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**(2013) 03 NCDRC CK 0018**

**In the National Consumer Disputes Redressal Commission**

New India Assurance Co. Ltd. and Anr. APPELLANT

Vs

Nanaksar Road Carriers RESPONDENT

**Date of Decision :** 11-03-2013

**Acts Referred:**

**Citation :** 2013 2 CPJ 422

**Hon'ble Judges :** J.M.MALIK J.

## Judgement

1. IT has to be borne in mind that Poverty wants some things, Luxury many, AVARICE, all things. This order shall decide the above mentioned complaint filed before this Commission on 19.3.1998. As a matter of fact, this complaint was firstly decided by this Commission vide its order dated 2.3.2006 by another Bench. This complaint is filed for reimbursement by the Insurance Company, qua the Carrier. It was held that the said case was not maintainable under Consumer Protection Act, 1986, because the issue was settled by the decision of the Hon''ble Apex Court in the case of Oberoi Forwarding Agency v. New India Assurance Co. Ltd. & Anr., : II (2000) SLT 86 : I (2000) CPJ 7 (SC) : 2000 (2) SCC 407, Shivani Roadlines v. Sundaram Textiles Ltd. & Anr. : V (2001) SLT 189 : III (2001) CPJ 8 (SC) : (2001) 5 SCC 625, and Ace Door to Door Express Cargo & Anr. v. Pfizer Ltd. & Ors.,, III (2001) CPJ 4 (SC) : IV, (2001) SLT 413.. Therefore, the then Bench of this Commission dismissed the complaint. Aggrieved by that order, Civil Appeal No. 4062 of 2006 was preferred before the Hon''ble Supreme Court of India. The Constitution Bench of the Hon''ble Supreme Court vide its judgment dated 17.2.2010, reported as M/s. Economic Transport Organisation v. M/s. Charan Spinning Mills (P) Ltd. & Anr., : I (2010) CPJ 4 (SC) : II (2010) SLT 44 : (2010) 4 SCC 114, on examination of the entire issue, has opined that the decision of this Court in M/s. Oberoi Forwarding Agencies'' case (supra), is not good law insofar as it construes a letter of subrogation -cum - assignment, as a pure and simple assignment. It was also held that an insurer alone cannot file a complaint under the Act. It was further held that in view of the opinion rendered by the Constitution Bench in M/s. Economic Transport Organisation''s case (supra), the order passed by the National Commission

dismissing the complaint as not maintainable, cannot be sustained and matter deserves to be remitted back to the National Commission for fresh consideration in the light of the said decision. The case was remanded back to this Commission for fresh consideration and disposal of the Original Petition, in accordance with law.

2. THE order passed by the Hon''ble Apex Court is dated 23.3.2010. File from the Supreme Court of India was received on 13.7.2010. Thereafter, on two hearings, none appeared. On 12.5.2011, Mr. Vivek Sharma, Proxy Counsel for M/s. Bhiwani Textile Mills appeared before this Commission but none appeared for OP. It was pointed out that OP had left the given address. On 26.8.2011, Advocates for the complainants appeared but none appeared on behalf of OP. On 9.3.2012, Mr. Kishore Rawat, Counsel for the complainants sought time to find out the new address of OP, for issuance of notice. On 13.7.2012, dasti notice was given to the Counsel for the complainants. Another notice was ordered to be issued through ordinary process. Fresh notice was again sent to OP vide order dated 12.9.2012. It was reported that OP was not traceable. Complainants also filed affidavit in this regard. It has also transpired that OP has not appeared before this Commission from the very start. It also did not appear before the Hon''ble Apex Court. Registered letter dated 7.11.2012 was sent but it has been received back with the postal remarks "incomplete address". Another notice was sent along with order of this Commission, dated 12.9.2012. Dasti notice was also issued to Mr. Kishore Rawat, Counsel for complainants, for service on OP. Affidavit of service was filed by Counsel wherein S.R. Kanda, has sworn in that he visited the residential address of the OP at H. No. 271, Tagore Park, Model Town, Delhi. This is four -storeyed building under construction belongs to Mr. Anand Sharma. Anand Sharma informed the deponent that he was not aware of M/s. Nanaksar Road Carriers. Ultimately, on 7.11.2012, under Order 5, Rule 20, OP was ordered to be served by substituted service in "Times of India" and "Dainik Bhaskar". Despite substituted service, OP did not appear on 15.2.2013, on which date, it was ordered to be proceeded against ex parte.

3. NOW , the facts deserve a look. M/s. Bhiwani Textiles Mills, Bhiwani, complainant No. 2, entrusted to M/s. Nanaksar Road Carriers, Delhi, OP, 114 consignments containing 160 bales of cloth (textile goods) at Bhiwani for carriage and safe delivery at Madras. Complainant No. 2 also handed over Invoices along with consignments to the OP. Value as per bales of the entire goods came to Rs. 19,13,020. The Consignee shown in the consignment notes is UCO Bank. The consignments were loaded at Bhiwani in Truck No. DL -1G -A6350.

4. THE consignments were never delivered at the destination, despite repeated demands made by the consignor as well as the consignee. OP issued non -delivery certificates dated 19.3.1996 to this effect confirming non -delivery of the goods at the destination station. The said non -delivery of the goods is the result of inadequate, deficient and imperfect services on the part of the opposite party

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and/or their employees. The complainants now claim a sum of Rs. 25,73,120 which is inclusive of interest @ 18% p.a. from the date of booking, till the filing of the complaint in the sum of Rs. 6,60,000 and costs of legal notice at Rs. 1,000 plus amount, as per bills, which comes to Rs. 19,13,020. Legal notices dated 31.1.1996/29.2.1996 under Section 10 of the Carriers Act were issued upon the OP by complainant No. 2, under registered A.D., followed by subsequent reminders and personal contacts, but the same could not produce the desired result.

5. IT is alleged that the OP failed to settle the claim, pay the above mentioned compensation and delayed the settlement of the above mentioned genuine claim of the complainants.

6. THE said consignments were insured With the complainant No. 1 against transit/road and other risks. Complainant No. 1 has settled and paid the amount to the complainant No. 2 by paying a sum of Rs. 21,11,922 vide cheque No. 0137446, dated 12.3.1997. Complainant No. 2 has assigned, transferred arid abandoned it right of claim in favour of the complainant No. 1 by executing letter of subrogation -cum -assignment deed in its favour. There is no conflict of interest between the complainants, as such. A legal notice was issued on 11.8.1997, through their Counsel requesting the OP to pay the compensation amount to the complainants by 5.9.1997, but till date, the OP failed to pay the said amount. The complainants requested OP to pay a sum of Rs. 21,11,922, the insured value of the goods, but the OP failed to settle the claim of the complainants. Ultimately, this complaint was filed with the prayer that a decree for Rs. 25,74,120 be passed in favour of the complainants, jointly or severally against the OP, with costs. Complainants also demanded interest @ 18% p.a. from the date of institution of complaint, till realisation of the decretal amount. We have heard the learned Counsel for the complainants and gone through the written submissions filed by them.

7. COMPLAINANT has produced on record copies of the 114 Invoices in respect of consignments in question which are placed at pages 19 to 132 of the paper -book and are marked as Annexures C -1 to C -113. The said consignments were handed over to the OP to accept the consignments for carriage vide Annexures D -1 to D -114 at pages 133 to 246 of the paper -book. For transporting consignments from Bhiwani to Madras and their details are given, as under:

8. THERE is no evidence on record that these goods were delivered to the consignee or sent back to the consignor. Furthermore, OP has issued 114 Non -delivery Certificates, dated 19.3.1996 in respect of each consignment note to this effect, confirming the non -delivery of the goods at the destination station, which are placed on record at pages 247 to 360 of paper -book and marked as Annexures E -1 to E -113. The complainant has also served notice under Section 10 of the Carriers Act which is placed at page 361 of the paper -book and is marked as Annexure -F. The Complainants have filed policy, which is placed at page Nos. 374 to 378 of the paper -book, and marked as Annexure -L.

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9. THIS is an indisputable fact that the complainant No. 1 had paid a sum of Rs. 21,11,922 as full and final settlement to the complainant No. 2. Complainant No. 2 has subrogated its rights against OP in favour of Complainant No. 1 by executing letter of subrogation and Power of Attorney in their favour, which is placed at pages 362 to 366 of the paper -book and marked as Annexures G and H, respectively. The discharge receipt issued by complainant No. 2 is placed at page No. 373 of the paper book and marked as Annexure -K. The complainants issued legal notice to OP through registered post, which is placed at pages 370 to 379 of the paper -book.

10. SECTIONS 7, 8 and 9 of the Carriers Act, 1865, deals with the provisions relating to the liability of common carrier for the loss and/or damage to the goods entrusted for carriage to them. Section 8 of the Act renders the carrier liable for the loss or damage to the consignment while it is in custody of the carrier. Section 9 of the Act provides that it would not be the responsibility of the ''consignor to prove the negligence or criminal act on the part of the Carrier. The liability of the carrier is that of a bailee and the carrier would be liable to pay the value of the consignment, once it is established that the consignee has failed to deliver the consignment. Since in this case, the goods were not delivered to the consignee, therefore, it is liable to make good the value of the consignment. This view was taken by the Apex Court in the following authorities. Nath Bros. Exim International Ltd. v. Best Roadways Ltd., I : (2000) CPJ 25 (SC) : I : (2000) ACC 434 (SC), Transport Corporation of India & Anr. v. Oriental Insurance Co. Ltd. & Anr., IV : (2011) CPJ 582 (NC). It is difficult to fathom as to why the OP did not come to contest this case. The evidence produced by the complainants is unrebutted on record. With the above said documentary evidence, the case of the complainant No. 1 is clear, there is no hinge or loop to hang a doubt on. It is well said that, to despise money is to dethrone a King. Again, money is a bottomless sea, in which, honour, conscience and truth may be drowned. Consequently, we allow the complaint, in the sum of Rs. 22,11,922 w.e.f. 12.3.1997 and grant interest @ 9% p.a. from 12.3.1997, till its realisation, in favour of the complainant and against the OP. Entire money will go to complainant No. 1. We also award litigation charges in the sum of Rs. 1,00,000 which would be paid within one month, otherwise it will carry interest at the rate of 9% p.a.

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