

(2004) 01 NCDRC CK 0122

In the National Consumer Disputes Redressal Commission

POONA BANGALORE CARRIERS

APPELLANT

Vs

RAJNEESH TRANSPORT CORPORATION

RESPONDENT

Date of Decision : 15-01-2004

Acts Referred:

Citation : 2004 1 CLT 467 : 2004 1 CPC 492 : 2004 2 CPJ 118

Hon'ble Judges : N.K.Jain , B.L.Khare , Pramila S.Kumar J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (for short the "Act") is by the opposite party against whom the District Forum, Indore has passed the impugned order directing the appellant to pay to the respondent a sum of Rs. 85,238/- plus Rs. 5,000/- with interest @ 18% p.a. and cost of the complaint.

2. THE respondent has not appeared despite service hence proceeded against, ex parte. The aforesaid amount is awarded on the finding that the appellant-opposite party was deficient in service in not transporting and delivering the goods in safe condition to the consignee and which were entrusted to it by the complainant for transport. However, at the out-set it may be observed that the appellant itself is a common carrier running a transport business and in fact the goods in question were entrusted to it by M/s. Premier Proteins Ltd. Indore for being taken and delivered to the Karnataka State Agro Corn Products Ltd. at Bangalore. The consignment consisted of 153 bags of soya flour which got wetted and infested in transit. The delivery receipt was also prepared by the complainant-carrier in the name of the consignor and the freight charges were also billed in the latter's name. Neither the consignor nor the consignee have approached the District Forum and we are afraid the complainant who was a carrier in the instant case did not fall within the category of a consumer as defined under Section 2(1)(d) of the Act. This definition is in two parts. Sub-clause (i) deals with purchase of goods with which we are not concerned. Sub-clause (ii) deals with hiring or availing of services. The case in hand is also of

hiring service for transportation of goods. This sub-clause thus reads : "(d) "consumer" means any person who (i) (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose. Explanation....."

So in order that the complainant could be treated as consumer it should have been shown that he had hired or availed of any service for transportation of the goods in question. As already pointed out in fact he had himself accepted the delivery of goods for being carried to Mysore and billed the consignor for the freight charges. The evidence on record further revealed that the appellant-opposite party had merely acted as an agent of respondent in arranging truck for the said transportation and there was absolutely no privity of contract between him and the consignor. It is the consignor, i.e., M/s. Premier Proteins Ltd., who was the consumer in the case and could have filed complaint against the respondent as also against the appellant. The respondent was not a consumer and the complaint at its instance was not maintainable and deserved dismissal on this short ground alone. The Forum below in our considered judgment erred in treating the respondent as consumer.

3. WE, therefore, allow this appeal, set aside the impugned order and direct that the complaint be dismissed. WE, however, make no order as to the cost which the parties are left to bear at their own as incurred throughout. Appeal allowed.