(2015) 03 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

Case No : NO 2728 of 2014

PREM DEVI — APPELLANT

Vs

M/S. CHOLAMANDALAM MS GENERAL — RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Sale of Goods Act, 1930, Section 19, Section 20 - Property passes when intended to pass - Specific goods in a deliverable state

Citation : 2015 2 CPJ 646

Hon'ble Judges : J.M. Malik

Advocate : Nimit Mathur, S. M. Tripathi

Judgement

1. Learned counsel for the parties present. Arguments heard.

2. Smt. Prem Devi Sharma was the owner of the vehicle in dispute. She entered into an agreement with Smt. Sita Devi for sale of the vehicle through agreement. Smt. Sita Devi paid a sum o fRs.2,57,587/- in cash to Smt. Prem Devi Sharma. She also deposited Rs.1,54,587/- as well as the installments from January, 2006 to August, 2006, the total being Rs.1,02,840/-. It was agreed that Smt. Sita Devi will deposit the balance amount to HDFC Bank in the shape of monthly installments from the date of agreement dated 4.9.2006 onwards and shall be entitled to get the aforesaid vehicle transferred in her name from RTO after completion of the installments.

3. Unfortunately, the vehicle was stolen on 28.6.2007. M/s Cholamandalam MS General Insurance Co. Ltd. repudiated the claim on the ground that Smt. Prem Devi Sharma had got no insurable interest after the date of sale.

4. Thereafter, the petitioner filed a complaint before the District Forum. The District Forum allowed the complaint. Aggrieved by the order of District Forum, the opposite party/insurance company preferred an appeal before the State Commission but the State Commission accepted the appeal and dismissed the complaint. Aggrieved by that order, Smt. Prem Devi Sharma has preferred this

revision petition before this Commission.

5. I have heard the learned counsel for the parties. Learned counsel for the petitioner has invited my attention towards the covenants of the agreement, which are reproduced as under: "That the First Party shall be responsible for all kinds of taxes, challan, accidents and dues etc. prior to 31.8.2006 in respect of the aforesaid Tata Safari and after 31.8.2006, the Second Party shall be responsible for all taxes, challans and claims.

That the aforesaid Tata Safari has been financed by H.D.F.C. Bank Ltd. In case any balance finance, in respect of the aforesaid Tata Safari remains outstanding, the First Party shall be responsible for the payment and clearance thereof and the First Party shall by all means hand over the N.O.C. of aforesaid Tata Safari to the Second Party/Purchaser. In case, any deficiency in the documents of the vehicle is found, the First Party shall be responsible for the same."

6. Learned counsel for the insurance company further vehemently argued that as per Sections 19 and 20 of the Sale of Goods Act, the sale already stands completed. Smt. Sita Devi has become the sole owner of the car. Consequently, the insurer is discharged from its liability. Again, t was intended that the sale should be complete as per the above said covenants of the agreement. This is unconditional sale and therefore, Sections 19 and 20 come into play.

7. However, the arguments urged by learned counsel for the respondent pale into insignificance in view of the judgment reported in the case titled as National Insurance Company Ltd. Vs. Jaipal Singh and others, revision petition No. 2262 of 2007, decided on 11.11.2011 by a Bench presided over by Hon''ble Mr. Justice Ashok Bha, President. The relevant extract of this judgment runs as under: "The stand taken by the petitioner that it is not liable to pay either to the original owner, in whose name the insurance cover stands as he ceased to have any insurable interest after the transfer and to the subsequent vendee because it did not have any privity of contract with him, cannot be accepted. The insurance cover was still valid. Insurance company would either is liable to pay the original owner or to the subsequent vendee. It cannot absolve itself of its liability to pay by taking contradictory stands. In the case of "subsequent vendee'', the stand taken by the petitioner is that it does not have any privity of contract with him as the insurance cover had not been transferred in his name. It absolves itself of the liability to pay to the original owner on the ground that he had divested himself of the insurance interest by transferring the property. This stand is contradictory. The insurance company would be liable to pay the person in whose name the insurance cover stands. The stand taken by the petitioner is neither legal nor morally acceptable.

8. A two Members Bench of this Commission in " Banowarilal Agarwalla vs. National Insurance Company Ltd. & Anr. IV (2005) CPJ 110 (NC)" taking into consideration the judgment of complete insurance''s case(supra) has held that the transferee in the absence of transfer of the insurance cover cannot claim

compensation from the insurance company but such cover stands in the name of the original owner; the original owner could claim the damages from the insurance company. Relevant observations of the Bench reads as under: "10. Be that as it may, it has also been held that since it is the vehicle which is insured and that cover is not disputed, only question involved is who should have preferred the claim? As rightly interpreted above, the petitioner has got no locus to file this complaint as he was not the insured. The only flaw in this case is that the claim should have been filed by the original policy holder and not by the complainant/purchaser of the vehicle. In this slightly technical situation, what could have been done was to have the complaint filed by the insured. Keeping in mind the principle of indemnification of loss by the insurers, in our view, this technicality should not come in the way of the Insurance Company honouring its part of the contract. In the facts and circumstances of the case, we direct that the claim before the respondent-insurance company be filed by the insured as per Policy, within a period of 6 weeks of passing of this order upon which the respondent shall consider the case as per law. The time spent before the consumer Forums in pursing his remedy by way of filing this complaint, shall have to be condoned, as it appears tht it was on account of some wrong advise that this procedure was initiated. Upon filing a complaint by the insured as per policy, the respondent shall sympathetically consider the claim in view of the report of the Surveyor which is on record and settle the claim as per terms of the policy, expeditiously."

9. Last but not the least, a bare reading of the agreement detailed above, clearly goes to show that in case of default, the complainant was to be responsible for the payment and clearance thereof to the Bank. NOC was to be given to the complainant. All these facts go to show that the question of complete sale did not arise till the aforesaid facts were completed and fulfilled.

10. Consequently, we accept the revision petition, set aside the order passed by the State Commission and restore the order of the District Forum.

