

(2012) 08 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

S Muthukumaran

APPELLANT

Vs

Ashok Jain Prop M/S Srinivasa Transport Corporation

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 492 : 2012 4 CPJ 225

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : V.Prabhakar , Sanjoy Kumar Ghosh

Judgement

1. THIS revision petition has been filed by the original complainant against the order dated 20.6.2006 passed by the State Consumer Disputes Redressal Commission, Chennai ("State Commission", for short). By its impugned order, the State Commission allowed the appeal of the respondent, set aside the order dated 29.10.200 passed by the District Consumer Disputes Redressal Forum, Chennai (North) and dismissed the complaint of the petitioner. The District Forum had earlier allowed the complaint of the petitioner against the opposite party, respondent herein.

2. BRIEFLY stated, the petitioner transported 400 bags of jaggery (each bag weighing 50 kgs and the total value thereof being Rs.2,25,000/-) through the respondent on 10.8.1998 on payment of freight charges of Rs.19,050/-. The consignee of the goods was M/s Hind General Stores, Calcutta. The goods reached the destination only after 30 days and by the time they reached, nearly 75% of the jaggery had melted because iron rods and pipes were also loaded along with the jaggery bags. According to the petitioner, jaggery melted on account of chemical reaction. It is the grievance of the petitioner that in spite of specific instructions to the respondent that the goods should be sent separately, they were sent along with other material which caused chemical reaction. Besides this, the goods loaded on 10.8.1998 left Chennai only on 13.8.1998 and in spite of the promise made by the respondent that the goods would reach in 10 to 15 days" time, they actually reached the destination after 30 days. Because of this, the consignee agreed to take the delivery of the goods only on payment of

25% of the total value thereby causing loss to the petitioner. The petitioner, therefore, issued a notice to the respondent but since there was no reply from respondent to the notice, a consumer complaint was filed by the petitioner before the District Forum. The respondent opposed the complaint on a number of grounds contained in their written statement filed before the District Forum.

3. ON appraisal of the issues and evidence adduced by the parties before it, the District Forum allowed the complaint by directing the respondent to pay a sum of Rs.1,12,500/- for the total loss of the value of the jaggery and also to pay a sum of Rs.19,050/- as freight charges with 12% interest from 10.9.1998 till the date of payment. Aggrieved by the aforesaid order of the District Forum, the respondent filed an appeal against the same before the State Commission which came to be allowed by the impugned order which is now under challenge before us.

4. WE have heard Mr. V. Prabhakar, Advocate for the petitioner and Mr. Sanjoy Kumar Ghosh, Advocate for the respondent and perused the record. The State Commission, while non-suited the claim of the petitioner and setting aside the order of the District Forum, has given the following reasons in para 9 of the impugned order:- "We have carefully gone through the materials on record. We are satisfied that the District Forum had allowed the complaint on wrong appreciation of materials on record. Admittedly the complainant made a claim that the goods were delivered in a damaged condition nearly after two months from the date of delivery. Again the complainant did not refuse to pay the freight charges. If really the goods had reached in such a damaged condition as claimed by the complainant, he would have definitely refused to pay the freight charges. Thirdly as to the actual damage caused to the jaggery, absolutely no material had been produced. As rightly pointed out, on behalf of the opposite party/appellant, except the ipsi dixit of the complainant, there was absolutely no material available on record, in support of his case. That apart, the presence of the consignee would have made a lot of difference in the appreciation of the case. Absolutely no excuse had been offered as to why the consignee had not been made a party. If the consignee had been made a party, it would have come to light whether the jaggery was received in damaged condition and that the consignee offered to pay only 25% of the total value for the consignment. Further, as already pointed out on behalf of the opposite party, it was never agreed/taken by the opposite party that the goods would be transported in a separate container. This was not in the hands of the opposite party. He was only acting as an agent of the complainant and he had no say with regard to the loading of the materials by the railways. The District Forum had proceeded on mere assumptions and surmises. It had assumed that the goods had been delivered in a damaged condition. Merely because the opposite party did not respond to the notices issued by the complainant, it was not as if the complainant need not do anything further to prove the damage alleged to have been caused. It was incumbent on the part of the complainant to establish and this, in our view, the complainant had not done."

5. WE agree with the view taken by the State Commission. No material has been placed before us which would persuade us to take a different view. The District Forum apparently did not appreciate the material placed on record correctly while accepting the complaint. It is not denied by learned counsel for the petitioner that the petitioner was aware of the fact that the goods had been loaded in the container which would be sent through the railways. It has also not been denied that the booking was not for a full container load. In view of this and also the fact that the alleged loss could not be proved by the material placed on record, the State Commission was right in holding that the claim made by the petitioner could not be established.

6. WE have considered the citations, namely, Nath Brothers Exim International Ltd. Vs. Best Roadways [(2000) 4 SCC 553] and Patel Roadways Ltd. Vs. Birla Yamaha Ltd. [(2000) 4 SCC 91] relied on by learned counsel for the petitioner but in view of the specific facts and circumstances of the present case, they would not be applicable to the present case. In the circumstances, we dismiss the revision petition and confirm the impugned order with the parties bearing their own costs.