(1997) 08 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

SONA ENTERPRISES APPELLANT

Vs

Continental Carriers P Ltd RESPONDENT

Date of Decision : 27-08-1997

Acts Referred:

Citation : 1997 3 CPJ 153

Hon'ble Judges : B.JAGANNATHA HEGDE , KUMAR GOWDA , B.H.KAMALAMMA J.

Judgement

1. THIS is a complaint filed under Section 12 of the Consumer Protection Act, 1986. The complainant''s case may be briefly stated thus:

2. THE complainant is a small women entrepreneur and she wanted to participate in an exhibition known as ''Bahrain Autumn Fair -1995'' conducted by M/s. Arabian Exhibition Management, from 30.11.1995 to 8.12.1995. She contacted M/s. Continental Carriers Private Limited -the 1st opponent, who are airfreight agents and consolidators. They gave her a quotation on 13.10.1995, undertaking to transport the articles, so that they may reach Bahrain on time. The 1st opponent assured her that the maximum time that is required for transportation of the consignment would be 15 to 20 days. The consignment for exhibiting was handed over to the 1st opponent. The 1st opponent delivered by the documents relating to the goods along with the invoice to the complainant. The 1st opponent thereafter entrusted the consignment to M/s. Sea -Speed Shipping Agencies (P.) Limited the 3rd opponent (the ship owner) through the 2nd opponent. It was agreed that the freight charges of Rs. 11,462/ - would be paid after the return of the complainant from Bahrain. The 1st Opponent assured her that the consignment would reach on time, i.e. on or before 30.11.1995. But the consignment did not reach Bahrain as promised and reached Bahrain only on 16.12.1995. The complainant, expecting that the consignment would reach in Bahrain, flew to Bahrain with her husband, to exhibit those goods in the exhibition. She had engaged a stall in the fair. She had to stay with her husband in a hotel and she had to incur expenditure in this regard. She is alleging that the opponents committed deficiency of service, in not delivering the goods on time.

It is also her case that she would have earned income of Rs. 1.00 lakh after meeting all her expenses. There - fore, she claims a sum of Rs. 10.16 lakhs from the opponents. The 1st opponent contends that he has not committed any deficiency in service. He is only a custom house agent, and that the complainant volunteered to render gratuitous service, as the complainant represented herself as a small lady entrepreneur and that they had not included, in the invoice, 10 percent service charges which are normally charged to others. The 1st opponent also contended that he was assured by the 2nd and 3rd opponents that the consignment would be delivered within time and that there was no negligence on his part. The 1st opponent further contends that by delivering the consignment to opponents -2 and 3 in time, he has discharged his function and that he is not responsible for any negligence on the part of opponents No. 2 or 3.

3. OPPONENTS 2 and 3 contend that they have not committed any deficiency in service, and there is no privity of contract between them and the complainant. It is also their contention that the 1st opponent did not inform them that time of delivery was an essential part of contract.

4. THE complainant has filed her affidavit and marked the documents C1 to C48. The 1st opponent has also filed his affidavit. Two affidavits have been filed on behalf of opponents 2 and 3. Ext. R1 to R8 have been marked for the opponents. Following points would arise for our considerations: (1) Whether the Complaint is maintain - able? (2) Whether the opponents committed any deficiency of service by not delivering the goods on or before 30.11.1995 at Bahrain? And (3) If the opponents are held to be liable for deficiency of service what is the relief to which the complainant is entitled. Point No. 1 :

5. THIS point arises for consideration be - cause the 1st opponent contends that the service rendered by him was gratuitous in nature. Ex. CI is the quotation given to the complainant by the 1st opponent. Ex.C2 is the invoice dated 4.11.1995, showing that the complainant is bound to pay a sum of Rs.11,462/ -. It gives the details of the amounts charged. No doubt, service charges has not been specifically mentioned in the said in - voice. By that we cannot come to the conclusion that the 1st opponent did gratuitous service. The following note made on the invoice clearly shows that the 1st opponent entered into a business transaction. '' ¦.. . ¦. . ¦. Please Note: 1. Please pay this Bill immediately. 2. Any delay in payments will attract an interest of 18.5% per annum of the due amount. 3. Discrepancies should be intimated immediately. 4. Payments in favour of "CONTINEN - TAL CARRIERS P. LTD", by A/C Payee Cheque/Draft drawn on a Bank in Bangalore only. ¦.. ¦.. ¦..''

6. NO document has been produced to show that it has been the practice of the 1st opponent to charge, other exporters, service charges separately. It is not stated anywhere in the affidavit filed by the 1st opponent that he had any special relationship with the complainant to do the job gratuitously. We are, therefore, not prepared to accept the contention that whatever the 1st opponent did free service. It is next contended that it is not a carrier as alleged by the

complainant. According to it, it is a custom house agent. In the invoice, it has styled itself as ''International Freight Forwarders and Consolidators. The learned Counsel for the complainant has produced the authorities to contend the scope of the duties normally done by ''International Freight Forwarders and Consolidators. We do not think it necessary to go into this aspect, as the facts are clear that the 1st opponent undertook to trans - port the consignment entrusted to it by the complainant to Bahrain. We, therefore, hold that the 1st opponent cannot escape his liability simply because it was describing itself as ''International Freight Forwarders and Consolidators''. The complainant is a ''consumer'' and, therefore, the com - plaint of the complainant is maintainable before a Consumer FORA. Point No. 2: It is the clear case of the complainant that time of delivery is an important essence of the engagement of service and that if the goods are not delivered on or before 30.11.1995, there will be complete frustration in the whole arrangement of sending the goods to Bahrain. In other words, there will be total failure of the object involved in the transaction. The 1st opponent, on the other hand, says that it was not bound to deliver the goods on or before 30.11.1995 as alleged by the complainant, that it has under - taken to deliver the goods approximately within 15 to 20 days. Now the point for adjudication is, whether the 1st opponent was aware, that the time of delivery was an essential part of the contract and whether it has accepted to do the service of the transportation of the goods to Bahrain on or before 30.11.1995. In Ex. CI no doubt it is stated that transit time is 15 to 20 days from Bangalore to Bahrain. There are many other documents in support of the contention of the complainant which possibly the 1st opponent cannot deny. The goods were delivered at Bangalore to the custody of the 1st opponent on 28.10.1995. In certain commercial transactions, time of delivery will become very essential. The learned Counsel for the complainant relies on letter -dated 7.11.1995 written by the 1st opponent to the complainant, enclosing several documents. Letter dated 7.11.1995 is marked as Ex. C3. Ex. C4 -a bill of lading shows that the articles are to be exhibited at ''Arabian Exhibition Management'', Bahrain. Ex. C5 dated 3.11.1995 is a certificate issued by the Government of India, Ministry of Textiles, stating clearly that the goods are being exported to ''Arabian Exhibition Management'' and that exhibition and sale would be held from 30.11.1995 to 8.12.1995. Exs. C6 and C7 the letters of Reserve Bank of India, also supports her contention. All these documents were pro - cured by the 1st opponent and forwarded to the complainant so as to enable her to take delivery of the consignment when it reached Bahrain. It is not open to the 1st opponent to contend that he had no knowledge of these facts or to contend that the complainant is making a false allegation in this regard. The irresistible conclusion we arrive at, is that the 1st opponent was aware that the delivery of time was the essence of the contract and that the 1st opponent actually assured the complainant to deliver the consignment on time, i.e. on or before 30.11.1995, at Bahrain. Point No. 3:

7. THE learned Counsel for the opponents 2 and 3 contended that there is no

privity of contract between them and the complainant. The complainant has not produced any material to show that she had anything to do with opponents 2 and 3. It was the 1st opponent who engaged the services of opponents 2 and 3. If opponents 2 and 3 have committed any deficiency of service, it should be attributed to the 1st opponent. Section 230 of the Indian Contract Act, 1872, support the contention that the 1st opponent is only liable under such circum - stances. He who acts through another does it himself. Opponents 2 and 3 were working under the 1st Opponent. They are his agents and the 1st Opponent is liable for their acts. Section 230 of the Indian Contract Act, 1872 reads thus: '' ¦ ¦. ¦. 230. Agent cannot personally enforce, nor be bound by contracts on behalf of principal - In the absence of any contract to that effect, an agent cannot personally enforce contract entered into by him on behalf of his principal, nor is he personally bound by them. Presumption of contract to contrary. -Such a contract shall be presumed to exist in the following cases (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad; (2) Where the agent does not disclose the ''name of his principal; (3) Where the principal, though disclosed, cannot be sued. z

8. IT is urged by the learned Counsel for the 1st opponent that he cannot be penalised for the mistake of opponents 2 and 3. We do not want to adjudicate the dispute that may arise between opponents 1 on the one hand and opponents 2 and 3 on the other. We are only concerned with the problem of compensating the complainant with whom she had entered into a contract. We therefore make it clear that this order will not come in the way of the 1st opponent taking any action against opponents 2 and 3, in accordance with law. Now, we come to the question of dam - ages. In the complaint, the total amount claimed by the complainant is Rs.'' 10.16 lakhs. In a statement filed on behalf of the complainant on 12.8.1996, the details of that figure has not been given. We asked the learned Counsel for the complainant to give the details of the compensation claimed by the complainant as per Exhibits marked on behalf of the complainant, before us. She has obliged us by giving the details of the same. It is as follows: Sl. No. Category under which Compensation is Claimed Date or Duration When Expense Occurred Amount (In Rs.) of the Expense Occurred Documents Enclosed in Proof of the Claim (1) (2) (3) (4) (5) (1) Package taken for two persons (Mrs. Sharma, the complainant and her husband, Mr. Sharma, who assisted her for the said exhibition. The said package was taken from 4.7.1995 to 2.1.1996 Exhibition package of Rs. 25,550 each =Rs. 51,100/ -Also, USD 480 each = Rs.16, 800/ - TOTAL: Rs. 67,900/ - (a) Exhibit "Ex. 6 (the pamphlet of the Autumn Fair 1995) (b) Ex. C -37 is the ticket of travel. ORBIT BUSINESS TOURS, B'' lore Branch (2) Stall taken in the said exhibition 31.11.1995 to 8.12.1995 (630 Dinar) equal to Rs. 62,370/ - Ex. C -33 is the invoice raised by the exhibitors (3) Racks made in the stall 29.11.1995 (10 $ 60 Cents) equal to Rs. 352/ -. Ex. C -34 which is receipt of payment (4) Fax charges from Hotel in Bahrain TYLOS'' to Dubai and India 9.12.1995 (10.3 Dinar) equal to Rs. 1,337/ - Ex. C -35, which is the receipt of payment. Exs.C -8, 11, 14 & 15

are the faxes made by the complainant (5) Duties paid towards hand luggage 28.11.1995 (15 Dinar) equal to Rs. 1,485/ - Ex. C -36, which is the receipt of payment. (6) Marine Insurance Charges 31.10.1995 Rs. 568/ - Ex. C -38, which is the receipt of payment. (7) Telephone expenses from Bangalore to Bahrain 10.10.1995 to 10.12.95 Rs. 400/ - Ex. C -46, which is the telephone bill. (8) Carpenter to pack the consignment from B'' lore to Behrain (4 huge boxes) Around mid -October, 1995 Rs. 12,000/ - Ex. C -E1.7 which is the whole list of items/goods packed in 4 boxes and examined by Government Authorities like RBI, etc. (9) Travel from B''lore to Bom. and from Bom. to B''lore including expenses towards stay, food, transport etc. 25.11.1995 to 12.12.1995 Rs. 6,600/ - Estimated cost (10) Charges towards getting goods from Moradabad/ Jaipur etc. Sept., 1995 to October, 1995 Rs. 28,000/ - Estimated cost (11) Food expenditure during stay in Bahrain 28.11.1995 to 8.12.1995 Rs. 4,455/ - Estimated cost (12) Administration expenses towards stationery, postage etc. Sept., 1995 to 12.12.1995 Rs. 2,400/ - Estimated cost (13) Miscellaneous expenses Sept., 1995 to 12.12.1995 Rs. 10,000/ - Estimated cost. (14) Loss of Business: - (a) Repayment of loan of Rs. 3 lakhs taken from SBI, B''lore for the exhibition Loan taken on 22.10.1995 for Rs. 2.5 lakhs and on 22.3.1995 for Rs. 50,000/ - Ex.C -43 and Ex. C -44, which are the documents of the SBI, Bangalore. (b) Use of salaried money of the husband, who is a salaried man. Rs. 50,000/ - taken on 22.11.1995 & Rs. 65.000/ - taken on 9.11.1995 . Ex.C -40 and Ex.C -41 showing receipt and payment (c) The Certificate of the Arabian Exhibition Management showing no Business being done by complainant in the said exhibition. Estimated loss under A, B and C above. 9.12.1995 Rs. 2,50,000/ - Ex. C -47 which is the certificate of the Arabian Exhibition Management (15) Loss of reputation in inter -national market, mental agony, tension, deteriorated health condition, anxiety and stress, etc. 30.11.1995 onwards till date. Rs. 5,00,000/ - (16) Freight charges to bring the consignment back from Bahrain to Bangalore, including expenses towards demurrage charges, damages, etc., along with the costs of the instant litigation and consultation charges of Advocate. Rs. 54,000/ - Estimated cost to be incurred to secure the goods back due to the failure of selling the said goods in the exhibition due to the negligence of OP 1. The complainant has claimed Rs. 84,700/ - at Sl. No. 1 towards travelling and stay expenses at Bahrain including the freight charges of her - self and her husband. We do not think that the complainant will be entitled to the charges incurred for her husband. We therefore allow only Rs. 42,350/ -. Claims at Sl. Nos. 2 to 7 are all supported by documents and we, therefore, al - low these claims. The complainant has not produced any documents in support of her claim at Sl. Nos. 8 to 13. The total of these claims would come to Rs. 63,455/ -. We would allow only Rs. 31,000/ - in this regard. The claim at Sl. No. 14 cannot be permitted as we are going to award interest on the amount claimed. With regard to claim of Rs. 5,00 lakhs at Sl. No. 15 by the complainant, we would limit it to Rs. 50,000/ -. At Sl. No. 16 a sum of Rs. 54,000/ - is claimed as freight charges for getting back the goods from Bahrain to Bangalore. This, according to us, is exorbitant. When the complainant has spent Rs. 11,462/ - for transportation of the goods from Bangalore to Bahrain, the same amount is required to get it back. So we would allow a sum of Rs. 11,462/ - only in this regard. In addition, the complainant will be entitled to the costs of the proceedings at Rs. 5,000/ -. In the result, we pass the following order: ORDER The 1st opponent is directed to pay a sum of Rs. 2,01,324/ - along with interest at 15% p.a., from 30.11.1995 till payment, together with Rs. 5,000/ - as costs of this proceeding. Complaint disposed of.