
(2005) 02 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

TARGET CARGO CARRIERS

APPELLANT

Vs

AROMA ORGANICS PVT. LTD.

RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Citation : 2005 0 ACJ 422 : 2005 0 NCDRC 17 : 2005 2 CPJ 30

Hon'ble Judges : K.S.GUPTA , B.K.TAIMNI J.

Advocate : SANJAY KUMAR GHOSH , H.C.GOEL

Judgement

1. THIS revision is directed against the order dated 11.1.1999 of Kerala State Consumer Disputes Redressal Commission. Thiruvananthapuram dismissing appeal Nos. 1213 and 1214 of 1998 against the common order dated 4.8.1998 of a District Forum allowing complaint Nos. 612 and 613 of 1997 filed by the respondents/complainants. In O.P. No. 612 of 1997, the petitioners were directed to pay Rs. 63,770/- while in O.P. No. 613 of 1997 Rs. 2,70,680/- with interest at 12% p.a. w.e.f. 27.6.1997.

2. FACTS giving rise to this revision lie in a narrow compass. In O.P. No. 612 of 1997, 9.44 MTs of acetone was booked through the petitioners by Hindustan Organic Chemicals Ltd. for being delivered to respondent No. 1/complainant No. 1 at Bombay. There was short delivery for which certificate was issued by the petitioners. Consignment was insured with respondent No. 2/complainant No. 2. On claim being made, the respondent No. 2 settled it for a sum of Rs. 65,770/-. In consideration of having received this amount, the respondent No. 1 executed letter of subrogation and special power of attorney in favour of respondent No. 2 authorising it to receive the damages from the petitioners. In O.P. No. 613 of 1997, quantity of acetone booked with the petitioners for transportation from Baroda to Kochi was 9.580 MTs. There was also short delivery for which certificate was issued by the petitioners, Respondent No. 2 settled the claim for Rs. 2,70,680/-. On receipt of this amount, the respondent No. 1 executed letter of subrogation and special power of attorney to the said effect in favour of respondent No. 2. Though complaints were resisted by the petitioners but they

were allowed by the District Forum in the manner noticed above and the order of District Forum was affirmed in appeals filed by the petitioner, by the State Commission. Relying on the decision in *Oberoi Forwarding Agencies v. New India Assurance Co. Limited and Anr.*, II (2000) SLT 86 = 1 (2000) CPJ 7 (SC) = (2000) 2 SCC 407, the submission advanced by Shri Sanjay Kumar Ghosh for petitioners was that after execution of aforesaid two documents, the respondent No. 1 ceased to have any right to recover compensation for the shortage of two consignments and respondent No. 2 was not a "consumer" within the meaning of Consumer Protection Act, 1986 (for short Act) as the service, namely, the transportation of consignments had already been availed of by respondent No. 1. Complaint jointly filed by the respondents was, thus, not maintainable. In *Oberoi Forwarding Agency's* case, in para No. 18 of the report at (p-415), the Supreme Court has noticed distinction between subrogation and assignment. Subrogation is the substitution of one person for another and an insurer exercising right of subrogation against third party must do it in the name of assured. It being a case of subrogation and not assignment, the complaint was maintainable by the respondents. To be noted that the amounts awarded by District Forum was as assessed by the Surveyor. There is, thus, no illegality or jurisdictional error in the orders passed by Fora below warranting interference in revisional jurisdiction under Section 21(b) of the Act.

3. ACCORDINGLY , revision petition is dismissed with cost of Rs. 7,500/- to the respondents.