(1998) 11 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

ARORA GOODS TRANSPORT CO. RESPONDENT

Date of Decision : 08-11-1998

Acts Referred:

Citation : 1998 2 CLT 606 : 1998 3 CPR 434 : 1999 1 CPJ 384

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal allowed with costs

Judgement

1. DISTRICT Forum, Bathinda on December 29, 1997 dismissed the complaint filed by United India Insurance Company and Punjab Spinning and Weaving Mills Ltd., Bathinda filed against Arora Goods Transport Co., Nagpur with costs of Rs. 1,000/-. The aforesaid order has been challenged by the complainants in this appeal. Punjab Spinning and Weaving Mills had taken Marine Insurance Policy from United India Insurance Company for a period of one year commencing from January 21, 1997 on payment of the requisite premium. During the currency of the aforesaid policy on February 21, 1997, 50 bales of cotton were booked from Nagpur to be brought to Bathinda with Arora Goods Transport Company, the opposite party. The value of the goods to be transported was stated to be Rs. 3,14,330/-. The goods were being carried in Truck No. MP-09D-7648. On their journey near Indore, the goods were damaged on account of fire. Claim was made before the Insurance Company. Assessor was appointed who assessed the loss at Rs. 2,43,010/-.

2. THE Insurance Company aforesaid paid the amount to Punjab Spinning and Weaving Mills Ltd. Subsequently under subrogation authority, the Insurance Company joining the consignor of the goods as aforesaid, approached the District Forum, Bathinda claiming Rs. 2,43,010/- from the transporter the opposite party. THE complaint was contested by the opposite party. Several pleas were taken. District Forum, Bathinda had no territorial jurisdiction to entertain the complaint. THE subrogation authority was not signed by the competent person. THE goods were booked at "owner''s risk" and liability of the opposite party was denied.

THEre was no negligence on the part of the opposite party as the cause of fire was stated to be on account of friction of iron hoops with which bales of cotton were tied. Both the parties led their evidence on affidavits and documents on the basis of which the impugned order was passed by the District Forum. It was held that District Forum, Bathinda had no territorial jurisdiction to entertain the complaint. The second question was also answered against the complainants that the subrogation was not authenticated by a competent person. On merits, it was held that there was no deficiency in rendering service on the part of the transporter as the cause of fire was beyond their control. Meaning thereby that there was no negligence on their part in the matter of transportation of the goods. Hence the complaint was dismissed with costs of Rs. 1,000/-.

Learned Counsel for the appellant complainants has argued that the approach of the District Forum in the matter of determining the question of territorial jurisdiction of the District Forum is erroneous on facts as well as in law. There is force in this contention. As per Goods Receipt, the opposite party was to transport the goods from Nagpur to Bathinda. Since delivery of the goods was to be effected at Bathinda, at least part of cause of action accrued at Bathinda. District Forum, Bathinda has therefore jurisdiction to entertain the complaint in view of Section 11(2)(c) of the Consumer Protection Act. The approach of the District Forum in deciding the question of territorial jurisdiction is not correct.

3. THERE is force in the contention of Mr. D.P. Gupta, Counsel for the complainant-appellants that when subrogation letter was duly attested by Notary Public, it was not necessary to lead any other evidence in order to prove the aforesaid document or competency of the executants. In support of this contention, reliance has been placed on the decision of the Delhi High Court in City Bank N.A., C. While referring to Section 85 of the Evidence Act, it was held that the documents duly attested by the Notary Public would indicate that the Notary Public had satisfied himself about the competency of the executants. That being the position, the approach of the District Forum, in holding that subrogation has not been established in the present case is again erroneous and cannot be accepted. The District Forum also held that the transporter was not liable as the goods were booked at "owner''s risk". This plea was earlier raised in several cases before this Commission and was repelled. Reference be made to K. Gopalakrishnan v. Parkash Roadlines Ltd., Appeal No. 136 of 1997, decided on 14.8.1997. (PSCDRC) It was held that by merely mentioning "At owner''s Risk" in the Goods Receipt, the transporter is not absolved from safe transit and delivery of goods at the destination. It is for the transporter to explain non delivery and on failure, he would be liable to compensate the complainant. A Revision Petition No. 167/1998 was filed against the aforesaid order of the State Commission before the National Commission, which was dismissed on May 29, 1998.

4. THE District Forum further held that there was no negligent act on the part of the transporter as the cause of fire probably was due to friction of iron hoops with which the bales were tied i.e. fire if any occurred on account of jolts and

jerks, a normal feature of carriage of goods in truck. This contention again cannot be accepted. It was incumbent upon the transporter to so load the truck that friction of such material, which was likely to cause fire be avoided. If no such steps were taken by the transporter, the same would amount to deficiency in rendering service and negligent act, if the goods were destroyed and not delivered. For the reasons recorded above, this appeal is allowed with costs of Rs. 1,000/-. The opposite party the transporter is directed to pay a sum of Rs. 2,43,010/- with 12% p.a. interest thereon from the date of occurrence of fire i.e. February 24, 1997 till payment along with costs as stated above. Let these directions be complied within a month of receipt of copy of this order. Appeal allowed with costs.

