

(2005) 12 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD.

APPELLANT

Vs

GREEN ROADWAYS (REGD.), UDAIPUR

RESPONDENT

Date of Decision : 20-12-2005

Acts Referred:

Citation : 2005 0 NCDRC 15 : 2006 1 CPR 177 : 2006 2 CLT 324 : 2006 2 CPJ 158

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

Advocate : K.L.NANDWANI

Judgement

1. THE appellant was one of the complainants before the State Commission, where they had filed a complaint alleging deficiency in service on the part of the respondent M/s. Green Roadways.

2. VERY briefly the facts of the case are that the second appellant who was the second complainant before the State Commission had hired the services of the respondent M/s. Green Roadways for transportation of its goods which got burnt by fire and were not delivered to the consignee. Since the goods were insured, a claim was preferred with the Insurance Company as well, where claim was settled and payment of Rs. 8,96,976 was received by the respondent appellant from the Insurance Company and they also executed a Letter of Subrogation and "Special Power of Attorney" in favour of the first appellant Insurance Company. On their filing a complaint before the State Commission, it was dismissed in following terms: "We are of the opinion that the complaint has only been filed by the Insurance Company. It has not been effectively filed by the consignor. Mere mentioning the name in the title of the consignor, in the title part of the complaint is not sufficient. The complaint should be signed by the consignor and it should be presented by the consignor himself or by a Legally authorised agent or Advocate. As the complaint has not been effectively filed on behalf of the consignor and has been filed only by the Insurance Company, the Consumer Forum has no jurisdiction to entertain this complaint v The remedy of the Insurance Company lies in a Civil Court. On this ground the complaint is

dismissed."

3. ON issue of notice, none appeared on behalf of the respondent, hence we go on to pass the orders, after hearing the learned Counsel for the appellant as also perusing the material on record. The basic facts are not disputed. We have very carefully gone through the Letter of Subrogation and Special Power of Attorney, in view of which we are unable to sustain the order passed by the State Commission for the simple reason that the complaint has been filed by the appellant United India Insurance Co. Ltd. on their behalf as also on behalf of the second complainant (the original consumer) on the strength of the Power of Attorney executed by the second appellant in favour of the Insurance Company, for which the authority to do so lies in the Letter of Subrogation and Special Power of Attorney executed by M/s. Reliance Kemot Industries Ltd. (the original hirer of services of the respondent M/s. Green Roadways). This is a pure and simple case of "subrogation" and not an "assignment". In the light of this, we find that the appellant was competent to file this complaint in his name as also in the name of the second complainant based on the Power of Attorney executed in his favour.

4. IN view of above, the order passed by the State Commission is set aside and the matter is remanded to State Commission for passing the order as per law after giving both the parties opportunity to plead their case as also leading evidence in support of their respective contentions. Both the parties are directed to appear before the State Commission on 28.2.06. A copy of this order be sent to both the parties.