(1993) 12 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd — APPELLANT

Vs

VANGARAI AMMAN TRANSPORTS — RESPONDENT

Date of Decision : 23-12-1993

Acts Referred:

Citation : 1995 1 CPJ 265

Hon'ble Judges : S.S.Dewan , R.L.Gupta J.

Advocate : N.S.Sitta , S.P.Jain

Judgement

1. ANSWER to the primal jurisdictional question regarding the maintainability of the present complaint and of the locus standi of the complaints to file the complaint under the Consumer Protection Act, 1986 (the ''COPRA'' in brief) in short is the subject matter of this order.

2. THE facts relevant and significant for the adjudication of the complaint lie in a narrow compass. On 20.4.1990 a consignment of Super Heater Tubes was booked for transportation with respondent -1, Vangarai Amman Transports, Karur in favour of complainant-2, Punjab State Electricity Board, through Assistant Engineer (Store Plant-II, RTP, Ropar (GGSTP). THE consignment was insured by complainant-2 with complainant-1. On 11.5.1990 while taking delivery of the consignment at Ropar, it is alleged that complainant-2 found that Crate No. 1 of Super Heater Panel and 7 bundles of Super Heater Tubes, were in damaged condition with deep cuts. It is alleged that respondent-1 or its employees did not take the required care to handle the consignment and had shown negligence and carelessness and improper arrangement in transportation of the consigned goods. On lodging of the complaint by complainant-2 with complainant-1, the latter reimbursed the loss fully of the former to the tune of Rs. 1,68,440/-. Later on, complainant-2 abandoned and subrogated all its rights, title and interest in favour of complainant-1 regarding the said claim of Rs. 1,68,440/-. Complainant-2 executed a letter of subrogation and Special Power of Attorney in favour of complainant-1 with respect to the above said claim. On notice being served, respondent-1 put in appearance through its Counsel, Sh. S.P. Jain,

Advocate. No written statement has been filed.

This Commission fixed a preliminary hearing on the point of jurisdiction.

3. SH. N.S. Sitta, learned Counsel for the complainants had strenuously urged that they are consumers and for the loss caused by the respondent-transporters, they can seek redressal under the COPRA. Having given a thoughtful consideration to the matter, as it deserves, we find, on an apparent reading of the allegations made in the complaint itself, that the complainant-Board has got full reimbursement of the loss from the complainant-Insurance Company. Hence, nothing remains to be claimed by the Board. So far as respondent-Insurance Company is concerned, there is no privity of contract between the Insurance Company and the Transporters. The Insurance Company, by no stretch of imagination, can make a grouse of deficiency of service, if any, on the part of the Transporters. The consignee executing a letter of subrogation in favour of the Insurance Company cannot enlarge the definition of a ''consumer'' as given in Section 2(1)(d) of the COPRA. The matter is not res integra and is squarely covered on all fours by a decision of the National Commission in the case, M/s . Green Transport Company v. New India Assurance Company Ltd., II (1992) CPJ 349 (NC) wherein it has been held as under:- "6. Under Section 2(1)(b) of the Consumer Protection Act, 1986 (hereinafter called the "Act''), a "complainant" has to be- (i) a consumer; or (ii) any registered voluntary consumer association; (iii) the Central Government or any State Government.

4. AS per the definition contained in Section 2(1)(d)(ii) of the Act, "Consumer" means, any peson who hires any services for consideration and includes any beneficiary of such services other than the person who hires the services for consideration when such services are availed of by the beneficiary with the approval of the first mentioned person. In other words, only the actual person who has hired the service for consideration or any other person availing of the benefit of such service with his approval can be regarded as a "consumer" under the Act. In the present case the transaction of hiring of service was the contract of carriage of goods entered into by M/s. Seth Brothers with M/s. Green Transport Company (appellant) for the transportation of the three drums containing oil from Bombay to Delhi. The complainant before the State Commission, namely, the New India Assurance Company was not the person who had hired the service nor had it availed of the service as beneficiary with the approval of M/s Seth Brothers. It had merely insured the consignment which formed the subject-matter of contract of carriage. Such being the position, the New India Assurance Company Ltd., cannot be regarded as coming within the definition of "Consumer" so as to entitle it to maintain the complaint petition before the Consumer Forum. The fact that the Insurance Company had acquired rights of subrogation or a transfer of the right of action which M/s. Seth Brothers had as against the transporter or that it had been granted a special power of attorney would not in any way improve the position of the Insurance Company so far as proceedings under the Consumer Protection Act are concerned. It may be

that they have a right to institute a suit against the transporter by virtue of subrogation, deed of transfer or special power of attorney. Those documents will not however, clothe the Insurance Company with the legal status and character of "consumer" so as to entitle it to invoke the special jurisdiction and maintain a complaint before the Redressal Forum constituted under the Act. According to the scheme of the Act, the right to seek redressal under its provisions is restricted strictly to consumers, registered consumer associations and the Central and State Governments who alone can figure as complainant. A third party/stranger cannot acquire by purchase or transfer intervivos the right of action which a "consumer" may have and maintain a complaint before a Redressal Forum, in his own name."

5. FOR the foregoing reasons, we feel constrained to be persuaded by the contention that the present complaint is maintainable under the COPRA and the complainants are "consumers" and find that the submission sans merit. Hence, this complaint is dismissed. However, we leave the complainants at liberty to approach any other appropriate FORum, including the Civil Court, as available under law to seek the necessary relief. Complaint dismissed.

