(1992) 07 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO.LTD — APPELLANT

Vs

JAIDEEP GOLDEN TRANSPORT CO — RESPONDENT

Date of Decision : 24-07-1992

Acts Referred:

Citation : 1992 3 CPJ 208

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Complaint allowed with costs

Judgement

1. THE complainant No. 1 is a Insurance Company the complainant No. 2 is the owner of the goods who manufacturing detergent powder. THE complainant No. 2 is manufacturing washing powder under the name of "NIRMA" entering into a contract with the Insurance Company by taking a Marine Insurance Policy for the period 29-6-88 to 28-6-89.

2. THE complainant No. 2 booked consignment of 300 bags of Nirma Washing Powder, each bag containing 50 Kg. with the opposite party Jaideep Golden Transport Company who carried the goods from Chhatral to Pathankot to be delivered to Calcutta Chemical Works at Pathankot. The complainant has lodged that due to carelessness and negligence of the opponent and its servants, agents, employee, the booked consignment has not been delivered to the consignee till the date. He therefore served a Statutory notice to the opponent that the opponent has issued a certificate of non-delivery of the suit goods dated 17-9-90 to the complainant No. 2.

On account of non-delivery of the consignment the complainant No. 2 lodged a claim with complainant No. 1 the Insurance Company for the amount of Rs. 1,12,050/- a value of the said goods. The claim having been verified by the complainant No. 1 and after investigation the complainant No. 1 paid the amount of Rs. 1,12,050/- to the complainant No. 2 by a cheque and in turn the complainant No. 2 has executed a Special Power of Attorney and the letter of Subrogation in favour of the complainant No. 1 and assigned all their rights and titles against the opposite party who has not delivered the said consignment to the consignee.

3. IN view of this Power of Attorney and Subrogation both the parties have filed this complaint claiming value of the goods, interest and cost. On receipt of our summons the opposite party has filed its version and has raised the following issues: 1. That the Commission has no jurisdiction; 2. The complainant No. 2 has not suffered any monetary loss as he has received Rs. 1,12,050/- from the Insurance Company; 3. That the complainant No. 1 is not a consumer within the meaning of Sections (1), 2(1)(d) of the Act; 4. The complainant No. 2 has lost interest upon receiving the amount of Rs. 1,12,050/- and, therefore, cannot be said to have suffered loss or damages.

4. THE opposite party has not disputed receipt of consignment and non-delivery to the consignee. Subsequently, the opposite party vide a second written statement dated 5-5-92 raised the legal contentions. With regard to the merits the opposite party has stated that he had procured a transport vehicle for full load of the complainant No. 2 and hired the services of Jaipur Okara Transport Corporation, Ahmedabad for transporting the goods in question to Pathankot in Punjab. That the truck in which the goods were loaded has passed at the Sales Tax Check post, Palanpur on 7-9-88. The opposite party has given particulars regarding the owner of that truck Registration No. etc. and has further stated that the driver of the vehicle and the vehicle are missing. He has made further effort to find the goods but he has failed. He is, therefore, not liable for the damages to any of the complainant. Mr. M.A. Bhatt the learned Advocate appearing on behalf of the opposite party has vehemently submitted that the complaint is not legal since the complainant No. 2 has received full value of the goods from complainant No. 1 Insurance Company.

5. THAT there is no negligence on his part since he has made full inquiry but the goods are not traceable.

6. IN support of this contentions Mr. Bhatt has relied upon the decision of this Commission given in the case of M/s. Shah Punamchand Devchand, complainant v. M/s. Calcutta Carriers, opposite party reported in 1992 (2) C.P.R. page 194. IN that case the complainant has filed a complaint against the opposite party for loss of goods. It w as found that the complainant has received full amount of the claim from the INsurance Company and he had already transferred his rights; to the INsurance Company by executing a deed of subrogation. The INsurance Company was not joined as a party. No other claim was made therefore, the Commission dismissed the complaint on the ground that the complainant having transferred his rights had no interest in the goods and, therefore, cannot file a complaint. However, in the instant case both the INsurance Company and the owner of the goods have filed joint complaint so as to avoid legal technicality. It is true that the value of the goods have been paid to the complainant No. 2 by the INsurance Company However the complainant had also asked for the interest and cost. Miss Shah has drawn out attention to the definition of ''Consumer'' with regard to hiring of service which reads as under: "Consumer" means any person

who: (ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

Miss Shah, therefore, submitted that not only a person who hires service is a consumer but it also includes any beneficiary of such service other than the persons who hire. In the instant case the complainant No. 2 hired the service and by deed of Subrogation transferred the benefits to the Insurance Company. The Insurance Company therefore, is a beneficiary and a "Consumer" within the meaning of this section.

We are inclined to accept these arguments that a contract to the opposite party was a service contract and the complainant having been transferred to the Insurance Company had the legal right and authority to file this complaint In any case the 2 original owner has been also joined as a party who has been paid only the principal amount but he is also entitled to interest during the interegnum period. In the aforesaid view of the matter we are of the opinion that the complainants are entitled to bring this complaint and there is no merit in the submission of Mr. Bhatt

7. WITH regard to the merits of the case it has been admitted that the goods have not been delivered to the consignee. The opposite party is a contracting party who is contracted to deliver the goods to the consignee at Pathankot. How the goods are to be sent was the responsibility of the contracting party. If its agents or employee misappropriates the goods the contracting party is responsible for the acts of the agent and employee. In view of the aforesaid circumstances, the opposite party is responsible for the value of the goods contracted to be carried by him.

8. THAT the opposite party has lost all the 300 bags valued of Rs. 1,12,050/-. He will be, therefore, liable to pay the said amount with running interest at the rate of 18% per annum from the alleged certificate of non delivery at Pathankot i.e. o say from 17-9-90. ORDER The opposite party is directed to pay Rs. 1,12,050/- with running interest of @ 18% per annum jointly to the complainants from 17-9-90 till the payment with the cost which is quantified at Rs. 2,000/- within 4 weeks from the date of receipt of this order. Complaint allowed with costs.