

V.
SUNDARAM TEXTILES LTD . AND ANR .

JULY 13 , 2001

[S. RAJENDRA BABU AND S.N. VARIAVA , JJ .]

B

Consumer Protection Act , 1986 - S.2 (b) and (d)

Consumer - Subrogation - Carrier - Non - delivery of goods - Loss of goods settled by Insurance Company - Insurance Company obtaining letter C of subrogation from consignor - Complaint by Insurance Company against carrier - Allowed - Validity of - Held , letter of subrogation was an assignment - Assignee not a beneficiary of the service and was not a Consumer - Thus , complaint by Insurance Company , not maintainable However , it is open to the Insurance Company to file claim for recovery in a Civil Court .

Respondent No. 1 consigned certain goods to appellant for transportation . The said goods were not delivered . Respondent no . 1 claimed loss of goods from respondent no . 2 — Insurance Company . The Insurance Company settled the claim and obtained " Letter of Subrogation , and a Special Power of Attorney " . Thereafter , on the basis of said letter respondent no . 2 - Insurance Company filed a claim against appellant - Carrier before the State Consumer Redressal Forum , which was allowed . Appellant unsuccessfully filed a Revision before the National Consumer Commission . Hence the present appeal .

The issue in the present appeal was whether respondent No. 2- F Insurance Company was a Consumer viz - a - viz the appellant and as such can file a complaint before the Consumer Forum .

Allowing the appeal , the Court

HELD : Respondent no . 2 - Insurance Company is not entitled to maintain G a complaint against appellant before the Consumer Forum . The main terms of the letter of Subrogation are in effect assignment only and since the assignee was not a beneficiary of the service , it was not a consumer . However , it will be open for the Insurance Company to file a claim for recovery of the amount of a Civil Court . [982 - H ; 983 - H ; 984 - A]

A New India Assurance Company Ltd. v . B.N. Sainani , [1997] 6 SC and Oberoi Forwarding Agency v . New India Assurance Co. Ltd. , [2000 SCC 407 , relied on .

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7349 of 2000 .

B From the Judgment and Order dated 11.3.1999^f of the National Consumer Disputes Redressal Commission , New Delhi .

M.N. Krishnamani , Alok Sangwan , Somayjit Pasi , S. Srinivasan and V. Sudeer for the Appellant .

C Soli J. Sorabjee , Attorney General , A.K. Raina and Anil Kumar Jha for the Respondent .

The Judgment of the Court was delivered by

D S.N. VARIAVA , J. This Appeal is against an Order of the National Consumer Disputes Redressal Commission dated 11th March , 1999 .

Briefly stated the facts are as follows :

E The 1st Respondent had entrusted to the Appellant 125 carton of goods , of the value of Rs . 9,30,188 for transport from Nanguneri to Itcheni . The goods were not delivered . The 1st Respondent had insured the goods with the 2nd Respondent . The 1st Respondent lodged a claim with the 2nd Respondent for loss of goods . The 2nd Respondent settled the claim of the 1st Respondent by paying a sum of Rs . 9,30,188 . The 2nd Respondent took a letter , which is termed as a " Letter of Subrogation , and a Special Power of Attorney " . On the basis of this letter the 2nd Respondent filed a complaint before the State Consumer Redressal Forum . The 1st Respondent was also a party to this complaint . The State Consumer Redressal Forum by its Order dated 16th December , 1998 directed the Appellant to pay a sum of Rs . 9,30,188 with interest at 12 % per annum .

G The Appellant filed a Revision before the National Consumer Redressal Commission which has been dismissed by the impugned Order dated 11th March , 1999. Hence this Appeal .

H The only question raised before us is whether an Insurance Company is a consumer viz - a - viz the Appellant and as such consumer can file

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before the Consumer Forum .

In the case of New India Assurance Company Ltd. v . B.N. Sainani reported in [1997] 6 SCC 383 , this Court has held that assignee of a to sue for the loss on account of short landing of goods cannot be regarded as any beneficiary of any service within the meaning of the definition " Consumer " . It has been held that such assignee cannot file a complaint under the Act , but can file a suit in a Civil Court for recovery of the loss . It has been held that the complaint by such assignee would not be maintainable .

In the case of Oberoi Forwarding Agency v . New India Assurance Co. Ltd. , reported in [2000] 2 SCC 407 , it has been held that an insurer is not the consignee for loss of goods during transit and having an assignment is not beneficiary of the services hired by the consignee from the carrier . It has been held that an insurer was not a consumer and could not , therefore , maintain a complaint against the carrier of the goods . It is held that even the assignment of the consignee as a co - complainant would not enable the insurer to file such a complaint . In this Judgment the term of " Letter of Subrogation " (in the case) are also set out . The main terms are , more or less , identical to those of the " Letter of Subrogation " in the present case . On an interpretation of those terms this Court has held that such a " Letter of Subrogation " would not effect an assignment . This Court has held that the assignee was not a beneficiary of the services and was not a consumer . It is held that a complaint by the Insurance Company was not maintainable .

Faced with this situation , Mr. Raina submitted that in both cases i.e. New India Assurance Co. Ltd.'s case and Oberoi Forwarding Agency's the decisions were based on the fact that there was an assignment . He submitted that if there was no assignment but a mere Subrogation then the principles laid down in these two cases would not apply . He submitted that on subrogation the Insurance Company would merely step into the shoes of the consumer and would be filing the complaint on behalf of the consumer . He showed to this Court the various terms of the Letter of Subrogation and submitted that , in this case , there was no assignment , but a mere subrogation . He submitted that the complaint was thus maintainable .

In our view , it is not necessary to decide whether a complaint would be maintainable if there was merely subrogation . The main terms of the Letter of Subrogation in this case are identical to the Letter of Subrogation in Oberoi Forwarding Agency's case . On such terms it has been held that it is not an assignment . As it is an assignment the principles laid down in the above

A mentioned cases apply and the complaint would not be maintainable . We , however , clarify that it will be open for the Insurance Company to file a claim for recovery of the amounts in a Civil Court .

Accordingly , the Appeal is allowed . There will , however , be no Order as to costs .

B

S.V.K.

Appeal allowed .