

CASE NO.:
Appeal (civil) 7349 of 2000

PETITIONER:
SAVANI ROAD.LINES

RESPONDENT:
SUNDARAM TEXTILES LTD, AND ANR.

DATE OF JUDGMENT: 13/07/2001

BENCH:
S. RAJEHDRA BABU & S.N. VARIAVA

JUDGMENT:
JUDGMENT

2001 (3) SCR 981

The Judgment of the Court was delivered by

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

Briefly stated the facts are as follows;

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 Itchalkaranji 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 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.

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.

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 a complaint before me Consumer Forum.

In the case of New India Assurance Company Ltd. v. B.N. Sainani, reported in [1997] 6 SCC 383f this Court has held that assignee of a mere right 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 compensating the consignor for loss of goods during transit and having an assignment was not beneficiary of the services hired by the consignor from the carrier. It is 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 addition of the consignor as a co-complainant would not enable the insurer to maintain such a complaint. In this Judgment the term of "Letter of Subrogation" (in that case) are also set put. The main terms are, more

or less, identical to the terms 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" was in 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 an assignment. As it is an assignment the principles laid down in the above 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.