

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 14.03.2014

Date of Hearing: 04.10.2024

Date of Decision: 18.11.2024

FIRST APPEAL NO.-265/2014

IN THE MATTER OF

NATIONAL INSURANCE CO. LTD.,

HAVING IT REGIONAL OFFICE AT:

2E/9, JHANDEWALAN, DELHI – 110055.

(Through: G.L Chawla & Associates)

...Appellant

VERSUS

1. SHRI VIRENDER BATRA,

I-5/44, SECTOR-16,

ROHINI, DELHI – 110085.

(Through: Mr. Nikhlesh Jain, Advocate)

2. PRAGATI PACKERS & MOVERS,

(NOW KNOWN AS M/S DELUXE CARGO & M/S A-ONE PACKERS)

PLOT NO. 404, NEAR HANUMAN MANDIR ROAD,

BHARTHAL, SECTOR-26, DWARKA, DELHI-110077.

...Respondents

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Mr. Chaitanya Jain, proxy counsel for Mr. Kapil Chawla,
counsel for the Appellant.

None for the Respondent No. 1 & 2.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

“The Complainant had booked a consignment with OP for household goods vide G.R.no.1433 to be delivered to Satya Prakash Duggal at Bombay with consideration of freight amount Rs.12, 000/- which was dully insured by OP1 as Transit Insurance vide policy cover note 361403/21/OB/4500000236, covering all risk against loss & damages to the said consignments. The above said consignment was delivered at destination by OP2 in damaged condition & some of belongings i.e. Crockery, dinner set, cooker, Juicer, mixer, and clothes were missing from the said consignment due to negligence of OP2 but damaged certificate was not issued by OP2. The complainant immediately approached OP2 & OP1 vide letter dated 16.02.09 & 17.02.09 respectively. Complainant was also directed by OP1 to contact Bombay Insurance co. to appoint a surveyor to assess the actual loss in transit. Complainant immediately approached OP1 office in Bombay to appoint surveyor to assess the actual loss in transit but both OPs remained silent deliberately to avoid claim. They

neither assessed the loss nor appointed any surveyor by OP1 nor did OP2 issue damage certificate to the complainant till date consequently the complainant was forced to file the complaint on 21.07.09 desperately.”

2. The District Commission after taking into consideration the material available on record passed the order dated **08.01.2014**, whereby it held as under:

“On 9.09.13 an interim order was passed in Forum before all parties that OP2 issued damage certificate & OP1 was directed to process the claim but OP1 and OP2 till date have not taken any action till 10.12.13.

We find OP1 and OP2 are deficient to obey interim order passed on 09.09.13, keeping in view, OP1 and OP2 is directed to pay Rs.40, 000/- to the complainant jointly within 30 days as harassment charges as the complainant is struggling for the justice since 2009 to 2013 and both OPs remained silent with closed eyes. Further OP2 is directed to issue damage certificate to the complainant & OP1 is directed to process the claim within 30 days U/S 25/27.

The order shall be complied within 30 days of the receipt of the copy of the order; otherwise action can be taken under Section 25/27 of the Consumer Protection Act.”

3. Aggrieved by the aforesaid order of the District Commission, the Appellant has preferred the present appeal contending that the District Commission erroneously held the Appellant liable for the deficiency of service. The Appellant further submitted that District Commission wrongly held the Appellant insurance company responsible for not complying with the interim order, despite the failure being on the part of

the Respondent no. 2. (transporter) who never issued the damage certificate; therefore, the Appellant insurance company cannot be expected to process the claim. Pressing the aforesaid submissions, the Appellant prayed for setting aside the order of the District Commission.

4. Notice of the present Appeal was issued upon the Respondents and were directed to file the reply to the present Appeal. The Authorized Representative of the Respondent no. 1 vide order dated 06.04.2016 has submitted that he does not wish to file the reply to the present Appeal and straightaway ready for the arguments. Further, the Respondent no. 2 has refused to accept the notice of the present Appeal.
5. The parties were directed to file the written submissions/arguments. The written submissions have been filed by the Appellant and the same have been considered. On the other hand, the Respondent no. 1 has failed to file his written submissions till date.
6. We have perused the material available on record and heard the counsel appeared on behalf of the parties.
7. The ***main question*** for consideration before us is ***whether the District Commission has erred in establishing deficiency on the part of Appellant/Opposite Party no. 1.***
8. On perusal of record, we find that on 27.01.2009, the Respondent no. 1 sent a consignment of various household items worth ₹1,00,000 through Respondent No. 2 (the transporter). The items were to be delivered at house in Mumbai. The Respondent no. 1 paid ₹12,000 as transportation charges to Respondent No. 2. Further, the Respondent no. 1 got insured the consignment with Appellant Insurance Company through their Dwarka branch, under Policy No. 361403/21/08/4500000236, covering all risks of loss and damage during transit. Upon arrival at the destination, the consignment was found in a severely damaged state indicating negligence by Respondent No. 2. The Respondent no. 1 informed the

Appellant insurance company about the situation vide letter dated 16.02.2009. Further, the Appellant advised the Respondent no. 1 to contact their nearest Mumbai office for a survey to assess the damage. The respondent contacted the Mumbai branch of National Insurance Co. Ltd., who assured that a surveyor would be sent to assess the damage. However, no surveyor was ever sent, seemingly to avoid taking responsibility.

9. The case of the Appellant is that the District Commission has failed to appreciate the fact that the Respondent no. 2 has failed to comply with the interim order passed by the District Commission on 09.09.2013 wherein the Respondent no. 2 was directed to issue damage certificate and the Appellant was directed to process the claim of the Respondent no. 1 (Complainant). However, since the Respondent no. 2 (transporter) failed to appear before the District Commission and was proceeded *ex-parte*, the damage certificate could not be issued by the Respondent no. 2 and the District Commission co-jointly made liable to the Appellant and Respondent no. 2 to pay an amount of Rs. 40,000/- to the Respondent no.1.
10. Furthermore, it is also pertinent to note that in the present case, the Appellant has failed to appoint any surveyor to access the loss of the Respondent no. 1 despite receiving the intimation of the loss of consignment vide letter dated 16.02.2009 which clearly shows the deficiency of service on the part of Appellant. Therefore, in our considered view, the District Commission has rightly held the deficiency of service on the part of Appellant and the Respondent no. 2 and directed the Appellant and the Respondent no. 2 to pay a lumpsum amount of Rs.40,000/- jointly to the Respondent no. 1.
11. In view of the above, we are in agreement with the reasons given by the District Commission and fail to find any cause or reasons to reverse the

findings of the District Commission. *Therefore, we uphold the order dated 08.01.2014 passed by the District Consumer Disputes Redressal Commission-VI, 'A' Block 1st floor, Vikas Bhawan, I.P. Estate, New Delhi-110002.*

12. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
13. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
14. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(PINKI)
MEMBER (JUDICIAL)**

Pronounced On:
18.11.2024

LR-AJ