

(1998) 07 NCDRC CK 0005

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**Case No:** None

SINGAPORE AIRLINES

APPELLANT

Vs

SWITZER INSTRUMENT, MADRAS

RESPONDENT

Date of Decision: July 3, 1998**Citation:** 1998 3 CPJ 358 : 1999 1 CPR 159**Hon'ble Judges:** E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.**Final Decision:** Appeal dismissed

Judgement

1. OF the 3 opposite parties the 2nd opposite party against whom alone an award has been passed by the District Forum is the appellant. The 1st complainant booked a cargo to be transported from Chicago to Madras with the 1st opposite party. The 1st opposite party appears to have engaged the services of the 2nd opposite party- Singapore Airlines. The booking was on 19.10.1994. The 2nd complainant is the Insurance Company with which the 1st complainant had insured the cargo. According to the complainants when the cargo reached Madras on 26.10.1994 and the 1st complainant went to receive the same through the 3rd opposite party. International Airport Authority of India, he found the cargo to have been damaged completely. Subsequently the 2nd complainant-Insurance Company paid the claim made by the 1st complainant of Rs. 23,347/- and the 1st complainant executed a Subrogation Letter enabling the 2nd complainant to claim the amount from the concerned parties. Now both the complainants have filed the complaint alleging deficiency in service on the part of the opposite parties and claiming Rs. 23,347 / - being the value of the consignment with interest thereon.

2. THE 3 opposite parties have filed separate written versions each of them stating that they are not liable to pay any amount to the complainants. THE 1st and 3rd opposite parties have specifically stated that only the 2nd opposite party is liable because the 2nd opposite party only carried the goods. THE 2nd opposite party specifically contended that the 2nd complainant is not a consumer vis-a-vis the 2nd opposite party and therefore, the complaint is not maintainable as against them.

The District Forum on consideration of the pleadings and the evidence accepted the case of the complainants as regards the 2nd opposite party and rejecting the contention of the 2nd opposite party held that there was deficiency in service on their part. On this finding it ordered the 2nd opposite party to pay to the 2nd complainant the amount claimed in the complaint with interest @ 12% p.a. from the date of complaint till realisation with Rs. 1,000/- as costs.

Now in the appeal the learned Counsel for the appellant/2nd opposite party contends that there was no privity of contract between the 2nd opposite party and the 1st complainant and therefore, the complaint against them is not maintainable. The District Forum has given a finding that it has not been specifically contended so and the written version filed by the 2nd opposite party is a vague one. On perusal of the written version, we are in agreement with this finding of the District Forum. The learned Counsel next contended that the 2nd complainant at any rate cannot maintain the complaint because they are not certainly consumers vis-a-vis the 2nd opposite party. But regarding this aspect of the matter, there is a recent order of the National Commission in III (1996) CPJ 51 (NC)". Therein it is stated that after payment of the amount by the Insurance Company if a complaint is filed by the consumer joining with the Insurance Company by mentioning the Subrogation Letter the complaint would be maintainable. Therefore, this point raised by the learned Counsel has no merit. Coming to the question of the damages, regarding this also there is no clear denial by the appellant/2nd opposite party in the written version, when it is the case of the complainant that the entire goods were lost. The value of the goods had been claimed on the basis of Invoice Ex. A1 produced by the complainants. The District Forum has also found that the damage had occurred only during transit i.e., while the goods were being carried by the 2nd opposite party and not when the 1st opposite party handed over the goods to the 2nd opposite party or after the 2nd opposite party handed over the goods to the 3rd opposite party. Regarding this aspect of the matter also we find that it is not the definite case of the 2nd opposite party that the goods had been already damaged or at the time it handed over the goods to the 3rd opposite party it was not in a damaged condition. It is the definite case of the opposite parties 1 & 3 that no damages occurred when the goods were in their hands. Thus we find that rightly the District Forum has held that the 2nd opposite party alone would be liable and rightly passed the order.

3. THUS we find no merit in the appeal. Accordingly the appeal is dismissed. However, there will be no order as to costs. Appeal dismissed.