

## NEW KHODIYAR TRANSPORT COMPANY Vs MANISH PANDYA

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** Oct. 15, 2003

**Citation:** 2004 1 CPJ 313

**Hon'ble Judges:** M.S.Parikh , M.K.Joshi J.

**Final Decision:** Appeal allowed

### Judgement

1. THIS appeal arises from order dated 30.8.2001 rendered by the learned Consumer Disputes Redressal Forum, Bhavnagar in Disputes Case

No. 108 of 1997 directing the opponent transport company to pay to the complainant Rs. 21,390/- with interest at the rate of 12% p.a. from the

date of complaint till payment and compensation and cost in the sum of Rs. 2,000/-.

2. IT was the complainant's case before the learned Forum that he had called for one bag of patterns from Vikram Engineers of Rajkot on

5.5.1997 through opponent transport company. But the opponent transport company delivered four bags and did not deliver one bag containing

patterns. He, therefore, approached the learned Forum for damages in the form of cost of patterns, compensation and expenses. The opponent

resisted the complaint inter alia on the ground that the goods as per the transport receipt were delivered to the consignee and accordingly five items

were delivered and not four items, that there were four bags containing casting and one item containing loose casting, in all five items which were

required to be delivered to the consignee and the consignee received the goods at the destination. According to the conditions of the transport

receipt, complainant should have given complaint with regard to non-receipt or loss of the goods within thirty days failing which the opponent

transport company would not be liable to compensate the complainant. Opponent transport company, therefore, prayed for dismissal of the

complaint.

After hearing the parties and considering the material placed on record, the learned Forum came to the conclusion that one bag containing pattern

was not delivered to the complainant. The learned Forum relied upon item No. 4/1, a xerox copy of the receipt bearing No. 7466 which contained

endorsement about non-receipt of one out of five bags and, therefore, the complainant established that there was short delivery by one bag which

according to the complainant contained patterns and not castings. The opponent transport company failed to show any material indicating that

delivery of all the goods was effected. Under such circumstances, the learned Forum held the opponent transport company responsible for short

delivery of one bag and passed the impugned order.

We have heard the learned Advocates for the parties. We have gone through the original documents which came to be referred to before the

learned Forum. We have also gone through the provisions of Section 10 of the Carriers Act, 1865, which have been referred to on behalf of the

original opponent transport company, now the appellant.

3. IT has been contended before us that the consignee is admittedly Akshar Machine Tools whereas the complaint is filed by one Manish Pandya.

Hence the complaint was prima facie not maintainable at law. We have gone through the averments contained in the complaint but we do not find

any averment to the effect that Manish Pandya happened to be the owner and/or partner of Akshar Machine Tools who is the consignee under the

transport receipt in question. Manish Pandya has been described in his individual capacity, residing at Akshar Pattern Works (and not Akshar

Machine Tools). In our considered opinion this is a fatal defect in the pleading which was presented before the learned Forum.

It has then been submitted that no notice was issued by the consignee to the opponent transport company either as per the conditions of the

transport receipt or as per Section 10 of the Carriers Act. It is an admitted fact that the complaint was filed before the issuance of any notice worth

the name. In fact no such notice was issued. If that is so, Section 10 of the Carriers Act clearly bars filing of the complaint. This principle is settled

even under the Consumer Protection Act, 1986.

4. ON merits it has been submitted on behalf of the opponent transport company that all the goods were delivered to the consignee. However, the

original of the receipt does indicate addition of words in Gujarati "Akshar Pattern Works, 922/B, Behind Kamal Apartment, Vaghivas Lane,

Subhashnagar, Bhavnagar" and endorsement of receipt of one bag less. The red copy of this very receipt has been shown from the file of the

opponent transport company and that does not contain this addition. However, the opponent transport company was not able to show clear

receipt of all the goods by appropriate endorsement of receipt by the complainant or by the consignee or any person on behalf of the consignee.

Therefore, factually the opponent transport company is not in a position to show delivery of all the goods as listed in the transport receipt.

However, what the transport receipt recites is 4 bags of casting and one item of loose casting. It does not indicate anywhere a bag of patterns.

Thus, factually, the complainant or the consignee would not be in a position to show whether patterns were in fact transported through the

opponent transport company. It is true that there is complainant's endorsement in the green copy of the transport receipt which is shown from the

complainant's file. However, that takes the matter neither here nor there except to observe that the complainant or the consignee did endorse to

have received one bag less. What was that bag about cannot be ascertained without reference to any factual pleading de hors the transport receipt.

Thus, the complaint will also fail for want of evidence with regard to consignment/transportation of patterns which is not evinced by any

documentary evidence.

In above view of the matter, the complaint deserved to be dismissed. The learned Forum has failed to consider all the aforesaid aspects apparent

on the face of the record.

In above view of the matter and bearing in mind the facts and circumstances of the case, we pass following order.  
ORDER Impugned order dated

30.8.2001 rendered by the learned Consumer Disputes Redressal Forum, Bhavnagar in Disputes Case No. 108 of 1997 is hereby set aside.

Disputes Case No. 108 of 1997 is hereby dismissed. This appeal is accordingly allowed, with no order as to costs throughout. The amount stated

to have been deposited in this Commission by the opponent transport company be verified and paid over to it by A/c. Payee cheque. Appeal

allowed.