

(2000) 08 NCDRC CK 0024

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

MANJUSHREE PLANTATION
LIMITED

APPELLANT

Vs

Bapputty

RESPONDENT

Date of Decision: Aug. 9, 2000

Citation: 2001 1 CPC 517 : 2001 1 CPJ 106 : 2001 1 CPR 593

Hon'ble Judges: M.S.Janarthanam , Banumathi Baskaran J.

Final Decision: Complaint allowed in part with costs

Judgement

1. M/s. Manjushree Plantation Limited (complainant) is a Public Limited Company registered under the Indian Companies Act, having its office at New Hope Post - 643 226, Nilgiris District.

2. ONE Sri Bapputty (opposite party) is the proprietor of M/s. National Transport, Door No. 10/686, Ooty-Mysore Road, Gudalur, Nilgiris.

The complainant is a large Plantation Company producing coffee, tea and other plantation products. The complainant entered into an agreement dated 14.11.1995 with the opposite party to transport coffee seeds from its Estate to various curing works at Pollachi and Salem in Tamil Nadu and Hassan in Karnataka State.

Pursuant to the agreement, the opposite party by memo dated 9.1.1996, it is said, advised the complainant to deliver the coffee seeds for transport to Yercaud Coffee Curing Works Ltd., Salem. The complainant accordingly had entrusted 200 bags of Arabica Parchment Coffee to be transported to Yercaud Coffee Curing Works Ltd., Salem.

3. THE complainant raised Invoice No. 14 dated 9.1.1996 for 200 bags of coffee weighing 10,000 kgs. valued at Rs. 6,00,000/- . THE opposite party undertook to deliver the coffee entrusted to lorry No. TNO 5799, by 12 Noon on 10.1.1996.

The complainant, it is said, duly informed of the despatch of the coffee seeds to the Yercaud Coffee Curing Works Ltd., Salem.

4. THE Yercaud Curing Works Ltd., Salem, by letter dated 24.1.1996 informed the complainant about the non-delivery of the coffee sent through the opposite party on 9.1.1996 by lorry No. TNO 5799. THE complainant informed the opposite party about the non-delivery of the coffee seeds sent to Salem. This apart, a complaint of theft had been lodged to the Inspector of Police, New Hope, on 24.1.1996. Similarly, the opposite party was also stated to have lodged a similar complaint.

While matters stood thus, the complainant was regularly contacting the opposite party for payment of a sum of Rs. 6,00,000/- being the value of the coffee seeds non-delivered by the opposite party. However, the opposite party gave evasive replies and did not make any attempt to trace the coffee seeds non-delivered. The complainant would claim that after curing the coffee seeds and making it fit for marketing, they would have realised Rs. 9,43,000/- being the market value of the coffee seeds which the complainant lost due to the deficiency in service on the part of the opposite party.

The complainant, therefore, on 4.4.1996 caused the issuance of a notice calling upon the opposite party to repay the loss sustained by them with interest @ 24% p.a. or otherwise appropriate legal proceedings would be initiated against him.

5. THE opposite party acknowledged the receipt of the said notice and sent its reply dated 16.5.1996 stoutly opposing the claims so made.

6. ALLEGING the factors as above, the complainant resorted to knock at the doors of this Commission alleging deficiency in service on the part of the opposite party and claiming the reliefs as against the opposite party as below :

(1) to repay the value of coffee seeds quantified at Rs. 6,00,000/- with interest @ 24% p.a. from 9.1.1996 till date of realisation; (2) to pay Rs. 3,43,000/- for the loss sustained by such failure of the opposite party; (3) to pay Rs. 50,000/- for deficiency in service committed by the opposite party in his failure to deliver the coffee at Salem on 10.1.1996 as agreed; (4) to pay Rs. 50,000/- for the mental agony and pain caused to the complainant by the loss sustained by such non-delivery of coffee as agreed; and (5) to pay Rs. 5,000/- as costs of this complaint and pass such further or other orders as may deem fit and necessary in the circumstances of the case.

The opposite party filed a counter contending in pith and substance as below :

There was no deficiency in service on the part of the opposite party. The insurance clause in the agreement entered into between them got subsequently amended and according to the amended clause, a duty is cast upon the complainant to insure the coffee seeds as and when it was delivered for transport to the opposite party. Proper steps have been taken for the tracing of the coffee seeds committed theft of by the driver of the lorry by the lodging of a complaint before the competent police station. The value of the coffee seeds was not at all declared by the complainant at the time of effecting delivery of the coffee seeds to the lorry No. TNO 5799. The value of such coffee seeds as given by the complainant is not at all admitted. In any event, the claim made by the complainant as respects the loss of coffee seeds, estimate value of the coffee seeds, amount of compensation for deficiency in service, amount of compensation for mental agony and costs, etc., are too exorbitant. The complaint, as such, is liable to be dismissed.

7. THE following exhibits had been marked on the side of the complainant.

(1) Ex. A1 dt. 14.11.1995 - Xerox copy of the agreement. (2) Ex. A2 dt. 9.1.1996 - Xerox copy of the memo issued by the opposite party requesting the complainant to load the coffee seeds of 200 bags in lorry No. TNO 5799. (3) Ex. A3 dt. 9.11.1996 - Xerox copy of Invoice No. 14 issued by the complainant. (4) Ex. A4 dt. 24.1.1996 - Xerox copy of the letter sent by Yercaud Coffee Curing Works informing non-delivery of coffee. (5) Ex. A5 dt. 24.1.1996 - Xerox copy of police complaint for theft given by the

complainant. (6) Ex. A6 dt. 4.4.1996 - Xerox copy of the notice issued by the complainant of the opposite party. (7) Ex. A7 dt. 16.5.1996 - Xerox copy of the receipt given by the opposite party.

The documents as below had been filed on the side of the opposite party.

(1) Ex. B1 dt. 12.8.1993 - Xerox copy of the partnership deed. (2) Ex. B2 dt. 12.12.1994 - Xerox copy of agreement for transport of coffee. (3) Ex. B3 dt. 29.12.1994 - Xerox copy of amendment of Clause (5) of Agreement. (4) Ex. B4 dt. 14.11.1995 - Xerox copy of agreement for transport of coffee seeds. (5) Ex. B5 dt. 24.1.1996 - Xerox copy of complaint to Inspector of Police, Gudalur. (6) Ex. B6 dt. 25.1.1996 - Xerox copy of complaint of the complainant alongwith a xerox copy of an FIR in Crime No. 12 of 1996 of Newhope Police. (7) Ex. B7 dt. 21.2.1996 - Xerox copy of letter informing that the complainant had taken necessary insurance coverage. (8) Ex. B8 dt. 4.4.1996 - Xerox copy of the registered notice of the complainant. (9) Ex. B9 dt. 16.5.1996 - Xerox copy of the reply notice issued by the opposite party.

8. THE documents, as above, namely, Exs. A1 to A7 and B1 to B9 were marked by consent.

No oral evidence by either of the parties was adduced. An endorsement in that regard had been made by both learned Counsels appearing for the parties.

Arguments of learned Counsel Mr. R. Rangaraj, representing M/s. S.K. Rakhunathan, appearing for the complainant and learned Counsel Mr. P. Duraisami, appearing for the opposite party were heard.

9. FROM the pith and substance of the submissions of learned Counsel appearing for the parties, the one and only question that arises for consideration is as to whether the opposite party can be mulcted with the liability for the value of the coffee seeds entrusted to him for safe delivery to Yercaud Coffee Curing Works Ltd., Salem, for non-delivery to them, on the facts and in the circumstances of the case, on the ground of deficiency in service on his part.

10. THERE is no pale of controversy that the complainant entrusted the coffee seeds of 200 bags weighing 10 tons to the lorry bearing Regn. No. TNO 5799 on 9.1.1996 pursuant to the instructions as given by the opposite party to the complainant (vide Ex. A2). It is also not in dispute that a contract came into existence between the complainant and the opposite party in his capacity as proprietor of M/s. National Transport, located at Door No. 10/686, Ooty-Mysore Road, Gudalur Nilgiris District, as respects their transport of coffee seeds from the estate of the complainant to various curing works at Pollachi and Salem and Tamil Nadu and also Hassan in Karnataka State. The agreement entered into between them for the year 1995 is under the original of Ex. A1 dated 14.11.1995. A xerox copy of the same agreement had been marked on the side of the opposite party as Ex. B4 dated 14.11.1995. Clause 5 of the agreement reads as under :

"5. As we have no transit insurance for coffee, please note to take adequate care for safe transport and delivery of coffee assigned to you. Please take necessary carriers insurance cover for the coffee transport and any loss or damage will be on your account."

The opposite party would however take a stand that Clause 5 of the Agreement Ex. A1 as referred to above had been subsequently amended and, therefore, it is that there was no duty cast on his shoulders to effect necessary insurance coverage for the goods transported by him. In projection of such a stand, the opposite party marked Exs. B2, B3 and B7.

Even at the outset, we may point out that those documents marked on the side of the opposite party cannot at all be expected to fetch any dividend in support of his claim either on facts or on law. Ex. B2 dated 12.12.1994 is an agreement relatable to the year 1994 for transport of coffee. Therefore, the clauses in that agreement is not at all relevant for the present purpose. Even otherwise, Clause 5 in that agreement is identical to Clause 5 of Exs. A1 and B4 both dated 14.11.1995. Even the amendment effected to Clause 5 of 1994 agreement namely, Exs. A1 and B4 as getting reflected by Ex. B3 dated 29.12.1994 cannot be expected to render any sort of a helping hand in projecting the claim as made by the opposite party. The amendment made in Ex. B3 as relatable to Clause 5 of the agreement for the year 1994 is to the following effect : "Please note to take adequate care for safe transport and delivery of coffee assigned to you."

11. AS per the clause, the opposite party is required to take adequacy of care and safe transport and delivery of coffee entrusted to him. It is plausible to contend that this sort of an amendment would relieve the opposite party from taking necessary insurance cover for the coffee transport he had undertaken. But, nonetheless, by way of reiteration, we may state that because the insurance clause was deleted in the special contract entered into between them, the opposite party was required to take adequacy of care and safe transport so as to see that the coffee seeds entrusted to him was safely delivered at the destination point.

The other document relied upon by the opposite party is Ex. B7 dated 21.2.1996 a letter from the complainant informing the opposite party that the complainant had taken necessary insurance cover. This sort of a letter, we also feel cannot be expected to advance the case of the opposite party to any extent whatever. Ex. B7 letter itself is dated 21.2.1996. The complainant feeling the pinch of loss of coffee seeds entrusted to the opposite party subsequently took upon the burden of insuring the coffee seeds sent pursuant to the memo of the opposite party so as to safeguard his position. That letter is relatable to the subsequent year 1996 and not for the year 1995.

12. ALL the agreements as referred to above relatable to the years 1994, 1995, had been entered into by the opposite party with the complainant only in his capacity as proprietor of M/s. National Transports, located at Door No. 10/686, Ooty-Mysore Road, Gudalur, Nilgiris District and not in any other capacity. Slyly, the opposite party would place on record a Xerox copy of the partnership deed he had entered into with others namely, Ex. B1 dated 12.8.1993 with an oblique motive of escaping the consequences to be ensued at the time of taking execution proceedings in case the claim, as made by the complainant against him, resulted in passing an award by this Commission. Therefore, we are not at all concerned with the constitution of the so-called partnership as getting disclosed by that document.

During the course of arguments, it is brought to our notice by learned Counsel Mr. R. Rangaraj, representing M/s. S.K. Rakhunathan, appearing for the complainant, a decision emerging from the Apex Court of this Country reported in I (2000) CPJ 42 (SC)=III (2000) SLT 554=AIR 2000 SC 1047, Patel Roadways Ltd. v. Birla Yamaha Ltd., decided on 28.3.2000. The Apex Court, in the said decision happened to consider in a threadbare fashion the liability of a common carrier in the light of the provisions adumbrated in The Carriers Act, 1865 (for short "the Act of 1865"). The paragraphs relevant for our consideration in the case on hand are 30, 31 and 47 and they reflect as under :

"30. From the provisions of the Consumer Protection Act noted in the foregoing paragraph the position is clear that the consumer disputes redressal agencies, i.e., District Forums, State Commissions and the National Commission are vested with powers of adjudication of all types of consumer disputes. No exception is made in case of consumer disputes in which the allegations made in the complaint regarding deficiency of service causing damage to or loss of the goods are contested. Indeed finality is attached to the orders of the redressal agencies and provision is made for execution and implementation of the orders passed by them treating such orders as decree of the Court. It is relevant to state here that on perusal of the provisions of the Act it is clear that the scheme of the statute is to provide hierarchy of Redressal Forums for attending to the grievances of consumers regarding deficiency in service promptly and give finality to the orders passed by the agencies. Therefore, it is difficult to accept the contention that the dispute redressal agencies provided in the Consumer Protection Act are not Forums which have jurisdiction to entertain the complaints in which claims for loss or damage to goods entrusted to a carrier for transportation is seriously disputed. The contention raised by Mr. Desai in this regard is accordingly rejected."

"31. Coming to the question of liability of common carrier for loss or damage to goods, the position of law has to be taken as fairly well-settled that the liability of a carrier in India, as in England, is more extensive and the liability is that of an insurer. The absolute liability of the carrier is subject to two exceptions; and act of God and a special contract which the carrier may choose to enter with the customer."

"47. From the conspectus of views taken in the decisions of different High Courts noted above it is clear that the liability of a common carrier under the Carriers Act is that of an insurer. This position is made further clear by the provision in Section 9, in which it is specifically laid down that in a case of claim of damage for loss to or deterioration of goods entrusted to a carrier it is not necessary for the plaintiff to establish negligence. Even assuming that the general principle in cases of tortious liability is that the party who alleges negligence against the other must prove the same, the said principle has no application to a case covered under the Carriers Act. This is also the position notwithstanding a special contract between the parties. These principles have held the field over a considerable length of time and have been crystallized into accepted position of law. No good reason has been brought to our notice to persuade us to make a departure from the accepted position. Therefore, we reiterate the position of law noticed above. The consequential position that follows is that the contention of Mr. Ashok Desai, learned Senior Counsel, that the respondents herein having failed to establish negligence on the part of the appellant, their claim for damages should be rejected, cannot be accepted."

The decision of the Supreme Court in Patel Roadways (supra), is applicable in all fours to the facts of the instant case.

13. THE fact that the opposite party had taken adequate steps in tracing the coffee seeds by way of institution of a complaint before the competent police station is of no consequence. THE liability for the loss of coffee seeds consequently rests on his shoulders.

14. ADMITTEDLY, the quantity of the coffee seeds entrusted to the opposite party is weighing 10 tons consisting of 200 bags. The coffee seeds so entrusted is admittedly uncured coffee seeds. The value given in the complaint for such uncured coffee seeds is Rs. 6,00,000/-. He would also incorporate an averment in paragraph 10 of the complaint that after curing the coffee seeds, the value he would be able to realise is Rs. 9,43,000/- that is to say, he would say, the value of the coffee seeds after curing would accrue to the extent of Rs. 3,43,000/- making the total value of Rs. 9,43,000/-. Of course, the opposite party would dispute the value of the coffee seeds as claimed by the complainant in taking up a stand in paragraph 10 of the counter to the effect. "The opposite party dispute the value of the goods and state that the value of the goods was not declared at the time of delivery by the complainant". Therefore, the value of the coffee seeds becomes a disputed fact. A duty is consequently cast upon us to estimate the value of the loss of the coffee seeds entrusted by the complainant to the opposite party. The dispute so raised by the opposite party would frizzle next to nothing. On the face of his own document namely, Ex. B5 dated 24.1.1996 which is nothing but the xerox copy of the complaint given by him to the Inspector of Police, Gudalur. A cursory perusal and glance of the said complaint under Ex. B5 would indicate the clear-cut admission made by him with regard to the quantity of coffee seeds entrusted to him besides the value of the seeds. What he would admit therein was that the coffee seeds entrusted to him weighed 10,000 kilos and the value of the 10,000 kilos would be around Rs. 8,00,000/-. The complainant admittedly not placed any tangible material in the shape of documents relatable to the price of coffee seeds on the date of loss in question though he would claim the value of the coffee seeds estimated at Rs. 9,43,000/-. Since the opposite party himself made a candid admission in Ex. B5 as to the value of the loss of coffee seeds on that date in question is Rs. 8,00,000/-, we can safely fix the value of loss of coffee seeds at Rs. 8,00,000/- and for our doing so, we cannot at all be found fault with. Therefore, we fix the value of the loss of coffee seeds at Rs. 8,00,000/-. The point is thus answered.

The complainant claimed compensation for deficiency in service on the part of the opposite party in a sum of Rs. 50,000/- and compensation for mental agony and pain quantified in a sum of Rs. 50,000/- apart from claiming interest @ 24% p.a. on the value of the loss of coffee seeds till up-to the date of realisation. We are of the view that the complainant can claim any one of the three things but not all of them. If interest is awarded at a reasonable rate on the value of the loss of coffee seeds till upto the date of realisation of the said amount, there is no need to award any compensation either for deficiency in service or for mental agony on the facts and in the circumstances of the case. We are, therefore, inclined not to grant any compensation either for deficiency in service on the part of the opposite party or for mental agony and anguish suffered by the complainant but inclined only to grant interest at a reasonable rate, say @ 12% p.a. on the value of the loss of the coffee seeds namely, Rs. 8,00,000/- from 9.1.1996 the date of entrustment till the date of realisation and we accordingly do so.

The complainant also claimed costs in a sum of Rs. 5,000/. The costs so claimed, we rather feel, on the facts and in the circumstances of the case is rather high calling for reduction in a suitable sum. Costs quantified in a sum of Rs. 1,000/-, if ordered to be paid by the opposite party, we rather feel, it won't be besides justice and we accordingly do so.

15. IN fine, the complaint is allowed in part. The opposite party is directed to pay to the complainant a sum of Rs. 8,00,000/- representing the value of loss of coffee seeds with interest @ 12% p.a. from 9.1.1996 the date of entrustment till upto the date of realisation and to pay costs of Rs. 1,000/. This order of ours is required to be complied by the opposite party within a period of two months from the date of receipt of this order. The complaint shall however stand dismissed in other respects. Complaint allowed in part with costs.