(1995) 05 NCDRC CK 0056

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

New India Assurance Company Ltd. — APPELLANT

Vs

NAGPAL TRADERS — RESPONDENT

Date of Decision: May 3, 1995

Citation: 1995 2 CLT 372 : 1995 2 CPC 351 : 1995 3 CPJ 511 : 1995 3 CPR 130

Hon'ble Judges: A.L.Bahri , R.L.Gupta J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal is directed against older of District Forum, Patiala dated December 19, 1994 hereby the complaint filed by M/s. Nagpal Traders was allowed and the Insurance Company was directed to give compensation/damages of Rs. 50,000/- alongwith compound interest at 18% per annum to be assessed annually w.e.f., June 1, 1990 till the date of recovery with a further direction to the Insurance Company to deliver the Registration Certificate, No Objection Certificate, and Affidavit of sale of the car to the complainant. Only brief facts of the case are required to be noticed to decide the question of entertainment of the complaint by the District Forum, which point was not taken up in the grounds of appeal. It came to the notice at the time of preparing the judgment that the case was listed for re-hearing and is now being disposed of after hearing Counsel for the parties.

2. THE complaint was filed by M/s. Nagpal Traders through its Proprietor Shri Ashok Kumar Nagpal. THE complainant deals in sale and purchase of old motor cars and other vehicles. He purchased damaged car No. MMU 8111 for Rs. 20,000/- on February 13, 1990 from the Opp. Party, the Insurance Company, the present

appellant. Actual delivery of the car was made on February 16, 1990. THE necessary documents were not handed over to the complainant inspite of several requests being made. In the meantime, the complainant got the car repaired by spending about 70,000/- and made it road-worthy.

In the written statement, the Insurance Company took up a plea that the complaint was not maintainable under the provisions of Consumer Protection Act On merits, it was asserted that only salvage of the ''Ford'' car, number aforesaid was purchased by the complainant through tender for Rs. 20,000/-. The assertion of the complainant that the Insurance Company had represented that the papers of the car were lying at Bombay office and were to be delivered subsequently, was denied. In the replication, the complainant reiterated its stand taken in the complaint. The District Forum after getting the affidavits and documents passed the impugned order.

The District Forum, an agency under the Consumer Protection Act could entertain the complaint from a complainant if he was a consumer as defined under the Act. The word ''Consumer'' has been defined under Section 2(d) of the Act as under:

"2(d)."consumer" means any person who- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or party promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;"

3. THE definition of the word ''consumer'' as reproduced above makes it abundantly clear that a person who obtains such goods for re-sale or for any commercial purpose will not be covered under the definition. We have referred to the pleadings of the parties wherein it is admitted case of the complainant himself that he deals in sale and purchase of old motor cars and other vehicles. To the same effect is affidavit of Shri Ashok Kumar Nagpal, who is Proprietor of the complainant-firm M/s. Nagpal Traders. Apart from that, reference be made to a registered notice sent on

behalf of the complainant to the Insurance Company wherein in para No. 6 it was specifically mentioned by the complainant that his business money had been blocked and he was suffering loss also, which was to the tune of Rs. 60,000/-. It is further mentioned that if the Registration Certificate and No Objection Certificate was delivered in time, he would have gained much more by selling the car or he would have utilised the said amount in business transaction. Thus no manner of doubt is left from the assertions of the complainant himself that he had purchased the car for commercial purposes, and if there was any deficiency of service in not supplying No Objection Certificate or papers of the car, he could have approached the Civil Court for claim of damages. Resort to the provisions of Consumer Protection Act in the circumstances stated above was nothing but abuse of the process of the Court.

For the reasons recorded above, this appeal is accepted. The order of the District Forum is set-aside. There will no order as to costs. During the pendency of the appeal an interim order was passed staying execution of the order of the District Forum beyond Rs. 75,000/- and it is stated that the complainant has already received a sum of Rs. 75,000/- from the Insurance Company, the appellant. The aforesaid amount will be returned to the Insurance Company by the complainant within two months. The complainant is left to seek his remedy in the Civil Court, if so advised. Appeal allowed.