Bharathi Knitting Company vs Dhl Worldwide Express Courier Division ... on 9 May, 1996

Equivalent citations: AIR 1996 SUPREME COURT 2508, 1996 AIR SCW 3115, (1996) 2 MAD LJ 146, (1997) 1 MAHLR 300, (1996) 22 CORLA 288, (1996) 87 COMCAS 886, (1996) 3 CURCC 110, (1996) 2 IJR 783 (SC), 1996 (4) SCC 704, 1996 CCJ 1035, (1996) 28 ALL LR 229, (1996) 3 CIVLJ 343, (1996) 4 COMLJ 1, (1996) 2 CPJ 25, (1996) 6 JT 254 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
BHARATHI KNITTING COMPANY

Vs.

RESPONDENT:
DHL WORLDWIDE EXPRESS COURIER DIVISION OF AIRFREIGHT LTD

DATE OF JUDGMENT: 09/05/1996

BENCH:
K. RAMASWAMY, FAIZAN UDDIN, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the appellate order of the National Consumer Disputes Redressal Commission, New Delhi dated 17.1.1996 made in FA No.317 of 1993 which in turn reversed the order of the State Forum Commission, Madras in O.P. No.364/93 dated June 9, 1993.

The admitted facts are that the respondent-plaintiff manufacturer appears to have an agreement with a German buyer for summer season, 1990 and consigned certain goods with documents sent in a cover on May 25, 1990 Containing (1) invoice No.32; (2) packaging list; (3) Original Export Certificate and certificate of origin No.T/WG/001316 dated 24.5.90; and (A) Original GSP Form A No.E1. It would appear that the cover did not reach the destination. Consequently, though the duplicate copies were subsequently sent by the date of receipt of the consignment, the season was over. Resultantly, the Consignee agreed to pay only DM 35,000/- instead of invoice value DM 56,469.63. As a result, the appellant laid the complaint before the State Commission for the difference of the loss incurred by the respondent in DM 21,469.63 equivalent to Rs.4,29,392.60 which was ordered. The respondent carried the matter in appeal. The National Commission in the impugned order held that since the liability was only of an extent of US $ 100 as per the receipt, the appellant is entitled for deficiency of service only to that extent which is equivalent to Rs.3,515/- with interest at 18% from May 25, 1990 till date of realisation with cost. Thus, this appeal by special leave.

It is contended by Mr. M.N. Krishnamani, learned senior counsel appearing for the appellant that the Consumer Protection Act, 1986 (for short, the 'Act') is a beneficial legislation envisaged to accord expeditious and inexpensive relief to the consumer; when the Commission gave a finding that there was a deficiency in service, the National Commission was wrong in law to reduce the liability of US $100 Contained in the receipts There is no consensus ad idem between the appellant and the respondent who is a courier vis-a-vis the appellant. Therefore, the National Commission was wrong in awarding deficiency amount only to the extent of US $100. He seeks to contend that until there is an agreement by the appellant by consensus at idem with the respondent for carriage of the invoice with limited liability, it must be presumed that in the event of nor- delivery of the cover thereof, the resultant damages must be born by the courier. The State Commission would be entitled to award the difference of the damages to the appellant. The State Commission, therefore, was right in awarding the damages. We find no force in the contention.

It is true that the Act is a protective legislation to make available inexpensive and expeditious summary remedy. There must be a finding that the respondent was responsible for the deficiency in service, the consequence of which would be that the appellant had incurred the liability for loss or damages suffered by the consumer due to deficiency in service thereof. When the parties have contracted and limited their liabilities, the question arises: whether the State Commission or the National Commission under the Act could give relief for damages in excess of the limits prescribed under kha Contract?

It is true that the limit of damages would depend upon the terms of the contract and facts in each case. In Anson's Laws of Contract, 24th Edn. at page 152, on exemption clause with regard to notice of a printed clause, it was stated that a person who signed, a document containing contract and terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. But if the document is not signed, being merely delivered to him, then the question arises: whether the terms of the contract were adequately brought to his notice? The terms of the contract have elaborately been considered and decided, The details thereof are not necessary for us to Pursue. It is seen that when a person signs a document which contains certain

contractual terms, as rightly pointed out by Mr. R.F. Nariman, learned senior counsel, that normally parties are bound by such contracts it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him to prove the terms in the contract or circumstances in which he came to sign the documents need to be established. The question we need to consider is; whether the District Forum or the State Commission or the rational Commission could go behind the terms of the contract? it is true, as contended by Mr. M.N. Krishnamani, that in an appropriate case, the Tribunal without trenching upon acute disputed question of facts may decide the validity of the terms of the contract based upon the fact situation and may grant remedy. But each case depends upon fits own facts. In an appropriate case where there is an acute dispute of facts necessarily the tribunal has to refer the parties to original civil Court established under the CPC or appropriate State law to have the claims decided between the parties. But when there is a specific term in the contract, the parties are bound by the terms in the contract. The National Commission in the impugned order pointed out as under:

> "We have considered the submissions of the counsel for the parties on the facts of the case and having regard the earlier decisions of this Commission. The consignment containing the documents sent in the cover had been accepted by the Appellant and was subject to the terms and conditions mentioned on the consignment note. The Complaining the documents sent in the cover had been accepted by the Appellant and was subject to the terms and conditions mentioned on the consignment note . The Complainant had signed the said note at the time of entrusting the consignment and had greed to and accepted the terms and conditions mentioned therein. Clauses 5 and 7 of the terms and conditions as also the important notice mentioned on The consignment note are reproduced below:
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> Clause 6: "Limitation of liability: Without prejudice to clause 7 the liability of DHL for any loss or damage to the shipment, which term shall include all documents or parcels consigned to DHL under this Air bill and shall not mean any one document or envelope included in the shipment is limited to the lesser of
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> a) US $ 100
>
> b) The amount of loss or damage to a document or parcel actually sustained or
>
> c) The actual value of the document or parcel as determined under Section 6 hereof, without regard to the commercial utility or special value to the shipper.
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> Clause 7: Consequent damages excluded: DHL shall not be liable in any event for any consequential or special damages or other indirect loss however arising whether or not DHL had knowledge that such damage might be incurred including but not limited to loss of income, profits interest, utility or loss of market. Important Notice: by the conditions set out below DHL and its servants and agents are firstly not to be liable at all for certain losses and damages and secondly wherever they are to be liable the amount of liability strictly limited to the amount stated in condition and

customers are therefore advised to purchase insurance cover to ensure that their interests are fully protected in all event. Under clause 5 of the terms end conditions of the contracts the liability of the Appellant for any loss or damage to the consignment:

was limited to US $ 100. Clause 7 of the contract specifically provided that the liability of the Appellant for any consequential or Especial damages or any otter indirect loss, that may occur including the loss of market or profits etc. was excluded. It is also pertinent to note that despite the advice in the important notice, the Complainant did not did one at the time or Consignment the contents of the cover and also not purchased the insurance cover to ensure that their interests are fully protected in all events." In view of the above consideration and findings we are of the opinion that the national Commission was right in limiting the liability undertaken in the contract entered into by the. parties and in awarding the amount for deficiency service to the extent of the liability undertaken by the respondent. Therefore, we do not think that there is any illegality in the order passed by the Commission. Shri Krishnamani has brought to our notice that there are number of judgments covering divergent views. In view of the view we have expressed above, it is now settled law and the Tribunals would follow the same. Lastly, it is Contended that besides the amounts awarded by the State Commission, liberty may be given to the. appellant to pursue the remedy available in law. It is needless to mention that the remedy available at law would be pursued accordingly to law.

The appeal is dismissed. No costs.