

SUPREME COURT OF INDIA

Nagpur Golden Transport Co.

Vs.

Nath Traders & Ors.

C.A.No.3546 of 2006

(P.Sathasivam and A.K.Patnaik,JJ.,)

07.12.2011

JUDGMENT

A.K.Patnaik,J.,

1. This is an appeal by way of special leave under Article 136 of the Constitution against the order dated 18.02.2003 of the National Consumers Disputes Redressal Commission in Revision Petition No.371 of 2000.

2. The facts very briefly are that the respondent No.3 booked a consignment of monoblock pumps with the appellant for transportation from Coimbatore to respondents No.1 and 2 at Gwalior in March, 1997. While the appellant was transporting the consignment in a truck, there was an accident and the monoblock pumps were damaged. The respondents No.1 and 2, therefore, did not take delivery of the 198 damaged monoblock pumps at Gwalior. In the circumstances, the appellant returned the 198 damaged monoblock pumps to the respondent No.3.

3. The respondents No.1 and 2 then filed Complaint No.101 of 1998 before the Consumer Disputes Redressal Forum, Gwalior, and their case in the complaint was that they had paid the price of the consignment to respondent No.3 and were entitled to Rs.3,61,131/- towards the price of the monoblock pumps and damages of Rs.70,000/-, loss of profit Rs.14,000/- as well as cost of Rs.5,000/- and interest @ 18% per annum on the amount claimed by them. The appellant resisted the claim contending that the claim was not maintainable under the Consumer Protection Act, 1986 (for short 'the Act'). The District Consumer Disputes Redressal Forum, in its order dated 27.01.1999, held that the appellant as a common carrier was the insurer of the goods in transit and if the goods have been damaged, the appellant was liable to respondents No.1 and 2 for negligence. The District Consumer Disputes Forum, therefore, awarded a sum of Rs.3,60,131/- along with interest @ 18% per annum from 01.04.1997 till the date of payment and Rs.500/- as counsel fee and further sum of Rs.500/- as cost of the case.

4. Aggrieved, the appellant filed appeal No.202 of 1999 before the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal, and the State Consumer Disputes Redressal Commission in its order dated 07.10.1999 held that there was no legal infirmity in the order of the District Consumer Disputes Redressal Forum, Gwalior, awarding the sum of Rs.3,60,131/- but took the view that levy of interest @ 18% per annum was penal and instead directed the appellant to pay interest @ 12% per annum on the amount of Rs.3,60,131/- from the date of filing of the complaint (02.03.1998) till the date of payment. The appellant filed a revision but by the impugned order dated 18.02.2003 the National Consumer Disputes Redressal Commission dismissed the revision.

5. On 10.07.2003, this Court took note of the fact that the amount awarded in favour of the respondents No.1 and 2 by the District Consumer Disputes Redressal Forum had been deposited and the counsel for the appellant had no objection to the amount to be paid to respondents No.1 and 2. This Court in its order dated 10.07.2003 issued notice limited to the question of law raised before the Court. In the order dated 10.07.2003, however, this Court appears to have recorded a different question of law and hence the appellant has filed an application I.A. No.2 of 2003 for clarification of the aforesaid order dated 10.07.2003. On reading the application I.A. No.2 of 2003, we find that the question of law raised was whether the appellant was entitled to receive 198 monoblock pumps from respondent No.3 when he is held to be liable to pay the price of the monoblock pumps to respondents No.1 and 2. We, accordingly, correct the order dated 10.07.2003 as prayed by the appellant in the application for clarification in I.A. No.2 of 2003.

6. At the hearing of the appeal, learned counsel for the appellant submitted that the District Consumer Disputes Redressal Forum should have directed the respondent No.3 to return the 198 monoblock pumps to the appellant when the appellant has been held liable for the price of the monoblock pumps to the respondents No.1 and 2, who had paid for the same to respondent No.3. He submitted that the appellant cannot be held liable to pay the price of the monoblock pumps to respondents No.1 and 2 and at the same time not entitled to the return of the 198 monoblock pumps from respondent No.3.

7. Learned counsel for respondent No.3 relied on the counter affidavit filed on behalf of the respondent No.3 in this Court in which it is stated that the 198 damaged monoblock pumps had no value and the same have been kept in the godown of the respondent No.3 under the watch and ward of extra staff engaged by the respondent No.3 and that due to delay the monoblock pumps have become useless and have no value at all.

8. We have considered the submissions of learned counsel for the appellant and the respondent No.3 and we are of the considered opinion that if the District Consumer Disputes Redressal Forum directed the appellant to pay Rs.3,60,131/- to respondents No.1 and 2 and this sum of Rs. Rs.3,60,131/- covered the price of the monoblock pumps and this price of the monoblock pumps had also received by respondent No.3 from the respondents No.1 and 2, the appellant was entitled to the return of the damaged 198 monoblock pumps from respondent No.1. We are also of the view that in case the respondent No.3 has disposed of the 198 monoblock pumps in the meanwhile, the appellant was entitled to the value of the

198 damaged monoblock pumps realized by the respondent No.3. If the damaged monoblock pumps are not returned by respondent No.3 to the appellant or if the value of the damaged monoblock pumps realized by respondent No.3 are not paid to the appellant, respondent No.3 would stand unjustly enriched. To quote Lord Wright in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd*¹.

".....Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution."

We are also of the considered opinion that the respondent No.3 was not entitled to any charges towards watch and ward etc. as respondent No.3 should not have retained the damaged monoblock pumps having received the full price of the pumps.

9. We, therefore, remand the matter to the District Consumer Disputes Redressal Forum, Gwalior, with the direction to issue notice to the parties and after taking evidence, if necessary, order the return of the 198 damaged monoblock pumps by respondent No.3 to the appellant and if the 198 damaged monoblock pumps are not available with respondent No.3, to find out the value of the 198 damaged monoblock pumps realized by the respondent No.3 and direct the respondent No.3 to pay the said value to the appellant. The appeal is allowed to the extent indicated above. No costs.

Judgment Referred.

¹(1942) 2 ALL ER 122 (HL)