

M/S. NAGPUR GOLDEN TRANSPORT COMPANY
(REGD.)

v.

M/S. NATH TRADERS & ORS.
(Civil Appeal No. 3546 of 2006)

DECEMBER, 07, 2011

[P. SATHASIVAM AND A.K. PATNAIK, JJ.]

CONSUMER PROTECTION ACT, 1986:

Restitution – Complaint against the carrier company for the goods damaged in transit – District forum holding the carrier company liable to the consignees for negligence – Held: If the amount determined by District Forum covered the price of damaged goods and the carrier had returned the said goods to the consigner and the latter having received the price of said consignment from the consignees, also retained the consignment or disposed it of but has not paid the realized amount to the carrier, the consigner would stand unjustly enriched – Matter remitted to District Forum to order the consigner to return the damaged goods or its value to the carrier – Unjust enrichment.

Respondent No.3 booked a consignment of monoblock pumps with the appellant for transportation from Coimbatore to respondents No.1 and 2 at Gwalior. The truck transporting the consignment met with an accident and the monoblock pumps were damaged. Respondents No.1 and 2, therefore, did not take delivery of 198 damaged monoblock pumps. The appellant returned the said articles to respondent No.3. Respondents No.1 and 2 filed a complaint before the District Consumer Disputes Redressal Forum, stating that they had paid the price of the consignment to respondent No.3 and were entitled to the same, along with damages.

- A The District Forum, held that the appellant as a common carrier was the insurer of the goods in transit and as the goods were damaged, the appellant was liable to respondents No.1 and 2 for negligence. It awarded a sum of Rs.3,60,131/- along with interest @ 18% per annum from 01.04.1997 till the date of payment. On appeal, the State Commission, maintained the award but reduced the interest to 12%, payable from the date of filing of the complaint (2.3.1998) till the date of payment. The revision filed by the appellant was dismissed by the National Commission.
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Partly allowing the appeal, the Court

- HELD: 1.1 If the amount directed by the District Forum to be paid by the appellant to respondents No.1 and 2 covered the price of the monoblock pumps and this price of the monoblock pumps had also been received by respondent No.3 from respondents No.1 and 2, the appellant was entitled to the return of the damaged 198 monoblock pumps from respondent No.3, and in case the latter has disposed of the articles in the meanwhile, the appellant was entitled to the value thereof realized by respondent No.3; otherwise, respondent No.3 would stand unjustly enriched. [Para 8] [486-B-D]
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- F *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd. (1942) 2 ALL ER 122 (HL)* – referred to

- 1.2 Respondent No.3 was not entitled to any charges towards watch and ward etc. as it should not have retained the damaged monoblock pumps having received the full price thereof. [para 8] [486-G]
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- 1.3 The matter is, therefore, remanded to the District Forum, 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
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**the appellant and if the said goods are not available with
respondent No.3, to find out its value and direct
respondent No.3 to pay the same to the appellant. [Para
9] [486-H; 487-A-B]**

Case Law Reference:

(1942) 2 ALL ER 122 (HL) referred to Para 8

**CIVIL APPELLATE JURISDICTION : Civil Appeal No.
3546 of 2006.**

**From the Judgment and Order dated 18.02.2003 of the
National Consumer Disputes Redressal Commission, New
Delhi in Revision Petition No. 371 of 2000 and 10.4.2003 in
Misc. Petition No. 98 of 2003.**

Sudarsh Menon for the Appellant.

**Dharam Bir Raj Vohra, P.K. Bajaj, Brahm Singh and Prem
Sunder Jha for the Respondent.**

The Judgment of the Court was delivered by

**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.**

A 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
 B 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
 C 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
 D 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.

E 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
 F 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
 G revision but by the impugned order dated 18.02.2003 the
 National Consumer Disputes Redressal Commission
 dismissed the revision.

H 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

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the District Consumer Disputes Redresal 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.

- A 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/-
B 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
C 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
D 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.* [(1942) 2 ALL ER 122 (HL)]:

- E ".....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
F 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
G 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
H direction to issue notice to the parties and after taking evidence,

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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.

R.P.

Appeal partly allowed.