

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 232 OF 2019**

(Against the Order dated 19/12/2018 in Complaint No. 335/2012 of the State Commission  
Maharashtra)

1. EAST INDIA TRANSPORT AGENCY  
301, STEEL CHAMBER DEVJI RATANSEY MARG MASJID  
(EAST  
MUMBAI 400 009

.....Appellant(s)

Versus

1. DHARIWAL INDUSTRIES LTD. & ANR.  
MANIKCHAND HOUSE 100-101, KENNEDY ROAD  
PUNE 411 001  
2. BAJAJ ALLIANZ GENERAL INSURANCE CO LTD  
GE PLAZA, AIRPORT ROAD MYERWADA  
PUNE 411 006

.....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING  
MEMBER**

FOR THE APPELLANT :

FOR THE APPELLANT : MR. SUKUMAR PATT JOSHI, SR.  
ADVOCATE  
MR. BISWAJIT PATAR, ADVOCATE  
MR. MANOJ KUMAR, MR. RAM, ADVOCATE  
MR. VEDANT KUMAR MUND, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENTS : MR. DAVESH VASHISTHA,  
ADVOCATE  
MR. SANJIT SHENOY, ADVOCATE

**Dated : 23 April 2024**

**ORDER**

1. The present First Appeal has been filed under Section 19 of the Consumer Protection Act, 1986 ("the Act") against the Order dated 19.12.2018 passed by the State Consumer Disputes Redressal Commission, Maharashtra ("the State Commission"), in CC No. 335 of 2012 wherein the Complaint of the Complainants (Respondents herein) was partly allowed.

2. For clarity and consistency, the parties involved in this Appeal will be referred to as per the original Complaint before the learned State Commission. Complainant No. 1/Respondent No. 1, "Dhariwal Industries," is a company incorporated under the Companies Act, 1956 and engaged in business activities. Complainant No. 2/ Respondent No. 2, "Bajaj Allianz General Insurance Co. Ltd.," is an insurance company. Meanwhile, The OP/Appellant - "East India Transport Agency" is involved in the business of Carriage of goods by road for hire and reward as a common carrier.

3. Brief facts, as per Complainant No. 1, are that they were engaged by the OP for carriage and safe delivery of a consignment of 350 cartons of Gutkha to their buyers in Kolhapur. The consignment, dispatched under supplier's invoices 730 & 731 dated 06.12.2010 was accepted by the OP and booked under Lorry Receipt No. 5559178 on the same date. However, the consignment failed to reach the buyers, leading Complainant No. 1 to contact Complainant No. 2, the insurance company. Cargo tracers were appointed to locate the consignment, and the OP informed them that it was stolen while in their custody. Despite confirmation of loss vide a non-delivery certificate dated 16.12.2010, the OP failed to reimburse the consignment's value. As the consignment was in the OP's custody, Complainant No. 1, the consignor/owner/insured party, suffered loss due to non-delivery. Consequently, Complainant No. 1 lodged a monetary claim with OP. Further, Complainant No. 1 had obtained a Marine Insurance Policy from Complainant No. 2 to cover the risk to the consignment during transit. Consequently, Complainant No. 2 settled the claim of Complainant No. 1 under the insurance policy for a sum of Rs.28,72,142/- as full and final settlement. Subsequently, Complainant No. 1, upon receiving payment from Complainant No. 2, executed a Letter of Subrogation and Special Power of Attorney in favor of Complainant No. 2 for Rs.28,72,142/-. This subrogation granted Complainant No. 2 all the rights and remedies available to Complainant No. 1. As a result, Complainant No. 2, having indemnified Complainant No. 1, is entitled to claim from the OP for the amount paid.

4. Being aggrieved due to the deficiency in service on the part of OP, Consumer Complaint No. 335 of 2012 was filed by both Complainants against the OP, seeking reimbursement of Rs.28,72,142/- with interest at 18% per annum from the date of loss until realization, along with a claim of Rs.50,000/- for litigation cost.

5. Upon issue of notice to the OP, it was duly served. But, no representation was made on behalf of OP before the learned State Commission. Consequently, by order dated 29.04.2013, the State Commission directed to proceed without the written version of OP. Thereafter, the learned State Commission held the OP negligent for failing to deliver the consignment to the buyers at Kolhapur and the consignment was stolen during transit. Consequently, the complaint was partly allowed with the following order: -

***“18. Nothing is there to disbelieve that complainant no.2 paid an amount of Rs.28,72,142/-. In view of subrogation, Complainant no.2 is entitled to claim the said amount from the opponent with interest. Opponent failed to consider the genuine claim of complainant no.1 and failed to repay the value of consignment. Ultimately, complainant no.1 has received amount of loss from second complainant. Loss to the consignment was admitted by the opponent. In that case, it was duty of the opponent to make payment of loss to complainant no.1. Certainly, opponent is guilty of deficiency in service.***

***As a result, we answer point no.2 for determination in affirmative and proceed to pass the following order:-***

## **ORDER**

- 1. Consumer complaint is partly allowed.**
- 2. Opponent do pay an amount of Rs.28,72,142/- to the complainant no.2 with interest @ 9% p.a. from the date of letter of subrogation i.e.25/02/2011 till its realization.**
- 3. Opponent do pay an amount of Rs.25,000/- as costs of litigation and shall bear its own.**
- 4. Copies of the order be furnished to the parties.”**

6. Being aggrieved by the impugned order dated 19.12.2018, the OP/ Appellant filed this present Appeal with the following prayer:

**(a). Allow the present Appeal; and**

**(b) Set aside the final judgment and Order dated 19.12.2018 passed by the Hon'ble State Consumer Disputes Redressal Commission, Maharashtra at Mumbai in Complaint Case No. CC/12/335; and.**

**(c) pass such other and further order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.”**

7. In the Appeal, the Appellant/OP has contended that the State Commission failed to recognize that Complainant No. 1 availed service from the Appellant/OP for commercial purposes, thereby excluding them from the definition of a Consumer under Consumer Protection Act, 1986. The State Commission overlooked regarding Complainant No. 2, the insurance company, joining the consumer complaint as a subrogate, which legally places its status below that of Complainant No. 1. The evident connection between the services availed by Complainant No. 1 and their business activities aimed at generating profits, which the State Commission failed to acknowledge.

8. Upon notice of the Appeal, the Respondents/ Complainants have filed IA. No. 1103/2021 seeking to file a reply by way of affidavit. In the reply, Respondent No. 1 raised preliminary submissions asserting that the appeal lacks merit both in terms of facts and law, as it was filed without any cause of action. Therefore, Respondent No. 1 sought the Appeal to be dismissed, and the complaint allowed.

9. The counsel for the Appellant/OP reiterated the facts of the case and grounds of appeal, emphasizing that the impugned order is erroneous and without jurisdiction. He argued that Complainant No. 1 is a business organization and the goods transported were purely commercial goods for commercial purposes, thus not qualifying as a Consumer under Section 2(1)(d) of the Consumer Protection Act, 1986. Additionally, he highlighted that the Insurance Company joined the consumer complaint as a subrogate, stepping into the shoes of Complainant No. 1, and therefore cannot have a superior status than Complainant No. 1 itself. The learned counsel for the Appellant/OP relied on the following judgments to support the arguments: -

***a. M/s. Suzuki Motorcycle India Pvt. Ltd. & Anr. Vs. M/s. Nagana Roadlines, Consumer Case No. 185 of 2009.***

***b. Punjab Conware, Container Freight Station Vs. Cipla Limited & Anr., F.A/658/2016.***

10. The learned counsel for the Respondents/Complainants argued that the transaction between Respondent No. 1 and the Appellant was not for commercial purposes, as no profit or commercial benefit was derived from the transportation of goods. He refuted the Appellant's citation of two judgments of the NCDRC, stating that these judgments remain binding as they have not been overruled. Additionally, he emphasized that the State Commission awarded the claim in favor of Respondent No. 2 based on the Letter of Subrogation and Special Power of Attorney executed by Respondent No. 1, subrogating all rights to Respondent No. 2. Therefore, Respondent No. 1 is not entitled to appoint an advocate to represent them, as Respondent No. 2 has already issued a Vakalatnama in favor of its advocates. The learned counsel concluded that the present Appeal lacks merit and is an attempt by the Appellant to evade liability, and thus prayed for its dismissal with exemplary costs. The learned Counsel for the Respondents relied upon the following judgments in support of the arguments:-

***a. National Insurance Co. Ltd. Vs. Harsolia Motors and Others, Civil Appeal No(s).5352-5353 of 2007.***

***b. New India Assurance Co. Ltd. vs. Industrial Transport, NCDRC, decided on 14.08.2018.***

***c. Nagpur Golden Co. Vs. Vishwabharti Store, NCDRC, decided on 26.08.2011.***

***d. Swiss Air Cargo Vs. Century Silk Inc. & Ors. NCDRC, decided on 26.08.2011***

11. I have gone through the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

12. The primary issue in the case revolves around whether the Complainant No. 1 qualifies as a 'Consumer' under the Consumer Protection Act, 1986, considering the nature of the transaction with the Appellant/OP. The issue concerning the Respondent No. 2 revolves around their legal standing in the case and their entitlement to pursue the claim against the Appellant/OP. Specifically, it questions whether the Respondent No. 2, an insurance company, has the right to join the consumer complaint in the capacity of a subrogate and whether their claim is valid based on the subrogation rights obtained from the Complainant No. 1.

13. As regards who is a Consumer, Section 2 (1)(d) of the Act reads as under:-

**2. (1) 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 partly 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 [but does not include a person who avails of such services for any commercial purpose] ;*

*{Explanation – For the purposes of this clause, "Commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment}.*

14. As regards the issue whether the Respondent No. 1 qualifies as a consumer under the Consumer Protection Act, 1986, it is crucial to examine the nature of their engagement with the Appellant/OP. Respondent No. 1, known as Dhariwal Industries, is unequivocally a commercial entity involved in commercial activities. Specifically, Dhariwal Industries sought the services of the Appellant/OP to facilitate the carriage, handling, and secure delivery of a consignment consisting of 350 cartons of Gutkha to their buyers in Kolhapur. Despite the consignment being meticulously packed and accepted by the Appellant/OP, it unfortunately did not reach its designated destination. Upon discovering that the consignment was stolen while under the custody of the Appellant/OP, Complainant No. 1 incurred significant financial loss as the goods did not reach the buyers. In response, Complainant No. 1 initiated a monetary claim against the Appellant/ OP, underscoring their position as the consignor, owner, and insured party of the lost consignment. Therefore, based on the outlined circumstances, it is evident that Complainant No. 1's engagement with the Appellant/OP was directly tied to commercial endeavours. Specifically, the services rendered by the Appellant/OP were sought to facilitate the safekeeping and transit of goods until their delivery. This establishes that they availed the services of the Appellant/OP for a commercial

purpose. Therefore, Complainant No.1 is not a 'consumer' as defined under section 2(1) (d) of the Act.

15. As regards the issue concerning Respondent No. 2, evidently, the insurer acted as a subrogee of Respondent No. 1, who entered into a service contract regarding a Marine Insurance Policy to mitigate the risk associated with the consignment during transit. Consequently, Respondent No. 2 settled the claim of Complainant No. 1 for Rs.28,72,142 under the insurance policy as full and final settlement. As a subrogee, Respondent No. 2 assumes the legal rights and remedies of the subrogor, meaning they can only assert those rights that are available to the original party. However, it has been established that Complainant No. 1 is not a consumer in relation to the Appellant because their engagement for commercial purposes. Respondent No. 2, therefore, as a subrogee, also cannot be classified as a consumer. Consequently, they would not have the standing to maintain consumer complaints in this context.

16. The Complainant Respondent cited the judgment of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Harsolia Motors and Ors. (Supra). However, evidently, the facts of the case are not similar. In the cited case, the Complainant, which is a commercial entity had filed a Consumer Complaint against the Insurance Company with respect to certain deficiency in service. The learned Court had held that the case was solely related to indemnifying the loss suffered by the Complainant and that the transaction leading to the insurance repudiation of the claim had no direct connection with profit-generating activities of the entity. In the case in question, however, Complainant No.1 and the Appellant are undisputedly commercial entities and a direct nexus with profit-generating activities. Therefore, the circumstances, nature of the complaint and dispute between the parties are significantly different from those cited in the case supra.

17. In view of the discussion above, it is clear that the learned State Commission passed the impugned order against the Appellant, disregarding the fact that Respondent/Complainant No. 1 does not qualify as a consumer due to inherent commercial nature of the activities. Since Respondent/Complainant No. 1 does not fall within the scope of definition of a consumer under Section 2(1)(d) of the Act, they lacked legal standing to pursue the consumer complaint.

18. Therefore, evidently, the learned State Commission exceeded its jurisdiction by adjudicating on the complaint. Consequently, the impugned order cannot be upheld. Based on the discussion above, the Appeal is allowed, and the impugned order is set aside. The Complainants/Respondents are granted the liberty to pursue their legal remedy by approaching the appropriate court.

19. There shall be no order as to costs. All pending Applications, if any, also stand disposed of accordingly.

20. The Registry is directed to release the Statutory deposit amount, if any due, in favour of the Appellant as per law.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)  
PRESIDING MEMBER**