

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 4412-4413 OF 2010

M/S. ASSOCIATED ROAD CARRIERS LTD. Appellant(s)

VERSUS

M/S. KAMLENDER KASHYAP & ORS. Respondent(s)

O R D E R

The challenge in the present appeals is to an order passed by the National Consumer Disputes Redressal Commission (in short, "NCDRC") dated 10.01.2008, whereby an order of the Himachal Pradesh Consumer Disputes Redressal Commission directing the appellant to pay a sum of Rs.4,29,445/- along with interest at the rate of 8% and costs of Rs.5000/- was not interfered with.

The sole argument raised by the learned counsel for the appellant is that in terms of Section 10 of Carriers Act, 1865, no prior notice was served upon the common carrier, therefore, the complaint before the Consumer Fora was not maintainable. Section 10 of the Carriers Act is reproduced hereunder :-

"10. Notice of loss or injury to be given within six months – No suit shall be instituted against a common carrier for the loss of, or injury to goods (including container, pallets or similar article of transport used to

consolidate goods) entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff."

Learned Counsel for the appellant relied upon a Judgment of this Court in Arvind Mills Ltd. Vs. Associated Roadways, reported in (2004) 11 SCC 545, wherein this Court has held as under :-

"7. Since the word 'suit' has been used both in Section 9 and Section 10 of the Carriers Act, there is no reason why we should not construe the said word as far as Section 10 is concerned in the same manner as it was done in Patel Roadways Limited (supra) qua Section 9. The distinction that has been sought to be drawn between Section 9 and Section 10, namely, that the former creates a substantive right whereas the latter only provides for procedure is unacceptable. Section 9 deals with the rule of evidence to be followed in dealing with cases under the Carriers Act and rules of evidence are the rules of procedure. Besides, the construction of the word 'suit' in Patel Roadways Limited (supra) did

not turn on whether Section 9 was either procedural or substantive.

8. The fact that the remedies under the Consumer Protection Act are in addition to and not in derogation of any other law does not mean that the rights under the Carriers Act can be exercised, except in accordance with the manner provided under the Act. Section 9 and 10 form an integral scheme by which a common carrier is fastened with liability irrespective of proof of negligence. Merely because the procedure under the Consumer Protection Act is summary in nature does not in any way warrant the abrogation of the requirement to serve notice under Section 10 of the Carriers Act before fastening any liability under that Act on the carriers."

The NCDRC has held that since the complaint was filed before the State Consumer Commission within a period of six months, it will amount to a notice upon the common carrier, therefore, the requirement of serving prior notice under Section 10 of the Carriers Act stands satisfied.

We find that the proceedings initiated before the Consumer Fora without serving a notice under Section

10 of the Carriers Act was not maintainable. The requirement of Section 10 of the Carriers Act is serving of prior *notice in writing of the loss or injury*. Notice is required to be served prior to initiation of proceedings and not the proceedings itself.

However, keeping in view the fact that the consignment was booked in the year 1997, it is too late in the day to relegate the parties to meet out the requirement of notice under Section 10 of the Carriers Act. The parties have contested the proceedings on merits and the State Commission as well as the NCDRC have returned a finding of fact that the appellant was deficient in providing service.

Therefore, in the facts and circumstances of the case, we do not wish to interfere with the impugned order. The appeals are, accordingly, dismissed with no order as to costs.

.....J.
[HEMANT GUPTA]

.....J.
[A. S. BOPANNA]

New Delhi;
AUGUST 17, 2021.

ITEM NO.102 Court 12 (Video Conferencing) SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4412-4413/2010

M/S. ASSOCIATED ROAD CARRIERS LTD. Appellant(s)

VERSUS

M/S. KAMLENDER KASHYAP & ORS. Respondent(s)

Date : 17-08-2021 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE A.S. BOPANNA

For Appellant(s) Mr. Ajay Garg, Adv.
 Ms. Tripti Gola, Adv.
 Mr. Mani Shanker, Adv.
 Mr. Vijay K. Jain, AOR

For Respondent(s) Mr. R. K. Kapoor, Adv.
 Ms. Kheyali Singh, AOR

 Mr. Satendra Sharma, Adv.
 Mr. Anil Kumar, Adv.
 Mr. Sudarshan Singh Rawat, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)