

Economic Transport Organization v Charan Spinning Mills Ltd

[(2010) 4 SCC 114]

October 2010

Summary

Can insurers bring subrogated actions before consumer forums under the Consumer Protection Act 1986 (Act)? The question was answered in the Supreme Court of India's recent decision in this case which delved into the concept of subrogation at length. The relevance case can be gauged by the fact that it was decided by a constitution bench (five judges including the Chief Justice of India).

Brief facts

Charan Spinning Mills (Insured) obtained an insurance policy from National Insurance Company (Insurers) to cover transit risks in respect of cotton yarn sent by it to various consignees against, among other risks, accidental damage. The Insured engaged the Economic Transport Organization (Carrier) for transportation, whose vehicle met with an accident and the consignment was completely damaged. The Insurers paid the loss upon which the Insured executed a 'Letter of Subrogation-cum-Special Power of Attorney' in favour of the Insurers. The Insurers (and the Insured as a co-complainant) sued the Carrier before the consumer forum (the District Commission). The complaint was allowed and the Carrier was directed to pay compensation. After losing a series of appeals before the State and National Commissions, the Carrier ultimately appealed before the Supreme Court.

Reasoning and judgment

The Carrier's main contention was that:

- (i) The Insurers had already settled the Insured's claim and so the Insured had no surviving claim against the Carrier.
- (ii) In any event, by assigning its interest in the claim to the Insurer, the Insured had no subsisting interest or enforceable right.
- (iii) As far as the Insurer was concerned, it was not a recipient of the Carrier's services and therefore was not a 'consumer' as defined in the Act. Consequently, its complaint before the consumer forum was not maintainable.

The Insurers on the other hand contented that payment of the insurance monies did not take away the rights of the Insured against the Carrier. Pursuant to subrogation, Insurers were entitled to sue based on these rights of the Insured as a 'consumer'. The 'assignment' did not take away these rights, which had accrued on account of the 'subrogation'.

While the Carrier's appeal was pending, another judgment of the Supreme Court, *Oberai Forwarding Agency v New India Assurance 2002 (2) SCC 407* was issued, which distinguished between 'subrogation' and 'assignment'. This case held that while in the case of a simple subrogation an insurer could maintain an action before the consumer forums in the name of the insured, it could not do so in the case of an 'assignment' of the rights by the insured to the insurer. This was because upon an assignment, the Insured did not retain the right to recover compensation and the insurer was not a 'consumer' so it could not sue before a consumer forum.

The judges hearing the *Economic Transport* matter disagreed and held that:

- (i) Payment of the insurance monies did not take away the right of an insured to sue the wrongdoer (the Carrier in this instance).
- (ii) Where the insurer had settled the claim of an insured, the law of insurance recognised 'subrogation' as an equitable corollary of the principle of indemnity, under which the rights and remedies of the insured against the wrongdoer are transferred to and vested in the insurer.
- (iii) Subrogation could be classified under 3 broad categories:
 - (a) Subrogation by equitable assignment: This is not evidenced by any document, but is based on the insurance policy and the receipt by the insured of the claim amount. The insured has no right to deny the equitable right of subrogation, even where there is no writing to support it.
 - (b) Subrogation by contract: This is evidenced by an instrument. The court recognised that insurers usually obtain a letter of subrogation in writing to avoid any dispute about the right to claim reimbursement, or to settle the priority of inter-se claims or to confirm the quantum of reimbursement pursuant to the subrogation, and to ensure co-operation by the insured. Where the assured executes a 'Letter of Subrogation', the rights of the insurer *vis-à-vis* the assured are governed by its terms.
 - (c) Subrogation-cum-assignment: In this case the insured executes a 'letter of subrogation-cum-assignment', which can enable the insurer to retain the entire amount recovered (even if it is more than what was paid to the insured) and gives the insurer an option to sue in the name of the insured or in its own name. The insured is left with no right or interest and is no longer entitled to sue on its own account and for its own benefit. But as the instrument is a 'subrogation-cum-assignment', and not a mere assignment, the insurer has the choice of suing in its own name, or in the name of the insured, if the instrument so provides.

The court held that in all three types of subrogation, the insurer could sue in the name of the insured. The insurer could request the insured to file the suit/complaint and can join as a co-plaintiff. Alternatively, the insurer could obtain a special power of attorney from the insured and then sue in the name of the insured as its attorney.

The court overruled the *Oberai* case to the extent it treated a 'subrogation-cum-assignment' as a mere 'assignment'. The court's reasoning was that a mere 'assignment' of the right to sue was barred by law (in view of §6 of the Transfer of Property Act 1882). When a letter of subrogation-cum-assignment is executed, the assignment is interlinked with subrogation, and is not an assignment of a mere right to sue.

However, the court upheld the finding in *Oberai* that an insurer cannot sue in its own name alone before a consumer forum as it was not a consumer under the Act. This finding is specific to consumer forums where a complaint would be maintainable so long as it is in the name of the insured and the insurer figures in the complaint only as an attorney holder or subrogee of the insured.

For further information on this topic please contact Tuli & Co by telephone

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