

**(2012) 01 NCDRC CK 0057**

**In the National Consumer Disputes Redressal Commission**

Aman Deep Sharma

APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LIMITED

RESPONDENT

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**Date of Decision :** 17-01-2012

**Acts Referred:**

**Citation :** 2012 0 NCDRC 36 : 2012 1 CPR 250 : 2012 2 CPJ 29

**Hon'ble Judges :** V.B.Gupta , Suresh Chandra J.

**Advocate :** Akhil Sachar , Mohan Babu Agrawal , Sanjay Jha

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**Judgement**

1. V.B.GUPTA, J.

2. PETITIONER has filed this revision petition against order dated 08.05.2009, passed by H. P. State Consumer Disputes Redressal Commission, Shimla (for short as "State Commission").Vide impugned order, appeal of respondent-Insurance Company was allowed. Along with present revision petition, an application seeking condonation of delay of 11months and 23 days has also been filed.

Brief facts of this case are that deceased-complainant (Sh. Salig Ram) filed complaint under Section 12 of the Consumer Protection Act, 1986 (for short as ? Act?) against respondent/ opposite party. In the complaint, it was alleged that he is owner of L & T/JCB Machine and on 20.11.2004 at about 12.00 noon, the vehicle met with accident and fell down about 300 meters deep in Khad and was totally damaged. At the time of accident, driver Dharam Singh was having valid driving licence. The machine was insured with respondent for the sum of Rs. 10 lac. Respondent's Surveyor submitted his report and assessed the total loss. Complainant applied to the respondent to compensate him for the loss by filing of relevant documents, but respondent has been delaying the matter without any reason. It is further alleged that despite repeated requests, verbal as well as written notice dated 06.03.2006, respondent is not paying the compensation. Finally, respondent refused to make the payment, vide letter dated 05.05.2006.

3. RESPONDENT contested the complaint and stated that the claim lodged by the

complainant was got investigated and assessed and when the same was not found to be genuine claim, then the same was repudiated and decision in this regard, was duly communicated to the complainant. Thus, there is no deficiency in service on the part of the respondent. It is also alleged that the vehicle was being driven by a person, who was not holding any valid and effective driving licence to drive the category of vehicle insured and thus, respondent is not liable to indemnify the insured for the loss suffered by him due to accident. The licence of driver is fake one. Respondent hired the service of Surveyor Sh. Arunesh Gautam and Sh. Rajnish K. Dhiman to verify about the genuineness of driving licence, which was originally shown to have been issued by RLA Shimla and RLA Shimla, vide reports dated 12.02.2005 and 13.06.2005, reported that driving licence No. 376/SML/88 has not been issued in favour of Sh. Dharam Chand son of Sh. Gulab Ram, as per office record. Further, the driving licence is shown to have been renewed by RLA Hamirpur. Since, the driving licence of Sh. Dharam Chand is fake one and there cannot be renewal of nonset.

4. DISTRICT Forum vide order dated 12.06.2008, allowed the complaint and passed the following order; "The opposite party is ordered and directed to pay a sum of Rs. 8,95,000/- to the complainant with interest at the rate of 9% per annum from the date of filing the complaint i.e. 24.08.2006 till realization besides cost of litigation, which we assess at Rs. 2,000/-. The complaint stands allowed, accordingly"

Aggrieved by the order of District Forum, respondent filed an appeal before the State Commission, which allowed the appeal and dismissed the complaint. Taking up application for condonation of delay first, relevant averments made in it, reads as under; "(a) The original complainant and respondent before the State Consumer Disputes Redressal Commission, Shri Salig Ram, the sole bread earner of the family unfortunately expired on 26.06.2008 leaving behind a widow, Smt. Sanesh Lata( petitioner No. 2 herein ) and an eighteen year old son (petitioner No. 1 herein). Upon the death of Shri Salig Ram, the problems of the petitioner herein increased manifold since the petitioners were constrained to look after the legal issues arising in the captioned matter as well as the work related issues, which were solely handed by Sh. Salig Ram prior to his unfortunate demise. (b) The petitioners herein with enormous difficulty continued the litigation which was pending before the Hon'ble State Commission. However, the petitioner No. 2 being domestic village women and the Petitioner No. 1 being boy of eighteen years were unable to comprehend the nuances of the litigation pending before the Hon'ble State Commission. Moreover, the petitioner No. 2/widow of Sh. Salig Ram was suffering from bouts of depression due to the sudden demise of her husband and consequently, the entire responsibility rested on her shoulders. (c) xxxxx xxxxx xxxxx xxxxx xxxxxx xxxxx xxxxxxxx (d) xxxx xxxx xxxxx xxxxx xxxxx xxxx xxxxxx (e) Pursuant to the death of Shri Salig Ram, Smt. Sanesh Lata, widow of the deceased suffered from bouts of depression which led to fluctuations in her blood pressure and other cardio-vascular problems. Shri Amandeep Sharma, Petitioner No. 1(son of the deceased) is the only person

available to take care of his mother, Petitioner No.2.(f) That Petitioner No. 2 was advised to take adequate rest by the doctors for at least six months. A copy of the Medical Certificate being CEH/1040/MC/2010 I is annexed. (g) That ill health of petitioner No. 2 coupled with the burden of payment of the installments of the vehicle being L&T/JCB machine No. M/C Sr. No. 2647 and requirement of constant attention to work related issues made it very difficult for them to make both the ends meet. (h) That the Petitioner enquired from her Advocate at Shimla only in July, 2010 when he apprised her about the dismissal of her case and he also told her that a copy of the order dated 8.5.2009 had already been dispatched to her. However, the Petitioners denied having received any such letter/order from her Advocate and requested him to apply fresh and take requisite steps for challenging the same. (i) That certified copy of the impugned order was applied for by the Petitioner's Advocate at Shimla on 2.8.2010 and the same was received by them only on 8.8.2010. (j) That the Petitioner herein sent the requisite documents immediately through their local counsel in Hamirpur to the counsel available at Delhi.6. That irreparable harm and injury shall be caused to the Petitioners herein if the delay is not condoned since the Petitioners shall be left remediless if they are debarred on technical plea of limitation from getting adjudicated their valid claims".

5. NO reply to application for condonation of delay has been filed on behalf of the respondent.

6. IT is argued by learned counsel for the petitioners that petitioner No. 2 is a widow and she was under depression after death of her husband and as such could not file the revision petition within time. Learned counsel has relied upon the medical certificate of the petitioner, filed in this case and has contended that there are sufficient grounds for condonation of delay. In support, learned counsel has relied upon Smt. Gargia and Gargi W/o of Late Sh. Kallu and Ors. Vs. Union of India(UOI) through General Manager, Northern Railways, (2011) ACJ, 528.

On the other hand, it is contended by learned counsel for the respondent that medical certificate, produced by the petitioners is fake one. As per this medical certificate, petitioner no. 2 was fit to resume work on 8.3.2010 onwards, whereas the certificate has been issued only on 27.7.2010. Moreover, this certificate does not bear the name of the doctor nor it bears the registration number of the doctor who has issued the same. Thus, this is no medical certificate in the eyes of law.

7. IN the entire application for condonation of delay, petitioner No. 2 has nowhere stated that from which date she had bouts of depression which led to fluctuation in her blood pressure and other cardio-vascular problems. Further, as per application for condonation of delay, petitioner no. 2 enquired from her Advocate only in July, 2010 when he apprised her about the dismissal of her case. He also told her that a copy of order dated 8.5.2009 had already been dispatched to her. However, petitioners have denied having received any such letter/order from her Advocate.

8. NO affidavit of this Advocate of the petitioners have been placed on record to corroborate the averments made in the application for condonation of delay. Second ground for condoning the delay, taken by petitioner No. 2 is that she was suffering from depression and was advised to take adequate rest by the Doctor. In support, petitioner No. 2 has placed on record copy of the Medical Certificate issued by the concerned Doctor, which is reproduced as under; "CEH/1040/MC/2010 Medical Certificate Date : 27-07-2010 Mr./Ms. SANEH LATA was under my treatment from 26.07.09 to 07.03.10 for SEVERE DEPRESSION ( M D I ) and was not able to perform her normal activities. Address: W/o LATE SH. SALIGRAM SHARMA WARD NO. 8, NEAR PATROL PUMP HAMIRPUR ( H. P.). She is fit to resume work on 08.03.10 ONWARDS. Sd/- Sd/- Doctor's Signature Signature of the Patient CMC Res. Inst. & Hospital of EH Near P. G.C., ANU (Hamirpur). "

As per above medical certificate, petitioner No. 2 remained under the treatment of the doctor, whose name has not been mentioned even in the certificate, from 26.07.2009 to 07.03.2010 for severe depression and she was fit to resume work on 8.3.2010 onwards. So, apparently petitioner No. 2 was fit to resume to work on 8.3.2010. However, there is no explanation as to why petitioner No. 2 if she was fit to resume her work, did not enquire from her Advocate about the case and waited uptill July, 2010.

9. MOREOVER, above stated medical certificate appears to be procured one and does not appear to be genuine, since this medical certificate was issued on 27.7.2010 (i.e. after a period of four and half months, after petitioner No. 2 resumed her normal activities). No reliance can be placed on such type of procured certificate. Further, petitioner No. 2 has not placed on record any prescription of the Doctor about the nature of the ailments and what treatment she was getting in this regard. Decision of Gargiaand Gargi (supra)is not applicable at all to the facts of the present case.

10. ACCORDINGLY, we hold that no sufficient cause has been shown by the petitioners for condonation of delay in filing of the present revision petition. Since, there is a delay of eleven and half months in filing of this revision petition, the present revision petition is liable to be dismissed on the ground of limitation alone. Now coming to the merits of this case, it is contended by learned counsel for petitioners that State Commission erroneously presumed that the driving licence of driver was fake and subsequent renewal of the same, would not validate it. It wrongly relied upon the affidavit of one Sh. Rajnish Kumar Dhiman, without summoning the records from the concerned Licensing Authority at Shimla to substantiate the fact that the licence was not genuine.

Further, impugned order is against the settled proposition of law which is no longer res-integra that the person who alleges breach must prove the same. Here, in the present case respondent has failed to prove that the licence was fake or there has been breach of conditions of policy on the part of the insurer. In support, learned counsel relied upon the following judgments; (i) United India Insurance Co. Ltd. Vs. Lehu and Others, (2003) 3 Supreme Court Cases, 338 ;

(ii) JankiNarayan Bhoir Vs. Narayan Namdeo Kadam, (2003) 2 Supreme Court Cases, 91 ; (ii) Oriental Insurance Co. Ltd. Vs. Smt. Asha Rani and Ors., FAO No. 371/2006, decided on 18.03.2008 by High Court of Delhi ; (iii) G. Balakrishna Pai and Anr. Vs. Sree Narayana Medical Mission General Hospital and T. B. Clinic and Ors., II (2008) CPJ,939( NC) and (iv) J. Yashoda Vs. K. Shobha Rani, (2007) 5 Supreme Court Cases 730.

11. ON the other hand, learned counsel for the respondent has contended that since the original licence issued to driver, Sh. Dharam Singh was fake one, subsequent renewal of the same will not validate it. In this regard, it will be appropriate to go through the relevant findings of the State Commission, which reads as under:- "We are of the view that no benefit can be derived by the appellant from the endorsement of the Authority at Hamirpur regarding issuance of licence by the Shimla Authority, when it was renewed by the former. Reason being that the renewing authority was admittedly not the original authority who had issued the driving licence in question. On the basis of its record, it is mentioned that it had been issued by the Licensing Authority at Shimla. So far Shimla authority is concerned, it has denied having issued any licence in favour of Dharam Singh driver. The fact is reinforced from the affidavit of person who had applied to the authority concerned for verification of the licence as to whether it had been issued or nor. Suffice it to say in this behalf, that in case the respondent was of the view that the licence had been issued by the authority Shimla, then he should have either asked the District Forum below to summon Er. Rajneesh Kumar Dhiman for his cross-examination, or alternatively with a view to controvert this affidavit, he should have got the licensing authority summoned as a witness in rebuttal. None of these courses were adopted by the respondent, why learned counsel had no answer. In fact there is no rebuttal to endorsement of licensing authority made on the application of Er. Rajneesh Kumar Dhiman or his affidavit filed in support the plea of the appellant. So far plea urged on behalf of respondent, that the list of witnesses was filed by the appellant, as such he did not ask for cross-examination of the Er. Rajneesh Kumar Dhiman is concerned, it has no merit because strict rules of evidence do not apply in the proceedings before the Foras. Besides this, we find no reason to discard the affidavit of Er. Rajneesh Kumar Dhiman, and or his application which contains the original endorsement regarding non issuance of driving licence by the authority at Shimla in favour of the driver Dharam Singh.

12. STATE Commission, further observed;- "It hardly needs to be clarified that what is proved to be fake, is non-est in the eyes of law. Therefore, what is not in existence cannot be validated by its subsequent renewal. Question of renewal would only arise when there is something existing in law. That being the position, and driving licence on which reliance is placed on behalf of the respondent is no driving licence in the eyes of law, as such the impugned order cannot be sustained in any circumstances whatsoever.

To similar effect is a recent judgment of the Hon<sup>ble</sup> Supreme Court in the case

of National Insurance Co. Ltd. Vs. Harbhajan Lal, IV (2008) CPJ 35 (SC) arising under Consumer Protection Act, 1986. In this case District Forum below had dismissed the complaint on the ground that driving licence was forged one. Appeal was allowed by the STATE Commission by reversing the order of District Forum after placing reliance on the decision by the Apex Court in the case of National Insurance Company Limited Vs Swaran Singh & Ors. (supra) This order of the STATE Commission was affirmed by the National Commission. Appeal of the insurance company was allowed by the Apex Court in the following terms:- "3. Learned counsel appearing on behalf of the appellant submitted that the judgment rendered by this Court in the case of Swaran Singh(supra) was applicable only in relation to the case of third party. In the present case, no complaint was filed by third party but the complaint was filed by the insured. Learned Counsel appearing on behalf of the appellant stated that it has been clarified by this Court in the case of National Insurance Company Limited V. Laxmi Narain Dhutt, III, (2007) CPJ 13 (SC) = II (2007) ACC 28 (SC)- IV (2007) SLT 102=2007(3) SCC 700, that the ratio laid down in the case of Swaran Singh (supra) would apply only in relation to the case of third party and not in relation to the own damaged cases, in which eventuality the insurer is only liable to show that the licence was fake one. 4. Accordingly, the appeal is allowed, impugned orders rendered by the STATE Commission and the National Commission are set aside and the same passed by the District Forum dismissing the complaint is restored:"

We find no reason to disagree with the above findings of the State Commission which are based on Judgment of Hon?ble Supreme Court in case HarbhajanLal (supra). Since, initial driving licence of Sh. Dharam Singh was fake/forged one, the mere fact the same has been renewed by some other authority would not validate the initial fake/forged licence. It is well settled that any fake licence is non-est in the eyes of law. Therefore, we fully concur with the reasoning given by the State Commission. It is well settled that scope in a revisional jurisdiction is limited and on this point we can refer with advantage the decision of Apex Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654, in which it has been laid down that; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a

case where such a view could have been taken by setting aside the concurrent findings of two fora."

13. ACCORDINGLY, we find that there is no illegality or infirmity in the impugned order passed by the State Commission. Consequently, there is no merit in this revision petition and same is hereby dismissed on the ground of limitation as well as on merits. No order as to costs.