

**(2008) 04 NCDRC CK 0019**

**In the National Consumer Disputes Redressal Commission**

Babulal Agrawal

APPELLANT

Vs

ORIENTAL INSURANCE CO LTD

RESPONDENT

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**Date of Decision :** 29-04-2008

**Acts Referred:**

**Citation :** 2008 3 CPJ 481

**Hon'ble Judges :** Subash Mahtab , Basanti Devi J.

**Advocate :** A.K.Mohanty , P.K.Sharma

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**Judgement**

1. THE unsuccessful complainant in CD Case No. 23 of 2000 of the District Forum, Bargarh has filed this appeal challenging the orders dated 6. 9. 2001 in the said CD case, as per which the District Forum has dismissed the complaint petition being devoid of merit, there being no cause of action and the complaint case has been filed beyond the period of limitation without necessary explanation to that effect.

2. THE facts in brief are that the complainant/appellant filed the aforesaid CD case to direct the sole opposite party/respondent to pay insurance claim of Rs. 1,96,000 with interest @ 18% per annum from 15. 2. 1997 till realization of the said amount, Rs. 25,000 towards loss of business, harassment and mental agony and Rs. 3,000 towards cost of litigation, in total a sum of Rs. 2,24,000. His case is that he has purchased and used Tata-709 bearing registration No. OR-17-8465 for earning his livelihood by self-employment. The vehicle was insured with the opposite party from 10. 9. 1996 to 9. 9. 1997. Unfortunately, the said vehicle met with an accident on 15. 11. 1997. He intimated about the same to the opposite party and lodged claim before him supplying all the required documents. But the opposite party neither settled the claim nor repudiated the claim. Therefore, complainant filed the CD case claiming aforesaid amount alleging deficiency of service by the opposite party. After entering into appearance, the opposite party vide his written version stated that the complaint is barred by limitation and the complainant is not entitled to any claim, the vehicle being driven by a driver holding fake licence contrary to the condition of

the policy in question. It is stated by the opposite party that soon after receipt of information about the accident, he had deputed a Surveyor. On the aforesaid ground viz. as the driver-Anand Kumar Pradhan was driving the vehicle possessing a fake driving licence, opposite party had repudiating the claim of the complainant sent a letter dated 18. 5. 1998 by registered post with A/d. Thus, the opposite party had claimed for dismissal of the CD case, he having not caused any negligence or deficiency in service in repudiating the claim.

Taking into consideration the documents viz. Exts. 1 to 15 filed on behalf of the complainant and Exts. A to 1 filed by the opposite party with reference to the pleadings of both the parties, the District Forum dismissed the complaint as barred by limitation.

3. THE complaint has challenged the said orders as illegal, arbitrary and against the principle of natural justice. We have heard the learned Counsel appearing from both sides and perused the pleadings of the parties and the documents filed by both parties.

4. THE CD case solely having been dismissed on the ground of barred by limitation by the District Forum, it has been contended on behalf of the appellant that no letter of repudiation dated 18. 5. 1998 has been received by him. The opposite party has not proved receipt of said letter by him. He was absent from the town from 17. 5. 1998 to 26. 5. 1998 and was bed ridden from 2. 4. 2000 to 13. 6. 2000. Therefore, had he received said letter, he would have easily filed the complaint petition in time. In this respect, though he has filed the affidavit (Ext. 15), the District Forum did not take the same into consideration. It has also been submitted by him that as soon as he recovered from sickness, he sent notice dated 13. 6. 2000 to the opposite party through his lawyer and thereafter filed the complaint case on 24. 6. 2000 when the opposite party did not respond to the pleader's notice. Undisputedly said Tata-709 met with an accident on 15. 11. 1997 and complainant had lodged claim before the opposite party. When complainant claims that the opposite party remains silent on the claim, for which he sent pleader's notice on 13. 6. 2000 and getting no reply, he filed the CD case yet opposite party insists that he has intimated repudiation of claim vide a letter despatched on 19. 5. 1998. Complainant states that since no A/d has been filed by the opposite party, dispatch of the said letter claimed by the opposite party should not be believed in view of the affidavit (Ext. 15) of the complainant. The limitation in filing the CD case being confined to this point, it is necessary that first of all it is to be decided whether the letter of repudiation was despatched on 19. 5. 1998 to the complainant. The medical certificates (Exts. 13 and 14) produced by the complainant does not show that he was sick and bed ridden till 18. 5. 1998. Opposite party has filed the postal receipt dated 19. 5. 1998 (Ext. G) and the copy of the discharge register of the discharge section (Ext. H ). He has also adduced evidence through affidavit (Ext. 1) of an officer of the dispatch section. All these go to establish that said letter of repudiation of claim was despatched in the address of the complainant as per the written

version on 19. 5. 1998 which is not received back being returned or unserved. Therefore, the necessary presumption would be that said letter of repudiation has been received by the complainant in time after it was despatched. The District Forum also viewed like this and has relied on a decision reported in 1968 (34) Con. LT 823 to the effect that if a letter properly directed and is proved to have been put into the post office, it is presumed that the letter reached the destination in proper time, according to regular course of business of the post office and was received by the person, to whom it was addressed. The complainant has neither requested further to the opposite party for reconsideration of his claim nor has filed the complaint petition, though until November, 1998, he was not sick and was not being treated by the doctor as per his own statement and information. As per his own information and statement, he remained sick from 15. 11. 1998 to 25. 12. 1998 and again from 2. 4. 2000 to 13. 6. 2000 in view of Exts. 13 and 14. He has filed the complaint case on 24. 6. 2000 and not soon after 13. 6. 2000. No explanation is forthcoming from him as to what made him not to file the complaint case after 25. 12. 1998 to 1. 4. 2000 and after 13. 6. 2000. Thus the delay in filing the complaint however after receipt of the aforesaid letter of repudiation in the year 1998 as well as from 13. 6. 2000 to 23. 6. 2000 has not been explained by the complainant. Even he has not filed any petition for condonation of delay when the complaint was filed on 24. 6. 2000. In these end of the view, we are of consensus opinion that the complainant has filed the CD case after inordinate delay and delay being not sufficiently and satisfactorily explained, the CD case is barred by limitation. The District Forum has also observed at the last part of its finding that in paragraph 8 of the complaint petition, complainant has stated that the cause of action arose on 25. 6. 2000, whereas the complaint case has been filed on 24. 6. 2000 which means there is no cause of action to file the case against the opposite party on 24. 6. 2000. This the complainant has not explained in the appeal memo and before us also. In the instant case, opposite party has repudiated the claim on the ground that driver-Anand Kumar Pradhan was driving the vehicle when the accident took place while carrying a fake driving licence. The complainant has not whispered single word in this respect in the appeal memo. It appears that he has not contested this plea of the opposite party with sufficient and satisfactory materials before the District Forum. Going through true xerox copies of driving licence, letter of D. O. , Raipur to the Senior Divisional Manager, letter of Sri G. K. Tiwari to the Divisional Manager, Oriental Insurance Company Ltd. , the particulars of driving licence in question viz. No. 2138-R-87 by the Licensing Authority, Raipur (Annexures-A to A/2) and the xerox copies of Ext. B and letter No. 2391 issued by the R. T. A. and letter No. HNA 180/97-98 dated 30. 11. 1997 of Sri H. N. Agrawalla, Surveyor and Loss Assessor, we have got reason to believe that though said driver - Anand Kumar Pradhan's driving licence was valid upto 28. 11. 1992 to drive LMV and HMV categories of vehicle, yet he was found driving the aforesaid vehicle on the date of accident, his driving licence being not renewed until then. On the other hand, the xerox copy of the driving licence discloses that said driving licence is valid upto 28. 11. 1998 which gives

enough suspicion that said driver was driving the vehicle having valid driving licence. In view of these circumstances, necessary conclusion would be that in contravention of the condition of the insurance policy, said driver was driving the vehicle in question on the date of accident viz. on 15. 11. 1997 without valid driving licence.

5. IN view of our observations made in the foregoing paragraphs, we find that the complainant has no case, the CD case having filed beyond the period of limitation. The opposite party is justified in repudiating the insurance claim as the driver who was driving the vehicle at the time of accident was not having valid driving licence.

6. IN the result, we find there is no merit in the appeal. Hence, the appeal is dismissed on contest without cost. The impugned orders dated 6. 9. 2001 in CD Case No. 23 of 2000 of the District Forum, Bargarh is hereby confirmed. Records received from the District Forum may be sent back forthwith. Appeal dismissed.