
(2015) 01 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

BIRLA SUN LIFE INSURANCE CO. LTD.

APPELLANT

Vs

Kiran Prafull Bahadure

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : 2015 1 CPJ 473

Hon'ble Judges : V.B.GUPTA , SURESH CHANDRA J.

Advocate : AVANISH KUMAR

Judgement

1. CHALLENGE in this revision petition is to the order dated 5.5.2014 passed by the State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench at Nagpur in First Appeal No.FA/13/193 by which the State Commission has dismissed the appeal of the petitioner/opposite party against the order of the District Forum on the ground that the appeal was barred by limitation.

2. BRIEFLY stated, the facts leading to filing of this revision petition are that the husband of the complainant/respondent obtained a Classic Life Plan Policy No.004888617 of the petitioner/opposite party Insurance Co. on 19.5.2011. The half yearly premium on the policy was Rs.15,000/- and the same was paid by the husband of the complainant to the opposite party. The life insured, however, expired on 26.9.2011 due to a heart attack. The complainant accordingly lodged a claim with the OP Insurance Co. for obtaining the benefits under the policy but on 30.11.2011, the claim was repudiated by the opposite party/petitioner Insurance Co. on the ground that the investigation carried out by the Insurance Co. revealed that the life insured was suffering from Ischemic Heart Disease prior to his application for taking the insurance cover and since he did not disclose it in his application form thereby making false declaration about his health status, the claim made by the complainant could not be accepted under the policy. The Insurance Co. also informed that along with repudiation of the claim, the premium paid under the policy had been forfeited. As per the allegation, the death of the husband of the complainant had occurred due to Cardiogenic Shock and so was a natural death and hence the OP Insurance Co. had acted illegally in

repudiating the insurance claim on the basis of incorrect reason. Alleging this to be a deficiency in service on the part of the Insurance Co., the complainant filed a complaint before the District Forum for direction for the payment of Rs.5,40,000/- towards the insurance policy amount and Rs.60,000/- for physical and mental hardship.

3. ON notice, the Insurance Co. filed its reply in which it was accepted that the policy in question had been issued and also that the death of the life insured had occurred on 26.9.2011 due to heart attack. However, the claim of the complainant had been repudiated because the husband of the complainant had failed to disclose information about the disease at the time of taking the insurance policy and as such the complainant was not eligible to receive the insurance benefits. Denying any deficiency in service, the Insurance Co. prayed for dismissal of the complaint. Both the parties led evidence in support of their averments. After hearing the parties and appreciating the evidence before it, the District Forum vide its order dated 30.7.2013 accepted the complaint. Aggrieved of the order of the District Forum, the petitioner Insurance Co. filed an appeal against it before the State Commission which came to be dismissed on the ground of limitation since there was delay of 56 days in filing the appeal which was not condoned by the State Commission. We have heard learned counsel Shri Avanish Kumar, Advocate for the petitioner. Learned counsel has submitted that the impugned order passed by the State Commission is illegal, perverse, unjustified and contrary to law which has resulted in gross miscarriage of justice to the petitioner Co. He submitted that the State Commission ought to have appreciated that the petitioner is a body corporate and as such should not have been treated on the same footing as an individual appellant who is bound to take quicker decision in regard to pursuing his legal remedies but in the case of a body corporate it is bound to be delayed since it is working through its officers/employees. He further submitted that the State Commission has taken too much technical view in rejecting the application for condonation of delay thereby dismissing the appeal without considering the merits. He finally contended that the State Commission ought to have condoned the delay considering the celebrated guidelines laid down by the Apex Court in the case of Collector, Land Acquisition, Ananatnag Vs. Mst. Katiji [AIR 1987 SC 1353] and decided the appeal of the petitioner on merits. According to the counsel, the petitioner has a good case on merits and as such he pleaded that the impugned order which cannot be sustained in the eye of law be set aside and the matter be remanded to the State Commission for deciding it on merits after affording opportunity of hearing to the parties.

4. SINCE the appeal of the petitioner has been dismissed on the ground of limitation, we have gone through the application under section 5 of the Limitation Act filed by the petitioner for condonation of delay in filing its appeal before the State Commission (a copy of which has been placed on record by the petitioner). We find from the perusal of the impugned order that the State Commission after going through the application of the petitioner and hearing the parties has

passed a reasoned order dismissing the application and the main appeal on the ground of limitation. The reasons recorded by the State Commission in support of the impugned order may be reproduced thus: ""I heard both the advocates on 21.03.2014 and weighed the contention against each other. I find prima facie the order by the Forum below is passed in favour of an individual respondent compensating her with the insurance of her deceased husband. Though, the appellant has deposited the entire decretal amount, still then, it comes to the notice that the appellant was not appropriately serious about filing the appeal. The delay as per the contention of the appellant is 47 days. The appellant received the copy of the order on 02.08.2013 and filed his appeal on 28.10.2013 which clearly shows that the delay is of 56 days and even after that the appellant took 14 days more to remove the office objection. Hence finally the appeal came to be registered on 11.11.2013 with a delay of 56 days. I consider that the delay of 56 days added with the period of limitation of 30 days becomes the time frame of 86 days. The appellant is a corporate institution with all the technological instruments and implements of fast communication under its command. Therefore, it is no wrong to expect such an organization to act in a swift and speedy manner with earnest alacrity in all its decisions and acts. Keeping this in mind and the superficial reasons cited by the appellant without appropriate evidence. I see no reasonable ground to accept the delay application. The explanation thus given by the appellant is neither satisfactory nor convincing. It is a battle between a frile individual and powerful institution where in the condonation of such delay and laxity would render, the object of the act fully negated. Hence in the light of the view taken by the Hon "ble Apex Court, the ratio emanating from the judgments referred supra and on the basis of the reasons developed in my mind, I decide not to condone the delay. ""

5. WHILE we agree with the contention of learned counsel that in dealing with an application for condonation of delay, one cannot adopt a hyper technical approach and has to follow a rational and pragmatic approach rather than pedantic while examining explanation about ""every day "s delay "". Having said that, it has to be kept in view that ""sufficient cause "" for condoning the delay being a question of fact, each case has to be examined in the light of its own peculiar facts and circumstances. In R.B. Ramlingam Vs. R.B. Bhavaneshwari, [2009 (2) Scale 108], the Apex Court has observed thus: ""We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition. ""

6. IN Ram Lal and Ors. Vs. Rewa Coalfields Ltd., [AIR 1962 Supreme Court 361], the Supreme Court has made the following observations: ""It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a discretionary jurisdiction vested in the Court by S.5. If sufficient cause is not proved nothing further has to be done; the

application for condonation has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. ""

7. WHEN we consider the contentions raised by learned counsel in regard to the request of the petitioner for condonation of delay, we are unable to find any fault with the impugned order. The view taken by the State Commission is in line with the ratio laid down by the Apex Court in a number of cases from time to time. In the circumstances, we are of the considered view that no case has been made out by the petitioner to justify our interference with the impugned order under section 21 (b) which confers very limited powers on this Commission while exercising our revisional jurisdiction.

8. EVEN otherwise, the petitioner has no case on merits as well. Perusal of the record placed before us indicates that the main ground on which the claim of the complainant has been repudiated is that the husband of the complainant failed to make a disclosure about his alleged existing Ischemic Heart Disease. The District Forum while non -suing the defence of the petitioner has passed a well - reasoned order in which it has considered the submissions of the petitioner Insurance Co. at length in the light of the evidence adduced before it. Regarding the investigation carried out by the petitioner Insurance Co. which led to the repudiation of the claim of the complainant by the Insurance Co., the District Forum has recorded as under: ""The applicant says that her husband died due to Cardiogenic Shock and therefore it was a natural death and the Opposite Party has given a false reason so as not to pay the benefits under the policy. The Opposite Party Insurance Company has submitted an investigation report also with their written statement. While perusing this investigation report, the opinion of the late policy holder 's family doctor has been recorded in the investigation report and it is as follows: ""Then our investigator visited at LA 's Family Physician Clinic to know the genuineness of LA 's death there he met Dr. Shrikant V. Rathi, as per him he knows Late Mr. Praful S. Bahadure - 35 years, since 30 year. He was his regular patient and his wife Mrs. Kiran Praful used to come for minor illness like fever and other general problem. LA had never suffered from any major illness like Hypertension, Diabetes or Heart Problem. ""

Looking at the late policy holder 's family doctor Dr. Rathi 's opinion given in the Opposite Party Insurance Company 's investigation report, it is apparent that the late policy holder did not have any heart related disease. Similarly in the conclusion of the Investigation report it is mentioned that as per the Indoor Case Papers of the Karkraniya Hospital, Amrawati the applicant 's husband Late Prafulla was admitted to Dapoli Hospital on 10.02.2010, it is mentioned that the insured was not of sound health and therefore, the insured purchased this

insurance policy. But while coming to this conclusion and denying the benefits of the late insured 's insurance to the applicant the Opposite Party Insurance Company has not submitted any supporting papers or the affidavit of the doctor who treated the late policy holder. They have failed to provide any proof in support of their argument that Applicant 's husband insured Late Prafulla had any heart disease since date 10.02.2010. ""

9. IN view of the above, it is clear that the only reason on account of which the claim of the complainant had been repudiated by the petitioner Co. could not be substantiated and as such on merits also we do not find any substance in the revision petition.

10. IN view of the above discussion, we dismiss the revision petition at the threshold but with no order as to costs.