
(2014) 07 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Gabharu Govindbhai Radadiya

APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LTD.

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : 2014 0 NCDRC 357

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : ANUSHREE KAPADIA

Judgement

1. REVISION Petition No.1939 of 2014 has been filed against the order dated 31.1.2012, passed by Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (short, ""State Commission """) in First Appeal No.304 of 2011.

2. THE brief facts of the case as per petitioner/complainant are that the Mediclaim Policy of the petitioner - Dr.Gabharu Govindbhai Radadiya and his family members was obtained from the respondent/opposite party no.1 through the opposite party no.3 (before the District Forum) - S.R.Yadav and he was to be obtained an amount of Rs.1,00,000/- as operation expense in case if any of the family members was to ill or was to be operated and Rs.20,750/- as bonus making the total of Rs.1,20,750/- . The policy number taken by the petitioner was No.230802/34/08/11/00002274. The said policy was from 6.1.2009 to 5.1.2010. The respondent is an insurance company while the opposite party no.2 (before the District Forum) is the TPA of the respondent/opposite party no.1 - insurance company. While the opposite party no.3 works as the insurance agent for respondent - insurance company (herein). The petitioner had been obtaining the hospitalization benefit policy in the name of his family members since year 1997. The petitioner on 3.8.2009 suffered from heart problem and he went to Dhruvini Hospital of Dr.Chirag Gandhi and the preliminary treatment was obtained by the petitioner. Thereafter, the petitioner went for checkup at the Care Hospital at Surat operated by Dr.Pritesh Parekh and after carrying out various test, the doctor diagnosed that a heart blockage was present and he recommended that the petitioner should be operated immediately. Due to this

reason, the petitioner was admitted at the Care Hospital on 4.8.2009, started taking the treatment and various tests were conducted. Dr.Pritesh Parekh with regard to the heart blockage conducted the operation of "CAG followed by PTCA to LAD with " and the petitioner was discharged from the hospital on 6.8.2009.

3. IN his prayer, the petitioner had sought from the respondent an amount of Rs.68,250/- along with 18% interest since the date of filing the complaint and Rs.25,000/- for physical and mental harassment.

4. AS per the say of the respondent - insurance company as per facts the petitioner had increased the sum insured from Rs.35,000/- to Rs.1,00,000/- and thus, an amount of Rs.65,000/- had been increased in the sum insured amount. The petitioner had been paid an amount of Rs.52,500/- under the previous policy of Rs.35,000/- by adding the bonus of Rs.17,500/-. The written information as to the same had also been given by the respondent - insurance company to the petitioner. The increase in the policy that was provided to the petitioner pertains to the new policy, while the illness of the petitioner cannot be considered under the new policy and further that at the time of the payment of the premium, the petitioner had already discussed with regard to the additional amount paid by him and had paid the sum insured premium on his own wish. District Consumer Disputes Redressal Forum at Navsari, vide their order dated 29.12.2010, partly allowed the complaint and passed the following order ; ""1. The complaint of the complainant is partly allowed. 2. The respondent no.1 and no.2 are ordered that they shall jointly and/or severally provide the rest of the amount of Rs.68,250/- along with 9% interest from the date of judgment till the payment of the amount. 3. The respondents no.1 and 2 are also hereby ordered that they shall jointly and/or severally provide the amount of physical and mental harassment at Rs.2,000/- and as the cost of application at Rs.1,500/- and they shall themselves bear their own cost. 4. The respondent no.3 does not have any responsibility under this case and therefore, the respondent no.3 is hereby released from his responsibility as to the case the respondent no.3 shall bear own cost. 5. The respondents no.1 and no.2 shall be required to comply by the order within 30 days of the date of order. ""

5. AGGRIEVED by the order of the District Forum, respondent/opposite party no.1 filed an appeal before the State Commission. The State Commission allowed the appeal and set aside the order of the District Forum.

6. STATE Commission in its order held as under ; ""13. The complainant has placed on record the certificate of treating hospital at the main file page no.41 and as per the column 5, the complainant has mentioned the ailment of hypertension. As the ailment of hypertension had occurred just recently to the complainant, the claim of the complainant came under the clause 4 : 3 and as for the same the waiting period was the initial period of two years. As the value of the policy amounting to Rs.10,000/- was increased on 6.1.2008, the complainant cannot make a claim for two years for the said amount. 14. On the basis of the above mentioned discussion, we are of the opinion that the learned

forum has unnecessarily considered and stressed too much on the point that the policy schedule is not provided along with and the terms and conditions have not been explained. Thus, there is requirement to interfere in the order provided by the learned forum and while considering the appeal the below mentioned final order is hereby provided. ORDER The appeal is allowed. The judgment pronounced by the Navsari District Consumer Disputes Redressal Forum for the complaint no.2/2010 dated 29.12.2010 is hereby set aside and thereby the complaint is also set aside. ""

Hence, the revision petition.

7. WE have heard learned counsel for the petitioner and gone through the records.

8. THE main grounds for revision petition are that : * That the State Commission has erred in interfering with the order of the District Forum, since, the District Forum has appreciated all the evidence on record and has discussed in detail the settled legal position before arriving at its decision. The State Commission has not appreciated the evidence or law relevant to the facts of the present case.

* That the State Commission has grossly erred in holding that the complainant has deliberately suppressed any document. The first page of policy certificate that is stated to be absent from the record of the appeal has not been supplied by the appellant - insurance company with its appeal memo and such a lapse cannot be attributed to the complainant. The record before the Forum was not called for though the appeal had been admitted. The complainant has produced the policy as was issued to the complainant and the same is produced herewith as well. In fact, the policy certificate for the relevant period was produced by both the parties before the Forum. The policy for the relevant period though mentions Mediclaim Policy (2007) the complainant was never informed of any change in the terms and conditions of the policy and the said Mediclaim Policy (2007) has never been supplied to the complainant. It was referred to for the first time in the proceedings before the District Forum by the respondent when a reply was filed before the State Commission.

* That the State Commission has erred in holding that the case of the complainant is covered under clause 4.3 of the purported Mediclaim Policy (2007) and that the waiting period began in the year 2008. The said clause states - ""From the time of inception of the cover the policy will not cover the following diseases/ailments/conditions for the duration shown below. This exclusion will be deleted after the duration shown provided the policy has been renewed without company without any break.

* That the petitioner has not been able to present his case before the State Commission on account of circumstances that were beyond the control of the petitioner and the petitioner was not aware of the listing of the appeal for hearing. The petitioner has been vigilant and diligent all throughout and the delay if any in preferring the present revision petition is solely because of the

fact that the petitioner was not aware of the passing of the order and no free copy was sent to the petitioner till he applied for the same recently on 20.2.2014.

* The present revision petition is filed within the prescribed period of limitation from the date of receipt of copy of impugned order, i.e., 20.2.2014. In the event, this Commission comes to the conclusion that there has been any delay, an application has been filed for condonation of delay by way of abundant caution in the interest of justice so that the rights of the petitioner are not defeated for technical reasons.

Along with present revision petition, an application seeking condonation of delay has also been filed. In the entire application, no period of delay has been mentioned. However, as per office report, there is delay of 729 days in filing of the revision petition. The reasons given for the delay are as follows ; ""1. By way of present application, the petitioner seeks condonation of delay if any, in filing the present revision petition against the impugned order dated 31.1.2012 passed by Gujarat State Commission in appeal No.304 of 2011, communicated for the first time to the appellant on February 20, 2014, allowing the respondent 's appeal against the order of the District Forum, Navsari in absence of the learned advocate for the petitioner, without appreciating the evidence on record and without considering the settled legal position applicable to the facts and circumstances of the present case. Certified copy of the impugned order is being filed herewith.

2. The contentions averments and legal grounds as stated in the memo of revision petition may be treated as part of the present application and the same are not repeated herein for the sake of brevity.

3. The learned advocate appearing for the petitioner was not aware of the listing of the matter and could not remain present for the hearing thereof as he was attending to his mother, who was hospitalized from 14.1.2012 to 3.2.2012.

4. The petitioner was not aware of the passing of the impugned order. Even today the website confonet.nic.in shows the matter as pending at ""Admit Stage "" and the final order is not uploaded.

5. It was only recently when the petitioner made inquiry regarding status of appeal in February, 2014 that he came to know of the passing of the impugned order. The petitioner then made inquiry and applied for a certified copy of the impugned order on 20.2.2014. The petitioner had no reason to believe that the appeal was decided an order was passed allowing the appeal in favour of the respondent -insurance company.

6. The applicant took steps for filing of the present revision petition immediately upon receiving the copy of the impugned order. The pleadings before the learned forum had to be sent to Advocate in Delhi and as the same were in Gujarati, they had to be translated and other documents had to be typed which took some time. Therefore, the present revision petition is filed on _____.

8. It is respectfully prayed that this Hon "ble Commission may be pleased to pass an order : - A. To condone the delay of ____ days in filing the present revision petition ; B. For such other and further reliefs as the Hon "ble Commission may deem fit in the facts and circumstances of the present case. ""

9. THE application has been drafted in a most casual, careless and negligent manner. It does not mention the name of the advocate appearing for the petitioner before the State Commission nor has it given any specific dates with regard to the receipt of the order or the date on which the petitioner made an enquiry regarding the status of the appeal filed before the State Commission. The application also does not mention the date of which revision petition was filed. The application nowhere also mentioned the number of days of delay to be condoned. Learned counsel for the petitioner has given no proper explanation for this period of delay. The only specific reason given for the delay is that the Advocate was attending to his mother, who was hospitalized from 14.1.2012 to 13.2.2012. That is not the sufficient explanation for the long period of delay of 729 days.

10. IT is well settled that ""Sufficient Cause "" for condoning the delay in each case is a question of fact. We are of the view that the petitioner has failed to give any proper justification for the delay of 729 days. The petitioner has also failed to give day to day justification with dates as also ""Sufficient Cause "" for condoning the delay of 729 days in filing the present petition.

11. INRAM Lal and Ors. Vs. Rewa Coalfields Ltd., AIR 1962 Supreme Court 361, it has been observed; ""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. ""

12. IN ""R.B. Ramlingam Vs. R.B. Bhavaneshwari, 2009 (2) Scale 108 "", Apex Court has observed ; ""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. ""

Apex Courtin case AnshulAggarwal Vs. New Okhla Industrial Development Authority, IV(2011) CPJ 63(SC) has observed ; ""It is also apposite to observe

that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the consumer foras "".

13. UNDER these circumstances, no sufficient cause is made out for condoning the delay of 729 days in filing the present petition. Accordingly, application for condonation of delay is not maintainable. Consequently, the present revision petition being hopelessly barred by limitation is hereby dismissed with cost of Rs.5,000/ - (Rupees Five Thousand Only).

14. COST of Rs.5,000/ - (Rupees Five Thousand Only) to be deposited in the "Consumer Legal Aid Account " of this Commission, within four weeks from today. In case, petitioner fails to deposit the said cost within the prescribed period, then he shall also be liable to pay interest @ 9% p.a., till realization. List on 8.8.2014 for compliance.