

(2015) 02 NCDRC CK 0146

In the National Consumer Disputes Redressal Commission

Icici Prudential Life Insurance Company Limited

APPELLANT

Vs

Chittipolu Uma

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Citation : (2015) 02 NCDRC CK 0146

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : PRATEEK KASLIWAL , RANBIR YADAV

Judgement

1. THIS revision petition has been filed by the petitioner against order dated 12.9.2013 passed by State Commission in FASR No. 5508/2013 - ICICI Prudential Life Insurance Co. Ltd. and Anr. Vs. Chittipolu Uma and Ors.; by which appeal was dismissed as barred by limitation.

2. BRIEF facts of the case are that deceased Chittipolu Shivaiah, husband of complainant No. 1 and father of complainant No. 2 and 3/ respondents obtained two policies from opposite party/ petitioner which were to commence from 22.7.2009 and 25.11.2009 respectively. On 12.4.2010, the insured died due to sun stroke. Complainants lodged claim with opposite party(s)/ petitioner(s) which was repudiated on the ground that prior to obtaining policy, deceased was admitted in hospital with severe damage of liver on account of alcohol and this fact was suppressed in proposal form. Alleging deficiency on the part of opposite party, complainants filed complaint before District Forum. Opposite parties resisted complaint on the ground taken in repudiation letter and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed opposite party to pay Rs. 6.00 lakhs and further granted Rs. 5,000/- as compensation and Rs. 2,000/- as costs. Opposite parties filed appeal before State Commission alongwith application for condonation of delay and Learned State Commission vide impugned order dismissed application for condonation of delay and in turn dismissed appeal against which this revision petition has been filed.

3. HEARD Learned Counsel for the parties finally at admission stage and perused

record. Learned Counsel for petitioners submitted that in spite of reasonable explanation for condonation of delay, Learned State Commission committed error in dismissing application for condonation of delay and dismissing appeal, hence revision petition be allowed and impugned order be set aside and delay may be condoned and matter may be remanded back to State Commission for disposal on merits. On the other hand, Learned Counsel for respondent submitted that order passed by Learned State Commission is in accordance with law, hence, revision petition be dismissed.

Perusal of record reveals that District Forum allowed complaint vide order dated 17.4.2013. As per application for condonation of delay, opposite party received copy of order on 22.5.2013 which was sent to counsel at Hyderabad for seeking opinion who advised to file appeal and after obtaining internal approvals, appeal was filed in which delay of 102 days occurred which may be condoned. As per application, opposite party received copy of District Forum's order on 22.5.2013 and this facts has not been controverted by counsel for complainant and in such circumstances, it can be presumed that copy of District Forum's order was received by opposite party on 22.5.2013 and appeal was filed on 2.9.2013 meaning thereby, appeal was filed with delay of 72 days instead of 102 days. It appears that in the application for condonation of delay, period allowed for filing appeal was not reduced by counsel for the appellant and mentioned delay of 102 days whereas there was delay of only 72 days in filing appeal. No doubt, there was delay of 72 days in filing appeal before State Commission and day to day delay should have been explained by appellant and Learned State Commission in the light of judgment of Hon'ble Apex Court in *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Anr.*, 2010 5 SCC 459; *Office of the Chief Post Master General and Ors. Vs. Living Media India Ltd. and Anr.*, 2012 3 SCC 563; *Anshul Aggarwal Vs. New Okhla Industrial Development Authority*, 2012 2 CPC 3; *R.B. Ramlingam Vs. R.B. Bhavaneshwari*, 2009 2 Scale 108; and *Ram Lal and Ors. Vs. Rewa Coalfiles Ltd.*, 1962 AIR(SC) 361; dismissed application for condonation of delay but in the light of latest judgment of Hon'ble Apex Court in (1) Civil Appeal Nos. 10120 -10121 of 2014 - *Jeevanti Devi Vs. Commercial Motors and Anr.*; (2) Civil Appeal No(s). 10289 of 2014 - *A.T.S. Govindarajane Vs. Chief Manager, State Bank of India*; (3) Civil Appeal No. 5071 of 2014 - *Taipen Traders Ltd. and Anr. Vs. M/s. Bhawani Cold Storage and Ors.*; by which delay of 135 days, 149 days and 218 days, respectively, in filing revision petition, was condoned, it would be appropriate to condone delay of 72 days subject to cost.

4. LEARNED State Commission in para 4 of the judgment also discussed some merits of the case but as all the objections raised by appellant in Memo of Appeal have not been dealt by State Commission and mainly appeal was dismissed as barred by limitation, it would be appropriate to remand the matter back to State Commission for disposal on merits.

5. CONSEQUENT LY , revision petition filed by the petitioner is allowed and

impugned order dated 12.9.2013 passed in FASR No. 5508/2013 - ICICI Prudential Life Insurance Co. Ltd. and Anr. Vs. Chittipolu Uma and Ors.; is set aside and delay in filing appeal before State Commission is condoned subject to payment of Rs. 5,000/- as cost to the complainant on or before the next date for appearance before State Commission.

6. LEARNED State Commission is directed to decide appeal on merits after giving an opportunity of being heard to the parties.

7. PARTIES are directed to appear before the State Commission on 17.03.2015.