

(2015) 01 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

K M Anbarasan S/O K M Mohan

APPELLANT

Vs

Tata Aig Life Insurance Co Ltd

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Citation : (2015) 01 NCDRC CK 0049

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

Final Decision : Appeal dismissed

Judgement

1. APPELLANT /Complainant has filed the present appeal under Section 19 of the Consumer Protection Act,1986 (for short, "Act") against order dated 28.11.2013, passed by State Consumer Disputes Redressal Commission, Chennai(for short, "State Commission"), vide which the complaint of the appellant was dismissed in default.

2. APPELLANT had filed a consumer complaint against Respondents /Opposite Parties on the ground, that by denying the legitimate claim of the appellant, respondents have committed deficiency in services.

3. CONSUMER complaint was contested by the respondents, by filing their written statement. During pendency of the complaint, it was dismissed in default.

4. BEING aggrieved by the impugned order, appellant has filed the present appeal. Along with it, an application seeking condonation of delay has also been filed. However, in the entire application, no period of delay has been mentioned. Be that as it may, as per office report, there is a delay of 349 days in filing this appeal.

5. WE have heard the learned counsel for the appellant on application for condonation of delay and gone through the record.

6. BEFORE advertng to the application for condonation of delay, it would be relevant to refer to the impugned order passed by the State Commission, which read as under; "No representation for complainant for the past many hearings,

from April, 2013. On 28.09.2013 also since there was no representation for the complainant, the case was adjourned to 28.11.2013, specially for the appearance of the complainant or for disposal. Today also there is no representation for the complainant. Complainant is also absent, thereby showing that the complainant is not interested in prosecuting the case. But the complainant had not taken any efforts to conduct the case. The respondent counsel is present. Therefore no useful purpose will be served in keeping the complaint on file. Hence the complaint is dismissed for default."

7. AS per above order, it is manifestly clear that appellant had not been appearing before the State Commission for past many hearings from April, 2013 onwards. On 28.09.2013 also, there was no representation for the appellant. Thereafter, when matter was adjourned to 28.11.2013, again there was no representation on behalf of the appellant. The State Commission, under these circumstances rightly observed, that appellant is not interested in prosecuting the case and dismissed the complaint in default.

8. THE appellant, after getting his complaint dismissed in default, did not become vigilant and careful. He has filed this appeal before this Commission in a casual manner with delay of 349 days.

9. THE main ground on which condonation of delay has been sought is reproduced as under; "That the delay in filing appeal is not intentional or deliberate but because of the faith of the Appellant on the Advocates who conducted his case before the State Commission as there was some miscommunication on behalf between the appellant and counsel. Further the appellant was not well and was hospitalized from time to time. It is submitted that the impugned order is dated 28.12.2013 which can be condoned in the interest of justice as the appellant who is a young boy of 29 years suffering from hardship as the expenses which were he thought was compensated by the Insurance Company were spent by his parents on his medical treatment were not compensated by the Insurance Company till date. The appellant is ill and in undergoing treatment and as a result has not been able to prefer the appeal in time. Copy of the medical certificate is enclosed herewith and moreover the matter is in the stage of final hearing and therefore grave injustice will be caused to the appellant herein if the delay is not condoned and the matter is not restored."

10. IT is well settled that "sufficient cause" for condoning the delay in each case is a question of fact.

11. IN Ram Lal and Ors. Vs. Rewa Coalfields Ltd., 1962 AIR(SC) 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. SIMILARLY , in *Oriental Insurance Co. Ltd. vs. Kailash Devi and Ors.*, 1994 AIR(P&H) 45, it has been laid down that; "There is no denying the fact that the expression sufficient cause should normally be construed liberally so as to advance substantial justice but that would be in a case where no negligence or inaction or want of bona fide is imputable to the applicant. The discretion to condone the delay is to be exercised judicially i.e. one of is not to be swayed by sympathy or benevolence."

13. IN *R.B. Ramlingam Vs. R.B. Bhavaneshwari*, 2009 2 Scale 108, Supreme Court 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."

14. HON "ble Supreme Court in *Anshul Aggarwal vs. New Okhla Industrial Development Authority*, 2011 4 CPJ 63 has laid down that; "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."

15. DECISION of *Anshul Aggarwal* has been reiterated in *Cicily Kallarackal Vs. Vehicle Factory*, 2012 4 CPJ 1 , wherein Hon"ble Supreme Court observed; "4 This Court in *Anshul Aggarwal v. NOIDA*, 2011 CPJ 63 has explained the scope of condonation of delay in a matter where the special Courts/Tribunals have been constituted in order to provide expeditious remedies to the person aggrieved and Consumer Protection Act, 1986 is one of them. Therefore, this Court held that while dealing with the application for condonation of delay in such cases the Court must keep in mind the special period of limitation prescribed under the statute (s).

5. In the instant case, condoning such an inordinate delay without any sufficient cause would amount to substituting the period of limitation by this Court in place of the period prescribed by the Legislature for filing the special leave petition. Therefore, we do not see any cogent reason to condone the delay. 6. Hence, in the facts and circumstance of the case as explained hereinabove, we are not

inclined to entertain these petitions. The same are dismissed on the ground of delay."

16. THE appellant has not mentioned the name of Advocates who were conducting the case before the State Commission. There is also nothing on record to show that the appellant took any action against those Advocates. Moreover, no medical record to this effect has been filed by the appellant so as to show that due to medical illness he could not file the appeal for 349 days.

17. THUS , gross negligence, deliberate inaction and lack of bonafides is imputable to the appellant. Hence, no sufficient grounds are made out for condoning the long delay of 349 days in filing the present appeal. The application for condonation of delay under these circumstances is not maintainable and present appeal being barred by limitation is hereby dismissed.