(2012) 09 NCDRC CK 0102

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO LTD — APPELLANT

Vs

Chandrakant Kisan Khatale — RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 506

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : Mohan Babu Agrawal

Judgement

1. THERE is a delay of 86 days in filing this revision petition. It is explained that it took time to get the impugned order translated. The said order is in Marathi language. It is further averred that after getting files, translation etc., the opinion was sought which was received in the second week of April, 2012. The counsel was deputed in this matter in the month of May, 2012. The State Commission passed the order on 12.12.2011. Learned counsel submits that all the above said facts delayed the filing of this appeal by 86 days.

2. WE find that the explanation given by learned counsel is not satisfactory. This is a lame excuse which hardly finds favour with the courts. The following authorities fully dovetail with this view. In Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), it has been held 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".

3. OTHER authorities i.e. Ram Lal and Others v. Rewa Coalfields Ltd., AIR 1962 Supreme Court 361; Delhi Development Authority Vs. Ramesh Kumar, 1996 (2) CCC 150 (Del), and the latest judgment of the Apex Court in the case of Office of the Chief Post Master General and Ors. Vs. Living Media India Ltd. and Anr. 2012

STPL(Web) 132 (SC) go a long way to fortify the case of the opposite party.

4. WE dismiss the complaint on the ground of delay.

5. NOW we advert to the merits of this case. The case of the complainant, Smt. Chandrakant Kisan Khatale is this. Her Tata Sumo bearing registration No. MH 18D 894 was insured with the Oriental Insurance Company Limited, petitioner in this case. In the course of journey, two unknown persons intoxicated the driver by pouring some intoxicating substances in his tea which led the driver of the vehicle to unconsciousness state. Thereafter, the above said two unknown persons stole away the above said vehicle. The claim was preferred before the Insurance Company, which was repudiated by the insurance company on the ground that the vehicle in question was being plied in contravention of terms and conditions of the policy.

6. THE District Forum, Nasik allowed the claim directing the insurance company to pay an amount of Rs. 3,88,000/- and compensation of Rs.1,000/- within a period of one month from the date of the impugned order i.e. dated 30.12.2002.

7. BOTH the parties, the complainant as well as the opposite party, preferred separate appeals before the State Commission. The State Commission accepted the appeal filed by the complainant and directed the insurance company to pay the amount of Rs.3,88,000/- with interest @6% p.a. till realization of payment and pay compensation in the sum of Rs.1,000/- to the complainant. The State Commission dismissed the appeal filed by the insurance company.

8. WE have heard the learned counsel for the petitioner. He vehemently argued that the vehicle in question was being plied in contravention of the terms and conditions of the insurance policy. Learned counsel for the petitioner also placed some documents for the first time before this fora. Those documents, Motor Claim Form etc. were not produced before the fora below.

9. WE are of the considered view that these documents which were not placed before the fora below cannot be considered by this Commission. From the new documents, the insurance company wanted to show that the said vehicle was insured for the private use only but subsequently, it was found out that the said car was hired for journey from Shirdi to Jalgaon @3.50/- per k.m. and advance of Rs.500/- was paid to the driver. Those documents should have been produced before the District Forum.

10. WE cannot say that these documents produced at this late stage are genuine. No explanation is forthcoming as to why these documents were not produced before the fora below. Both the fora below have given a concurrent finding and we see no ground to interfere with their orders.

11. ABOVE all the authority by the Hon''ble Apex Court reported in National Insurance Co. Ltd. vs. Nitin Khandelwal 2008 CTJ 680 (SC)(CP) applies to this case on all fours. Its relevant extract is reproduced as follows:- "13. In the case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle

breach of condition is not germane. The appellant Insurance Company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer. The respondent submitted that even assuming that there was a breach of condition of the insurance policy, the appellant Insurance Company ought to have settled

the claim on non-standard basis. The Insurance Company cannot repudiate the claim in toto in case of loss of vehicle due to theft." The revision petition is, therefore, dismissed.