
(2013) 05 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO. LTD

APPELLANT

Vs

M. SURESH

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 332

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

Advocate : RAJESH K.GUPTA

Judgement

1. REVISION petition no. 881 of 2013 has been filed under section 21 (b) of the Consumer Protection Act, 1986 challenging, inter-alia, the impugned final judgment and order dated 12.07.2012 passed in First Appeal no. 918 of 2012 by the Karnataka State Consumer Disputes Redressal Commission, Bangalore ("the State Commission ").

2. THE brief facts of the case as stated by the respondent/complainant are that on 09.11.2008, his Skoda Car bearing Registration no. KA 03 MG 3025 met with an accident on 07.00 p m on N H 4 Road, near Thathikallu Village, Mulbagal Taluk, Kolar District. Due to the accident the above said vehicle was fully damaged. The Nangali police station has registered a case in Crime no. 191 of 2008 against the said vehicle. The FIR is herewith produced for kind perusal of this Hon "ble Court. As the Skoda Car bearing Registration no. KA 03 MG 3025 was fully damaged in the accident and was got repaired by Vinayaka Cars Pvt. Ltd., authorised dealer of Skoda Auto India Pvt. Ltd., Revack Building, no. 50/ 2 TC Palya Cross, Old Madras Road, Bangalore - 560 049. The respondent/complainant spent Rs.10,46,961/- including tax towards repair. The said fact was conveyed to opposite party and all necessary document i.e., Driving Licence, R C Book, Cost of repair bills etc., for settlement towards repairing the vehicle were produced to them. To his utter surprise respondent/ complainant received a letter dated 27.08.2009 sent by the opposite party stating that person who was driving at the time of accident was under the influence of alcohol including all the occupants of the vehicle. The respondent/complainant replied on 29.08.2009

denying the said allegation. The respondent himself was the driver-cum-owner of the Skoda and he had possessed a valid and effective driving licence at the time of accident.

3. IN their statement of objections before the District Forum the petitioner/ opposite party - Oriental Insurance Company Ltd., have stated that that the claim is not maintainable. They have admitted that the insured vehicle Skoda Laura Car bearing no. KA 03 MG 3025 was insured with the petitioner under the private car package policy and that the Insured Declared Value of the said car was Rs.7,55,556/-. As such, the liability of the opposite party/insurer cannot be beyond the Insured Declared Value so declared by the complainant and that the liability of the respondents is limited to the amount as per the assessment so made by the IRDA approved surveyor. Further, the respondent/complainant having submitted his Job Card, Estimate Detail/ pre-order dated 17.11.1998, was only an estimate towards the spares and labour and was not the actual amount spent towards the repair of the insured vehicle. The respondent/ complainant had failed to submit the bills towards repairs carried out and the amount so remitted to the repairer in respect of repair and labour charges.

4. IN order to ascertain the material facts about the occurrence of the accident an investigator was appointed who had submitted his report dated 19.02.2009 and that on confirmation that the driver/complainant and occupants being under the influence of alcohol, had further entrusted the matter for further investigation to Shyamravi Associates, being Surveyor and Loss Assessors, as well investigator, who had submitted his report dated 12.07.2009. On obtaining the Accident Register of the concerned Hospital, i.e., R L Jalappa Hospital, wherein Mr Suresh, Mr Sudhakar and Mr Mahadeva who were since brought and treated at around 08.30 p m for the injuries sustained in the accident that occurred on 09.11.2008 at around 07.00 p m in the relevant portion it was stated that: (i) Mr Suresh son of Munishamaiah, aged 29 years (complainant/ insured/driver) "O/E - Pt Conscious, disoriented to time and Breath smells of alcohol, conjunctival congestion +. " (ii) Mr Sudhakar, c/o Suresh aged about 27 years, occupant of insured car, "O/E - Patient conscious, disoriented not responds to oral commands. Eyes- congested, breath smells of alcohol, slurred speech ". (iii) Mr Mahadev c/o Suresh aged about 32 years, Occupant/ informant. "O/E - Pt is conscious, disoriented, not responds to oral commands, breath smells of alcohol, slurred speech + conjunctival congestion.

Hence, the claim of the complainant was rightly repudiated vide letter dated 27.08.2009 as per the terms and conditions, i.e., Section I clause (c) of the policy as under: "We refer to the above claim would like to inform you that it is confirmed through Medical Reports that person who was driving at the time of accident Mr M Suresh, was charged sheeted. Further note that vehicle was driven by the driver under the influence of alcohol including all occupants of vehicle, it is confirmed through Medical Reports furnished by the Medical Superintendent, R L J Hospital and Research Centre, Tamaka, Kolar - 563 101. The company shall

not be liable to make any payment in respect of (c) any accidental loss or damage suffered whilst the insured or any person Driving the vehicle with the knowledge and consent of the insured is under the influence of intoxicating liquor or drugs. In view of the above, we regret to inform you that we are not liable to make any payments. Hence, we herein repudiating your claim. This is for your kind information and records. (Kindly ready once again page 1 and 2 of policy conditions, we enclose herein one more copy of policy terms and conditions) ".

Bangalore IV Additional District Consumer Disputes Redressal Forum, Bangalore ("the District Forum) vide order dated 22.12.2010 have concluded that "coming to section 185 and 202 MV Act, though section 185 of MC Act is relevant to the fact which says if a person driving the vehicle under the influence of drugs must have been trusted that he must be having more than 30 mg of alcohol in his blood per 100 ml which have been detected in a test by breath analyser or must be a person who was incapable of exercising proper control over the vehicle. Under this case except the doctor who examined the complainant by breathing stated to have recorded in the case sheet that complainant was breathing alcoholic smell there had not been any test done to determine that there was more than 30 mg alcohol in 100 ml of blood of the complainant or he was under the influence of alcohol and was incapable of taking care of himself. Mere smelling alcohol itself is not sufficient to hold that the complainant was incapable of taking care of himself. It is only on the basis of this imaginary or unscientific method, the OP has repudiated the claim which cannot be sustained. Except on this point we do not find any controversy between the parties regarding the claim of the complainant. Admittedly, the complainant 's vehicle was insured with the insured value of Rs.7,55,556/-. The complainant has claimed damages of Rs.10,46,961/- based on estimation of damage to the car by a garage party. When the insured value is less than the estimation of the damage the insured is not entitle for claiming compensation more than the insured value of the vehicle. As per the valuation report of the surveyor appointed by the OP, the surveyor in his report referring to several damage of the vehicle and insured value has assessed the loss at Rs.7,41,556/- and valued the salvage at Rs.2.00 lakh and determined the liability of the OP as Rs.5,52,056/- after deducting policy excess Rs.1,000/-. As found from the photographs of the damaged card, the car found to have mangled fully resulting in scrap. The OP has not claimed for possession of salvage. Therefore, considering the insured value of the vehicle assessment of salvage at Rs.2.00 lakh by the surveyor found to be imaginary and baseless. The surveyor in his entire report has not given any details as to the basis on which he had arrived at the value of salvage at Rs.2.00 lakh. Therefore, such valuation in our view is unscientific. Hence, considering this aspect of the matter and insured value on the date of the accident, we find it just and equitable to direct the OP to reimburse Rs.6.00 lakh by valuing the salvage at Rs.1.5 lakh and by rounding of the compensation payable to Rs.6.00 lakh which in our view would meet the ends of justice. With this we direct that the complainant shall himself keep the salvage and we pass the following order. Complaint is allowed. OP is directed to

pay Rs.6.00 lakh to the complainant within 45 days from the date of this order with interest @ 9% per annum from the date of claim made by the complainant until it is paid. OP shall also pay cost of Rs.3000/- to the complainant ".

5. AGGRIEVED by the order of the District Forum the petitioner filed an appeal before the State Commission. The State Commission vide their order dated 12.07.2012 held that: "the learned counsel for the respondent/complainant contended that since no scientific method was adopted by the doctors at Jalappa Hospital, Kolar to show that the respondent was fully drunk and the doctor has not been examined to prove the same and o scientific method has been adopted that the respondent consumed more than 30 mg of alcohol in his blood per 100 ml which have been detected in a test by breath analyser. Therefore, in our considered opinion that the appellant/OP who has taken the contention that the violation of terms and conditions of the policy enumerated under Section 185 of the Motor Vehicles Act that the driver who drives the vehicle should not drive by consuming alcohol. There is no hard and fast rule. Burden of proof always lies on the persons who repudiated such contention. The appellant neither examined the doctor nor the hospital authority notice the presence of 30 mg of alcohol in 100 ml of blood taken from the body of the respondent. Therefore, we are of the opinion that repudiating made by the appellant for payment of compensation is deficiency of service. Therefore, in our view the impugned order passed by the District Forum does not call for any interference. With regard to the quantum of compensation awarded is concerned the ID value of the vehicle was Rs.7,55,556/-. Of course, the respondent has claimed Rs.10,46,961/- issued by Vinay Garage. But the insurer appointed a surveyor who assessed the damage to the tune of Rs.7,41,556/- out of which Rs.2,00,000/- has been deducted towards the value of the salvage and rightly comes to the conclusion in awarding Rs.6.00 lakh with interest at 9% per annum from the date of claim made by the complainant that is the respondent. Therefore, we do not see any good reasons to interfere with the order under challenge. Accordingly, we pass the following: Appeal is dismissed. The order passed by the District Forum in complaint no. 1845 of 2010 is confirmed ".

6. AGGRIEVED by the order of the State Commission, the petitioner had filed the present revision petition before us. We have heard the learned counsel for the petitioner and have also carefully gone through the records of the case. The main ground for the revision petition is that the State Commission and the District Forum below exercised its jurisdiction illegally and material irregularity by failing to appreciate that the present case clearly fall under section 185 (b) of the Motor Vehicles Act, 1988. Along with the revision petition, the petitioner has filed an application for condonation of delay of 76 days. The reason given for the delay is that "the revision petitioner "s company has all India operation and in order to ensure that only appropriate cases are filed for revision petition it had sent the case file for opinion of a lawyers after which the file was sent to head office for approval. In this process, because of inadvertent lapse, some relevant pages (First Appeal before the State Commission and certified copy of the impugned

judgment) went missing and copy of the same were received by the Delhi Office of the Revision Petition on February 28, 2013 only and the revision petition is being filed on 06.03.2013 ".

It will be seen that the petitioner has not mentioned any dates in the application for condonation of delay nor he has indicated as to how they have calculated the delay of 76 days. It is pertinent to mention that even before the State Commission, the Insurance Company has filed the first appeal along with an application under section 5 of the Limitation Act to condone the delay of 37 days in filing the appeal. This shows the casual attitude and way of working of the petitioner. The only defence given for the delay is that some relevant pages of the First Appeal before the State Commission and the certified copy of the impugned judgment went missing and were received by the Delhi Office only on 28.02.2013 after over six months of the impugned order. As per the office report of this Commission, there is a delay of 131 days. The date of impugned order is on 12.07.2012 and the impugned order was received by the petitioner on 22.07.2012 and the revision petition was filed on 06.03.2013. It is well settled that "sufficient cause " for condoning the delay in each case is a question of fact.

7. THE apex court in the case of In AnshulAggarwal 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 ".

In BalwantSingh Vs. Jagdish Singh & Ors., (Civil Appeal no. 1166 of 2006), decided by the Apex Court on 08.07.2010 it was held: "The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005] ".

8. 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. "

Similarly, in *Oriental Insurance Co. Ltd. vs. Kailash Devi & Ors.* AIR 1994 Punjab and Haryana 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. "

In *R.B. Ramlingam Vs. R.B. Bhavaneshwari*, 2009 (2) Scale 108, it has been 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. "

Recently, Hon "ble Supreme Court in *Post Master General and others vs. Living Media India Ltd. and another* (2012) 3 Supreme Court Cases 563 has held; "After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under; "It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy. Public interest undoubtedly is a paramount consideration in exercising the courts" discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation /resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest. "

9. THE Court further observed; "It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. In view of our conclusion on Issue (a), there is no need to go into the merits of Issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs ".

10. OBSERVATIONS made by Apex Court in the authoritative pronouncements discussed above are fully attracted to the facts and circumstances of the case. Even, after getting two adverse findings, petitioners have chosen not to settle the claim of the respondent but have dragged him to the highest Fora under the Act. It is not that every order passed by Fora below is to be challenged by a litigant even when the same are based on sound reasoning. It is a well-known fact that Courts across the country are saddled with large number of cases. Public Sector Undertakings indulgences further burden them. Time and again, Courts have been expressing their displeasure at the Government/Public Sector Undertakings compulsive litigation habit but a solution to this alarming trend is a distant dream. The judiciary is now imposing costs upon Government/Public

Sector Undertaking not only when it pursue cases which can be avoided but also when it forces the public to do so. Public Sector Undertakings spent more money on contesting cases than the amount they might have to pay to the claimant. In addition thereto, precious time, effort and other resources go down the drain in vain. Public Sector Undertakings are possibly an apt example of being penny wise, pound-foolish. Rise in frivolous litigation is also due to the fact that Public Sector Undertakings though having large number of legal personnel under their employment, do not examine the cases properly and force poor litigants to approach the Court. In the above circumstances, the application for condonation of delay is dismissed being time barred by limitation with cost of Rs.5,000/- (Rupees five thousand only). Petitioner is directed to deposit the cost by way of demand draft in the name of "Consumer Welfare Fund " as per Rule 10 A of Consumer Protection Rules, 1987, within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation. List on 5th June 2013 for compliance.