(2016) 12 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

Case No : 3419 of 2016

RAFNAS P.K. Vs RELIANCE GENERAL INSURANCE CO. LTD. & 2?ORS.

Date of Decision : 22-12-2016

Acts Referred:
Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2017 1 CPR 240

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : DSouza Philip

Judgement

1. This Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), by the Complainant, is directed against the order dated 22.01.2016, passed by the Kerala State Consumer Disputes Redressal Commission at Thiruvananthapuram (for short "the State Commission") in Appeal No. 300 of 2014, preferred by Reliance General Insurance Co. Ltd. (for short "the Insurance Company"), Opposite Parties No. 1 and 2 in the Complaint. By the impugned order, the State Commission, while allowing the Appeal, has, inter alia, directed the Insurance Company to depute an approved Surveyor and Loss Assessor, in whose presence Opposite Party No.3, one of the Dealers of Hyundai cars, would carry out necessary repairs of the vehicle of the Complainant and make it roadworthy; in doing so, the estimate (Ext. A9) would not be taken into account; and on submitting the final bills by the Dealer, the Insurance Company would be liable to pay the same, subject to IDV limit of the vehicle in question.

2. The Appeal had been filed by the Insurance Company against the order dated 27.01.2014, passed by the District Consumer Disputes Redressal Forum at Kannur (for short "the District Forum") in Complaint Case No. 357 of 2012. By the said order, the District Forum, while partly allowing the Complaint, had directed the Dealer to repair the vehicle and make it road worthy and the Insurance company to pay the estimated cost of 4,66,946/- to the Dealer and 1,000/- to the Complainant as litigation costs.

3. By availing financial assistance of 2,00,000/- from M/s Sundaram Finance Ltd.,

on 31.12.2011 the Complainant had purchased a new EON Magna (O) BS IV Mushroom car, manufactured by Hyundai Motor Company India Ltd., against sale consideration of 3,50,783/-. The Complainant had taken an Insurance policy from the Insurance Company for the vehicle in question. The policy was valid for one year from 31.11.2011. On 06.08.2012, while the vehicle was parked in the porch of the Complainant, due to floods it was completely damaged. In order to get the vehicle repaired, the Complainant approached the Dealer, which had arranged for the Insurance policy. The representatives of the Dealer inspected the vehicle and under their instructions, it was taken to the yard of the Dealer, for which the Complainant had to pay a sum of 3,250/- towards break down service. In due course of time, on behalf of the Complainant claim application, insurance policy and estimate, at 4,66,946/-, were sent by the Dealer to the Insurance Company. The Insurance Company asked the Complainant to produce the vehicle for inspection but since the vehicle was with the Dealer, the same could not be done. After several requests, the Insurance Company agreed to carry out the repairs to certain extent and not as per the full estimate given. The Insurance Company was neither willing to undertake the repairs of the vehicle as per the estimate given nor to the full satisfaction of the Complainant and the Dealer was also asking the Complainant to take the vehicle, with the warning that if he did not take the same, he would be charged 100/- per day as penalty or rent for parking of the vehicle. In the aforesaid background, alleging deficiency in service and unfair trade practice on the part of the Opposite Parties, the afore-noted Complaint came to be filed before the District Forum. The Complainant had, inter alia, prayed for a direction to the Opposite Parties to repair the vehicle to his full satisfaction and if it was not possible then to refund the amount of sale consideration with interest @ 7% p.a., besides paying 35,000/- as compensation for mental agony. The Complainant had also prayed for the reimbursement of the amount(s) paid as interest to the Finance Company as well as for litigation costs.

4. On consideration of the evidence adduced before it by the parties, the District Forum partly allowed the Complaint and issued the aforesaid directions to the Opposite Parties.

5. Aggrieved, the Insurance Company carried the matter further in Appeal to the State Commission. As noted above, the State Commission has allowed the Appeal, modifying the relief granted to the Complainant in the manner indicated above. Hence, the present Revision Petition.

6. It is pointed out by the office that the Revision Petition is barred by limitation, inasmuch as there is a delay of 231 days in filing the same. An Application, seeking condonation of delay, has been filed along with the Revision Petition. In paragraphs 4 to 7 of the affidavit, the Petitioner has furnished the following explanation: " 4. That the delay occurred to prefer the present Revision Petition against the Impugned Judgment dated 22-01-2016 are due to various reasons beyond the control of this Applicant/Petitioner and are not intentional or

deliberate. The certified copy of the impugned Order dated 22-01-2016 passed in the Appeal No. 300/2014 has been received by the counsel for the Petitioner in Kerala some where in the month of April 2016. Thereafter the said counsel has intimated about the said Judgment and Order mentioned above, to this Applicant/ Petitioner, during the last week of April 2016. During the said period, the courts in Kerala State were closed and the said counsel could not be available for further discussion on the Judgment impugned herein.

5. That the petitioner could meet the said counsel of the petitioner at the court below, only when he came after the vacation and that was during June 2016. The petitioner preferred to file the Revision Petition against the said Judgment passed in the Appeal No. 300/2014 by the hon''ble State Commission. As such the petitioner has asked the counsel whether he knew any lawyer in Delhi as the Revision Petition was to be preferred before this Hon''ble National Commission in Delhi. The said counsel of the petitioner at the court below, answered in negative. Thus the petitioner had to search and had to initiate enquiries to find out any lawyer in Delhi. Since the Petitioner hails from a very remote village in Kerala State, he could not have any access to any lawyers either at the High Court Level or at the national capital Delhi area at all. In the said process of searching for a lawyer in Delhi, it has taken a couple of months time again, as without finding a lawyer it would have been in vain this revision petition.

6. That when the petitioner has accidentally met one of his known person who was working in the Gulf Area, the petitioner had told him about the fate of the car and also the case filed against the insurance company and the status of the case after the Appeal filed by the Respondents No. 1 and 2 herein. The petitioner also told him that the petitioner wanted to file a Revision Petition before the National Commission as going by the Judgment passed in the Appeal, the insurance company shall definitely play fraud on the brand new vehicle and ultimately the petitioner might suffer. Then the petitioner has asked him whether he knows any lawyer/s in Delhi who could be able to file Revision Petition at the hon''ble National Commission. It was only from that person, the petitioner got the mobile number of the present counsel appearing before this hon''ble Commission. It was some where in the month of August 2016. The petitioner has contacted the present counsel and the counsel has asked the petitioner to send photo copies of the case paper so as to give him legal opinion/advice about his case. The present counsel has received the case papers and has studied the said bunch of papers and opined that the petitioner could prefer a revision against the said impugned Judgment of the Appeal, passed by the hon''ble State Commission in Kerala. The counsel has also advised the petitioner to send all the papers as some of the documents were not in a proper form and were unable to read them.

7. Thereafter the counsel has again received a bunch of papers from the petitioner asking the counsel to prepare the revision and to file the present revision petition. In the process some of the papers in vernacular Malayalam language were to be sent back to the petitioner for translating into English,

specially those documents which are the evidence of the petitioner presented before the CDRF Kannur. The said case papers were to be gain sent back to the counsel herein by the petitioner from Kerala and the said transit of papers have also taken some considerable time. Thereafter, the counsel had to prepare the draft for which he had to research on case laws and other authorities pronounced by this hon''ble commission as well as the hon''ble supreme court. The said process had also has taken some considerable time after the documents were received back at the office of the counsel for the petitioner herein, to prepare the Revision Petition. As such all the said components of transactions had taken considerable time and has caused delay in filing the revision petition by the petitioner before this hon''ble commission. But the petitioner had taken all the pain to file the revision petition at an early date but only could do after all these above mentioned exercises due to the procedure and also not knowing any lawyer/Advocates in Delhi. Hence due to all these reasons the revision petition filed is delayed by some days, which is not intentional or deliberate but has happened due to unavoidable circumstances. Hence this hon''ble commission may have to condone the said delay caused in filing this petition, as the petitioner also have a very strong case in this revision petition, lest high prejudice and injustice will be happened to the petitioner."

7. We have heard learned counsel for the Petitioner on the question of delay.

8. In our view, the explanation furnished by the Petitioner is absolutely unsatisfactory. It is manifest from the material on record that before the State Commission the Petitioner was duly represented by his Counsel. On disposal of the Appeal by the State Commission vide the order impugned in this Revision Petition on 22.01.2016 and the resultant modification of the order passed by the District Forum and since the impugned order was to the detriment of the Petitioner, his Counsel must have informed him about the same. If indeed he was not informed about it, being the Complainant, the Petitioner was required to keep a vigil on the case. If the Petitioner was not in receipt of certified copy of the impugned order either from the State Commission or his Counsel within a reasonable period, without waiting for a period of three months to get the same, he could have got the Revision Petition filed at the earliest, with an application for exemption from filing the same, as was done by the Petitioner at the later stage. No date-wise developments, which took place in the matter, have been indicated in the Application. Admittedly, in the month of April, 2016, the Petitioner had been informed by his Counsel about the impugned order. Yet, the Petitioner took two months in meeting the said Counsel and taking a decision to file the Revision Petition and thereafter further two months in searching an Advocate in Delhi to take necessary steps into the matter. Even after contacting the present Counsel in August, 2016, the Petitioner took four months in filing the Revision Petition, stating that considerable time had elapsed in transit of the documents and in completing other formalities. In view of the explanation furnished, it seems that the Petitioner has nothing to say for the delay caused in filing the present Revision Petition and whatever has been stated is an after-

thought. Being the Complainant and bearing in mind the limited statutory period of 90 days, as provided under Regulation 14 of the Consumer Protection Regulations, 2005, the Petitioner was required to be more vigilant and cautious in pursuing the remedy available to challenge the impugned order, at least on coming to know about the impugned order in the month of April, 2016, but that was not to be. Even thereafter, the Revision Petition has been filed before this Commission only on 08.12.2016, i.e. with a delay of 231 days, over and above the aforesaid statutory period. In view of the above, we are of the opinion that the Petitioner has failed to make out any cause, much less a sufficient cause, for condonation of the said inordinate delay.

9. Bearing in mind the afore-stated facts and the observations of the Hon''ble Supreme Court in Anshul Aggarwal vs. New Okhla Industrial Development Authority [(2011) 14 SCC 578] to the effect that while deciding an application for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Act for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if highly belated petitions filed against the orders of the Consumer Foras are entertained, we are not inclined to condone inordinate delay of 231 days in filing the present Revision Petition.

10. Accordingly, the Application seeking condonation of delay is dismissed and consequently the Revision Petition is dismissed in limine on the ground of limitation.