

(2008) 09 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

SHIRSENDU MAZUMDAR

APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LIMITED

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Citation : 2008 4 CPJ 410

Hon'ble Judges : A.Chakrabarti , S.N.Basu , S.Majumder J.

Advocate : B.Prosad , D.Bhowmick , S.S.Dutt

Judgement

1. BEING aggrieved by the judgment and order dated 11. 4. 2008 passed by the learned District Forum, Darjeeling, at Siliguri, in Consumer Case No. 106/s/2006 dismissing the complaint, the present Appeal has been preferred by the complainant.

2. THE facts of the case briefly are that the complainant purchased a Maruti Omni Van bearing registration number WB-74-E/0657 from Beekay Auto Pvt. Ltd. , Matigara, Siliguri, by obtaining a car loan from Bank of India, Islampur. The vehicle was duly covered by insurance from 23. 8. 2003 to 22. 8. 2004. The said vehicle met with an accident on 17. 5. 2003 at Krishnapur within the Police Station of Islampur, Uttar Dinajpur. The fact of accident was reported to the Insurance Company and an FIR was also lodged with the local Police Station. The Insurance Company appointed a surveyor. After the accident the complainant contacted with the dealer who was the authorized service centre of Maruti company at Siliguri, where he placed his damaged car. The car was repaired for which a bill amounting to Rs. 1,55,000 was raised. He filed a claim with the Insurance Company/respondent Nos. 1 and 2 for payment of the said amount, but it only allowed the claim of Rs. 27,400 and hence, this case. After filing of the written version by Oriental Insurance Company the complainant filed an application before the Forum along with a copy of complaint which was filed before the DCDRF, Uttar Dinajpur, praying for making the complaint filed before Uttar Dinajpur District Forum being numbered 26/2005, a part of the present complaint. On hearing both sides the petition of the complainant was allowed and

the complainant No. 26/2005 filed before the Uttar Dinajpur District Forum was accepted for consideration along with the complaint filed before the Siliguri Forum. The OP-Insurance Co. in their written version alleged that the complainant previously filed a dispute arising out of the same cause of action before the DCDRF, Uttar Dinajpur and it was registered as D. F. Case No. 12/2005, which was dismissed for default on 12. 4. 2005. The OP-Insurance Company also contended that Siliguri Forum had no jurisdiction to entertain and adjudicate the present complaint as the cause of action took place within the territorial jurisdiction of Uttar Dinajpur Forum. The complainant stated that he had filed a petition for restoration of the dismissed petition. But the said Uttar Dinajpur Forum further dismissed the petition on the ground that the Forum does not have necessary power to restore a dismissed petition. He, therefore, filed a complaint before the Siliguri Forum being case number 106/s/06. But the Siliguri District Forum again dismissed the petition on the ground that it was not legally permissible to adjudicate a complaint on the self-same subject when it was filed before the Uttar Dinajpur Forum and the said Forum had dismissed the petition and that the cause of action took place in Uttar Dinajpur. It further observed that in the fitness of things the dispute should be filed before the said Forum. However, it also observed that being a District Forum the Siliguri Forum is not competent to transfer the case to any other Forum and it is the State Commission which is the appropriate authority to issue necessary direction as to which Forum will adjudicate the dispute.

From a perusal of the Memo of Appeal and also the impugned judgement we find that since the cause of action took place in the territorial jurisdiction of Uttar Dinajpur Forum, the dispute should be adjudicated by the said Forum. However, the said Forum dismissed the first dispute, but it failed to restore the dispute, though a petition was filed, on the ground that it does not have necessary power to restore a dismissed petition. He, therefore, filed a fresh petition being dispute case No. 26/2005, but the said petition was again dismissed on the ground that the complainant had earlier filed a dispute on the self-same matter and the same stood dismissed.

3. AFTER perusal of the impugned judgement and the Memo of Appeal we are inclined to say that the learned Uttar Dinajpur District Consumer Disputes Redressal Forum misdirected itself in dismissing the restoration petition on the ground that it does not have necessary authority. As per settled principle of law as decided by the Hon"ble Apex Court as well as the Hon"ble National Commission, it is the inherent power of the Forum to restore a petition which is dismissed for default. The Hon"ble National Commission in the case of General Manager, Telecom, Rajkot v. Jayantilal Hemchand Gandhi reported in III (1993) CPJ 273 (NC), were in complete agreement with the observation of the Haryana State Consumer Commission in Satender Yadav v. Somko Automobiles and Another reported in II (1994) CPJ 170 and observed as follows: "equally one must come back to the hallowed principles of natural justice which must inevitably come into play the absence of embodied rules. It is in adage of the law

that no litigant shall suffer because of the act of a Court. It is somewhat elementary that sometimes for the most unavoidable or impeccable reason a litigant or his Counsel may fail to appeal before the redressal agencies on the appointed day. The rules framed under the Act give express power for dismissing a case in default which inevitably is done in the absence of the defaulting party. Can it possibly be said that even if such party appears and shows the most convincing and impeccable reason for its non-appearance the redressal agencies would be helpless in the matter, or to repeat the words of Lord Dennis that they must fold their hands and deny redress where it is patently due. We do not think so. Indeed we are inclined to the view that refusal to restore even when patently good cause is shown would be a patent miscarriage of justice. It is on this larger principle that the detailed procedural provisions in the Civil Procedure Code exist for restoration of a suit or appeal. It is true that those provisions in stricto sensu are not at all attracted in the consumer jurisdiction. But that is no ground for holding that the spirit, the principle and the purpose underlying them, would not be equally attracted for granting redress in the manifest situation requiring restoration of the lis. "

It is accordingly ordered that the order of the District Forum at Siliguri dated 11. 4. 2008 be set aside. The case is sent back on remand to the Uttar Dinajpur District Consumer Forum with a direction to hear afresh the petition to be so filed by the complainant for restoration of the dispute he had filed being case No. 12/2005. Failure to restore the petition by the Forum below will be tantamount to miscarriage of justice which he is legitimately entitled to as a consumer in terms of Section 2 (1) (d) of the Consumer Protection Act. The appellant is also directed to file such petition for restoration with the District Forum, Uttar Dinajpur. The Appeal is allowed on contest without cost. The case should be heard on merit and disposed of probably within 90 days. Appeal allowed.