(2013) 04 NCDRC CK 0126

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE COMPANY LIMITED — APPELLANT

Vs

Vakeel Singh — RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 226 : 2013 2 CPJ 311

Hon'ble Judges : V.B.GUPTA , R.GUPTA J.

Advocate : HARSH KUMAR

Judgement

1. THIS revision petition is filed against the order dated 12th August 2011 passed the Punjab State Consumer Disputes Redressal Commission, Chandigarh (''the State Commission '') in appeal no. 327 of 2006 which has been allowed and set aside the order dated 23.01.2006 in Consumer Complaint no. 261 of 2005 passed by the District Consumer Disputes Redressal Forum, Patiala (''the District Forum '') As per the respondent/complainant he purchased one Indica Car having its registration no. PB 11 W 9777 from Harish Kumar son of Shri Gobind Ram, resident of H No. 202, Bajwa Colony, Patiala duly insured with the Petitioner / opposite party - Insurance Company from 04.08.2003 to 03.08.2004. The respondent/complainant got the R C of the said car transferred in his name and unfortunately the said car was stolen on 03.11.2003. A claim was lodged with opposite party along with the letter for transfer of policy of the said car from Harish Kumar and all the formalities were duly completed.

2. TO the surprise of the respondent/complainant received the letter dated 25.05.2005 informing that the respondents have no insurable interest and why his claim should not be repudiated. The said letter is illegal against the provisions of law and is liable to be withdrawn. The insurance company in their reply stated that it is pertinent to mention that if any running policy has to be transferred in the name of a new owner, i.e., second owner then the requisite transfer form have to be filed and the required transfer fee has to be deposited which the respondent never did so. The facts of the complainant were partly admitted to the extent that vide letter dated 25.05.2005 Shri Harish Kumar and Vakeel Singh

were informed that the buyer Shri Vakeel Siingh has no insurable interest in the policy and therefore, the companies liability does not exist, as why such claim should not be repudiated/ filed as no claim. The District Forum while considering the case came to the conclusion that the "only point for consideration is as to whether the respondent/ complainant is entitled to the benefit of the policy. The learned counsel for the respondent/complainant alleged that after the respondent/complainant purchased the car the insurance policy stood already transferred in favour of the respondent/complainant. In view of the provisions of Section 157 of the Motor Vehicle Act, the learned counsel for the petitioner/ insurance company, however, has referred 2005 (3) 416 BanowarilalAggarwal vs National Insurance Co. Ltd., and another, and latest KishanChand and another vs United India Insurance Co. Ltd., and another on the point. However, without going into the merits of the case but relying upon the law recently laid down by the Hon ''ble National Commission in 2005 (3) COT 414 (Supra). We have no option but to hold the complaint to be not maintainable as the policy was not got transferred by the respondent/ complainant in his favour till the vehicle purchased by him was stolen. Consequently, the complaint is dismissed holding the respondent/complainant having no locus standi to file the complaint ".

3. AGGRIEVED by the order of the District Forum, the respondent/complainant filed an appeal before the State Commission. The State Commission were of the view that "the entry in the registration certificate was made in favour of the respondent/complainant on 27.10.2003 and the said vehicle was stolen on 03.11.2003 before the expiry of the "14 days period " given to the transferee, to get the insurance policy transferred in his name and as such no negligence or fault on the part of the respondent/complainant can be attributed ". "In view of the above discussion, it is clear that the petitioner/ insurance company has repudiated the claim without any basis and ignoring the provisions of the Indian Motor Tariff Act, particularly GR 17 and the District Forum also did not take notice that before the expiry of ''14 days '' time '' for transfer of the insurance policy in the name of the respondent/complainant, the vehicle was stolen and without the physical presence of the vehicle and its inspection, the policy could not be transferred in the name of the respondent/complainant. Therefore, the order of the District Forum is not sustainable in the eyes of law ". "Accordingly, the appeal is accepted and the impugned order dated 23.01.2006 under appeal passed by the District Forum is set aside. Consequently, the complaint filed by the respondent/ complainant is accepted and the petitioner/ insurance company is directed to pay Rs.3.40,700/-, i.e., the sum insured along with interest @ 7.5% per annum from the date of repudiation of the claim till realisation and Rs.5,000/- as litigation expenses ".

4. HENCE , this present revision petition. We have heard the learned counsel for the petitioner and have gone through the records carefully. The revision petition has been filed with a delay. Registry has reported that there is a delay of 57 days in filing the revision petition. However, in the application for condonation of delay filed by the petitioner/ insurance company, it has been reported that there is a

delay of 44 days in filing the present revision petition. The reasons given for the condonation of delay are as follows: "That the petitioner/ insurance company prays that a delay of 44 days in filing the petition may please be condoned, in the interest of justice. It is humbly submitted that certified copy of the order of State Consumer Disputes Redressal Commission, Chandigarh has been received on __________ by the petitioner ''s branch office due to the communication gap between branch office and the regional office. Thereafter upon reading the impugned order, the present petition was got drafted immediately. The same is being filed thereafter, without there being any further delay. The impugned order is of 12.08.2011, the certified copy of the said order was prepared on 13.09.2011 and that certified copy of order of SCDRC, Chandigarh, has been received on 26.09.2011 by the branch office situated at Nabha District, Patiala and thereafter on 28.09.2012 petitioner insurance company handed over the said copy of the order to Mr Gopal Mittal , Advocate, Panchkula for seeking legal opinion, thereafter Mr M B Raghavan, Advocate, Chennai gave his legal opinion dated 29.10.2011 and advised to file the revision petition, thereafter Regional Office, Chandigarh sent the case file to the Delhi Regional Office and the Delhi Regional Office appointed an advocate vide letter dated 30.11.2011 and after obtaining the case file and relevant details and documents for filing revision petition. Thereafter, upon reading the impugned order, the present appeal was got drafted immediately. The same is being filed thereafter, without there being any further delay. The decision of filing present revision petition before the Hon ''ble Commission is taken by the competent authority situated in Regional Office - I, New Delhi and having centralised legal department, but the matter was of Branch Office at Nabha, Patiala and Divisional Office at Sangrur and Regional Office, Chandigarh and Head Office at Chennai. As such after the decision of the matter by the State Commission below, complete file was placed before the competent authority in Divisional Office Sangrur and Regional Office at Chandigarh and thereafter Head Office at Chennai and thereafter legal department at New Delhi whereby it was decided to file the present revision petition before the National Commission, New Delhi. All the matters relating to National Commission and Hon ''ble Supreme Court are to be taken care by the Regional Office at New Delhi of the Insurance Company Branch Office at Nabha, Patiala and file was received in New Delhi. The file has to go with various stages before placing before the competent authority which took time. After receiving the file from concerned Branch Office and Divisional Officer, the matter was scrutinized and ultimately after the decision of the competent authority to file the present revision in the matter, Advocate was appointed and the file was made available to him. Revision Petition was got prepared, but since some documents were not received, revision petition could not have been filed. As soon as the said documents and pleadings was received signed revision petition along with its annexures was made to counsel for filing the same before the National Commission and will be filed before your Lordships on 08.02.2012. The delay caused in taking decision was due to the fact that file was related to Branch Office Nabha at District Patiala who forwarded the same to the Regional Office at

Chandigarh. The delay was caused in the above and due so much work pressure and as such the delay caused of 44 days was due to the above mentioned reasons and same may kindly be condoned in the interest of justice. The impugned order is of 12.08.2011, the certified copy of said order was prepared on 13.09.2011 and that the certified copy of order of SCDRC, Chandigarh, has been received on 26.09.2011 by the branch Office situated at Nabha District Patiala and thereafter on 28.09.2012 petitioner/ insurance company handed over the said copy of the order to Mr Gopal Mittal, Advocate, Panchkula for seeking legal opinion, thereafter Mr M B Raghavan, Advocate Chennai gave his legal opinion dated 29.10.2011 and advised to file the revision petition, thereafter Regional Office, Chandigarh sent the case file to the Delhi Regional Office and Delhi Regional Office appointed an advocate vide letter dated 30.11.2011 and after obtaining the case file and relevant details and documents for filing the revision petition. Thereafter upon reading the impugned order, the present appeal was got drafted immediately. The same is being filed thereafter, without there being any further delay ".

5. THE reasons given above indicate a very casual and irresponsible approach while dealing with the case. The number of days taken at various levels of processing have not been explained or justified. The only reasons given by the petitioner/ insurance company for the delay is that the files were being sent by the Branch Office at Nabha, District Patiala for most of the decisions, to the Regional Office at Chandigarh and the Head Office at Chennai, the competent authority situated in Regional Office, New Delhi and the Counsels. The inability to work to a time schedule and within a time frame work, however, cannot be taken sufficient cause to condone the delay of 57 days in filing the present revision. 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 ".

6. IN BalwantSingh Vs. Jagdish Singh and 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 bona fide, 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] ".

In Ram 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. "

7. SIMILARLY , in Oriental Insurance Co. Ltd. vs. Kailash Devi and 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. "

8. 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.

11. IN the above circumstances, the application for condonation of delay is dismissed being time barred by limitation with cost of Rs.10,000/- (Rupees ten 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 10th May 2013 for compliance.