(2013) 03 NCDRC CK 0042

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

ORIENTAL INSURANCE CO. LTD — APPELLANT

Vs

RAKESH KUMAR , ADDITIONAL SECRETARY , SHEELA TIWARI , Smt Sarla Tiwari Wife Of Late Trilok Tiwari , Himanshu Tiwari , Sandhya Tiwari , Managing Director Chhattisgarh State Power Housing Co. Ltd. , Jirmanaya Devi — RESPONDENT

Date of Decision: March 21, 2013

Citation: 2013 0 NCDRC 208

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

Advocate: ARUN SRIVASTAVA , RAHUL SHARMA , UZMA ASHRAF

Judgement

1. REVISION petitions nos. 3509, 3510 and 3511 of 2011 have been filed against the order dated 29th April 2011 in appeal nos. 716, 715 and 18 of 2010 respectively of the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur (''the State Commission ''). The revision petitions nos. 1367 and 3185 of 2012 have been filed against the order dated 28th September 2011 in appeal nos. 368 and 385 of 2011 of the State Commission. All these case relates to group insurance coverage obtained by the respondents from the petitioner for their employees where the petitioner - the insurance company rejecting the claims.

2. IN revision petitions no. 3509, 3510 and 3511 of 2011 the District Consumer Disputes Redressal Forum, Raipur (Chhattisgarh) (''the District Forum '') allowed the complaints and ordered as follows: In RP No. 3509 of 2011

"Respondent will pay insurance amount of Rs.4.00 lakh and interest at the rate of 6% per annum as simple interest from 25.09.2007 till the date of realisation of full and final amount to complainant within the period of one month for payment to the successors of deceased Ram Prasad. Respondent would pay a sum of Rs.5,000/- to complainant for the mental pains suffered on account of the above said act. Complainant would make payment of the above-said amount to successors of deceased Ram Prasad within the period of one month from the date of recovery from the insurance company. Respondent will pay a sum of Rs.1,000/- to complainant as cost of litigation ".

In RP no. 3150 of 2011

"The non-applicant must pay an amount of Rs.4.00 lakh within a month for the purpose of enabling settlement/ payment to the successors of deceased Jagdish Prasad Tiwari along with 6% simple interest per annum from 25.09.2007 the date of filing of petition onwards. As the said act of the non-applicant caused mental agony to the petitioner, the non-applicant must pay Rs.5,000/- to the petitioner. The aforesaid insurance amount collected from the insurance company must be distributed to the successors of Jagdish Prasad Tiwari within a month of its collection. As petition cost, let the non-applicant pay Rs.1,000/- to the applicant ".

In RP no. 3511 of 2011

"Respondent no. 1 will pay insurance amount of Rs.4.00 lakh with interest at the rate of 6 per cent per annum as simple interest from 08.01.2008 till the date of realisation of full and final amount to complainant within the period of one month for payment to the successors of deceased Trilok Narain Tiwari. Complainant would make payment of the above said amount to successors of deceased Trilok Narain Tiwari within the period of one month from the date of recovery from the insurance company. Respondent no. 1 will pay a sum of Rs.1,000/- to complainant as cost of litigation ".

2. In revision petition nos. 1367 and 3185 of 2012, the District Forum allowed the complaint of the plaintiff and directed as under:

"Therefore, on the basis of above discussion/ arguments, the claim of the plaintiff is accepted under section of 12 of Consumer Protection Act, 1986 and directed that within one month from the date of this order: The insurance company will pay the balance amount of Rs.67,420/- to the plaintiff or legal heirs of Late Sohar Sahal and

6% interest thereon with effect from 03.11.2007 till the date of payment. After receiving the amount from the insurance company, the plaintiff/ Chhattisgarh Vidyut Board will pay the amount to the legal heirs of the Late Sohar Sahal. Rs.700/- will be paid to the plaintiff as litigation cost to the plaintiff ".

In RP nos. 3509, 3510 and 3511 of 2011 the State Commission vide its order dated 29th April 2011 observed as follows:

"In view of the observations, contained hereinabove, the appeal being devoid of merit, is dismissed. The order of the District Forum regarding liability of insurer is affirmed. It appears from record that the complainant/ employer has not placed any material on record to show that it has paid the sum assured to legal heirs of the deceased insured. On presentation of such proof that the amount has already been paid to the beneficiaries/ legal heirs of the insured the complainant shall be entitled to the awarded amount. In case no such proof is filed, then the beneficiaries themselves would be entitled to receive the aforesaid amount whose names are mentioned in the application filed by the complainant under Order 1 Rule 10 of CPC but subsequently not pressed. Besides the amount directed to be paid under the impugned order, the appellant shall also be liable to pay a sum of Rs.1,000/- towards cost of this appeal to the complainant ".

3. IN RP Nos. 1367 and 3185 of 2012 the State Commission vide its order dated 28.09.2011 has observed as under:

"In view of aforesaid, we find that insurance company/ OP no. 1 is liable to pay sum assured Rs.4.00 lakh to the complainant/ Power Holding Company Limited and the complainant/ Power Holding Company Limited is required to make payment of the entire amount of Rs.4.00 lakh to the LR ''s of the deceased employee. The amount which has already been paid by the complainant/ Power Holding Company Limited to the LR ''s of the deceased amounting to Rs.3,32,580/- may be a retained by the complainant/ Power Holding Company, but remaining amount of Rs.67,420/- will be paid by it to the LR ''s of the deceased Shri Sohar Sai within a month from its payment by the Insurance Company to the complainant. The entire amount of Rs.4.00 lakh will carry interest @ 6% per annum from the date of filing of the complaint i.e., 03.04.2007 till date of payment. The cost of litigation is quantified as Rs.2,000/- and it will also be payable by the Insurance Company to the complainant. With these directions, both these appeals are disposed of ".

4. HENCE , these revision petitions. We have heard learned counsel for the petitioner and have also gone through the records carefully. The revision petitions have been filed with delays ranging from 85 to 91 days. The reasons given in the application for the delay in the revision petitions nos. 3509, 3510 and 3511 of 2011 are as follows: The impugned judgment was pronounced by the Hon ''ble State Commission on 29.04.2011 and the certified copy of the judgment was received on 02.05.2011. Therefore, there is a delay of 85 days (82 days in RP No.3511 of 2011) in filing the accompanied revision petition, which is bonafied and not intentional and is due to the reasons beyond the control of the petitioner. The certified copy of the judgment along with the covering letter of the Advocate dated 02.05.2011 was sent in which there was a strong recommendation for filing revision petition along with the grounds. That the opinion was sought from another panel Advocate (Mr N K Thakur) where he also recommended for filing revision petition before Hon ''ble National Commission by his letter dated 10.05.2011. That the papers were forwarded to the regional office which was again forwarded to the head office after seeking legal opinion from the law officers of the company.

That on 30.06.2011 the competent authority took a decision to proceed with the filing of revision petition and to depute a lawyer for filing. The case was marked by letter dated 07.07.2011, the file along with the documents was received on 15.07.2011 along with the original file. That the counsel to whom the revision petition was given for studying the file and to give legal opinion as to whether revision petition should be filed or not had to leave urgently for his home town for his personal reasons. That on 03.08.2011 the counsel was back and after giving opinion on the law point involved. That on 03.08.2011 the relevant documents were given for translation from vernacular language (Hindi) to English which is the language in which the documents are accepted by the Hon ''ble Commission. That on 25.08.2011 the translated documents were received. That on 05.09.2011 preliminary draft was prepared and on 25.09.2011 final draft was prepared and on 10.10.2011 the revision petition was given for signature and the same was received for filing on 13.10.2011.

5. THE stage wise explanation of the delay has also been given by the petitioner by way of an affidavit, which reads as under:

29.04.2011 Judgment and Order was passed by the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur in appeal no. 716 of 2010 on 29.04.2011 02.05.2011 The certified copy of the judgment was received on 02.05.2011. 02.05.2011 to 10.05.2011 The file along with the relevant documents was sent to one of the panel advocates for seeking his opinion for the purpose of filing revision petition and thereafter Mr N K Thakur, one of the panel advocates gave his recommendation for filing the revision petition before the Hon ''ble National Commission. 10.05.2011 That after obtaining the opinion from the panel advocate Mr N K Thakur, the papers for filing the revision petition were forwarded from regional office and then subsequently after seeking the legal opinion from the law officers of the company, the papers were forwarded from the regional office to the head office. 30.06.2011 The competent authority took the decision to proceed with the filing of the revision petition. 07.07.2011 The letter was issued to the concerned advocate wherein the said case was marked for the purpose of filing of revision petition. 15.07.2011 The file along with the relevant documents was received on 15.07.2011. 15.07.2011 The counsel to whom the case was marked had to urgently leave for his home town for some personal reasons and he came back on 03.08.2011. 03.08.2011 That after coming from his home town the concerned advocate gave his opinion on the law point involved in the said matter. 03.08.2011 The documents were given for translation from the vernacular language (Hindi) to English as the documents are accepted only in English language by the Hon ''ble Commission and subsequently the translated documents were received on 25.08.2011. 05.09.2011 The preliminary draft was prepared by the concerned advocate and was discussed with the petitioner insurance company. 25.09.2011 The final draft was prepared. 10.10.2011 The revision petition was given for signatures the company. 13.10.2011 The revision petition that was given for signatures the company and the same was received on 13.10.2010.

6. IN RP no. 1367 and 3185 of 2012 the reasons given for the delay are as follows:

"That the impugned judgment was pronounced by the Hon ''ble State Commission on 28.09.2011 and the certified copy of the judgment was received by the petitioner on 05.10.2011. Therefore, there is a delay of 89 days in filing the accompanied revision petition, which is bonafide and not intentional and is due to the reasons beyond the control of the petitioner. That the certified copy of the judgment along with the covering letter of the Advocate dated 25.10.2011 was sent in which there was a strong recommendation for filing revision petition along with the grounds. That the opinion was sought from another panel advocate (Mr N K Thakur) where he also recommended for filing revision petition before Hon ''ble National Commission by his letter dated 10.11.2011. That the papers were forward to the regional office which was again forwarded to the head office after seeking legal opinion from the law officers of the company. That the competent authority took a decision to proceed with the filing or revision petition and to depute a lawyer for filing. The case was marked by letter dated 09.12.2011 to the advocate for filing of revision petition, the file along with the documents was received on 15.12.2011 along with the original file by the advocate for the petitioner. That immediately after receiving the file a dispute arose in respect of the premises of the advocate for the petitioner itself from where the advocate for the petitioner is operating his office, i.e., A - 24 Kailash Colony, New Delhi. Access of the advocate for the petitioner was restrained by Dr Yashwant Singh, alleged power of attorney of Mr Sateesh Kumar Singh, the alleged owner of A - 24 Kailash Colony, New Delhi. That on account of the above state of affairs in the office of the advocate for the petitioner the accompanying petition could not be prepared and filed in this Hon ''ble Court within limitation and the same was filed after a delay of 89 days ".

8. The reasons for condonation of delay in all the five revision petitions do not satisfy us that there was sufficient cause for not preferring the revision petition or making an application within the prescribed period. The learned counsel for the petitioner has cited two judgments of the Apex Court in the case of ''Collector, Land Acquisition, Anantnag and Anr. Vs Mst Katiji and Ors., decided on 19.02.1987 and State of Haryana vs Chandra Mani and Ors decided on 30.01.1996. The said citations are not applicable in this case. It is well settled that "sufficient cause " for condoning the delay in each case is a question of fact: 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. "

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. "

7. 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. "

8. 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 ".

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.

9. THE Apex Court, in the case State Bank of India vs B S Agricultural Industries II (2009) SLT - 793 = (2009) 5 SCC 121 have held as under:

"As a matter of law, the Consumer Forum must deal with the complainant on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the Consumer Forum to take notice of section 24A and give effect to it. If the complaint is barred by time and yet the Consumer Forum decided the complaint on merits, the Forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside. "

The present case is fully covered under the case laws cited above Supra. The petitioner has failed to produce any detailed reasons to explain the delay.

10. ACCORDINGLY , no sufficient grounds are made out for condonation of delay ranging from 85 - 89 days in filing the present revision petitions. The applications for condonation of delay under these circumstances are not maintainable and the present revision petitions being barred by limitation are hereby dismissed with cost of Rs.50,000/- (Rupees fifty 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 the Consumer Protection Rules, 1987 within four weeks from today. In case the petitioner fails to deposit the cost within the prescribed period, then it shall also be liable to pay interest @ 9% per annum till its realisation.