NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 1782 OF 2013

(Against the Order dated 31/01/2013 in Appeal No. 67/2011 of the State Commission Orissa)

1. NATIONAL INSURANCE CO. LTD.
JEEVAN BHARTI, 4TH FLOOR, CONNAUGHT CIRCUS,
NEW DELHI - 1100001 .....Petitioner(s)

Versus

1. PRABODH KUMAR SWAIN & ANR.
S/I SHRI NIRMAL CHANDRA SWAIN, T.P.M.ROAD, P.O HAKIMPADA,PS/SD
ANGUL
ORISSA
2. M/S CANRA BANK,
THROUGH BRANCH , ANGUL BRANCH, P.O/
ANGUL
ORISSA .....Respondent(s)

BEFORE:
HON'BLE MR. DINESH SINGH,PRESIDING MEMBER
HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE,MEMBER

For the Petitioner : For the Petitioner : Mr. S. K. Ray, Advocate with
Ms. Nikita Chaturvedi, Advocate

For the Respondent : For the Respondent No.1 : Mr. Subesh Kumar Sahu, proxy counsel for
Mr. Sanjib Kumar Mohanty, Advocate

For the Respondent No.2 : NEMO

Dated : 14 Jul 2022

ORDER

1. This revision petition has been filed under section 21(b) of the Act 1986 in challenge to the Order dated 21.01.2013 of the State Commission in appeal no. 67 of 2011 arising out of the Order dated 04.01.2011 of the District Commission in complaint no. 54 of 2010.

2. We have heard the learned counsel for the insurance co. (the petitioner herein). Learned proxy counsel is present for the complainant (the respondent no. 1 herein). No one appears for the bank (the respondent no. 2 herein). We have also perused the record including *inter alia* the Order dated 04.01.2011 of the District Commission, the impugned Order dated 21.01.2013 of the State Commission and the petition.

3. The short point involved in this case is that the complainant had insured his vehicle (truck) with the insurance co. for an assured sum of Rs.9,60,000/- for the period from 04.10.2006 to 03.10.2007. The requisite premium was paid. The policy was valid. During the subsistence of the policy the vehicle met with an accident on 19.10.2006. The complainant claimed loss of Rs.6,25,020/-. The surveyor appointed by the insurance co. assessed the loss at Rs. 2,30,000/-. The insurance co. vide its letter dated 28.04.2010 intimated the complainant that it will settle the claim at Rs. 1,04,316/- and sent therewith pre-receipted vouchers for discharge in full. Aggrieved with the quantum at which the claim was being offered to be settled, the complainant filed a complaint before the District Commission on 08.06.2010.

The District Commission made its appraisal of the case and assessed the loss at Rs. 5,27,770/-. It ordered the insurance co. to pay the said sum to the complainant along with compensation of Rs. 20,000/- within one

month of issue of its Order.

On appeal being filed by the insurance co., the State Commission made its own independent appraisal of the case and assessed the loss at Rs. 4,50,000/-. It ordered the insurance co. to pay the said sum to the complainant along with compensation of Rs. 20,000/- as ordered by the District Commission within two months of receipt of its Order, failing which it would carry interest at the rate of 15% per annum till payment.

4. Learned counsel for the insurance co. argues that the surveyor's report should not have been overruled by the State Commission.

We may first observe that survey and investigation are one of the fundamentals in settling a claim, and can not and should not be disregarded or dismissed without cogent reasons, though it also goes concomitantly that the survey or investigation should be convincing and pass credence in scrutiny.

In the instant case, however, we find that cogent reasons were duly forthcoming for overruling the surveyor's report. The District Commission made its appraisal after examining the entire evidence which *inter alia* included the vouchers relating to the repairs undertaken on the accident-hit vehicle. The State Commission then took due note of the surveyor's report as well as of the District Commission's appraisal and after considering the entire evidence made its own assessment with convincing reasons given.

We may add that the learned counsel could not explain the reasons that when its own surveyor had assessed the loss at Rs. 2,30,000/- what caused the insurance co. to intimate the complainant vide its letter dated 28.04.2010 that it will settle the claim at only Rs. 1,04,316/-. The learned counsel could also not explain the reasons that when the accident occurred on 19.10.2006 and the complainant's entitlement to the claim arose on the said date itself what caused the inordinate delay of sending intimation of settlement on 28.04.2010 i.e. after over 3 ½ years, whether the delay was on the part of the insurance co. or on the part of the complainant or both. We may emphasize that the claim should ordinarily have been fairly and equitably settled within a reasonable period in the normal course.

5. Learned counsel then argues that the case was barred by limitation since the accident occurred on 19.10.2006 and the complaint was filed on 08.06.2010 which was much beyond the two-year period stipulated under the Act 1986. He however fairly admits that the objection was not taken in the written version before the District Commission nor in the memorandum of the appeal before the State Commission, but submits that this is a point of law and can be raised at any time.

However, learned counsel for the complainant vehemently contends that having not raised the issue of limitation before the District Commission i.e. the forum of original jurisdiction and not even before the State Commission i.e. the forum of appellate jurisdiction it does not readily lie in the mouth of the insurance co. to now raise it in revision at this belated stage.

Be that as it may, we garner from the material placed before us by the insurance co. with its petition that the insurance co. intimated settlement of the claim at a sum of Rs. 1,04,316/- vide its letter dated 28.04.2010 and sent pre-receipted vouchers for discharge therewith and the complainant was aggrieved with the quantum at which the claim was being offered to be settled as according to him the loss was much higher i.e. Rs. 6,25,020/-; as such the cause of action arose when he received the said letter of 28.04.2010 and he filed his complaint on 08.06.2010 which was well within the limitation period of two years provided under section 24A(1) of the Act 1986. In any case, when the complainant's claim was being inordinately delayed and there is nothing on record to show that the delay was on the part of the complainant it was a continuing cause of action. Moreover, sufficient cause to condone the delay under section 24A(2) was readily forthcoming in the factual matrix of the present case as can be gathered from the material placed before us by the insurance co. with its petition. Hence, looking from any angle, the plea that the complaint was barred by limitation fails miserably. The argument of learned counsel that the limitation should be counted from the date of the accident is patently irrational, there is a distinct distinction between the date on which the accident occurred and the date on which the cause of action arose.

6. Learned counsel then argues that the vehicle was purchased under a hire-purchase agreement which shows that the same was being used for "commercial activities" and therefore the complainant was not a 'consumer' under section 2(1)(d) of the Act 1986. He however fairly concedes that this objection too was

not taken in the written version before the District Commission nor in the memorandum of appeal before the State Commission, but submits that this is a point of law and can be raised at any time.

Section 2(1)(d) of the Act 1986 precludes a person who hires or avails of any service for any "commercial purpose" but the explanation thereto makes it clear that "commercial purpose" does not include services availed exclusively for the purposes of earning livelihood by means of self-employment. Whether the services were availed for commercial purpose and if so whether the services were availed exclusively for the purposes of earning livelihood by means of self-employment were questions which required evidence to be led. The onus was on the insurance co. to take such preliminary objection in its written version before the District Commission. However it took no such objection before the District Commission nor even in its appeal before the State Commission.

Whether the services were availed for commercial purpose and if so whether the services were availed exclusively for the purpose of earning livelihood by means of self-employment was undoubtedly a question of fact and required evidence to be led. It was admittedly neither raised before the District Commission nor even in appeal before the State Commission. In other words, it is patently clear that the opportunity to rebut the same was not duly provided to the complainant before the District Commission or even before the State Commission.

We may also observe that there may be cases where the legal issues raised are such as would not turn upon the nature of facts or are unalloyed points of law not having much nexus with the factual matrix of the case or its factual intricacies. But in matters where it is necessarily to be seen whether the activity undertaken was for commercial purpose and whether it was exclusively for the purpose of earning livelihood through self-employment much would depend upon the facts and as such adequate opportunity to both the sides must be made available so that they may furnish out the relevant facts and evidence on the basis of which the due inference may be drawn. In such cases if the plea is not raised at the appropriate stage when it ought to have been raised and where the opportunity to furnish an adequate rebuttal in that regard could have been availed by the other side, it becomes highly doubtful whether such a plea seeking ouster of the jurisdiction may be raised at a belated stage.

7. There appears to be no misappreciation of evidence on the part of the State Commission as may cause to require fresh *de novo* re-appreciation in revision. The award appears to be just and equitable in the facts of the case. There appears to be no jurisdictional error or a legal principle ignored or erroneously ruled or miscarriage of justice having been occasioned in the impugned Order. This appears to be a frivolous petition unnecessarily filed to prolong the *lis*. Points of law regarding 'limitation' and 'consumer' have to be applied on the facts of the case, and the facts can only be determined by leading evidence before the forum of first instance or in rare cases by filing additional evidence before the forum of appellate jurisdiction and should not be raised in revision just for the sake of prolonging the *lis* as is evident in the instant case. The purpose of looking into the records of the lower fora in revision is principally to see whether any jurisdictional error or material irregularity has been committed, which has to be judged by seeing their orders in the light of the evidence and material placed before them i.e. in the light of the material which they were privy to when they passed their orders.

8. The present revision being totally bereft of worth must fail. It stands dismissed.

The amount if any deposited by the insurance co. with the District Commission in compliance of this Commission's Order dated 22.07.2014 along with interest if any accrued thereon shall be forthwith released by the District Commission to the complainant by way of 'payee's account only' demand draft as per the due procedure. The balance awarded amount shall be made good by the insurance co. within six weeks from today, failing which the District Commission shall undertake execution, for '*enforcement*' and for '*penalty*', as per the law.

9. The Registry is requested to send a copy each of this Order to the parties in the petition and to their learned counsel as well as to the District Commission immediately. The stenographer is also requested to upload this Order on the website of this Commission immediately.

Later on, Ms. Meena Kapoor, learned counsel for the bank (the respondent no. 2 herein) appeared and she was apprised of the Order.

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DINESH SINGH
PRESIDING MEMBER
.....J
KARUNA NAND BAJPAYEE
MEMBER