NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 1737 OF 2018

(Against the Order dated 16/04/2018 in Complaint No. 7/2015 of the State Commission Gujarat)

1. UNITED INDIA INSURANCE CO. LTD.
THROUGH ITS DULY CONSTITUTED ATTORNEY ,
MANAGER DELHI REGIONAL OFFICE -I, 8 FLOOR,
KANCHENJUNGA BLDG. 18 BARAKHAMBA ROAD
NEW DELHI 110001 .....Appellant(s)

Versus

1. RAJESH KUMAR G. PATEL
SEVALIYA VISANAGAR
MEHSANA .....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER

FOR THE APPELLANT : MR. C. K. GOLA, ADVOCATE
FOR THE RESPONDENT : MS. USHA YADAV, ADVOCATE

Dated : 08 April 2024

ORDER

PER SUBHASH CHANDRA

This Appeal has been filed by the United India Insurance Company Limited (hereinafter referred to as "the Insurance Company") challenging the order dated 16.04.2018 of the State Consumer Disputes Redressal Commission, Gujarat (for short "the State Commission") in Complaint No.07 of 2015 filed by the Respondent herein (hereinafter referred to as "the Complainant"). By the impugned order, the State Commission allowed the Complaint and directed the Insurance Company to pay to the Complainant ₹24,61,000/- along with interest @ 9% from the date of complaint till realization, ₹15,000/- for the harassment and ₹10,000/- as costs.

2. The brief facts of the case are that the Complainant purchased a TATA IWA Dumper from Cargo Motors Pvt. Ltd. Mehsana for ₹24,61,000/- for his livelihood after taking loan from the Bank and got the Dumper insured with the Insurance Company by paying premium of ₹55,917/-. Policy no.064100/31/12/01/00006051 was issued. It is alleged that on 15.08.2013, Dixit Patel, driver of the Complainant, parked the vehicle before Amarnarayn Society after locking it carefully and went to home. Next day he did not find the vehicle at the place. He tried to search the vehicle but the same was not available. He filed a Complaint before Visnagar Police Station Mehsana bearing criminal registration no.216/13 on 16.08.2013. He informed the Insurance Company immediately with the FIR. The letter received from Cargo Motors with one key was sent with the claim form. Insurance Company

asked for certain other documents which were provided. Since the Insurance Company did not either reject or grant the claim, the Complainant filed a Complaint before the State Commission seeking ₹24,61,000/- with interest @ 18% p.a., ₹50,000/- towards harassment and ₹25,000/- as costs.

3. The Appeal has been filed with a delay of 117 days which is sought to be condoned through IA No.18099 of 2018 on the grounds that it took time to draft and file the Appeal and the delay is stated to neither deliberate nor willful. Respondent has contested this IA on the ground that the reasons advanced are general and vague since the Appellant has a panel of Advocates at various levels and that delay has not been sufficiently explained to be condoned.

4. The Insurance Company contested the Complaint and filed written statement denying deficiency in service or unfair trade practice on their part. It was contended that the Complaint being barred by time was not maintainable and deserved to be dismissed with costs. It was submitted that upon receipt of the claim from the Complainant, as per the usual practice and procedure, they processed the claim and upon review of the documents submitted by the Complainant, it was found that the Complainant provided only one key. They requested the Complainant to provide the 2nd key. The Complainant produced a letter issued allegedly by Tata Motors stating that only one key was issued. Upon verification, it was found that no such letter was issued and also that the transaction was suspicious in nature and some fraud was involved. It was submitted that they repudiated the claim as per the terms and conditions of the policy.

5. We have heard learned Counsel for the parties. Short synopsis of arguments have been filed by the parties.

6. It is an admitted fact that the Complainant had taken a Goods Carriage Vehicle Policy for his Dumper from the Insurance Company for ₹24,51,000/-. The Appellant argued that the Respondent/Complainant informed them about the theft after a delay of 3 days, i.e. on or around 19.08.2013. It is submitted that upon receipt of the intimation, they immediately issued claim form and asked for all the necessary documents such as FIR, Panchnama, 2 keys etc. However, for reasons best known to the Respondent/Complainant, partial documents were submitted and only one key was provided stating that he was provided only one key by the manufacturer/dealer. It is contended that in present day modern vehicles, 2 keys are always provided to the owner. It is submitted that the Insurance Company after processing the claim and ascertaining the report of the investigators, repudiated the claim of the Complainant vide letter dated 07.01.2016 giving cogent reasons. However, in the meantime the Respondent/Complainant filed a pre-mature Complaint before the State Commission.

7. It is argued on behalf of the Respondent/Complainant that the claim was rejected by the Insurance Company on the presumption that one key was inside the vehicle as only one key was given to them. It is submitted since the police was intimated timely about the theft, a delay of a few days in intimation to the Insurance Company cannot be fatal to the claim of the consumer. It is further contended that the Respondent/Complainant produced the copy of the letter dated 08.05.2014 issued by Cargo Motors Pvt. Ltd., Mehsana (authorized dealer) which was never challenged. It is argued that the Appellant has not produced any documents regarding the appointment of a second investigator/investigation report. It is submitted that

the second investigation report also established that on 15.08.2013 the theft took place. Complainant has relied upon **Anshul Agarwal vs. New Okhla Industrial Development Authority,** IV (2011) C{PJ 63 (SC), **Suhinder Kaur & Anr. Vs. Omaxe Ltd.,** III (2015) CPJ 499 (NC) and **Punjab National Bank & Anr. Vs. Susanta Chattopadhyay,** 1 (2019) CPJ 434 (NC).

8. From the foregoing, it is manifest that the loss of the vehicle insured was reported to the police on 16.08.2013 and thereafter to the Appellant/Insurance Company on 19.08.2013. The fact of theft has been concluded with the second investigation report by the investigator appointed by the Insurance Company as under:

CONCLUSION

a. Point no. 3(e) on page no. 3 conveys that the door of the cabin might not have been locked at the time of theft.

b. The manufacturer, M/s Tata Motors have confirmed that they have supplied keys in pair.

c. However, during my visit to the insured, I could feel that the insured is a very docile person and that there does not seem to be any involvement of the insured and/or his family members in the incidence of this theft. In support of this, I would like to mention that -

i. The insured's said vehicle is less than one year old at the time of accident.

ii. The insured has regularly paid the monthly instalments to the financier Statement of the Indusind Bank is enclosed as Annexure-12

iii. The insured has provided bills towards purchase of fuel for his vehicle during the month of Augusts 2013 (the month of theft) and is as follows:-

S.No.	Date	Bill NO.	Qty. (Litres)	Amount
1	02/08/2014	20802	170	9718.90
2	04/08/2014	20818	165	9433.07
3	06/08/2014	20833	112	67403.04

4	07/08/2014	20847	174	9947.58
5	08/08/2014	20859	113	6460.21
6	11/08/2014	20887	116	6631.72
7	14/08/2014	20924	185	10576.45
8	15/08/2014	20937	136	7775.12

9. However, the letter or repudiation states as under:

"This is in reference to your claim under ARO/MOTOR/OD/CLM/2012-13 of Rs.23,37,400/- for theft of vehicle no. GJ-02-VV-1607. We have thoroughly processed your claim based on the documents submitted by you. We had also conducted an investigation through an experienced investigator Mr. Gautam Panchal. Based on these documents the claim is repudiated on the following grounds:

The theft of the vehicle no. GJ-02-VV-1607 happened on 15/08/2013 but the intimation was made to the company on 19/08/2013. Therefore this amounts to delay in intimation to the company by 3 days. As per various authorities of the Hon'ble National Commission, the intimation to the insurer should have been "immediate". However due to late intimation we lost the precious right to conduct an immediate investigation into the matter.

2. You have produced only one key of the vehicle. However, as per usual practice the manufacturer supplies with minimum two keys.

3. You have produced a letter allegedly issued by Tata Motors dated 20/05/2014 stating that company had supplied only one key to the insured. But upon verification made by the investigator it appears that no such letter has been given by Tata Motors. Hence, this shows that you have not approached the company with clean hands and you have committed misrepresentation/fraud in order to obtain the claim. Tata Motors have confirmed that they had provided a pair of keys (2 keys)

4. You have also produced a letter allegedly issued by Cargo Motors Mehsana which states that only key was issued. This letter does not seem authentic as it is undated and has no reference of the signing person, designation etc.

5. Hence it is clear that door of the vehicle was unlocked at the time of theft and you would have kept one key inside the vehicle. This can be inferred due to the

fact that you have provided only one key and then tried to produce unauthentic letters to prove your case of only key.

6. The policy condition no. 2 states that "the insured shall give all such information and assistance as the company may require". The policy condition no. 5 states that "the insured shall take all reasonable steps to safeguard the vehicle insured from loss or damage and to maintain it in efficient condition and the company shall have at all times free and full access to examine the vehicle insured or any part thereof or any driver or any employee of the insured". The claim is hence also repudiated on these policy conditions as you have not provided correct information and also not taken reasonable steps to safeguard the vehicle.

7. This is also to inform you that we are aware that you have filed consumer complaint legal matter which is pending. However this is to clarify that repudiation of the claim is purely on merits of the matter and not due to any pending legal matter.

Therefore, on the basis of above stated reasons your claim is being repudiated."

10. In ***Kanwarjit Singh Kang vs. M/s ICICI Lomard General Insurance Co. Ltd. & Anr.,*** Order dated 29.03.2022 the Hon'ble Supreme Court while examining the issue of duty of the insured to cooperate with the insurer has held that the delay in informing the theft to the insurer when the same was already informed to the law enforcement authorities, cannot amount to breach of "duty of cooperate" and that it would amount to taking a high technical view. He, therefore, relies on judgment of the Hon'ble Supreme Court in ***Om Prakash vs. Reliance General Insurance,*** **(2017) 9 SCC 74** and that mere delay in intimating the Insurance Company about the theft of the vehicle should not be a shelter to repudiate the insurance claim which has been otherwise proved to be genuine.

11. This Appeal has been filed with a delay of 117 days. The grounds for seeking condonation of delay are that the impugned order was received on 30.04.2018 after which the matter was assigned to present Counsel on 04.12.2018 (wrongly mentioned in IA for condonation of delay as 04.12.2012) for drafting the Appeal and Counsel raised some queries which were referred on 10.09.2018 vide mail and letter. Thereafter, Appeal was drafted and sent to the Appellant on 18.09.2018 for approval and signature with direction to provide cheque of ₹35,000/- for statutory deposit, which was received by the Counsel on 20.09.2018. These are vehemently opposed by Learned Counsel for the Respondent on the groundthat these are not sufficient grounds. In ***State Bank of India vs B S Agriculture Industries*** (I) (2009) 5 SCC 121 decided on March 20, 2009, it has been held by the Hon'ble Supreme Court that:

> "It would be seen from the aforesaid provision that it is peremptory in nature and requires the consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. **The expression, 'shall not admit a complaint' occurring in Section 24 A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.**
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> 12. As a matter of law, the consumer forum must deal with the complaint 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 Section24 A and give effect to it. **If the complaint is barred by time and yet, the consumer forum decides 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.**"
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> [Emphasis added]

12. The Hon'ble Apex Court has laid down that the settled legal proposition of law of limitation under the Consumer Protection Act has to be applied with all its rigour when the statute so prescribes, though it may harshly affect a particular party. The Appellant has not been able to provide adequate and sufficient reasons which prevented him to approach this Commission within the limitation.

13. The Hon'ble Supreme Court has also held that party who has not acted diligently or remained inactive is not entitled for condonation of delay. The Hon'ble Supreme Court in ***R. B. Ramlingam vs. R. B. Bhavaneshwari,*** I (2009) CLT 188 (SC) has also described the test for determining whether the petitioner has acted with due diligence or not and held as under:

> "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."

14. Condonation of delay is not a matter of right and the applicant has to set out the case showing sufficient reasons which prevented them to come to the Court/Commission within the stipulated period of limitation. The Hon'ble Supreme Court in ***Ram Lal and Ors. Vs. Rewa Coalfields Limited***, AIR 1962 Supreme Court 361 has held as under:

> "It is, however, necessary to emphasise 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 condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay 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."

[Emphasis added]

15. The burden is on the applicant to show that there was sufficient cause for the delay. The expression 'sufficient cause' has been discussed and defined by the Hon'ble Supreme Court in the case of ***Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer***, 2013 AIR SCW 6510 as under:

"Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of *bona fide* on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever he court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. **The court has to examine whether the mistake is *bona fide* or was merely a device to cover an ulterior purpose**. (See: Manindra Land and Building Corporation Ltd. V. Bhootnath Banerjee & Ors, AIR 1964 SC 1336; LalaMatadin V. A.Narayanan, AIR 1970 SC 1953; Parimal V. Veena alias Bharti AIR 2011 SC 1150 L2011 AIR SEW 1233); and ManibenDevraj Shah V. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629: (2012 AIR SCW 2412).

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It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "*dura lexsedlex*" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

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> The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of *bona fide* on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. **In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature**".
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> [Emphasis supplied]

16. Further, in ***Anshul Aggarwal Vs. New Okhla Industrial Development Authority***, (2011) 14 SCC 578, the Hon'ble Supreme Court has advised the Consumer Forums to keep in mind while dealing with such applications the special nature of the Consumer Protection Act. The Hon'ble Supreme Court has held as under:

> "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*."**
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> [Emphasis supplied]

17. The purpose of Section 24 A is to ensure that the provisions of the Consumer Protection Act, 1986 as a beneficial legislation are not diluted through challenges which cause cases to be prolonged through litigation even in Consumer Fora. The justification for the condonation of delay in the instant case is only an attempt to delay the implementation of an order of the State Commission as it is manifest that the Appellant delayed taking a decision for 8 months from 30.04.2018 till 04.12.2018. Cause shown is, therefore, not found to be sufficient.

18. In view of the above, we do not find any reason to condone the delay which has not been satisfactorily explained. The application for condonation of delay is accordingly dismissed. As a consequence, Appeal is also dismissed *in limine* being barred by limitation.

19. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER