

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

FIRST APPEAL NO. 968 OF 2019

(Against the Order dated 08/03/2019 in Complaint No. 443/2017 of the State Commission Gujarat)

1. GOKUL REFOILS & SOLVENT LTD.

GOKUL HOUSE, 43, SHREEMALI CO OP HSG SOC LTD OPP
SHIKHAR BUILDING NAVRANGPURA
AHMEDABAD

.....Appellant(s)

Versus

1. BRANCH MANAGER, ORIENTAL INSURANCE
COMPANY LTD.

1 FLOOR, MODI CHAMBER STATION ROAD UNJHA ` ` ` ` ` ` ` `
MEHSANA
GUJARAT

.....Respondent(s)

BEFORE:

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

For the Appellant : Mr. Siddharth H. Dave, Advocate

For the Respondent : Mr. Abhishek Kumar Gola, Advocate

Dated : 12 Jan 2023

ORDER

1. This appeal has been filed under section 19 of the Act 1986 in challenge to the Order dated 08.03.2019 of the State Commission in complaint no. 443 of 2017.

2. Heard learned counsel for the appellant (the 'complainant co.') and for the respondent (the 'insurance co.'). Perused the record.

3. The matter relates to repudiation of an insurance claim regarding claimed loss on account of an incident of fire which occurred in the godowns of the complainant co. on 22.08.2007. As submitted by learned counsel for the complainant co. the complaint was preferred before the State Commission on 17.12.2017. The application for condonation of delay filed therewith mentioned a delay of 2920 days in filing the complaint. The State Commission dismissed the case as being hopelessly barred by limitation. Hence this appeal.

4. It is noticed that in its application for condonation of delay the complainant co. computed the delay from the date of the loss i.e. from the date of occurrence of the incident of fire. It figured the delay to be 2920 days. The State Commission has taken the period of delay as such i.e. 2920 days without making any calculation of its own.

5. However, limitation has to be computed from the date on which the cause of action arose, which is distinctively different from the date of occurrence of the loss. In the instant case the cause of action arose when the claim was repudiated by the insurance co. and the same was communicated to the complainant co.

6. Due to efflux of time, or for whatever reason, the entire record of the case is not available with the insurance co. The date of making the claim by the complainant co. and the date of its repudiation by the insurance co. are not available on record. Neither the claim documents nor the repudiation letter *per se* are available. However

there is a copy of an internal communication of the insurance co. dated 11.12.2009 from which it appears that the claim had been re-examined and again recommended for repudiation by the insurance co. Learned counsel for both sides do not dispute the authenticity of this document.

7. Learned counsel for the complainant co. submits that its claim has not been formally repudiated by the insurance co. and as such it is a continuing cause of action. The submission in the alternative is that sufficient cause to condone the delay under section 24A(2) of the Act 1986 is also forthcoming.
8. Learned counsel for the insurance co. submits that the claim was duly repudiated since the loss was not covered by the terms and conditions of the subject insurance policy. Learned counsel admits that the repudiation letter is not traceable. He however submits that the repudiation was prior to 11.12.2009, the date when the claim was subsequently re-examined by the insurance co. at the request of the complainant co. Submission is that even counting from 11.12.2009, when the claim was re-examined and again found untenable, the complaint is heavily barred by limitation and also that sufficient cause to condone the delay is not at all forthcoming.
9. As already said above, limitation has to be calculated from the date on which the cause of action arose and not from the date of occurrence of the loss. In the present case, even though the repudiation letter *per se* is not available, it is but tellingly obvious that the repudiation had taken place before the subsequent re-examination i.e. before 11.12.2009 and the same was in the knowledge of the complainant co. Counting from 11.12.2009, when the claim was re-examined and again found unsustainable, till 17.12.2017, when the complaint was filed before the State Commission, the period comes to 2928 days i.e. 08 years and 08 days. Discounting the limitation period of 02 years provided for in section 24A(1) of the Act 1986, the complaint was delayed at the very least by 06 years and 08 days.
10. In the application for condonation of delay sufficient cause to condone the delay is not at all visible. The complainant co. in para 5 of its application has given a table containing the dates of its correspondence with the insurance co. and the dates of the insurance co.'s internal communications. It is seen therefrom that the complainant co. sent a complaint letter to the insurance co. on 30.09.2009. Its immediate next correspondence to the insurance co. is a letter written regarding non-settlement of the claim on 04.07.2016 i.e. after about 06 years and 09 months. This huge hiatus of almost 07 years remains totally unexplained. After reviving the correspondence in 2016, the complainant co. then filed its complaint in 2017.
11. Learned counsel for the complainant co. submits that the complainant co. sat silent for the said period of almost 07 years since verbal assurances had been given by the insurance co. that it will settle its subject claim. Such sort of explanation sounds more a pretext than a reason, and is too much to swallow and difficult to digest. Learned counsel could not provide the specific dates on which such assurances were given, nor the names of the officials of the insurance co. who gave the assurances or of the complainant co. to whom such assurances were given. It is implausible that the complainant co., with sufficient wherewithal at its command, would not have followed-up on its claim for almost 07 years at a stretch. It is also difficult to fathom what sort of assurances could have been possibly given in a matter in which even after re-examination the claim had been found to be unsound.
12. That being as it may, from the material on record it appears that the claim was examined by the insurance co. and repudiated and it was also subsequently re-examined and again recommended for repudiation. The repudiation was in the knowledge of the complainant co. It was thus in no way a case of continuing cause of action or a case wherein the cause of action had not sufficiently ossified into a final shape. The complaint was made with delay of atleast 06 years and 08 days beyond the prescribed 02 year limitation period. And sufficient cause to condone the delay is not at all evident. As such, we find no reason to take a different view of the matter than which has been taken by the State Commission, and come to the same conclusion that the complaint ought to stand dismissed on limitation.
13. Further, as is being garnered from the record, it also appears that the complainant co. is a regular client of the insurance co. since long and a large number of its claims keep being processed with the insurance co. on a continuous basis. We may elaborate on the overall situation.

14. At this stage however learned counsel for the complainant co. requests for an interlude to seek instructions.

After an interlude learned counsel submits on instructions that the complainant co. wishes to withdraw its appeal unconditionally.

15. In the wake of the above submission the present appeal no. 968 of 2019 is dismissed as withdrawn, without the option to file it again before this Commission.

16. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel immediately. The stenographer is requested to upload this Order on the website of this Commission immediately.

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