BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 18.03.2025

DELIVERED ON: 01.04.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD).No.379 of 2025

ICICI Lombard General Insurance Limited
Through Mr.Rohan Mishra Legal Manager
Fourth Floor, Red Fort Capital
Parasvnath Towers, Bhai Veer Singh Marg
Gole Market, New Delhi 110 001 ....Petitioner /Appellant

Vs

Lakshmana Mudaliar Selvakani
97G/9F, Third Street, Teacher Colony (East)
Near Banu Brindavan Hotel
Tuticorin, Tamil Nadu- 628 008 ...Respondent /Respondent

PRAYE: Civil Revision Case is filed under Article 227 of Constitution of India, to call for the records pertaining to the impugned Final Order passed by the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No.795 of 2024 dated 08.10.2024 (received on 19.10.2024), set aside the same and further direct the National Consumer Disputes Redressal Commission, New Delhi to admit the First Appeal No.795 of

2024 here the appeal on merits and in accordance with law and dispute of the same within a reasonable time as may be specified by the High Court.

For Petitioner	: Mr.Isaac Mohanlal Senior Counsel for M/.Isaac Chamber
For Respondent	:Mr.B.Saravanan Senior Counsel For Mr.V.Sakthivel

O R D E R

The appellant in the First Appeal No.795 of 2024 on the file of the National Consumer Disputes Redressal Commission, New Delhi has filed the present revision petition challenging the dismissal of their application for condonation the delay of 101 days in filing the first appeal.

2.The respondent herein has purchased Overseas Insurance Policy for himself and his wife from the petitioner insurance company for a sum of 1,00,000 U.S.Dollar. According to the complainant, at the time of taking policy, he had furnished all his personal records and medical records of his wife. The policy was issued on 16.06.2018 covering the period between 24.06.2018 and 14.12.2018. When the respondent was at San Francisco, USA, on 12.11.2018 he felt discomfort and he was admitted to the hospital where he was diagnosed that he was affected with hypertension due to coronary artery disease. On 12.11.2018, he was given coronary angioplasty with stent replacement. After following medical care, he was discharged. He had submitted his claim form to the petitioner insurance company on 14.03.2019.

3.The petitioner/Insurance Company had repudiated the claim on the ground that coronary artery disease has arisen from the pre-existing condition of diabetes mellitus and hypertension which are strong risk factors. The Insurance Company referred to the exclusion clause of 2.1.4 and stated that any claim due or arising of precondition whether declared or undeclared is not covered under the policy. Aggrieved over repudiation, the respondent has filed a consumer complaint in C.C.No.27 of 2019 before the Tamil Nadu State Consumer Disputes Redressal Commission (TNSCDRC), Madurai Bench.

4.The State Commission after considering the submissions on either side, rejected the defence of the Insurance Company and proceeded to pass an order directing the insurance company to pay a sum of Rs.69,80,000/- towards insured amount along with 6% interest from the date of complaint till realisation. The opposite parties therein were directed to pay a sum of Rs.2,00,000/- towards compensation along with 6%

interest. The opposite parties were further directed to pay a sum of Rs. 10,000/- towards costs. The above said order was passed by the Tamil Nadu State Consumer Disputes Redressal Commission, Madurai on 08.04.2024 and a copy of the order was received by the counsel on 25.04.2024.

5.As per Section 51 of the Consumer Protection Act, an appeal has to be preferred within a period of 30 days namely on or before 25.05.2024. However, the appeal was presented before the National Consumer Disputes Redressal Commission (NCDRC), New Delhi on 31.08.2024 with a delay of 101 days. The delay application was dismissed by the National Commission on the ground that the petitioner/Insurance Company is having technically competent and well qualified persons on their rolls and strong administrative set-up and therefore, condoning such delay would not be in letter and spirit of the Consumer Protection Act, 1986. Challenging the same, the present revision petition has been filed.

6.According to the learned senior counsel appearing for the petitioner, the order copy was received through post by the learned counsel appearing for the insurance company on 25.04.2024 and the appeal ought to have been presented before 25.05.2024. As per applicable rules, the appeal has to be presented along with certified copies of all the documents which were marked on either side before the State Commission. The free certified copy sent by the State Commission was misplaced by the lawyer in his office. That apart, the records were incomplete and they were not able to locate the records. After spending sometime, an application was filed before the State Commission for furnishing certified copies of the records on 12.07.2024 and the certified copies were made ready on 12.07.2024. However, it was found that the record was incomplete to the effect that the documents filed on the side of the insurance company have not been applied for. Therefore, another application was filed for certified copy of the other records on 12.08.2024 and immediately, after receipt of the said documents, the appeal was presented on 31.08.2024. The delay is purely on account of the factors beyond the control of the appellant and there is no malafide intention in filing the appeal belatedly.

7.The learned senior counsel appearing for the revision petitioner had further contended that the NCDRC has relied upon four decisions to dismiss the application for condonation of delay. None of the decision arise out of the Consumer Protection Act. In all the cases, the delay is more than 200 days. In such circumstances, the Consumer

Commission ought not to have relied upon those decisions to dismiss the application to condone the delay of 101 days. He had further contended that when the delay has been properly explained, the National Commission ought to have considered the explanation and condoned the delay.

8.The learned Senior Counsel appearing for the revision petitioner had further contended that the respondent herein had undergone the Angioplasty at San Francisco due to pre-existing disease. As per the policy condition, even if such a pre-existing disease is declared, when a medical treatment is taken based upon the pre-existing disease, the same is excluded from the purview of the present insurance policy. The said aspect has not been considered by the State Commission. In such circumstances, the National State Commission ought to have given an opportunity to the petitioner Insurance Company to put forth their case considering the fact that the appellant has established a prima facie case on merits.

9.The learned Senior Counsel for the petitioner has relied upon a judgment of the Hon'ble Division Bench in Bombay High Court reported in ***2025 SCC Online Bom 138 (Niraj B.Kannure Vs. Milroc Good Earth Property & Developers LLP and others)*** wherein the Hon'ble Division Bench was pleased to reverse the order of the National Consumer

Redressal Forum rejecting to condone the delay of 82/84 days on the ground that the delay was neither willful nor due to negligence, but caused to to unavoidable procedural requirements.

10.The learned Senior Counsel appearing for the revision petitioner has also relied upon a judgement of the Hon'ble Supreme Court reported in ***CDJ 2022 SC 680 (Manager, Indusind Bank Limited & Another Vs. Sanjay Ghosh)*** wherein the Hon'ble Supreme Court was pleased to set aside the order of the National Consumer Disputes Redressal Commission and condoned the delay of 67 days in filing the revision before it. He further pointed out that the Hon'ble Supreme Court has further observed that the question of limitation is not to be examined with a view to decline the condonation, but to do substantial justice.

11.Per contra, the learned Senior Counsel appearing for the respondent herein had contended that the order copy was received by the learned counsel for the Insurance Company on 25.04.2024. It is not stated when the order copy was found to be missing. The copy application for receiving certified copies of the document was filed only on 12.07.2024 which is beyond the period of limitation. Even the said copy application was made in piecemeal manner only for a part of the documents. Another copy application was made on 12.08.2024 for receiving another set of certified copies. In such circumstances, it is clear that there was a total negligence on the part of the officials of the insurance company. No reason has been assigned for such a delay. The claim made by the respondent herein has been erroneously repudiated by the insurance company though the said claim is covered by the approved insurance policy. When the claim has been allowed for around Rs.68,00,000/-, the Insurance Company ought to have been more cautious in filing an appeal in time.

12.The condone delay application is as vague as it could be, without any particulars about the date of missing of the order or the reason for delay in filing of the application for receiving the certified copies of the document. The learned senior counsel had relied upon a judgement of the Hon'ble Supreme Court reported in ***(1972) 1 SCC 366 (The State of West Bengal Vs. The Administrator, Howrah Municipality and others)*** wherein the Hon'ble Supreme Court has held that the word 'sufficient cause' would receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

13.According to the learned Senior Counsel appearing for the respondent, the facts narrated above will clearly indicate that it is a clear case of negligence and inaction and therefore, liberal construction of the word 'sufficient cause' cannot be invoked. He has also relied upon a judgement of the Hon'ble Supreme Court reported in ***(1983) 4 SCC 566 (Mohd.Yunus Vs. Mohd.Mustaqim and others)*** to contend that this Court cannot exercise of its jurisdiction under Article 227 of Constitution of India, unless serious dereliction of duty and flagrant violation of fundamental principles of law or justice are involved. The learned senior counsel has also relied upon another judgment reported in ***(2001) 8 SCC 97 (Estralla Rubber Vs. Dass Estate (P) Ltd.)*** for the same principle.

14.The learned senior counsel for the respondent has also relied upon a judgment of the Hon'ble Supreme Court reported in ***(2011) 14 SCC 579 (Anshul Aggarwal Vs. New Okhla Industrial Development Authority)*** to contend that in case of condonation of delay, the Court has to keep in mind that a special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions. The Hon'ble Supreme Court has also pointed out that 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. He had further relied upon a judgment of the Hon'ble Supreme Court reported in ***(2012) 8 SCC 524 (Cicily Kallarackal Vs. Vehicle Factory)*** wherein the Hon'ble Supreme Court has held that when the Special Courts/Tribunals have been constituted in order to provide expeditious remedies to the person aggrieved and the consumer protection Act, 1986 is one of them, condonation of delay in such cases, the Court must keep in mind the special period of limitation prescribed under the statute. The learned senior counsel has also relied upon a judgment of the Delhi High Court reported in ***2025 SCC Online Del 222 (General Manager, Northern Railways Vs. Harieen Kaur)*** wherein the High Court had refused to exercise the discretionary power under Article 227 of the Constitution of India where the delay has not been condoned by the National Commission unless the order shows complete lack of jurisdiction or perversity. Hence, he prayed for dismissal of the revision petition.

15.Heard both sides and perused the material records.

16.The issue now that arises for consideration is whether the revision petitioner has made out any sufficient cause for condoning the delay of 101 days in filing an appeal before the National Consumer

Disputes Redressal Commission.?

17.The Insurance Company has admitted the receipt of order copy from the State Consumer Commission on 25.04.2024. Admittedly, the appeal has to be filed on or before 25.05.2024. According to the Insurance Company, the order copy was misplaced in the Advocate Office and they have applied for certified copies of the documents filed on either side so as to number the appeal.

18.The above said reason has been assigned for the delay of 101 days. The affidavit filed in support of the condone delay application reveals that the copy application for receiving the certified copies of the documents have been filed on 12.07.2024 and 12.08.2024 much after a period of limitation. However, it could be seen that the demand draft for payment of Court Fees for filing the appeal has been taken on 01.07.2024. The National Consumer Disputes Redressal Commission (NCDRC) has not found the reason assigned by the insurance company as unbelievable or unreasonable. NCDRC has proceeded to dismiss the condone delay primarily on the ground that the insurance company is a corporate entity, having well qualified persons on its rolls and therefore, the delay cannot be condoned.

19.It is to be noted that the delay had happened only in the office of the Advocate who was handling the complaint before the State Consumer Commission and no delay is attributed to the office of the insurance company. In such circumstances, the reason assigned by NCDRC for not condoning the delay is not legally sustainable.

20.The Hon'ble Supreme Court in a judgment reported in ***CDJ 2022 SC 680 (Manager, Indusind Bank Limited & Another Vs. Sanjay Ghosh)*** was pleased to condone the delay of 67 days in filing a revision before NCDRC after pointing out that the question of limitation is not to be examined with a view to decline the condonation, but to do substantial justice. It is to be noted that the appellant before NCDRC in that case was a banking company. This Court is inclined to follow the said judgment of the Hon'ble Supreme Court.

21.In view of the above said deliberations, the order impugned in the revision petition is set aside and the civil revision petition is allowed. The delay in filing the appeal before the National Consumer Disputes Redressal Commission, New Delhi is condoned on condition to pay a cost of Rs.25,000/- to the respondent herein on or before 23.04.2025.

On proof of payment of such cost before the prescribed time, NCDRC may proceed to dispose of the appeal on merits and in accordance with law.

01.04.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The National Consumer Disputes Redressal Commission,
New Delhi

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR, J

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Pre-delivery order made in
C.R.P.(NPD)(MD).No.379 of 2025

01.04.2025