

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on:- 22.12.2022

Pronounced on:- 30.12.2022

OWP No. 278/2013

United India Insurance
Company Limited

...Petitioner/ Appellant(s)

Through: Mr. N.H. Khuroo, Advocate

V/s

Ghulam Nabi Bhat & Ors.

...Respondent(s)

Through: Mr. Syed Sajad Geelani, Advocate

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE.

JUDGMENT

.12.2022

1. This is a petition by United India Insurance Company ["the Insurance Company"] against the order dated 01.01.2013 passed by J&K State Consumer Disputes Redressal Commission, Srinagar, [" the Commission"].
2. The Commission, in terms of order dated 01.01.2013 ["the impugned order"] has allowed the appeal of the respondent no. 1 i.e., Appeal No. 2 of 2012 and condoned the delay involved in instituting the complaint before Divisional Consumer Protection Forum ["The Divisional Forum"] subject to payment of Rs. 1000/- as costs.

3. The respondent no. 1 being the owner of Tata Truck bearing registration No. JK05/5121 got it insured with the Insurance Company for a sum of Rs. 4 lacs vide insurance policy No. 111464/24/1/519/2007. The insurance policy was effective from 31.05.2007 to 30.05.2008. During the currency of the insurance policy, the vehicle of respondent no. 1 which was being driven by one Farooq Ahmad Bhat met with an accident at Chanderkote, as a result whereof the driver died on spot and extensive damage was caused to the vehicle. In respect of the accident, an FIR was registered with the Police Station Chanderkote.
4. Immediately after the accident, the respondent no. 1 lodged a claim for indemnification with the insurance company. The insurance company deputed a Surveyor for assessment of loss. The matter remained pending with the Insurance Company and it was in the year 2009 a communication was received by the respondent no. 1 from the Insurance Company to submit the driving licence of the driver who, at the relevant point of time, was driving the vehicle and had lost his life in the accident. In view of the death of the driver in the accident, the respondent no. 1 could not locate the driving licence as a result the company did not settle the claim.
5. Be that as it may, the company eventually vide its communication dated 23.09.2009 repudiated the claim of

the respondent no.1. Accordingly a complaint was filed by the respondent no. 1 before the Divisional Forum on 31.12.2009. It needs to be noticed that accident involving the Truck took place on 17.09.2007. In his complaint the respondent no. 1 sought indemnification of the loss suffered by him on account of damage to the insured vehicle in the accident from the insurance company.

6. The complaint was entertained by the Divisional Forum and the same was opposed by the Insurance Company on merits. The plea of limitation was not pleaded or pressed into service to oppose the complaint of the respondent no. 1. However, at the time of final consideration of the complaint, the plea of limitation was, for the first time, pressed into service by the company. It was argued on behalf of the company that the cause of action to file the complaint accrued to the respondent no. 1 on the date of accident i.e 17.09.2007, and, therefore, in terms of section 18-A of the J&K Consumer Protection Act, 1987 [“ 1987 Act”], the period of limitation for filing the complaint, which is two years from the date of accrual of cause of action, expired on 16.09.2009. The complaint filed on 31.12.2009, was thus, barred by limitation.
7. On behalf of the company, it was further submitted that the respondent no. 1 having not filed any formal application seeking condonation of delay was not entitled to maintain his

time barred complaint. It was thus urged to the Divisional Forum to dismiss the complaint of respondent no. 1 as barred by limitation.

8. *Per Contra*, on behalf of respondent no. 1, it was argued before the Divisional Forum that the cause of action to file the complaint accrued to the respondent no. 1 on the date of repudiation of claim i.e 23.09.2004, and, therefore, the complaint filed on 31.12.2009 was within time.
9. The Divisional Forum having considered the rival contentions and gone through the provisions of Section 18-A of the 1987 Act, concluded that the complaint filed by respondent no. 1 was hit by limitation and accordingly dismissed the same vide its order dated 28.04.2012.
10. Feeling aggrieved and dissatisfied with the order of the Divisional Forum, respondent no. 1 filed an appeal before the Commission who, without going into lengthy arguments advanced on both sides, condoned the delay in filing the appeal subject to payment of costs of Rs. 1000/- to be paid by respondent no. 1.
11. The Commission was of the opinion that delay of few months was inconsequential, and, therefore, the technical plea of limitation should not become the reason for avoiding the decision of the complaint on merits. This was done by the Commission vide its order dated 01.01.2013 which is

challenged before us in this writ petition filed under Article 226 of the constitution of India.

12. Having heard learned counsel for the parties and perused the material on record, following questions emerge for determination:-

- a. Whether the period of limitation for filing a consumer complaint under section 18-A of the 1987 Act, can be condoned by the Divisional Forum or the Commission as the case may be, even if there is no formal application by the complainant demonstrating that he had sufficient cause for not filing the complaint within such period?
- b. In other words whether the word “may” used in sub section 1 of section 18-A renders the provisions of section 18-A directory, and, therefore, there is always discretion in the Divisional Forum or State Commission as the case may be to *suo-moto* condone the delay beyond the period of two years i.e period of limitation prescribed?
- c. What exactly is the “cause of action” to file a complaint in case of loss caused to the insured vehicle in an accident?
- d. In other words whether for the purposes of reckoning the period of limitation, in such cases the cause of action accrues to the complainant on the date the loss

is caused in the accident or from the date the claim of the complainant /insured is formally repudiated by the company?

13. With a view to appreciate the above questions, it is necessary to first set out Section 18-A of the 1987, Act, herein below:-

Section 18-A. Limitation Period.

(1) “The Divisional Forum or the State Commission may not admit a complaint unless it is filed within two years from the date on which the cause of action arises. Notwithstanding anything contained sub-section (1), a complaint may be entertained after the period specified in sub-section (1) if the complainant satisfies the Divisional Forum or the State Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period: Provided that no such complaint shall be entertained unless the Divisional Forum or the State Commission, as the case may be, records its reason for condoning such delay.”

14. From plain reading of section 18-A, it clearly transpires that by use of the word “may” a discretion has been conferred upon the Divisional Forum or the State Commission as the case may be, to admit a complaint even after expiry of period of limitation i.e two years from the date of accrual of cause of action.

15. In contradistinction to the word “may” used in section 18-A, the Central Consumer Protection Act, 1986, uses the word “shall” and perhaps makes the provision mandatory. It is well established canon of statutory interpretation that the words “may” and “shall” are interchangeably used. Whether these words “may” and “shall” denote mandatory or directory nature of the provision depends upon the context in which these are used and also nature and object of legislation, in which these words are used.
16. In the instant case, this issue is no longer *res integra* in view a Division Bench judgment of this Court in **Insurance Company Vs. Posnkar Nath Pandita & Sons 2010 (2) JKJ 412.** As is held by the Division Bench of this Court sub-section 1 of section 18-gives discretion to the Divisional Forum or the State Commission as the case may be to entertain the complaint even beyond the expiry of two years from the date of accrual of cause of action. This is notwithstanding that the delay beyond the period of two years is condonable on the complainant satisfying the Divisional Forum or the State Commission as the case may be that he had sufficient cause for not filing the complaint within such period. It also needs to be noticed that the proviso appended to section 18-A only regulates the discretion to be exercised by the Divisional Forum/State Commission for entertaining the complaint beyond a period

of two years. The Divisional Forum /State Commission is under an obligation to record its reasons for condoning the delay in filing the complaint beyond the period of two years.

17. Learned counsel for the appellant tried to distinguish the judgment of the Division Bench of this Court in case titled as **Insurance Company Vs. Posnkar Nath Pandita & Sons** , by arguing that the judgment of the Division Bench, if accepted to be lying down good law, would render the second part of sub-section 1 of section 18-A redundant.

18. Without going into that aspect of the matter and feeling bound by the earlier Division Bench Judgment passed in **Posnkar Nath Pandita & Sons**, (supra) we are inclined to fall in line with the aforesaid judgment. Section 18-A read in its entirety would mean that ordinarily a consumer complaint is required to be filed within two years from the date of accrual of cause of action. However, it is always in the discretion of the Divisional Forum/ Consumer Commission to entertain such complaint even beyond the period of two years, though such discretion must be informed by reasons to be recorded while condoning the delay. That apart, the delay in filing the complaint can also be condoned on the complainant demonstrating sufficient cause for not filing the complaint within limitation period. It would, therefore, emerge that in an appropriate case and for

reasons to be recorded, the Divisional Forum/ State Commission are empowered to entertain complaint beyond limitation. The complaint should not be entertained unless it is filed within two years, is a prescription directory in nature.

19. Having given our answer to question No. 1, it is time for us to move to the question No. 2.

20. The determination of question No. 2 depends purely on understanding the meaning of the term “cause of action” . The term “cause of action” is neither defined in the 1987 Act nor do we find its definition even in the Code of Civil Procedure. Indisputably the term “cause of action” is of wide import and has different meaning and connotations in different contexts. Generally the cause of action means bundle of facts which if proved or admitted entitle the complainant to the relief prayed for. The cause of action is essentially an event which gives occasion for seeking redressal of the grievance in the court of law. The cause of action in the context of limitation with reference to a contract of insurance may accrue to the aggrieved party on the date the contract of insurance is entered into; on the date the accident involving the insured vehicle takes place; or even the date on which the claim of the insured for indemnification is repudiated.

21. The view which we have taken herein is supported by the judgment of the Hon’ble Supreme Court in case of M/s

Transport Corporation of India Ltd. V.s Veljan

Hydrair Ltd., (2007) 3 SCC 142 para 11 & 12 of the

judgment which are relevant for our purpose are reproduced

hereunder:-

Para 11. Section 24-A of the Consumer Protection Act, 1986 provides that neither the District Forum nor the State Commission nor the National Commission shall admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. The term “cause of action” is of wide import and has different meanings in different contexts, that is when used in the context of territorial jurisdiction or limitation or the accrual of right to sue. It refers to all circumstances or bundle of facts which if proved or admitted entitles the plaintiff(complainant) to the relief prayed for. In the context of limitation with reference to a contract for carriage of goods, the date of cause of action may refer to the date on which the goods are entrusted, date of issue of consignment note, the date stipulated for delivery, the date of delivery, the date of refusal to deliver, the date of intimation or carrier’s request to wait for delivery as the goods being traced, the date of intimation of loss of goods, or the date of acknowledgement of liability.

Para 12. In this case, the consignment was entrusted to the appellant on 10.05.1996. On 08.11.1996, the respondent instructed the appellant to re-book the consignment. On

08.08.1998, 13.10.1998, 07.11.1998 and 08.12.1998, the respondent demanded delivery. By letters dated 15.12.1998, 21.06.1999 & 03.07.1999, the appellant assured the respondent that it was in the process of locating the goods and requested the respondent to wait and assured that it will inform about the status. Thereafter, the appellant did not inform the status. The complaint has been filed within two years from the date of receipt of the said letter dated 03.07.1999 and is in time. In fact in view of the request of the appellant to the respondent to wait till the consignment was traced, the limitation for an action would not start to run until there was a communication from the appellant either informing about the loss or expressing its inability to deliver or refusal to deliver, or until the respondent makes a demand for delivery or payment of value of the consignment after waiting for a reasonable period and there is non-compliance. Therefore, the complaint is not barred under section 24-A of CP Act.

22. In the instant case, the accident took place on 17.09.2007, but the claim for indemnification lodged by respondent no. 1 was formally repudiated on 23.09.2009. The repudiation of the claim cannot be but a cause of action to file the complaint. However, we are not saying that the cause of action did not accrue to the respondent no. 1 on the date of accident but as explained in the aforesaid judgment by the Hon'ble Supreme Court, the cause of action may

accrue at different stages and at different points of time, however, for the purposes of reckoning the period of limitation, what is relevant is the date when the cause of action last accrued.

23. We are aware that in the judgment of the Hon'ble Supreme Court of India rendered in a case of **Kendimalla Raghavaiah & Co. V.s Nationa Insurance Co. and ors. 2009 (5) SC 377.** it is held that with reference to a fire insurance policy, undoubtedly, the date of accrual of cause of action has to be the date on which the fire breaks out. However, the Division Bench of the Hon'ble Supreme Court has not adverted to the fact that the cause of action may in some cases accrue on more than one occasion and on different dates. As a matter of fact the earlier judgment of the Hon'ble Supreme Court rendered in case of **Veljan Hydrair Ltd.,** (supra) not laying down elaborately the law on subject is not noticed or discussed.

24. Be that as it may, in view of the clear exposition of law by the Hon'ble Supreme court in the case of **Veljan Hydrair Ltd.,** it is abundantly clear that the cause of action in the case of a contract of insurance shall also accrue on the date the claim, if any, lodged by the insured is repudiated.

25. Viewed from this angel, we find the complaint filed by the respondent no. 1 in time. Otherwise also, there is wide discretion vested in the Divisional Forum/ State Commission

to condone the delay beyond two years in an appropriate case by passing a speaking order. The judgment of the State Commission is though not well reasoned, does not produce results different from the one that we intend to.

26. In view of our answer to the twin questions framed above and the discussion made above, we find no merit in this petition and the same is, accordingly, dismissed. The District Commission [Divisional Forum earlier] under the Consumer Protection Act, shall proceed in the complaint and decide the same on merits.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
30.12.2022
"Nuzhat"

Whether the order is speaking: Yes

Whether the order is reportable: Yes