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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Jan-31-2012

Judge : The Honourable Shri. Justice K.R. Udayabhanu President

Appeal No. : First Appeal No. A/11/618 (Arisen out of Order Dated 16/07/2011 in Case No. CC/07/135 of District Thiruvananthapuram)

Appellant : Deepa and Another

Respondent : The Proprietor, Thampuratty Gas Agency and Another

Judgement :

JUSTICE SHRI. K.R. UDAYABHANU : PRESIDENT

The appellants are the complainants in CC.135/07 in the file of CDRF, Thiruvananthapuram. The application to condone the delay in filing the complaint vide I.A.192/09 was dismissed and consequently the complaint was also dismissed.

2. The complainants are the LRs/daughter and son of the deceased who sustained burn injuries on 17.5.04 when igniting the gas stove and died on 24.5.04. The complaint was filed on 24.5.07 ie beyond the period of limitation stipulated in the statute. It is after filing the complaint that the delay condonation petition was filed

to condone the delay of 335 days. In the affidavit filed by the 2nd complainant/son of the deceased in support of the application it is mentioned that soon after the incident the matter was reported to the 1st opposite party/gas agency who assured that adequate compensation will be awarded after consulting with the parent department, M/s Indian Oil Corporation and Insurance Company. Subsequently the 1st opposite party asked them to produce a certificate from the Taluk office. Accordingly the certificate dated was 24.09.2004 from the Taluk office was produced. He used to make enquiries. In the meantime the deponent met with an accident and was bed ridden for a couple of months. He is the only male member of the family. Hence the delay occurred.

3. It is submitted by the counsel for the appellants that the above legal heirship certificate was produced and waited for the opposite parties to take a decision on the matter and subsequently lawyer notice dated:5.4.07 was issued. In the reply notice on 28.4.07 the opposite parties have admitted that there is a valid insurance coverage with 2nd opposite party/insurance company. In the reply notice the allegation is with respect to the negligence on the part of the deceased. The appellant has relied on the decision of the National Commission in West Bengal Agro Industries Corporation Vs. Sri.Bijoy Kumar Roy and Others in Revision Petition Nos.850-851/1996 dated, 5th August 1999 wherein the delay on the ground of the assurances given by the dealer therein was found to be sufficient.

4. In the instant case we find that the statement in the affidavit filed by the 2nd complainant that he had submitted the legal heirship certificate as directed by the opposite party stands not disputed. Of course the 2nd complainant has not produced any objective evidence with respect to the accident sustained by him and treatment undergone. The 2nd complainant could have been directed to produce the same. All the same we find that in view of the nature of the claim that a person has died on account of the alleged manufacturing defect of the gas cylinder etc and in view of the fact that a proper delay condonation petition has been filed and in view of the fact that the sworn affidavit of the 2nd complainant that he had submitted the legal heirship certificate as directed by the 1st opposite party and the first opposite party had assured to contact the manufacturer of the gas cylinder and the insurance company and pay the compensation we find that

the Forum ought to have allowed the delay condonation application filed.

5. In the circumstances the order of the Forum is set aside. The appeal is allowed. The matter is remitted back to the Forum for disposal on merits. The matter stands posted before the Forum on 29.2.2012.

Office will forward the LCR along with a copy of this order to the Forum.

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