

DR. A. SURESH KUMAR & ORS.

A

v.

AMIT AGARWAL

(Civil Appeal No. 988 of 2021)

JULY 08, 2021

B

[VINEET SARAN AND DINESH MAHESHWARI, JJ.]

*Consumer Protection Act, 1986: Claim for medical negligence against appellant-doctors – Appellants filed reply but with a delay of 7 days beyond the period of 30+15 days (45 days) – National Commission rejected application for condonation of delay in filing written statement on the ground that in Constitution Bench judgment of Supreme Court in *National India Assurance v. Hilli Multipurpose Cold Storage, it was held that the delay beyond the period of 30+15 days (45 days) cannot be condoned by National Commission – Held: It is categorically stated in the CB judgment that it would operate prospectively – In the instant case, since the application for condonation of delay was filed prior to the CB judgment, the said application for condonation of delay ought to have been considered on merits and should not have been dismissed on the basis of the CB judgment – Order of National Commission set aside – Delay in this case was only for 7 days for which valid explanation was given – With the consent of parties, delay of 7 days is condoned but on payment of Rs. 25000/- – Limitation – Delay, condonation of.*

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**New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited (2020) 5 SCC 757 – followed.*

F

Case Law Reference

(2020) 5 SCC 757

followed

Para 1

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 988 of 2021.

G

From the Judgment and Order dated 14.12.2020 of the National Consumer Disputes Redressal Commission at New Delhi in Interlocutory Application No. 18361 of 2019 in CC No. 480 of 2019.

H

A Anand Shankar Jha, Arpit Gupta, Girish Bhardwaj, Abhilash Gopinath, Shubham Tripathi, Advs. for the Appellants.

Amalpushp Shrotri, Adv. for the Respondent.

The following Order of the Court was passed:

B **ORDER**

The respondent had filed a claim for medical negligence against the appellants-Dr. A. Suresh Kumar and others. The appellants filed their reply but with a delay of 7 days beyond the period of 30+15 days (45 days). The National Consumer Disputes Redressal Commission (for short 'NCDRC') rejected the application for condonation of delay in filing the written statement on the ground that in the Constitution Bench judgment of this Court in the case of *New India Assurance Company Limited vs. Hilli Multipurpose Cold Storage Private Limited*, reported in (2020) 5 SCC 757, it has been held that the delay beyond the period of 30+15 day (45 days) cannot be condoned by the NCDRC. However, in paragraph 63 of the said judgment dated 04.03.2020, it is categorically stated that this judgment would operate prospectively. In the present case, the written statement was filed by the appellants on 25.11.2019 with an application for condonation of delay of 7 days.

In our view, since the application for condonation of delay was filed prior to the judgment of the Constitution Bench, which was delivered on 04.03.2020, the said application for condonation of delay ought to have been considered on merits and should not have been dismissed on the basis of the Constitution Bench judgment in the case of *New India Assurance Company Limited* (supra) because the said judgment was to operate prospectively and the written statement as well as the application for condonation of delay had been filed much prior to the said judgment.

Accordingly, the impugned order of the NCDRC deserves to be, and is, hereby set aside.

G At this stage, learned counsel for the parties have submitted that this Court may consider the matter with regard to the condonation of delay of 7 days, which has been rejected by the NCDRC.

H Having heard learned counsel for the parties and after going through the record and for the reasons given in the application for condonation of delay filed before the NCDRC and also considering the

fact that the delay was only for 7 days for which valid explanation has been given and with the consent of learned counsel for the parties, we condone the delay of 7 days in filing the reply by the appellants before NCDRC, but on payment of cost of Rs.25,000/- (Rupees twenty five thousand only). The said cost shall be paid by the appellants to the respondent within 15 days from today. In case, the said payment is not made, written statement already filed by the appellants on 25.11.2019 shall not be accepted. However, if the payment is made, the written statement shall be accepted by the NCDRC and every effort shall be made by the NCDRC to decide the complaint filed by the respondent as expeditiously as possible, preferably within six months.

The appeal stands allowed with the above observations.

Devika Gujral

Appeal allowed.