

CHETANKUMAR DINKARBHAI JANI V. UNITED INDIA INSURANCE CO. LTD.

**Chetankumar Dinkarbhaj Jani Vs. United India Insurance Co.
Ltd.**

**1. CHETANKUMAR DINKARBHAI JANI
REST. AT H/303, GHANSHYAM COMPLEX, NR.
CHANDLODIYA OVER BRIDGE, CHANDLODIYA,
AHMEDABAD
GUJARAT**

.....Petitioner(s)

Versus

**1. UNITED INDIA INSURANCE CO. LTD.
THROUGH ITS REGIONAL OFFICE, UNITED INDIA
BHAWAN, NR. INCOME TEX ASHRAM ROAD,
AHMEDABAD
GUJARAT**

.....Respondent(s)

Case No. : REVISION PETITION NO. 161 OF 2018

Date of Judgement: 01 December 2023

Judges : DR. INDER JIT SINGH

**For Petitioner : MR. MAYANK GAUTAM, ADVOCATE
MR. SOMESH CHANDRA JHA, ADVOCATE**

For Respondent : MR. RAJESH K GUPTA, ADVOCATE

Facts

- *Petitioner Chetankumar's Bolero pickup vehicle was stolen on the night of 21-22 November 2012.*
- *Petitioner went to police station on 22nd November to file FIR but was asked to search for vehicle first.*
- *FIR was filed on 24th November 2012 about theft of the vehicle.*
- *Insurance claim was filed after 2 months which was rejected by insurer United India Insurance due to late intimation.*
- *Petitioner filed complaint against insurance company rejection before District Forum which allowed the complaint.*
- *Insurance company appealed in State Commission which set aside District Forum order and allowed appeal of insurer.*
- *Hence the petitioner has filed this revision petition against State Commission order.*

Court's Elaborate Opinions

- *Complainant had approached police on 22nd November itself though FIR was filed on 24th Nov so he fulfilled the policy condition of immediate intimation to police in case of vehicle theft as per second part of Condition 1.*
- *Mere delay in written intimation to insurer should not result in denial of genuine claim as per Supreme Court decision in Om Prakash case.*
- *Facts of this case similar to Supreme Court case of Gurshinder Singh in which it was held that delay in intimation to insurer alone cannot be ground to repudiate claim which is otherwise genuine.*
- *Repudiation of claim by insurer in this case was thus held to be not proper.*

Sections and Referred Laws

- **Revision Petition filed under Section 21(b) of Consumer Protection Act 1986 against State Commission Order.**
- **Condition No. 1 of Insurance Policy referred related to intimation requirements in case of loss or theft.**
- **Order refers to Supreme Court judgements in Om Prakash v. Reliance General Insurance, Gurshinder Singh v. Shriram General Insurance and National Insurance Company Limited v. Nitin Khandelwal.**



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Court

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Full text of Judgement :

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 22.11.2017 of the State Consumer Disputes Redressal Commission Gujarat (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No 96 of 2015 in which order dated 26.11.2014 of Ahmedabad Rural District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum) in Consumer Complaint (CC) no. 211 of 2013 was challenged, inter alia praying for setting aside the order dated 22.11.2017 of the State Commission.

2. While the Revision Petitioner (hereinafter also referred to as Complainant) was Respondent and the Respondent (hereinafter also referred to as OP) was Appellant in the said FA No. 96 of 2015 before the State Commission, the Revision Petitioner was Complainant and Respondent was OP before the District Forum in CC no. 96 of 2015.

3. Notice was issued to the Respondent on 01.02.2018. Parties filed Written Arguments/Synopsis on 18.02.2019 and 24.06.2019 respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that Complainant was the owner of a Bolero Pick Up Vehicle bearing registration no. GJ-18-AV-0362 and was having insurance of the said vehicle from the respondent / Insurance Company. The said vehicle was parked in complex of his house, which got stolen in the intervening night of 21.11.2012 and 22.11.2012 (morning). Complainant went to Ghatlodia Police Station to lodge the complaint but concerned police officer asked him to look for the vehicle nearby but it was not traceable and so Complainant filed complaint before the Police Station on 24.11.2012. Claim was filed by the complainant before the Insurance Company but insurance company rejected the claim of the Complainant on the ground that complaint was filed later on and complainant informed the insurance company after 60 days, which is breach of condition no.1 of the policy. Being aggrieved of the repudiation, the Complainant filed CC before the District Forum and District Forum vide order dated 26.11.2014 allowed the Complaint. Being aggrieved, the OP preferred an appeal before the State Commission and State Commission vide order dated 22.11.2017 allowed the appeal of the OP / Insurance Company. Hence, the Complainant is before this Commission now in the present RP.

5. Petitioner has challenged the said Order dated 22.11.2017 of the State Commission mainly on following grounds:

i. Clause No.1 of the insurance policy has been complied by the Petitioner in as much as in case of theft or criminal act, the insured is supposed to give immediate notice to the police only and the immediate notice in writing to the company is only required upon the occurrence of any accidental loss or damage.

ii. In the copy of the FIR, at the bottom it has been alleged that appellant had approached the Police Station to lodge complaint on 22.11.2012, the date when vehicle was stolen but was instructed to carry out a search for the vehicle and, thereafter, complaint came to be registered on 24.11.2012. Even in the impugned order, it has been mentioned that Petitioner went to PS on 22.11.2022.

iii. Date of theft of the vehicle was between 21.11.2012 night to 22.11.2022 morning and the Petitioner approached the PS on the same day to file FIR.

iv. The petitioner had called upon the person on the date of theft who assisted in purchasing the vehicle and asked him to give the copy of FIR assuring that claim will be passed but no proper advice was given regarding the written intimation to the insurance company. The Petitioner also wrote an application to the service provider asking for the call details of the particular date but the service provider did not respond so.

v. The appellant was not aware of the condition of immediate intimation nor the agent informed the Petitioner to do so, otherwise the Petitioner would have given written intimation to the insurance company.

vi. The present case is covered by the case of Om Prakash Vs. Reliance General Insurance and Anr. Civil Appeal No.15611 of 2017 and National Insurance Company Limited V s. Nitin Khandelwal 2008 11 SCC 259

6. Heard counsels of both sides. Contentions/pleas of the

parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

6.1 Counsel for the Petitioner apart from repeating the points which are stated in para 5, grounds for challenging the order of the State Commission argued that insurance company by necessary implication has admitted that there is an ambiguity in the wording of the clause

and it is a settled law that in case where two interpretations are possible, the one favouring the insured shall be given effect to. Reliance is placed by the counsel for the petitioner on the findings of the Hon'ble Supreme Court in United India Insurance Co. Ltd. Vs. Pushpalaya Printers (2004) 3 SCC 694.

6.2 Counsel for the respondent argued that condition no.1 of the policy stipulates that in the event of any claim, immediate notice is required to be given in writing as it deprives the insurance company of its legitimate right to inquire into the alleged theft of vehicle and make an endeavor to recover the same. The FIR was lodged on 24.11.2012, after a gap of two days. Notice to respondent / insurance company was given on 24.01.2013 after gap of two months. The claim was repudiated on the ground of delay in intimation to the insurer and delay in filing the FIR within a reasonable time.

6.3. Reliance is placed on the following judgments of the Supreme Court / National Commission :

a. Gurshinder Singh Vs. Shriram General Insurance Co. Ltd. (2020) 11 SCC 612

b. Karambir Vs. Oriental Insurance Co. Ltd., RP No. 3623 of 2012

c. Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha, Civil Appeal No. 6739 of 2010.

d. New India Assurance Co. Ltd. Vs. Trilochan Jane, First

Appeal No. 321 of 2005

7. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. The claim of Complainant has been repudiated by the OP Insurance Company mainly on the ground of delay in informing the insurance company / lodging the complaint, which according to Insurance Company is breach of condition no.1 of the policy. State Commission accepting the contentions of Insurance Company, allowed the appeal. Extract of relevant para of State Commission's order is reproduced below:

"9. As per facts discussed above, Complainant has intimated the Insurance Company after period of two months and that too not immediately as per condition no.1 of the policy and so there is breach of condition no.1 of policy. Resultantly, decision of the Insurance Company rejecting the claim is correct and in consonance with the conditions of the policy. The decision of the Learned Forum allowing the complaint of the complainant with observations that there is no breach of condition no.1 of policy, is erroneous, wrong and incompatible with the records and is liable to be quashed and set aside."

8. Here it is to be noted that incident happened in the intervening night of 21.11.2012 and 22.11.2012, although the FIR was lodged on 24.11.2012. The Complainant contends that intimation to police was given on 22.11.2012 itself with a request to lodge FIR, but he was asked to carry out the search, which is evident from the footnote on the FIR. The claim was filed with Insurance Company after two months.

9. Condition no.1 of the policy is reproduced below:

"1. Notice shall be given in writing to the company immediately upon the occurrence of any accidental loss or damage in the event of any claim and thereafter the insured

shall give all such information and assistance as the company shall require. Every letter claim writ summons and/or process or copy thereof shall be forwarded to the company immediately on receipt by the insured. Notice shall also be given in writing to the company immediately the insured shall have knowledge of any impending prosecution, inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender."

10. Similar issues were considered by Hon'ble Supreme Court in Gurshinder Singh (supra) wherein Hon'ble Supreme Court held as under:

"14. We find, that the second part of Condition No. 1 deals with the 'theft or criminal act other than the accident'. It provides, that in case of theft or criminal act which may be the subject of a claim under the policy, the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender. The object behind giving immediate notice to the police appears to be that if the police is immediately informed about the theft or any criminal act, the police machinery can be set in motion and steps for recovery of the vehicle could be expedited. In a case of theft, the insurance company or a surveyor would have a limited role. It is the police, who acting on the FIR of the insured, will be required to take immediate steps for tracing and recovering the vehicle. Per contra, the surveyor of the insurance company, at the most, could ascertain the factum regarding the theft of the vehicle.

15. It is further to be noted that, in the event, after the registration of an FIR, the police successfully recovering the vehicle and returning the same to the insured, there would be no occasion to lodge a claim for compensation on account of

the policy. It is only when the police are not in a position to trace and recover the vehicle and the final report is lodged by the police after the vehicle is not traced, the insured would be in a position to lodge his claim for compensation.

16. As observed by the bench of two learned Judges in the case of *Om Prakash (supra)*, after the vehicle is stolen, a person, who lost his vehicle, would immediately lodge an FIR and the immediate conduct that would be expected of such a person would be to assist the police in search of the vehicle. The registration of the FIR regarding the theft of the vehicle and the final report of the police after the vehicle is not traced would substantiate the claim of the claimant that the vehicle is stolen. Not only that, but the surveyors appointed by the insurance company are also required to enquire whether the claim of the claimant regarding the theft is genuine or not. If the surveyor appointed by the insurance company, upon inquiry, finds that the claim of theft is genuine then coupled with the immediate registration of the FIR, in our view, would be conclusive proof of the vehicle being stolen.

17. That the term 'cooperate' as used under the contract needs to be assessed in facts and circumstances. While assessing the 'duty to cooperate' for the insured, inter alia the Court should have regards to those breaches by the insured which are prejudicial to the insurance company. Usually, mere delay in informing the theft to the insurer, when the same was already informed to the law enforcement authorities, cannot amount to a breach of 'duty to cooperate' of the insured.

18. We concur with the view taken in the case of *Om Prakash (supra)*, that in such a situation if the claimant is denied the claim merely on the ground that there is some delay in intimating the insurance company about the occurrence of the theft, it would be taking a hyper technical view. We find, that this Court in *Om Prakash (supra)* has rightly held that it would not be fair and reasonable to reject genuine claims

which had already been verified and found to be correct by the investigator.

19. We find, that this Court in Om Prakash (supra) has rightly held that the Consumer Protection Act aims at protecting the interest of the consumers and it being a beneficial legislation deserves pragmatic construction. We find, that in Om Prakash (supra) this Court has rightly held that mere delay in intimating the insurance company about the theft of the vehicle should not be a shelter to repudiate the insurance claim which has been otherwise proved to be genuine.

20. We, therefore, hold that when an insured has lodged the FIR immediately after the theft of a vehicle occurred and when the police after investigation have lodged a final report after the vehicle was not traced and when the surveyors/investigators appointed by the insurance company have found the claim of the theft to be genuine, then mere delay in intimating the insurance company about the occurrence of the theft cannot be a ground to deny the claim of the insured."

11. The facts of present case are squarely covered under the Gurshinder Singh (supra case). In this case, Complainant immediately informed the police about the theft and FIR was lodged within 2 days. There was a valid policy as on date of incident. Hence, the action of the Insurance Company in repudiating the claim was not correct. State Commission went wrong in allowing the appeal of Insurance Company and setting aside the order of District Forum. The order of State Commission suffers from a material irregularity and cannot be sustained, hence the same is hereby set aside. District Forum has given a well reasoned order. Hence the same is restored with additional cost of Rs.10,000/- to be paid by respondent / Insurance Company to the Petitioner herein. All payments as per this order to be made within 45 days, failing which it will carry interest @

12% p.a.

12. Revision Petition is disposed off accordingly.

13. The pending IAs in the case, if any, also stand disposed off.

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