

GAYATRI DEVI NISHAD V. V.K. MOTORS WORKS & 2 ORS.

Gayatri Devi Nishad Vs. V.K. Motors Works & 2 Ors.

1. GAYATRI DEVI NISHAD

S/O. SHRI PARGANIYA RAM NISHAD, ADDRESS
WEATHER DEPARTMENT LAL PUR,
RAIPUR
CHHATTISGARH

.....Petitioner(s)

Versus

1. V.K. MOTORS WORKS & 2 ORS.

THROUGH PROPRIETOR SHYAMRAJ VISHWAKARMA,
S/O. LT. PARASNATH VISHWAKARMA NEAR NEW
POLICE LINE, OPP PETROL PUMP, FATESH MARKET OPP
NARESHWAR MANDIR TALAB, TIKARAPARA,
RAIPUR
CHHATTISGARH

2. UNITED INDIA INSURANCE COMPANY LTD.

JEEVAN BIMA PARISAR, JEEVAN BIMA MARG, PANDRI
RAIPUR TEHSIL AND
DISTRICT-RAIPUR
CHHATTISGARH

3. UNITED INDIA INSURANCE COMPANY LTD.

REGISTERED AND MAIN OFFICE 24, WHITE ROAD,
CHENNAI-600014
TAMIL NADU

.....Respondent(s)

Case No. : REVISION PETITION NO. 1076-1077 OF 2019

Date of Judgement : 01 December 2023

Judges : DR. INDER JIT SINGH

For Petitioner : MOHD. ANIS UR REHMAN, ADVOCATE

For Respondent : MR. NISHANT GOEL, ADVOCATE FOR R-1

MR. ANIMESH SINHA, ADVOCATE WITH

MR. SHUBHAM BUDHIRAJA, ADVOCATE FOR R-2 & R-3

Facts:

- *Fire occurred at OP-1's premises causing damage to complainant's ambulance which was there for repairs.*
- *Vehicle was insured with OP-2 & OP-3 at the time. OP-2 did not respond to request for compensation.*
- *OP-1 initially assured free repairs but later demanded payment. This led to complaint alleging deficiency in service.*

District Forum Order:

- *Partly allowed complaint, directed OPs to pay Rs. 6,47,300 at 9% interest and Rs 25,000 compensation for mental agony.*

State Commission Order:

- *Allowed appeals filed by OPs, dismissed original complaint.*

Revision Petition Grounds:

- *Failure to examine documents and affidavits properly. Crucial evidence like vehicle damage due to OP-1's fire not considered.*
- *Insurance claim repudiation incorrect and not based on valid grounds. Reliance on incorrect version by insurer wrong.*

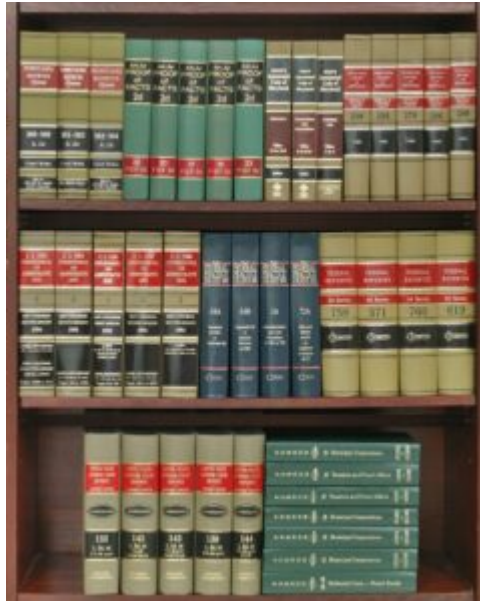
- *Overlooked facts like vehicle used as ambulance, surveyor's loss assessment of Rs. 6,47,300 on salvage basis.*
- *Order based on technicalities rather than merits.*

Court's Elaborate Opinion:

- *Repudiation based on alleged breach of road tax payment provisions seems vague. Specific clause violation not established.*
- *Principle of Contra Proferentem applies – interpretation against drafter when ambiguity exists.*
- *Facts different from cases laws cited. Here, valid insurance existed at time of incident. Delayed tax payment not explicit breach.*
- *Fire accidental, no willful default by OP-1. With valid insurance, only insurance company liable as per contract.*
- *Hence, State Commission order set aside. Insurance company directed to pay assessed loss with interest.*

Referred Laws and Sections:

- *Section 2(6) of Consumer Protection Act – Deficiency in Service*
- *Section 66 of Motor Vehicles Act – Permit requirement for vehicles over 3000 kg*
- *Referred Case Laws:*
 1. *United India Insurance Co. vs Sushil Kumar Godara*
 2. *Narinder Singh vs New India Assurance Co. Ltd*
 3. *Naveen Kumar vs National Insurance Co. Ltd*
 4. *Canara Bank v. United India Insurance Co. Ltd*



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Full text of judgement :

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent(s) as detailed above, under section 21(b) of Consumer Protection Act 1986, against the common order dated 24.04.2019 of the State Consumer Disputes Redressal Commission, Pandari Raipur, Chhattisgarh (hereinafter referred to as the 'State Commission'), in First Appeal (FAs) No. 1091/2018 & 28/2019 in which order dated 26.11.2018, District Consumer Disputes Redressal Forum, Raipur (hereinafter referred to as District Forum) in Consumer Complaint (CC) no. 508/2015 was challenged, inter alia praying to set aside the order passed by State Commission and allow the present revision petition.

2. Two separate appeals were filed by OPs in which the Revision Petitioner (hereinafter also referred to as complainant) was Respondent-1, the Respondent-2 & 3 (hereinafter also referred to as OP-2 & 3) were Appellants and Respondent-1 (hereinafter also referred to as OP-1) was Respondent-2 in the said FA/1091/2018; the Revision Petitioner (hereinafter also referred to as complainant) was

Respondent-1, the Respondent-1 (hereinafter also referred to as OP-1) was Appellant and Respondent-2 & 3 (hereinafter also referred to as OP-2 & 3) were Respondent-2 & 3 in the said FA/28/2019 before the State Commission, the Revision Petitioner was complainant and Respondent(s) were OPs before the District Forum in the CC no. 508/2015. Parties will also be referred to as they were arrayed before the District Forum.

3. Notice was issued to the Respondent(s) on 21.01.2022. Parties filed Written Arguments/Synopsis on 12.12.2022 (complainant), 19.12.2022 (OP-1) and 14.12.2022 (OP-2 & OP-3) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:-

The complaint outlines the occurrence of a fire at the premises of OP-1, resulting in extensive damage, including the Complainant's Chevrolet Tavera Ambulance. Despite the vehicle being insured during the incident, the insurance company, OP-2, purportedly did not respond to the Complainant's request for repair or compensation. Allegedly, OP-1 initially assured the Complainant of cost-free repairs but later demanded a substantial sum for the vehicle's restoration. This apparent discrepancy between assurances and subsequent demands led the Complainant to assert a deficiency in service by both OP-1 and OP-2, prompting the filing of the complaint seeking redressal for the unfulfilled promises and lack of action by the involved parties.

5. Vide Order dated 26.11.2018, in the CC no. 508/2015, the District Forum has partly accepted the complaint and directed OPs to pay a sum of Rs. 6,47,300/- @ 9% p.a. and to pay compensation of Rs. 25,000/- towards mental agony.

6. Aggrieved by the said Order dated 26.11.2018 of District Forum, OPs/Respondents appealed in State Commission and the

State Commission vide common order dated 24.04.2019 in FA/1091/2018 & FA/28/2019 has allowed the appeals and dismissed the complaint, exonerating OPs from any liability.

7. Petitioner has challenged the said Order dated 24.04.2019 of the State Commission mainly on following grounds:

i. The State Commission's failure to thoroughly examine the presented documents and affidavits led to an order that contradicts established laws. They overlooked crucial evidence, such as the fact that the complainant's vehicle was damaged due to a fire in OP-1's garage, holding OP-1 responsible. Additionally, they did not consider that the complainant's vehicle was insured with OP-2 & OP-3, and the appointed surveyor assessed the loss, as awarded by the District Forum.

ii. The insurance company's repudiation is incorrect, as it was not based on the correct grounds. The State Commission's reliance on the insurer's version, which presented a different incident than the one claimed by the complainant, is erroneous. The learned State Commission erred by failing to consider the crucial fact that the complainant's vehicle was used for ambulance purposes, weighing 2335 kilograms. According to Section 66 of the Motor Vehicle Act, a permit is required for vehicles exceeding 3000 kilograms. Therefore, the dismissal of the complaint and the allowance of the appeal by the State Commission constitute a legal error.

iii. The State Commission overlooked crucial facts surrounding the vehicle's location and the fire incident at OP-1's workshop. Additionally, the assessment of the loss by the surveyor appointed by OP-2, valuing it at Rs. 6,47,300/- based on salvage, was reportedly disregarded by the State Commission. Furthermore, the dismissal of the complaint was allegedly based on technicalities rather than a thorough consideration of the case's merits. The State Commission's order is based on presumptions rather than a proper assessment

of the evidence presented.

8. 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.

i. The counsel for petitioner/complainant argued that the District Forum initially allowed the complaint and directed the respondents/OPs to pay the assessed amount by the surveyor, along with interest, mental harassment compensation, and the cost of the suit. The OPs appealed against the District Forum's order to the State Commission, and the State Commission allowed their appeal, resulting in the dismissal of the complaint. The counsel argues that the vehicle was entrusted for repair to OP-1, and the damage occurred in OP-1's garage due to a fire. Therefore, OP-1 bears responsibility for the loss, and the version of events provided by OP-1 is false. Additionally, the vehicle was insured with OP-2 & OP-3, and the appointed surveyor assessed the loss. The repudiation of the insurance claim is questionable, and the grounds cited for repudiation were incorrect.

ii. The counsel further asserts that the vehicle, weighing 2335 kilograms, was utilized as an ambulance and according to Section 66 of the Motor Vehicle Act, a permit is required for vehicles exceeding 3000 kilograms. The complainant's vehicle was stationed in the workshop of OP-1 and was destroyed in a fire within OP-1's workshop. OP-2 appointed a surveyor who, on a salvage loss basis, assessed the loss at Rs. 6,47,300/-. The state commission, without taking these facts into consideration, issued an order that is deemed illegal and not maintainable under the law.

iii. The argument presented by the counsel for Respondent-1/OP-1 revolves around Section 2(6) of the Consumer Protection Act, contending that a complaint must demonstrate a

deficiency in service to be considered valid. It is emphasized that the fire, resulting from a short circuit in OP-1's garage, was purely accidental, and there is no evidence of negligence on OP-1's part in safeguarding the complainant's vehicle. The State Commission concurred with the perspective that the complainant himself acknowledges the absence of any deficiency in services concerning the security of the vehicle. Additionally, the State Commission acknowledged that the complainant cannot simultaneously seek compensation from OP-1 for the damaged vehicle while also claiming insurance money from other parties (OP-2 & OP-3) for the same vehicle. This simultaneous claim for compensation and insurance is regarded as contradictory and contrary to legal principles.

iv. The State Commission further observed that, according to the complainant's own admission, the vehicle was adequately insured. Consequently, if compensation for the loss of the vehicle is to be sought, it should fall within the purview of the insurance companies (OP-2 & OP-3), rather than OP-1, in whose garage the fire occurred. The State Commission underscores the substantial financial loss and distress incurred by OP-1 due to the fire. OP-1 had promptly reported the incident to the police and was advised to pursue the matter in the appropriate legal forum. Stressing the absence of any established deficiency in service on the part of OP-1, the State Commission concurs that OP-1 is also a victim of the unfortunate incident.

v. The counsel for OP-2 & OP-3 argued that the insurance company repudiated the complainant's claim based on the grounds that the complainant had violated provisions of the Motor Vehicles Act, 1988, specifically by driving an ambulance on public roads without paying the requisite road tax. This breach of policy was cited as the reason for repudiating the claim. The complainant's subsequent action of paying the road tax on 20.04.2015, post the loss event for the outstanding period from 01.01.2014 till 30.06.2015 is self-evident. This

act, undertaken to comply with legal requirements, indicates that the complainant had been driving a commercial vehicle on public roads for more than 11½ year is clear breach of the law.

vi. The counsel for OP-2 & OP-3 asserts that the complainant's case essentially seeks a re- evaluation of evidence, which is not within the permissible scope of a Revision Petition. The revision petition should address errors on the face of the record or jurisdictional errors of which the complainant has failed to demonstrate. The counsel further contends that the claim is not payable as the damage to the vehicle resulted from internal defects, and according to the policy terms, internal damages are not covered. Furthermore, they argue that the complainant, by failing to take measures to keep the vehicle safe until its repair, exhibited negligence and this absolves Insurance Company from liability to pay the claim.

vii. The counsel relied on following judgements:

a. Lourdes Society Snehanjali Girls Hostel and Ors. vs. H&R Johnson (India) Ltd. and others, (2016) 8 SCC 286

b. Rubi (Chandra) Dutta vs. United India Insurance Co. Ltd. (2011) 11 SCC 269

c. United India Insurance Co. vs. Sushil Kumar Godara, Civil Appeal No. 5887/2021, SC, Para 11, 12, 13 & 14

9. In United India Insurance Co. vs. Sushil Kumar Godara, Civil Appeal No. 5887/2021, decided on 30.09.2021, Hon'ble Supreme Court held that "when an insurable incident that potentially results in liability occurs, there should be no fundamental breach of the conditions contained in the contract of Insurance." In this case, the temporary registration of vehicle had expired on the date of incident, the respondent had not applied for registration or that he was awaiting registration, the vehicle was not only driven, but also taken to another city, where it was stationed overnight, and got

stolen there. Hon'ble Court, applying the ratio of *Narinder Singh vs. New India Assurance Co. Ltd.* (2014) 9 SCC 324 observed that this case was in the context of an accident is immaterial. It is of no consequence that the car was not plying on the road, when it was stolen, the material fact is that concededly, it was driven to a place from where it was stolen, after the expiry of temporary registration. But for its theft, the respondent would have driven back the vehicle. In *Narinder Singh (Supra)* the claim was in the context of an accident, involving a vehicle, the temporary registration of which had expired. The Hon'ble Court held that the insurer was not liable, and observed that:-

"11. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner.

12. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11-1-2006 and the alleged accident took place on 2-2-2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11-1-2006, when the period of temporary registration expired, the appellant, owner of the vehicle, either applied

for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract."

10. In Naveen Kumar vs. National Insurance Co. Ltd. (RP/250/2019, decided on 26.11.2015, NCDRC in a reference, held as follows:-

"9. For the reasons stated hereinabove, the reference is answered in following terms:-

(i) If a vehicle without a valid registration is or has been used/driven on a public place or any other place that would constitute a fundamental breach of the terms and conditions of the contract of insurance even if the vehicle is not being driven at the time it is stolen or is damaged: (ii) If a vehicle without a valid registration is used/driven on a public place or any other place, it would constitute a fundamental breach of terms and conditions of the policy even if the owner of the vehicle has applied for the issuance of a registration in terms of S.41 of the Act before expiry of the temporary registration, but the regular registration has not been issued".

11. In the instant case, OP Insurance Co. had repudiated the claim on the ground that the complainant had violated provisions of Motor Vehicles Act by driving the ambulance on public roads without paying the requisite road tax. The question arises as whether non- payment of road tax can be construed as violation of Motor Vehicle Act and whether plying a vehicle on road without paying road tax constitute an offence punishable under Motor Vehicle Act, 1988 on the same footing as driving without a valid registration, either temporarily or permanent, which are in clear violation of

Section 39 and 192 of the Motor Vehicle Act, 1988. In this instant case the road tax was paid subsequently, post the event. We are of the considered view that facts of the present case are distinguishable from the cases in Sushil Kumar Godara (Supra) and Narinder Singh (Supra) as there is specific mention of repudiation based on non-payment of road tax as a fundamental breach. However, it's not clearly established or explicitly mentioned that delayed road tax payment can warrant claim rejection or constitute a breach of the agreement. The exclusion clauses in question seem vague, with the OPs unable to specify the exact clause or section violated. Considering this ambiguity, the principle of Contra proferentem applies, where vague repudiation grounds without specific violations may not hold weight. This principle suggests that in cases of ambiguity, the interpretation should be against the party drafting the contract, placing the onus on the insurer to provide explicit and unambiguous clauses when repudiating a claim. It was held by Hon'ble Supreme Court in Canara Bank v. United India Insurance Co. Ltd., (2020) 3 SCC 455 that:-

“Insurance Policy must be read holistically so as to give effect to reasonable expectations of all the parties including the insured and the beneficiaries- it must be interpreted in a commercially sensible manner coverage clauses to be read broadly, and ambiguity, if any, to be resolved in favour of insured-exclusions to be read narrowly.”

12. In view of above, we conclude that action of Insurance Co. in repudiating the complainants claim is not correct. When the incident of fire happened at the workshop of OP-1, the vehicle was covered under a valid Insurance policy, Complainant was in no way responsible for the incident, mere fact of non-payment of road tax for certain period prior to this date, which was paid subsequent to date of incident, is not a valid reason to repudiate the claim. Hence, the State Commission went wrong in setting aside the order of District Forum and dismissing the complaint. Hence, the order of State Commission cannot be

sustained and is hereby set aside.

13. As the incident of fire at the workshop of OP-1 is not due to any willful default on the part of OP-1, and was mere an incident of accidental fire due to short circuit, and the vehicle in question had a valid Insurance at the time of incident, agreeing with the contentions of OP-1/Respondent-1 herein, we hold only Respondent-2 and Respondent-3 i.e. Insurance Company liable for the loss. Accordingly, the repudiation order of Insurance Company is set aside, complaint is allowed with directions to OP-2 & OP-3/Respondent-2 & Respondent-3 herein. Insurance company to pay the loss as assessed by the surveyor i.e. Rs. 6,47,300/-, along with simple interest @9% p.a. from the date of complaint i.e. 02.09.2015 till the date of payment, along with litigation cost of Rs. 25,000/-. All payments to be made within 45 days of this order, failing which it will carry interest @12%p.a.

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

—END—