

Insurance claim repudiation and award of compensation: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

RELIANCE GENERAL INSURANCE COMPANY LTD.

...Appellant

RAM MEHAR

...Respondent

Case No: REVISION PETITION NO. 117 OF 2017

Date of Judgement: 01 January 2024

Judges:

SUBHASH CHANDRA – PRESIDING MEMBER

For Appellant: MR NAVNEET KUMAR, MR SAURABH TIWARI, ADVOCATES

For Respondent: MR RAM MEHAR SHARMA, ADVOCATE

Facts:

Respondent's commercial vehicle insured by petitioner for Rs 2,25,000. Vehicle met with accident on 09.09.2009 and seized by police. Intimation of accident given on 24.09.2009, breaching policy condition of immediate intimation. Claim repudiated as per breach of condition, consumer complaint filed. District Forum allowed complaint on non-standard basis for 75% as per Supreme Court judgment in Amlendu Sahoo case. State Commission on appeal modified order to full Insured Declared Value (IDV) of Rs 2,25,000 with entitlement to salvage by insurance company. Revision petition filed on ground order suffered material irregularity.

Order of District Forum:

Complainant obligated to intimate insurer within stipulated period as per policy terms. Accident on 09.09.2009 but intimation on 24.09.2009, after 15 days delay breaching terms. As per Supreme Court judgment in Amlendu Sahoo case, compensation can be granted on non-standard basis in such cases. Following guidelines in the judgment, compensation granted on non-standard basis to extent of 75% of admissible claim.

Order of State Commission:

Argument by insurance company that compensation should at most be 75% as awarded by District Forum due to delay in intimation. Delayed intimation does not affect right to compensation in accident cases as per National Commission judgment in Gurmeet Kaur case. Vehicle taken into custody by police immediately, no chance of pilferation. District Forum erred in relying on Amlendu Sahoo judgment and awarding 75% compensation. Amlendu Sahoo was case of no valid driving licence and vehicle used for hire, requiring non-standard basis settlement. No such issue here, complainant entitled to entire IDV of Rs 2,25,000 subject to salvage deduction. Surveyor applied 40% deduction without basis only to favour insurance company.

Arguments by Petitioner:

State Commission erred in awarding IDV ignoring vehicle depreciation based on age. Claim was for damage, not theft, requiring assessment by applying depreciation as per policy. Award beyond claim amount and prayer is without jurisdiction. Surveyor report under Insurance Act can only be disregarded for valid reasons.

Arguments by Respondent:

Concurrent findings of fact by consumer fora, revision petition deserves dismissal.

Laws and Cases Referred:

Section 21(b) Consumer Protection Act 1986

Amlendu Sahoo Vs. Oriental Insurance Corporation, Civil Appeal No. 2703 of 2010

New India Assurance Company Limited vs Gurmeet Kaur and Others, 2015 (3 CLT 476)

***Sri Venkateswara Syndicate Vs. Oriental Insurance Co. Ltd. & Anr.,
(2009) 8 SCC 507***

Opinion of the Commission:

Issue is whether orders of consumer fora are justified or suffer from material irregularity. State Commission order modifies District Forum order based on surveyor assessment to IDV deduction salvage value. State Commission erred in equating accident/own damage with theft case. Surveyor report was not challenged but ignored without valid reasons. Supreme Court judgment in Venkateswara case holds insurer can disregard surveyor report only for valid reasons. In absence of challenge, State Commission order disregarding assessment based on policy terms is perverse. Averments in revision petition merit consideration.

Order:

Revision petition allowed, State Commission order set aside. Parties to bear own costs.

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Full Text of Judgment:

1.This revision petition under section 21(b) of the Consumer Protection Act, 1986 (in short, the 'Act') assails the order dated 17.05.2016 in First Appeal No. 269 of 2015 of the State Consumer Disputes Redressal Commission, Haryana (in short, the 'State Commission')upholding the appeal and modifying the order dated 29.04.2014 of the District Consumer Disputes Redressal Forum, Karnal (in short, the 'District Forum') in Consumer Complaint no.259 of 2011. The order of the District Forum partly allowing the complaint was upheld by the State Commission and the order modified to allow a higher compensation.

2.The relevant facts in the petition are that respondent's commercial vehicle no. HR 45A0412, model 2004 was insured by the petitioner for Rs 2,25,000/-. On 09.09.2009 the vehicle met with an accident and was seized by the police. Intimation about the accident was conveyed to

the petitioner on 24.09.2009 which was a breach of the condition of the policy which mandates immediate intimation. The claim preferred by the respondent was repudiated as a "noclaim" against which a consumer complaint was filed before the District Forum. The complaint was allowed on non-standard basis for 75% relying on the judgment of the Hon'ble Supreme Court in Amrendu Sahoo Vs. Oriental Insurance Corporation, Civil Appeal no. 2703 of 2010 with interest @ 9% till realization, compensation of Rs 3,000/- and legal cost of Rs 2,200/-. On appeal, the State Commission modified the order to the full Insured Declared Value (IDV) of Rs2,25,000/- with entitlement of the insurance company to salvage. This order is impugned before us by way of a revision petition on the ground that the order of the State Commission suffered from material irregularity.

3. I have heard the authorized representative of the petitioner and the learned counsel for opposite parties and carefully considered the material on the record.

4. The order of the District Forum had concluded that:

Therefore, after going through the legal precedents and the terms and conditions of the insurance policy, it is evident that the complainant was under obligation to intimate the OP about the loss/damages to the insurer within the stipulated period as per the terms and conditions of the insurance policy. In the instant case the accident had taken place on 09.09.2009 and the intimation was given on 24.09.2009, i.e., after delay of fifteen days and as such the intimation was not given as per requirement of the terms and conditions of the insurance policy. However, the Hon'ble Apex Court in Amalendu Sahoo vs OIC Civil Appeal no. 2703 of 2010 has held that in such like cases the claim can be granted on non-standard basis and has laid down the guidelines for granting compensation on non-standard basis.

In view of the guide lines laid down in Amalendu Sahoo's case (supra), we deem it proper to grant compensation on the basis of non-standard basis to the extent of 75% of the admissible claim.

5. The State Commission's order dated 17.05.2016 reads as under:

6. Learned counsel for the opposite parties vehemently argued that

accident took place on 09.09.2009 whereas intimation was given on 24.09.2009. In this way he violated the terms and conditions of insurance policy (Ex -6) and was not entitled for any compensation. At the most he was entitled for 75% as awarded by District Forum. Survey or rightly assessed loss to the tune of Rs.13,521/- so the appeal be dismissed.

7. This argument is of no avail. As far as the case of information is concerned the complainant cannot be deprived of compensation on this ground because it is a case of accident and not of theft. It is opined by Hon'ble National Commission in New India Assurance Company Limited vs Gurmeet Kaur and Others, 2015 (3 CLT 476) that in accident cases if intimation is not given to the insurance company immediately it does not affect the right of the insured. In theft insurer may be deprived of a chance to recover the vehicle, but, in case of accident vehicle is there and can be examined.

As per complainant vehicle was taken into custody by policy immediately and there was no question of pilfration. It is now here alleged by surveyor that due to this reason he was not in a position to assess the loss properly. Learned District Forum failed to take into consideration this aspect and awarded compensation @ 75% relying upon the opinion of Hon'ble Supreme Court expressed in Amalendu Sahoo vs OIC,

Civil appeal no.2703 of 2010 decided on 25.08.2010. In that case driver of the vehicle was not having a valid driving licence and the vehicle was being used for hire and reward purposes. That is why it was directed that the matter be settled on non-standard basis, whereas in the present case no such question is involved. Further survey or assessed loss to the tune of Rs.25,785/- but applied depreciation of 40% without any basis. As per cover note Ex C 11 dated 21.05.2009 the IDV was Rs.2,25,000/-. However the same was decreased to this extent after four months is no-where explained. It appears that to favour insurance company surveyor has applied this deduction. So the complainant is entitled to entire IDV of Rs.2,25,000/-. However, insurance company will be entitled for salvage. Impugned order is modified accordingly.

6.Ld. Counsel for the petitioner argued that the State Commission had erred in concluding that the respondent was entitled to the entire IDV of the vehicle and in not appreciating that the indemnification of the vehicle against loss in case of an accident was after due depreciation based on the age of the vehicle and could not be awarded on the basis of IDV as in a case of theft, as awarded by the State Commission. The prayer of the respondent was for a 'damage claim' and not 'theft'. It was argued that the instant case was one of 'own damage' and not of theft and therefore was required to be assessed as done by the surveyor by applying the depreciation at the prescribed rates as applicable to the Reliance Commercial Package Policy. It was also argued that the State Commission acted without jurisdiction in awarding compensation beyond the claim and the prayer of the respondent. It was also argued that the report/assessment of the surveyor is an important requirement under the Insurance Act, 1939 which cannot be ignored unless there were cogent and valid reasons. Ld. Counsel for the respondent pressed for dismissing the petition in view of the concurrent findings on facts of the lower fora.

7.The issue in this petition is whether the orders of the lower fora are justified or suffer from a material irregularity as alleged in the petition. The order of the State Commission awarding IDV with deduction for salvage modifies the order of the District Forum which is based on the surveyor's assessment on a non-standard basis. The State Commission has clearly erred in conflating an accident or 'own damage' case with that of a theft. The surveyor's report has also been ignored, even though the respondent/complainant before the District Forum and also the State Commission did not challenge it. As held by the Apex Court in Sri Venkateswara Syndicate Vs. Oriental Insurance Co. Ltd. & Anr., (2009) 8 SCC 507 decided on 24.08.2009 the insurer may disregard a surveyor's report and the insured can contest it but with valid reasons. In the absence of any challenge to the insurer's assessment of loss based on the policy mandates, the order of the State Commission has erred in disregarding these crucial aspects and concluding that:

"... surveyor assessed loss to the tune of Rs 25785 but applied depreciation of 40% without any basis. As per cover note Ex. C-11 dated

21.04.2009 the IDV was Rs2,25,000/-. How the same has decreased to this extent after 4 months is nowhere explained. It appears that to favour insurance company surveyor has applied this deduction.”

In view of the policy guidelines in place, the order of the State Commission is therefore perverse and deserves to be set aside.

8. In view of the aforesaid discussion, the averments in the revision petition merit consideration and the same is liable to succeed. The petition is accordingly allowed. Impugned order of the State Commission is hereby set aside. Parties will bear their own costs.

9. Pending IAs, if any, stand disposed of with this order.