

Repudiation of theft insurance claim due to delay in intimation and lack of reasonable care to safeguard insured vehicle: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

RAHUL RANKA

...Appellant

ORIENTAL INSURANCE COMPANY LIMITED

...Respondent

Case No: REVISION PETITION NO. 3895 OF 2017

Date of Judgement: 01 January 2024

Judges:

SUBHASH CHANDRA – PRESIDING MEMBER

For Appellant: MR UMESH NAGPAL, ADVOCATE

For Respondent: MR RAJESH K GUPTA, ADVOCATE

Facts:

The petitioner, Rahul Ranka, had insured his Maruti Swift car for Rs 4,01,000 with the respondent, Oriental Insurance Company Limited, from 28.07.2010 to 27.08.2011. On 27.08.2011, the vehicle was allegedly stolen from the limits of Gacchipura Police Station in Rajasthan. An FIR was lodged on 03.05.2011 under Section 379 IPC. The police filed a closure report stating that the vehicle could not be traced. The insurance company was informed about the theft on 28.04.2011, a day

after the incident. The company rejected the claim made by the petitioner. A legal notice was sent to the company on 07.04.2012, but the claim was still not settled. Hence, the petitioner approached the District Consumer Disputes Redressal Forum, Bhilwara by filing a complaint seeking the insured amount of Rs 4,01,000 along with compensation of Rs 1,50,000.

District Forum's Order:

The District Forum allowed the complaint and directed the insurance company to pay Rs 4,01,000 along with litigation cost and interest. It held that the company wrongly repudiated the claim on the ground of delay in intimation and lack of care to safeguard the vehicle. The company was duly informed about the theft, though with a day's delay, fulfilling the policy condition. As regards lodging FIR, it was done after 6 days, but this cannot be deemed as negligence by the complainant since the company was promptly informed. The contention that the driver failed to take steps to secure the vehicle was rejected since he went to collect the sale proceeds as assured, which indicates he had no knowledge of any foul play. The discrepancies in chassis number in FIR and RC documents were held as irrelevant. Hence, repudiation of claim was held illegal amounting to deficiency in service.

Arguments in Appeal:

The insurance company filed an appeal against the District Forum's order in the State Commission. It was argued that immediate intimation about theft, as per Condition 1 of policy, was not made by lodging FIR after 6 days. Further, as per Condition 4, the complainant failed to ensure safety of vehicle as the driver accompanied two unknown persons who later stole the vehicle after traveling about 230-250 kms. Judgments were relied upon to contend that delay in FIR lodging discharges insurer from liability and also that allowing unknown persons to travel results in lack of care. The complainant's arguments about driver being duped were refuted. Discrepancies in chassis numbers were also highlighted.

State Commission's Order:

The State Commission allowed the insurer's appeal and set aside the

order of the District Forum. It concurred with the insurance company's contentions. Relying on Supreme Court and National Commission judgments, it held that immediate lodging of FIR is a must and 6 days delay violates Condition 1. Further, the driver failed to take reasonable care in safeguarding the insured vehicle by traveling such long distance with unknown persons and hence Condition 4 was also breached. The claim, hence, deserved to be rejected.

Arguments in Revision Petition:

In the present revision petition before the National Commission, the complainant reiterated his arguments about the driver being duped and there being no negligence. Reliance was placed on the Supreme Court decision in Om Prakash case that only immediate intimation about loss is required to be given. Delay in lodging FIR should not result in claim denial.

Respondent's Arguments:

The insurance company contended that the District Forum's order allowing the claim was erroneous. The State Commission examined all documents and legal position and rightly set aside that order. Violations of Conditions 1 and 4 have been clearly established based on evidence as driver went with unknown persons for long distance and chassis numbers also did not match. No explanation was provided by the complainant. Mere delay in FIR is ground enough for claim repudiation as held Supreme Court in Gurshinder Singh case.

Court's Observations and Conclusions:

The National Commission concurred with the findings and conclusions of the State Commission after perusing the material on record. It found that the State Commission's order is well reasoned and relies on applicable Supreme Court judgments that delay in FIR beyond reasonable time violates policy Condition 1. Further, allowing unknown persons to travel long distance shows lack of reasonable care by driver to safeguard vehicle as per Condition 4. The order also details why the complainant's arguments were not satisfactory to discharge the burden of proof. Since policy terms were breached, repudiation of claim was valid. No interference was warranted with the State Commission's order. Consequently, the revision petition was dismissed.

Sections Referred:

Section 21(b) of Consumer Protection Act, 1986 – Revision jurisdiction of National Commission

Cases Cited and Referred:

Oriental Insurance Co. Vs. Parvesh Chander Chadha, Civil Appeal No. 6739 of 2010 – Delay in FIR filing discharges insurer

Shakuntala Devi Vs. United India Insurance Co., RP No. 3934 of 2012 – Delay in intimation about theft can invalidate claim

Maneet Singh Vs. National Insurance Co. RP No. 4419 of 2014 – Allowing unknown persons without reasonable care contributes to loss

Om Prakash Vs. Reliance General Insurance, Civil Appeal No. 15611 of 2017 – Only immediate intimation of loss required

Gurshinder Singh vs Shriram General Insurance Company Limited & Anr., (2020) 11 SCC 612 – Delay in intimation despite FIR can repudiate claim

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Court

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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 15.10.2017 in Appeal No. 674 of 2016 of the State Consumer Disputes Redressal Commission, Bench No. 1, Jaipur, Rajasthan (in short, the ‘State Commission’) setting aside the order dated 09.02.2016 of the District Consumer Disputes Redressal Forum, Bhilwara (in short, the ‘District Forum’) in Consumer Complaint no. 85 of 2014 which had upheld the complaint filed by the petitioner herein.

2.The brief conspectus of facts, as per the petitioner/complainant, are that the insured his Maruti Swift car no. RJ06 CA 7068 for Rs 4,01,000/- with the respondent from 28.07.2010 to 27.08.2011. The vehicle was stolen on 27.08.2011 from the limits of Police Station, Gacchipura,Nagore, Rajasthan. FIR No. 30/2011 was lodged on 03.05.2011 under section 379 IPC and areport was filed before the Court that the vehicle could not be traced which was accepted. The insurance company

was informed immediately, and a claim filed before it which was not settled. Therefore, a legal notice was sent on 07.04.2012 which was replied to though settlement of claim was not done. A complaint before the District Forum was therefore filed seeking the insured amount along with compensation of Rs 1,50,000/-. On contest, the complaint was ordered by the District Forum in petitioner's favour concluding that there was deficiency in service on part of the respondent/opposite party. On appeal, the State Commission set aside this order on the grounds that the FIR was lodged after 6 days of the theft thereby violating condition no. 1 of the Policy and that Policy condition no. 4 was also violated since the petitioner failed to ensure the safety of the vehicle leading to its loss by theft. The present petition assails this order.

3.I have heard the counsel for the parties and carefully perused the material on record.

4.The District Forum's order has held as under:

6. Condition 1 was that insurance company should be immediately notified in writing of theft. He also had to lodge FIR. Complainant informed insurance company a day late on 28.04.2011 through Exhibit 1, which shows that he did not make any delay. About lodging FIR, it was lodged after 6 days on 03.05.2011. It cannot be deemed dangerous because complainant informed insurance company immediately. Complainant informed insurance company immediately and fulfilled his duty. According to our view, it is baseless to repudiate the claim.

7. According to insurance company, condition 4 of policy that they try to save the vehicle was violated. The driver went with 2 unknown persons to bring the amount of vehicle at Makana which shows that he totally failed to save it. He should have known that it could happen. According to our view, it is robbery instead of theft. Driver went with them after deciding on the amount, to receive it. This is not unusual. It does not prove that driver failed to take any steps to secure the vehicle. If he knew about it, why would he even go with them. It was not possible for them to know, so its wrong to say that they failed to take steps to secure the vehicle. The inconsistency in chassis number in FIR and in vehicle documents is irrelevant and does

not prove that the vehicle was not stolen.

8. After going through the 2 reasons, we find that the repudiation of claim on ground on delay in intimation and safety is baseless.

9. Therefore, we find that insurance company made deficiency in service to repudiate the claim.

10. So, we admit the complaint and order insurance company to pay Rs.4,01,000/- within 2 months from date of order and 2000 as litigation cost within 2 months and 6% per annum interest from 06.02.2013 on Rs.4,01,000/-.

5. However, the State Commission's order in appeal set aside the order of the District Forum holding as follows:

The appellant has rightly relied upon the judgment passed by the apex court in Civil Appeal no. 6739/2010 Oriental Insurance Co. Vs. Parvesh Chander Chadha which was further reiterated by the National Commission in Revision Petition No. 3934/2012 Shakuntla Devi Vs. United India Insurance Co. and this Commission has also of the same view in First Appeal No. 1/2016 Nagji Bhai Patel Vs. New India Assurance Co. Hence, in view of the admitted fact that theft has not been reported to the police immediately, the appellant cannot be saddled with the liability to pay the claim and appeal is allowable on this ground alone.

The other contention of the appellant is that reasonable steps of safeguard the vehicle has not been taken as the driver of the vehicle went with unknown person who have stolen the vehicle. The FIR clearly shows that talks were going on between the driver of the vehicle and one Raghvendra Singh about the sale of the vehicle. Raghvendra Singh assured him to pay the sale proceed at Makrana and driver along with Raghvendra Singh and one other person went to Makrana to have sale proceed where they forced the driver to get off the vehicle and took the vehicle away.

The contention of the appellant is that if driver of the vehicle would have not allowed the unknown person to travel in the vehicle the incident could not happen and reliance has been placed on the judgment passed by the National Commission in Revision Petition No.4419/2014 Maneet Singh Vs. National Insurance Co. where the driver of the vehicle had given lift to unknown persons who have committed the crime but here in the present case the facts are peculiar one on the pretext

of purchase of the vehicle Raghvendra Singh and other persons travelled in the vehicle and the driver of the appellant bonafidely acted. Hence, it cannot be said that he has not taken reasonable steps to safeguard the vehicle from the loss.

The appellant has relied upon III (1998) CPJ 30 (NC) Bhai Bhagtu Cotton Factory Vs. National Insurance Co. where the cash was left in solitary car which is not the case here. Further reliance has been placed on the judgment passed by the National Commission in Revision Petition No. 1796/2015 M.D. Shamsur Alam Vs. Reliance General Life Insurance, Revision Petition No. 2795/2008 Oriental Insurance Co. Vs. Tara Singh, Revision Petition No. 1480/2016 Reliance General Insurance Co. Vs. Nitin Lamba where the keys of the vehicle were left in the vehicle which is not the case here.

Further reliance has been placed on the judgment passed by the Apex court in Civil Appeal No. 1375/2003 Surajmal Ramniwas Oil Mills Vs. United India Insurance Co. where open transit insurance policy was purchased and insured has not disclosed each and every consignment before it had left the factory. Hence, not at all applicable to the present controversy.

Hence, in view of the above that policy condition no. 1 has not been complied with, loss to the vehicle has not been reported immediately the claim should not have been allowed.

6. The instant revision petition relies upon the argument that there was no negligence on part of the driver and that it was a case of theft where the driver was duped by the persons accompanying him through criminal breach of trust. Hence condition no. 4 of the Policy was not violated. Reliance was placed on the judgment of Hon'ble Supreme Court in Om Prakash Vs. Reliance General Insurance, Civil Appeal No. 15611 of 2017 wherein it was laid down that intimation of accidental loss has to be given immediately upon occurrence and thereafter insured has to give all information and assistance as may be required.

7. On behalf of the respondent, it is contended that the petitioner took a private car package policy – Zone B from the respondent. The insured vehicle was allegedly stolen on 27.04.2011 and an FIR was

lodged on 03.05.2011. The respondent sought clarification/explanation from the insured vide letter dated 09.11.2012. Learned counsel for the respondent alleged that a consumer complaint no. 47 of 2013 was preferred by the petitioner before the District Forum and the District Forum erroneously allowed the complaint and directed the respondent/insurance company on Rs.4,01,000/- with 6% interest from 06.02.2013 within two months and Rs.2000/- as litigation cost. Thereafter, the respondent preferred an appeal no.674 of 2016 before the State Commission below and it rightly dismissed the consumer complaint. Learned counsel for the respondent further states that in the present case, the FIR was lodged after a lapse of 6-7 days, therefore, the insurance company has repudiated the contract of insurance as the petitioner is alleged to have violated condition no.1 of the policy.

8.The learned counsel for the respondent further submits that the vehicle was sent with the driver with two unknown person to Makrana and on the way from Bhilwara to Makrana the said two unknown persons stole the vehicle. Learned counsel for the respondent further states that the driver of the car had gone with unknown persons from Bhilwara to Makrana which was almost 230-250 kms and this itself is a clear violation of condition 4 of the policy. Further, in the FIR the chassis number of the vehicle does not match with that mentioned in the Registration Certificate and no explanation was provided by the insured despite repeated requests nor replied to the letter dated 09.11.2012. Therefore, the learned counsel for the respondent states that the consumer complaint was rightly dismissed by the State Commission and there was no illegality or irregularity necessitating intervention by this Commission.

9.Revision petitioner has relied upon the judgment of the Hon'ble Supreme Court in Dharamender vs United India Insurance Co. Ltd., and Ors., in Civil Appeal no.5705 of 2021(SLP (C) no.34639 of 2015, decided on 13.09.2021 to argue that delay in intimation to the insurance company is not a valid ground for rejection the claim. On the other hand, the respondent has contended that the Hon'ble Supreme Court in

Gurshinder Singh vs Shriram General Insurance Company Limited & Anr., (2020) 11 SCC 612 decided on 24.01.2020 has held that repudiation of the claim on the ground that there was delay in informing the insurance company of theft of the vehicle when the police had already been informed in a timely fashion had been upheld on the basis of Om Prakash vs Reliance General Insurance (2017) 9 SCC724. It had been held that the ".....insurance policy is a contract between the insurer and the insured and the parties would be strictly bound by the terms and conditions as provided in the contract between the parties. Generally, an insurance contract is governed by the rules of interpretation applicable to the general contract. However, due to the specialized nature of contract of insurance, certain rules are tailored to suit insurance contract". ".....When an insured has lodged the FIR immediately after the theft of a vehicle occurred and when the policy after investigation have lodged a final report after the vehicle was not trace 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".

10. From the foregoing and the material on the record it is manifest that the State Commission's order is based on the judgments of the Hon'ble Supreme Court in Oriental Insurance Co. Vs. Parvesh Chander Chadha, Civil Appeal No. 6739 of 2010 which was reiterated by this Commission in Shakuntala Devi Vs. United India Insurance Co., Revision Petition No. 3934 of 2012 that where theft was not reported to the Police immediately, the insurer could not be saddled with the liability of the claim. It has also relied upon this Commission's judgment in Maneet Singh Vs. National Insurance Co. in RP No. 4419 of 2014 to conclude that the petitioner did not take reasonable steps to safeguard the vehicle from loss since the driver allowed unknown persons to accompany him who stole the vehicle. The petitioner did not file any documents to controvert any of these arguments through documents as prayed by him and for which adequate opportunity was granted to him.

11. In the light of the foregoing, it is manifest that the order of the State Commission is based upon the terms and conditions of the Policy, notably conditions no. 1 and 4. It is evident that the FIR was filed on 03.05.2011 i.e., 5 days after the occurrence of the theft. The insurance company was intimated only on 28.04.2011 which was after the lodging of the FIR. The conclusion of the District Forum that there was deficiency in service is not based on evidence or any ratio in any judgment. The order of the State Commission, setting aside the order of the District Forum is reasoned and detailed and sets out grounds for the same on both grounds of delay in intimation as well as laches on part of the insured in safeguarding the car insured. There vision petitioner has not been able to controvert these grounds satisfactorily. For these reasons, the petitioner is liable to fail.

12. For the aforesaid reasons and in the facts and circumstances of the case, the revision petition is found to be without merits and is accordingly disallowed. Order of the State Commission is affirmed. There shall be no order as to costs. Pending IAs if any, also stand disposed of with this order.