

The case deals with insurance claim denial and scope of coverage under vehicle insurance policy: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

UNITED INDIA INSURANCE CO. LTD.

...Appellant

KEHAR SINGH

...Respondent

Case No: REVISION PETITION NO. 1111 OF 2016

Date of Judgement: 02 January 2024

Judges:

JUSTICE SUDIP AHLUWALIA – PRESIDING MEMBER

For Appellant: MR. A.K. DE, MS. ANANYA, ADVOCATES

For Respondent: MR. SHALINDER SAINI, ADVOCATE

Facts:

The complainant, Kehar Singh, owned a Tata Sumo vehicle insured with United India Insurance Company. The IDV of the vehicle was Rs. 3 lakhs. Singh engaged Rajender as the driver of the vehicle. On 8/9/2000, Singh asked Rajender to transport some household goods, but Rajender did not reach the destination. Singh lodged a DDR on 14/4/2000 and an FIR on 8/2/2001 for the missing driver and vehicle. The police submitted an untraced report. Singh filed an insurance claim which the company repudiated on 14/12/2001 citing delay in

intimation and insufficient documents. Singh filed a consumer complaint against the repudiation. The District Forum allowed the complaint and directed the insurance company to pay Rs. 3.6 lakhs as compensation along with interest and costs. The company appealed to the State Commission.

Insurance Company's Arguments:

Singh informed the company on 25/9/2000, leading to a delay of 17 days in intimation, violating policy conditions. This was a case of criminal breach of trust under Section 406 IPC and not theft under Section 379 IPC. The vehicle was 9 months old at the time of loss, so the depreciated value of Rs. 2.3 lakhs assessed by the surveyor should have been awarded. The District Forum and State Commission wrongly allowed the complaint without considering the delay in intimation and the nature of the offence. Cited the NCDRC order in New India Assurance Co. Ltd. v. Trilochan Jane on the importance of immediate intimation in theft cases.

Complainant's Arguments:

The company had repudiated the claim only on grounds of delay and offence not being theft. Complainant diligently reported to police. The FIR was registered only after his complaint to Addl. CJM. There was theft of the vehicle, not criminal breach of trust. Cited Supreme Court judgment in Gurshinder Singh v. Sriram General Insurance that late intimation to insurer is not prejudicial if immediate police complaint. Cited cases like Om Prakash v. Reliance General Insurance on condoning delay in intimation if reasonable steps taken for prompt intimation.

State Commission's Observations and Decision:

The policy covers loss due to malicious act, which includes criminal breach of trust by the driver. Hence, the company cannot deny liability. However, the IDV was Rs. 3 lakhs while the District Forum awarded Rs. 3.6 lakhs. The company is only liable to pay the IDV amount. Appeal partly allowed. Insurance directed to pay Rs. 3 lakhs instead of Rs. 3.6 lakhs. Rest of District Forum order upheld.

Revision Petition Before NCDRC:

Insurance Company's Arguments:

Reiterated arguments made before State Commission. The District Forum and State Commission failed to consider delay in intimation and nature of offence. As per NCDRC order in New India Assurance Co. Ltd. v. Trilochan Jane, delay results in inability to trace vehicle.

Complainant's Arguments:

Reiterated arguments made before State Commission. Delay rightly condoned by courts below. Entitled to higher interest due to inflation and increase in vehicle prices.

NCDRC's Decision:

The loss was covered under "malicious act" and "in transit by road" clauses in the insurance policy. Hence, repudiation only on basis of offence was improper. However, the vehicle was almost 2 years old at the time of loss. The surveyor's valuation of Rs. 2.3 lakhs after depreciation was reasonable. Revision petition allowed. Compensation reduced from Rs. 3 lakhs to Rs. 2.3 lakhs. Rest of State Commission order upheld. Parties to bear their own costs.

Sections and Laws Referred:

Consumer Protection Act, 1986 – Section 21(b)

Indian Penal Code, 1860 – Section 379 (Theft), Section 406 (Criminal breach of trust)

Cases Referred:

By Insurance Company:

New India Assurance Co. Ltd. v. Trilochan Jane (NCDRC)

By Complainant:

Om Prakash v. Reliance General Insurance (Supreme Court)

Gurshinder Singh v. Sriram General Insurance (Supreme Court)

Samri Devi Shaw v. New India Assurance Co. Ltd. & Ors (NCDRC)

Oriental Insurance Co. Ltd. v. Paramjit Kaur II (NCDRC)

In summary, the NCDRC upheld the insurance company's liability under the policy but reduced the compensation amount taking into account depreciation of the insured vehicle. The delay in intimation was condoned since reasonable steps were taken for prompt intimation. The

case clarified the scope of coverage under vehicle insurance policies covering malicious acts.

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Court

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Full Text of Judgment:

1.This Revision Petition has been filed by 'United India Insurance Co. Ltd.' under Section 21(b) of the Consumer Protection Act, 1986 against the impugned Order dated 14.12.2015 passed by the State Consumer Disputes Redressal Commission, Haryana in F.A. No. 3027 of 2003, vide which the Appeal filed by the Petitioner was partly allowed, and the Order of the District Forum was upheld with modified directions.

2. The factual background, in brief, is that the Complainant Kehar Singh is the owner of one Tata Sumo vehicle bearing registration No. HR-51/D-7181, which was insured with the Petitioner w.e.f. 03.12.1999 to 02.12.2000, for an IDV of Rs. 3.00 lacs. He engaged one Rajender as his driver to drive the said vehicle. On 08.09.2000, the Complainant loaded some household goods and asked his driver to unload the same at District Gautam Budh Nagar. However, the driver did not reach the destination, nor any information was received of his whereabouts. The Complainant reported the matter to Police vide DDR No. 16 dated 14.04.2000, but the Police did not lodge an FIR. The Insurance Company was also informed of the incident. On the directions of the Addl. CJM, Faridabad, an FIR dated 08.02.2001 was later filed under Section 406 of the IPC. The Police submitted untraced report, and the Complainant filed his claim before the Petitioner. The Petitioner repudiated the claim vide letter dated 14.12.2001 on the ground that there was delay in giving intimation to the Insurance Company and that the Complainant had not furnished the required documents for settling the claim. Aggrieved by the repudiation of his claim, he filed Complaint before the District Forum, Faridabad.

3. The District Forum vide its Order dated 17.10.2003 allowed the Complaint and directed the Petitioner to pay to the Complainant Rs. 3,60,000/- along with interest @12% p.a. from the date of theft of the

vehicle till the date of realisation, Rs. 5,000/- for mental agony, Rs. 1,000/-towards cost of litigation. The Petitioner filed its Appeal before the State Commission, which,vide the impugned Order dated 14.12.2015 partly allowed the Appeal and upheld the Order of the District Forum with modified directions. The relevant extracts of the impugned Order are setout as below –

“7. The only question for determination is as to whether the driver who was entrustedthe vehicle, not being traceable, the complainant was entitled to be indemnified by the Insurance Company?

8. As per the complainant he had employed Rajender as driver who was deputed to shiftsome of his household goods. Neither the driver nor the goods reached at the destinationand neither driver nor vehicle were recovered. Though, initially the D.D.R. (Annexure-C) was recorded and later on the intervention of the Court, F.I.R. Annexure-H, waslodged. Stress is being laid on the terms of the Insurance Policy. Section 1 of the policyis reproduced below:-

“SECTION 1. LOSS OF DAMAGE The Company will indemnify theInsured against loss or damage to the Motor Car and/or its accessories whilstthereon.

- a) By fire explosion self ignition or lightning.
- b) By burglary, housebreaking, or theft.
- c) By Riot and Strike
- d) By earthquake (Fire and Shock Damage)
- e) By Flood, Typhoon, Hurricane, Storm, tempest Inundation, Cyclone,Hailstorm, Frost.
- f) By accidental external means
- g) By malicious act
- h) By terrorist activity
- i) Whilst in transit by road, rail, inland waterway, lift, elevator, or air Subject to a deduction for depreciation at the rates mentioned below in respect or partreplaced”

9. Admittedly, the driver was not found nor the vehicle was found. Whether the driverhimself misappropriated the vehicle or by some third party’s act the vehicle and driverwas missing, the policy covers the loss due to mischievous act. Word ‘mischievous’ hasbeen defined as ‘an act done maliciously is one that is wrongful and performed willfullyor intentionally, and without legal justification’. The insurance

covering malicious act, the Insurance Company cannot deny its liability.

10. There is another aspect that IDV of the vehicle was Rs.3.00 lacs while the District Forum allowed Rs.3.60 lacs. The arguments raised on this point appears convincing as the District Forum allowed compensation beyond the IDV. The Insurance Company is only liable to pay the IDV.

11. In view of the above, the appeal is partly allowed. The Insurance Company is directed to pay Rs.3.00 lacs instead of Rs.3.60 lacs. The order is modified accordingly to this extent. Rest of the order is upheld.

12. The impugned order is modified in the manner indicated above and the appeal stands disposed of."

4. Ld. Counsel for the Petitioner has argued that the Complainant informed the Petitioner about the incident on 25.09.2000 and the Petitioner appointed Mr. M.S. Uppal as Surveyor who submitted his Survey Report dated 18.03.2001 assessing the value of the vehicle to be Rs.2,30,000/- subject to acceptance of liability by the Petitioner; That the Petitioner vide letter dated 14.12.2001 repudiated the claim on the grounds that the Complainant reported about the theft to the Petitioner after a delay of 17 days in violation of the Policy conditions and further there was misrepresentation on the part of the Complainant; That the District Forum and State Commission wrongly allowed the Complaint without appreciating the fact that there was delay of 17 days in violation of the Policy conditions, and also the fact that this was not a case of theft but of criminal breach of trust. Further, the vehicle was insured for Rs. 3,00,000/- and the vehicle was 9 months older at the time of theft, therefore it should have been accounted for depreciated value as assessed by the Surveyor at Rs. 2,30,000/-; That this Hon'ble Commission vide the Order dated 27.03.2015 in RP/2738/2011 had remanded back the matter, and held that the Order of the State Commission cannot be sustained as the same is patently illegal, and the State Commission was directed to decide the matter afresh; That the District Forum and State Commission ought to have appreciated the fact that the delay in intimation may result in the thief carrying the vehicle very far for the Police to trace the

vehicle, or that it may easily be dismantled, and therefore it is of prime importance that intimation is given immediately in accordance with the Policy conditions; Ld. Counsel for Petitioner cited the Order of this Commission in "New India Assurance Co. Ltd. v. Trilochan Jane, FA/321/2005" in support of his contentions.

5. Ld. Counsel for Respondent has argued that the Petitioner repudiated the claim of the Respondent on the limited ground of delay in reporting the loss of vehicle and also on the ground that the present case is a case of criminal misappropriation and not that of theft, therefore it is not covered under the Policy; That the Respondent had diligently taken all the steps to report the loss of vehicle by lodging complaint with the Police. On account of inaction of the Police, the Respondent even filed a complaint before Addl. CJM, Faridabad which led to registration of FIR No. 70 dated 08.02.2001; That there was theft of the vehicle and not criminal breach of trust as is alleged by the Petitioner; That in the matter of "Gurshinder Singh v. Sriram General Insurance, CA No. 653 of 2020", the Hon'ble Apex Court held that immediate reporting to the police, however, late reporting to the Insurer cannot be said to be prejudicial to the Insurance Company. Ld. Counsel for Respondent placed reliance on the cases of

"OmPrakash v. Reliance General Insurance, CA No. 15611/2017", "Samri Devi Shaw v. New India Assurance Co. Ltd. & Ors, RP/3434/2009" and "Oriental Insurance Co. Ltd. v. Paramjit Kaur II, (2016) CPJ 67 (NC)" in support of his contentions; That the present Petition is liable to be rejected with heavy cost in favour of the Respondent and the Respondent is also entitled to compensation with higher interest in order to compensate for loss of value of money/purchasing power due to inflation and exorbitant increase in prices of vehicles.

6. This Commission has heard both the Ld. Counsel of the Petitioner and the Respondent, and perused the material available on record.

7. The important aspects to be considered for deciding the controversy in the present case are, firstly, what was the scope of Insurance coverage in the Policy, and secondly, what were the limitations to Insurance, which need to be considered before deciding whether the

Insurance claim was justified. Unfortunately, a copy of the full Insurance Policy has not been actually filed on behalf of the Petitioner, although at Sl.No. 8 of its Index of documents, Annexure-P1 is described as the "Typed copy of the Policy".

But actually it is seen to be only a typed copy of the "Schedule" to the concerned Policy which only spells out the Limitation Clauses for the purpose of Insurance Claims, which are re-produced as follows-

"Limitation As to use:

1. Use for organized, pace-making, reliability trial speed testing.
2. Carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with the Motor trade.
3. Hire or Reward Use only for social, domestic and pleasure purpose and for the insured's own business."

8. The actual extent of coverage does not reveal itself from such copy of the Schedule of the Policy, but the Ld. State Committee in its impugned Order had taken note of such coverage, which is set out as below –

" SECTION 1. LOSS OF DAMAGE

The Company will indemnify the Insured against loss of damage to the Motor Car and/or its accessories whilst thereon.

- a) By fire explosion self ignition or lightning.
- b) By burglary, housebreaking, or theft.
- c) By Riot and Strike
- d) By earthquake (Fire and Shock Damage)
- e) By Flood, Typhoon, Hurricane, Storm, tempest Inundation, Cyclone, Hailstorm, Frost.
- f) By accidental external means
- g) By malicious act
- h) By terrorist activity
- i) Whilst in transit by road, rail, inland waterway, lift, elevator, or air Subject to a deduction for depreciation at the rates mentioned below in respect or part replaced."

9. Now, in its repudiation letter (Annexure-P4) dated 14.12.2001, it is seen that the Petitioner/Insurance Company had repudiated the Insurance claim on the simple ground that it was not a case of theft

under Section 379 IPC, but fell under Section 406 of the said Code which constitutes the offence of "criminal breach of trust".

But, as already seen from extent of coverage noted by the Ld. State Commission, the Insurance was payable for loss not only "By malicious act", but also "Whilst in transit by road, rail, etc.." in terms of Clauses (g) & (i) respectively of the Section pertaining to 'Loss of Damage' in the Insurance Policy. Consequently, there was no scope for the Insurance Company to repudiate the Insurance Claim on the ground that it was a case of loss under the offence of "criminal breach of trust", since such breach of trust itself is a "malicious act", and had been apparently committed by Complainant's own driver, who had driven away with the vehicle and was never traced again.

10. However, the Insurance amount actually ordered by the Ld. State Commission would appear to be excessive. While the State Commission had reduced the compensation awarded by the Ld. District Forum from Rs. 3,60,000/- to the actual IDV of the vehicle i.e. Rs. 3.00 lakhs, yet it ignored the fact that on the date of loss (8.9.2000), the vehicle was itself almost two years old, since the Complainant had purchased the same on 30.11.1998, as can be seen from the Claim Form (Annexure -P2) submitted by him.

11. Consequently, the assessment made by the Surveyor in his Report (Annexure-P3) submitted to the Insurance Company of having assessed the actual valuation of the vehicle at Rs. 2,30,000/- in view of the depreciation for the period of almost two years was certainly reasonable and proper.

12. For the aforesaid reasons, the Revision Petition is allowed by partially modifying the impugned Order of the Ld. State Commission to the extent that the amount awardable to the Complainant/ Respondent for loss of the Insured vehicle is reduced from Rs. 3.00 lakhs to Rs. 2,30,000/-, while rest of the directions of the Ld. District Forum, which were also not disturbed by the Ld. State Commission, are affirmed.

13. Parties to bear their own costs.

14. Pending application(s), if any, also stand disposed off as having been rendered infructuous.