

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1111 OF 2016

(Against the Order dated 14/12/2015 in Appeal No. 380/2015 of the State Commission Haryana)

1. UNITED INDIA INSURANCE CO. LTD.

THROUGH ITS DEPUTY MANAGER, AT REGIONAL
OFFICE-1, KANCHANJANGHA BUILDING, 18
BARAKHAMBHA ROAD,
NEW DELHI-110001

.....Petitioner(s)

Versus

1. KEHAR SINGH

S/O KUNDAN SINGH,PRESENT, R/O HOUSE NO. E-33,
SECTOR-11,
FARIDABAD
HARYANA

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA,PRESIDING MEMBER

FOR THE PETITIONER : MR. A.K. DE, ADVOCATE
MS. ANANYA, ADVOCATE.

FOR THE RESPONDENT : MR. SHALINDER SAINI, ADVOCATE.

Dated : 02 January 2024

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

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 set out as below –

“7. The only question for determination is as to whether the driver who was entrusted the 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 shift some of his household goods. Neither the driver nor the goods reached at the destination and 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, was lodged. Stress is being laid on the terms of the Insurance Policy. Section 1 of the policy is reproduced below:-

"SECTION 1. LOSS OF DAMAGE The Company will indemnify the Insured against loss or 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. Admittedly, the driver was not found nor the vehicle was found. Whether the driver himself misappropriated the vehicle or by some third party's act the vehicle and driver was missing, the policy covers the loss due to mischievous act. Word 'mischievous' has been defined as 'an act done maliciously is one that is wrongful and performed willfully or 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 ***“Om Prakash 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.

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SUDIP AHLUWALIA
PRESIDING MEMBER