NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 3640 OF 2012

(Against the Order dated 18/07/2012 in Appeal No. 367/2010 of the State Commission Himachal Pradesh)

1. NEW INDIA ASSURANCE CO. LTD.
Through its Duly Constituted Attorney Manager, R/o -I Level-5,Tower-II Jeevan Bharti 124 Connaught Circus
New Delhi - 110001
Delhi .....Petitioner(s)

Versus

1. BALBIR BANSHTU
S/o Sh Sukh Chain R/o Village Dulgaon P.O Kutara,Tehsil Rohroo
Shimla
H.P .....Respondent(s)

BEFORE:
HON'BLE MR. C. VISWANATH,PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA,MEMBER

For the Petitioner : Mr Abhishek Gola, Advocate with
Mr Anshul Kumar, Advocate

For the Respondent : Mr Shohit Chaudhary, Advocate

Dated : 06 Jan 2023

ORDER

PER MR SUBHASH CHANDRA

This revision petition has been filed under section 21 of the Consumer Protection Act, 1986 (in short, 'the Act') against the judgment dated 18.07.2012 of the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla (in short, 'the State Commission') in First Appeal no. 367 of 2010.

2. The brief facts of the case as stated by the petitioner are that the respondent/ complainant took insurance cover from the petitioner/ opposite party, New India Assurance Company Ltd., in respect of his truck bearing registration no. HP 10B 2505 for a sum of Rs.4,20,000/- on 19.04.2006 for a period of one year from 19.04.2006 to 18.04.2007. Premium was duly paid to the insurance company. On 24.07.2006, the said truck met with an accident at village Smmerkot, Tehsil Rohroo when the vehicle was on its way from Dalgnon to Delhi via Sungari. The accident was reported to the Police Station, Rohroo. Due to the said accident, the vehicle suffered extensive damage. Insurance company was also intimated about the accident. The insurance company appointed a spot surveyor who visited and inspected the spot of accident. Respondent was called upon to file a claim form. He submitted an estimate of repairs of Rs.1,50,000/- to the insurance company. Subsequently, the bills of repairs were also forwarded to the insurance company. As no information regarding the claim was received from the insurance company, the respondent/ complainant repeatedly visited the office of the insurance company. He was repeatedly informed by the officials of the insurance company that the claim was under process. The claim was repudiated by the petitioner on 28.09.2007 on the ground that the Fitness Certificate of the vehicle was not valid. Hence, the respondent/ complainant approached the District Consumer Disputes Redressal Forum, Shimla (in short, 'the District Forum') and prayed for payment of:

i. A sum of Rs.1,50,000/- along with interest at the rate of 15% per annum with effect from 24.07.2006 till date of payment;
ii. A sum of Rs.20,000/- as damages for the unfair trade practice and deficiency in service; and
iii. A sum of Rs.5000/- as cost of litigation.

3. The petitioner/ complainant (insurance company) contested the case before the District Forum by way of reply. The District Forum vide its order dated 27.07.2010 allowed the complaint on non-standard basis and held as under:

> *"6. ……..The summon bonnum of the controversy interse the parties, is, qua, whether the fitness certificate issued by the concerned authority was fake or not. The complainant relies upon the endorsement in the registration certificate declaring the vehicle to be fit to be plied on the date of the accident. However, the endorsement qua the fitness of the afflicted vehicle was subjected to verification and the investigator elicited the opinion of the concerned registering authority, under Annexure R – 10, who, at the foot of the verification conducted by Shri S L Saini, Surveyor and Loss Assessor qua the genuineness or otherwise of the endorsement qua fitness of the afflicated vehicle, has recorded, a statement that the endorsement qua fitness is fake. Hence, we are lacked the fitness to be plied, especially, when the statement so recorded by the concerned RLA though has been unassailed by the complainant, yet for lack of opposite proof qua its authenticity, the same has to be accroded sancity.*
>
> *7. ……..In the light of the verdict of the Hon'ble Apex Court in Civil Appeal no. 2703 of 2010 in case titled Amalendu Sahoo vs Oriental Insurance Company Limited, wherein it has been held by the Hon'ble Apex Court that, in case of any breach of the terms and conditions of the insurance policy, construable to be inclusive of the afflicted vehicle not possessing a fitness certificate, the OP company is liable to settle the claim of the complainant, on a non-standard basis. More so, when in the citation referred above the infraction as alleged was qua limitation as use of the afflicted vehicle, hence, the alleged infraction was construed by the Hon'ble Apex Court to be necessitating indemnification on a non-standard basis, the instant case as well when the alleged infraction is on an analogous ground, we are bound to do likewise, hence, we proceed to do so.*
>
> *8. ……against the estimated sum of Rs.1,57,000/- the surveyor has assessed an amount of Rs.61,753/- which assessment has been assailed by the learned counsel for the complainant to be untenable, inasmuch as, the surveyor has not ascribed any reasons and that it has been prepared behind his back.*
>
> *9. As a sequel to above, we allow this complaint and direct the opposite party – company to indemnify the complainant to the extent of Rs.1,14,403/- on a non-standard basis, along with interest at the rate of 9% per annum, with effect from the date of filing of the complaint till realization. The litigation cost is quantified at Rs.3,000/-. This order shall be complied with by the opposite party-company within a period of 45 days after the date of receipt of copy of this order."*

4. Aggrieved by the order of the District Forum, the petitioner herein approached the State Commission. The State Commission, after hearing the both the parties, dismissed the appeal observing as under*:*

> *"10. As regards the precedents cited by the counsel for the appellant that in case of a vehicle being plied passing or without fitness certificate, insurer is not liable, as the plying of a vehicle without fitness certificate amounts to fundamental breach of law and the policy, there cannot be any dispute. There are so many judgments to this effects and even this Commission has also held like that in a couple of cases. However, the precedents have no application to the facts of the present case in view of the finding (of fact) that the vehicle had been duly passed and certified to be fit and the said certificate was in vogue when the accident took place.*
>
> *11. In view of the above stated position, the appeal is dismissed."*

5. Dissatisfied by the order of the State Commission, the petitioner/ insurance company has filed this present revision petition.

6. We have heard the learned counsels for the parties and have perused the records carefully.

7. The petitioner has urged the same grounds that were highlighted before the State Commission and cited the following case laws (i) ***New India Assurance Co. Ltd., vs Birbal Singh Jhakhar*** – RP no. 2476 of 2012 decided on 06.02.2014; (ii) ***Pal Singh vs Oriental Insurance Co. Ltd.,*** - Revision Petition no. 1911 of 2011 decided on 03.07.2012 and (iii) ***National Insurance Co. Ltd., vs M/s Venus Industries*** – RP no. 1000 of 2018 13.02.2019 in support of his argument that "*A person who comes to a Court or a Tribunal with tainted hands and tries to obtain a claim on the basis of a forged document is not entitled to any relief and the claim is liable to be dismissed on this ground alone without even examining the same on merits. Therefore, the State Commission, in my view, was not justified in allowing the claim*". It is seen from the above, that these relate to the same issues that were raised before the lower fora and no new grounds have been brought out in this petition.

8. The respondent has contended by way of written arguments that the grounds raised by petitioner have already been dealt with by both The District Forum as well as The State Commission. The District Forum allowed the complaint on non- standard basis and relied upon the Hon'ble Supreme Court's judgment in ***Amalendu Sahoo v. Oriental Insurance Co. Ltd.*** (2010) 4 SCC 536 which held that in case of breach of the terms and conditions of insurance policy, construable to be inclusive of the afflicted vehicle not possessing a fitness certificate, the OP-Company, is, liable, to settle the claim of the complainant, on a non-standard basis. The State Commission upheld the order of District Forum in appeal holding as below:

"nonetheless, even if its construed that, the vehicle was lacking the fitness to be plied, even then, with the CP-Company having not adduced proof that lack of fitness of the vehicle rendered it un-liable and un-roadworthy, in as much, as, it suffered from a patent and latent mechanical defect, which defects, hence, caused the accident which proof could have been comprised by adduction of evidence of a mechanical expert reflecting the fact of its suffering from patent and latent manufacturing defects, hence caused the accident, as such, for lack of the above apposite evidence, we cannot conclude, that, even if the afflicted vehicle was lacking fitness from the concerned authority, yet its absence did rendered the vehicle to be unroadworthy or that it was the preponderant cause of the accident, hence, in the light of the verdict of the Hon'ble Apex Court in Civil Appeal No. 2703 of 2010, in case titled Amalendu Sahoo v. Oriental Insurance Co. Ltd., wherein it has been held that, in case of breach of the terms and conditions of insurance policy, construable to be inclusive of the afflicted vehicle not possessing a fitness certificate, the OP-Company, is, liable, to settle the claim of the complainant, on a non-standard basis."

The respondent has therefore prayed that the claim be allowed on non- standard basis and dismiss the present Revision Petition be dismissed with costs.

9. This Commission, in exercise of its revisional jurisdiction, is not required to re-assess and re-appreciate the evidence on record when the findings of the lower *fora* are concurrent on facts. It can interfere with the concurrent findings of the *fora* below only on the grounds that the findings are either perverse or that the *fora* below have acted without jurisdiction. Findings can be concluded to be perverse only when they are based on either evidence that have not been produced or based on conjecture or surmises i.e. evidence which are either not part of the record or when material evidence on record is not considered. The power of this Commission to review under section 21 of the Act is therefore, limited to cases where some *prima facie* error appears in the impugned order. Different interpretation of the same set of facts has been held to be not permissible by the Hon'ble Supreme Court.

10. The Hon'ble Supreme Court in ***Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd.,*** (2011) 11 SCC 269 has held that:

"*23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora."*

11. Reiterating this principle, the Hon'ble Supreme Court in ***Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors*** (2016) 8 Supreme Court Case 286 held:

"17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons."

12. Again, the Hon'ble Supreme Court in ***T Ramalingeswara Rao (Dead) Through LRs and Ors vs N Madhava Rao and Ors***, dated 05.04.2019 held as under:

"12. When the two Courts below have recorded concurrent findings of fact against the Plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be perverse, a case for interference may call for by the High Court in its second appellate jurisdiction."

13. From the records it is apparent that the petitioner has challenged the impugned order on the very same grounds which were raised before the District Forum as well as the State Commission in appeal. The concurrent findings on facts of these two *foras* are based on evidences led by the parties and documents on record. The present revision petition is therefore an attempt by the petitioner to urge this Commission to re-assess, re-appreciate the evidence which cannot be done in revisional jurisdiction. Learned counsel for the petitioner has failed to show that the findings in the impugned order are perverse.

14. The *foras* below have pronounced orders which are detailed and have dealt with all the contentions of the petitioner. It is seen that the orders of these *fora* are based on evidence on record. In view of the settled proposition of law that where two interpretation of evidence are possible, concurrent findings based on evidence have to be accepted and such findings cannot be substituted in revisional jurisdiction, this petition is liable to fail.

15. We, therefore, find no illegality or infirmity or perversity in the impugned order. The present revision petition is, therefore, found to be without merits and is accordingly dismissed.

.....
C. VISWANATH
PRESIDING MEMBER

.....
SUBHASH CHANDRA
MEMBER