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RESERVED

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
UTTAR PRADESH, LUCKNOW**

**APPEAL NO. 1004 OF 2016**

(Against the judgment/order dated 22-03-2016 in Complaint Case  
No.17/2015 of the District Consumer Forum, Aligarh )

The New India Assurance Company Limited  
Divisional Office  
Danpur Place, Civil Lines  
Centre Point, Aligarh.  
Through its Divisional Manager

...Appellant/Opposite Party

Vs.

Mohd. Rameez  
S/o Mohd. Riyaz  
R/o 6/182, Sarai Rehman  
Thana Banna Devi  
District Aligarh

...Respondent/Complainant

**BEFORE:**

**HON'BLE MR. JUSTICE AKHTER HUSAIN KHAN, PRESIDENT  
HON'BLE MRS. BAL KUMARI, MEMBER**

For the Appellant : Sri Ashish Srivastava, Advocate.

For the Respondent : Sri Vikas Agarwal, Advocate.

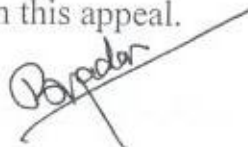
Dated :- १९ -08-2016


**JUDGMENT**

**PER MR. JUSTICE A. H. KHAN, PRESIDENT**

This is an appeal filed under Section-15 of the Consumer Protection Act 1986 against the judgment and order dated 22-03-2016 passed by District Consumer Forum, Aligarh in Complaint Case No.17/2015 Mohd. Rameez V/s The New India Assurance Company Limited whereby District Consumer Forum has allowed above complaint partially and has ordered opposite party The New India Assurance Company Limited to pay Rs.4,01,500/- to complainant. The District Consumer Forum has further ordered opposite party Insurance Company to pay Rs.2,000/- for physical and mental harassment and Rs.2,000/- as cost of the case to complainant.

Appeal has been filed on behalf of above opposite party and the complainant is respondent in this appeal.





Learned Counsel Sri Ashish Srivastava appeared for appellant.

Learned Counsel Sri Vikas Agarwal appeared for respondent.

We have heard learned Counsel for the parties and have gone through the impugned judgment and order.

It has been contended by learned Counsel for the appellant Insurance Company that the impugned judgment and order passed by the District Consumer Forum is against law and evidence. The respondent has settled the claim with the Company and has accepted payment of Rs.11,98,500/- in full satisfaction. As such the complaint moved by respondent/complainant before District Consumer Forum is not maintainable.

It has been contended by learned Counsel for the appellant Insurance Company that claim of respondent has been settled on sub-standard basis with the consent of complainant on the ground that complainant has failed to handover second key of the vehicle in original to Insurance Company and has violated Condition No.4 of policy.

Learned Counsel for the respondent/complainant has opposed the appeal.

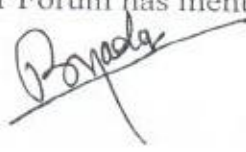
It has been contended by learned Counsel for the respondent/complainant that the impugned judgment and order passed by District Consumer Forum is in accordance with law and evidence.


It has further been contended by learned Counsel for the respondent/complainant that respondent/complainant has not settled the claim with Insurance Company and he has not accepted Rs.11,98,500/- as full satisfaction. He has not given consent for settlement of claim on sub-standard basis.

It has been contended by Learned Counsel for the respondent/complainant that Rs.11,98,500/- only were transferred in the account of complainant. Therefore, complainant has sent notice to appellant Insurance Company for remaining amount of Rs.4,01,500/-. Rejection of claim of complainant for remaining amount of Rs.4,01,500/- by appellant Insurance Company is arbitrary and against law.

We have considered the submissions made by learned Counsel for the parties.

The District Consumer Forum has mentioned in impugned judgment







that according to opposite party paper no. 9 Ka/6 filed before District Consumer Forum is the letter through which the Insurance Company has made payment of Rs.11,98,500/- to complainant/respondent by deducting 25% of claim on the ground of non production of key by him. The District Consumer Forum has held in impugned judgment and order that perusal of said paper no. 9 Ka/6 shows that signature of complainant has been obtained on said paper but it does not show consent of the complainant. It has further been held by District Consumer Forum in the impugned judgment and order that the Insurance Company has decided claim without consent of complainant/respondent.

In the impugned judgment and order the District Consumer Forum has held that complainant has not been paid Rs.4,01,500/- for non-delivery of key of truck whereas there is no such condition in insurance policy that the insured complainant shall handover key of truck lost.

During the course of arguments before us learned Counsel for the appellant could not show any clause of condition in insurance policy making mandatory for insured complainant to handover key of lost vehicle. The finding recorded by District Consumer Forum on this point cannot be said to be contrary to law and evidence.

Admittedly the truck in question was insured for Rs.16,00,000/- and incident of theft of truck alleged by respondent/complainant (insured) has been accepted by appellant Insurance Company. The Insurance Company has made deduction of Rs.4,01,500/- on the ground of settlement of claim on sub-standard basis for non-delivery of key which is not warranted by terms and conditions of the policy.

Above paper No.9 Ka/6 is a receipt of Rs.11,98,500/- given by complainant/respondent. It is not a consent for deciding claim on sub-standard basis. Further more signature of complainant/respondent on it is in Hindi and entries of this receipt have been filled in English. There is nothing on record to show that the entries were read over and explained to complainant/respondent before obtaining his signature and he has signed it after having understood its contents. Certainly the Insurance Company was in dominating position. Therefore, burden lies on him to prove that said receipt was completely filled and complainant/respondent signed it after

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having understood its contents. But the Insurance Company has failed to discharge his burden.

In view of discussions made above, after having gone through whole facts and circumstances of the case and pleadings of the parties as well as evidence on record, we are of the view that deduction made by appellant Insurance Company in insured amount of Rs.16,00,000/- is against law and unjustified. The District Consumer Forum has rightly ordered payment of remaining amount of Rs.4,01,500/-. The compensation awarded by District Consumer Forum for mental and physical harassment as well as cost of the case is also appropriate. We find no good ground for interference in the impugned judgment and order passed by the District Consumer Forum.

The appeal has no force and is dismissed accordingly with cost of Rs.10,000/- payable by appellant to respondent.

Let copy of this order be made available to the parties within 15 days positively as per rules.

The amount deposited by appellant Insurance Company under Section-15 of the Consumer Protection Act 1986 in this appeal shall be remitted to the District Consumer Forum concerned for making disposal in accordance with law.

*A.H.Khan* 19/8/2016  
(JUSTICE A. H KHAN)  
PRESIDENT

*Bopdar* 19/8/2016  
(SMT. BAL KUMARI)  
MEMBER