

A.F.R

RESERVED  
STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
UTTAR PRADESH LUCKNOW

APPEAL NO. 1469 OF 2012

Reliance General Insurance Company Limited through its Manager (Legal), Ist  
Floor, Rohit House, Opposite Saharaganj, Shah Najaf Road, Lucknow

Appellant

Versus

Vishwa Dev Singh son of Ram K. Singh, resident of village Naugwatir, Pargana  
Bhiranpur, Tehsil Sadar District Sultanpur

Respondent

BEFORE

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT

HON'BLE MR. J.N. SINHA, MEMBER

HON'BLE MR. SANJAI KUMAR, MEMBER

For the Appellant

: Sri Ashok Mehrotra, Advocate

For the Respondent

: Sri V.K. Singh, Advocate

DATED: 23.07.2015

JUDGMENT

MR. JUSTICE VIRENDRA SINGH, PRESIDENT

This appeal has been filed by the appellant against the judgment and order dated 25.05.2012 passed by District Consumer Forum, Sultanpur in Complaint case no. 09 of 2011 allowing the complaint against opposite parties 1 and 2 and directing them to pay insurance amount of Rs.5,20,460/- to the complainant within a month alongwith interest @ 09% p.a. from the date of filing the complaint till the payment is made and also pay to the complainant a sum of Rs.5000/- towards compensation and Rs.1000/- as litigation charges.

Briefly stated the facts of the case as per complaint are that the complainant purchased a Bolero D.I. Jeep on 25.01.2008 for a sum of Rs.5,20,460/- with the financial assistance provided by the Canara Bank, Sultanpur which was fully insured by the opposite party for the period 25.01.2008 to 24.01.2009 under policy number 1901172311600869. The said vehicle was having temporary

registration no. UDK-00-18-776 and due to serious illness the complainant could not get the permanent registration of the vehicle. In the night of 25/26.03.2008 the said vehicle was stolen information of which was duly given to all the concerned opposite parties. The required papers were submitted by the complainant to the opposite parties but the opposite parties rejected the claim of the complainant. Being aggrieved the complainant filed the complaint before the District Consumer Forum claiming insurance amount of Rs.5,20,460/- alongwith interest and compensation.

The opposite parties 1 and 2 filed their written statement stating that the claim of the complainant was rejected on 03.08.2010 as there is violation of Section 39 of the M.V. Act. There was neither any delay nor any deficiency in service on the part of the opposite parties and the complaint of the complainant is liable to be dismissed.

Opposite party no.3 has also filed the written statement before the District Consumer Forum admitting the loan given by it, theft of the vehicle occurred and that the vehicle was insured with opposite parties 1 and 2.

The District Consumer Forum after hearing both the parties and perusing the entire record allowed the complaint of the complainant by the impugned order which has been challenged by the appellant in the present appeal.

We have heard Sri Ashok Mehrotra, learned counsel for the appellant and Sri V.K. Singh, learned counsel for the respondent and perused the entire record.

There is no dispute on the facts on record that the said vehicle was not registered on the date of loss i.e. the theft occurred of the vehicle and the temporary registration was expired on 27.02.2008 which denotes that on the date of theft i.e. 26.03.2008 the vehicle was not registered in the name of the owner which is, as per contention of the learned counsel for the appellant, breach of insurance contract as well as violation of Sections 39, 40 and 41 of the Motor Vehicles Act and therefore, the claim repudiated by the insurance company stands justified.

We have come across the following Citations in respect to breach of conditions of the policy for justification of the claim repudiation:-

1. "National Insurance Company Limited versus Nitin Khandelwal - reported in (2008) 11 SCC 259"





In this case the Hon'ble Supreme Court has held that in case of theft of vehicle nature of use of the vehicle cannot be looked into. In that case the vehicle though registered and insured as a private vehicle at the time of theft, was being used as a taxi for carrying passengers on payment and the repudiation of the claim by Insurance Company was based only on the ground that the vehicle was being used contrary to the terms and conditions of the insurance policy. In this case the Hon'ble Supreme Court has held that even assuming that there was a breach of conditions of the insurance policy, the insurer ought to have settled the claim on non-standard basis and justified the claim upto extent of 75% which was awarded by the Hon'ble National Commission.

2. "Amalendu Sahoo versus Oriental Insurance Company Limited reported in (2010) 4 SCC 536"

Wherein Hon'ble Supreme Court has held that the insurer could not repudiate the claim in toto, wherein breach of terms of comprehensive policy was alleged thereby repudiating the claim by the insurer alleging that the vehicle was hired out in breach of policy at the time of meeting with accident. The Hon'ble Supreme Court in this case thereby applying the guidelines laid down in the "Appaprasad Pathak (2006)2 CPJ 144 (NC)" have held that the insurer could not repudiate the claim in toto and thus awarded 50% of the claimed amount of the insured.

3. "New India Assurance Company Limited versus Narayan Prasad Appaprasad Pathak - II (2206) CPJ 144 (NC)"

In this case the Hon'ble National Commission, in a case where the vehicle was driven carrying more passengers than permitted by a driver without being duly licensed, settled the claim at 75% on non standard basis in the light of the guidelines issued by GIC which are as follows:

S. No.	Description	Percentage of settlement
(i)	Under declaration of licensed Carrying capacity	Deduct 3 years' difference in premium from the amount of Claim or deduct 25% of claim amount, whichever is higher.
(ii)	Overloading of vehicles beyond Licensed carrying capacity	Pay claims not exceeding 75% of admissible claim.



- (iii) Any other breach of warranty/ condition of policy including limitation as to use. Pay upto 75% of admissible claim

4. "HDFC Chubb General Insurance Company Limited versus Ila Gupta and others - I (2007) CPJ 274 (NC)"

In this case the Hon'ble National Commission did not justify the repudiation of the claim on this ground that the vehicle did not have permanent registration number as the non registration of the vehicle did not led to accident and if the insurer was so strict about said condition they should have cancelled the policy within reasonable time after bringing it to the knowledge of insured.

5. "B. V. Nagaraju versus Oriental Insurance Company Limited - II(1996) CPJ 28 (SC)".

In this case the Hon'ble Supreme has held that in a case of denying the liability of the Insurance Company on the ground that goods vehicle was being used for carrying nine passengers against permissible limit of six , the Insurance Company cannot take advantage of "Exclusion Clause" of the policy that the insured vehicle was entitled to carry 6 workmen excluding driver because those 6 workmen when travelling in the vehicle are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident. The misuse of the vehicle in that stage was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which by themselves had gone to contribute to the causing of the accident.

6. III (2013) CPJ 528 (NC) - Bharti Axa General Insurance Company Limited and another versus B.A. Lokesh Kumar"

The Hon'ble N.C.D.R.C. has held in respect to invalid registration number and breach of conditions of policy that registration of vehicle is mandatory requirement of law as per Section 39 of the Motor Vehicle Act, 1988 and since the vehicle did not have valid registration number on the





date of accident the use of vehicle was in violation of law and condition of insurance policy. Therefore, the repudiation of the claim is justified.

7. "2014 (4) T.A.C. 1 (SC) – Narinder Singh versus New India Assurance Company Ltd and others"

*In this case the Hon'ble Supreme has held that that in this case registration of vehicle was expired on 11.01.2006 when the vehicle was without registration and nothing was brought on record to show that owner of vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period of temporary registration on ground of some special reasons and since using a vehicle on public road without any registration is not only an offence punishable under Section 192 of the M.V. Act but also a fundamental breach of terms and conditions of policy contract , therefore the Insurance Company is not liable for damages.*

No doubt in the case of Narinder Singh and in the case of Bharti Axa General Insurance Company Limited Hon'ble Supreme Court and Hon'ble N.C.D.R.C. have held that wherein the registration of vehicle is expired and the vehicle is being used without registration in violation of Section 39 of the Motor Vehicle Act, there being no evidence to show that either the permanent registration was applied or the extension of period of temporary registration was sought, the repudiation of the claim is justified as the vehicle was being used on public road without any registration which is not only an offense punishable under Section 192 of the M.V. Act but also a fundamental breach of terms and conditions of policy contract but with utmost regard to the law laid down by the Hon'ble Supreme Court as well as Hon'ble N.C.D.R.C. in the aforesaid cases, we are of this view that the case before us is different on the facts of the case considered by the Hon'ble Supreme Court as well as Hon'ble N.C.D.R.C. because there had been the case of plying the vehicle on public road without registration amounting the offense under M.V. Act as well as the violation of the policy condition, while in this case before us the vehicle was not being plied on the public road for committing any offense rather the vehicle was stationed in the premises of the



vehicle from where it was stolen. It was a case of theft wherein the registration and non registration have no nexus either to the theft of the vehicle or commission of any of the offense. In our view the law laid down by the Hon'ble Supreme Court in the case of Nitin Khandelwal , Amalendu Sahoo and B.V. Nagaraju and the law laid down by the Hon'ble N.C.D.R.C. in the case of Narayan Prasad Appaprasad Pathak and in the case of Ila Gupta is relevant law applicable in this case before us and on the strength of that law at least 75% of the amount of insurance is worth to be allowed to the complainant/respondent even assuming that there was a breach of condition of the insurance policy. We find our view further more justified for the fact that even after knowing the fact that there had been merely the registration for one month as temporary registration and which is further to be extended or to be allowed as permanent registration later on, at the time of issuing the policy by the insurer, the insurer never asked the insured/complainant to get his registration as permanent registration or otherwise the insurer shall terminate the contract of insurance. Neither the insurance contract is terminated by the insurance company on the date of expiring of the temporary registration, nor any notice is issued in this regard by the insurer to the insured.

Hence in the light of the aforesaid discussion we are of this view that this appeal deserves to be partly allowed.

Order

The aforesaid appeal is partly allowed. The impugned order is partly amended that that complainant is entitled to get 75% of the insurance amount which is mentioned in the impugned order to the tune of Rs.5,20,460/-. Rest of the impugned order of the District Consumer Forum concerned shall remain intact.

  
(JUSTICE VIRENDRA SINGH)  
PRESIDENT

  
(J.N. SINHA)  
MEMBER

  
(SANJAY KUMAR)  
MEMBER