

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

APPEAL NO. 1628 OF 2015

(Against the judgment/order dated 09-07-2015 in Complaint Case
No.347/2012 of the District Consumer Forum-II, Agra)

I.C.I.C.I. Lombard General Insurance-
Company Limited
Through the Manager Legal
Office at 4th Floor
Corporate Chambers-II
Vibhuti Khand, Gomti Nagar
Lucknow Interalia office at
Sanjay Place, Agra.

...Appellant/Opposite Party

Vs.

Sanjay Singh
S/o Mr. Jagdish Prasad
R/o Salempur Dhankar
P.S. Nibohara
District Agra

...Respondent/Complainant

BEFORE:

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

For the Appellant : Sri Brijendra Chaudhary, Advocate.

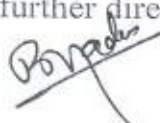
For the Respondent : Sri Naveen Kumar Tiwari, Advocate.

Dated :- १९ 08-2016

JUDGMENT

PER MR. JUSTICE A. H. KHAN, PRESIDENT

Present appeal has been filed under Section-15 of the Consumer Protection Act 1986 against the judgment and order dated 09-07-2015 passed by District Consumer Forum-II, Agra in Complaint Case No.347/2012 Sanjay Singh V/s Branch Manager, I.C.I.C.I. Lombard General Insurance Company Limited, Sanjai Place, Agra and others whereby District Consumer Forum has allowed above complaint and has ordered opposite parties no. 1 and 2 to pay Rs.7,26,751/- to complainant with interest @ 7% per annum from 26-10-2010 till date of actual payment. The District Consumer Forum has further directed said opposite parties to





pay to the complainant Rs.5,000/- for mental harassment and cost of the case. The District Consumer Forum has ordered said opposite parties to pay above amount within one month from the date of judgment.

Appeal has been filed on behalf of above opposite parties no. 1 and 2 and the complainant is respondent in this appeal.

Learned Counsel Sri Brijendra Chaudhary appeared for appellant.

Learned Counsel Sri Naveen Kumar Tiwari appeared for respondent.

We have heard learned Counsel for the parties and perused impugned judgment and award as well as written arguments of the parties.

It is contended by learned Counsel for the appellant Insurance Company that the impugned judgment and award is against law and evidence. The District Consumer Forum has erroneously allowed the complaint without considering the provisions of Insurance Law.

It is contended by learned Counsel for the appellant that Hon'ble National Commission has observed in various judgments that delayed intimation to the police authorities as well as to the Insurance Company is the violation of basic terms and conditions of the insurance policy. Therefore, repudiation of claim on this ground is justified.

It has been further contended by learned Counsel for the appellant that at the alleged time of incident vehicle in question was left unattended and unlocked. Ignition key of the vehicle was also not removed from the vehicle. In such situation it shows gross negligence on the part of the driver of the vehicle and as per terms and conditions of the insurance policy, the appellant Insurance Company is not liable to pay compensation for the loss of vehicle.

Learned Counsel for the appellant has placed reliance on following judicial pronouncements.

01. Oriental Insurance Company Limited V/s PraveshChander Chadha – Civil Appeal No.6739 of 2010 decided by Hon'ble Apex Court vide judgment dated 17-08-2010.

02. New India Assurance Company Limited V/s Ram Avtar- I(2014) CPJ 29 (NC).

03. Oriental Insurance Company Limited V/s Delhi Assam Roadways Corporation- II(2014) CPJ 10 (NC).

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04. New India Assurance Company Limited V/s Rajesh Yadav-II(2014) CPJ 398 (NC).
- 05.National Insurance Company Limited V/s Shravan Singh - I(2016) CPJ 450(NC).
- 06.New India Assurance Company Limited V/s Ajit Kumar -IV(2013) CPJ 137 (NC).
- 07.Jagdish Prasad Bakshi V/s Oriental Insurance Company Limited - III(2014) CPJ 134 (NC).
- 08.Jignesh Natwar Singh Solanki V/s I.C.I.C.I. Lombard General Insurance Company Limited - II(2016)CPJ 13(NC).
- 09.Shamsur Alam V/s Reliance General Insurance Company Limited and another – II(2016) CPJ 385 (NC).

Learned Counsel for the respondent/complainant has opposed appeal. It has been contended by him that the impugned judgment and order is in accordance with law and evidence.

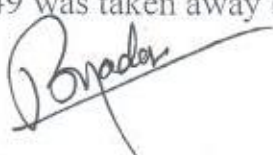
Learned Counsel for the respondent has placed reliance upon following judicial pronouncements.

- 01.National Insurance Company Limited V/s Nitin Khandelwal IV(2008) CPJ 1(SC).
02. C. O. Chola Mandalam & Others V/s Abhijat Saini and others – 2014 (4) CPR 178(NC).
- 03.United India Insurance Company Limited V/s Gyan Singh – 2006 CTC 221 (CP) (NCDRC).
- 04.New India Assurance Company Limited V/s Shri Girish Gupta decided by Hon'ble National Commission in Revision Petition No.590 of 2014 on 31-07-2014.

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

Admittedly Truck No. RJ 11 GA-2549 of complainant was insured with appellant Insurance Company at Policy No. was 3003/57290835/00/000 bearing Cover Note No. 57290835 and the policy was effective from 22-08-2009 till 31-08-2010 covering risk upto Rs.9,08,438/-.

It has been stated in complaint by complainant that his above Vehicle No. RJ 11 GA-2549 was taken away by thieves on 27-07-2010 from Fariha –

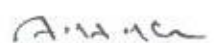


Mustafabad Road. After incident complainant and his driver went to police station concerned to lodge F.I.R. but the police did not register report and assured complainant to recover the vehicle. Later on, on 03-08-2010 Crime No. 112/2010 under Section 379 I.P.C. was registered in local Police Station Fariha, District Firozabad against unknown persons. Thereafter complainant gave information of theft to appellant Insurance Company but the appellant Insurance Company declined to make payment of insurance amount.

The appellant Insurance Company has filed written statement before District Consumer Forum and has opposed complaint. In written statement it has been stated by the appellant Insurance Company that F.I.R. of the incident as well as information given to the appellant Insurance Company is delayed. In written statement it has further been stated by appellant Insurance Company that claim of the complainant now respondent has been repudiated vide letter dated 26-10-2010 because F.I.R. as well as statements of owner and driver of the vehicle revealed that vehicle was left unattended and unlocked. Key of the vehicle was also left in the vehicle. In written statement it has been further stated by appellant Insurance Company that complainant is not a consumer and the complaint filed by him is not maintainable as there is no question of deficiency in service. Territorial jurisdiction of District Consumer Forum has also been challenged in the written statement by appellant Insurance Company.

After hearing both the parties District Consumer Forum has passed the impugned judgment and order. In impugned judgment the District Consumer Forum has overruled the objection raised by appellant Insurance Company regarding territorial jurisdiction of District Consumer Forum. In impugned judgment District Consumer Forum has also considered the issue of delayed information and has held that the delay of F.I.R. has been properly explained by complainant. In impugned judgment District Consumer Forum has placed reliance on the judgment of Hon'ble National Commission rendered in the case of C. O. Chola Mandalam & Others V/s Abhijat Saini and others reported in 2014 (4) CPR 178(NC).

The District Consumer Forum has further placed reliance on judgment of Hon'ble Apex Court rendered in the case of National Insurance Company Limited V/s Nitin Khandelwal reported in IV(2008) CPJ 1(SC).

The District Consumer Forum has further placed reliance on the judgment of State Commission rendered in the case of United India Insurance Company Limited V/s Gyan Singh reported in 2006 CTC 221 (CP) (NCDRC).

The District Consumer Forum has concluded that delayed information to police or appellant Insurance Company has a little importance as the condition in this respect is directory in nature and the claim cannot be repudiated on this very ground.

Placing reliance on judgment of Hon'ble Apex Court rendered in the case of National Insurance Company Limited V/s Nitin Khandelwal (supra) the District Consumer Forum has applied formula of fixation of compensation on 'Non Standard Basis' and has fixed thereby compensation of Rs.7,26,751/- by making deduction of 20% from insured amount and has allowed complaint accordingly.

During course of hearing of appeal issues of territorial jurisdiction and maintainability of complaint under the Consumer Protection Act have not been raised. Present complaint contains consumer's dispute and District Consumer Forum, Agra has jurisdiction to entertain it.

In view of submissions made by learned Counsel for the parties, following points arise for determination in this appeal.

01. Whether repudiation of claim on the ground of delayed information to police and Insurance Company is justified.
02. Whether repudiation of claim on the ground of negligence in safeguarding the vehicle insured is justified.

Point No.01 for determination:

In the case of Oriental Insurance Company Limited V/s Parvesh Chander Chadha (supra) the Hon'ble Apex Court has considered the issue of delayed information to insurer and has observed as under:-

"In terms of the policy issued by the appellant, the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of vehicle and make an endeavour to recover the same. Unfortunately, all the consumer foras omitted to consider this grave lapse on the part of the

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respondent and directed the appellant to settle his claim on non-standard basis. In our view, the appellant cannot be saddled with the liability to pay compensation to the respondent despite the fact that he had not complied with the terms of the policy."

Hon'ble National Commission has also repeatedly held that repudiation of claim on the ground of delayed information is justified. For instance following judgments may be quoted.

- 01. New India Assurance Company Limited V/s Ram Avtar (supra).
- 02. New India Assurance Company Limited V/s Rajesh Yadav (supra).
- 03. National Insurance Company Limited V/s Shравan Singh (supra).
- 04. Jisgnesh Natwar Singh Solanki V/s I.C.I.C.I. Lombard General Insurance Company Limited (supra).

At this juncture, Clause-1 of insurance policy is relevant to reproduce below.

"Clause-1 – Notice shall be given in writing to the Company immediately upon the occurrence of any accidental or loss or damages and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require.....

 In case of theft or other criminal act which may be the subject of a claim under this policy, the insured shall give immediate notice to the police and co-operate with the company in securing the conviction of offender."

In Concise law dictionary compiled and edited by P. Ramanatha Aiyar word 'immediately' has been defined as follows:

The term immediately means "within a reasonable time".

In above dictionary word 'prompt' has been explained as follows:-

"prompt is convertible with at once and in its ordinary acceptance means at the same point of time, immediately without delay at once and at the same time, simultaneously, directly".

In the case of Silversons V/s Oriental Insurance Company Limited and another reported in IV (2011) CPJ 9 (SC) the Hon'ble Apex Court has considered clause of prompt notice of insurance policy and has held as

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under:-

“Although, the view taken by the National Commission that for availing benefit of the Policy, the insured should give intimation to the insurer within 24 hours or 48 hours or at best within 72 hours appears to be too narrow and we are inclined to agree with the learned Counsel for the appellant that it would be sufficient if intimation is given to the insurer within a reasonable period, but what should be the reasonable period within which the insured should inform the insurer about the loss of goods would depend upon the facts of each case and no strait-jacket formula can be laid down to determine as to what would constitute prompt notice within the contemplation of Clause 9 of the Institute Cargo Clauses. Insofar as this case is concerned, we are convinced that the long time gap of almost three months between the date when the appellant had been informed about discharge of the cargo by MV “Aken” at Colombo Port and the intimation given by the appellant to the insurer was unreasonable and, by no stretch of imagination, it could be construed as a prompt notice.”

In view of dictionary meaning of word immediately as well as proposition laid down by Hon’ble Apex Court in above case of Silversons V/s Oriental Insurance Company Limited and another, it is apparent that word immediately should be interpreted as to mean without unreasonable delay.

The incident of theft in present case is alleged to have taken place on 27-07-2010 whereas F.I.R. has been registered in local Police Station Fariha, District Firozabad on 03-08-2010. It is alleged by respondent/complainant that on the day of occurrence on 27-07-2010 the complainant/respondent and his driver went to local police station Fariha for lodging F.I.R. but the local police station did not register report and assured to search the vehicle. Ultimately F.I.R. was lodged on 03-08-2010 in said police station when police could not search the vehicle. It has further been stated by complainant/respondent that after registration of crime the Insurance Company was also informed about the incident without delay. In written statement appellant Insurance Company has admitted that F.I.R. was registered in local police station on 03-08-2010 and intimation of loss was given to Insurance Company. Relevant para 2 of the written statement of

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Insurance Company is reproduced below.

"That in reply to the contents of paras No.6 to 10 of the complaint about taking away of the vehicle by unknown culprits on 27-07-2010 within PS Fariha Firozabad and getting FIR lodged on 03-08-2010 and intimation of loss to the Co. thereafter and repudiation of the claim by the Co. vide letter dated 26-10-2010 to the insured. It is submitted that from the details in the FIR and the statements of the owner and driver of the vehicle it revealed and became clear that the vehicle was left unattended with keys of the vehicle in the vehicle itself and it was parked all alone without anyone on its giving change to culprits to take it away which amounted to breach of policy condition about taking of due and reasonable care of the insured properly from the loss and since there has been negligence and lack of care in safeguarding the insured property i.e. vehicle from the loss there has been no question of any liability of the Co. due to breach of policy condition for not taking due and reasonable care to safeguard the property from loss and further it is submitted that there has also been breach of policy condition No.1 which provides for notice in writing by the insured to the Co. and lodging of FIR immediately on the happening of the mishap because as per case of the complainant's himself for mishap on 27-07-2010 the FIR was got lodged on 03-08-2010 and thus there has been delay in getting FIR lodged and intimation of loss to the Co. has also not as per condition No.1 of the policy and there has been no question of any liability of the OP Ins. Co. as per law by the Hon'ble National Commission in the case of New India Ass. Co. Vs. Trilochan Jane decided on 09-12-2009 and all other allegations contrary to the facts and position as stated are wrong and are denied and not admitted and repudiation of the claim by the Co. has been just, proper, legal and valid."

In view of averment made in para 2 of written statement it is apparent that appellant Insurance Company has been informed by complainant/respondent about incident of theft after registration of F.I.R. on 03-08-2010. The complainant/respondent is resident of District Agra and the vehicle in question was insured by Branch Office of I.C.I.C.I. Lombard General Insurance Company Limited, Agra. Incident has taken place in District Firozabad. F.I.R. has been registered on 03-08-2010 in P.S. Fariha of

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District Firozabad.

Considering all facts and circumstances of the case as narrated above, we are of the view that delay of F.I.R. has been explained by complainant respondent and intimation of incident has been given to appellant Insurance Company within a reasonable time after registration of F.I.R. The District Consumer Forum has drawn conclusion correctly in this respect. The District Consumer Forum has placed reliance on judgment of honourable National Commission rendered in the case of CEO, Cholamandalam MS General Insurance Company Limited & others V/s Abhijat Saini and others reported in 2014 (4) CPR 178(NC) wherein Hon'ble National Commission has held as under:-

"In our view the provisions of delay in informing the Insurance Company or lodging the report with the police are of little significance as these are of directory nature and not of mandatory nature. What is relevant is whether any such accident or occurrence has taken place or not and whether the insured has played fraud or given wrong information to take undue benefit against the insurance policy. Once the report is lodged with the police may be in any form, the Insurance Company is barred from appointing any investigator to investigate into the fact whether the theft or accident has taken place or not."

Learned Counsel for the appellant Insurance Company has filed copy of surveyor's report alongwith his written argument. The conclusion drawn in surveyor's report is quoted below.

"Keeping in view the above observation it is clear that unknown person stolen the vehicle no. RJ-11-GA-2549 and insured suffered actual loss due to said incident but the vehicle stolen due to gross negligence and carelessness of the insured so we are of the opinion that the case is not maintainable. "

The conclusion drawn by surveyor shows that incident of theft alleged by the complainant has been accepted by surveyor. There is no whisper of movement in surveyor report to show that the incident of theft has been committed with collusion or connivance of insured complainant/respondent. Further more in surveyor's report there is nothing to indicate that the vehicle could not be recovered due to late information given by insured to Insurance

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In view of discussion made above, after having gone through all facts and circumstances of the case as well as evidence on record, we are of the view that the complainant/respondent has given prompt information to police after incident and he has given information to Insurance Company without unreasonable delay in terms of conditions No.1 of insurance policy.

In the case of Oriental Insurance Company Limited V/s Parvesh Chander Chadha (supra) the incident of theft is alleged to have taken place on 18-01-1995 and First Information Report was lodged in police station 20-01-1995 but information to Insurance Company was given for the first time on 19-09-1995 after considerable long time whereas information about incident of theft has been given to the appellant Insurance Company in present case in appeal promptly within 7 or 8 days after registration of F.I.R. The facts of present case in appeal are distinguishable with the facts and circumstances of the case of Oriental Insurance Company Limited V/s Parvesh Chander Chadha (supra).

In a recent judgment rendered in the case of Bajaj Allianz General Insurance Limited V/s Abdul Sattar and others reported in 2016(1) CPR-541 NC after having considered clause of notice similar to above quoted clause 1 of present policy Honourable National Commission has held that in case of theft of vehicle only requirement on the part of the insured was to intimate the police immediately and cooperate in securing conviction of offender.

In view of discussion made above we are unable to accept that the late information has been given to Insurance Company causing prejudice to him. Repudiation of claim on the ground of delayed information is not justified.

Point no.01 for determination is decided in negative against appellant Insurance Company.

Point No.2 for determination:

In the case of Oriental Insurance Company Limited V/s Delhi Assan Roadways Corporation (supra) there was an Exclusion Clause-4 in insurance policy which reads as under:

"The policy does not cover loss of cash abstracted from safe/strong rook or any duplicate thereof belonging to the insured unless such key has been obtained by threat or violence."

With reference to above condition Hon'ble National Commission has

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held as under:

“Thus opening of safe was done without use of ‘threat’ or ‘violence’ and thus not covered under the policy terms and conditions.”

In the case of New India Assurance Company Limited V/s Ajit Kumar(supra) the Hon’ble National Commission has placed reliance on the judgment of Hon’ble Apex Court rendered in the case of New India Assurance Company Limited V/s T. V. Sarathi reported in II(2009) CPJ 169 SC and has held as under:

“The citations quoted by the learned Counsel for the petitioner at the time of arguments make it clear in categorical terms that when the complainant had left the vehicle unattended and unlocked, it amounted to violation of terms and conditions of the policy and the claimant was not liable to be paid for compensation.”

In the case of Jagdish Prasad Bakshi V/s Oriental Insurance Company Limited (supra) the Hon’ble National Commission has dismissed revision filed against judgment and order of State Commission whereby State Commission has held repudiation of claim justified on the ground that the petitioner was negligent in taking care of truck as the driver has left the key inside the truck.

In the case of Shamsur Alam V/s Reliance General Insurance Company Limited and another (supra) also Hon’ble National Commission has dismissed revision filed against similar order of State Commission. Relevant part of judgment is extracted below.

“Thus on reading of the above, it is clear that as per the insurance contract it was obligation of the insured to take all reasonable steps to safeguard the vehicle from any loss or damage and it was also the obligation of the insured that the insured vehicle should not be left unattended without proper precaution being taken to prevent further damage or loss. Admittedly in the instant case, the driver of the vehicle left the vehicle unmanned with keys in the ignition which facilitated the theft of the vehicle. This clearly amounts to breach of condition No.5 of the insured contract. Therefore, we do not find any fault with the order of the State Commission holding that repudiation of the insurance claim was justified.”

In impugned judgment the District Consumer Forum has held that surveyor’s report has not been produced by Insurance Company and the

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Insurance Company has failed to prove that the vehicle has been left unattended with keys of the vehicle at the time of incident.

The appellant Insurance Company has produced surveyor's report as well as copy of First Information Report of incident lodged by the complainant/respondent in local police station. Perusal of surveyor's report as well as copy of First Information Report shows that at the time of theft insured complainant/respondent and his driver both were attending call of nature and the key was left in vehicle. From perusal of F.I.R it is also apparent that they were easing themselves in a nearby field keeping watch on the truck parked. They raised alarm and tried to prevent theft when truck was started by miscreants.

Condition No.5 of complainant's policy in question reads as follows:

"The Insured shall take all reasonable steps to safeguard the vehicle insured from loss or damage and to maintain it in efficient condition and the Company shall have at all time free and full access to examine the vehicle insured or any part thereof or any driver or employee of the insured."

In the case of New India Assurance Company Limited V/s Girish Gupta (supra) the Hon'ble National Commission has placed reliance on judgment of Hon'ble High Court Punjab and Haryana rendered in the case of Bazaj Allianz Insurance Company Limited V/s Manoj Aggarwal III(2006) CPJ 1980 wherein said Hon'ble High Court has considered exclusion clause of insurance policy which was similar to the exclusion clause-5 of insurance policy of present case in appeal and has held as under:

"This clause, I would understand, would mean that the insured shall take reasonable steps for protection. Retention of a key in the car ought not to be at all times taken as constituting so serious breach as to disentitle the insured to make the claim under the policy. It all depends on facts of the case. The car was said to have been lost at the time when the driver had taken the vehicle and parked the vehicle in front of the house of his relative but did not remove keys. The particular Clause 5 extracted above shall be read in the context of a person deliberately doing an act that resulted in theft. If no wilful act could be attributed to the insured then, in my view, this clause cannot operate to exclude the liability of the insurance company. A human fallibility to forget is not the same as committing violation of terms of

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the policy. The permanent Lok Adalat had taken care to case some portion of liability on the insured and has denied to him the 25% of the sum insured under the policy. Thankfully for the insurance company, claimant himself has not come by means of any writ petition seeking for the entire amount."

In the case of New India Assurance Company Limited and another V/s Shri Girish Gupta (supra) the Hon'ble National Commission also has considered exclusion clause of policy similar to above exclusion clause-5 of present case in appeal and has observed as follows:-

"21. This condition in our considered view requires insured to take reasonable steps for protection of the insured vehicle from any loss or damage. The leaving of the key in the ignition of the car on all occasions cannot be termed as so serious breach so as to disentitle the insured from seeking claim under the insurance policy. Whether or not there is breach of condition will always depend upon the facts of the case. The car is said to have been stolen when the driver parked the vehicle at road side and went to ease himself, forgetting to remove the keys from ignition. This lapse on the part of the driver cannot be treated as wilful breach of condition no.5 on the part of the driver. If in the hurry to answer the call of nature the driver forgot to remove keys from the ignition switch he cannot be said to have committed wilful breach violation of the terms of the above condition no.5. In our aforesaid view we are supported by judgment of Punjab & Haryana High Court in the matter of Bajaj Allianz General Insurance Company Limited V/s M/s. Sagar Tour & Travels & another P.L.R. Vol. CLX IV-(2011-4)."

The above observations made by Hon'ble National Commission in the case of New India Assurance Company Limited V/s Girish Gupta (supra) are fully applicable on the facts of present case before us. The National Commission has dismissed the revision filed against the judgment and order passed by State Commission whereby complaint was allowed and insurer was directed to pay 75% of insured amount.

As mentioned above there is no whisper of movement in surveyor's report that incident of theft of truck has been committed in collusion with complainant or with his connivance. There is nothing in surveyor's report to show that complainant or his driver has abated the commission of offence of

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theft. Contrary to it surveyor's report also confirms the incident of theft alleged.

In view of discussion made above, after having gone through whole facts and circumstances of the case, it is apparent that complainant insured and driver had watch on truck while they were easing themselves. They had raised alarm and tried to prevent theft of truck. As such we are of the view that merely on the ground that the complainant insured and his driver went to respond natural call after parking truck with key it cannot be said that they have not taken reasonable steps to safeguard vehicle and have violated above condition no.5 of present insurance policy. Repudiation of claim is not justified on this ground also.

Point No.2 for determination is also decided in negative against appellant.

In the case of National Consumer Company Limited V/s Nitin Khandelwal reported in IV(2008) CPJ 1 (SC) Hon'ble Apex Court has held as follows:-

"12. In the case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle breach of condition is not germane. The appellant Insurance Company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer. The respondent submitted that even assuming that there was a breach of condition of the insurance policy, the appellant Insurance Company ought to have settled the claim on non-standard basis. The Insurance Company cannot repudiate the claim in toto in case of loss of vehicle due to theft.

13, In the instant case, the State Commission allowed the claim only on non-standard basis, which has been upheld by the National Commission. On consideration of the totality of the facts and circumstances in the case, the law seems to be well settled that in case of theft of vehicle, nature of use of the vehicle cannot be looked into and the Insurance Company cannot repudiate the claim on that basis."

Perusal of judgment of Hon'ble Apex Court rendered in the case of National Insurance Company Limited V/s Nitin Khandelwal (supra) shows that in this case the insurance claim was repudiated by the Insurance Company on the sole ground that the driver of vehicle did not hold a valid

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licence. In this context, the Hon'ble Apex Court has held that in theft of vehicle breach of condition is not germane. The facts of the case before Hon'ble Apex Court are distinguishable with the facts of case of present appeal before us.

The formula of settling the claim on Non Standard Basis adopted by District Consumer Forum is not applicable on the facts of this case but the complainant/respondent has not filed appeal for enhancement of compensation. As such no interference is justified in this appeal.

In view of conclusions drawn above, we are of the view that the repudiation of claim by Insurance Company is not justified and is a deficiency in service assured. The District Consumer Forum has rightly allowed the complaint filed by complainant/respondent.

In view of discussion made and conclusion drawn above, the appeal is dismissed with cost of Rs.5,000/- The cost shall be paid by appellant Insurance Company to the complainant/respondent. The above cost shall be paid to respondent/complainant out of amount deposited by appellant in this appeal under Section-15 of the Consumer Protection Act. After payment of said cost, remaining amount deposited under Section-15 of the Consumer Protection Act shall be remitted to District Consumer Forum who shall pass appropriate order for disposal of said amount in accordance with law.

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

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

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(SMT. BAL KUMARI) 19.8.2016
MEMBER