

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1195 OF 2022

(Against the Order dated 08/07/2022 in Appeal No. 96/2021 of the State Commission
Chandigarh)

1. IFFCO TOKIO GENERAL INSURANCE COMPANY LTD.
IFFCO TOWER, PLOT NO.3 SECTOR 29, GURUGRAM
GURUGRAM
HARYANA

.....Petitioner(s)

Versus

1. HARMANPREET SINGH
HOUSE NO. 42, PREM NAGAR, NEAR GOVERNMENT
SCHOOL, AMBALA CITY, AMBALA DISTRICT,
HARYANA
AMBALA
HARYANA

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MS. SHASHWATI PARTHI,
ADVOCATE

FOR THE RESPONDENT :

FOR RESPONDENT : MR. DHARUV DWIVEDI, ADVOCATE

Dated : 12 July 2024

ORDER

1. The present Revision Petition has been filed under Section 58(1)(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 08.07.2022, passed by the State Consumer Disputes Redressal Commission, U.T. Chandigarh (the 'State Commission') in First Appeal No. 96/2021, wherein the Appeal filed by the Respondent/ Complainant was allowed, thereby setting aside the Order dated 28.09.2021, passed by the District Consumer Disputes Redressal Commission-1, U.T. Chandigarh (the "District Commission") in Consumer Complaint No. 560/2019.

2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum. Mr. Harmanpreet Singh is identified as the Complainant. IFFCO Tokio General Insurance Company Ltd. through Manager/authorized person, is identified as the OP-1 and Maruti Insurance Broking Pvt. Ltd. through its Manager/ authorized is identified as OP-2.

3. The facts of the case, as per the Complainant, are that Mr. Sandeep Kumar (Previous Owner) sold his vehicle, a Maruti S-cross Delta with Regn No.HR-788-5280, to Mr. Harmanpreet Singh, the Complainant on 04.09.2017. The vehicle was insured with OP-1 under a Package Policy (Private Vehicle) from 01.12.2016, to 30.11.2017, for an Insured Declared Value (IDV) of Rs.7,37,134/-. The papers of the vehicle were sent to the Registering Authority, (MV) Ambala for transfer of vehicle Regn on 05.09.2017. Shortly after the sale, on the night of 10/11.09.2017, the vehicle was involved in an accident in Chandigarh, resulting in a DDR (Daily Diary Report) No. 10 being registered with Police Station, Sector 19, Chandigarh on 11.09.2017. OP-1 was promptly notified about the accident via their toll-free number and email. The appointed surveyor inspected the vehicle and deemed it beyond repair, declaring it a 'Total Loss'. However, OP-1 subsequently repudiated the claim filed by Mr. Harmanpreet Singh, citing "No Claim" due to lack of insurable interest on his part in the vehicle. This was notified vide letters dated 27.10.2018 and 06.12.2018.

4. In response to the repudiation, Mr. Harmanpreet Singh filed a Consumer Complaint (CC/560/2019) before the learned District Commission, seeking payment of the claim of Rs. 7,37,134/- along with interest at 24% per annum from the date of the accident to the date of payment; Compensation of Rs. 3,00,000/- for deficiency in services, unfair trade practices, mental agony, torture, and harassment; and Rs. 25,000/- as litigation costs.

5. In reply filed before the learned District Forum, OP-1 contested the complaint on the primary ground that on the date of the accident, the complainant, Mr. Harmanpreet Singh, was not the insured under the policy. OP-1 contended that the policy in question had been purchased by Mr. Sandeep Kumar, and the complainant had failed to furnish the 'GR-17' form necessary for the transfer of the insurance policy into his name. However, OP-1 admitted that the vehicle in question was insured under the said policy for an Insured Declared Value (IDV) of Rs. 7,37,134/-. As for OP-2, no appearance was made on its behalf, resulting in the District Forum placing OP-2 ex-parte.

6. The learned District Commission vide Order dated 28.09.2021, dismissed the complaint relying on the judgment of this Commission in **IFFCO Tokio General Insurance Co. Ltd. Vs. Ashok Laxman Mane & Ors., R.P. No.3896 of 2013** decided on 27.7.2020.

7. Being dissatisfied with the District Forum order, he filed an Appeal No. 96 of 2021 and the State Commission vide order dated 08.07.2022, allowed the appeal, while placing reliance on the judgment of Hon'ble Supreme Court titled **Surendra Kumar Bhilawe vs The New India Assurance Company, Civil Appeal No. 2632 of 2020, decided on 18 June, 2020**, thereby setting aside the District Forum Order dated 28.09.2021 and observed as follows:

“16. Keeping in view the above discussion, we are of the considered view that the impugned order passed by the District Commission, dismissing the consumer complaint, being not based on the correct appreciation of evidence and law on the point, suffers from illegality and perversity, needs interference of this Commission. Consequently, this appeal stands allowed and the impugned order stands set aside. The consumer complaint filed by the complainant/ appellant stands partly allowed against respondent no.1 only and dismissed against respondent no.2. Accordingly, respondent no.1-insurance company is directed as under:-

- i. To pay / reimburse the claim amount to the extent of Insured Declared Value of the vehicle in question i.e. Rs.7,37,134/-, as the same has been declared total loss, along with interest @9% p.a. the date of repudiation of claim i.e. from 27.10.2018. However, the wreck of the vehicle shall remain in the custody of respondent no.1.***
- ii. To pay compensation to the tune of Rs.30,000 I- to the appellant/complainant, for causing him mental agony, harassment and humiliation and also deficiency in providing service, negligence and adoption of unfair trade practice, as his genuine claim was repudiated.***
- iii. To pay cost of litigation to the tune of Rs.15,000/- to the appellant/ complainant.***
- iv. This order be complied within a period of 30 days from the date of receipt of a certified copy thereof, failing which the awarded amounts shall further entail interest @12% p.a. from the date of default till realization.”***

8. The Petitioner/OP-1, being dissatisfied with the impugned Order dated 08.07.2012 filed the instant Revision Petition.

9. Upon notice of the Revision Petition, the Respondent/ Complainant filed his reply, reiterating the facts of the case. He supported the State Commission order, stating that it is a reasoned order based on precedents set by the Hon’ble Supreme Court. The Respondent argued that the present Revision Petition should be dismissed on the grounds that there is no illegality, material irregularity, or jurisdictional error in the State Commission order.

10. As against the same, the Petitioner filed a Rejoinder denying the contents of the Reply filed by the Respondent/ Complainant. The Petitioner contended that the revisional jurisdiction of NCDRC was rightly invoked, as the State Commission, through the impugned

order, made legally incorrect observations that need to be remedied in light of settled law. It was contended that it is a well established fact that the deeming provision in Section 157 of the Motor Vehicles Act, 1988, extends only to third-party risks and does not cover own damage liabilities. Thus, in the instant case, the Respondent, having not transferred the insurance policy and seeking compensation for own damage, cannot succeed in light of the settled law. They, therefore, sought that the captioned revision petition be allowed.

11. In his arguments, the learned counsel for the Petitioner/OP-1 reiterated the contentions presented before both fora. He argued that the Petitioner rightly invoked the revisional jurisdiction of NCDRC as the State Commission's order overlooked the settled law on transfer of insurance once transfer of ownership is complete. The impugned order failed to distinguish the present case from the facts and circumstances of the binding decision in ***Complete Insulations (P) Ltd. v. New India Assurance Co. Ltd.***, (1996)1 SCC 221 by the Hon'ble Supreme Court; and ***IFFCO-Tokio General Insurance Co. Ltd., Ashok Laxman Mane & Ors.***, R.P. No.3896 of 2013. Moreover, it is the Respondent's submission that the deeming fiction created by Section 157 of the MV Act, 1988 extends to claims for own damages and placed reliance on ***Surendra Kumar Bhilawe v. New India Assurance Co. Ltd.***, (2020) 18 SCC 224 to support his contention. As per him, it is entirely erroneous to place reliance on Surendra Kumar (Supra) since there is no claim of transfer of ownership. Therefore, the present case hinges on the question whether there is a deemed transfer of comprehensive insurance policy, which was specifically dealt with by the Apex Court in Complete Institutions (Supra). He highlighted that the scope of Section 157 of the 1988 Act, is in complete consonance with GR 17 of the India Motor Tariff, 200 which provides that-

In case of Package Policies, transfer of the "Own Damage" section of the policy in favour of the transferee, shall be made by the insurer only on receipt of a specific request from the transferee along with consent of the transferor."

12. The learned counsel for petitioner further argued that the deeming fiction of Section 157 of the 1988 Act does not extend to own damages claim and is limited to only third party liabilities. The impugned order is reading Section 157 outside its context as provided by the title of Chapter XI: Insurance of Motor Vehicle against 3rd party risks made applicable through GR 17. He contended that an illusion of claim intimation was created through email dated 17.09.2017. However, the information reached the Petitioner only on 24.11.2017 through the claim form. The Respondent had thus failed to intimate to the Petitioner within 14 days, about the change in ownership. The claim intimation after 75 days is way beyond the stipulated 14 days period and a request for transfer of insurance policy was never even attempted by him. These are all deliberate lapses which are in contravention of the statutory provision as well as the contractual obligations. He argued that, without prejudice to the above, if any amount is payable to the Respondent, it should be the amount assessed by the Surveyor, which is about Rs.5,08,935/- and not the IDV amount of Rs.7,37,134/- as he never disputed the survey report. Thus, the amount payable is limited to the loss Surveyor assessed. He relied on the following judgments to support his arguments: -

1. ***IFFCO Tokio General Insurance Co. Ltd. v. Ashok Laxman Mane, 2020 SCC OnLine NCDRC 208.***
2. ***Jaspal Singh v. Tata AIG General Insurance Co. Ltd., 2023 SCC OnLine NCDRC 598.***
3. ***Balwant Singh and Sons v. National Insurance Co. Ltd. (2020) 11 SCC 745.***
4. ***Reliance General Insurance Co. Ltd. v. Annamma Raju, 2022 SCC OnLine Ker 9705.***
5. ***New India Assurance Company Ltd. Vs Chandrakant Bhujangrao Jogdand, RP No. 4387 of 2009.***
6. ***National Insurance Co Ltd v Jai Bhagwan RP No 118 of 2013.***

13. On the other hand, the learned Counsel for the Respondent/ Complainant reiterated the facts of the case. He argued that Section 157 of the Motor Vehicles Act, which deals with transfer of insurance certificates upon vehicle ownership transfer, does not distinguish between third-party claims and own damage claims. The contention is supported by the explanation in Section 157(1), which explicitly states that the entire policy, including rights and liabilities, is transferred to the new owner upon vehicle transfer. This includes claims under comprehensive policies, not just third-party claims. The claim for reliance on the decision of the Hon'ble Supreme Court in ***Surendra Kumar Bhilawe vs. The New India Assurance Company*** is misplaced. He emphasized that Section 157's amendment in 1994 clarified that the transfer includes all rights and liabilities, debunking any notion that it only applies to third-party claims. He disputed the application of the Supreme Court's decision in ***M/s Complete Insulations (P) Ltd vs. New India Assurance Company Ltd (1995)***, arguing it pertained to the old Motor Vehicles Act, 1939 and did not consider the 1988 Act's provisions. The current laws do not allow insurers to selectively deny transfer of comprehensive policy benefits, as it aims to prevent insurers from splitting policies post-transfer, which could undermine the purpose of comprehensive insurance. Thus, Section 157 of the Motor Vehicles Act mandates the transfer of all policy rights and liabilities upon vehicle transfer, including own damage claims, and criticizes reliance on outdated legal precedents to deny such claims. He argued against the applicability of GR 17 of the Indian Motor Tariff, effective since 30.06.2002, is a subordinate legislation and cannot stand independently against Section 157 of the MV Act. Citing the ***Kerala Samsthana Chethu Thozhilali U vs. State of Kerala*** case, it asserted that subordinate legislation must align with primary legislation and cannot contradict it. Also, Condition No. 5 of the policy underscores that the policy remains active after a change of vehicle ownership unless a new insurance policy is obtained, which was not the case. Thus the policy, including potential own damage claims, is deemed transferred under Section 157(1) of MV Act, which covers all aspects of the insurance policy upon vehicle transfer. Even if the commission disagrees, the argument suggests that, in this specific case, where the accident occurred shortly after ownership transfer, denying the claim solely on grounds of policy ownership change is untenable. He asserted that the contention by the Petitioner about the delay in reporting the claim, which was not cited as a reason for repudiation in the letter dated 27.10.2018. Thus, raising it now is inadmissible. The Respondent promptly reported the claim. Citing the Supreme Court's decision in ***Saurashtra Chemicals Ltd. vs. National Insurance Co. Ltd.***, he asserted that an insurance company cannot introduce new grounds for repudiation beyond those mentioned in the original letter.

Since delay was not a cited reason in the letter of repudiation, it cannot be used as a defense in this forum.

14. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

15. The primary issue in this case is whether the Respondent, who was the registered owner of the vehicle at the time of the accident but did not transfer the insurance policy in his name, is entitled to claim compensation for own damage under the insurance policy purchased by the previous owner? The case hinges on the interpretation of Section 157 of the Motor Vehicles Act, 1988, which deals with the transfer of insurance policies in relation to third-party risks and whether it extends to cover own damage liabilities.

16. It is an established fact that the vehicle, a Maruti S-cross Delta bearing registration No. HR-788-5280, was insured with OP-1 under a Package Policy (Private Vehicle) from 01.12.2016 to 30.11.2017, for an Insured Declared Value (IDV) of Rs. 7,37,134/-. The vehicle was sold by the original owner, Sh. Sandeep Kumar, to the Complainant, Harmanpreet Singh, on 04.09.2017. The vehicle met with an accident on the night of 10/11.09.2017 in Chandigarh, and a DDR No. 10 dated 11.09.2017 was registered with the Police Station, Sector 19, Chandigarh. The Complainant informed OP-1 about the accident immediately via its toll-free number and email. The vehicle was inspected by a surveyor appointed by OP-1, who declared it beyond repair and a total loss. OP-1 rejected the Complainant's claim on 27.10.2018 and 06.12.2018, stating that the Complainant had no insurable interest in the vehicle as the insurance policy had not been transferred to his name.

17. The letters repudiating the claim dated 27.10.2018 and 06.12.2018 reveal that the claim of the complainant was rejected by OP-1, solely on the ground that since the vehicle in question stood transferred in the name of the complainant but the insurance policy was not got transferred in his name and it still stands in the name of the original owner- Sandeep Kumar. As such, the complainant had no insurable interest. In this regard, Section 157 of the Motor Vehicles Act, 1988 reads as under:-

".....Section 157 of MV Act 1988:- Transfer of certificate of insurance -- (1) Where a person, in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter, transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer....."

18. Hon'ble Supreme Court of India in Surendra Kumar Bhilawe vs The New India Assurance Company, Civil Appeal No. 2632 Of 2020, decided on 18 June, 2020 had held that

"Section 157 of the Motor Vehicles Act, 1988 introduces a deeming provision whereby the transfer of the certificate of Insurance and the policy of Insurance are deemed to have been made, where the vehicle along with the Insurance policy is transferred by the owner to another person."

19. In the present case also, admittedly the registration of the vehicle in question stood transferred in the name of the complainant on 05.09.2017. As such, it was not required for him to get the insurance policy transferred in his name because the existing insurance policy in question, in respect of the same vehicle will also be deemed to have been transferred in his name and the policy will not lapse, in view of Section 157 of the M.V. Act referred above, even if, intimation in that regard was not given to the insurer. In this view of the matter, it is held that repudiation of the complainant's claim by OP - insurer was illegal.

20. The Hon'ble Supreme Court in ***Surendera Kumar Bhilawe (Supra)*** has held that "the Insurer could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership". In the case under consideration of the Hon'ble Supreme Court, the vehicle was hypothecated to a Bank and payment of instalment was being made by the Appellant/ Complainant. It was also held that Sections 19 & 20 of Sale of Goods Act, 1930, which deal with the stage at which the property in movable goods passes to the buyer, is of no assistance to the Insurer. It is further held: -

"32) If there is an impediment to the transferee, as in the instant case, where 'No Objection' of the financier bank was imperative for transfer of the said truck, there could be no question of transfer of title until the impediment were removed, for otherwise the contract for transfer would be injurious to the financier bank, immoral, unlawful and void under Section 10 read with Sections 23 and 24 of the Contract Act, 1872.

33) It was thus, an implicit condition of the agreement for transfer of the said truck, that the transfer would be complete only upon issuance of 'No Objection' by the financier bank and upon compliance with the statutory requirements for transfer of motor vehicle. "

21. In view of the foregoing, I am of the considered view that the learned State Commission passed a detailed and well-reasoned order based of facts and law. Therefore, I find no reason to interfere with the same. The Revision Petition No. 1195 of 2022 is dismissed.

22. There shall be no order as to costs.

23. All pending Applications, if any, are also disposed of accordingly.

**AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER**