

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1034 OF 2015**

(Against the Order dated 31/08/2015 in Complaint No. 16/2013 of the State Commission Maharashtra)

1. NEW INDIA ASSURANCE CO. LTD. & ANR.

1ST FLOOR, RUNGTA COMPLEX, JAISTAMBH CHOWK,  
GANESH NAGAR ROAD,  
GONDIA-441601

2. THE NEW INDIA ASSURANCE CO. LTD.,

DR. BABASAHEB AMBEDKAR BHAVAN, 4TH FLOOR,  
HIGH LAND DRIVE SEMINARY HILLS, NAGPUR-440006 .....Appellant(s)

Versus

1. TIRATH SINGH AWATARSINGH BHATIA

R/O. RAJGOPALACHARI WARD, NEAR GURUNANK  
GATE,

GONDIA-441601

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. C. VISWANATH, PRESIDING MEMBER**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, MEMBER**

**For the Appellant :** Mr. Vishnu Mehra, Advocate  
Mr. Anant Mehrotra, Advocate

**For the Respondent :** Mr. Kaushik Mandal, Advocate

**Dated : 01 Jul 2022**

**ORDER**

1. The present First Appeal has been filed against the impugned order dated 31.08.2015 passed by State Consumer Disputes Redressal Commission, Maharashtra Circuit Bench, Nagpur (in short 'State Commission') in the Complaint Case No. CC/13/16.

2. Alongwith the First Appeal, IA/9568/2015, an application for condonation of delay of 61 days has also been filed by the Appellant. For the reasons stated in the application and in the interest of justice, IA/9568/2015 is allowed and delay condoned.

3. The case of the Complainant/ Respondent is that he insured his vehicle, Ashok Leyland Truck, Registration No. MH 35 K 3400, under Commercial Package Insurance Policy No. 16030231110100000212, with the Appellant/Opposite Parties from 03.05.2011 to 02.05.2012. The Insurance Declared Value under the Policy was Rs.21,66,000/-. On 28.06.2011, the driver of the Complainant Junaid Iddrish Seikh was handed over the vehicle to despatch Manure/Fertilizer from Gondia to Mashal. The driver after reaching Mashal at around 7:30 P.M, unloaded the manure and came back to Desaiganj and parked the vehicle at M/s Saibaba Roadlines, Brahmmapuri Road, Gadchiroli. On 29.06.2011, when the driver woke up in the morning, could not find the vehicle where it was parked. He informed about the same to the Complainant. The Complainant then reached M/s Saibaba Roadlines and searched for the vehicle but could not find it and immediately reported the incident to the Police Authorities at Desaiganj, Gadchiroli as well as the Opposite Party. FIR No.37/11 on 30.06.2011 was registered at Desaiganj Police Station under section 379 IPC. Around two and half months later, the Opposite Party deputed an investigator, Mr. Shrikant R Siwankar, to investigate into the matter. The Complainant handed over all necessary documents to the Surveyor for scrutiny and settlement of his claim. In the meantime, the Police Authorities arrested and interrogated one of the accused in the theft, who confessed that the driver of the Complainant was also involved in the theft of vehicle. The Opposite Party, vide letter dated 05.11.2012,

repudiated the claim of the Complainant on the ground that since the driver/employee of the Complainant was involved in the theft, the claim was outside the purview of the Insurance Policy due to breach of trust. Alleging deficiency in service on the part of the Opposite Party, the Complainant filed a Consumer Complaint before the State Commission with the following prayer:-

*“(i) pay the amount of IDV of the vehicle Rs.21,66,000/- withheld along with interest @ 18% from the date of theft till full and final realization of the amount.*

*(ii) pay compensation of Rs.1,00,000/- for mental and physical harassment and Deficiency in service and Unfair Trade Practice caused by the O.P.'s for inducing inordinate delay and not settling the matter as per the regulation of the IRDA.*

*(iii) pay cost not less than Rs.25,000/-*

*(iv) grant any other relief as this Hon'ble Forum may deem fit and proper.”*

4. The Complaint was resisted by Opposite Party by filing the Written Statement in which it was contended that Opposite Party regularly issued Insurance Policy and the Complainant had a transport business in the name and style of 'Guru Nanak Road Lines'. Due to regular purchase of Policy, the Complainant was well aware of the terms and conditions as well as the exclusion clause under the Commercial Package Policy. The driver of the Complainant colluded with the culprits for his personal benefit and drove the vehicle to Hyderabad in breach of Policy condition, i.e., beyond the geographical boundary of the territory of Maharashtra State. In such circumstance, the Opposite Party was not liable to pay insurance claim for any loss accrued to the Complainant. The claim was rightly repudiated. It was also submitted that as per the Police Investigation Report, gear box of the Vehicle valued at Rs.95,000/- was recovered by the Police subsequently, which was not deducted from the claim by the Complainant.

5. The State Commission after hearing the Learned Counsel for the Parties and perusing the record, vide impugned order dated 31.08.2015, partly allowed the Complaint in the following terms:-

*“(i) The complaint is partly allowed.*

*ii) The Opposite Party Nos. 1 and 2 are directed to pay to the complainant Rs.20.71 lacs with interest @ 9% p.a. from the date of repudiation of his claim i.e. from 05.11.2012 till its realization by him.*

*iii) The Opposite Party Nos. 1 and 2 shall also pay to the complainant compensation of Rs.25,000/- towards physical and mental harassment and cost of proceedings amounting to Rs.10,000/-.*

*iv) Copy of the order by furnished to both parties free of cost.”*

6. Aggrieved by the order of the State Commission Appellant/Opposite Party preferred the present Appeal before this Commission with the following prayer:-

*“It is, therefore, prayed that this Hon'ble Commission may be pleased to allow the instant First Appeal and set aside/reverse the final impugned order dated 31.08.2015 passed by the Learned State Consumer Disputes Redressal Commission, Maharashtra Nagpur Circuit Bench, Nagpur in Complaint Case No. CC/13/16.*

*Any other or further order(s) deemed fit by this Hon'ble Commission in the facts and circumstances or the case may pleased be pleased.”*

7. Heard the Learned Counsel for the Parties and carefully perused the record. Learned Counsel for the Appellant submitted that the State Commission erred in appreciating the fact that the Respondent was carrying on transport business and was having a fleet of vehicles, therefore, was not a Consumer under Section 2 (1) (d) of the Consumer Protection Act, 1986. On merits, Learned Counsel for Appellant/Opposite Party submitted that the State Commission had erroneously allowed the Complaint filed by the Respondent, without appreciating the reasons recorded in the Repudiation Letter. The State Commission failed to appreciate that it was not a matter of theft but criminal breach of trust and was outside the purview of the Policy. The State Commission failed to distinguish between the theft and the criminal breach of trust and attributed the incident as 'theft' and wrongly allowed the Complaint filed by the Respondent.

8. Learned Counsel for the Respondent/Complainant submitted that the Appellant/Opposite Party did not supply the terms & conditions of the Policy to the Complainant. The Opposite Party cannot take the benefit of the exclusion clause of the Policy which did not form part of the contract, due to non-supply of the same to the Complainant. Learned Counsel for the Respondent placed reliance on the judgment of Supreme Court in **New India Assurance Co. Ltd. v. Jagtar Singh in RP No. 3619 of 2012; Modern Insulators Ltd. v. Oriental Insurance Co. Ltd., AIR 2000 SC 1014** wherein it was held that "*the opposite party cannot take benefit of an uncommunicated exclusion clause.*" The Learned Counsel submitted that they had immediately informed the Opposite Party on 30.06.2011 about the theft but they declined to accept the intimation and asked the Respondent/Complainant to give intimation along with a copy of FIR. Thereafter, the Respondent got FIR lodged and gave written intimation to the Opposite Party on 01.07.2011. The Opposite Party also deputed the investigator after expiry of two and half months of receipt of the notice. The Opposite Party repudiated the claim after 16 months without application of mind. Learned Counsel relied on the judgment of Hon'ble Supreme Court in **National Insurance Company Ltd. v. Nitin Khandelwal, IV (2008) CPJ 1 (SC)** which held that:-

*"In case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle breach of policy 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 Hon'ble National Commission in number of Cases has upheld the above said order and passed the judgement."*

9. Further, the Insurance Regulatory & Development Authority (IRDA), vide its Circular Reference, dated 20.09.2011, has notified that:-

*"The insurer's decision to reject a claim shall be based on sound logic and valid grounds. It may be noted that such limitation clause does not work in isolation and is not absolute. One needs to see the merits and good spirit of the clause, without compromising on bad claims. Rejection of claims on purely technical grounds in a mechanical fashion will result in policyholders losing confidence in the insurance industry, giving rise to excessive litigation."*

10. Learned Counsel also relied on the judgement of this Commission under **Oriental Insurance Co. Ltd. v. Paramjit Kaur & ors., decided on 15.03.2007** wherein it was held that the theft by the driver of a truck amounts to malicious act and loss thereby will be covered under the Insurance Policy.

11. Facts of the case are that the Respondent took Insurance Policy No.160302311100000212 from the Appellant, for his vehicle No. MH-35-K-3400 valid from 03.05.2011 to 02.05.2012. On 28.06.2011, the Complainant entrusted the vehicle to the driver to despatch manure/fertilizer from Gondia to Mashal. The said vehicle was stolen on 29.06.2011. During investigation it was revealed that the driver was involved in theft. The Opposite Party, vide letter dated 05.11.1012, repudiated the claim on the ground the driver/employee was involved in the offence which amounted to criminal breach of trust.

12. So far as the question of maintainability is concerned, this Commission in **Harsolia Motors v National Insurance Company Ltd. [I (2005) CPJ 26 (NC)]** held that a contract of Insurance is a contract of indemnity and, therefore, there is no question of commercial purpose in obtaining insurance coverage. In the

instant case the dispute relates to the Insurance, which is a contract of indemnity. In view of law laid down, the Complainant/Respondent is a "Consumer" and the Complaint is maintainable.

13. It is relevant to mention that the Appellant has not filed complete copy of the Insurance Policy. Only cover note has been filed. It is, however, clear from the impugned order that the Policy covered loss/damage to the vehicle by burglary, house breaking or by malicious act. During investigation, it was found that the driver of the vehicle was involved in the theft. In this regard, the State Commission relied on a judgement of this Commission in case of **S. Bhagat Singh v. Oriental Insurance Co. Ltd., Revision Petition No. 7 of 1991, decided on 03.11.1991** whereby this Commission observed that:-

*"Even if it is assumed that the driver dishonestly took away the taxi- car, even then the case would fall under sec. 378 of Indian Penal Code wherein theft has been defined. The present case is fully covered under illustration (d) appended to that section. The said illustration reads as follows:*

*(d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft. In the present case the driver was entrusted with the taxi-car. He did not take it back to Dehradun but has gone away somewhere either with the passengers or after they had alighted from it on way to Dehradun. As noticed earlier, the taxi-car was to ply only between Dehradun and Delhi. Thus the driver in the present case will be deemed to have committed theft of the taxi-car."*

14. The State Commission observed that the decision in aforesaid judgement is fully applicable in the present case, as the driver had in collusion with two other culprits committed theft of the Vehicle owned by the Respondent, and insured by Appellants. The Appellant/Opposite Party could not produce any judgment either of this Commission or Hon'ble Supreme Court contrary to the aforesaid decision.

15. It is admitted that the vehicle was stolen and during police investigation it was found that the driver of the vehicle was also involved in the theft. The Opposite Party repudiated the claim stating that it was not a case of theft but breach of trust, which was outside the purview of the Insurance Policy. The Insurance Policy covered the loss to the vehicle by burglary, house breaking or by malicious act. It is a case of theft and involvement of driver in the theft will not rule out the commission of theft.

16. The State Commission passed a well-reasoned order. Appellants have failed to point out any illegality or irregularity in the impugned order which may warrant interference in the Appellate jurisdiction. The Appeal is dismissed with no order as to costs.

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**C. VISWANATH**  
**PRESIDING MEMBER**

.....J  
**RAM SURAT RAM MAURYA**  
**MEMBER**