

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1662 OF 2022

(Against the Order dated 15/09/2022 in Appeal No. 649/2014 of the State Commission Uttar Pradesh)

1. PRADEEP KUMAR YADAVPetitioner(s)

Versus

1. ICICI, LOMBARD GERNERAL INSURANCE CO. LTD.Respondent(s)

BEFORE:

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

FOR THE PETITIONER : FOR PETITIONER : MR. PRAMOD KUMAR SINGH,
ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENT: MR. YOGESH MALHOTRA, MR
SUSHANT KISHORE, ADVOCATES

Dated : 23 September 2024

ORDER

1. This Revision Petition is filed under Section 58(1)(b) of the Consumer Protection Act, 2019 ("the Act") against the order dated 15.09.2022, passed by the learned U.P. State Consumer Disputes Redressal Commission, Lucknow ('State Commission') in FA No.649/2014 wherein the State Commission allowed the Appeal filed by the Respondent/OP against the order dated 13.02.2014 passed by the District Consumer Disputes Redressal Forum, Varanasi ('the District Forum') wherein the District Forum allowed Complaint No.07/2013.

2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

3. Brief facts of the case, as per the Complainant, are that he is the owner of Tata Sumo bearing No.UP-65-AT-7251 and had taken an insurance policy from Respondent/OP from 13.08.2012 to 12.08.2013. On 14/15.08.2012 vehicle was stolen and on 15.08.2012 he informed the police by dialing 100 about the theft of the vehicle and thereafter, he lodged the Crime No. 132/12 under Section 379 IPC on 22.08.2012 at Jaipura Varanasi Police Station. On 01.09.2012 intimation was also given to the insurer about the theft. However, the Insurance Company repudiated the claim on 02.11.2012 on the ground of violation of condition No.1 of the insurance policy in question due to delay in intimation of 8 days to the police authorities and 16 days in intimation to the insurance company. Being aggrieved, he filed a consumer Complaint before the District Forum.

4. In reply before the District Forum, OP refuted all allegations in the complaint. While acknowledging that the vehicle was insured with OP, they emphasized that the policy was subject to specific terms and conditions. The complainant failed to promptly report the theft to the police and to inform the insurer. The OP refuted the allegation that the insurance claim was repudiated solely due to delay in lodging the FIR, asserting that there was breach of crucial policy terms and conditions, including the delay in reporting theft to police as well as insurer. They contended that this delay deprived both parties of the opportunity to effectively search for the vehicle. There was thus no deficiency in service on their part and sought the complaint to be dismissed.

5. The learned District Forum vide Order dated 13.02.2014 allowed the complaint and directed the Respondent/OP as under:

“ORDER

The complaint of complainant Pradeep Kumar Yadav is accepted. The opposite parties are jointly and severely ordered to pay the insured amount of Rs.4,40,000/- of the insured amount of vehicle within one month from the date of this order and for mental, physical and mental agony Rs.5,000/- and legal expenses Rs.2000/- after the expiry of time limit 7% interest will be payable from the date of filing this complaint. Apart from this, the rest of the reliefs sought by the complainant against the opposite parties are set aside.

(Extracted from translated copy)

6. Being aggrieved by the Order of the learned District Forum, the OP filed an Appeal No.649/2014 and the State Commission vide order dated 15.09.2022 allowed the Appeal and set aside the order of the District Forum with the following observations:

5. The insurance claim has been rejected by the insurance company on the ground that after the vehicle was stolen, the theft was reported with extreme delay. It is the contention of the learned counsel for the appellant that in fact the policy was obtained by the complainant from another company, which had lapsed. After the vehicle was stolen, a new policy was obtained by suppressing the information regarding the old policy and the police report was lodged with extreme delay, therefore the insurance company was cheated by the complainant. Accordingly no claim is payable. The legal position in this regard is clear that if the insured vehicle is stolen, the first Information should be filed immediately. As per the facts of case law New India Assurance Co. Ltd. v. Sharif Ahmad IV (2018) CPJ 190 (NC), the delay in filing of FIR results in loss of opportunity to trace the insured vehicle. In the present case, no reason was given for the delay in writing the first information report after the vehicle was stolen, therefore, the insurance company has a statutory opportunity to reject the insurance claim due to delay in reporting the theft of the vehicle by the complainant. It would also be pertinent to mention that the vehicle was reported stolen on the very next date i.e. on 14.08.2012, when the policy was issued. Accordingly, the appeal is allowed.

ORDER

6. The appeal is accepted. The decision and order passed by the District Commission on 13.02.2014 is set aside.

Both the parties will bear their own expenses.

At the time of filing of the appeal by the appellant, the amount deposited in the appeal along with accrued interest shall be returned to the appellant in one month as per law.”

7. Being dissatisfied by the Order dated 15.09.2022 passed by the learned State Commission, the complainant filed this Revision Petition.

8. In his arguments the learned Counsel for complainant contended that the OP rejected the claim due to delay in notifying the insurer and police about theft. While the vehicle was stolen on 14/15.08.2012, the Intimation of theft was given to the police on 15.08.2012 itself and FIR was lodged on 22.08.2012 and insurer was informed on 01.09.2012. However, the insurer repudiated the claim citing violation of the policy's terms and conditions. He argued in favour of District Forum's order and sought to allow the Revision Petition.

9. Per contra, the learned Counsel for Respondent/OP argued that there was clear violation of terms & conditions of the insurance policy by the complainant. The policy issued to him explicitly states that the claim for theft of vehicle is not payable if theft is not reported to the Insurer immediately. However, OP was informed about the incident only on 01.09.2012 with the delay of 16 days and also lodged the FIR on 22.08.2012 with the delay of 8 days which is clearly violation of the terms and conditions of the Policy. The learned Counsel argued in favor of the impugned order passed by State Commission and sought to dismiss the Revision Petition. He relied on the following judgments:

A. New India Assurance Company Ltd. vs. Trilochan Jane, IV (2012) CPJ 441 (NC);

B. Oriental Insurance Company Limited vs. Parvesh Chander Chadha, (2018) 9 SCC 798;

C. Tata AIG General Insurance Co. Ltd. vs. Nikhil Seth, IV (2015) CPJ 195 (NC);

D. National Insurance Co. Ltd. vs. Suresh Kumar, I (2016) CPJ 205 (NC);

E. Reliance General Insurance Co. Ltd. vs. Harbhajan Khaira, IV (2016) CPJ 150 (NC);

F. Bharti Axa General Insurance Co. Ltd. vs. Bhag Chand, IV (2016) CPJ 219 (NC);

G. Gurshinder Singh vs. Shriram General Insurance Company (2020) 11 SCC 612.

10. 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.

11. The main issue to be determined is whether the action of Respondent/ Insurance Company in repudiating the claim vide letter dated 02.11.2012 on the grounds of delay in reporting is in compliance of the terms of contract?

12. The Respondent/Insurer, vide letter dated 02.11.2012 repudiated the claim of the Petitioner/Complainant on the grounds of suppression or concealment and misrepresentation of material facts; and violation of Condition No.1 of the Policy. In the present case, admittedly the OP was informed about the incident on 01.09.2012, with the delay of 16 days and also lodged the FIR on 22.08.2012 with the delay of 8 days.

13. The Hon'ble Supreme Court in *Surendra Kumar Bhilawe Vs. The New India Assurance Co. Ltd.*, AIR 2020 Supreme Court 3149, has held as under:

“53. In our considered opinion, the National Commission erred in law in reversing the concurrent factual findings of the District Forum and the National Commission ignoring vital admitted facts as stated above, including registration of the said truck being in the name of the Appellant, even as on the date of the accident, over three years after the alleged transfer, payment by the Appellant of the premium for the Insurance Policy, issuance of Insurance Policy in the name of the Appellant, permit in the name of the Appellant even after three years and seven months, absence of ‘No Objection’ from the financier bank etc. and also overlooking the definition of owner in [Section 2\(30\)](#) of the Motor Vehicles Act, as also other relevant provisions of the [Motor Vehicles Act](#) and the Rules framed thereunder, including in particular the transferability of a policy of insurance under [Section 157](#).

54. In view of the definition of ‘owner’ in [Section 2\(30\)](#) of the Motor Vehicles Act, the Appellant remained the owner of the said truck on the date of the accident and the Insurer could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership to Mohammad Iliyas Ansari.

55. The judgment of this Court in [Oriental Insurance vs. Sony Cheriya](#), AIR 1999 Supreme Court 3252, was rendered in the context of liability of an Insurer in terms of the insurance policy and is not attracted in this case, where the claim of the insured has not been rejected on the ground of the same not being covered by the policy of insurance, but on the ground of purported transfer to a third party by entering into a sale agreement.”

14. The Hon'ble Supreme Court in *Jaina Construction Committee V. Oriental Insurance Co Ltd.*, 2022 SCC OnLine SC 175 has held:

“12. In the opinion of the Court the afore-stated ratio of the judgment clinches the issue involved in the case on hand. In the instant case also, the FIR was lodged immediately on the next day of the occurrence of theft of the vehicle by the complainant. The accused were also arrested and charge-sheeted, however, the vehicle could not be traced out. Of course, it is true that there was a delay of about five months on the part of the complainant in informing and lodging its claim before the Insurance Company, nonetheless, it is pertinent to note that the Insurance Company has not repudiated the claim on the ground that it was not genuine. It has repudiated only on the ground of delay. When the complainant had lodged the FIR immediately after the theft of the vehicle, and when the police after the investigation had arrested the accused and also filed challan before the court concerned, and when the claim of the insured was not found to be not genuine, the Insurance Company could not have repudiated the claim merely on the ground that there was a delay in intimating the Insurance Company about the occurrence of the theft.”

15. The Hon’ble Supreme Court in ***Dharmender Vs. United India Insurance Co. Ltd. & Ors., Civil Appeal No.5705 of 2021 decided on 13.09.2021*** has held as under:

“We have heard the learned counsel for the parties at length and find that the order passed by the NCDRC cannot be sustained. The claim of the appellant was repudiated by the Insurance Company on the ground that there is delay of 78 days in intimating the vehicle being stolen on the intervening night of 24-25.04.2010. It is the said ground which was raised and accepted by the NCDRC. The NCDRC has returned the following finding to set aside the orders passed by the District Forum, as affirmed by the State Commission:-

“7. The delay of 78 days was not explained. The complainant has failed to make a case that there was delay in intimation due to unavoidable circumstances as per the IRDA circular.”

However, in respect of the argument that the FIR was delayed, the said arguments need not be examined in this case as the case of Insurance Company throughout was based upon delay in intimation to the Insurance Company.”

16. The Hon’ble Supreme Court in ***Gurshinder Singh Vs. Shriram General Insurance Company Ltd., 2020 (11) SCC 612*** has held:

*“9. We are of the view that much would depend upon the words “cooperate” and “immediate”, in Condition 1 of the standard form for commercial vehicles package policy. Before we analyse this case any further, we need to observe the rules of interpretation applicable to a contract of insurance. Generally, an insurance contract is governed by the rules of interpretation applicable to the general contracts. However, due to the specialised nature of contract of insurance, certain rules are tailored to suit insurance contracts. Under the English law, the development of insurance jurisprudence is given credence to Lord Mansfield, who developed the law from its infancy. Without going much into the development of the interpretation rules, we may allude to Neuberger, J. in *Arnold v. Britton* [*Arnold v. Britton*, 2015 AC 1619 : (2015) 2 WLR 1593 : 2015 UKSC 36 (SC)E], which is simplified as under:*

(1) Reliance placed in some cases on commercial common sense and surrounding circumstances was not to be invoked to undervalue the importance of the language of the provision which is to be construed.

(2) The less clear the words used were, the more ready the court could properly be to depart from their natural meaning, but that did not justify departing from the natural meaning.

(3) Commercial common sense was not to be invoked retrospectively, so that the mere fact that a contractual arrangement has worked out badly, or even disastrously, for one of the parties was not a reason for departing from the natural language.

(4) A court should be very slow to reject the natural meaning of a provision as correct simply because it appeared to be a very imprudent term for one of the parties to have agreed.

(5) When interpreting a contractual provision, the court could only take into account facts or circumstances which existed at the time that the contract was made and which were known or reasonably available to both parties.

*(6) If an event subsequently occurred which was plainly not intended or contemplated by the parties, if it was clear what the parties would have intended, the court would give effect to that intention. [Robert Merkin QC et al., *Colinvaux's Law of Insurance* (11th Edn.), p. 159.]*

10. *A perusal of the aforesaid shows that this contract is to be interpreted according to the context involved in the contract. The contract we are interpreting is a commercial vehicle package policy. There is no gainsaying that in a contract, the bargaining power is usually at equal footing. In this regard, the joint intention of the parties is taken into consideration for interpretation of a contract. However, in most standard form contracts, that is not so. In this regard, the court in such circumstances would consider the application of the rule of *contra proferentem*, when ambiguity exists and an interpretation of the contract is preferred which favours the party with lesser bargaining power.*

11. *It is argued on behalf of the respondents and rightly so, that the insurance policy is a contract between the insurer and the insured and the parties would be strictly bound by the terms and conditions as provided in the contract between the parties.*

12. *In our view, applying the aforesaid principles, Condition 1 of the standard form for commercial vehicles package policy will have to be divided into two parts. The perusal of the first part of Condition 1 would reveal that it provides that "a notice shall be given in writing to the company immediately upon the occurrence of any accidental loss or damage". It further provides that in the event of any claim and thereafter, the insured shall give all such information and assistance as the company shall require. It provides that every letter, claim, writ, summons and/or process or copy thereof shall be forwarded to the insurance company immediately on receipt by the insured. It further provides that a notice shall also be given in writing to the company immediately by the*

insured if he shall have knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence, which may give rise to a claim under this policy.

13. A perusal of the wordings used in this part would reveal that all the things which are required to be done under this part are related to an occurrence of an accident. On occurrence of an accidental loss, the insured is required to immediately give a notice in writing to the company. This appears to be so that the company can assign a surveyor so as to assess the damages suffered by the insured/ vehicle. It further provides that any letter, claim, writ, summons and/or process or copy thereof shall be forwarded to the company immediately on receipt by the insured. As such, the intention would be clear. The question of receipt of letter, claim, writ, summons and/or process or copy thereof by the insured, would only arise in the event of the criminal proceedings being initiated with regard to the occurrence of the accident. It further provides that the insured shall also give a notice in writing to the company immediately if the insured shall have the knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. It will again make the intention clear that the immediate action is contemplated in respect of an accident occurring to the vehicle.

14. We find that the second part of Condition 1 deals with the “theft or criminal act other than the accident”. It provides that in case of theft or criminal act which may be the subject of a claim under the policy, the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender. The object behind giving immediate notice to the police appears to be that if the police is immediately informed about the theft or any criminal act, the police machinery can be set in motion and steps for recovery of the vehicle could be expedited. In a case of theft, the insurance company or a surveyor would have a limited role. It is the police, who acting on the FIR of the insured, will be required to take immediate steps for tracing and recovering the vehicle. Per contra, the surveyor of the insurance company, at the most, could ascertain the factum regarding the theft of the vehicle.

15. It is further to be noted that, in the event, after the registration of an FIR, the police successfully recovering the vehicle and returning the same to the insured, there would be no occasion to lodge a claim for compensation on account of the policy. It is only when the police are not in a position to trace and recover the vehicle and the final report is lodged by the police after the vehicle is not traced, the insured would be in a position to lodge his claim for compensation.

16. As observed by the Bench of two learned Judges in Om Prakash [Om Prakash v. Reliance General Insurance, (2017) 9 SCC 724 : (2017) 4 SCC (Civ) 759] , after the vehicle is stolen, a person, who lost his vehicle, would immediately lodge an FIR and the immediate conduct that would be expected of such a person would be to assist the police in search of the vehicle. The registration of the FIR regarding the theft of the vehicle and the final report of the police after the vehicle is not traced would substantiate the claim of the claimant that the vehicle is stolen. Not only that, but the surveyors appointed by the insurance company are also required to enquire whether the claim of the claimant regarding the theft is genuine or not. If the surveyor appointed by the insurance company, upon inquiry, finds that the claim of theft is genuine then

coupled with the immediate registration of the FIR, in our view, would be conclusive proof of the vehicle being stolen.

17. That the term “cooperate” as used under the contract needs to be assessed in the facts and circumstances. While assessing the “duty to cooperate” for the insured, inter alia, the court should have regard to those breaches by the insured which are prejudicial to the insurance company. Usually, mere delay in informing the theft to the insurer, when the same was already informed to the law enforcement authorities, cannot amount to a breach of “duty to cooperate” of the insured.

18. We concur with the view taken in Om Prakash [Om Prakash v. Reliance General Insurance, (2017)9 SCC 724: (2017) 4 SCC (Civ) 759], that in such a situation if the claimant is denied the claim merely on the ground that there is some delay in intimating the insurance company about the occurrence of the theft, it would be taking a hyper-technical view. We find that this Court in Om Prakash [Om Prakash v Reliance General Insurance, (2017) 9 SCC 724: (2017) 4 SCC (Civ) 759] has rightly held that it would not be fair and reasonable to reject genuine claims which had already been verified and found to be correct by the investigator.

19. We find that this Court in Om Prakash [Om Prakash v. Reliance General Insurance, (2017)9 SCC 724:(2017) 4 SCC (Civ)759] has rightly held that the Consumer Protection Act aims at protecting the interest of the consumers and it being a beneficial legislation deserves pragmatic construction. We find, that in Om Prakash [Om Prakash v. Reliance General Insurance, (2017) 9 SCC 724: (2017) 4 SCC (Civ) 759] this Court has rightly held that mere delay in intimating the insurance company about the theft of the vehicle should not be a shelter to repudiate the insurance claim which has been otherwise proved to be genuine.

20. We, therefore, hold that when an insured has lodged the FIR immediately after the theft of a vehicle occurred and when the police after investigation have lodged a final report after the vehicle was not traced and when the surveyors/investigators appointed by the insurance company have found the claim of the theft to be genuine, then mere delay in intimating the insurance company about the occurrence of the theft cannot be a ground to deny the claim of the insured.”

17. In view of the judgments of the Hon’ble Supreme Court cited above, minor delay in intimation to the Insurance Company as well as delay in lodging the FIR is no more a factor for the insurer to deny the claim of the Petitioner/Complainant.

18. In view of the foregoing deliberations, the impugned order of the learned State Commission dated 15.09.2022 in Appeal No.649/2014 is set aside and the order of the District Forum dated 13.02.2014 in Complaint No.07/2013 is upheld. Consequently, the Revision Petition No.1662 of 2022 is allowed.

19. There shall be no order as to costs. All pending Applications, if any, also stand disposed of accordingly.

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