

**STATE CONSUMER DISPUTE REDRESSAL COMMISSION****BIHAR, PATNA****Appeal No. 95 of 2022**

Bajaj Allianz General Insurance Co. Ltd., 6<sup>th</sup> floor, Alankar Palace, Boring Road Crossing, Patna- 800001

... (O.P. no. 1)/Appellant

**Versus**

1. Sri Ashish Ranjan Singh, S/o- Sri Kameshwar Singh, resident of Mohalla-Bajar Samiti Road, Ara, PS- Ara Nawada, District- Bhojpur

.... Complainant/Respondent

2. Sumit Kumar, All Motor Insurance Point, Near Pawna Hardware, Station Road, Nawada, Ara, PS- Ara Nawada, District- Bhojpur

.... O.P. no. 2/Respondent

3. Branch Manager, Central Bank of India, Branch- Shahpur, District- Bhojpur

**Counsel for the Appellant:** Adv. R.C. Narayan

**Counsel for the Respondent:** Adv. S.K. Dubey, Adv. B.B. Sinha & *Ex-parte*

Before,

**Gita Verma, Judicial Member**  
**Md. Shamim Akhtar, Judicial Member**

**Dated: 05.11.2024**

**As per Gita Verma, Judicial Member.**

**Order**

1. This appeal has been filed by Bajaj Allianz General Insurance Co. Ltd. through its Manager of Patna Branch who was O.P. no. 1 in complaint case no. 10 of 2019 before the District Consumer Forum, Bhojpur, Ara against the *ex-parte*

order 29.06.2022 by which it was ordered to pay the complainant-respondent no. 1 a sum of Rs. 6,37,850/- on account of total loss of the insured motor vehicle, Rs. 10,000/- as compensation for mental and physical harassment and Rs. 5,000/- as litigation cost within two months of the date of order failing which to pay the entire amount with 6% interest thereon.

2. The case of complainant was that he is an educated unemployed person. He purchased a pick-up van for self-employment and earning by taking loan from Central Bank of India-respondent no. 3 and the vehicle was insured with the appellant for Rs. 5,62,000/- under policy number G-18-3169-1803-00000047 for the period 10.03.2018 to the midnight of 09.03.2019. The registration number of the vehicle was BR-03-GA-3095. It was a goods carrying- public carrier. The vehicle met with an accident on 31.05.2018 within Bheldi PS area of Saran district for which Bheldi police case no. 180/2018 was registered and the vehicle was seized by the police. Later on it was released to the complainant on 28.06.2018 by the order of court. The vehicle was badly damaged in the accident. The complainant informed the appellant about the accident and filed his claim for total loss. The appellant deputed a surveyor who examined the vehicle, assessed the loss and submitted his report to the appellant. But appellant repudiated his claim by assigning the reason that he had not filed the papers demanded by it for settlement of the claim. The complainant brought his vehicle to the garage of Tiwary & Sons at Ara by pulling it through another vehicle and the surveyor inspected the vehicle at that very place. The aforesaid garage gave an estimate of Rs. 6,37,850/- for the repair of the vehicle. The surveyor sent by appellant (O.P. no. 1) took all the necessary papers from the complainant and assured him that his claim shall be settled very soon.
3. Notice was served on the appellant but he did not appear before the District Forum. So, the case was heard and decided *ex-parte* against it. In the execution proceeding of the impugned order the appellant paid the entire amount as ordered by the District Forum to the complainant then the appeal was filed.

4. Heard the leaned counsel for the appellant and respondent no. 1 and 3. Respondent no. 2 did not appear before us. So, the appeal was heard *ex-parte* against him.
5. It has been stated in memo of appeal and it has been submitted also on behalf of appellant that it had given vakalatnama to its lawyer for appearing before the District Forum and contesting the case but he didn't appear and contest. He didn't give any information to the appellant. Under such circumstance, the case was heard *ex-parte* before the District Forum. A Xerox copy of the said Vakalatnama has been filed in support of his submission. It has further been submitted that the appellant came to know about the impugned order at the stage of execution. Then, it filed the appeal.
6. The aforesaid submission is not at all an acceptable explanation for non-appearance of the appellant before the District Forum because it had full knowledge of the case and only then it had given signed wakalatnama to its lawyer. It can be simply termed as slackness. A lawyer holding wakalatnama on behalf of any party is the recognized agent of the party according to order 3 Rules 1 & 2 CPC. So, slackness on his part shall be legally construed as slackness on the part of the concerned party. As such this submission is not going to help the appellant in any way.
7. The complainant has examined himself as a witness on an affidavit and he has fully supported his case. His oral evidence has remained unrebutted. So, it has got to be accepted. Besides that he has filed Xerox copies of 19 documents as annexures in support of his evidence on affidavit. The District Forum has dealt with those documentary evidences in detail in its order. So, we do not consider it necessary to reproduce it here. It is well proof from these oral and documentary evidences that the complainant had sent all necessary papers to the appellant required to settle his claim according to the terms and conditions of the policy. Under such circumstances, repudiation of the claim was obviously deficiency in service on the part of the appellant. Therefore, we find and hold that District Forum had rightly allowed the complaint, but the amount

of money ordered to be paid to the complainant on the count of damaged of the vehicle Rs. 637,850/- is in excess of the insurance coverage of the vehicle. Rs. 5,62,000/-only which is not just and proper. So, this part of impugned order is modified and lowered down to Rs. 5,62,000/- only. The excess amount paid by the appellant to the complaint on this count is ordered to be adjusted in the amount to be paid by the appellant on other counts according to the impugned order. Since it is case of total loss of the vehicle, the appellant shall be at liberty to get the salvage.

8. On the basis of the foregoing discussion, the **appeal is dismissed** with contest with Rs. 20,000/- as cost of appeal payable within a month by the appellant to the complainant with aforesaid modification in the operative part of the impugned order. If the appellant does not pay the cost of appeal within the stipulated period the complainant shall be at liberty to realize it through the process of District Forum.