

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 925 OF 2019

(Against the Order dated 18/01/2019 in Appeal No. 364/2018 of the State Commission
Punjab)

1. KULJIT KAUR & 4 ORS.

WD/O. SH. SUKHWINDER SINGH, R/O. H.NO. 477,
VILLAGE DHOTIAN TESHIL AND
DISTRICT-TARN TARN
PUNJAB

2. AMRITPAL SINGH (MINOR)

S/O. SH. SUKHWINDER SINGH, R/O. H.NO. 477, VILLAGE
DHOTIAN TESHIL AND
DISTRICT-TARN TARN

3. HARPREET KAUR(MINOR)

D/O. SH. SUKHWINDER SINGH, R/O. H.NO. 477,
VILLAGE DHOTIAN TESHIL AND
DISTRICT-TARN TARAN

4. MANPREET KAUR

D/O. SH. SUKHWINDER SINGH, R/O. H.NO. 477,
VILLAGE DHOTIAN TESHIL AND
DISTRICT-TARN TARAN

5. HARJINDER KAUR

W/O. JASWANT SINGH, R/O. H.NO. 477, VILLAGE
DHOTIAN TESHIL AND
DISTRICT-TARN TARAN

.....Petitioner(s)

Versus

1. CHOLAMANDLAM MS GENERAL INSURANCE CO.
LIMITED

THROUGH ITS MANAGING DIRECTOR/GENERAL
MANAGER/CEO/PRINCIPAL OFFICER, 2ND FLOOR,
DARE HOUSE 2ND NSC BOSE ROAD,
CHENNAI-600001

.....Respondent(s)

BEFORE:

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

FOR THE PETITIONER :

FOR THE PETITIONERS : MR.UPDIP SINGH, ADVOCATE (VC)

FOR THE RESPONDENT :

FOR THE RESPONDENT : MR.ANSHUL MEHRAL, ADVOCATE
(VC)

Dated : 21 June 2024

ORDER

1. The present Revision Petition has been filed by the Petitioner/ OP under Section 21(b) of the Consumer Protection Act, 1986 ("the Act") against the impugned order dated

18.01.2019, passed by the learned Punjab State Consumer Disputes Redressal Commission, Chandigarh ('the State Commission') in First Appeal No.364/2018 wherein the State Commission modified the order passed by the learned District Consumer Disputes Redressal Forum, Amritsar ('the District Forum') dated 02.02.2018 and directed the OP to pay 75% amount of the insured declared value of Rs.13,75,000/- i.e. Rs.10,31,250/- on non-standard basis along with interest @ 9% per annum from the date of filing the complaint till actual payment.

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 Complainants, are that Sukhwinder Singh, the husband of Complainant No. 1, insured his vehicle Regn No. PB-05-Q-9322, Engine No. 578839, Chassis No. EFA2022, Model 2009 with the OP from 24.08.2013 to 23.08.2014. It was financed by Indusind Bank for Rs.10,75,000/-. Sukhwinder Singh died on 12.02.2014. Before his death, the loan was repaid to Indusind Bank. Post his death, Complainant No. 1 attempted to transfer the insurance policy to the legal heirs' names. The OP required the death certificate, RC showing ownership transfer, and the original policy for effecting the transfer. However, due to hypothecation by Indusind Bank, the RC transfer was hindered without a NOC from the Bank. Despite repaying the loan, the Indusind Bank delayed and eventually refused to issue the NOC, forcing Complainant No. 1 to file a complaint against the Bank on 03.04.2014. The Consumer Court ruled in favor of the Complainant on 22.01.2015, directing Indusind Bank to issue the NOC upon submission of No Objection by other legal heirs. The NOC issued by Indusind Bank on 20.02.2015 was dated incorrectly as 03.02.2014. Despite requesting for correction, the Complainant accepted the NOC with incorrect date. The policy period was from 24.08.2013 to 23.08.2014. Sukhwinder Singh's death was intimated to the OP, but due to the RC transfer issue, the policy was not transferred. The Complainant renewed the policy in the deceased's name for the period 24.08.2014 to 23.08.2015 as advised by the OP, pending RC transfer. On 28.01.2015, the vehicle met with an accident resulting in total loss. The OP's surveyor inspected the vehicle, but the claim was repudiated on 13.03.2015, citing the policy was not transferred within three months of the insured's death. She alleged the rightful claim was wrongfully denied. Being aggrieved, they filed a Consumer Complaint before the District Forum.

4. In reply, before the District Forum the Respondent/ OP averred that no legal heir certificate was submitted, nor was the policy transferred to the Complainants' names, justifying the repudiation of the claim on 13.03.2015. They contended that the Complainants never approached them for policy transfer, disputing the occurrence of the claimed incident. The OP denied the allegations and sought dismissal of the complaint with costs.

5. The District Forum, vide Order dated 02.02.2018 allowed the complaint with the following directions:

“10. Consequently, the instant complaint succeeds and the Opposite Party is directed to pay a sum of Rs. 13,75,000/- to the complainants as compensation as IDV of the vehicle in question, subject to furnishing the letter of subrogation, power of attorney for transfer of RC of the vehicle in question in favour of the Opposite Party, by the complainant. Compliance of this order be made within 30 days from the receipt of copy of the order, failing which amount awarded will carry interest @ 9% per annum from the date of order until full & final recovery. Copies of the order be furnished to the parties free of costs. File is ordered to be consigned to the record room. Case could not be disposed of within the stipulated period due to heavy pendency of the cases in this Forum.”

6. Being aggrieved by the order of the District Forum, the Respondent/OP filed an Appeal before the State Commission. The learned State Commission, vide order dated 18.01.2019 modified the order of the District Forum dated 02.02.2018 and directed the OPs as under:

“5. We have heard the learned counsel for the parties and have also examined the record of the case. Evidence on the record has been perused by us with the able assistance of counsel for the parties, besides pleadings of the parties. Complainant no.1 Kuljit Kaur tendered in evidence her affidavit Ex.CW-1/A on the record. She testified the facts of the case in her deposition as pleaded in the complaint. Ex.C-1 is the copy of insurance policy in the name of Sukhwinder Singh for the vehicle in question for IDV of Rs.14,00,000/- for the period from 24.08.2013 to 23.08.2014. Sukhwinder Singh policy holder expired on 12.02.2014 vide death certificate vide Ex.C-2 on the record. The policy was again issued in the name of Sukhwinder Singh vide Ex.C-3 by OP Insurance Company for the period 24.08.2014 to 23.08.2015 for IDV of Rs. 13,75,000/-. Vide Ex.C-4 dated 13.03.2015, OP repudiated the insurance claim of complainants under Condition no.10 of the insurance policy, which is reproduced as under:

"Condition no. 10: In the event of the death of the sole insured, this policy will not immediately lapse but will remain valid for a period of three months from the date of the death of insured or until the expiry of this policy (whichever is earlier). During the said period, legal heir(s) of the insured to whom the custody and use of the motor vehicle passes may apply to have this policy transferred to the name(s) of the heir(s) or obtain a new insurance policy for the motor vehicle.

Where such legal heir(s) desire(s) to apply for transfer of this policy or obtain a new policy for the vehicle such heir(s) should make an application to the Company accordingly within the aforesaid period. All such applications should be accompanied by:-

(1) Death Certificate in respect of the insured;

(2) Proof of title to the vehicle;

(3) Original policy"

OP demanded various documents from Sukhwinder Singh vide letter Ex.C-5 dated 10.02.2015. Ex.C-6 is the copy of application to Indusind Bank for getting NOC of the vehicle. Ex.C-7 is the copy of order dated 22.01.2015 passed in CC No. 189/14 in favour of complainant directing Indusind Bank to issued NOC. Vide Ex.C-8 Indusind Bank issued NOC in the name of Sukhwinder Singh dated 03.02.2014. Ex.C-9 is the copy of formSS issued by Indusind Bank. Ex.C-10 is the copy of no objection certificate given by Harjinder Kaur. Ex.C-11 is the copy of DDR no.32 dated 28.01.2015 regarding the accident of insured vehicle. Ex.C-12 is the copy of R.C. of insured vehicle. The complainants also placed on record documents Ex.C-13 to Ex.C-26 on the record about this vehicle and the estimate of loss suffered in the accident by the complainants. The above referred evidence has been sought to be rebutted by OP during arguments of this appeal before us. The OP relied upon affidavit of Ashutosh Kumar, Manager Legal of OP company Ex.OP-1 in support of case of OP. Ex.OP-2 is the copy of insurance policy of vehicle in question for the period 24.08.2014 to 23.08.2015. Ex.OP-3 is the copy of Motor Final Survey Report-Commercial. Ex.OP-4 is the copy of motor (spot) survey report t dated 06.03.2015. Ex.OP-5 is the copy of repudiation letter of insurance claim. Ex.OP-6 is the copy of terms and conditions of the insurance policy.

6. From appraisal of material evidence on the record and hearing the respective submissions of counsel for the parties, we find that Sukhwinder Singh got his vehicle insured with OP during his lifetime for the period 24.08.2013 to 23.08.2014 vide policy Ex.C-1. He expired on 12.02.2014, as per death certificate Ex.C-2. After his First Appeal No.364 of 2018 death on 12.02.2014, the policy was again taken for insurance of vehicle in question in the name of Sukhwinder Singh, as policy holder for the period of 24.08.2014 to 23.08.2015 vide Ex.C-3 on the record. The version of the complainant is that on account of non submission of NOC by Indusind Bank, complainant no.1 could not get the insurance policy transferred in her name. This fact is further established on record by virtue of order passed by the District Forum Amritsar on 22.01.2015 Ex.C-7. The loan amount of Indusind Bank has since been cleared and it issued NOC to complainant no.1 subsequently by mentioning wrong date thereon. The intimation was given to insurance company, vide Ex.C-11 regarding the accident of the vehicle on 28.01.2015. The version of OP is that policy was not transferred in the name of the complainant from Sukhwinder Singh, who had already died before the current insurance policy Ex.C-3 covering the period of accident. The insurance company primarily insured the vehicle and Sukhwinder Singh since dead was the policy holder thereof. We find that once this fact came to the knowledge of OP that Sukhwinder Singh had expired on 12.02.2014, thereafter OP also committed material irregularity in issuing the policy in the name of Sukhwinder Singh, since dead. The OP received the premium therefor from complainants in the

name of Sukhwinder Singh after his death despite its knowledge of his death. The OP acted in issuing policy in the name of dead person as policy holder under the pulse of greed only. The District Forum primarily observed that complainants were not at fault in this case and the circumstances were beyond their control in not getting the policy transferred in time. We find that the policy holder Sukhwinder Singh had already expired before issuance of policy Ex.C-3, the OP willingly did it on receipt of payment of premium despite knowledge of his death. In this view of the fact matter, we are of this view that this is equitable case where it should be settled on non-standard basis only, it is the vehicle which is insured and not the deceased Sukhwinder Singh.

7. As a result of our above discussion, the order of the District Forum Amritsar is modified in this appeal by directing OP to pay 75% amount of the insured declared value of Rs. 13,75,000/- i.e. Rs.10,31,250/- on non-standard basis on furnishing of documents by complainants, as directed by District Forum Amritsar in its order with interest @9% per annum from the date of filing the complaint till actual payment. The OP is directed to deposit the shares of minor complainant no.2 Amritpal Singh and complainant no.3 Harpreet Kaur in fixed deposit receipts in their names in some nationalized bank till they attain the age of majority.

8. Appellant had deposited an amount of Rs.25,000/- in this Commission at the time of filing the appeal. This amount alongwith interest, which accrued thereon, if any, be remitted by the registry to the respondents of this appeal in equal shares by way of crossed cheque/demand draft after the expiry of 45 days subject to stay order, if any. The shares of the minor respondent nos.2 and 3, being complainant nos.2 and 3 be deposited in fixed deposit receipts in some nationalized bank in their names till they attain the age of majority.”

7. Being dissatisfied by the Impugned Order dated 18.01.2019 passed by the learned State Commission, the Petitioners/ Complainants filed the instant Revision Petition No. 925 of 2019.

8. It needs to be mentioned that no Revision Petition was filed by the Respondent/OP against State Commission order of 18.01.2019.

9. In his arguments, learned Counsel for the Petitioners/ Complainant reiterated the facts stated in the Complaint and the grounds advanced in the Revision Petition and submitted that the fact of death of Sukhwinder Singh (the insured) on 12.02.2014 was very well within the knowledge of the Respondent/OP when the policy in question was issued on 24.08.2014. He,

therefore, sought to set aside the impugned order passed by the State Commission and uphold the order passed by the District Forum in toto.

10. On the other hand, the learned Counsel for the Respondent/OP admitted the policy in question issued in the name of deceased Sukhwinder Singh. The claim of the Petitioner could have been rejected in totality because the contract of insurance is based on utmost good faith and it was the responsibility of the Complainant to disclose the death of the insured before renewing the policy and took the fresh policy in her name. He sought to dismiss the claim of the Petitioners. He has relied upon the following judgments:

(i) Nirasha Sinha Vs. HDFC Ergo General Ins. Co. Ltd., R.P. No.3337 of 2016, decided on 18.08.2017 by the NCDRC;

(ii) Kiran Banerjee & Ors. Vs. National Insurance Company & Ors., MAC. APP. 700/2019 & CM Nos.33715-17/2019, decided on 29.07.2019 by the Hon'ble High Court of Delhi.

11. I have examined the pleadings and associated documents placed on record, including the orders of the learned District Forum and the learned State Commission and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the Parties.

12. Considering the fact that Respondent/OP has not challenged the State Commission Order dated 18.01.2019, the same is final with respect to the said OP.

13. The only remaining dispute is whether the learned State Commission rightly modified the order of the District Forum dated 02.02.2018 and directed the OP to pay 75% amount of the insured declared value of Rs.13,75,000/- i.e. Rs.10,31,250/- on non-standard basis along with interest @ 9% per annum from the date of filing the complaint till actual payment?

14. In this regard, it is an admitted position that the insurance policy in question was renewed after the death of Sukhwinder Singh. It is also undisputed that the Respondent/OP had known about this fact at the time of renewing the insurance policy in question. It is an uncontested position that the No Objection Certificate was not in possession of the Complainants even after paying the entire dues to the bank, and that's why the insurance policy for the vehicle was renewed in the name of a dead person. Therefore, there were minor violations of the contractual obligations on both the sides. Under these circumstances, I am of the considered view that the learned State Commission has rightly modified the order of the District Forum dated 02.02.2018 and applied the non-standard basis. The detailed and

well reasoned Order of the learned State Commission dated 18.01.2019 does not suffer from any illegality or impropriety. In fact, the order is just and fair. Therefore, no intervention is warranted. The Revision Petition No. 925 of 2019 is, therefore, dismissed.

15. There shall be no order as to costs.

16. All pending Applications, if any, stand disposed of accordingly.

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