

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
HARYANA PANCHKULA**

Date of Institution:07.05.2018

Date of final hearing:16.07.2024

Date of pronouncement:16.08.2024

First Appeal No.596 of 2018

IN THE MATTER OF

Jyoti Sagar son of Dikshit Kumr, resident of House No.1028, Mangal Colony,
Karnal.Appellant.

Versus

1. L&T Insurance Company Limited, 6th Floor, DCM Building, 16, Barakhamba Road, New Delhi
through its Branch Manager.

2. L&T Finance Limited, SCO No.2245, Sector 12 M, Karnal through its Branch manager, Karnal.

.....Respondents No.1 & 2.

3. L&T Insurance Company Limited, Corporate Office, 6th Floor, Plot No.177, CSI Road, Near Bandra
Kurla, Telephone Exchange, Mumbai-400098.Respondent No.3.

CORAM: Mr. Naresh Katyal, Judicial Member.

Mr. S.C. Kaushik, Member.

Present:- Mr. Gobind Chauhan, counsel for the appellant.

Mr. Vishal Aggarwal, counsel for respondents No.1 & 2.

Mr. Gaurav Sharma, counsel for respondent No.3.

PER: NARESH KATYAL, JUDICIAL MEMBER

ORDER

Challenge in this Appeal No. 596 of 2018 of appellant/complainant has been invited to legality of order dated 05.04.2018 passed by District Consumer Disputes Redressal Commission-Karnal (*In short "District Consumer Commission"*) in Consumer Complaint No.285 of 2016, vide which complainant's complaint was dismissed.

2. **Factual matrix:** Complainant-Jyoti Sagar is owner of Sonalika Tractor, which he purchased from OP No.2 after taking loan of Rs.4,80,000/- vide Loan-cum-Hypothecation Agreement dated 03.04.2015. At the time of providing financial assistance to him; OP No.2-L&T Finance Ltd.-Karnal asked him that he will have to get tractor insured from OP No.1-L&T Insurance Co. Ltd., which is OP No.2's sister concern. Accordingly, he (complainant) got truck insured from OP No.1 vide policy dated 03.04.2015, valid up to 02.04.2016.

3. Tractor was stolen on 02.09.2015. FIR No.874 was registered U/s 379 IPC in P.S. City-Karnal. Complainant lodged claim with OP No.1-Insurer. He completed formalities in that regard and was assured that insurance benefits will be given to him in two months and that will be transferred in his loan account. As per plea, this has not been done, despite his repeated requests to OPs. He was told that: until and unless untraced report is not submitted, till then payment of compensation will not be given to him.

4. On 07.06.2016, he obtained copy of untraced report from Court and submitted to OP No.2-Financer, but no amount of compensation had been paid by OP No.2-Financer to him. On the other hand, OP No.1-Insurer demanded financed amount with interest from him. Complainant served Legal Notice dated 20.08.2016, thereby calling upon insurer and financer to settle his loan amount, but no action had been taken in that regard. By alleging deficiency in service and unfair trade practice on the part of OPs; complaint has been filed, seeking compensation of Rs.50,000/- and Rs.11,000/- for litigation expenses.

5. Upon notice, OPs No.1 & 3 (Insurer) through their jointly filed written statement have admitted that vehicle of complainant was insured with it. Complaint is premature as complainant has not lodged any claim with insurer. There is not deficiency in service on the part of insurer. Complainant has suppressed true and material facts. He has not given intimation to insurer regarding theft of tractor in question. No claim was lodged with insurer. Fact regarding purchasing of tractor has also been admitted. It is pleaded that no notice was served upon insurer and consumer forum has no jurisdiction.

6. In separate written statement filed by OP No.2-Financer, it is pleaded that complaint is not maintainable. It is an abuse of process of Court and is motivated. As per terms & conditions of Agreement on the basis of which loan was advanced to complainant; all disputes arising out of Loan Agreement shall be settled through Arbitration. It is pleaded that District Consumer Commission has no jurisdiction. It is admitted that tractor was purchased after taking loan from OP No.2- Financer and it was insured from OP No.1. It is pleaded as incorrect that OP No.2-Financer asked complainant that he will have to get the tractor insured from OP No.1. As per plea, complainant got insured his tractor with his own sweet will and OP No.2 never insisted anyone to get insure their vehicle from any particular insurance company. No intimation of theft of vehicle has/had been given by complainant to it (Financer). No amount has/had been received by Financer from Insurance Company. Financer has/had never demanded untraced report and never assured complainant to pay him insurance claimed amount. It is pleaded as incorrect that complainant is not liable to pay back loan amount. As per plea; Financer has every right to recover loan amount as per agreed terms & conditions, from complainant. Complainant is trying to escape from his liability by filing this complaint. Financer has served many demand notices to complainant, but he is not paying any heed to its genuine request. Release of compensation is a matter between complainant and insurer. Financer is only entitled to recover its loan amount.

7. Parties led their respective evidence (oral as well as documentary). On analyzing the same, Learned District Consumer Commission vide order dated 05.08.2018 has dismissed the complaint. Feeling dissatisfied, complainant has filed this appeal.

8. We have heard learned counsel for the parties at length and with their able assistance; record of complaint, too has been pursued. 9. Learned counsel appearing for appellant-complainant, while urging for acceptance of his appeal, has urged that impugned order dated 05.08.2018 passed by learned District Consumer Commission-Karnal is legally unsustainable. It is urged that complainant-appellant had completed all formalities as desired by financer and insurer, post theft of his tractor resulted on 02.09.2015, in order to

enable financier and insurer to settle his claim. However, his claim has not been settled, which amounts to deficiency in their service. It is urged that complainant has served legal notice dated 20.08.2016 to financier and insurer (OPs) mentioning therein expressly about theft of his vehicle and filing of claim with insurer and also regarding other obligations required to be fulfilled by him towards settlement of theft claim by insurer and financier. This legal notice was not replied by insurer and financier which as per contention, amounts to admission of the facts by them regarding receipt of documents from complainant along with claim form towards settlement of his insurance claim. Despite that; OPs (financier and insurer) have taken false stand in their respective written statement that they have not been intimated about theft and that complainant had never lodged any claim. It is urged that theft had taken place on 02.09.2015 i.e. during currency of insurance policy which was valid from 03.04.2015 to 02.04.2016. Further, it is urged that IDV of stolen tractor as per certificate of insurance is Rs.5,79,500/- and in view of factual scenario of case; complainant-appellant was entitled to insurance claim on 'non-standard basis'.

10. Refuting the contentions, learned counsel for OPs (insurer and financier) have urged with one voice that tractor was stolen on 02.09.2015. FIR was lodged on 29.09.2015 i.e. after 27 days. Complainant did not get the vehicle registered in his name within 30 days of its purchase on hypothecation basis by availing loan. He purchased the vehicle in question on 03.04.2015 and had not got it registered in his name till 02.09.2015, (date of theft). It is urged by learned counsel appearing for financier (OP No.2) that it has no statutory obligation to satisfy complainant's claim regarding stolen tractor rather to the contrary, it (financier) is legally entitled to recover the loan amount from complainant. On behalf of insurer (OPs No.1 & 3), learned counsel has urged that complainant's complaint is premature as no theft insurance claim has ever been lodged before it.

11. At the very outset, this Commission does not see any force in basic contention of Learned Counsel for complainant/appellant that: by not replying to complainant's legal notice dated 20.08.2016, insurer and financier have admitted the facts so stated in legal notice. May be, legal notice dated 20.08.2016-Ex. C-6 had not been replied by insurer and financier, yet this circumstance will not amount to admission on the part of insurer and financier, of any facts asserted in said legal notice, even remotely. At legal pedestal; only facts stated/pleaded in written statement/reply by any respondent(s) would constitute admission of facts, so asserted in plaint. Facts stated in legal notice will not constitute any admission, in event of respondent(s) not responding to said legal notice. Scope and ambit of admission of fact cannot be extended too far, on this quality of whimsical and fanciful contention of learned counsel for complainant/appellant. This contention stood repelled.

12. Complainant purchased tractor in question on 03.04.2015, which was allegedly stolen on 02.09.2015. From date of purchase, till its alleged theft; tractor in question was not got registered by complainant in his name. Temporary number assigned to this vehicle has validity of 30 days only. It had been the obligation and duty of complainant/appellant alone to promptly get the vehicle (Tractor) registered in his name with Registering Authority. Since, complainant has failed in that arena and did not get the vehicle in question, registered in his name till its theft resulted on 02.09.2015, therefore, he had run the risk and peril so occasioned due to his above laxity. There would be no obligation of insurer to satisfy the theft claim of complainant in wake of above factual scenario. Complainant is not entitled to drive any claim benefit under insurance policy.

13. Judgment of Hon'ble Apex Court in case titled as ***Narinder Singh Vs. New India Assurance Company and other Civil Appeal No. 68463 of 2014 arising out of SLP (Civil) 20308 of 2013*** is also attracted with full force wherein it was held that: '*as vehicle was without any registration on the day of alleged accident and nothing was brought on record to show that before or after expiry of temporary registration, owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons it amounted not only to offence punishable under Section 192 of the Motor Vehicles Act but also fundamental breach of terms and conditions of policy and order passed by Fora below dismissing claim was upheld.*' In the case in hand, facts are akin. Complainant/appellant had not placed any evidence on record that after getting vehicle insured on 03.04.2015, he had ever applied for extension of temporary registration or applied for permanent registration under Section 39 of the Motor Vehicle Act, till the date of its theft (02.09.2015).

14. In view of above discussion this Commission is of firm opinion that there arises no deficiency in service on the part of OPs towards complainant, who has been rightly non-suited. His complaint has been rightly dismissed. There is no fallacy, legal or factual on the part of Learned District Consumer Commission in its order dated 05.04.2018. It is hereby affirmed, upheld and maintained. Present appeal being devoid of merits is hereby dismissed.

15. Copy of this order be provided to all parties free of cost as mandated by the Consumer Protection Act, 2019. This order be also uploaded forthwith on the website of the Commission for the perusal of parties.

16. Application(s), pending, if any, stands disposed off in terms of the aforesaid order.

17. Appeal file, complete in all respect, be consigned to record room alongwith a copy of this order.

Pronounced on 16th August, 2024

S.C Kaushik

Naresh Katyal

Member

Judicial

Member

Addl. Bench

Addl. Bench