

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 90 OF 2017

(Against the Order dated 30/09/2016 in Complaint No. 343/2016 of the State Commission
Chandigarh)

1. ORIENTAL INSURANCE CO. LTD.

THROUGH ITS MANAGER, SCO 45, SECTOR-C,
CHANDIGARH

.....Appellant(s)

Versus

1. M/S. BOMBAY TRADERS

THROUGH ITS PARTNER SANJIV MAHAJAN, 114, IIIRD
FLOOR, SECTOR-44,
GURGAON

.....Respondent(s)

BEFORE:

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

HON'BLE BHARATKUMAR PANDYA, MEMBER

FOR THE APPELLANT :

MR. ARVIND GUPTA, ADVOCATE

MR. KANAV BHARDWAJ, ADVOCATE

FOR THE RESPONDENT :

MR. SHIVENDRA DWIVEDI, ADVOCATE

MR. SAMARTH WADHAWA, ADVOCATE

Dated : 10 May 2024

ORDER

1. Heard Mr. Arvind Gupta, Advocate, for the appellant and Mr. Shivendra Dwivedi, Advocate, for the respondent.

2. Oriental Insurance Company Limited has filed above appeal against the order of State Consumer Disputes Redressal Commission, Chandigarh, dated 30.09.2016 passed in CC/343/2016, allowing the complaint and directing the appellant to pay Rs.1035714.99 with interest @10% per annum, from 12.12.2015 till the date of payment to the respondent, as insurance claim, with default clause.

3. There is delay of 67 days in filing the appeal. The appellant has filed IA/590/2017, for condoning delay in filing the appeal. The appellant stated free certified copy of the judgment dated 30.09.2016 was received on 07.10.2016. Thereafter, the record of the case was collected from the counsel appearing before State Commission, which was received in last week of November, 2016. The opinion of the counsel for filing the appeal was received in December, 2016. Thereafter, the papers were handed over to the counsel appearing before National Commission, who drafted the appeal and filed on 12.01.2017. Cause shown is sufficient. IA/590/2017 is allowed. Delay in filing the appeal is condoned.

4. M/s. Bombay Traders (the respondent) filed CC/343/2016 for directing the appellant to pay (i) Rs.2340495/- along with interest @18% per annum from the date of the claim till the date of actual payment, as insurance claim; (ii) Rs. two lacs, as the compensation for mental agony; (iii) Rs.55000/- as litigation cost; and (iv) any other relief, which is deemed fit and proper in the circumstances of the case.

5. The complainant stated that it was a partnership firm. For the personal use of the partner, the complainant purchased BMW X5 3.0d, year of manufacture 2008, having Engine No.21676881, Chassis No.F42030U76419, Registration No.HR-26 BE 9200, for Rs.4129961/- from Bird Automotive. The said vehicle was insured by Oriental Insurance Company Limited, vide Private Car Package Policy No. 231110/31/2014/2704, for the period of 28.05.2013 to 27.05.2014, for declared value of Rs.28/- lacs, in the name of the complainant. Uday Mahajan son of Sanjiv Mahajan (the partner), who had valid driving licence, was driving the car on 15.06.2013 at 3:00 hours, when the accident occurred. At the time of accident, there was heavy rain fall and all of a sudden one animal came in front of the car. In order to save the car, the driver turned the car towards right and the car hit the roundabout of 34/36 and was extensively damaged. After the accident, the police of Police Station Sector 36, Chandigarh reached on the spot and got Uday Mahajan examined by the doctor. The doctor did not find any injury to Uday Mahajan but observed that smell of alcohol was emanating from him. The police challaned him under Section 185 of the Motor Vehicles Act, 1988. The police towed the vehicle and parked it at police station Sector 36, Chandigarh. The complainant informed the opposite party about the accident of the vehicle and damage caused to it on 16.06.2013 and also submitted claim form. The opposite party told that till the vehicle is not released from police station and sent to service centre for repair, the surveyor cannot be appointed. Further, estimate of repair can only be given by the authorised service centre. The complainant got the vehicle released from police station and informed authorised service centre i.e. Deutsche Motoren Private Limited, H-8, Sector 63, Noida, who towed the vehicle to its service centre. After examination of the vehicle, Deutsche Motoren Private Limited gave estimate of Rs.1720329.37 dated 05.11.2013 for the repair of the vehicle. The complainant submitted the estimate of repair dated 05.11.2013 to the opposite party, who told to continue with repair and submit final bill of the repair of the vehicle. After repair of the vehicle, Deutsche Motoren Private Limited gave final bill of repair dated 21.11.2014 of Rs.2340495/-. The opposite party appointed its surveyor for verification of the damage and assess the loss. In spite of repeated request, the opposite party did not supply the copy of the survey report. The opposite party, vide letter dated 02.12.2015, repudiated the claim of the complainant on the ground that the accident took place on 15.06.2013, while Registration Certificate was transferred in the name of the complainant on 08.08.2013 and at the time of the accident, the driver was under the influence of liquor. The complainant purchased the vehicle from Bird Automotive, vide Retail Invoice dated 07.10.2011, which was registered on 15.10.2010 the tax was paid till 14.10.2023. These documents were submitted at the time of obtaining Private Car Package Policy No. 231110/31/2014/2704. There is no medical examination report that the driver was intoxicated to such extent that he was not in position to drive the car. After issuing the policy in the name of the complainant, repudiation of the claim was illegal. Then this complaint was filed on 11.07.2016, claiming deficiency in service.

6. The appellant/opposite party filed its written reply and contested the complaint. The opposite party stated that at the time of obtaining insurance policy, the vehicle was inspected by TDM Auto Lines, Mohali, who gave its report dated 27.05.2013. The complainant submitted the Proposal Form on 27.05.2013, in the name of M/s. Bombay Traders, without disclosing the ownership of the vehicle, on which, Private Car Package Policy No. 231110/31/2014/2704, for the period of 28.05.2013 to 27.05.2014, was issued by the opposite party. The accident occurred on 15.06.2013. The story relating to the cause of accident due to coming of stray animal in front of the vehicle, is a figment of imagination and does not stand the test of rational reasoning. From DDR No.4 dated 16.06.2013, under Section 185 of the Motor Vehicles Act, 1988, it was proved that the accident was caused as the driver was driving the vehicle under the influence of alcohol. The vehicle was released on 24.10.2013 from police attachment, after accident. The complainant submitted an estimate of Rs.1720329.37 dated 05.11.2013 for the repair of the vehicle. Then the opposite party appointed S.K. Kaul & Company, New Delhi as the surveyor on 10.02.2014, who inspected the vehicle on 11.02.2014 and submitted status report dated 13.02.2014. The claim form was filed on 27.05.2014. The surveyor submitted Final Survey Report dated 29.12.2014, assessing the loss on repair basis to the tune of Rs1035714.99, payable subject to the terms and condition of the policy. The opposite party appointed Royal Associates, Chandigarh as an investigator, who submitted Investigation Report dated 03.06.2015. Thereafter, the papers were examined by the competent authority, who found that on the date of accident, the complainant was not registered owner of the car and at the time of accident, the driver was driving the vehicle under the influence of alcohol. The competent authority then issued show-cause notices dated 26.06.2015 and 03.08.2015 to the complainant. In spite of service of the notices, the complainant did not give any reply. Then the claim was repudiated vide letter dated 02.12.2015 on the ground that on the date of accident, the complainant was not registered owner of the car and at the time of accident, the driver was driving the vehicle under the influence of alcohol. There was no deficiency in service.

7. State Commission, in the judgment dated 30.09.2016, held that on the date of accident i.e. on 15.06.2013, the complainant was the owner of the vehicle on the basis of Retail Invoice dated 07.10.2011 and Insurance Policy was issued in its name on 28.05.2013. Relying upon judgment of this commission in New India Insurance Company Limited Vs. Bimlesh, IV (2014) CPJ 569 (NC), it has been held that the complainant had insurable interest and insurance policy was valid. Transfer of Registration Certificate of the vehicle in the name of the complainant on 08.08.2013 was immaterial. Although DDR was registered against the driver of the vehicle on the allegation that smell of alcohol was coming from the driver at the time of accident but there is no evidence to prove the level of alcohol in the blood of the driver was such high that he could not drive the vehicle as such there was no violation of Condition No.2(c) of the policy. The surveyor has assessed the loss to the tune of Rs.1035715/- which was payable. On these findings, the complaint was allowed. Hence this appeal has filed.

8. We have considered the arguments of the counsel for the parties and examined the record. Admittedly BMW India Private Limited was registered owner of the car, having Registration No.HR 26 BE 9200, who sold it to the complainant, vide Retail Invoice dated 07.10.2011. Since then the vehicle was in possession of the complainant. Private Car Package Policy No. 231110/31/2014/2704, for the period of 28.05.2013 to 27.05.2014, for

declared value of Rs.28/- lacs, of the vehicle was issued in the name of the complainant. Thus on the date of accident, i.e. on 15.06.2013, the complainant was the owner and in possession of the vehicle which was insured by the appellant in its name. This commission in **New India Insurance Company Limited Vs. Bimlesh, IV (2014) CPJ 569 (NC)**, held that the complainant acquired ownership of the vehicle on the basis of sale letter and delivery of possession and had insurable interest and insurance policy was valid, although registration certificate was transferred subsequent to the accident. Supreme Court in **Punya Kala Devi Vs. State of Assam, (2014) 14 SCC 142**, held that a person in possession of the motor vehicle, shall be the owner under Section 2(30) of the Motor Vehicle Act, 1988. As such transfer of Registration Certificate of the vehicle in the name of the complainant on 08.08.2013 was immaterial.

The counsel for the appellant relied upon the judgment of Supreme Court in **Complete Insulations (P) Ltd. Vs. New India Assurance Company Limited, (1996) 1 SCC 221**, in which, insurance policy was issued in the name of previous owner. The vehicle was sold on 15.06.1989, Registration Certificate of the vehicle was transferred on 15.06.1989. The vehicle met in an accident on 17.09.1989. The transferee vide letters dated 26.06.1989 and 24.07.1989, requested the insurer to transfer insurance policy in its name but insurance policy was not transferred in the name of the transferee of the vehicle till the date of accident. Motor Vehicle Act, 1988 came into force on 01.07.1989. Supreme Court held that under Section 157 of Motor Vehicle Act, 1988, the insurance policy is deemed to be transferred only in respect of third party risks. As under Section 103-A of Motor Vehicle Act, 1939, the insurer had right to reject the application for transfer of the policy in the name of the transferee as such deeming provision under Section 157 of Motor Vehicle Act, 1988 will not apply for the owner's risk as the transfer and request to transfer policy took place before enforcement of new act.

This case has no application in the present case. In this case, insurance policy has been issued in the name of the complainant.

9. So far as the other ground i.e. at the time of the accident, the driver was under the influence of liquor as such there was violation of Condition No.2(c) of the policy. Supreme Court in **IFFCO Tokiyo General Insurance Company Limited Vs. Pearl Beverage Limited, (2021) 7 SCC 704**, held that 'driving under the influence of alcohol' is to be understood that on account of consumption of alcohol, either before commencement of driving or during the driving and before the accident, his faculties and driving skill had been affected (influenced). It means that the alcohol consumed earlier was the cause or it contributed to the occurrence of accident.

The appellant relied upon From DDR No.4 dated 16.06.2013, under Section 185 of the Motor Vehicles Act, 1988, registered against Uday Mahajan, the driver of the vehicle at the time of accident. In this report it has been mentioned that on medical examination, the doctor found that the driver was under the influence of liquor. No Medical Test Report has been produced. As such there is no evidence to prove that the consumption of liquor by the driver had contributed to the cause of accident. The complainant has stated that at the time of accident, there was heavy rain fall and all of a sudden one animal came in front of the car. In order to save the car, the driver turned the car towards right and the car hit the roundabout of 34/36 and was extensively damaged. This evidence of the complainant has been accepted by

the State Commission as there is rebuttal of it. As such, it was not proved that the consumption of liquor by the driver had contributed to the cause of accident. In view of the judgment of Supreme Court in **Pearl Beverage**'s case (supra), there is no violation of condition no.2 of the policy.

10. So far as the compensation is concerned, State Commission has awarded the compensation as assessed by the surveyor. Impugned order State Commission does not suffer from any illegality.

O R D E R

In view of the aforesaid discussion, the appeal is dismissed.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER