

Appeal No.  
14 of 2023

National Insurance Company Ltd.  
and Another  
Vs.  
Kanchan Paliyal and Another

19.07.2024

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, UTTARAKHAND, DEHRADUN

Date of Institution : 08.02.2023

Date of Final Hearing : 08.07.2024

Date of Pronouncement : 19.07.2024

**First Appeal No. 14 / 2023**

1. National Insurance Company Ltd.  
Through Manager  
Regional Office at 56, Rajpur Road, Dehradun  
Sh. Saurabh Kumar
2. National Insurance Company Ltd.  
Through Divisional Manager  
Office at Ranipur More, Haridwar  
(Through: Smt. Anjali Gusain, Advocate)  
....Appellants

VERSUS

1. Kanchan Paliyal D/o Late Sh. Makan Singh alias Makanu Kohli
2. Anju Paliyal D/o Late Sh. Makan Singh alias Makanu Kohli

Both R/o Village Sakniyani Patti, Shrikot, Tehsil Gaja  
District Tehri Garhwal  
At Present R/o near Office of District Magistrate  
Rudraprayag, Uttarakhand

(Through: Sh. Arun Uniyal, Advocate)  
....Respondents

**Coram:**

**Ms. Kumkum Rani,**  
**Mr. B.S. Manral,**

**President**  
**Member**

**ORDER**

**(Per: Ms. Kumkum Rani, President):**

This appeal under Section 41 of The Consumer Protection Act, 2019 has been directed against judgment and order dated 26.11.2022 passed by the

learned District Consumer Disputes Redressal Commission, Rudraprayag, in consumer complaint No. 02 of 2022 styled as Kanchan Paliyal and Another Vs. National Insurance Co. Ltd., wherein the District Commission was pleased to allow the complaint by directing the appellants to pay Rs. 1,89,451/- (Rupees One Lakh Eighty Nine Thousand Four Hundred and Fifty One Only) within one month from the date of order alongwith 6% interest from the date of filing of the complaint.

2. The facts giving rise to the present appeal, in brief, are as such that the vehicle, bearing registration No. UK13-8214 owned by late Sh. Makan Singh, father of the complainants was insured with the appellant vide policy No. 46100031191144183592. It is further pleaded in the complaint that on dated 16.01.2020, the father – Late Sh. Makan Singh alias Makanu Kohli, mother – Late Smt. Sampati Devi and brother – Late Master Divyanshu Paliyal of the complainants were coming from Dehradun to Rudraprayag, but due to technical defect, an accident took place at Saknidhar, Devprayag, District Tehri Garhwal because the driver had lost the control over it and the said vehicle was totally damaged. In the said occurrence, the father, mother and brother of the complainants were declared dead. The father of the complainants was employed in Tehsil Ukhimath, District Rudraprayag and after the above said incident, the complainants are the legal heirs of the deceased Late Sh. Makan Singh. The incident was immediately informed to the P.S. Devprayag, District Tehri Garhwal, where a FIR was registered. The matter was also immediately informed to the opposite party – Insurance Company. On receiving the information about the accident, the Insurance Company had deputed its surveyor, who after obtaining requisite and relevant documents from the complainants went on the spot, but vide letter dated 04.08.2020, the Insurance Company had repudiated the claim amount and closed the claim file. The complainants had contacted the Insurance Company several times, but the claim amount was not paid to the

complainants, thus there was deficiency in service on the part of the Insurance Company. Therefore, the complainant was submitted before the District Commission concerned.

3. Written statement was submitted before the District Commission by the Insurance Company – opposite party alleging that the complaint is admitted to the extent that the vehicle in question was insured with the answering opposite party subject to the terms and conditions of the policy. It is also submitted in the written statement that the Insurance Company after receipt of the survey report from the surveyor Sh. R.R. Sharma and Investigation Report of Sh. Himanshu Sharma, it was observed that six persons namely Sh. Makan Singh, Smt. Sampati Devi, Master Divyanshu Paliyal, Smt. Phool Devi, Smt. Hemlata Devi and Kumari Neha were travelling inside the vehicle at the time of accident against the seating capacity of five. As per survey report and the claim form, the cause of accident is as to “vehicle got unbalanced and fell in Khai”. As there was overloading of vehicle due to sitting of persons against the seating capacity, therefore, breach of terms and conditions of the policy, the claim was not payable under the terms and conditions of the policy. Hence, the answering opposite party has rightly closed the file as ‘No Claim’. It is further contended and pleaded in the written statement that the claim was duly repudiated on the basis of the survey report and the vehicle was overloaded which was against the terms and conditions of the policy. On such count, the complaint case should be dismissed.

4. After hearing both the parties and after taking into consideration the material available on record, the District Commission passed the impugned judgment and order dated 26.11.2022, whereby the complaint was allowed.

5. Having been aggrieved by the aforesaid judgment and order of the District Commission, the Insurance Company has preferred the present appeal before us.

6. We have heard learned counsel for the parties and perused the record.

7. After a perusal of the impugned judgment, it is an admitted fact that the vehicle in question UK13-8214 was registered in the name of Late Sh. Makan Singh, father of the complainants. It is not disputed that the said vehicle was insured with the appellants vide policy No. 46100031191144183592 with comprehensive liability at the time of accident / occurrence. It is also not disputed that the accident took place on dated 16.01.2020 when the complainants' father alongwith his wife and son was coming from Dehradun to Rudraprayag while plying the subject vehicle and the deceased Late Sh. Makan Singh, as a driver lost his control over the vehicle, resulting into accident of the vehicle at Saknidhar, Devprayag, District Tehri Garhwal, whereby father, mother and brother of the complainants were declared dead. Simultaneously, the vehicle was got badly damaged in the said accident. It is not denied by the appellants that FIR was also registered about the above accident in P.S. Devprayag, District Tehri Garhwal. The appellants company has not raised any such contention that the information about the accident was given to the appellants with inordinate delay. Both the parties have conceded during the course of arguments that upon receiving the information of the accident, the appellants – Insurance Company had deputed its surveyor, who inspected the spot and prepared the survey report. Sh. Himanshu Sharma, Panel Insurance Investigator has also submitted his survey report dated 17.03.2020 before the Insurance Company, which is also available in the appeal record (paper Nos. 16 to 22).

8. We have perused the above survey report submitted by the appellants wherein all the documents were found valid and effective on the date of accident. The surveyor has also observed that it is confirmed that insured vehicle No. UK13-8214, met with an accident occurred on 16.01.2020 and the accident occurred near Saknidhar (Teen Dhara) under jurisdiction of P.S. Dev Prayag District Tehri Garhwal. On dated 16.01.2020, the insured vehicle was being driven by Late Sh. Makan Singh from Rishikesh towards Rudraprayag, which was also occupied by his wife Smt. Sampati Devi, son Master Divyanshu Paliyal, relatives Smt. Phool Dei Devi, Smt. Hemlata alias Laxmi Devi and Km. Neha.

It is further observed by the surveyor that the driving license of the deceased Sh. Makan Singh got verified from LA, Rudraprayag and found valid on date of accident. **The surveyor has also submitted that the OD claim is genuine and payable as per terms and conditions**, but at the time of accident, the vehicle was occupied by 06 persons (04 adults and 02 minors).

9. As per surveyor report, the seating capacity as per R.C. is mentioned as 5 including driver. It is undisputed that Late Sh. Makan Singh, the registered owner of the vehicle was driving the subject vehicle at the time of accident. As per surveyor report, the subject vehicle was occupied by six persons (04 Adults & 02 Minors) at the time of accident namely:-

- (1) Sh. Makan Singh (registered owner / driver of the subject vehicle)
- (2) His wife Smt. Sampati Devi,
- (3) Son Master Divyanshu Paliyal
- (4) Relative Smt. Phool Dei Devi
- (5) Relative Smt. Hemlata alias Laxmi Devi
- (6) Km. Neha

10. Learned counsel for the appellants has further contended that the District Commission has failed to appreciate the fact that the complainants were never entitled to claim amount of Rs. 1,89,451/- as the claim should have been allowed after deducting 25% of the assessed amount on the basis of non-standard basis. It is an admitted fact that as per Registration Certificate, the date of registration of the insured vehicle is shown as 05.11.2016 and the accident took place on dated 16.01.2020, i.e. after more than three years. As per Registration Certificate seating capacity was prescribed for five persons only. As per insurance policy, the IDV of the subject vehicle was described in the policy as Rs. 1,99,389/-.

11. As per surveyor report, if there are two minors travelling and seating inside the subject vehicle they will be considered as one unit.

12. The surveyor has not specifically alleged anywhere in his report that there was overloading and the driver was plying the subject vehicle with the passengers exceeding the limits. As per the surveyor report, there was six persons including two minors and driver, sitting inside the subject vehicle. As per the surveyor report, the seating capacity of the subject vehicle was up to five persons, so considering the two minors as one unit, we find no case of overloading. Thus, we are of the considered view that there is no violation of any terms and conditions of the insurance policy. The complainants have not filed any cross-appeal for enhancement of the claim amount, hence they are not entitled to more amount as awarded by the Commission below.

Accordingly, the impugned judgment and order is perfect and justified.

13. We are of the considered view that the impugned judgment should be confirmed and the appeal is liable to be dismissed.

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14. Accordingly, the appeal is hereby dismissed and the impugned judgment and order dated 26.11.2022 passed by the District Commission, Rudraprayag is affirmed. No order as to costs of the appeal.

15. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. The copy of this Order be sent to the concerned District Commission for record and necessary information.

16. File be consigned to record room along with a copy of this Order.

**(Ms. Kumkum Rani)**  
**President**

**(Mr. B.S. Manral)**  
**Member**

Pronounced on: 19.07.2024