

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 303 OF 2022**

(Against the Order dated 29/10/2021 in Appeal No. 183/2019 of the State Commission  
Chandigarh)

1. UNITED INDIA INSURANCE CO. LTD. & ANR. ....Petitioner(s)

Versus

1. AMANDEEP SINGH & ANR.

2. .

. ....Respondent(s)

**BEFORE:**

**HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER**

FOR THE PETITIONER : MR. ANIMESH SINHA, ADVOCATE  
MR. SHUBHAM BUDHIRAJA, ADVOCATE

FOR THE RESPONDENT : MS. SWETA RANI, ADVOCATE FOR R-1  
MR. SAMARTH AGRAWAL, ADVOCATE FOR R-1  
MR. JAIDEEP SINGH, ADVOCATE PROXY WITH AR FOR R-2

**Dated : 03 June 2024**

**ORDER**

1. The present Revision Petition (RP) has been filed by the Petitioners against Respondents as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 29.10.2021 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. A/183/2019 in which order dated 13.06.2019 of District Consumer Disputes Redressal Forum-II, U.T. Chandigarh (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 533/2018 was challenged, *inter alia* praying for setting aside the impugned order.

2. While the Revision Petitioner(s) (hereinafter also referred to as OP/Insurance Company) was Appellant before the State Commission and OPs-1 & 2 before the District Forum and the Respondent-1 (hereinafter also referred to as Complainant) was Respondent -1 before the State Commission and Complainant before the District Forum and Respondent-2 (hereinafter referred to as Kotak Mahindra Prime Ltd./OP-3) was Respondent -2 before the State Commission and OP-3 before the District Forum.

3. Notice was issued to the Respondents on 22.04.2022. Parties filed Written Arguments on 15.12.2023 (Petitioner) and 29.01.2024 (Respondent-1) respectively.

Respondent -2 has not filed written synopsis, however, R-2 has filed reply to Revision Petition on 20.09.2022.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that: -

The Complainant/Respondent-1 got insured one Taxi with OP-1 effective from 08.10.2017 to 07.10.2018. The complainant hired Sh. Harinder Shahi as driver for his vehicle. The said car met with an accident in the night of 18.10.2017 near Punjab College, Sarkpada on Sirhand-Chunni Road. The car was hit by unknown vehicle resulting in, the Taxi went out of control and hit against the roadside tree. The incident of accident was reported to the police at Police Post: Chunni Kalan, District-Mohali. The complainant informed OPs-1 & 2 and car was taken to the authorized repairer M/s Joshi Hyundai, Mohali. The loss estimate prepared by the Authorized Repairer was supplied to OP-2, the authorized office to deal the accidental loss claim and after receiving the same, final Survey was carried out by the surveyor appointed by OP-2. OP-2 approved the claim on total loss basis. Since the insured Taxi is under Hypothecation with OP-3/Kotak Mahindra Prime Ltd., Chandigarh, OP-2 wrote a letter to OP-3 (financing bank) to supply the NOC for cancellation of registration of the insured vehicle. The OP-3 demanded full payment in advance for issuing the NOC and did not issue the conditional NOC to OP-2. OP-2 also sent a copy of the said letter to the Registration authority Punjab, Chandigarh for cancellation of registration and other related documents. When the OP-2/Insurance Company did not pay the claim and delayed the payment of the claim in spite of providing all the documents as and when demanded. Aggrieved by the attitude of the OPs, complainant issued a legal notice on 28.08.2018 to pay the claim within 7 days from the receipt of the Legal Notice. Despite receipt of notice, nothing has been done, hence the complainant filed complaint before the District Forum.

5. Vide Order dated 13.06.2019, in the CC No. 533/2018, the District Forum allowed the complaint against OPs-1 & 2 and dismissed the complaint qua OP-3.

6. Aggrieved by the said Order dated 13.06.2019 of District Forum, Petitioners appealed in State Commission and the State Commission vide order dated 29.10.2021 dismissed Appeal No. A/162/2019 and upheld the order passed by the District Forum with modifications in the directions.

7. Petitioners have challenged the said Order dated 29.10.2021 of the State Commission mainly on following grounds:

i.

The State Commission has incorrectly upheld the order dated 13.06.2019 passed by the District Forum because it has not considered the Petitioner's defense that the insured was not having a fitness certificate as on 18.10.2017. It has not considered the Petitioner's defense that transport vehicle without fitness certificate is not validly registered U/s 39 & 40 of the Motor Vehicles Act, 1988. It has not considered the Petitioner's defense that vehicle without fitness certificate is a fundamental breach of the policy. The State Commission has not considered that Petitioner's defense that the insured himself admitted that he was not having any fitness certificate at the time of loss, it has also not considered the Petitioner's defense that the repudiation letter dated 22.03.2018, based on verification report dated 07.12.2017, has stated the ground of fitness certificate. The State Commission has passed the order in a mechanical manner by the considering the verification report and the repudiation letter, which states that the said car was not having the fitness certificate as on date of loss on 18.10.2017.

(ii) The State Commission has committed an error by not considering the settled position of laws laid down nu the Hon'ble Supreme Court in **Narinder Singh Vs. New India Assurance Company Ltd.** (2014) 9 SCC 324, wherein it was held that absence of valid registration of a motor vehicle amounted to fundamental breach of the policy. The State Commission has not considered the judgment of National Commission in RP No. 622/2013- **Baghel Singh Vs. National Insurance Co. Ltd.**, wherein it was held that vehicle without fitness certificate on date of loss is a fundamental breach of the policy.

(iii) The State Commission has erred by not even considering the Petitioner's appeal and the Appeal has been rejected with a blanket statement that "the impugned order is based on the correct appreciation of evidence and law, on the point, it does not suffer from any illegality, warranting the interference/modification of this Commission."

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

8.1 In addition to the averments made under grounds (para 7), Petitioners contended that the District Forum has mistakenly based its decision on the case of

G. Kothainachiar v. Branch Manager, United India Insurance Co. Ltd. (supra). The case of G. Gothainachiar was decided in the year 2007 that is before the position of law was settled by the Hon'ble Supreme Court in the case of Narinder Singh. In the case of United India Insurance Co. Ltd. v. Surinder Kumar, Revision Petition No. 2340 of 2013 it was held that a vehicle shall not be considered validly registered under section 39 of the Motor Vehicle Act, 1988 if it did not possess the required fitness certificate and the case of Narinder Singh and G. Kothainachiar were considered in this case. It is further contended that the State Commission has dismissed the appeal of the petitioner without discussing the contentions of the Petitioner or the findings of the impugned order by giving a blanket statement that "In our opinion, the order passed by the Learned District Commission-II, U.T. Chandigarh being based on correct appreciation of evidence, and law, on the point, does not suffer from any illegality, warranting the interference/modification of this Commission..." making the order a non-speaking order and one with non-application of mind. The insured vehicle met with an accident on 18.10.2017. The Petitioner, being the insurer of the said vehicle was informed about the loss event on 24.10.2017 and surveyor, Inder Pal Singh was immediately appointed to assess the loss to the vehicle. The Surveyor submitted its survey report on 22.02.2018 wherein it has clearly mentioned 'NA' in the column for 'Fitness Certificate Number' thereby confirming that the Respondent No.1 did not have a valid fitness certificate at the time of the accident. The Petitioner also appointed Adv. Ravi Mani for the verification of the Registration Certificate and Route permit of the insured vehicle and the Investigator submitted its report on 07.12.2017 wherein it concluded that the Fitness Certificate of the said vehicle had expired on 14.10.2017. Based on the above findings of the surveyor and the investigator, the Petitioner repudiated the claim of Respondent-1 through letter dated 22.03.2018. In support of its contentions, the Petitioner has also relied upon the judgment passed by this Commission in (i) Shirajurrehman Shahjan Bagwan v. V.S. Thorat, Revision Petition No. 2149 of 2015, decided on 15.10.2015 (ii) Hem Raj Goyal v. Reliance General Insurance Company Ltd., Revision Petition No. 1710 of 2014, decided on 17.03.2020.

8.2 On the other hand Respondent-1/complainant contended that his insured vehicle met with an accident on 18.10.2017 at 10-30 P.M. when Sh. Harinder Shahi who was employed as driver was driving it. The accident was immediately reported to the police at Police Post, Chunni Kalan, District Mohali where DDR No. 5 was entered by the police. Information was given to the Petitioners/OPs-1 & 2 and car was taken to the authorized repairer M/s Joshi Hyundai, Mohali, prepared the loss estimate and the same was supplied to the Petitioner/OP-2 and after receiving the same final Survey was carried out by the Surveyor appointed by the OP-2. OP-2 approved the claim on Total Loss basis. Since the Taxi was under Hypothecation with Respondent-2/OP-3 (Financing Bank), OP-2 wrote a letter for NOC for cancellation of registration of insured vehicle but the financing bank demanded full payment in advance for issuing NOC and did not issue the conditional NOC. Thereafter, the OP-2/Petitioner herein did not pay the claim and

delayed the payment in spite of providing all the documents as and when demanded and as per settled law the claim reported should be finalized/decided immediately and the insured should not be put to unnecessary harassment. Hence, filed complaint before the District Forum. District Forum rightly held and directed the Petitioners to pay Rs.4,09,500/- (Net of Salvage Loss Basis Without RC, as per report of Surveyor) with interest @9% per annum from the date of repudiation i.e. 22.03.2018 till realization along with litigation cost to the Complainant. State Commission dismissed the Appeal filed by the Petitioner against the order of the District Forum, as being devoid of any merit observing therein that the order passed by the District Forum was based on the correct appreciation of evidence and law on the point, does not suffer from any illegality, warranting the interference/modification as the Petitioners/OPs had wrongly and illegally repudiated the well-founded claim of Respondent-1 and as such, they are guilty of rendering deficient services to the Complainant. It is further contended that the present Revision Petition preferred by the Petitioners before this Commission is merely an attempt to delay the matter and harass the Complainant as there are already concurrent findings in favour of the Reespondent-1 given by both the Fora below.

8.3 The Respondent No. 2 contended that the Revision Petition is neither maintainable nor tenable under law as the repletion by the revisionist of Respondent-1, who is the borrower of Respondent-2, is wrong and is illegal. It is further contended that Respondent -2 is a financial institution involved in the business of providing loan facility to borrowers for purchase of vehicles, through public funds, is suffering and incurring losses for a frivolous and illegal denial of the claim by the revisionist, because of which neither the borrower is paying the outstanding dues to Respondent-2 under the garb of pendency of the claim and litigation nor the revisionist as per the direction of the State Commission under the garb of false and frivolous pretext that there was no fitness certificate of the vehicle and thus causing a loss of public fund as well as the funds of Respondent-2 which should not be allowed. Respondent No.2 has relied upon the judgment in **G. Kothainachiar Vs. The Branch Manager, United India Insurance Company Ltd. & Ors.** decided on 29.10.2007.

9. Petitioner Insurance Company repudiated the claim of Respondent-1 herein on the ground that the vehicle in question did not possess valid fitness certificate at the material time of accident, i.e. on 18.10.2017. The vehicle in question was registered on 26.10.2015 and the R.C. was valid till 14.10.2017. The Investigator appointed by the Insurance Co. after verifying from the office of State Transport Authority, Mohali, Punjab, reported that RC was issued on 26.10.2015 and fitness was valid upto 14.10.2017. This is evident from Annexure –P3 document (RC) on record. Hence, the main issue for consideration is whether the Insurance Co. is justified in repudiating the claim on the ground of vehicle not having a valid

fitness certificate on the date of accident. The fact of vehicle not having a valid fitness certificate on the date of accident has not been disputed by the Respondent-1.

10. Relying on the judgment of Hon'ble High Court of Karnataka (2017) SCC OnLine Kar 4463, the Respondent-1 has contended that the Insurance Co. cannot deny the liability to compensate on the ground that as on the date of the accident, the fitness certificate had expired. The requirement of fitness certificate is not one of the conditions of the Insurance policy and it is not the defence available U/s 149(2)(a)(II) of the M.V. Act.

11. District Forum has allowed the complaint relying on the judgment of the Commission in RP 1503 of 2004- G. Kothainachiar Vs. the Branch Manager, United India Insurance Co. & Ors. decided on 29.10.2007, and State Commission upheld the order of the District Forum. This Commission in RP 2340 of 2013 –United India Insurance Co. Ltd. Vs. Surinder Kumar, decided on 23.09.2016 (2016 SCC OnLine NCDRC2542) observed as follows:-

*10. Considering the facts and circumstances on record, it is clearly made out that on the date of accident, the said commercial vehicle did not have a certificate of fitness, because the said certificate had expired on 11.4.2005, whereas the accident took place on 5.2.2006. The District Forum while passing their order have rightly relied upon Section 56 of the Motor Vehicles Act, 1988, which says that a transport vehicle shall be deemed to be not validly registered, unless it carries a certificate of fitness. The State Commission has relied upon an order passed by this Commission in **G. Kothainachiar vs. United India Insurance Company (supra)**, saying that the insurance company cannot repudiate the claim when there is no breach of terms of the policy, although there may be breach of the provisions of Motor Vehicles Act, 1988. This contention is, however, not valid in view of the order passed by the Hon'ble Supreme Court in **Narinder Singh vs. New India Assurance Company Ltd. (2014) 9 SCC 324**, in which it has been clearly held that if the vehicle is not validly registered as per the provisions of the Motor Vehicles Act, 1988, it amounted to a fundamental breach of terms and conditions of the policy and the claim is not payable. As laid down in Section 56 of the said Act regarding certificate of fitness of transport vehicles, it is clearly stated that a vehicle shall not be deemed to be validly registered for the purpose of Section 39, unless it carries a certificate of fitness as per the prescribed proforma. It is made out, therefore, that the District Forum rightly dismissed the complaint of the respondent and the view taken by the State Commission is not in accordance with law and hence, the order of the State Commission deserves to be set aside.*

11. Further, in the two cases stated by learned counsel for the insurance company i.e., **Oriental Insurance Company Ltd. vs. B.A. Nagesh (supra) and United Insurance Company Ltd. vs. B. Ugandar (supra)**, it was held that a transport vehicle was required to have a fitness certificate, otherwise the claim was not payable for violation of the statutory requirements laid down in the Motor Vehicles Act.

Similar view was taken by this Commission in RP 622 of 2013 – Baghel Singh Vs. National Insurance Co. Ltd., decided on 16.09.2016.

12. In **United India Insurance Co. vs. Sushii Kumar Godara**, Civil Appeal No. 5887/2021, decided on 30.09.2021, Hon'ble Supreme Court held that "when an insurable incident that potentially results in liability occurs, there should be no fundamental breach of the conditions contained in the contract of Insurance." In this case, the temporary registration of vehicle had expired on the date of incident, the respondent had not applied for registration or that he was awaiting registration, the vehicle was not only driven, but also taken to another city, where it was stationed overnight, and got stolen there. Hon'ble Court, applying the ratio of **Narinder Singh vs. New India Assurance Co. Ltd.** (2014) 9 SCC 324 observed that this case was in the context of an accident is immaterial. It is of no consequence that the car was not plying on the road, when it was stolen, the material fact is that concededly, it was driven to a place from where it was stolen, after the expiry of temporary registration. But for its theft, the respondent would have driven back the vehicle. In **Narinder Singh (Supra)** the claim was in the context of an accident, involving a vehicle, the temporary registration of which had expired. The Hon'ble Court held that the insurer was not liable.

13. In **Naveen Kumar vs. National Insurance Co. Ltd.** (RP/250/2019, decided on 26.11.2015, NCDRC in a reference, held as follows:-

*"9. For the reasons stated hereinabove, the reference is answered in following terms:- (i) If a vehicle without a valid registration is or has been used/driven on a public place or any other place that would constitute a fundamental breach of the terms and conditions of the contract of insurance even if the vehicle is not being driven at the time it is stolen or is damaged: (ii) If a vehicle without a valid registration is used/driven on a public place or any other place, it would constitute a fundamental breach of terms and conditions of the policy even if the owner of the vehicle has applied for the issuance of a registration in terms of S.41 of the Act before expiry of the temporary registration, but the regular registration has not been issued".*

14. In the instant case, the claim has been repudiated by the Insurance Company on the ground that vehicle was not having valid fitness as required under section 56 of Motor Vehicle Act, 1988. The question arises is whether driving the vehicle on public road without valid fitness certificate is violation of Motor Vehicle Act and whether plying vehicle on road without required fitness certificate constitute an offence punishable under Motor Vehicle Act, 1988 on the same footing as driving without a valid registration, either temporary or permanent, which are in clear violation of Section 39 and 192 of Motor Vehicle Act. Section 56 of Motor Vehicle Act is reproduced below:

*56. Certificate of fitness of transport vehicles (1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorised testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder.*

15. From the above, it is clear that under section 56, if the transport vehicle is not having a certificate of fitness, it shall not be deemed to be validly registered for the purpose of Section 39. Hence, this alone becomes a valid ground for Insurance Company to repudiate the claim. Hence, in our considered view, plying the transport vehicle on road without a valid fitness certificate is in violation of provisions of Motor Vehicle Act entitling the Insurance to repudiate the claim as these constitute fundamental breach of conditions of the policy. This Commission has taken a similar view in RP 2894/2018 – National Insurance Co. Vs. Raje, decided on 19.02.2024 and RP 1199/2022 –Prمود Khuswah Versus The Oriental Insurance Company Ltd. , decided on 23.02.2024.

16. In view of the above point, we are of the considered view that both the District Forum and State Commission went wrong in allowing a complaint / dismissing the appeal of the Petitioner Insurance Company.

17. In view of the foregoing, the order of the District Forum and State Commission cannot be sustained the same are hereby set aside and complaint is dismissed. Revision Petition is disposed off accordingly. Pending IAs, if any, also stand disposed off.

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**DR. INDER JIT SINGH**  
**PRESIDING MEMBER**