

**H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA.**

First Appeal No.: 13/2022
Date of Presentation: 08.02.2022
Order Reserved on : 27.06.2024
Date of Order : 05.07.2024

Shriram General Insurance Company Limited, Bilaspur,
District Bilaspur, H.P. through its Manger, Shriram General
Insurance Company Limited, SCO 178, 1st Floor, Sector 38-C,
Chandigarh.

..... Appellant/Opposite party.

Versus

1. Rateshwari Devi W/O Late Sh. Ramesh Chand, R/O
Village Police, Post Office Thuran, Tehsil Jhandutta,
District Bilaspur, H.P.
2. Neeraj Kumar S/O Late Sh. Ramesh Chand, R/O Village
Police, Post Office Thuran, Tehsil Jhandutta, District
Bilaspur, H.P.
3. Preeti Devi D/O Late Sh. Ramesh Chand, R/O Village
Police, Post Office Thuran, Tehsil Jhandutta, District
Bilaspur, H.P.

..... Respondents/Complainants.

Coram

Hon'ble Justice Inder Singh Mehta, President

Whether approved for reporting?¹ Yes

¹Whether reporters of the local papers may be allowed to see the order?

For the Appellant: Mr. Jagdish Thakur, Advocate.

**For the Respondents: Mr.Yashveer Chauhan vice Mr.
Manoj Thakur, Advocate.**

Justice Inder Singh Mehta, President

ORDER

Instant appeal is arising out of the order dated 29.10.2021 passed by Learned District Consumer Commission, Una, Camp at Bilaspur, in consumer Complaint No.71/2016 titled Rateshwari Devi & Ors. Vs. M/s Shriram General Insurance Company Ltd.

Brief facts of Case:

2. Brief facts of the case are that the complainants are the successors of late Sh. Ramesh Chand who was owner of the vehicle No.HP-69-0113 which was insured with opposite party/insurance company w.e.f. 01-10-2015 to 30.09.2016. Sh.Ramesh Chand was also insured for personal accident claim being owner of vehicle. The aforesaid vehicle met with accident on 21.11.2015. Information was given to the opposite party/insurance

company and claim was lodged. The opposite party/insurance company appointed a surveyor who assessed the loss. Despite submission of all documents and completing codal formalities, the claim of the complainant was repudiated by the opposite party/insurance company which amounts to deficiency in service. Hence, the present complaint.

3. The opposite party/Insurance company resisted and contested the complaint by filing reply and alleged that on receiving intimation regarding loss/damage, a surveyor was appointed who assessed the loss to the tune of Rs.55,250/- on repair basis. However, it is found that four persons including driver were travelling in the accidental vehicle which is violation of terms and conditions of the insurance policy, therefore, the claim of the complainant was repudiated. There is no deficiency in service on the part of the insurance company. A prayer for dismissal of complaint was made.

4. The complainants filed rejoinder denying the contents of the reply filed by opposite party and reiterating those of complaint.
5. The parties led evidence in support of their respective pleadings.
6. After hearing the parties, learned District Commission allowed the complaint of the complainants.
7. Feeling aggrieved by the order of learned District Commission, the appellant/opposite party has preferred the instant appeal before this Commission.
8. I have heard learned counsel of the parties and have also gone through the record carefully.
9. Learned counsel of the appellant/insurance company has submitted that on receiving intimation, surveyor was appointed who assessed the loss to the tune of Rs.55,250/-. He further submitted that the claim was

repudiated on the ground that at the time of accident four persons were travelling in the vehicle against the seating capacity of three persons and the said factum has also been admitted by the learned District Commission below but the learned District Commission has wrongly mis-interpreted the judgment of Hon'ble Supreme Court in case titled Lakhmi Chand Vs. Reliance General Insurance 2016 ACJ 551, whereas, in this judgment, the Hon'ble Supreme Court has held that if more persons than the seating capacity are travelling, the claim is to be settled on non-standard basis i.e. 75% of the assessed amount of Rs.55,250/- which comes to Rs.41,437/-. He further submitted that the complainants are also claiming Personal Accidental claim on account of death of owner-driver, Ramesh Kumar, whereas, Ramesh Kumar was not driving the vehicle, therefore, the complainants are not entitled for PA claim. He further submitted that for PA claim, three following conditions are to be fulfilled:-

1. The person must be owner of the vehicle in question as per RC.

2. His name must be in the certificate of insurance.
3. He must have valid and effective DL to drive the vehicle.

In the present case, predecessor-in-interest of the complainants Sh.Ramesh Chand was the registered owner of the vehicle and his name is figured in the certificate of insurance but he was not having driving license, therefore, complainants are not entitled for PA claim. He has also relied upon the order of Hon'ble National Commission in case titled United India Insurance Co. Ltd. Vs. Havaben and Ors., Revision Petition No.3061 of 2008 dated 04.09.2013, Judgment of Hon'ble Punjab & Haryana High Court in case titled Deepika Sharma & Ors. Vs. Deepak & Ors. FAO No.137 of 2016, Order of Hon'ble Karnataka State Consumer Commission in case titled Oriental Insurance Co. Ltd. Vs. H.S. Mullappa, Appeal No.785/2014 dated 06.09.2021 and judgment of Hon'ble High Court of Judicature at Madras in case titled M/s The Cholamandalam MS General Insurance Co. Ltd. Vs. Ramesh Babu, CMA No.2434 of 2019 dated

02.09.2020 and prays that appeal of the appellant/insurance company be allowed.

10. On the other hand, learned counsel of the respondents/complainants has submitted that Satish Kumar was driving the vehicle in question who was holding valid and effective driving license to drive the vehicle. He further submitted that the impugned order does not require any interference and prays that appeal of the appellant be dismissed. He has also relied upon the judgment in case titled B.V. Nagaraju Vs. Oriental Insurance Co. Ltd. dated 20.05.1996 and judgment in case titled Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan & Ors. dated 01.04.1987.

11. In rebuttal, learned counsel of the appellant/insurance company has submitted that Satish Kumar was the driver of the vehicle but the PA claim is to be given to owner-cum-driver, therefore, the claim of the complainants is not maintainable.

FINDINGS:

12. The admitted fact emerging on record is that complainants are successors of late Sh. Ramesh Chand who was registered owner of the vehicle No.HP-69-0113. The said vehicle was insured with the opposite party/insurance company w.e.f. 01-10-2015 to 30.09.2016.

13. It is further an admitted fact that during the existence of insurance policy, the vehicle in question met with an accident on 21.11.2015 in which Ramesh Chand died and vehicle was damaged. Intimation regarding accident was given to the opposite party/Insurance company.

14. It is also an admitted fact emerging on record that Insurance Company appointed a surveyor who assessed the loss to the tune of Rs.55,250/- on repair basis.

15. The perusal of the repudiation letter dated 25.01.2016, Annexure C-6 indicates that the insurance company has repudiated the claim of the complainants on the

ground that at the time of accident 3+1 persons were travelling in the vehicle in question against the seating capacity of 2+1 which is violation of the terms and conditions of the insurance policy.

16. The repudiation of claim of the complainants on the aforesaid ground is not justified as there is no case of the opposite party/insurance company that overloading or sitting of extra passenger was cause of the accident. Even in the FIR, Annexure C-3 there is no mention that due to overloading/sitting of extra passenger, the vehicle in question met with accident. However, it is mention in the FIR that due to driving of the vehicle by the driver in high speed accident took place.

17. Thus, it is clear that the said extra passenger has not attributed any role in the accident.

18. Since the cause of accident was not overloading or sitting of extra passenger, it cannot be held that the vehicle

in question was being plied in violation of terms and conditions of the insurance policy. As such, repudiation of claim by the insurance company on the above said ground amounts to deficiency in service.

19. Perusal of the registration certificate of the vehicle in question, Annexure C-1, it is crystal clear that Ramesh Chand was registered owner of the vehicle in question.

20. Further, perusal of copy of insurance policy, Annexure C-2 indicates that name of the insured in the policy is mentioned as Ramesh Chand and Rs.100/- was paid towards the Personal Accident for owner-driver and PA cover for owner cum driver is Rs.2.00 lacs.

21. It is coming on record that when the accident took place the vehicle was being driven by driver Satish Kumar and at the relevant point of time owner/insured Ramesh Chand was also travelling in the said vehicle. Once the premium of Rs.100/- was paid by the owner/insured for PA

cover of owner-driver and the owner who does not know driving, he can appoint a driver to drive the vehicle.

22. In the instant case, owner of the vehicle in question Ramesh Chand has appointed Sh.Satish Kumar as driver who was holding a valid and effective driving license. The owner of the vehicle Ramesh Chand has also paid premium of Rs.100/- for PA cover of owner-driver, therefore, plea of the insurance company that owner of the vehicle was not holding valid driving license and on account of death of the owner, complainants are not entitled for PA cover does not seem to be correct.

23. Thus, in view of above stated facts on account of death of insured/owner of the vehicle in question, the complainants being successors of the insured are entitled to the PA cover of Rs.2.00 lacs.

24. As far as the judgments relied upon by the appellant/insurance company are concerned, same are not applicable in the facts and circumstances of the present case.

25. In view of the above discussion, I find no infirmity in the order passed by the learned District Commission and same does not require any interference.

26. Consequently, appeal of the appellant/insurance company fails and same is hereby dismissed and the impugned order remains upheld.

27. Parties are left to bear their own costs.

28. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of District Commission alongwith certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.

Justice Inder Singh Mehta
President

Manoj