

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND  
DEHRADUN

Date of Admission: 13.07.2022  
Date of Final Hearing: 03.07.2024  
Date of Pronouncement: 15.07.2024

**FIRST APPEAL NO. 113 / 2022**

1. Shriram General Insurance Company Limited  
through its Manager, Branch 10186  
Office situated at 1001, L.G.F. Naiwala, Arya Samaj Road  
Naiwala, Karol Bagh, New Delhi
2. Shriram General Insurance Company Limited  
through its Manager, E-8, EPIP, RIICO Industrial Area  
Sitapura, Jaipur  
through their Authorised Signatory  
Sh. Pankaj Chandok, Branch In Charge  
Branch Office at Meedo Plaza, Rajpur Road  
Dehradun

(Through: Sh. Deepak Ahluwalia, Advocate)  
..... Appellants

Versus

Smt. Umesh W/o late Sompal  
R/o Village Joyopotta, P.S. Kankhal, Post Missarpur  
District Haridwar, Uttarakhand

(Through: None)  
..... Respondent

**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 the impugned judgment and order dated 16.04.2022 passed by learned District Consumer Disputes Redressal Commission, Haridwar (hereinafter to be referred as "The District

Commission”) in consumer complaint No. 161 of 2020, styled as Smt. Umesh Vs. Shriram General Insurance Company Limited and another, wherein and whereby the consumer complaint was allowed, directing the appellants / opposite parties to pay the amount of P.A. for owner – driver amounting to Rs. 2,00,000/- to the respondent / complainant together with interest @6% p.a. from the date of filing of the consumer complaint, i.e., 20.08.2020 till actual payment, besides to pay Rs. 25,000/- towards counsel fee & litigation charges and Rs. 15,000/- towards mental & physical agony as well as financial loss.

2. The facts giving rise to the present appeal, in brief, are, as such that late Sompal, husband of respondent / complainant – Smt. Umesh, was the registered owner of three-wheeler model Kranti Auto-Nandi Super 400-D bearing registration No. UK08-TA-4604. The said vehicle was the only source of earning livelihood for the deceased as well as his family. The aforesaid vehicle was insured with the appellants / opposite parties (insurance company) vide policy No. 101026/31/16/011671 for the period from 31.10.2015 to 30.10.2016 at an IDV of Rs. 1,00,000/-. The insurance policy provided coverage to the insured vehicle from accidental damage and theft as well as other motor claim besides P.A. Cover for Owner – Driver to the tune of Rs. 2,00,000/- in the event of death. On dated 09.12.2015, the deceased was going for his routine work by the insured vehicle, but unfortunately at about 7:30 a.m., the insured vehicle collided with a bus bearing registration No. UK08-PA-1079, resulting in the death of the deceased on the spot. On account of sudden death of the deceased, the complainant went into severe depression. The complainant submitted claim with the insurance company, but the insurance company did not settle the claim. Thereafter, the complainant sent a legal notice to the

insurance company regarding status and settlement of the claim through e-mail on 24.07.2020, which was not responded by the insurance company. Thus, the behaviour of the insurance company falls under the purview of deficiency in service. Therefore the consumer complaint was filed by the complainant before the District Commission within the period of limitation.

3. The appellants / opposite parties filed joint written statement before the District Commission, pleading that the complainant has not lodged any claim with the insurance company. The insurance company came to know about the alleged death of the deceased only after receiving the summons of the consumer complaint filed before the District Commission. Since the claim was not reported, the insurance company did not have any opportunity to process the same. Therefore, no lack of service can be attributed to the insurance company. It was also pleaded that as per the provisions of Consumer Protection Act, 2019, the consumer complaint should have been filed within a period of two years from the date of cause of action, but the present consumer complaint has been filed after a period of four years of the alleged death of the deceased, which is clearly barred by limitation. Moreover, the complainant has not moved any application before the District Commission for condonation of delay in filing the consumer complaint. Therefore, the consumer complaint is liable to be dismissed.

4. Learned District Commission, after hearing both the parties and after taking into consideration the material available on record, passed the impugned judgment and order on dated 16.04.2022, thereby allowing the consumer complaint in the above terms. Being aggrieved

by the impugned judgment and order, the present appeal has been instituted by the insurance company as an appellants.

5. Vide order dated 22.02.2024, it was directed that the appeal shall proceed ex-parte against respondent. On 03.07.2024, the date of ex-parte arguments, Sh. Anuj Kumar Sharma, learned counsel for respondent has appeared before the Commission for placing arguments. We have heard the arguments and perused the record available before us.

6. It is an admitted fact that the deceased was the registered owner of the subject vehicle, which was insured with the insurance company under Package Policy for the period from 31.10.2015 to 30.10.2016. It is also not disputed that the vehicle was insured at an IDV of Rs. 1,00,000/-. It is further not disputed that under the insurance policy, P.A. Cover to the tune of Rs. 2,00,000/- was provided to the Owner – Driver in the case of death. It is also admitted that on 09.12.2015, the deceased / insured expired on account of grievous injuries sustained in a road accident, when he was going by the insured vehicle for his routine work.

7. In the consumer complaint, it is nowhere averred in the consumer complaint that intimation regarding death of the insured was immediately given to the insurance company. In the consumer complaint, it is only alleged that the consumer complaint is within time, but it is nowhere explained therein as to how it was within time.

8. Learned counsel for the appellants has cited following case laws:

- (i) **Kandimalla Raghavaiah & Co. Vs. National Insurance Co. Ltd. and another; III (2009) CPJ 75 (SC).**
- (ii) **Judgment dated 19.08.2020 passed by Hon'ble National Commission in First Appeal No. 516 of 2012; Babubhai Bhagvanji Tandel Vs. New India Assurance Company Limited.**
- (iii) **State Bank of India Vs. B.S. Agricultural Industries (I); II (2009) CPJ 29 (SC).**

9. In **Kandimalla Raghavaiah & Co.** (supra), it was observed by Hon'ble National Commission that the cause of action occurred on the intervening night between 22<sup>nd</sup> / 23<sup>rd</sup> March, 1988, when the fire broke out, but the complaint was filed only in the year 1997. The first action by the appellants was in November, 1992, i.e., after a gap of 4½ years, when the appellants asked for the claim form. The Commission finally held that both the complaints were barred by limitation and, therefore, could not be entertained. In Civil Appeal, Hon'ble Apex Court held in para 18 as under:

“18. It is, therefore, clear from the aforementioned correspondence between the appellant and the Insurance Company that cause of action in respect of the special insurance policy arose on 22<sup>nd</sup> / 23<sup>rd</sup> March, 1988, when fire in the godown took place damaging the tobacco stocks hypothecated with the Bank in whose

account the policy had been taken by the appellant. Thus, the limitation for the purpose of Section 24A of the Act began to run from 23<sup>rd</sup> March, 1988 and, therefore, the complaint before the Commission against the Insurance Company for deficiency in service, whether for non-issue of claim forms or for not processing the claim under the policy, ought to have been filed within two years thereof. As noticed above, the complaint was in fact filed on or after 24<sup>th</sup> October, 1997, which was clearly bared by time.”

10. In **Babubhai Bhagvanji Tandel** (supra), the consumer complaint was dismissed by the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai on the ground of limitation. In appeal, it was held by Hon’ble National Commission that in view of law laid down by Hon’ble Apex Court in **Kandimalla Raghavaiah & Co.** (supra), the cause of action arose on the date the vessel sank and not from the date when the claim was repudiated, which was after almost five years. The appeal was dismissed, confirming the judgment of the State Commission.

11. In **State Bank of India** (supra), it was held by Hon’ble Apex Court that the provision regarding limitation for filing of consumer complaint provided under the Act is peremptory in nature and requires Consumer Forum to see before admitting complaint, that it has been filed within two years from date of accrual of cause of action. It was further held that delay can be condoned if sufficient cause for delay is shown. It is the duty of Consumer Forum to take notice of Section 24A and give effect to it. It was also observed that complaint barred by time, if decided on merits, Forum would be committing an illegality.

12. In the instant case, the accident in which the insured expired, took place on 09.12.2015 and the consumer complaint was filed before the District Commission on 20.08.2020, that too without any delay condonation application in filing the consumer complaint. In view of the specific provision regarding limitation for filing the consumer complaint provided under the Consumer Protection Act, 2019, i.e., Section 69(1) as well as in the light of above quoted law, the consumer complaint was not legally maintainable, being barred by limitation and the same ought to have been dismissed as such by the District Commission.

13. For the reasons aforesaid, we are of the view that the impugned judgment and order has been passed by the District Commission without application of mind, ignoring the provisions of the Act as well as law. Hence, the impugned judgment and order passed by the District Commission is totally unjustified and the District Commission has exercised the jurisdiction not vested in it by law and has acted with material illegality and infirmity, while passing the impugned judgment and order. Thus, we are inclined to interfere with the finding recorded by the District Commission. Therefore, the appeal is liable to be allowed.

14. Appeal is allowed. Impugned judgment and order dated 16.04.2022 passed by the District Commission is set aside and consumer complaint No. 161 of 2020 is hereby dismissed, being barred by limitation. No order as to costs of the appeal. The amount deposited by the appellants with this Commission, be released in their favour.

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. A 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: 15.07.2024