

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 1150 OF 2017**

(Against the Order dated 03/02/2017 in Appeal No. 829/2016 of the State Commission  
Haryana)

1. ROYAL SUNDARAM GENERAL INSURANCE  
COMPANY LIMITED (FORMERLY KNOWN AS ROYAL  
SUNDARAM ALLIANCE INSURANCE COMPANY  
LIMITED)

(FORMERLY KNOWN AS ROYAL SUNDARAM  
ALLIANCE INSURANCE CO. LTD.) THROUGH VICE  
PRESIDENT, SUNDARAM TOWER 45 & 46, WHITES  
ROAD,  
CHENNAI-600014

.....Petitioner(s)

Versus

1. ISHWAR SINGH MEHRA & ANR.  
S/O. SH. JAI KARAN VILLAGE JAJI, P.O. JUAN, TEHSIL  
AND  
DISTRICT-SONEPAT-131001  
HARYANA

2. M/S. MALWA AUTO SALES (CHEVROLET)  
G.T. ROAD, KUNDLI  
SONIPAT  
HARYANA-131028

.....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING  
MEMBER**

FOR THE PETITIONER :                   FOR PETITIONER : MS.DEEPA CHAKO, ADVOCATE  
MS. RUBY KUMARI, PROXY COUNSEL

FOR THE RESPONDENT :               FOR RESPONDENT NO.1 : MR.PARDEEP DAHIYA, ADVOCATE  
THROUGH VC  
FOR RESPONDENT NO.2 : NONE APPEARED

**Dated : 20 May 2024**

**ORDER**

1. This Revision Petition No. 1150 of 2017 challenges impugned order of Haryana State Consumer Disputes Redressal Commission, Panchkula ('the State Commission') dated 03.02.2017 vide which, the State Commission partially allowed the FA No.829 of 2016 and increased the compensation awarded by District Consumer Disputes Redressal Forum, Sonapat ('the District Forum') dated 04.08.2016.

2. Brief facts of the case, as per the Complainant, are that he was the owner of Tavera car No.HR10P-5499 purchased in 2010. Vide policy No. VPC0569306000100 the vehicle was

insured by Petitioner/ OP from 29.05.2013 to 28.05.2014. On 18.05.2014 the Complainant's vehicle had met with an accident. The intimation was given to Police and the Insurance Company. The surveyor appointed assessed the loss as Rs.1,54,559. However, the Complainant demanded the IDV value of vehicle being total loss of Rs.4,98,717. Being aggrieved, the Complainant filed Consumer Complaint before the District Forum.

3. In reply, Respondent No.2/OP-1 contended that the appointed surveyor had inspected the vehicle in question. The vehicle is still lying parked in the premises of the Respondent No.2/OP-1. Neither the Insurance Company nor the Complainant had allowed the Respondent No.2/ OP-1 to repair the vehicle. There is no deficiency in service on the part of the Respondent No.2/OP-1.

4. In reply, the Petitioner/OP-2 admitted the vehicle in question was insured by it. They contended that the Surveyor undertook the necessary survey and assessed the loss to be Rs.1,54,559/-, after making appropriate deductions for depreciation and policy excess as per policy. They further contended that the Complainant did not produce the vehicle for re-inspection along with original bills and receipts for payment made to Respondent No.1, for settlement of the claim. They sought dismissal of the complaint.

5. The learned District Forum, vide order dated 04.08.2016, allowed the complaint in part and observed as under:

***“Now the main question arises for consideration before this Forum is as to for what amount the complainant is entitled to?”***

***The vehicle of the complainant was insured for Rs.4,98,717/- and the complainant by way of present complaint has claimed Rs. 4,98,717/-, whereas the surveyor has assessed the net payable amount to the tune of Rs.1,54,559/-.***

***In our view, the complainant is entitled to get the amount as assessed by the surveyor because as per authoritative decisions of Hon'ble National Commission and Hon'ble State Commission, the surveyor is the best person to assess the loss and his report cannot be brushed aside. Thus, taking into consideration the report of the surveyor, we hereby direct the respondent no.2 insurance company to make the payment of Rs.1,54,559/- (Rs.one lac fifty four thousand five hundred fifty nine) to the complainant within a period of 60 days from the date of passing of this order, failing which, the above said amount shall fetch interest at the rate of 09% per annum the date of passing of this order till its realization.***

***With these observations, findings and directions, the present complaint stands partly allowed.”***

6. Being aggrieved by the impugned order, the Complainant filed an Appeal and vide order dated 03.02.2017, the State Commission partly allowed the Appeal and increased the compensation as under:

***“3. Learned counsel for the complainant has urged that the car was taken to Malwa Auto Sales, Sonapat -opposite party No. 1 (authorized dealer of the car). Malwa Auto Sales assessed the loss at Rs.9.00 lakh whereas Insured Declared Value of the car was Rs.4,98,717/-. For ready reference, the report dated May 30th, 2014 submitted by Malwa Auto Sales is reproduced as under:-***

***"It is certified that a vehicle number HR-10P-5499 met with accident on dated 18th May, 2014 and this vehicle is lying in our workshop for repair. And after inspection of above said vehicle our engineer/foreman prepared estimate cost of its repair which is approximately Rs. Nine Lacs which is excess of IDV, because body shell and engine are not in repairable condition both are replaceable with new one as well as AC of the vehicle also replaceable with new one and other parts of the vehicle like chassis also replaceable with new one. Thus this vehicle is not in repairable condition."***

***4. A reading of the report shows that the car was totally damaged. The photographs of the damaged car also depicts that the car was totally damaged. In view of this, this Commission is of the opinion that the Insured Declared Value of the car should have been awarded by the District Forum instead of directing to pay Rs. 1,54,559/- to the complainant. This being so, the impugned order is modified to the extent that the Insurance Company shall pay Rs.4,98,717/- (Insured Declared Value of the car) to the complainant within a period of sixty days from the date passing of this order. The car is still lying in the garage of Malwa Motors. The salvage of the car would be retained by the Insurance Company. The complainant is directed to execute the letter of subrogation, to hand over the keys of the car, transfer the Registration Certificate in the name of the Insurance Company and execute all other necessary documents required for the purpose. The appeal stands disposed of in the manner indicated above."***

7. In her arguments, learned Counsel for the Petitioner/OP-2 reiterated the grounds taken in the Revision Petition and argued in favour of the order passed by the District Forum and sought to set aside the impugned order of the State Commission. She relied upon the surveyor report. She also relied upon the following judgments:

***i. Mira Sea Foods through its Proprietor Mohanbhai M. Vadhavi Vs. New India Assurance Co. Ltd., 2017 SCC OnLine NCDRC 529;***

***ii. United India Insurance Co. Ltd. And Ors. Vs. Roshan Lal Oil Mills Ltd., (2000) 10 SCC 19.***

8. In his arguments, the Counsel for the Complainant/Respondent No.1 reiterated the grounds taken in the Complaint and asserted that the vehicle in question was completely destroyed in the accident and he is entitled for IDV of the vehicle to the tune of Rs.4,98,717 as awarded by the State Commission. He argued in favour of the impugned order passed by the State Commission. He sought to dismiss the present Revision Petition with costs. The Respondent No.2-M/s. Malwa Auto Sales (Chevrolet)/OP-1 did not appear before this Commission despite service and therefore, the Respondent No.2/OP-1 proceeded ex-parte vide order dated 15.03.2024.

9. I have examined the pleadings and associated documents on record, including the orders of the learned District Forum and the learned State Commission and rendered thoughtful consideration to the arguments advanced by the learned Counsels for the Petitioner.

10. Based on the arguments advanced on behalf of both the parties, it appears that there was a discrepancy in the assessment of the vehicle's damage and repair cost following an accident. The breakdown of the key issues is as follows:

- i. **Total Damage and Repair Estimation:** The vehicle in question was reported as totally damaged in the accident, as brought out in the report from Malwa Auto Sales, Sonapat (Respondent No.2/OP-1), the authorized car dealer. The repair estimate provided by Respondent No.2/OP-1 amounted to Rs.9 lakh, while the Insured Declared Value (IDV) of the car itself was Rs.4,98,717/-, according to their report dated 30.05.2014.
- ii. **Surveyor Report and Loss Assessment:** A surveyor's report dated 15.07.2014 assessed the loss to the vehicle to be as Rs.1,54,559/-, after deducting depreciation and excess value.
- iii. **Discrepancy in Compensation:** There was a discrepancy between the repair estimate of the authorized dealer (OP-1/ Respondent No.2) and the assessment of the surveyor. Clearly, OP-1, as authorised dealer is more in sync with the damages and repair costs. Therefore, to that extent the report of surveyor limiting the loss to Rs.1,54,559/- is untenable. There is total loss and the estimated repair cost is more than IDV. Therefore, compensation to the extent of IDV is applicable in this case.

11. Hon'ble Supreme Court where importance to assessment made by Surveyor is given. The importance of taking into account the Surveyor's Report has been dealt in the case of *New India Assurance Co.Ltd. Vs. Pradeep Kumar (2009) 7 SCC 787*, decided on 9.4.2009, the relevant para is reproduced below:-

***“21. Section 64-UM (2) of the Act, 1938 reads:***

***64-UM (2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred,***

***from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereinafter referred to as “approved surveyor or loss assessor”):***

***Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor.”***

In the above said case, it was further held as under:

***“In the said decision, it is no doubt held that though the assessment of loss by an approved surveyor is a prerequisite for payment or settlement of the claim, the surveyor report is not the last and final word. It is not that sacrosanct that it cannot be departed from and it is not conclusive. The approved surveyor’s report may be the basis or foundation for settlement of a claim by the insurer in respect of loss suffered by insured but such report is neither binding upon the insurer nor insured. On the said proposition, we are certain that there can be no quarrel. The surveyor’s report certainly can be taken note as a piece of evidence until more reliable evidence is brought on record to rebut the contents of the surveyor’s report.”***

12. In ***Sri Venkateshwara Syndicate Vs. Oriental Insurance Co. Ltd. & Anr.***, decided on 24.8.2009, the Hon’ble Supreme Court has observed as under :

***“22. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing the fact that the Surveyor/Surveyors are appointed by the insurance company under the provision of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them.”***

13. In the case in question, the Complainant had taken the car to Malwa Auto Sales, Sonapat (OP-1), who is the authorized dealer of the cars of OP-2. It was the Malwa Auto Sales which had caused the detailed inspection of damages to the car by its qualified engineer/ foremen and determined the costs for repairs as Rs.9,00,000/-. OP-1 had provided details of the repairs involved and the costs vide report dated 30.05.2014. Thus, it is a matter of record that the car was totally damaged and the costs of repair were well beyond the Insured Declared Value (IDV) of the car, which was only Rs.4,98,717/-. Even the surveyor

was to have based his assessment of damage to the car based on the inputs from the repair agency. Thus, the report of the Surveyor limiting the loss to Rs.1,54,559/- is untenable.

14. Based on the above, in my considered view, the learned State Commission rightly overlooked the surveyor report and directed the OP to pay the Complainant Rs.4,98,717/-, which is the Insured Declared Value of the car. Therefore, the impugned order of the State Commission dated 03.02.2017 does not suffer any illegality or material irregularity and the same is upheld. Consequently, the Revision Petition No.1150 of 2017 is dismissed.

15. All pending Applications, if any, stand disposed of accordingly.

16. The amount, if any, deposited by the Petitioner may be released/ adjusted after compliance of the order of the learned State Commission.

.....  
**AVM J. RAJENDRA, AVSM VSM (Retd.)**  
**PRESIDING MEMBER**