

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1907 OF 2016

(Against the Order dated 31/03/2016 in Appeal No. 676/2014 of the State Commission
Orissa)

1. UNITED INDIA INSURANCE COOMPANY LTD.
THROUGH THE REGIONAL MANAGER, DRO-1,
KANCHENJUNGA BUILDING, 8TH FLOOR, 18,
BARAKHAMBA ROAD,
NEW DELHI-110001

.....Petitioner(s)

Versus

1. RABI NARAYAN NAIK & ANR.
W/O. LATE SH. MADHUSUDAN NAIK, C/O. M/S. SHREE
STORE, MAIN ROAD, BALUGAON, AT /P.O. BALUGAON
DISTRICT KHURDA, BHUNASEWAR
ODISHA

2. REGIONAL TRANSPORT OFFICE (RTO),
BHUNANESWAR, AT-ACHARYA VIHAR SQUARE,
BHUNANESWAR,
DISTRICT-KHURDA
ODISHA

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. ANUJ KUMAR, ADVOCATE
MR. HARSH KUMAR, ADVOCATE

FOR THE RESPONDENT : MR. SHAKTI KANTH PATANAIAK, ADVOCATE FOR R-1
NEMO – FOR R-2

Dated : 03 June 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 21 of Consumer Protection Act, 1986, against the order dated 31.03.2016 of the State Consumer Disputes Redressal Commission, Odisha (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 676/2014 in which order dated 15.10.2014 of District Consumer Disputes Redressal Forum, Khurda, Bhubaneswar (hereinafter referred to as District Forum) in C.D. Case No. 369/2009 was challenged, inter alia praying for setting aside the impugned order dated 31.03.2016 passed by the State Commission.

2. While the Revision Petitioner(s) (hereinafter also referred to as OP) were Appellants before the State Commission and OP-1 & 2 before the District Forum and the Respondent No. (hereinafter also referred to as Complainant) was Respondent No.1 before the State

Commission and Complainant before the District Forum and Respondent No. 2 (hereinafter referred to as OP-3/RTO) was Respondent No.2 before the State Commission in FA/676/2014 and OP-3 before the District Forum in C.D. Case No. 369/2009.

3. Notice was issued to the Respondents on 31.01.2018. Parties filed Written Arguments on 14.12.2023 (Petitioner) and 15.09.2023 (Respondent-1) respectively.

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

(i) The complainant got his vehicle TATA 407 Mini Truck insured from the United India Insurance Company Ltd. for the period from 03.01.2008 to 02.01.2009 with package policy with IDV amounting to Rs.3,01,600/-. The said vehicle met with an accident on 01.08.2008 near Sindurapalli, N.H. No. 5 and the complainant reported the matter before Chamakhandi Police Station in the district of Ganjam vide Station Diary Entry dated 02.08.2008. The next day morning the complainant informed the matter to the insurer and one Surveyor Er. S.B. Choudhury was deputed by the Insured and he conducted the spot survey and after survey and other formalities, the vehicle was shifted to Sriram Service Stateion, Sindurapalli, Chhattarpur, Ganjam and the vehicle was kept in the said Garrage at Sriram Service Station, Er. B.P. Mohanty deputed by the insurer conducted the final survey and lastly Er. S.K. Panda deputed by the insured conducted the re-inspection survey at said garage. The damaged vehicle was estimated by the said Service Station and given estimate amount of Rs.3,06,747/- and the complainant submitted the claim form on 04.08.2008 with other documents before the Insurer for settlement of the claim. The vehicle was repaired by the said Sriram Service Station and the total amount of Rs.3,32,230/- was spent towards the said repair work of the damaged vehicle and the complainant paid the said amount to the said Service Station for release of the vehicle. Subsequently the complainant submitted the said Retail Invoice regarding repair expenditure of the said damaged vehicle. The Insurer United India Insurance Co. Ltd. repudiated the claim on 27.05.2009 taking plea on the driving licence of driver, Basanta Kumar Baral bearing D.L. No. 12528/88 issued by D.T.O., Charuchandpur Manipur found fake on verification. Hence, the complainant filed complaint before the District Forum.

5. Vide Order dated 15.10.2014 in the C.D. Case No. 369/2009, the District Forum has allowed the complaint against OPs-1 & 2 and dismissed ex parte against the OP-3.

6. Aggrieved by the said Order dated 15.10.2014 of District Forum, Petitioner(s) appealed in State Commission and the State Commission vide order dated 31.03.2016

dismissed the First Appeal No. 676 of 2014 and confirmed the order passed by the District Forum.

7. Petitioner has challenged the said Order dated 31.03.2016 of the State Commission mainly on following grounds:

(i) The order of the Forum below is bad in law as well as on facts, hence is liable to be set aside. The forum below failed to appreciate that the claim in respect of 3rd party are distinctly different from the "Own Damage" claim and the principle laid down in Swaran Singh's case reported in AIR 2004 SCW 663 has no application to the "Own Damage Claim". This being the position of law, laid down by the Apex Court, the Forum below erred in holding that the Insurance Company is liable to indemnify the insured on the ground that the complainant had no knowledge that the driver was having a fake Driving Licence.

(ii) The Forum below also ignored various other Judgments passed by the National Commission to that effect. For the above reasons this is a fit case where the forum below should have held that the petitioner insurance company is not liable to indemnify the insured as the driver had a fake Driving Licence and he had violated the policy conditions. The forum below failed to appreciate that in the insurance policy it has been stipulated that the petitioner insurance company is not liable to indemnify any loss caused to the vehicle if the vehicle was driven by the person, who does not have valid & effective Driving License at the time of accident of the vehicle. As per the terms of policy, the petitioner issued the policy as per applicable terms and conditions including "Persons or classes of Persons entitled to drive: Any person including Insured provided that a person/ driver holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. The person holding an effective learner's Licence may also drive the vehicle and such a person satisfies the Rule of Central Motor Vehicle Rule, 1989.

(iii) The Forum below failed to appreciate the terms of the insurance contract as agreed between the parties. The forum below failed to appreciate the report submitted by the Surveyor Mr. Rajat Kanti Chakraborty- submitted a DL-verification report dated 07.12.1988. The forum below failed to appreciate the report submitted by the investigator that on 04.04.2009 the Investigator -H. Iboyaima Singh, submitted his investigation report regarding verification of DL of Driver Sh. Basant Kumar Baral and during investigation the investigator found and intimated to the petitioner that the District Transport Officer, Churachandpur, District Churachandpur, Manipur verified the D/L No. 12528/CH. and found that the D/L. No.12528/Chi is recorded and standing in the name of one R.K.Matum Singh and not in the name of one Basant

Kumar Baral S/o Raghunath Baral as per record maintained by the Office of the District Transport Officer, Churachandpur, District Churachandpur, Manipur and hence the D/L. No. 12528/CH. submitted by Basant Kumar Baral is false/fake driving licence.

(iv) The fora below failed to appreciate that the precedent passed by the Hon'ble Supreme Court of India reported in AIR 2014 SC 3761 in Narinder Singh vs New India Assurance Company Ltd. The respondent has not filed any documentary evidence regarding his relationship with the insured i.e. M/s.Shree Store because the insurance contract has been executed with M/s.Shree Store and the respondent has not filed any documentary evidence regarding his proprietorship with M/s. Shree Store.

(v) The fora below failed to appreciate that the impugned judgment is illegal in view of the above facts and circumstances and is contrary to the settled law, for which it needs to be set aside.

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 under grounds (para 7) it is contended that the petitioner insurance company issued a 'Goods Carrying (other than 3 Wheeler) Public Carrier Policy' for the period 03.01.2008 to 02.01.2009 vide Policy No. 634305/31/07/01/00003891 for the vehicle having registration no. OR- 02AE-1770 - MINI TRUCK (407) in favour of M/s. Shree Store, Balugaon having IDV Rs.3,01,600/-. The petitioner issued the policy as per applicable terms and conditions. On 01.08.2008 the insured vehicle met with an accident when it was driven by Mr. Basanta Kumar Baral (having DL No. 12528/88 dated 07.12.1988), causing damages to the insured vehicle. A police complaint /SDE NO. 35 dated 02.08.2008 was lodged at Police Station, Ganjam. The surveyor appointed by the insurance company submitted its report dated 05.08.2008. The statutory surveyor Mr. Rajat Kanti Chakraborty- submitted a DL- verification report of Licence No.12528/88 dated 07.12.1988. It was verified from R.T.A. Office Midapore, M.V. Dept. that there is no existence of the above mentioned driving Licence. The Authority verbally noticed that the Licence No. 12528/88 date 07/12/1988 have not issued in the name of Mr.Basanta Kr. Baral, they issued the licence No.12528 date on 20.06.1984 in the name of Dulal Chandra Ghosh. Hence, from physical verification and available documents it confirms that the driving licence No. 12528/88 date 07.12.1988 name of Mr.Basanta Kumar Baral are fictitious and false. In the Final report dated 20.01.2009 of the

Surveyor & Loss Assessor) by Er. Bani Prasad Mohanty stated that the Driver Particulars: Name of Driver Basanta Kumar Barala, MDL No. & Validity-173/92K, 7.12.1998, upto 17.08.2009, Issuing authority- LA,BBSR, Tyupe of License- Permanent, Badge Number –nil and Authorised to drive-LMV, HTV and Particulars of loss/Damage- Cabin Assy, Chasis, Radator, Fr. Axle, Rear Axles Load Body & other parts as detailed in the report. The surveyor has assessed the net Loss on Repair basis Rs.1,80,000/-. The Investigator -H. Iboyaima Singh, submitted his investigation report regarding verification of DL of Driver Sh. Basant Kumar Baral, and during investigation the investigator found and intimated to the petitioner that the undersigned went to the office of the District Transport Officer, Churachandpur, District Churachandpur, Manipur and verified the D/L No. 12528/CH. and found that the D/L. No.12528/CH. is recorded and standing in the name of one R.K.Matum Singh and not in the name of one Basant Kumar Baral S/o Raghunath Baral as per record maintained by the Office of the District Transport Officer, Churachandpur, District Churachandpur, Manipur and hence the D/L. No. 12528/CH. submitted by Basant Kumar Baral is false/fake driving licence. The petitioner repudiated the claim of the respondent through repudiation letter dated 27.05.2009 for the reason that the driving license of driver on wheel named Basanta Kumar Baral bearing D/L No.12528/88 issued by D.T.O., cahrunchandpur, Maipur has been found fake on verification, which constitutes violation of provisions stated under person or classes of Person entitled to drive on the face of the insurance policy. The District Forum allowed the complaint against the OPs 1 & 2 and dismissed exparte against the OP.3. It is further contended that as per the settled principle of law of that claim in respect of a third party is distinctly different from the own damage claim whereas the principle laid down in **Swaran Singh's** case reported in AIR 2004 SCW 663 has no application to the own damage claim. It is submitted that applicability of law laid down in :

AIR 2008 SCW 329 in re: UIIC vs Davinder

AIR 2007 SC 1563 NICL vs Laxmi Narayan Dhut

Narinder Singh vs NICL in the present matter.

In view of the aforementioned case laws impugned order is liable to be set aside in the interest of justice.

8.2 On the other hand Complainant/Respondent No.1 has contended that the complainant insured his truck with the petitioner/ insurance company after paying due premium for IDV of Rs.3,01,600/- During the validity of the Insurance policy the vehicle unfortunately met with an accident. An insurance claim was lodged and the said claim of the complainant was repudiated vide letter dated 27.05.2009 on the ground that the driver Basant Kumar Baral, who was driving the vehicle was having DL 12528/88 issued by RTO Charuchandpur, Manipur was a fake licence. The Respondent/complainant, thereafter filed complaint that the repudiation of the claim is

illegal as the licence was renewed many time i.e. on 17.01.1995 then to 01.05.1997, then to 04.03.2000 and then to 17.08.2009 by the Competent Authority, therefore the licence issued in the year 1988, from the Manipur State, was a fake one was not known to the Complainant. Both the Fora below based on the facts and evidence based on record allowed the complaint and gave concurrent finding. In support of his contention, the Respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of "**Rajiv Shukla vs. Gold Rush Sales and Services Ltd. and Ors.** [MANU/SC/1120/2022 : (2022) 9 SCC 31] while affirming its earlier view taken in the case of "**Rubi (Chandra) Dutta Vs. United India Insurance Company** (2011) 11 SCC 269" that the National Commission has no right to interfere with the concurrent finding of facts of the Fora below in its Revisional Jurisdiction. It is further contended that in **Nirmala Kothari Vs. United India Insurance Co. Ltd.** 2020 (4) SCC 49, while hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the insurance company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the insurance company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable. In view of the law laid down by the Hon'ble Supreme Court in **Nirmal Kothari**, the present Revision Petition is liable to be dismissed as the insurance company has failed to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive.

8.3. Respondent No.2 did not appear. OP-3 also did not appear before the District Forum and was proceeded ex parte. The District Forum dismissed the complaint against OP-3. OP-3/Respondent No.2 also did not appear before the State Commission.

9. We have carefully gone through the orders of the State Commission, District Forum, and other relevant record. It was observed by the Hon'ble Supreme Court in **Nirmala Kothari v. United India Insurance Co. Ltd.**, (2020) 4 SCC 49 that the mere existence of a fake driving license does not absolve the insurance company of liability, as they are further obligated to prove that the vehicle owner failed to exercise reasonable care in employing the driver. Furthermore, if the owner exercised due diligence in verifying the driver's credentials at the time of employment, they are not obliged to verify the authenticity of the license from the licensing authority. The owner diligently inspected the driver's license at the time of employment, thus fulfilling their duty of reasonable care. There is no evidence to suggest that the insurer (OP) directed the owner to conduct further verification of the license. Moreover, there is no evidence on record indicating that the insurer alerted the owner prior to the

accident regarding the alleged fraudulent nature of the driver's licence. In this case, the Hon'ble Supreme Court further observed that the Insurance Company is liable to indemnify the Insured unless it can prove that there was willful negligence on the part of the Insured in employing the driver regarding the veracity of the Driving License. Relevant portion of the order are reproduced below.

“9. Having set forth the facts of the present case, the question of law that arises for consideration is what is the extent of care/diligence expected of the employer/insured while employing a driver? To answer this question, we shall advert to the legal position regarding the liability of the Insurance Company when the driver of the offending vehicle possessed an invalid/fake driving licence. In the case of United India Insurance Co. Ltd. vs. Lehru & Ors. a two Judge Bench of this court has taken the view that the Insurance Company cannot be permitted to avoid its liability on the ground that the person driving the vehicle at the time of the accident was not duly licenced. It was further held that the willful breach of the conditions of the policy should be established. The law with this respect has been discussed in detail in the case of Pepsu RTC vs. National Insurance Co. We may extract the relevant paragraph from the Judgment: (Pepsu case, SCC pp. 223-24, para10)

“In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.”

10. While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the

licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.

11. The view taken by the National Commission that the law as settled in the Pepsu case (Supra) is not applicable in the present matter as it related to third-party claim is erroneous. It has been categorically held in the case of National Insurance Co. Ltd. vs. Swaran Singh & Ors.(SCC pp.341, para 110) that:

“110. (iii) ...Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time.”

12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

13. On facts, in the instant case, the Appellant/Complainant had employed the Driver, Dharmendra Singh as driver after checking his driving licence. The driving licence was purported to have been issued by the licencing authority, Sheikh Sarai, Delhi, however, the same could not be verified as the concerned officer of the licencing authority deposed that the record of the licence was not available with them. It is not the contention of the Respondent/ Insurance Company that the Appellant/complainant is guilty of willful negligence while employing the driver. The driver had been driving competently and there was no reason for the Appellant/Complainant to doubt the veracity of the driver's licence. In view of above facts and circumstances, the impugned judgment is not liable to be sustained and is hereby set aside. The appeals accordingly stand allowed. The respondent/ Insurance Company is held liable to indemnify the appellant.

10. In this case, there are concurrent findings of both the Fora below against the Petitioner Insurance Company. It has been held by Hon'ble Supreme Court in catena of judgments^[i] that revisional jurisdiction of the National Commission is extremely limited, it should be exercised only in case as contemplated within the parameters specified in the provision i.e.

when State Commission had exercised a jurisdiction not vested in it by law or had failed to exercise jurisdiction so vested or had acted in the exercise of its jurisdiction so vested or had acted in the exercise of its jurisdiction illegally or with material irregularity. It is only when such findings are found to be against any provisions of law or against the pleadings or evidence or are found to be wholly perverse, a case for interference may call for at the second appellate (revisional) jurisdiction. In exercising of revisional jurisdiction, the National Commission has no jurisdiction to interfere with concurrent findings recorded by the District Forum and the State Commission, which are on appreciation of evidence on record.

11. In view of the foregoing, we are in agreement with the observation/findings of State Commission and find no reason to interfere with the order of the State Commission. There is no illegality or material irregularity or jurisdictional error in the order of State Commission, hence the same is upheld. Accordingly, Revision Petition is dismissed.

12. The pending IAs in the case, if any, also stand disposed off.

[i] 1 Ruby (Chandra) Dutta vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269, Sunil Kumar Maity vs. State Bank of India and Ors. (2022) SCC OnLine SC 77, Lourdes Society Snehanjali Girls Hostel and Another Vs. H & R Johnson (India) Limited and Ors, (2016) 8 SCC 286, T. Ramalingeswara Rao (Dead) Through Legal Representatives and Anr. Vs. N. Madhava Rao and Ors. (2019) 4 SCC 608, Rajiv Shukla Vs. Gold Rush Sales and Services Limited and Anr. (2022) 9 SCC 31

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