

# Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

*"An aware consumer is an asset to the nation"*

Website : [www.advantageconsumer.com](http://www.advantageconsumer.com)

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ADVANTAGE - IV

## Queries & Answers through the Web

([www.advantageconsumer.com](http://www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

### Sub: Problems with the Apartment Owners Association.

Since formation of Swangreen association of apartment owners under West Bengal Apartment ownership act 72(now 2022), no receipts had been issued to me though I paid my contribution of common area maintenance charges regularly, from December 2023 to January 2025.

From time to time, I requested President and Treasurer to give me written acknowledgements of my payments but no response had been received from them. In this regard I like to mention that it is in violation of Apartment ownership Act bye-laws no: 2024

Please guide me. Can I move to consumer court for redressal if I don't get any response from the Association or Housing department?

Goutam Ghosal  
Swangreen, Kolkata 700104.

**Ans:** As is evident, even routine things become challenging, when right people are not engaged. The issue of non-issue of "Receipt" should be faced by other Residents / Flat-owners as well. Being in a democratic set up, did you try to mobilise your co-residents in this regard? Was there any effort made to discuss this issue in the AGM or other Meetings of the RWA? They are supposed to circulate the Audited Accounts of the RWA in the AGM.

I am sure, your RWA must be managed by your co-residents, who must be managing the affairs on voluntary basis. Have they registered the Resident Association, with the Registrar of Societies, though, it is not mandatory. If the RWA is Registered, the issue can be reported to the Registering Authority and they have powers to intervene.

But, in a Society which is managed by volunteers, I feel that the residents can take joint initiatives and set right the things. The Office-bearers can even be changed through appropriate procedure. Someone has to take the initiative and even you can make efforts in that direction, after involving more co-flat owners. To answer your query, an Office of the RWA is normally not for profit, i.e., the Office-bearers (President, Treasurer, etc.) who are members of the Residents' community do not get any remuneration and their services are not for a consideration. Such voluntary services, which are free of cost, are beyond the purview of the Consumer Protection Act and hence approaching a consumer court will not help. One can approach a civil court.

**Sub: Non-payment of interest on delayed maturity settlement by SBI**

This is Santosh Kumar Panda seeking your kind opinion in a case of non-payment of interest on the matured amount of Fixed deposit blocked without reason by SBI...for a considerable period of about more than 2 years.

The principal and interest were paid up to the period of maturity, but the amount blocked for more than two years was not considered.

Finally, complained to RBI ombudsman for relief. They have asked the amount of compensation I expect. I seek your opinion about, what could be the compensation on the principal amount?

Santosh Kumar Panda,  
Sambalpur, Odisha

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**Ans:** I am not aware of any specific quantum of compensation for the period of delay. Such compensation claim would depend on the individual circumstances.

Since you are a senior citizen basically living out of the savings which you have deposited in good faith in a Public Sector Bank, such gross negligence on the part of the Bank needs to be viewed seriously and they are liable to compensate you with punitive compensation.

30% penal interest on the deposit made should meet the ends of justice. In a recent judgment, the Supreme Court ruled that the Credit Card issuing Banks can levy even beyond 30%, as deemed necessary, on the Credit Card bills, from defaulting customers, though the National Consumer Disputes Redressal Commission had prescribed an upper limit of 30% on the Credit Card Bill (instead of 36% to 49%) – (Hongkong and Shanghai Banking Corporation Ltd. Vs Awaz and Others, Civil Appeal No. 5273 of 2008).

You can even claim higher compensation, if you had incurred any tangible loss because of this delay, which you can quantify with due evidence.

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**Delay in intimating the Insurance Company about the accident, for valid reasons can be condoned.**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 14615-14616/2024  
SPECIAL LEAVE PETITION (CIVIL) NOS. 2219-2220 OF 2020**

**RAJESH KUMAR... APPELLANT(S) VERSUS  
NATIONAL INSURANCE CO. LTD..... RESPONDENT(S)**

## **JUDGMENT**

### **PAMIDIGHANTAMSRINARASIMHA,J.**

1. Leave granted.
2. The present appeals challenge the order dated 16.07.2019 in Revision Petition Nos. 878-879/2019 passed by the National Consumer Disputes Redressal Commission, which had allowed the respondent's appeal and reduced the amount of payable insurance. The appellant here is the consumer who sought that the respondent-insurer release the entire insurance amount in his favour. The District Consumer Disputes Redressal Commission had allowed the complaint partly, whereas the State Consumer Disputes Redressal Commission modified it and allowed the complaint in full. The respondent then approached the National Commission, resulting in the impugned order. The brief facts required for the disposal of these appeals are as follows.
3. The appellant had purchased a Private Car Insurance Policy bearing Policy No. 420503/31/12/6100000851 from the respondent for a vehicle he owned. This policy was applicable for the period 02.07.2012 to 01.07.2013 and it served to compensate the appellant incase the insured vehicle met with an accident. The maximum sum that could be claimed from the respondent was the 'Insured Declared Value', which was fixed at Rs. 5,02,285/-. While this policy was in force, the appellant met with an accident on 25.03.2013 while he was driving the said vehicle and a cow suddenly turned up before it. In an attempt to avoid the animal, he made a sudden turn which caused his car to turn upside down and fall in a ditch.
4. At the time of the accident, the appellant had a co-passenger along with him. While both the occupants of the car had suffered some injuries, the appellant felt that the co-passenger needed immediate attention. The appellant rushed the co-passenger to a hospital, leaving the car capsized in the ditch. In this state, one of the wires in the car short-circuited, which set the car on fire and it was damaged substantially. While the appellant lodged an FIR on the same day, he wrote to the respondent only on 28.03.2013. The respondent appointed a surveyor, who assessed the damage to be Rs. 53,543.97/- but stated that the damage occurred due to the appellant's omission to take care of the vehicle. Accordingly, the respondent denied the insurance claim citing delay in the intimation and on having left the vehicle unattended, exposing it to further damage.

5. The appellant had approached the District Commission claiming Rs.5,02,285/- being the insured value of the vehicle. Having considered the matter in detail, the District Commission held that the delay in intimating the insurer was caused due to the appellant's attempts to rescue his co- passenger and that, by itself, cannot be fatal to the insurance claim. The Commission also found that the appellant's claim was genuine and it is evidenced by prompt reporting to the police. After a detailed examination, the District Commission held that even assuming the short-circuiting could have been avoided by monitoring the vehicle, the appellant would still be entitled to insurance amount on a non-standard basis, that is, with minimal deduction. Hence, it partly allowed the complaint by its order dated 09.11.2016 directing the respondent to release 75% of the insurance amount, i.e., Rs.3,76,713/-.
6. Aggrieved, both the parties filed cross-appeals before the State Commission. The State Commission allowed the appeal of the appellant fully and directed the release of the entire insured sum of Rs.5,02,285/- with 9% interest from the date of filing the complaint till actual realization.
7. The insurance company, the respondent herein, filed a revision petition under Section 21(b) of the Consumer Protection Act, 1986 before the National Commission. By the order impugned before us, the National Commission partly allowed the appeal and reduced the insurance amount to just Rs.53,543/-. While upholding the findings of the District and State Commissions to be correct in finding the delay in intimation not being fatal and also that the claim of the accident was promptly reported to the police, the Commission, however proceeded to rely on Condition no. 4 of the policy to reduce the insurance payable. As per Condition No.4, the vehicle could not have been left unattended by an insured and if further damage is done because the vehicle is unattended and proper precaution is not taken, then claim is beyond the insurance cover. In the facts of the case, the commission came to the conclusion that the damage due to the short-circuiting was 'damage following the accident' and caused squarely due to the vehicle being unattended. Hence, it held that the damage due to short-circuiting was not payable and the only amount that needed to be paid by the respondent was the damage attributed solely to the accident on 25.03.2013, and not to the short-circuiting following the accident.
8. Challenging the above-referred reasoning and conclusions of the National Commission, the appellant filed the present appeals. We have heard Mr. Avinash Sharma, Ld. Counsel appearing for the appellant and Mr. Abhishek Kumar, Ld. Counsel appearing for the respondent.

9. Mr. Sharma submitted that the National Commission went beyond the scope of its revisional jurisdiction and relied on the precedents in *Momna Gauri v. Scooter India Ltd.*, and *Rubi Chandra Dutta v. United India Insurance Co. Ltd.*. He further submitted that in cases of insurance pertaining to motor vehicle accidents, the liability of the insurer must be interpreted strictly.
10. On the other hand, Mr. Abhishek Kumar, Ld. Counsel appearing for the respondent submitted that the National Commission had correctly exercised its revisional jurisdiction in the present case. He submitted that the courts below disregarded the survey report, which is patently erroneous. As for whether the National Commission's was justified in interfering with the concurrent findings, he submitted that the District Commission also found that the vehicle was left unattended by the appellant however, the State Commission did not answer the question as to why the vehicle was left exposed to further damage for a period of three days. He would therefore submit that interference in the revisional jurisdiction against the concurrent findings is fully justified. He also argued that the National Commission correctly applied Condition No. 4 of the policy in excluding the damage caused by the short-circuiting.
11. **Analysis:** We have given the matter our anxious consideration and considered the submissions of both the sides carefully. Section 21(b) of the Consumer Protection Act, 1986 vests the National Commission with revisionary jurisdiction. It allows the National Commission to invoke the same if the State Commission has exercised a jurisdiction not given to it by law, or has failed to exercise it at all, or has exercised the same but with illegally or with material irregularity.
12. On a careful scrutiny of the records of the case, it is seen that both the District and State Commissions had reached a concurrent finding about whether the delay in intimation to the respondent was justified. Both held that this delay was justifiable and not fatal to the insurance claim. Both the courts had also reached the finding that the damage took place in two phases: (a) once when the vehicle fell into a ditch and capsized; and (b) when the short-circuiting took place due to the car remaining in that state.
13. In our opinion, the National Commission could not have interfered with pure finding of fact arrived at by the District and State Commissions while exercising revisional jurisdiction. It is unclear as to how the National Commission perceived that the State Commission exercised jurisdiction not vested in it or has failed to exercise jurisdiction vested in. There is nothing to indicate in the decision of the National Commission as to whether there is any illegality in the approach adopted by the State Commission or that it had acted with material irregularity.

14. The other ground that the respondent has raised before is that the survey report was disregarded by the District and State Commissions but the National Commission has correctly examined and relied on it. This submission cannot be accepted, since the State Commission had examined the survey report in detail and in fact found it to be lacking. It stated that the surveyor's claim that the vehicle was left unattended cannot be accepted since the appellant had justifiable reasons for the same. Furthermore, the finding of the surveyor that the short-circuiting was caused by the appellant himself was not based on any evidence.
15. This Court had the occasion to examine the scope and ambit of jurisdiction of the National Commission while exercising revisional jurisdiction. In *Sunil Kumar Maity v. State Bank of India & Ors.*, it was held that the conditions laid down in Section 21(b) are the only parameters under which a revision may be invoked. If a document has already been considered and rejected by the State Commission, a revision does not lie merely because the National Commission has a different view on the same. Similarly, in *Rajiv Shukla v. Gold Rush Sales & Services Ltd.*, it was laid down that in cases where the courts below have reached findings on facts, the jurisdiction of revision is very limited and must be invoked only when there is a patent illegality in the findings. In *Rubi Chandra* (supra) it was held that even if no patent error, the revisional jurisdiction may be invoked in a case of gross miscarriage of justice.

**To be concluded in the next issue.....**

### **Support Your Cause**

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