

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

VOLUME – XXXVII

JANUARY 2025

ADVANTAGE - I

Queries & Answers through the Web

(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.)

CONSUMER PROTECTION COUNCIL, ROURKELA CELEBRATED “NATIONAL CONSUMER DAY 2024”



CPC, Rourkela celebrated the **National Consumer Day (24th December 2024)** at the Council’s premises. The programme started with the lighting up the ceremonial lamp, by Council’s President P Ravi Krishnan. Jt. Secretary Rajib Kumar Nayak presented a detailed activity of the Council.

Vice President of the Council, Bharat K Behera elaborated on digital solutions in addressing unfair practices in ecommerce and online services. The President discussed the consumer related issues and the theme for 2024 was “**Virtual Hearings & Digital Access to Consumer Justice**”. He gave some tips about the amended Consumer Protection Act, 2019. He also elaborated the activities of the Council during the last two years with the guidance of our Chief Mentor Sri B Vaidyanathan and our Secretary Bhimasen Pradhan.

Our Treasurer A Samantray noted that the theme of this year’s National Consumer Day reflected the government’s commitment to providing consumers with access to justice through digital means. Then it was an open session for discussion and suggestion from members about how to solve the day-to-day consumer issues through the Council, taking advantage of the digital advancements in consumer disputes redressal.

The programme was celebrated with the active participation of all our executive members. At the end, Ex. Committee Member Shri Mangar proposed a vote of thanks. Council’s members and guests attended the celebration. Our Executive committee member Amitav Thakur was the **master of ceremony**.

Insurance Company is liable to compensate, unless it can prove that the Insured wilfully employed a driver without a valid Driving License

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)

UNITED INDIA INSURANCE COOMPANY LTD.Petitioner(s)
Versus
RABI NARAYAN NAIK & ANR.Respondent(s)

Continued from December 2024 issue.....

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 wilful 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 wilful 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 wilful 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 licensed 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 wilful 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 appellants.

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 On Line SC 77, Lourdes Society Snehajali Girls Hostel and Another Vs. H & R Johnson India) Limited and others, (2016) 8 SCC 286, T. Ramalingeswara Rao (Dead) Through Legal Representatives and Anr. Vs. N. Madhava Rao and others (2019) 4 SCC 608, Rajiv Shukla Vs. Gold Rush Sales and Services Limited and Anr. (2022) 9 SCC 31

DR. INDER JIT SINGH
PRESIDING MEMBER

Small Steps lead to Big Changes

Mrs. Reena James vs JioMart

Mrs. Reena James purchased a skybag from Jiomart outlet (Plutone Mall) on 08th Dec 2023 but after few months the zips of the bag started malfunctioning. She mended it herself but when it repeatedly happened, she approached the concerned person (Mr. Pravakar Nayak, the salesman) on 5th October 2024 in Jio smart bazaar; Plutone Mall and he assured her of replacement within 2 to 3 working days. But he kept on prolonging saying company has not responded yet. Till 16th October 2024, she waited but the person didn't respond. Then she personally went to Jiomart, and the salesman informed that she has to select between the two bags which were already from the old stock which he showed earlier when she went to purchase the skybag and its quality, capacity and colour were not acceptable to her. She also requested that she was ready to pay extra by replacing the bag with the another one which the sales person refused. All in all they were asking to adjust with their old stock replacement, for which she denied.

Due to non-cooperation from JioMart, Mrs. James approached CPC Rourkela on 18th Oct 2024 and narrated the details. We suggested her to mail us details along with documentary evidence like pictures of bag and its warranty card, which she did on 19th Oct 2024. Next day, we speed posted letter along with printout of attachments (which Mrs. James mailed to us) to JioMart and the speed post envelope got delivered to them after ten days. On receipt of our letter, JioMart called Mrs. James and agreed to accept at her demand. They got the bag replaced with superior quality worth Rs.4400 for which she paid the difference amount of Rs. 850. Moreover they requested Mrs. James to close case with Consumer Protection Council.

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To,
**The President,
Consumer Protection Council; Rourkela
B-90, Sector-7,
Rourkela- 769003**

Sub: **Complaint against Jiomart.**

Dear Sir,

This is to bring to your kind notice that I purchased a sky bag from Jiomart outlet (Plutone) on 08/12/23 but after few months the zips of the bag were not working properly. I mended it myself but when it repeatedly happened, I approached the concerned person (Mr. Pravakar Nayak, the salesman) on 5th October 2024 in Jiosmart bazaar; Plutone Mall and he assured me of replacement within 2 to 3 working days. But he kept on prolonging saying company has not responded yet. Till 16th October, I waited but the person didn't respond. Then I personally went to Jiomart, and the salesman informed that I have to select between the two bags which was already from the old stock which he showed earlier when I went to purchase the skybag and its quality, capacity and colour were not acceptable to me. I also requested that I'm ready to pay extra by replacing the bag with the another one for which the sales person refused. All in all they were asking to adjust with their old stock replacement, for which I denied.

So, I need an immediate reply from the concerned person as its unethical to ask a customer to compromise in all instance. I'm attaching the picture of bag and its warranty card along with this mail.

May I request you to help me out to solve the issue, which I've been facing since last eleven months. Waiting for your early action and reply.

Thanking you,

Yours faithfully
Mrs. Reena James
Date: 19/10/24
Ph - 9439076882

Consumer Protection Council, Rourkela (Regd.)



(A pioneer in taking up class complaints since 1985)
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Website : www.advantageconsumer.com

An Aware Consumer is an Asset to the Nation

Donation to the Council qualifies for deduction under section 80-G Income Tax Act.

02/CPCPKL/2024-26

19th October 2024

Ref. No.

Date :

To,
The Manager,
Jio Mart, Reliance Smart,
Plutone Mall, Unit-4,
Ring Road, Gopabandhu Nagar,
Chhend, Rourkela-15,
Odisha-769015.

Sub: Complaint against Jio Mart for non-cooperation relating to Skybag

Dear Sir,

This is to inform you that we have received a complaint mail from a customer, Mrs. Reena James, against your Jiomart for non-cooperation on replacement of Skybag, which she bought from your outlet during December last year.

Here are attached printouts of her email along with images of bag as well as warranty card. They are self explanatory. You are aware that defective bag has to be replaced within the stipulated date of Warranty Card from the date of purchase. You are requested to look into this and resolve the issue within 10 working days from the date of receipt of this letter.

We solicit your prompt and positive action.

Thanks & regards,


P. Ravi Krishnan
President

Encl..

Member – State Consumer Protection Council, Bhubaneswar
Member – Consumer Coordination Council, New Delhi

Consumer Information Centre
(Sponsored by Department of Consumer Affairs, Government of India)
Read Advantage Consumer, Council's Monthly

Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of "Consumer Protection Council, Rourkela".

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Remittance for subscription may be sent to the Secretary,
Consumer Protection Council, B/90, Sector-7, Rourkela-769003,
through crossed D.D/M.O or Cheque (local only), payable in
favour of

'CONSUMER PROTECTION COUNCIL, ROURKELA'.

For tariff and other details regarding advertisement, contact
Editor.

ADVANTAGE CONSUMER
ENGLISH MONTHLY

JANUARY 2025

To

Printed & Published by Sri B Pradhan, Consumer Protection Council,
Rourkela at B/90, Sector-7, Rourkela – 769003

E.mail : bpradhan.cpcrkl@gmail.com
(or) vaidya@advantageconsumer.com

If undelivered, please return to :
Consumer Protection Council, Rourkela
B/90, Sector-7, Rourkela -769003, Odisha

JANUARY 2025