Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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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.)

Continued from July 2024 issue.....

Insurance Claim not allowed due to violation of conditions of the Policy. But in a rare gesture, the Insurance Company also penalised for the inordinate delay in communicating the repudiation of the claim.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI
REVISION PETITION NO. 2037 OF 2018
(Against the Order dated 02/04/2018 in Appeal No. 740/2011 of the State Commission Delhi)

1. ORIENTAL INSURANCE CO. LTD.
HEAD OFFICE, 88, JANPATH 1ST FLOOR,
NEW DELHI-110001 ....Petitioner(s)

Versus

1. SUJAP SINGH & ANR.
S/O. LT. SH. AMARJEET SINGH, R/O. B-143,
MIG FLATS, ASHOK VIHAR
DELHI-110052 ....Respondent(s)

BEFORE:
HON'BLE MR. BINOY KUMAR, PRESIDING MEMBER
HON'BLE MR. JUSTICE SUDIP AHLUWALIA, MEMBER

Dated : 03 Mar 2023

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

Since the provisions under the New Act and the Old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in Kondaih's case because the transferee-insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks that Section 157 of the New Act provides that the certificate of insurance together with the policy of insurance described therein "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred". If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the New Act and in the realm of contract for which there must be an agreement make between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle. The view taken by the National Commission is therefore correct."

14. From the side of the Respondent/Complainant however it has been argued that an Insurance claim is to be viewed from the perspective that it is the vehicle that is insured and not its owner. In support of such contention, the decision of this Commission in "***New India Insurance Co. Ltd. Vs. Jagjit Singh (RP No. 4688 of 2008)"*** was cited in which on this premise the decision of the State Commission had also gone in favour of the Complainant who had succeeded in his claim before the District Forum.

15. In a similar situation, the Delhi State Consumer Disputes Redressal Commission had also disposed of the Appeal preferred by the Insurance Company in ***"National Insurance Co. Ltd. Vs. Ram Gopal Sharma (First Appeal No. 1140 of 2006)"*** in favour of the Complainant since it was of the view that-

> "***7. On the concept of equity, it is the vehicle which is insured and not the person and the only safeguard in such cases where total loss is by way of theft is that if the insurable interests have not been transferred in the name of the person who has purchased the vehicle in spite of being the actual owner, the "No Objection Certificate" from the original owner as well indemnity bond from the claimant should be obtained. But in no way the Insurance Company can escape from its liability against the policy. If such a benefit is given to the insurance companies, then it will get unjustly enriched whereas the actual consumer would be at great jeopardy and his interest would suffer."***

16. The Apex Court in ***"National Insurance Co. Ltd. Vs. Nitin Khandelwal, Civil Appeal No. 3409/2008",*** had upheld the Order of the State commission which had allowed compensation for the stolen vehicle on a Non-Standard Basis at 75% of the insured amount where there was a breach of the Policy terms and conditions to the extent that the vehicle in question was being used as a taxi for carrying passengers on payment, although it was registered and insured as a private vehicle. But in doing so, the Apex Court after noting the submission of the Respondent/Claimant that even assuring that there was a breach of condition of the Insurance Policy, the Appellant-Insurance Company ought to have settled the claim on Non-Standard Basis and that it could not repudiate the claim in *Toto* in case of loss of the vehicle due to theft. But, the Apex Court did not make any specific observations on the legal position in this regard and observed *inter alia –*

> ***"15. In the facts and circumstances of the case, the real question is whether, according to the contract between the respondent and the appellant, the respondent is required to be indemnified by the appellant. On the basis of the settled legal position, the view taken by the State Commission cannot be faulted and the National Commission has correctly upheld the said order of the State Commission.***
>
> ***16. The State Commission had allowed only 75% claim of the respondent on non-standard basis. We are not deciding whether the State Commission was justified in allowing the claim of the respondent on non-standard basis because the respondent has not filed any appeal against the said order. The said order of the State Commission was upheld by the National Commission.***
>
> ***17. In our considered view, no interference is called for. This appeal is accordingly disposed of. In the facts and circumstances of the case, the parties are directed to bear their own costs."***

17. In ***"Gurshinder Singh Vs. Shriram General Insurance Co. Ltd. & Anr., Civil Appeal No. 653/2020",*** the Supreme Court in relying upon the ratio of an earlier decision in ***"Om Prakash Vs. Reliance General Insurance & Anr., Civil Appeal 15611/2017 decided on 4.10.2017"*** reversed the decision of this Commission in a case where both the District Forum and the State Commission had granted compensation to the Complainant, while the Revision filed by the Insurance Company was allowed by this Commission in a case where there was delay on the part of the Complainant in intimating the Insurance Company about the occurrence of theft of his insured vehicle.

18. In ***"Om Prakash and Other Vs. Rajbiri & Ors., First Appeal No. 1609 of 1992"*** the Punjab & Haryana High Court had allowed the complaint where the original insured had died, but the Insurance Policy continued to be renewed in his name in place of his son.

19. An emphatic reliance on a decision of the Punjab State Consumer Disputes Redressal Commission in "***Sukhwinder Kaur Vs. ICICI Lombard General Insurance Co. Ltd., Appeal No. 669/2019",*** where the original insured had died and claim for the stolen vehicle by his Legal Heirs was repudiated as they had failed to give intimation of the Insured's death, the State Commission held that the Complainants being the only legal as well as natural successors of the deceased, Gursharan Singh was entitled to compensation as it was the vehicle and not the person insured.

20. In ***"United India Insurance Co. Ltd. Vs. Ram Prakash Raturi, Revision Petition No. 550/2008",*** where this Commission had dismissed the complaint in a case in which Insurance Policy was in the name of previous owner-Smt. Roopa Sharma and not the purchaser/Complainant, the Apex Court remanded back the matter to this Commission after observing *inter alia –*

"7. It was noted as if there was no dispute that when the vehicle was insured the registration certificate had been seen by the insurance company. It was noted that there was no dispute that the vehicle had been transferred in the name of the complainant. In fact, there was categorical dispute about this fact. It is, therefore, clear that the National Commission has disposed of the revision petition without considering the relevant factors.

8. In the circumstances, we set aside the order of the National Commission and remit the matter to it for a fresh consideration in accordance with law.

9. The appeal is allowed to the aforesaid extent. No costs."

Thereafter, the Revision Petition which was remanded back, was dismissed for non-prosecution on 30.8.2011 by this Commission, when no appearance was put in on behalf of the Petitioner after being notified.

21. Having considered the applicability of the decisions relied upon by the Respondent/Complainant, this Commission is, however, of the view that on the existing position of law in this regard, particularly in the light of some subsequent decisions of the Apex Court, his claim is not tenable. This is so because it has to be noted that breach of Policy conditions which in the present case happen to be failure to get the Policy transferred in the name of the Complainant within the time prescribed, *ipso facto* disentitles him from claiming the compensation as on the relevant date i.e. three months after death of his father- registered owner and insured, as there was no privity of contract between him and the Insurance Company. The Apex Court has not held anywhere that any distinction is liable to be made in the event of a transferee purchaser with a natural LR/Successor where there is non-compliance of the Policy terms and conditions. The view of the Hon'ble Punjab and Haryana High Court or of the Punjab State Consumer Disputes Redressal Commission in this regard, have only persuasive value for this Commission. The categorical view of the Hon'ble Apex Court regarding binding nature of the terms and conditions and even the words used in the Insurance Policy in this regard as laid down in the case of ***"Export Credit Guarantee Corporation of India Limited Vs. Garg Sons International"*** which was delivered in deciding ***Civil Appeal No.1557 of 2004*** along with other connected Appeals on 17/01/2013. The relevant extracts from the aforesaid decision of the Apex Court are set out is as below: -

"8. It is a settled legal proposition that while construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. It is also well settled, that since upon issuance of an account of risks covered by the policy, its terms have to be strictly construed in order to determine the extent of the liability of the insurer. Therefore, the endeavour of the Court should always be to interpret the words used in the contract in the manner that will best express the intention of the Parties (Vide Suraj mal Niwas Oil Mills (P) Ltd. V. United India Insurance Co. Ltd., MANU/SC/0814/2010: (2010) 10 SCC 567).

9. The insured cannot claim anything more than what is covered by the insurance policy. "…. the terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the Parties adversely." The clauses of an Insurance Policy have to be read as they are….. Consequently, the terms of the Insurance Policy, that fix the responsibility of the Insurance Company must also be read strictly. The Contract must be read as a whole and every attempt should be made to harmonize the terms thereof, keeping in mind the rule of contra proferentem does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon.

(Vide: Oriental Insurance Co. Ltd. v. Sony Cheriyan MANU/SC/0495/1999: AIR 1999 SC 3252; Polymat India P. Ltd. v. National Insurance Co. Ltd. MANU/SC/1019/2004: AOR 2005 SC 286; Sumitomo Heavy Industries Ltd. v. Oil and Natural Gas Co. MANU/SC/0540/2010: AIR 2010 SC 3400; and Rashtriya Ispat Nigam Ltd. v. Dean Chand Ram Saran MANU/SC/0327/2012: AIR 2012 SC 2829).

10. In Vikram Greentech (I) Ltd. and Anr. v. New India Assurance co. Ltd. MANU/SC/0519/2009 SC 2493, it was held:

An Insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself…. The Endeavour of the Court must always be to interpret the words in which the contract is expressed by the Parties. The Court while construing the terms of policy is not expected to venture into extra liberalism that may result in rewriting the contract or substituting the terms which were not intended by the Parties.

(see also Sikka Papers Limited v. National Insurance Co. Ltd. and Ors. MANU/SC/0907/2009: AIR 2009 SC 2834)

11.Thus it is not permissible for the Court to substitute the terms of the contract itself, under the garb of construing terms incorporated in the agreement of insurance. No exceptions can be made on the ground of

equity. <u>The liberal attitude adopted by the Court, by way of which it interferes in the terms of an insurance agreement, is not permitted. The same must certainly not be extended to the extent of substituting words that were never intended to form a part of the agreement</u>."

22. In view of the decision of the Apex Court in "***Export Credit Corporation Limited (Supra)"*** there can be no doubt that the Forum which decides on an insurance claim cannot go beyond the specified terms and conditions specified within the words used in the policy or the relevant scheme, and cannot under the guise of a Social Welfare Interpretation extend the meaning of those words artificially**.**

23. Further, it has been seen in the case of ***"New India Assurance Co. Ltd. Vs. A. Kalavathi"*** (supra) that the complaint of wife of the deceased insured, who was undoubtedly a natural and legal heir/successor, was dismissed by this Commission on account of her failure to comply with the requisite conditions of her husband's Insurance Policy. The Commission, therefore, is of the opinion that the Ld. State commission in the present case incorrectly allowed the Appeal of the present Respondent whose complaint had been correctly dismissed by the District Forum.

24. However, considering the unprofessional and unfair conduct on the part of the Petitioner/ Insurance Company in not promptly repudiating the claim of the Complainant/Respondent for the reason that he had failed to comply with the relevant Clause for transfer of the Insurance Policy in his name within the specified time from the date of death of his father/ original Insured, would certainly invite censure. It is a matter of record that intimation of the claim was submitted as far back as on 26.5.2005. But, the Complainant was made to approach the Insurance Company again and again on various pretexts and asked to submit some documents or the other which would have been altogether irrelevant if his claim was to be ultimately repudiated solely on the ground that he had failed to comply with the requisite Policy terms and conditions. The documents asked from the Complainant during the intervening period were such irrelevant ones as the original Cover Note, financial repayments, status, proof of existence of vehicle in the month of November 2004, apart from asking him to comply with some other formalities vide letter dated 10.1.2007 (as mentioned in Para 9 of the complaint). But, copy of such letter has not been placed on record on behalf of the Petitioner/Insurance Company. The claim was finally repudiated almost two years later, on 18.4.2007 after the Complainant had been made to submit all the information and documents sought from him. He certainly deserves to be compensated for such harassment, callousness and uncalled for attitude on the part of the Insurance Company in making him run from pillar to post before finally repudiating his claim for a reason which had no nexus with the various compliances he had been made to perform for a long time span of almost two years. 25. Consequently, while holding that the claim of the Complainant was not tenable on account of non-compliance of relevant Policy conditions which required him to get the Policy transferred in his name within th

25. Consequently, while holding that the claim of the Complainant was not tenable on account of non-compliance of relevant Policy conditions which required him to get the Policy transferred in his name within the time specified, the Revision is allowed after setting aside the Impugned Order of the State Commission. At the same time, a compensation of Rs. 1,00,000/- towards mental pain and harassment is awarded to the Respondent on account of the dilatory and harassing attitude of the Petitioner- Insurance Company before belatedly repudiating his insurance claim.

26. Parties to bear their own costs.

27. Pending applications, if any, also stand disposed off.

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When an individual is availing services "Free of cost", she is not a consumer, under the Act.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

REVISION PETITION NO. 1786 OF 2017(Against the Order dated 09/03/2017 in Appeal No. 259/2014 of the State Commission Punjab)

DR. KIRANDEEP KAUR

EX-MEDICAL OFFICER, CIVIL HOSPITAL DHANAULA, NOW MEDICAL OFFICER-GYNECOLOGIST, CIVIL HOSPITAL, SANGRUR. PUNJAB.

Versus

BEANT KAUR & 5 ORS.

W/O. KHUSIA SINGH, S/O. CHETAN SINGH, R/O. VILLAGE PHARWAHI,
TEHSIL AND DISTRICT – BARNALA. PUNJAB. ....Respondent(s)

BEFORE: **HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER**

Date: 03 Apr 2023

ORDER

1. Heard the learned Counsel for the Petitioner.

2. The Petitioner was OP-3 before the District Forum. She was working as a Gynaecologist in the CHC Hospital, Dhanula.

3. The learned counsel submitted that the patient was pregnant, came to the hospital during intervening night of 12.08.2011 and 13.08.2011 with the history of abdominal pain. The staff nurse (OP-4) examined the patient and suspected gastritis. Her labour pain further increased and meconium stained discharge noted. As there was no facility for C-Section, the OP-3 referred the patient to the Civil Hospital, Barnalato Dr. Jasbir Singh Aulakh. The patient delivered a baby with meconium which subsequently died. Therefore, being aggrieved by the negligence of the OP-3 and the OP-4, the Complainant filed a complaint before the District Forum, Barnala, against the State of Punjab, the CMO, Barnala, Dr. Kirandeep Kaur, staff nurse and Dr. Jasbir Singh Aulakh.

4. The District Forum held the partly allowed the Complaint against the State of Punjab (OP-1) and Dr. Kirandeep Kaur (OP-3) and directed to pay jointly and severally the compensation of Rs.2,00,000/- to the Complainant.

5. Being aggrieved, Dr. Kirandeep Kaur (OP-3) filed FA 259 of 2014, and the State of Punjab (OP-1) filed FA 233 of 2014 before the State Commission. Both the appeals were dismissed and the Order of District Forum was upheld.

6. Being aggrieved, the OP-3 / Petitioner filed the instant Revision Petition.

7. Heard the learned counsel for both the side. The Complainant filed her Written Arguments.

8. I have carefully perused the medical record of CHC Hospital, Dhanaula and Civil Hospital Barnala. Admittedly, it was full term pregnancy and the patient approached the OP-3 in the midnight of 12-13.08.2011 with acute abdominal pain. On the instructions of the OP-3 the staff nurse prescribed antacids, some lab tests were done outside and patient was kept under observation. The patient showed meconium-stained discharge, therefore, emergency caesarian delivery was needed. However, due to the strike of NRHM staff nurses at CHC, Dhanaula, the C-Section was not performed. Therefore, OP-3 referred the patient to Dr. Jasbir Singh Aulakh at Civil Hospital, Barnala in the early morning by ambulance. The C-Section was performed on 13.08.2011 at 10 a.m. As the newborn was engulfed with meconium stain, it died after few hours.

9. In my view, due to the strike of nurses, the OP-3 was unable to perform C-section and took prompt decision to shift the patient at Civil Hospital, Barnala. It was done in the best interest of the patient which does not constitute medical negligence. It was neither deficiency nor failure of duty of care from the OP-3.

10. It is pertinent to note that the CHC Hospital is a government hospital providing free services and OP-3 was working as Govt. servant. Therefore, it was a "Contract of Service" which the OP-3 was rendering in CHC. Thus, the patient was not a consumer as defined under section 2(1)(d) of the Act,1986. This view dovetails from the recent decision of Hon'ble Supreme Court in **Nivedita Singh Vs. Dr. Asha Bharti**[1] ***&Ors.*** Therefore, the Consumer Complaint filed before the District Forum is not maintainable.

11. At the end of argument, the learned counsel for the Petitioner submitted on instructions from the Sr. Gynaecologist & Obstetrician (Petitioner-OP-3) that even though no negligence was attributable to her, she volunteered to pay a total of Rs.2,00,000/- to the Complainant, on humanitarian ground for the death of new born.

12. I appreciate the humanitarian gesture of Petitioner and allow to pay total Rs.2,00,000/- to the Complainant, after deducting the amount, if any, has already been paid or deposited. This direction in any case shall not be construed as a precedent.

13. Based on the discussion above, no medical negligence is attributed to the OP-3. The Revision Petition is allowed and the Orders of both the for a below are hereby set-aside. Consequently, the Complaint No.11/2012 filed before the District Forum, Barnala is dismissed.

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[1] Civil Appeal No. 103 of 2021 – DOJ 7/12/2021

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