

# 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)

VOLUME – XXXIV

DECEMBER 2022

ADVANTAGE - XII

## 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.)

## CONSUMER PROTECTION COUNCIL, ROURKELA CELEBRATED “NATIONAL CONSUMER DAY – 2022”



The **National Consumer Day** was held on **24<sup>th</sup> December, 2022** (Saturday) at Our Office premises

The programme started with the lighting up the ceremonial lamp, welcome address and a brief introduction of council by President Mr. A.K. Goswami, Honorary Jt. Secretary Mr. Rajib Kumar Nayak presented a detailed activity of the council during the celebration. Our Vice President Mr. P. Ravikrishnan addressed the members and newly enrolled members of the council and elaborated the consumer movement in the country. He gave some tips about the new Consumer Protection law imposed by Govt. Of India. President of the CPC, Rourkela elaborated the activities of the council during the last two years with the guidance of our Chief Mentor Sri Vaidyanathan and our Secretary Shri Bhimasen Pradhan. Our Treasurer Mr. A. Samantray also gave some tips about consumer related issues during lockdowns and the theme for 2022 was “ **FAIR DIGITAL FINANCE**” . Then it was an open session for discussion and suggestion from members about how to solve the day to day activities through the Consumer Protection Council, Rourkela against present advance technological challenges.

The programme was celebrated with the active participation of our executive members S/Shri B.D. Tripathy, M.S. Mangar, Biswesh Chandra Mishra, Ms. C. Gayatri Sinha and Sanjay Senapati. At the end, Shri B.K. Behera proposed a formal vote of thanks. Approximately fifty persons including members and guests attended the celebration. Our active member Mr. Amitav Thakur was the master of ceremony.

**Liability of the Insurance Company under ‘theft’  
clearly explained, and compensation awarded to the  
insured consumer.**

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

**REVISION PETITION NO. 648 OF 2020**

(Against the Order dated 03/03/2020 in Appeal No. 40/2013 of the State Commission Assam)

ORIENTAL INSURANCE CO. LTD.

THROUGH ITS MANAGER, LEGAL DEPARTMENT HEAD  
OFFICE AT 88, JANPATH FIRST FLOOR,  
NEW DELHI-110001

.....Petitioner(s)

Versus

RAGHO NATH JAISWAL @ RAGHU

S/O. LATE DWARKA PD JAISWAL, R/O. HINDI SCHOOL

ROAD, P.O. & P.S. &

DISTRICT-GHOLAGHAT

ASSAM

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. C. VISWANATH, PRESIDING MEMBER**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, MEMBER**

**Dated : 13 Apr 2022**

**ORDER**

1. Heard Mr. K.K. Bhat, Advocate, for the petitioner and Ms. Manisha Ambwani, Advocate, for the respondent.
2. Aforementioned revision has been filed from the order of Assam State Consumer Disputes Redressal Commission, Guwahati, dated 03.03.2020, passed in First Appeal No.40 of 2013 (arising out of order of District Consumer Forum, Golaghat, dated 07.06.2013, passed in Consumer Protection Case No.6 of 2009 Raghunath Joiswal @ Raghu Vs. The Branch Manager, Oriental Insurance Company Ltd.) whereby the complaint was allowed and the opposite party was directed to pay Rs.688500/- with interest @9% per annum and compensation of Rs.10000/- to the complainant and the appeal was dismissed.
3. Raghunath Joiswal @ Raghu (the respondent) filed Consumer Protection Case No.6 of 2009, for directing The Oriental Insurance Company Ltd. (the petitioner) to pay (i) Rs.765000/ as I.D.V. value of the vehicle, (ii) Rs.200000/-, as escalation cost and (iii) Rs.25000/- as deficiency in service, total Rs.990000/- along with interest @9% per annu as his insurance claim.
4. The complainant stated that he was registered owner of an Oil Tanker vehicle, bearing registration No. AS-01-P-8009, which was only source of earning his lively-hood by way of self-employment. The complainant obtained Commercial Vehicle Package Policy No.2006/1367 (which was renewal of earlier policy), for the period of 07.06.2005 to 06.06.2006, for a sum assured of Rs.765000/-, from the opposite party. The complainant let out the said Oil Tanker to one Manoj Kumar Duggar, for Rs.50000/- per month,

for a period of 19.06.2003 to 23.08.2005, for carrying out his petroleum product, who was plying it smoothly under the control of the complainant. The said Oil Tanker was found missing from 23.08.2005 and could not be traced. The complainant lodged criminal complaint (registered as C.R. No.998 of 2005) against Manoj Kumar Duggar. Later, the complainant came to know that Manoj Kumar Duggar was absconding due to C.R. Case No.740 of 2005, (Case Crime No.296/2005, U/S 406/420 IPC) PS Jorhat. The complainant lodged an insurance claim before the opposite party as the vehicle was insured for risk of the theft. However, the opposite party repudiated the claim, vide letter dated 06.06.2007, on the ground that it was a case of breach of trust and not of theft. The complainant then made claim before Insurance Ombudsman, who also rejected the claim on 21.08.2008. On the allegations of deficiency in service, the complaint was filed.

5. The petitioner filed its written reply on 01.07.2010, in which, issue of insurance policy, has not been denied. It has been stated that the complainant had let out the said Oil Tanker to one Manoj Kumar Duggar, the Proprietor of M/s. Oswal Association, Jorhat, for Rs.50000/- per month, who disposed of the vehicle. The criminal case, i.e., Case Crime No.488/2005, lodged by the complainant against Manoj Kumar Duggar was registered under Section 406/420 IPC, i.e. criminal breach of trust and cheating at P.S. Golaghat. The loss occurred out of contractual liability, falling under Exclusion Clause-2 of the policy. As such the claim was repudiated. There was no deficiency in service on their part.

6. District Consumer Forum, after hearing the parties, by judgment dated 07.06.2013, found that in view of Illustration (d) of Section 378 IPC, the present case, was a case of theft and the opposite party was liable to reimburse the loss, under the policy. The claim has been wrongly repudiated by the opposite party. On these findings, the complaint was allowed as stated above. The petitioner filed an appeal (registered as First Appeal No.40 of 2013) from the aforesaid order. State Commission, after hearing the parties, by judgment dated 03.03.2020, dismissed the appeal. Hence this revision has been filed.

7. We have considered the arguments of the counsel for the parties and examined the record. Clause-1 (ii) of Commercial Vehicle Package Policy provides that the company will indemnify the insured against loss or damage to the vehicle insured hereunder and or its accessories whilst thereon (i)...

(ii) by “burglary, housebreaking or theft”.

8. The “theft” has been defined under Section-378 of Indian Penal Code, 1860 as follows: -

**Section-387. Theft.** - Whoever, intending or take dishonestly any movable property out of possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.

#### **Illustrations**

(d) A, being Z’s servant, and entrusted by Z with the care of Z’s plate, dishonestly runs away with the plate, without Z’s consent. A has committed theft.

9. This Commission, in **S. Bhagat Singh Vs. The Oriental Insurance Company Ltd., II (1991) CPJ 700 (NC)** and **The Oriental Insurance Company Ltd. &anr. Vs. Rohit Kumar Gupta &Ors., I (1994) CPJ 196 (NC)** and Supreme Court, in **National Insurance Company Ltd. Vs. Ishar Das Madan Lal, (2007) 4 SCC 105**, held that transfer of possession of goods to a merchant who deals in the goods of that type and who may in turn transfer the goods and all rights to them to a purchaser in the ordinary course of business. Transfer of possession of goods, therefore is a sine qua non for entrustment. The person must be handed over the possession of the property. Illustration (d) appended to Section 378 IPC envisages a situation of this nature. It has been held that it was theft and not breach of trust.

10. Registration of FIR of the case i.e., Case Crime No.296/2005, U/S 406/420 IPC) at PS Jorhat, is not a decisive factor. The case of the complainant was fully covered under Illustration (d) appended to Section 378 IPC. Foras below have not committed any illegality, in treating the case of the respondent as a case of theft.

11. The petitioner has filed Terms and Condition of “Commercial Vehicle Package Policy (page-37). Clause-2 is quoted below:

2. The Company shall not be liable to make any payment in respect of:

(a) Consequential loss depreciation, wear and tear, mechanical or electrical breakdowns, failure or breakages not for damage caused by overloading or strain of the insured vehicle not for loss of or damage to accessories by burglary, housebreaking or theft unless such insured vehicle is stolen at the same time.

Exclusion clause has no application in the present case.

### ORDER

In view of the aforesaid discussions, the revision is dismissed. ■

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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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