

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

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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.)

Continued from December 2021 issue.....

A delay in informing the Insurance Company should not be the sole reason for rejecting a genuine claim.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 3367 OF 2016

(Against the Order dated 06/10/2016 in Appeal No. 681/2016 of the State Commission Uttar Pradesh)

NATIONAL INSURANCE COMPANY LTD.

THROUGH ITS DULY, CONSTITUTED ATTORNEY,
MANAGER, NATIONAL INSURANCE COMPANY LTD.,
LEGAL VERTICAL, 2 E/9, JHANDEWALAN EXTENSION,
NEW DELHI-110055

.....Petitioner(s)

Versus

RATNESH KUMAR

S/O. RAGHUBIR SINGH, R/O. BHADRI POST-AMOUR,
TAHIL SHIKONA BAD,
DISTRICT-FIROZABAD
UTTAR PRADESH

.....Respondent(s)

BEFORE:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA, MEMBER

Dated : 24 Aug 2021

ORDER

4. This order was impugned by the insurance company on the same ground and the State Commission has rejected the said contention of the insurance co. and has held as under:

The investigator of the appellant/opposite party insurance company has stated in his report that the

pradhan author, Sirsaganj District Firozabad had told him that upon the report of the respondent/complainant, a crime no. 504/12 was registered under Section 379 IPC dated 08.09.2012 and wherein it was said to be written that the tractor trolley no. UP-83-S-6747 was stolen on dated 29/30.08.2012 at night near Sothra Road, friends colony, Sirsaganj, but the tractor trolley was not found and sent FIR. The investigator of the appellant/opposite party insurance company has neither given any valid reason upon considering the wrong and doubtful statement regarding stealing of the tractor given by the respondent/complainant nor any such statement has been given and concluded by the police

Therefore, on the basis of complete perusal of the above statement we have come to this conclusion that the repudiation of the claim of the respondent/complainant by the appellant/opposite party insurance company is not valid and correct. Therefore, district forum has not made any error in accepting the claim of the respondent/complainant. The order passed by the district forum cannot be said to be illegal and baseless. The direction given by the district forum to the appellant/opposite party insurance company to pay the insured value, cannot be said to be unfair and baseless.

5. The present revision petition has been filed on the same contentions. It is a settled proposition of law that this Commission has a very limited revisional jurisdiction. It is not required to re-assess and re-appreciate the evidences on record and substitute with its own conclusion on facts, especially when the findings on facts are concurrent. It has been so held by the Hon'ble Supreme Court in the case of **"Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd. – (2011) 11 SCC 269"** which is as under:

"23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora".

6. Learned counsel for the petitioner has relied on Hon'ble Supreme Court in the case of **Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha – Civil Appeal No. 6739/2010** decided on 17.08.2010, wherein the Hon'ble Supreme Court has held that the delay in lodging the claim was fatal and the insurance company could not be saddled with the liability to pay the compensation to the respondent, as the respondent had not complied with the terms of the policy. Relevant portion on which reliance is placed reads as under:

"Admittedly the respondent had not informed the appellant about the alleged theft of the insured vehicle till he sent letter dated 22.5.1995 to the Branch Manager. In the complaint filed by him, the respondent did not give any explanation for this unusual delay in informing the appellant about the incident which gave rise to cause for claiming compensation. Before the District Forum, the respondent did state that he had given copy of the first information report to Rajender Singh Pawar through whom he had insured the car and untraced report prepared by police on 19.9.1995 was given to the said Shri Rajender Singh Pawar, but his explanation was worthless because in terms of the policy, the respondent was required to inform the appellant about the theft of the insured vehicle. It is difficult, if not

impossible, to fathom any reason why the respondent, who is said to have lodged First Information Report on 20.1.1995 about the theft of car did not inform the insurance company about the incident. In terms of the policy issued by the appellant, the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of the vehicle and make an endeavour to recover the same. Unfortunately, all the consumer foras omitted to consider this grave lapse on the part of the respondent and directed the appellant to settle his claim on non-standard basis. In our view, the appellant cannot be saddled with the liability to pay compensation to the respondent despite the fact that he had not complied with the terms of the policy.”

7. It is argued by learned counsel for the respondent that the judgment of Hon’ble Supreme Court In Parvesh Chander Chadha (Supra) not only is distinguishable on facts but it has been re-considered by Hon’ble Supreme Court in its recent judgment in **Gurshinder Singh Vs. Sriram General Insurance Co. Ltd. in Civil Appeal No. 653 of 2020 decided on 24th January, 2020** wherein the Hon’ble Supreme Court has dealt with the issue of delay in intimating the Insurance Co. of the incident. The Hon’ble Supreme Court in its judgments has re-considered its earlier findings in Parvesh Chander Chadha (supra) and also in Om Prakash Vs. Reliance General Insurance &Anr. in Civil Appeal No. 15611 of 2017 decided on 4th October, 2017 and has upheld its findings in case of Om Prakash (Supra). Also this order of the Supreme Court is given by three Hon’ble Judges. The Ld. Court has relied on para 18, 19 & 20.

8. The relevant paragraphs are reproduced as under:

18. We concur with the view taken in the case of Om Prakash (supra), that in such a situation if the claimant is denied the claim merely on the ground that there is some delay in intimating the insurance company about the occurrence of the theft, it would be taking a hyper technical view. We find, that this Court in Om Prakash (supra) has rightly held that it would not be fair and reasonable to reject genuine claims which had already been verified and found to be correct by the investigator.

19. We find, that this Court in Om Prakash (supra) has rightly held that the [Consumer Protection Act](#) aims at protecting the interest of the consumers and it being a beneficial legislation deserves pragmatic construction. We find, that in Om Prakash (supra) this Court has rightly held that mere delay in intimating the insurance company about the theft of the vehicle should not be a shelter to repudiate the insurance claim which has been otherwise proved to be genuine.

20. We, therefore, hold that when an insured has lodged the FIR immediately after the theft of a vehicle occurred and when the police after investigation have lodged a final report after the vehicle was not traced and when the surveyors/investigators appointed by the insurance company have found the claim of the theft to be genuine, then mere delay in intimating the insurance company about the occurrence of the theft cannot be a ground to deny the claim of the insured.

9. Though there is a delay of 19 days in informing the Insurance Co., however the surveyor has not disputed the genuineness of claim. He in his report has clearly acknowledged that report of theft of subject vehicle was made to police and an FIR was also registered. The complainant has clearly stated that he immediately lodged the report of theft with police. The police did not record the report and he had to seek intervention of higher Police officer and this caused delay of 10 days in registration of FIR. The delay of 19 days therefore on the facts of this case is not fatal. The impugned order does not suffer with any illegality or perversity.

10. The findings of the fora below on this ground cannot be held to be illegal or perverse.

11. Revision petition has no merit and the same is dismissed. ■■■

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Insurance company penalised, as it could not establish that it had supplied details of Terms and Conditions to the insured, based on which it had disallowed the claim.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 113 OF 2021

(Against the Order dated 12/10/2020 in Appeal No. 614/2019 of the State Commission Delhi)

1. M/S. ORIENTAL INSURANCE CO. LTD.Petitioner(s)
Versus
1. HARINDER PAL SINGHRespondent(s)

BEFORE:

**HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA, MEMBER**

Dated: 13 Aug 2021

ORDER (ORAL)

The present Revision Petition, under Section 58 (1) (b) of the Consumer Protection Act, 2019 (for short "the Act") has been filed by the Petitioner (hereinafter referred as "the Insurance Company") against the order dated 12.10.2020 of the State Consumer Disputes Redressal Commission, Delhi (for short "the State Commission") in Appeal No.614 of 2019 which was filed against order dated 16.10.2019 passed by the District Consumer Disputes Redressal Forum-Janak Puri, New Delhi (for short "the District Forum") in Complaint No.324 of 2014.

2. The brief admitted facts of the case are that on 01.07.2013, the Complainant had purchased family floater Mediclaim policy in the name of his wife and it was also covering the entire family. He developed chest pain and was admitted in the hospital on 08.10.2013. He was initially admitted at B. L. Kapoor Hospital but later on, shifted to Ganga Ram Hospital where he was diagnosed with coronary artery disease and a stent was inserted in one of his arteries. He had spent on this treatment a sum of ₹2,68,000/-. The Insurance Company was approached for cash facility which was denied. The Complainant, thereafter, submitted his claim for the said sum and compensation for harassment and mental agony but it was repudiated on 31.12.2013. Subsequent representations of the Complainant were also dismissed. Aggrieved, the Complainant filed the Complaint before the District Forum.

3. Notice of the Complaint was duly served upon the Insurance Company. The Insurance Company filed its Written Statement. In the Written Statement, the contention raised was that in terms of clause 4.1 and 4.3 of the terms and conditions of the insurance policy, since the Complainant had suffered with the specific disease within two years of the policy, the expenses incurred by him cannot be reimbursed. That as per this exclusion clause, such a claim could be entertained only after two years from the issuance of the policy.

4. In the Rejoinder, the Complainant has specifically stated that no terms and conditions had ever been supplied to him and he was not aware of any such clause.

5. Parties led their evidences before the District Forum. The District Forum heard the arguments of the learned Counsel for the parties.

6. The only contention raised before the District Forum was that the claim was not maintainable due to the bar of two years and hence, the repudiation was as per the terms and conditions. The District Forum, however, rejected the said contention and held as under:

Controversy lies in a narrow campus. Only one point is urged on behalf of the OP that claim was not covered under the exclusion clause. The plea of the complainant is that the terms and conditions of the policy were never furnished to him. Now the question arises as to whether OP could reject the claim in on the basis of exclusion clause which was never furnished to the insurer. The answer is in the negative. Admittedly the contract of insurance is based on utmost bona-fide intension of the parties. Both the parties are expected to disclose each other relevant fact at the time of commencement of the policy. As the insured is expected of disclosing every aspect as to his state of health, so is insurer bound to supply all relevant documents including the terms and conditions of the policy to the insured.

However, in the present case the insured has taken a specific stand as to non-supply of terms and condition, it has been emphatically denied by the OPs. The OPs have not placed on record any document whatsoever to establish that it supplied the terms and conditions to the complainant either at the time of execution of policy or any time subsequent there to. It is now well settled law that insurance company cannot escape under the umbrella of so-called terms and conditions to thwart legitimate and justified claim of the insured, if the said terms and conditions were not supplied to the insured. In the present case there is no iota of evidence as regards supply of terms and conditions to the complainant.

In the Judgment titled Modern Insulators Ltd. Vs Oriental Insurance Co. Ltd. (2000) 2 SCC 734 Hon'ble Supreme Court held as: -

“It is the fundamental Principle of the Insurance Law that utmost good faith must be observed by the contracting parties and good faith forbids either party from disclosure and similarly it is the duty of the insurance company and its agent to disclose all material facts in their knowledge since the obligation of good faith applied to both equally. Since the terms and conditions of the standard policy wherein exclusion clause postulating cesser of the insurance in case of second hand /used property was included were neither a part of the contract of insurance nor discloses to the insured the insurer could not claim the benefit of the said exclusion clause.”

It is now well settled law that where parties have entered into a contract on the basis of terms and conditions, in such a situation it would be the terms and conditions which would prevail. The Hon'ble Supreme Court in case titled Export Credit Guarntee Corpn. of India Ltd. Vs. Garg Sons International 2013 STPL (Web) 36 SC, held as under:

“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 word. It is also well settled, that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on 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: M/s/ Suraj Mal Ram Niwas Oil Mills (P) Ltd. Vs. United India Insurance Co. Ltd., (2010)10 SCC 567).”

“Thus, it is not permissible for the court to substitute the terms of the contract itself, under the grab of construing terms incorporated in the agreement of insurance.

No exception can be made on the ground of equity. 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.”

7. After so concluding, the District Forum while allowing the Complaint passed the following directions:

“In view of the discussions stated above the repudiation of claim of complainant by OP was unwarranted and unjustified and pass an award in the sum of Rs 2,68,000/- in favour of the complainant and against OP to be paid by OP within 45 days from the date of receipt of this order failing which failing which OP shall be liable to pay interest @ 6% p.a. from the date of filing of the complaint till actual realization. We also award a sum of Rs 20,000/- for harassment, mental agony and harassment.”

8. The said order was impugned before the State Commission and the same contention had been raised before the State Commission. The State Commission after re-appreciating and re-assessing the entire evidences on record dismissed the Appeal. The relevant extract of the judgment of the State Commission wherein the entire contentions of the Insurance Company were considered is reproduced as under:

The plea of the appellant that page-2 of the policy at page-34 of the bunch of appeal mentions that the insurance is subject to conditions, clauses, warranty, endorsements as per form attached is a printed material of standard form of policy. Merely writing so does not absolve the insurance company from its liability to send the copies of terms and conditions along with policy *To be concluded in next issue.....*

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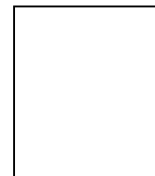
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