

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2538 OF 2018

(Against the Order dated 06/06/2018 in Appeal No. 175/2018 of the State Commission
Punjab)

1. NEW INDIA ASSURANCE CO. LTD.

CORE NO. 3, FIRST FLOOR, SCOPE MINAR, LAXMI
NAGAR DISTRICT CENTRE
DELHI-110092

.....Petitioner(s)

Versus

1. M/S M.R. FILLING STATION

THROUGH ITS PROP. MS. SIMMI ARORA, D/O. SH.
MOHAN SINGH ARORA, RATTAN SINGH CHOWK,
FATEHGARH CHURIAN,
AMRITSAR
PUNJAB

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. J P N SHAHI, ADVOCATE
MS. AASTHA K., ADVOCATE

FOR THE RESPONDENT : MR. ANAND PRAKASH, ADVOCATE

Dated : 21 December 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 06.06.2018 of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 175/2018 in which order dated 15.01.2018, District Consumer Disputes Redressal Forum, Amritsar (hereinafter referred to as District Forum) in Consumer Complaint (CC) no. 181/2016 was challenged, inter alia praying to quash and set aside the orders passed by the State Commission and District Forum.

2. While the Revision Petitioner (hereinafter also referred to as OP) was Appellant and the Respondent (hereinafter also referred to as Complainant) was Respondent in the said FA/175/2018 before the State Commission, the Revision Petitioner was OP and Respondent was complainant before the District Forum in the CC no. 181/2016.

3. Notice was issued to the Respondent. Parties filed Written Arguments/Synopsis on 13.03.2023 (Petitioner/OP) and 28.02.2023 (Respondent/Complainant) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:-

The case is of Respondent's/Complainant's insurance claim for a petrol tanker which was comprehensively insured with the Petitioner/OP insurance company. The tanker was completely damaged in a fire caused by a short circuit in the engine area on 04.02.2015. The insurance claim was submitted to the OP immediately after the incident, and a loss surveyor was appointed to assess the damages, evaluating them at Rs. 2,25,000/-. However, the insurance company/OP raised objections stating that the driver's hazardous goods carriage training certificate did not cover the date of the loss. Although the driver had a license for driving MCWG and LMV vehicles, the training certificate for hazardous goods was valid only from 20.05.2015 to 19.05.2016, which did not cover the date of the incident (04.02.2015). Consequently, the insurance claim was repudiated by the OP. Subsequently, the complainant filed a consumer complaint before the District Forum in Amritsar, which ruled in favor of the complainant, directing the insurance company to pay 75% of the total claimed amount, i.e., Rs. 5,74,170/-, on a non-standard basis. The District Forum found the driving license valid and deemed the claim admissible under non-standard conditions. The petitioner/OP, the insurance company, then appealed this decision before the State Commission, Punjab, Chandigarh. The State Commission upheld the District Forum's order, concurring with its decision.

5. Vide Order dated 15.01.2018, in the CC no. 181/2016 the District Forum has allowed the complaint and directed OPs to make payment of 75% of the claimed amount by the complainant; to pay Rs. 2,000/- as compensation and Rs. 1,000/- as litigation expenses to the complainant.

6. Aggrieved by the said Order dated 15.01.2018 of District Forum, Petitioner appealed in State Commission and the State Commission vide order dated 06.06.2018 in FA No.175/2018 has dismissed the appeal and upheld the District Forum's order.

7. Petitioner has challenged the said Order dated 06.06.2018 of the State Commission mainly on following grounds:

- i. The State Commission's judgment lacks support from valid legal principles and does not align with the evidence, documents, and assertions presented by the OP. Instead, it relies on assumptions and conjectures. The Commission made an error by not

thoroughly examining the records and incorrectly concluding that there was deficiency in the services of the petitioner company.

- ii. The Commission overlooked crucial legal provisions related to the issuance of licenses for drivers handling hazardous goods. Section 132 of Central Motor Vehicles Rules, 1989 specifies the transporter or owner's responsibility for drivers of vehicles carrying hazardous goods. It mandates that such drivers must hold a valid license as per Rule 9, which includes undergoing training and obtaining certification. The renewal of this license necessitates a yearly refresher course. However, in this case, the driver failed to undergo the necessary training for carrying hazardous goods during the period of the incident. No endorsement was made as required under the rules, and the respondent did not ensure compliance with the specific endorsement mandated by Rule 132(5). Consequently, the repudiation of the claim was justified.

- iii. Both the District Forum and the State Commission failed to discuss and consider the Motor Vehicles Act and the Motor Vehicles Rules before reaching their conclusions. The OP did not contest the validity of the driver's license; however, the necessary endorsement required for driving the specific class of vehicle was lacking. Although the driver possessed a valid license for the vehicle, he didn't have the requisite endorsement. The Commission acknowledged the need for training, and the driver did obtain a valid certificate from 20.05.2015, to 19.05.2016. However, there was no certification covering the accident date of 04.02.2015. The absence of this endorsement was a critical oversight by the Commission, leading to an erroneous decision in favor of the Complainant/Respondent.

- iv. The State Commission has further erred by awarding an amount exceeding the loss assessed by the surveyor. It is noteworthy that the surveyor assessed the loss, and any award by the Commission should align with that assessment. The Commission's decision to grant the entire amount as claimed by the complainant is incorrect, especially when the surveyor's assessment was not contested or found to be flawed by the complainant. The terms of the policy do not stipulate payment of the amount claimed by the complainant.

- v. The Commission failed to consider the fundamental breach committed by the complainant in the terms of the policy by allowing the vehicle to be driven by an unauthorized person. This oversight, which compromised the policy terms, should have been a crucial factor in the Commission's decision. The Commission, in passing the order, did so mechanically without a thorough examination of the documents and judgments presented. The directive to pay interest is a grave error, and its imposition lacks proper consideration. The Commission selectively chose facts without

appreciating them in totality, resulting in an unjust judgment. The failure to consider all relevant facts and circumstances is a significant flaw in the decision-making process. The Commission's failure to conduct a comprehensive examination of the case resulted in a hasty and adverse order against the OP.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

- i. The counsel for the Petitioner/OP highlighted that the insurance company had appointed assessors to assess the loss and justified repudiating the claim based on their assertion that the driver lacked a valid training certificate during the incident. However, the District Forum contradicted this, finding that the driver indeed held a valid license covering the vehicle's operation. Even if there was an absence of endorsement as claimed by the OP, the District Forum ruled that the claim should be considered on a non-standard basis. Consequently, they directed the OP to settle 75% of the claimed amount along with interest. Unsatisfied with the District Forum's decision, the OP appealed to the State Commission. The State Commission upheld the District Forum's decision, emphasizing that the training certificate issued to the driver was valid during the incident period, despite being cancelled later. Their conclusion rested on affirming that the driver possessed the necessary training for handling hazardous goods at the time of the accident.

- ii. The counsel contends that the State Commission erred in its decision by overlooking pertinent provisions of the law concerning the issuance of a license for drivers of vehicles transporting hazardous goods. Referring to Section 132, which outlines the responsibilities of the transporter or owner of a goods carriage, they stress that the driver must possess a driving license in accordance with Rule 9. Rule 9 specifies language proficiency and mandates drivers to undergo necessary training. Moreover, it requires an annual one-day refresher course for the renewal of a license to drive a transport vehicle carrying hazardous goods. The counsel argues that, during the period of the loss, the driver did not undergo the requisite training for transporting hazardous goods, and no endorsement was made, as mandated by Rule 132(5). Consequently, they assert that the claim was rightfully repudiated due to the lack of training and necessary endorsements. The counsel further contends that both the Forum and the State Commission failed to consider the relevant provisions of the Motor Vehicles Act and Rules before reaching their conclusions. Additionally, they clarify that the OP did not contest the validity of the driver's license but emphasized the absence of the required endorsement for driving a vehicle carrying hazardous goods. According to the counsel, the driver did not undergo the necessary training and did not possess a valid certificate covering the date of the accident.

- iii. The counsel emphasizes another significant error made by the Commission, asserting that the decision to award an amount exceeding the assessment conducted by the surveyor is unwarranted. They argue that the terms of the policy do not stipulate payment beyond what is assessed by the surveyor. Additionally, the counsel contends that the Commission overlooked a fundamental breach of policy terms committed by the complainant. This breach occurred when the complainant entrusted the vehicle to an individual unauthorized to drive such a vehicle, thereby violating the policy's terms.

- iv. The counsel for the complainant/respondent argued that the State Commission's decision aligns with the District Forum's ruling, emphasizing that the driver possessed the required training during the insured period when the vehicle faced an accidental fire. Additionally, the counsel presented evidence in the form of a letter from the Indian Oil Corporation Limited, confirming the driver's completion of Hazardous Goods carrying Training on the date of the incident. This letter underscores the significance of trained drivers for safety measures at their Oil Terminal and affirms that the driver, Sh. Heera Singh, was adequately trained and vigilant in handling the tanker, averting a potentially catastrophic outcome during the incident.

- v. The counsel emphasizes that the insurance policy was procured not for commercial gain but for protection against unforeseen incidents. They argue that the insurance company's refusal to fulfill the claim, despite collecting premiums, amounts to misappropriation of property and is unjustified given the incident's circumstances. Moreover, they assert that the driver possessed the required training and skills, meeting the criteria specified by Rule 9(3) & 132(5) of the MV Rules, 1989. They contend that the insurance policy was meant to provide coverage in case of unforeseen events, and denying the claim despite the driver's valid training constitutes an unjust denial of coverage.

9. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. In this case, there are concurrent findings of both the fora below against the Petitioner Insurance Company. The main reason for repudiating the claim is that hazardous goods carriage training certificate of the driver did not cover the date of loss. The complainant contended that all the documents were burnt in the fire which engulfed the petrol tanker on 04.02.2015. No petrol tanker can enter in IOC (Indian Oil Corporation) depot unless driver is properly trained in hazardous goods carriage. The IOC has issued a certificate affirming that all mandatory safety norms have been observed and then only green card was issued on the basis of which petroleum products could be filled. State Commission after due consideration of evidence before it has upheld the findings of District Forum. Surveyor has assessed the loss of Rs. 4,00,243/- on repair basis (stating further that the loss is likely to increase between Rs. 50,000/- to Rs. 60,000/-

after dismantling) and Rs. 2,43,672 on cash loss basis (stated to be Rs. 2,25,000 after negotiating with the insured)

10. As was held by the Hon'ble Supreme Court in **Rubi Chandra Dutta Vs. United India Insurance Co. Ltd.** [(2011) 11 SCC 269], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In **Sunil Kumar Maity Vs. State Bank of India & Ors.** [AIR (2022) SC 577] held that *“the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the 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 illegally or with material irregularity.”*

11. The Hon'ble Supreme Court in **Rajiv Shukla vs Gold Rush Sales And Services Ltd.** Civil Appeal No. 5928 of 2022, decided on 8th September, 2022, held that:- *“13. As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction.*

14. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act.”

12. In view of the foregoing, we find no illegality or material irregularity or jurisdictional error in the order of State Commission, hence the same is upheld. Accordingly the RP is dismissed.

13. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER