

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 449 OF 2018

(Against the Order dated 07/08/2017 in Appeal No. 286/2016 of the State Commission Haryana)

1. NATIONAL INSURANCE CO. LTD.

NATIONAL LEGAL VERTICAL NATIONAL INSURANCE
CO. LTD. 2E/9, JHANDEWALA EXTN.

NEW DELHI - 110055

.....Petitioner(s)

Versus

1. M/S. SHYAM INDUS

HB COMPLEX DEV COLONY, DELHI ROHTAK ROAD
ROHTAK

HARYANA

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE AJIT BHARIHOKE, PRESIDING MEMBER

For the Petitioner : Mr. K.K. Bhat, Advocate

For the Respondent :

Dated : 15 Feb 2018

ORDER

1. This revision is directed against the order of the State Commission Haryana dated 7.8.2017 in first appeal No.286/2016 whereby the State Commission dismissed the appeal preferred by the petitioner insurance company against the order of the District Forum, Rohtak allowing the consumer complaint filed by the respondent/complainant.

2. Briefly put, facts material for the disposal of the revision petition are that the complainant being owner of Mahinder Bolero Jeep having engine No.GHB4H66036 and chassis No. MAIPS2GHKB5H89214 got it insured with the petitioner insurance company. The insurance cover was valid from 20.11.2011 to 19.11.2012. The vehicle was stolen on 2.11.2011. Theft report was lodged with the police station Civil Lines, Rohtak on the same day and intimation to the insurance company was given. The insurance claim preferred by the respondent, however, was repudiated by the petitioner insurance company vide letter dated 26th December, 2012. Being aggrieved the respondent raised consumer dispute by filing a complaint in the District Forum, Rohtak.

3. The opposite party/petitioner filed written statement pleading that the subject vehicle was not having a valid registration on the date of the alleged theft. It was pleaded that non-registration of a motor vehicle with the transport authority is a violation

of Section 39 of Motor Vehicle Act, 1988 as well as terms and conditions of the insurance policy. Had the vehicle been registered, it would have been easy for the police to trace out the same. On the aforesaid allegations, the opposite party/petitioner justified the repudiation of insurance claim vide letter dated 26.12.2012.

4. The District Forum on consideration of the pleadings and the evidence allowed the complaint and directed the petitioner as under: -

In view of the aforesaid law which are fully applicable on the facts and circumstances of the case it is observed that repudiation of claim by the opposite party is illegal and complainant is entitled for the claim as per IDV of the vehicle. As such, it is observed that opposite party shall pay the IDV of the vehicle i.e. Rs.6,31,750/- alongwith interest @ 9% p.a. from the date of filing the present complaint i.e. 20.3.2014 till its actual realization and shall also pay a sum of Rs.3000/- as litigation expenses to the complainant maximum within one month from the date of completion of formalities by the complainant i.e. Form No.26, 2829, 30, 35, Original RC, Subrogation letter, Indemnity Bond and Affidavit of transferee etc. to the opposite party failing which the opposite party shall be liable to pay further interest @ 12% pa. on the awarded amount from the date of decision. Complaint is allowed accordingly.”

5. Aggrieved by the order of the District Forum, petitioner/opposite party preferred an appeal before the State Commission which vide impugned order concurred with the finding of the District Forum and dismissed the appeal.

6. Dissatisfied with the order of the State Commission, the petitioner insurance company has preferred this revision petition.

7. Shri K.K. Bhat, learned Advocate for the petitioner has assailed the impugned order on the ground that the Fora below have failed to appreciate that the insured vehicle at the time of theft was unregistered, meaning thereby that it was used by the complainant in violation of Section 39 of the Motor Vehicle Act, 1988 which is an offence under Section 192 of the Motor Vehicle Act, 1988. Therefore, therefore, the repudiation of the insurance claim was justified. In support of his contention, learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the matter of **Narinder Singh vs. New India Assurance Co. Ltd. & Ors., Civil Appeal**

No.8463 of 2014 arising out of SLP (Civil) No.26308 of 2013 as also the judgment of Co-ordinate Bench of this Commission in the matter of **Oriental Insurance Co. Ltd. & Anr. vs. Vikram Kanda 2016 SCC Online NCDRC 1108** and the judgment of the Co-ordinate Bench in **RP/4479/2013 Oriental Insurance Co. Ltd. vs. Rajesh Nautiyal decided on 19.12.2014.**

8. The facts of the case are more or less admitted. It is undisputed that the subject vehicle was insured with the petitioner insurance company and it was stolen on 2.11.2011. It is also undisputed that at the time of theft the subject vehicle was unregistered. Contention of learned counsel for the petitioner is that as the respondent/complainant had failed to get the subject vehicle registered within a period of one month from the date of its purchase, the user of the same after the expiry of one month period amounted to violation of Section 39 of the Act and therefore the insurance company was justified in repudiating the insurance claim.

9. In order to appreciate the contention of learned counsel for the petitioner, it would be useful to have a look on Section 39 of the Motor Vehicle Act, 1988 which deals with the necessity for registration. The relevant Section is reproduced as under: -

“39. Necessity for registration.—No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner: Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government”

10. Bare reading of section 39 suggests that driving of unregistered motor vehicle by any person in any public place or any other place is prohibited. The section casts an obligation on the owner of the motor vehicle not to permit the vehicle to be driven in any public place or any other place. Violation of this provision is an offence as defined under section 192 of the Act. Case of the petitioner is that since the vehicle was unregistered, the respondent insured had violated section 39 of the Act which is an offence punishable under section 192 of the Act.

11. From the FIR No.600 dated 2.11.2011 under Section 379 IPC registered at police station Civil Lines, Rohtak on the complaint of Sandeep More it is clear that on the said date Sandeep More had driven said unregistered vehicle to “Maina Tourism Complex” Rohtak and parked it in the parking of the said complex. It is also clear from

the FIR that subject vehicle was stolen while it was parked. No doubt that Sandeep More violated Section 39 of the Motor Vehicle Act, 1988 when he drove the vehicle upto the parking of Maina Tourism Complex and while driving he violated Section 39 of the Motor Vehicle Act which is offence punishable under Section 192 of the Act. However, from the contents of the FIR it is also clear that the vehicle was stolen while parked in the parking of the above tourism complex. Thus, the question arises whether the commission of offence under Section 192 of the Motor Vehicle Act prior to the theft would justify repudiation of insurance claim?

12. Answer to the above question is in the negative. Admittedly, at the time of insurance subject vehicle was unregistered. Despite that the insurance company provided the insurance cover to the subject vehicle without insisting for its registration, temporarily or permanent, before accepting the proposal for insurance. Perusal of Section 43 of the Motor Vehicle Act would show that even in case of a vehicle having temporary registration such a registration is valid only for a period not exceeding one month. Despite that the petitioner insurance company instead of providing the insurance cover for one month, issued the insurance policy for full one year and charged premium for an year without making it clear to the insured that in case the insured failed to get the vehicle registered within a month from the date of purchase, the insurance cover would stand withdrawn. If at all there was any intention on the part of the insurer that in the event of any single violation of Section 39 of the Act, the insurance cover to the subject vehicle would stand withdrawn, the insurance company was expected to make a clear stipulation in this regard in the insurance contract. This, however, is not the case. I have gone through the terms and conditions of the insurance contract as also the provisions of the Act. There is nothing in the contract or the Act to provide that in the event of any single violation of provision of Section 39 of the Act, the insured shall loose insurance cover if loss / damage to the vehicle is caused subsequent to the commission of said violation punishable under section 192 of the Act. Therefore, in my view, the insurance company cannot take advantage of offence under section 192 r/w section 39 of the Act committed by the insured by driving the vehicle from his residence to the hospital much earlier to the theft of the vehicle which was parked in the parking lot of the hospital. As such, the repudiation of the claim is not justified.

13. Learned counsel for the petitioner has tried to justify the repudiation of the claim on the strength of the law laid down by the Supreme Court in the matter of Narinder Singh Vs. New India Assurance Company Ltd. (supra). In my opinion, aforesaid judgment is not applicable to the facts and circumstances for the reason that in the said case, the insurance claim was in respect of damage caused to the unregistered vehicle in an accident, meaning thereby that at the relevant time, the vehicle was being driven in violation of mandate of Section 39 of the Act. In the instant case, admittedly at the

time of theft, subject vehicle was not being driven by anyone. Thus, at the time of theft, respondent was not violating Section 39 of the Act. In view of the aforesaid distinction of facts in the matter of **Narinder Singh** (supra) and the instant case, the above-noted judgment of Hon'ble Supreme Court is not applicable to the facts of this case. Similar view was taken by this Commission vide order dated 28.4.2015 in RP/3794/2013. SLP No.23878/2015 filed against said order was dismissed by Hon'ble Supreme Court vide order dated 28.8.2015. The judgments of the Co-ordinate Bench in the matter of **Oriental Insurance Co. Ltd. vs. Vikram Kanda** (supra) and **Oriental Insurance Co. Ltd. vs. Rajesh Nautiyal** (supra) are of no avail to the petitioner as those judgments have been passed without noting that facts of **Narinder Singh's** case (supra) were different, as it was a case of accident of the subject car which was being driven without registration. Therefore, I am of the view that repudiation of insurance claim by the insurance company is unjustified and as such, order of the foras below cannot be faulted.

14. Looking from a different angle. The basis of repudiation is that the respondent has violated the mandate of Section 39 of the Act which is punishable under section 192 of the Act. On perusal of section 192 of the Act, we find that violation of Section 39 of the Act in the event of first offence is punishable with a fine which may extend to Rs.5000/- but shall not be less than Rs.2000/- and for the second or the subsequent offence, it is punishable with imprisonment upto one year or with fine which may extend to Rs.10,000/- but not less than Rs.5000/-. It is not clear from the record whether the alleged offence of driving the vehicle from the house of the complainant to the hospital was the first offence or the subsequent offence. Thus, for the prosecution under section 192 r/w Section 39 of the Act, the complainant could be fined between Rs.2000/- to Rs.5000/-. Denial of the insurance cover to the extent of Rs.6,31,750/- for violation of Section 39 r/w Section 1192 of the Motor Vehicle Act to the complainant would thus amount to imposing a punishment much higher than the punishment prescribed under section 192 of the Act. Therefore, also, repudiation of the claim is not justified.

15. In view of the discussion above, we are of the opinion that petitioner has failed to point out any jurisdictional error or material irregularity in the impugned order which may call for interference by this Commission in exercise of revisional jurisdiction. Revision petition is, therefore, dismissed.

.....J
AJIT BHARIHOKE
PRESIDING MEMBER