

(2024) 11 NCDRC CK 0006

National Consumer Disputes Redressal Commission

Case No: Revision Petition No.168 Of 2018

Mohd. Mukhtar

APPELLANT

Vs

Bajaj Allianz General Insurance
Co. Ltd

RESPONDENT

Date of Decision: Nov. 18, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)

Hon'ble Judges: Karuna Nand Bajpayee, Presiding Member; Dr. Sadhna Shanker, Member

Bench: Division Bench

Advocate: Pawan Kumar Ray, Amit Kumar Maihan

Final Decision: Allowed

Judgement

Dr.Sadhna Shanker, Member

1. This revision petition under section 21(b) of the Consumer Protection Act, 1986 (in short, the 'Act') has been filed against the order dated 22.11.2017 passed by the State Consumer Disputes Redressal Commission, Lucknow (in short, the 'State Commission') in First Appeal No. 430 of 2017, arising out of the order dated 07.01.2017 of the District Consumer Disputes Redressal Forum, Kanpur Nagar (in short, the 'District Forum') whereby the consumer complaint no. 595 of 2014 was partially allowed.

2. We have heard the learned counsel for the petitioner (hereinafter referred to as the 'complainant') and the learned counsel for the respondent (hereinafter referred to as the 'insurance company') and perused the record including inter alia the Order dated 07.01.2017 of the District Commission, the impugned Order dated 22.11.2017 of the State Commission and the petition.

3. The brief facts of the case are that the complainant's car bearing registration no. U.P. 78 AF 1126 was insured for a sum of Rs.4,43,800/- with the insurance company. The insurance was valid for the period from 26.10.2013 to 25.10.2014. During this period, on 23.06.2014 the vehicle in question met with an accident. It is alleged that though the complainant claimed for total loss but the officers of insurance company called him on 07.10.2014 and paid only Rs.2,00,000/- by putting pressure upon him whereas the sum assured of the policy in question was Rs.4,43,800/-. It is further alleged that the complainant signed the consent letter under duress received Rs 2,00,000/- and remaining amount of total sum insured i.e. Rs.2,43,800/- was not given to him. The grievance of the complainant is that as the car in question was totally damaged, therefore, the complainant is entitled for total sum insured i.e. Rs. 4,43,800/-.

4. Feeling aggrieved, the complainant filed a complaint before the District Consumer Disputes Redressal Commission, Kanpur Nagar, U.P. seeking a direction to the insurance company to pay balance amount of Rs. 2,43,800/- of the sum insured along with interest at the rate of 18% per annum and compensation of Rs. 50,000/- towards mental agony and Rs. 7,500/- towards cost of the case.

5. The insurance company contested the complaint by filing written statement and relied on the observation of the surveyor that the nature and cause of loss does not co-relate with the damages and in the absence of any independent witness at spot and injury/towing details the fate of the claim to be decided at Insured's end. On the request of the complainant, it re-considered the matter and after due consideration of all the relevant factors, assessed the total cash loss worth Rs.2,00,000/-. It is further stated that the complainant agreed to accept the said amount of Rs.2,00,000/- towards full and final settlement and signed a consent letter-cash loss dated 24.09.2024 and the damaged car was also allowed to be retained by the complainant so he retained salvage value. It is further stated that there is no deficiency in service on the part of the insurance company.

6. The District Commission, vide its Order dated 07.01.2017, partially allowed the complaint and directed the insurance company to pay the remaining amount of Rs. 2,43,800/- along with interest at the rate of 8% per annum from the date of filing of complaint till actual payment along with Rs.5,000/- towards the cost of litigation.

7. Being aggrieved by the order dated 07.01.2017 of the District Commission, the insurance company preferred an appeal before the State Commission.

8. The State Commission, vide its order dated 22.11.2017, allowed the appeal of the insurance company and quashed the Order dated 07.01.2017 of the District Forum dismissing the complaint.

9. Feeling aggrieved by the order dated 22.01.2017 of the State Commission, the complainant has filed the instant revision petition before this Commission.

10. Before this Commission, learned counsel for the complainant has argued that even though the consent letter, which was printed on an undated non-judicial stamp paper, bears the signature of the complainant but it lacks all the relevant information regarding details of the complainant and the settlement reached between the parties, therefore, the same cannot be said to be a legally valid document. Further, it was argued that in the letter dated 18.09.2014, the complainant purportedly agreed to settle for the amount of Rs.2,00,000/- because the complainant was coerced to accept above-said amount with the ultimatum that either he agrees to it or receives no money whatsoever. Under such circumstances, the complainant had no recourse but to show his willingness through the letter dated 18.09.2014. Therefore, the said consent letter dated 18.09.2014 was signed under duress and the same cannot be said to be a legal document and cannot be relied upon. However, it is noteworthy that on 24.10.2014, the complainant once again took action by sending a legal notice claiming the total claim amount of Rs.4,43,800/-.

11. Further, it was submitted that the Surveyor's report indicated that due to lack of correlation between the nature and cause of the loss and the damage sustained due to accident, the determination of the insured's claim should fall under the purview of the insurance company. Subsequently, the insurance company assessed the total cash loss at Rs.2,00,000/- but it had not furnished any evidence or logic as to on what basis it arrived at a compensation of Rs.2,00,000/-.

12. It is further argued that the repair estimate given by Khanna Auto Sales (P) Ltd. was Rs. 8,31,102.85/- while the sum insured of the policy in question is Rs. 4,43,800/-, and there was thus total loss of the vehicle and consequently the complainant is entitled for the total sum insured of Rs.4,43,800/-. The counsel also pointed out a letter of the complainant dated 04.09.2014 sent to the insurance company. He informed the insurance company that the repair cost for the aforementioned vehicle would amount to Rs.11,00,000/- and hence it was a total loss. However, if the insured stated that the repair cost was Rs.4,00,000/-, they could direct Khanna Hyundai to undertake the repairs for Rs.4,00,000/-

13. The insurance company's counsel countered the complainant's contentions and argued that since the complainant had received the amount from the insurance company in full and final settlement without any whisper of any kind of protest, he had no locus to re-agitate the settled claim. He further argued that the complainant sent notice to the insurance company only after 17 days from the date of receipt of payment, which fact itself makes it evident that there was no coercion or any pressure upon the complainant to accept the payment from the insurance company and unless

there is cogent evidence to show that there was any pressure or coercion, settled claim cannot be reopened. In support of this contention, learned counsel has placed reliance on the following decisions:

(i) Sushila Agarwal vs. SBI GIC Ltd. & Anr., Revision Petition No. 2614 of 2016 decided on 04.10.2017 (NC)

(ii) Swastik Petrochem (I) Pvt. Ltd. Vs. Oriental Insurance Co. Ltd., C.C. No. 359 of 2014 decided on 16.08.2017

14. Further, it was argued that the State Commission has passed a well reasoned order.

15. The main issue for consideration before this Commission is as to whether the insurance company was absolved of its liability after the complainant had signed the consent letter.

16. It is not in dispute that the policy was valid at the time of accident. On the perusal of the records, it is seen that the State Commission had set aside the Order of the District Commission which had allowed the complaint and directed the insurance company to give the claimed amount with interest. It is also seen that throughout these proceedings i.e. from the level of District Commission to State Commission, and even this Commission, the insurance company has been contending for dismissal only on the basis that the discharge voucher has been signed by the complainant. The main argument of the insurance company is that once the complainant has signed the consent letter voluntarily, he cannot re-agitate the matter again. This argument has been set at rest by the IRDA circular that has been relied on by the complainant. Reference is made to the Insurance Regulatory Development Authority of India (hereinafter referred to as the 'IRDA') Circular No. IRDA/L/CIR/Misc/173/09/2015 dated 24.09.2015 whereby the guidelines are issued to the general insurance companies, which are as under:-

"The Insurance Companies are using discharge voucher" or "settlement intimation voucher" or in some other name, so that the claim is closed and does not remain outstanding in their books. However, of late, the Authority has been receiving complaints from aggrieved policyholders that the said instrument of discharge voucher is being used by the insurers in the judicial for a with the plea that the full and final discharge given by the policyholders extinguish their rights to contest the claim before this Courts.

While the Authority notes that the insurers need to keep their books of accounts in order, it is also necessary to note that insurer shall not use the instrument of discharge voucher as a means of estoppel against the aggrieved policy holders when such policy holder approaches judicial fora.

Accordingly insurers are hereby advised as under:

Where the liability and quantum of claim under a policy is established, the insurers shall not withhold claim amounts. However, it would be clearly understood that execution of such vouchers does not foreclose the rights of policy holder to seek higher compensation before any judicial fora or any other fora established by law.

All insurers are directed to comply with the above instructions.”

17. Further, reliance is placed on the case of M/s Rainbow Apparels vs. New India Assurance Co. Ltd. decided on 12.10.2018 in CC No. 167 of 2006. The relevant extract is set out as below-

.... “the guidelines of the IRDA are clear and unambiguous that signing of a discharge voucher would not debar the insured to seek remedy for additional insurance amount form an appropriate forum”. All the proceedings in this case are after the issuance of this circular.”

It is seen from the records that all the proceedings in this case have taken place after the issuance of the circular. Further, it is also seen that the consent letter on stamp paper of Rs. 100/- does have blank columns and no details as to what is being consented to. It is also seen that a typed consent letter dated 18.09.2014 is recorded as follows:

“To,

The Branch Manager,

Bajaj Alliance General Assurance Company,

Kanpur Nagar,

Claim No. :OC-15-1302-1801-00001114

Policy No. :OG-14-1302-1801-00003431

Vehicle No. : UP 78 AF 1126

Sir,

As per your letter dated 06.09.2014, I am ready to settle the claim in Rs.2,00,000/- after conversation held before your officers. Either you take the aforesaid vehicle or get it sold and that may be paid to me.

18.09.2014 Mohd. Mulkhtar

130/571, Babupurwa, Azadngar,

This letter also seeks balance payment from the insurance company.

In view of the above, we are of the view that the insurance company cannot take the plea that the signing of discharge voucher stops the complainant from seeking further relief on the basis of its claim. The finding of the State Commission on this account is not sustainable.

18. Further, the insurance company settled the claim for Rs.2,00,000/- towards full and final settlement, but no evidence has been brought to show by which methodology or formula, the amount of Rs. 2,00,000/- had been arrived at. When the insurance company had agreed to pay the amount towards the loss to the vehicle in question, it makes it clear that the insurance company had accepted that there was a loss to the vehicle and its liability to pay. The complainant had submitted the repair estimate of Rs. 8,31,102/- given by Khanna Auto Sales which has not been contested by the insurance company while the insured declared value of the vehicle was Rs.4,43,800/-. Since no basis for the assessed loss payment of Rs.2,00,000/- has been put forward and the uncontroverted repair estimate shows that the car suffered a total loss, we are of the opinion that the claim of the complainant ought to have been considered as total loss and accordingly the total insured declared value ought to have been paid to the complainant as per the policy terms.

19. In view of the above, we are of the opinion that the District Commission had rightly allowed the complaint and the Order dated 22.11.2017 of the State Commission is liable to be set aside.

20. In the result, the revision petition is allowed and the Order dated 22.11.2017 of the State Commission is set aside and the Order of the District Commission allowing the complaint and directing the insurance company to pay Rs. 2,43,800/- along with interest at the rate of 8% from the date of complaint till the date of payment and cost of Rs. 5,000/-, is upheld. The insurance company is directed to comply with the order of the District Commission within a period of six weeks from today. All pending I.A.s shall stand disposed of accordingly.