

(2024) 11 NCDRC CK 0066

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 455 Of 2021

Krishna Kumar Kushwaha

APPELLANT

Vs

Managing Director, United India
Insurance Company Ltd. & Anr

RESPONDENT

Date of Decision: Nov. 25, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)
- Consumer Protection Act, 2019 - Section 58(1)(b)
- Indian Penal Code, 1860 - Section 279, 337, 338, 363, 366, 376

Hon'ble Judges: Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

Bench: Single Bench

Advocate: Abishek Chaudhary, Suman Bagga

Final Decision: Dismissed

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. This Revision Petition No. 455 of 2021 challenges the order of U.P. State Consumer Disputes Redressal Commission, Lucknow ('State Commission') dated 23.02.2021, vide which, the learned State Commission dismissed the FA No.83/2021 filed by the Petitioner/ Complainant and affirmed the District Consumer Disputes Redressal Commission, Kanpur Nagar ('District Commission) order dated 05.01.2021 in C.C. No.28/2015 wherein the complaint was dismissed.
2. As per report of the Registry, there is a delay of 16 days in filing of the present Revision Petition. As the delay occurred during the suspended period of limitation due to Covid-19, the present Revision Petition is treated to have been filed within limitation.

3. For convenience, the parties are referred to as placed in the original Complaint filed before the District Commission.

4. Brief facts of the case, as per the complainant, are that the complainant purchased the car on January 24, 2012, and insured it for one year, from 24.01.2012, to 23.01.2013. The car was stolen on 10.03.2012, from within the jurisdiction of the Kalyanpur Police Station. A case was registered under IPC Sections 279, 337, and 338, with the driver allegedly confessing to the crime on 20.03.2013. Upon the car's recovery, it was sent to Society Motors, which estimated repairs at ■4,77,975. The complainant accused the insurer of making an unfair demand of deposit of ■30,000 without a receipt, which he refused. He argued that the insurance company's actions constitute a deficiency in service. Being aggrieved, the complainant filed a consumer complaint before the District Commission sought compensation for damages caused by a car accident, alleging a deficiency of service by the insurance company, Opposite Party (OP) No. 1 (United Insurance Company Limited), and the repair service provider, OP-2 (Society Motors).

5. In its written version before the District Forum, OP-1 disputed the theft and accident claims, asserting that the complainant fabricated the incident to cover up a different criminal act of rape allegedly committed in the same car on 02.04.2012. The complainant's father filed the theft report only on 29.04.2012, long after the alleged rape incident, which shows an attempt to cover up his criminal activity. Due to perceived fabrication, OP-1 had already rejected the claim on 23.01.2013.

6. In its written version before District Forum, OP-2 denied theft and other events alleged in the complaint. There is no service deficiency on its part. Any legitimate claim is sole responsibility of OP-1. There is no valid cause of action against them, rendering the complaint invalid.

7. The District Forum, vide order dated 05.01.2021, dismissed the complaint with the following reasons:

On the one hand, the OP-1 has proved it from cogent evidences that the car was in fact recovered from the possession of complaint on 2.4.2012 and the incidents of theft and accident of the car are purely fictitious and fabricated stories and, on the other hand, the OP-2 has raised a question of law in this regard and in this context reliance has been placed on Universal Sompo General Insurance Co. Ltd. Vs. Boop Lal Dangi reported in 2017(2) AICC 1385 wherein it has been held that insurance claims can be rejected on the ground of delayed submission of intimation and documents to the insurance company. In this connection, the complainant himself has stated in his pleadings that the accident took place on 2.4.2012 and the estimate of repair of car was given to him on 25.11.2014 and his claim was rejected on 25.11.2014. In such a situation, the complainant did not observe/follow the terms of policy. Therefore, the complainant is not entitled to any relief sought by him. Accordingly, the present

complaint is liable to be rejected/ dismissed.

ORDER

The complaint stands dismissed/rejected. Each Party shall bear its own costs.
(Extracted from translated copy)

8. Being aggrieved by the said order, the Complainant filed FA No.83/2021 and the State Commission vide order dated 23.02.2021 dismissed the Appeal and affirmed the District Forum order dated 05.01.2021 in CC No.28/2015 with following observations:

"We have heard the learned counsel for the appellant.

In the present case, a perusal of the judgment of District Consumer Commission reveals that the accident took place on 2.4.2012 and estimate on account of repair of the car was sent to the insurance company after about two and half years of the accident. Besides this, at the time of accident the car was being driven by a person named Bhopender, who confessed his guilt on 20.3.2013. In the present case, Crime No. 65/2012 under Section 363, 366 and 376 IPC is pending in court against complainant/ accused with the allegation of rape of a 8 years old girl and at the time he was caught by public inside the car with a minor girl, his car was wretched / damaged by furious public. At that time the car was parked in a ditch and the complainant was in objectionable position with the girl on the rear seat of the car.

From the above-mentioned facts, it is evident that the appeal is devoid of merits and, as such, the same is liable to be dismissed at the admission stage itself.

ORDER

Appeal is devoid of merits and, as such, the same is hereby dismissed at the admission stage itself. Let the file be consigned to record room."

(Extracted from translated copy)

9. Being dissatisfied by the Impugned Order dated 23.02.2021 passed by the learned State Commission, the Petitioner/ Complainant filed the instant Revision Petition No.455 of 2021.

10. In his arguments, the learned counsel for the petitioner/ complainant reiterated the grounds in the Revision Petition and asserted that the vehicle in question was stolen on 10.03.2012. The intimation to the police as well as the Insurance Company was given and the FIR was lodged on 02.04.2012 in respect of the stolen of vehicle. He argued that the Insurance Company rejected the claim on frivolous ground. He therefore sought to allow the Revision Petition and set aside the orders passed by the Fora below.

11. The learned counsel for respondent No.1/OP-1 argued in favour of the concurrent findings of the fora below. He further contended that factum of the theft of car subsequent

accident of the same car and confession of driver are parts of fabricated story which has been framed by the complainant in his defence so as to escape himself from the other crime and in this process a false and fake FIR has been registered. He sought dismissal the Revision Petition.

12. I have examined the pleadings and associated documents placed on record, including the orders of both the fora and rendered due consideration to the arguments advanced by both the parties.

13. Mainly the case is centred on the verification of evidence for the alleged theft/ accident and potential connection to the other criminal case, as well as whether the denial of the insurance claim constitutes a deficiency of service. However, on perusal of the impugned orders passed by the complainant has not established the factum that the vehicle was stolen.

14. The learned District Forum rendered a detailed and well-reasoned order based on evidence and arguments advanced before it. The learned State Commission, after due consideration of the pleadings and arguments, determined that no intervention is warranted on the District Forum's order. Also, there are no significant grounds are reasons are advanced by the Petitioner which entails interference with such detailed and well reasoned orders.

15. It is a well settled position in law that the scope for Revision under Section 21(b) of the Consumer Protection Act, 1986 and now under Section 58(1)(b) of the Consumer Protection Act, 2019 confers very limited jurisdiction on this Commission. In the present case, there are concurrent findings of the facts and the revisional jurisdiction of this Commission is limited. The petitioner failed to reveal anything substantial to warrant interference into the orders passed by the Fora below. After due consideration of the entire material, I do not find any illegality, material irregularity or jurisdictional error in the impugned Order passed by the learned State Commission warranting interference in revisional jurisdiction under the Act. I place reliance on the decision of Hon'ble Supreme Court in the case of '*Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd.*, (2011) 11 SCC 269.

16. In addition, Hon'ble Supreme Court in '*Sunil Kumar Maity vs. SBI & Anr.* Civil Appeal No. 432 OF 2022 Order dated 21.01.2022 observed as follows:-

"9. It is needless to say 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. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report

from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required.”

17. Similarly, in a recent order the Hon'ble Supreme Court in Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. (2022) 9 SCC 31 has held that:-

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. 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.

18. In view of the aforesaid deliberations, the detailed and well reasoned order of the learned State Commission dated 23.02.2021 does not suffer from any illegality or impropriety. Thus, no intervention is warranted. The Revision Petition No. 455 of 2021 is, therefore, dismissed.

19. Considering the facts and circumstances of the case, there shall be no order as to costs.

20. All pending Applications, if any, stand disposed of accordingly.