

## NEW INDIA ASSURANCE COMPANY LIMITED Vs SUPDU R.WAH

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** June 20, 1998

**Citation:** 1999 2 CPC 628 : 1999 2 CPJ 194 : 1999 3 CPR 104

**Hon'ble Judges:** A.A.Halbe , G.R.Bedge , Rajyalakshmi Rao J.

**Final Decision:** Appeal partly allowed

### Judgement

1. THE important question which arises for our consideration is whether the insured is entitled to recover the insured value of the stolen articles or

the actual price or value of the said articles. THE District Forum, Nasik in Complaint No. 75 of 1994 has taken the view that the insured is entitled

to recover the loss at the rate of insured value of the stolen articles. We respectfully beg to differ from this decision.

2. THE few facts shall have to be noted and they are that the respondent/complainant owns a godown of Class-I construction at Nandgaon. He

has been storing the LPG cylinders in the said godown and for that purpose, at the relevant time he had taken out the policy against theft, etc. of

the valuation of Rs. 7,50,000/- for LPG empty cylinders and Rs. 50,000/- for Gas Stoves, Regulators, spare p arts, etc. When the policy was in

force, the theft of 55 gas cylinders took place between the night of 15.6.1992 and 16.6.1992. THE complainant reported about the theft with the

Nandgaon Police Station, which recorded the First Information Report in Crime No. 1-70/92. THE Police recorded the necessary punchanama as

well as the statement of the complainant. THE complainant, thereafter preferred the claim about the loss of 55 gas cylinders @ Rs. 1,500/- per

cylinder on the ground that this was the penal amount payable to the Hindustan Petroleum Company from whom he used to receive the gas

cylinders. THE. Insurance Company came forth with the pleading that when the theft took place, the price of the gas cylinder as per M/s.

Hindustan Petroleum Corporation was Rs. 550/- and not Rs. 1,500/- or alternatively, Rs. 850/-. THE Insurance Company, therefore showed its

willingness to pay Rs. 30,250/- and called upon the complainant to discharge the voucher to that effect so as to enable the Insurance Company to

release the payment. However, the complainant did not agree and the District Forum on consideration of the facts came to the conclusion that the

complainant was entitled to the reimbursement of Rs. 82,500/- for the loss of 55 cylinders @ Rs. 1,500/- per cylinder.

The Insurance Company in this appeal has vehemently urged that HPCL price of gas cylinders was Rs. 550/- on the date on which the theft took

place. It was raised to Rs. 850/- with effect from 15.2.1993. The penal amount of Rs. 1,500/- was applicable in case there was spurious disposal

of the cylinders or the fraudulent disposal of the cylinders by the dealer or by anybody acting on his behalf. But so far as the stolen cylinders were

concerned, the complainant was entitled to reimbursement @ Rs. 550/- per cylinder. The story of the complainant that the total insurance in regard

to gas cylinders was Rs. 7,50,000/- cannot be countenanced on the ground that the insured value of the cylinders was more than Rs. 550/- per

cylinder. Before adjudicating upon the aspect of this claim, we may settle down on some of the admitted positions. The complainant had insured

the gas cylinders, gas stoves, regulators, etc. for the total value of Rs. 8 lakhs. Now, this is the valuation which has been furnished by the

complainant and which has been accepted by the Insurance Company in good faith. We are unable to persuade ourselves to hold that on the basis

of this calculation the price of the cylinder was much more than Rs. 550/- or even Rs. 850/-. It was around Rs. 1,500/-. We hold that the insured

value has no relevance so far as the claim concerns the loss of cylinders. The loss has to be calculated on the basis of the actual value or the price

of the cylinders and in that regard we may refer to two letters sent by M/s. HPCL.

Letter dated 28.12.1993 clearly reveals that the rate of gas cylinder was Rs. 850/- w.e.f. 15.2.1993. It is, however, not in dispute that the theft

took place between 15.6.1992 to 16.6.1992. The price of Rs. 850/- is therefore not available to the complainant for placing his claim. Another

letter dated 4.2.1994 clearly shows that at the time of theft, the rate applicable was Rs. 550/- per cylinder. In this regard, when we questioned the

learned Counsel for the respondent/complainant, he clearly admitted that the dealer used to recover Rs. 550/- per cylinder by way of deposit from

each consumer. This will briefly boil down to the fact that the reimbursement could be only @ Rs. 550/- and not beyond that amount. Thereafter,

by letter dated 31.1.1994, the Insurance Company offered to the complainant to discharge the vouchers and receive the cheque for Rs. 30,250/-.

It seems that this was not acceptable to the complainant and hence, the grievance as indicated above.

3. WE may here observe that Rs. 1,500/- was recoverable from the dealer on the basis of the Circular dated 1st August, 1987 issued by the

HPCL. This penal amount was recovered because of the prevailing practice amongst the dealers to deal in spurious/unapproved regulators and

giving LPG equipment for that purpose. Shortly stated, this would mean that if the dealer fraudulently or clandestinely dealt with the cylinders for the

benefit of non-registered consumers. He was liable to pay the penalty @ Rs. 1,500/- per cylinder. Here, even the Company does not dispute that

there was theft. In the letter dated 4.2.1994, the Company accepts this position, but has advised the appellant-Insurance Company to settle the

claim for Rs. 850/- per cylinder. WE are afraid that the suggestion cannot be implemented. The complainant is being entitled to reimbursement only

at the rate of prevalent price or rate of Rs.550/-per cylinder. His claim on the basis of insured value cannot be accepted. The learned Counsel for

the Insurance Company by way of illustration contended that if the house containing cycles is insured for Rs. 1 lakh, the insured cannot claim that

value for the theft of a cycle or two. WE fully concur with this suggestion and we hold that the complainant/insured is entitled to reimbursement of

the value of the loss of the article. The loss in this regard, works out at Rs. 550/- per cylinder and the offer is a valid offer and beyond that the

claim cannot be extended.

However, we further observe that the amount if recovered by the HPCL over and above Rs. 550/- per cylinder should be refunded to the

complainant. He cannot be the sufferer when the theft of the article is admitted and evinced by the first information recorded by the Police. All the

same, the claimant is entitled to Rs. 30,250/-. We cannot lose sight of one important fact that the Insurance Company has delayed the claim

beyond normal 3 months. We, therefore, view that this is an uncalled for delay. We, therefore impose cost of Rs. 3,000/- on the Insurance

Company. Accordingly, we pass the following order : ORDER

The appeal is partly allowed. The appellant shall pay Rs. 30,250/-, plus cost of Rs. 3,000/- to the respondent/complainant within 8 weeks of the

communication of this order, failing which, the Insurance Company shall pay interest @ 18% p.a. on this amount from the date of complaint.

Appeal partly allowed.