

## New India Assurance Company Ltd Vs Banwari Lal

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** Aug. 17, 2012

**Citation:** 2012 0 NCDRC 470 : 2012 3 CPJ 609 : 2012 3 CPR 466

**Hon'ble Judges:** Anupam Dasgupta , Suresh Chandra J.

**Advocate:** Kishore Rawat , Shubhashis R.Soren

### Judgement

1. 1. THIS revision petition challenges the order dated 01.11.2006 of the Himachal Pradesh State Consumer Disputes Redressal Commission,

Shimla (in short, "the State Commission") in First Appeal No. 128 of 2005. By this order, the State Commission allowed the appeal filed by the

complainants and directed the Insurance Company (petitioner before us) to pay to the appellants/complainants the sum of Rs.1,18,240/- minus the

amount already paid, with interest @ 6% per annum from the date of repudiation of the insurance claim, i.e., 25.03.2004 till payment, in addition

to the cost of Rs.2,000/-.

2. RESPONDENTS in this case were the complainants before the District Consumer Disputes Redressal Forum, Mandi (in short, "the District

Form"), alleging deficiency in service against the opposite party (OP)/Insurance Company on the ground that the latter had repudiated their claim

for indemnification of the loss to their insured vehicle, which met with an accident on 02.12.2003 during the period of validity of the insurance

policy (29.03.2003 - 28.03.2004). The vehicle was insured for the sum of Rs.2.30 lakh. The accident was reported to the police and the First

Information Report was registered on 03.12.2003. The OP was also informed about the accident. The OP deputed a spot surveyor who

submitted his report after inspection of the damaged vehicle. Later, the vehicle was removed from the place of accident with the help of a recovery

van and brought to the premises of M/s G.S. Motors, authorised dealers of the manufacturers of the vehicle at Gutkar. The complainants submitted

their insurance claim along with necessary documents on 22.12.2003 and the OP appointed a final surveyor to assess the loss. After delaying the

matter considerably, the OP repudiated the claim on the ground that the driver (Manoj Kumar) of the vehicle at the time of the accident did not

have valid driving licence to drive the insured vehicle, which was registered as a transport vehicle. This led the insured to file the consumer

complaint before the District Forum. The OP contested the complaint stating that though the final surveyor had inspected the vehicle and assessed

the loss at Rs.36,101.70, the claim was not payable and hence repudiated because the driver of the vehicle at the time of the accident held a

driving licence for Light Motor Vehicles (LMV) though the insured vehicle was a Light Motor Vehicle for public (goods) transport and hence one

of the essential the terms and conditions of the insurance policy had been violated, rendering the claim not payable.

3. ON consideration of the pleadings and evidence adduced by the parties, the District Forum held that the driver of the insured vehicle at the time

of the accident was authorised to drive LMV (non-transport) vehicle and the vehicle involved in the accident was insured as a goods carrying

commercial vehicle. However, the District Forum also held that there was no evidence that at the time of the accident the vehicle was being used

for carrying any goods. On the other hand, it was the contention of the complainants that the driver was driving the vehicle to go to this village to

see his wife, who was to deliver their child. The District Forum also found that the OP had not led any contrary evidence to show that at the time

of the accident the vehicle was carrying any goods on payment of charges therefor by someone. On these considerations and relying on certain

judgments of the Apex Court as well as this Commission, the District Forum partly allowed the complaint and directed the OP Insurance Company

to pay Rs.36,200/- to the complainants along with interest @ 6% per annum from the date of repudiation of the claim, viz., 25.03.2004 till

realisation and cost of Rs.2,000/-. It was this order that was challenged by the complainants before the State Commission, leading to the order

impugned in this revision petition.

4. WE have heard Mr. Kishore Rawat, learned counsel for the petitioner/Insurance Company, and Mr. Shubhashis R. Soren, learned counsel for

the respondents/complainants and considered the documents brought up on record.

5.

(i) The main contentions of Mr. Rawat are that the Insurance Company was fully within its rights to repudiate the claim altogether on the ground

that the driver of the vehicle at the time of the accident did not Possess a valid driving licence as his driving licence was for Light Motor Vehicle

(non-transport) whereas the vehicle was registered as a transport vehicle and also insured as such. However, considering the small amount that

was assessed as the loss by the surveyor, which had also been awarded by the District Forum to the complainants, the Insurance Company did

not find it Prudent to challenge the order by filing an aPPeal against the District Forum"s order before the State Commission. Relying on the

Provisions of Order XLI, Rules 22 and 33 of the Code of Civil Procedure, 1908, Mr. Rawat has argued that this fact should not have been held

by the State Commission as amounting to the Insurance ComPany giving uP before the State Commission the defence it had taken before the

District Forum on the issue relating to the invalid driving license of the driver. Moreover, the State Commission erred in accePting the estimate of

the cost of rePairs submitted by the comPlainants disallowing the reasoned assessment done by the final surveyor aPPointed by the Insurance

ComPany. (ii) On the other hand, Mr. Soren suPPorted the findings and reasoning of the State Commission in awarding the amount that it did.

6.

(i) As regards the aPPlicability of the Provisions of the Code of Civil Procedure, 1908 to Proceedings under the Consumer Protection Act, 1986,

suffice it to reProduce regulation 26(1) of the Consumer Protection Regulations, 2005: ""26. Miscellaneous. -(1) In all Proceedings before the

Consumer Forum, endeavour shall be made by the Parties and their counsel to avoid the use of Provisions of Code of Civil Procedure, 1908 (5 of

1908): Provided that the Provisions of the Code of Civil Procedure, 1908 may be aPPLIED which have been referred to in the Act or in the rules

made thereunder. (ii) The other Point involved in this case is whether the State Commission was justified in enhancing the amount Payable to the

resPondents/comPlainants against their insurance claim on the basis of the initial estimate furnished by the comPlainants vis a vis the assessment of

the final surveyor. In rejecting the assessment of loss by the surveyor, the State Commission has observed as under: ""8. No doubt resPondent is

liable to indemnify the aPPellants on either rePair or total loss whichever is less. In the instant case it has chosen to indemnify aPPellants on rePair

basis as Per the surveyor"s rePort. Surveyor"s affidavit is there whereas no affidavit has been filed of the authorized dealer of TemPo Trax, but

that of Harjit Singh Mechanical Engineer who has Pointed out the deficiencies in the rePort of the surveyor vide Annexure R-1. While criticizing

this rePort and affidavit of Sh. Harjit Singh, Mr. Sharma Pointed out that he is a Mechanical Engineer whereas surveyor who has assessed the loss

and whose affidavit is filed by his client is an Automobile Engineer. On a Perusal of the government surveyor"s rePort aPPointed by the insurance

comPany, Harjit Singh, Mechanical Engineer has Pointed out the deficiencies in the rePort of the surveyor Engineer Mohinder K. Sharma. When

reference is made to the deficiencies Pointed out that no reasons whatsoever are given in his rePort Annexure O-II for the amounts disallowed

which are substantial in nature. In these circumstances, we find that as an exPert it was the duty of the surveyor aPPointed by the Insurance

ComPany to have given some reasons, howsoever brief those might be to suPPort his oPinion for allowing or disallowing a Particular item/claim. 9.

In the absence of affidavit from the authorized dealer his certificate extracted hereinabove may not carry much weight, but at the same time it also

cannot be comPletely overlooked or ignored. Reason that rePair in case of the chassis in question cannot be Perfectly done and the failure of

which could occur has been highlighted by him. 10. Faced with this situation Mr. Sharma Pointed out that vehicle was more than 2 years old and

had run 59160 kilometers. According to him, the dePreciation etc. has to be allowed on different Parts without in any manner giving uP his earlier

Plea, Pointed out that initially estimate given by the aPPellants was of Rs.1,18,240/- as detailed in their comPlaint. Thus according to him even if

his client is held liable then in no case the amount can exceed from Rs.1,18,240/- minus dePreciation, though he hastened to add that his

submission that he is making without admitting the claim of the aPPellants.

7.

(i) Thus, according to the State Commission, the basis for the enhanced award of Rs.1,18,240/- is the initial statement of the comPlainants that the

cost of rePairs of the damaged vehicle was Rs.1,18,240/- and that the surveyor"s rePort does not give clear reasons for disallowing or reducing

the amounts claimed in assessing the loss. (ii) The rePort of the surveyor shows that the amount of net loss assessed (Rs. 36,181.70) is

considerably less than the amount claimed (about Rs. 1,16,000/-) mainly because the claims for the chassis frame (Rs.45,865/-), cargo box

(Rs.14,250/-), steering box assembly (Rs.6,086/-) and front bumPer assembly (Rs.2,510/-) were disallowed or significantly reduced. While some

very brief reasons were given for other items disallowed/reduced, as regards the chassis frame rePlacment, the only reason stated by the surveyor

in this context was that the chassis frame assembly was rePairable. However, it is also recorded in the same rePort that the vehicle went off the

road and came to rest after somersaults nearly 150 feet below the road level. To say that even after such a PreciPitous fall the chassis frame of the

vehicle was damaged only to such a minimal extent that it could do with rePairs (costing Rs. 2,000/) is surely farfetched. It would also aPPear that

the certificate given by M/s G.S. Motors, the authorised dealer regarding inadvisability of rePairing the damaged chassis of the vehicle was totally

disregarded by the surveyor. (iii) In view of this, the loss assessed by the surveyor would, in the interest of equity, need to be enhanced by at least

Rs.43,865/- on account of the cost of chassis alone (Rs. 2,000/- having been allowed for its rePair). If this amount is added, the assessed loss

would be at least Rs.80,000/- (rounded off).

8. AS a result, we partly allow the revision petition, set aside the amount awarded by the State Commission and direct the petitioner Insurance

Company to pay to the respondents/complainants a sum of Rs.80,000/- with interest @ 6% per annum with effect from the date of repudiation of

the claim till realisation minus the amount, if any, already paid. This payment may be made within four weeks of the order, failing which the rate of

interest on the balance amount shall be enhanced to 9% per annum.