NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2426 OF 2017

(Against the Order dated 09/11/2016 in Appeal No. 1430/2013 of the State Commission Punjab)

1. BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD.
BLOCK NO. 4, 7TH FLOOR, DLF TOWER 15, SHIVAJI MARG,
NEW DELHI-110015 .....Petitioner(s)

Versus

1. M/S. KAY VEE ENTERPRISES
THROUGH ITS PARTNER SHRI VIJAY KUMAR VATS,
VILLAGE LAKHNAUR, KHARAR-KURALI ROAD,
DISTRICT-MOHALI
PUNJAB .....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA,PRESIDING MEMBER

FOR THE PETITIONER : MR. ANKIT CHATURVEDI, ADVOCATE
FOR THE RESPONDENT : MR. MANAN BHALL, ADVOCATE

Dated : 26 March 2024

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

This Revision Petition has been filed against the impugned Order dated 09.11.2016 passed by the Ld. State Consumer Disputes Redressal Commission, Punjab in Appeal No. 1430/2013 vide which, the Appeal filed by the Complainant was allowed and the Order of the Ld. District Forum dismissing the complaint was set-aside.

2. The factual background, in brief, is that the Complainant who is engaged in the trade of both edible and non-edible items as a dealer and commission agent, procured an Open Marine Policy from the Petitioner, with policy number OG-12-1203-1005-0000001, covering the period from 01.04.2011 to 31.03.2012. Despite not receiving a copy of the policy, the Complainant operated under the belief that its terms and conditions mirrored those of policies obtained for two other affiliated firms from the Petitioner. On 07.06.2011, the Complainant contracted M/s Sahni Tanker Service to transport 30.850 tons of rice bran oil to a consignee in Kanpur Dehat. The value of the oil amounted to Rs. 16,25,795/-. The oil was being transported in a tanker bearing registration number PB-11-AF-9577 when it was involved in an accident near Agra on 12.06.2011, resulting in the loss of the entire consignment. A First Information Report (FIR) was subsequently filed under Sections 279, 304-A, 337, and 338 of the Indian Penal Code at PS Kosikalan, Mathura. Upon notifying the Petitioner's office in Agra, a surveyor was appointed to assess the damages. Following the surveyor's inspection and submission of a survey report, the Petitioner requested additional documentation for the claims process, which the Complainant promptly provided. However,

the Petitioner rejected the claim in a letter dated 23.08.2011. Subsequently, the Complainant issued a Legal Notice dated 20.12.2011, demanding payment of the claim amount within 15 days. Despite this, no response was received from the Petitioner. In response to the wrongful repudiation of the claim, the Complainant filed its complaint before the Ld. District Forum, Ludhiana.

3. The District Forum vide its Order dated 23.10.2013 dismissed the complaint. The Complainant then filed Appeal before the Ld. State Commission, which allowed the same vide the impugned Order dated 09.11.2016, and directed the Petitioner to pay to the Complainant 75% of the insured amount along with interest @8% p.a. from the date of repudiation till the date of realization. The relevant extracts of the impugned Order are set out as below -

"6. The OPs repudiated the claim of the complainant on the sole ground of overloading the tanker than its capacity. The OP took it as major breach of terms and conditions of the policy. The law has been settled by Supreme Court in "National Insurance Co. Ltd. Vs. Nitin Khandelwal" reported in 2008 III, CPC page 559, to the effect that where the breach of the terms and conditions of policy is not fundamental, the claim should be settled on non standard basis. Even in "Amalendu Sahu Vs. Oriental Insurance Co. LTd. " reported n 2010 (III) CLT 01, the Apex Court has held that relied upon the guidelines for settling such claims on non standard basis. In case of overloading of vehicle beyond licenced carrying capacity, pay claims not exceeding 75% is admissible claim. Supreme Court has held that overloading beyond licenced capacity to be a case of non standard basis for settlement and pay claim should not exceed 75% of the insured amount. We are further fortified by law laid down by National Commission in "Oriental Insurance Co. Ltd. Vs. B.Ramareddy" reported in 2006(II) CPC 274 to the effect that in case of carrying passengers beyond seating capacity, the claim should be settled on non standard basis with interest. The breach of policy is not fundamental in this case and claim is liable to be settled on non standard basis not exceeding 75% of the assured amount.

7. With regard to the next objection that complaint is not maintainable because the business of complainant was commercial, it is settled principle of law that insurance is taken for the purpose of indemnification for the loss only. This type of complaint is certainly maintainable in the case of insurance policy.

8. For the reasons stated above, we cannot affirm the order of the District Forum and the same is reversed in this appeal. We direct the insurance company to pay 75% amount of the insured amount on non standard basis to complainant alongwith interest @8% p.a. from the date of repudiation till realization. The appeal filed by the appellant is accepted and the order passed by the District Forum is set-aside by accepting the complaint of the complainant protanto."

4. Ld. Counsel for Petitioner has argued that the guidelines governing the payment of claims on a non-standard basis are not applicable to private insurance companies; That the Respondent knowingly engaged the services of Sahni Tanker Service, Patiala, and loaded rice bran oil weighing 30.810 MT into Tanker No. PB-10-AF-9577, exceeding its carrying capacity of 16 MT (as per the Registration Certificate and National Permit). The insured was aware of the vehicle's excessive loading, constituting a material violation of the Policy which justifies the repudiation of the claim; That in cases of fundamental breaches of policy terms, any consideration for settling the claim on a non-standard basis should adhere to the guidelines outlined for such scenarios. It was held by this Commission in "Bhagirath Bishnoi v. New India Assurance Co. Ltd., RP No. 3369 of 2010" that when overloading exceeds 75%

of the licensed carrying capacity of the vehicle, the insured is not entitled to compensation. The Respondent's breach of policy terms by overloading the vehicle is a critical factor to be considered; That this Commission's decision in "New India Assurance Co. Ltd. v. Parshottam Kumar I (2016) CPJ 381 (NC)" held that an insured cannot be allowed to receive both benefits for overloading the vehicle and compensation for accidental death. The State Commission erred in applying the judgment of the Hon'ble Apex Court in "Amalendu Sahoo v. Oriental Insurance Company Limited, CA No. 2703 of 2010" as demonstrated by the Commission's deviation in "Kulwant Singh v. The Managing Director United India Insurance Co. Ltd., RP No. 3320 of 2014" wherein it was held that in the latter case, the violation of conditions in "Amalendu Sahoo" (supra) was irrelevant to the damage caused to the vehicle, whereas in the present case, the delay in informing the Police was detrimental to the insurer's interests and constituted a fundamental violation justifying the repudiation of the claim.

5. The State Commission appropriately adhered to the decision of the Hon'ble Apex Court in "Amalendu Sahoo" (supra), wherein it was established that in cases of vehicle overloading beyond the licensed capacity, claims should be settled on a non-standard basis not exceeding 75% of the admissible claim; That the District Forum initially ruled in favor of the Petitioner based on the decision of this Commission in "Lakshmi Chand v. Reliance General Insurance, RP No. 2032 of 2012," and dismissed the complaint. However, the subsequent order by the Hon'ble Apex Court in "Lakshmi Chand v. Reliance General Insurance (2016) 3 SCC 100" overturned this decision, asserting that the insurance company must not only demonstrate a breach of the contract terms (which must be fundamental) but also prove that such breach caused the accident; That the Petitioner has failed to plead or prove either the occurrence of a breach of contract conditions or that the accident resulted from the alleged breach. The communication dated 18.07.2011 from the Petitioner to the Respondent merely alleges a breach of policy terms without addressing the question of whether the accident occurred due to this breach.

6. This Commission has heard both the Ld. Counsel for Petitioner and Respondent, and perused the material available on record.

7. In “Amalendu Sahoo Vs. Oriental Insurance Company Limited, Civil Appeal No. 2703 of 2010, decided on March 25, 2010”, the Apex Court had relied upon the guidelines in an earlier case in “New India Assurance Co. Ltd. Vs. Narayan Prasad Appaprasad Pathak” and allowed the Appeal by setting aside the concurrent decisions of the District Forum, the State Commission as also of this Commission, dismissing the Insurance Claim in which there had been the breach of terms and conditions of the Policy in as much as the insured at the relevant time had used the vehicle involved in the accident for hire which situation was outside the coverage under the Policy’s terms and conditions. The relevant extracts of the decision of the Hon’ble Apex Court in ultimately allowing the said Appeal in favour of the Appellant, are set out as below –

“14. In this connection reference may be made to a decision of the National Commission in New India Assurance Co. Ltd. V. Narayan Prasad Appaprasad Pathak. In that case also the question was, whether the Insurance Company can repudiate the claims in a case where the vehicle carrying passengers and the driver did not have a proper driving licence and met with an accident. While granting claim on non-standard basis the National Commission set out in its judgment the guidelines issued by the Insurance Company about settling all such non-standard claims. The said guidelines are set out below: (CPJ p.146, para 4)

“Sl.No.	***Description***	***Percentage of settlement***

(i)	***Under declaration of licensed carrying capacity.***	***Deduct 3 years' difference in premium from the amount of claim or deduct 25% of claim amount, whichever is higher.***
(ii)	***Overloading of vehicles beyond licensed carrying capacity.***	***Pay claims not exceeding 75% of admissible claim.***
(iii)	***Any other breach of warranty/ condition of policyincluding limitation as to use.***	***Pay up to 75% of admissible claim."***

8. The Petitioner's side has however relied on an earlier decision of this Commission in "IFFCO Tokio General Insurance Co. Ltd. Vs. Gaurav Bhargava [2015 SCC OnLine NCDRC1646]", in which it had relied upon the observations of the Hon'ble Supreme Court in "United India Insurance Co. Ltd. Vs. Manubhai Dharmasinhbhai Gajera & Ors. , (2008) 10 SCC 404", in which the Hon'ble Apex Court had observed in the context of the conditions in Mediclaim Insurance Policies and observed that there existed a distinction between Public Sector Insurance Companies who are bound by the directions of the General Insurance Company and the Central Government, which are however not applicable to private players in the Insurance field.
9. Relying on the aforesaid decision, this Commission in "IFFCO Tokio General Insurance Co. Ltd. Vs. Gaurav Bhargava" (supra) had dismissed the complaint of the Insured by holding that the Guidelines governing Insurance Regulations for General Insurance Public Sector Companies (GIPSA) would not apply to the Insurer in the said case which happened to be a private Insurance Company.
10. However, the aforesaid decision of this Commission pronounced on 28.1.2015, cannot be regarded as a good law in view of a subsequent Division Bench decision of this Commission in "RP No. 843 of 2016- IFFCO Tokio GIC Ltd. Vs. Anil, decided on 3.1.2022", in which the claim of the Insured was allowed after dismissing the Revision Petition filed by the Petitioner/IFFCO Tokio GIC Ltd., which was also the Petitioner in the earlier decision, relied upon by the present Petitioner/Insurance Company with the following observations inter alia-
"8. Learned counsel for the insurance co. makes an argument that the Hon'ble Supreme Court's judgment in the Amalendu Sahoo case is applicable only on public sector insurance companies and not on private sector insurance companies. She makes a submission that the public sector undertakings operate inter alia for public benefit but private sector operates only for profit. She also tries to draw a difference between government contracts and private contracts.

9. We are not at all convinced with the submission advanced on behalf of insurance co. that since it is a private sector insurance company Hon'ble Supreme Court's judgment in the Amalendu Sahoo case is not applicable on it. Pertinently, the Act 1986, for better protection of the interests of consumers, does not differentiate between public sector service providers and private sector service providers. Concomitantly, Hon'ble Supreme Court in its judgment does not in any way, implicitly or explicitly, make a distinction between public sector and private sector insurance companies. Additionally, it is for Hon'ble Supreme Court to clarify if it wishes a distinction between public sector and private sector insurance companies. Self-evidently, the principle is intended to ensure the ends of equity and justice, and as such, in matter like the one at hand, to make an inter se distinction between sets of public sector and

private sector service providers sounds illogical and self-defeating, the principle approved by Hon'ble Supreme Court by its very nature is meant to serve the larger public good and is of universal applicability. Attempting to create a laboured distinction between public sector and private sector in respect of the applicability of Hon'ble Supreme Court's judgment given in the Amalendu Sahoo case appears quite misplaced and certainly not well-conceived. Further, the judgment was passed in 2010, and we are now in 2022. There was sufficient time and opportunity for the insurance co. herein to move Hon'ble Supreme Court for whatever purpose it wanted to and in whichever manner available to it under the law. In so far as this Commission is concerned, in the obtaining facts and position, in the context of consumer justice, we make no distinction on the applicability of Hon'ble Supreme Court's judgment between public sector and private insurance companies, both being service providers, similarly placed, to be similarly treated, and to be similarly made liable in the event of being found guilty for deficiency in service or unfair trade practice or restrictive trade practice for which remedy is provided for under the Act 1986 (now the Act 2019). In cases where the vehicle was being used for hire in violation of the policy conditions, as in the instant matter, the insurance company concerned, be it in the public sector or in the private sector, cannot repudiate the claim in toto but has to settle it as non-standard claim in conformity with the principle approved and laid down by Hon'ble Supreme Court in the Amalendu Sahoo case, private insurance companies are not excepted."

11. In the light of the aforesaid subsequent decision of this Commission in RP No. 843 of 2016, this Bench has no hesitation in holding that the decision in "Amalendu Sahoo" (supra) would also apply to the Private Insurance Companies including the Petitioner in the present case.

12. Now, from his side, Ld. Counsel for the Petitioner has relied upon a decision of this Commission, dismissing "RA No. 240 of 2016 in RP No. 2234 of 2015- New India Assurance Co. Ltd. Vs. Parshotam Kumar" in which the ratio of the decision of the Hon'ble Supreme Court in "Amalendu Sahoo" (supra) was distinguished by holding that the insured vehicle in the said case was found carrying a load which was almost 70% in excess of the permissible limit, on account of which the accident had taken place due to such over loading itself, on account of which the Complainant was not entitled to any Insurance claim.

13. In addition, the Petitioner side has also cited a decision of this Commission in "RP No. 3369 of 2010- Bhagirathi Bishnoi Vs. New India Assurance Co. Ltd.", in which it was noted that according to the revised guidelines, the Insurance Company is not liable to pay any compensation if the over loading was in excess of 75%. The actual overloading in the said case having been found to be to the extent of 90.46% of the sanctioned capacity, the Revision Petition filed at the instance of Complainant/ insured was dismissed.

14. In the present case, however, it is seen that while the load capacity of the vehicle in question was 16MT, the permissible laden weight, is shown to be 25MT in its relevant National Permit for Goods Carriage No. 6318/PB-11/NP/2011. Further, it is seen that the total gross weight as found by the concerned Weight Establishment (J K Dharam Kanda) was 40830 kg i.e. 40.83 MT, which is therefore well below 75% of the total laden weight permissible.

15. Consequently, the Complainant/Respondent is found entitled to an amount not exceeding 75% of the admissible claim. The actual over-loading in the given case was to an extent of 15.83 MT over and above the permissible laden weight of 25MT, which is 63.32% excess of

the permissible load capacity. The entitlement of the Respondent/Complainant is therefore liable to be proportionately reduced to that extent.

16. Consequently, this Revision Petition is allowed after modifying the impugned Order of the Ld. State Commission by directing that instead of 75% of the "Insured amount", the Petitioner/Insurance Company is liable to pay the Respondent's claim on a non-standard basis by deducting an amount equitable to 63.32% from such insured amount, which shall be paid from the date of repudiation alongwith interest @ 8% p.a. till its actual realisation.

17. Parties to bear their own costs.

18. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

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SUDIP AHLUWALIA

PRESIDING MEMBER