

**H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA.**

First Appeal No. : 151/2018
Date of Presentation : 11.04.2018
Order Reserved on : 03.07.2023
Date of Order : 01.08.2023

National Insurance Company Limited, R/O National Highway
Shitla Mata Mandir, Sector-2, Parwanoo, Solan, H.P. through
its Administrative Officer (Legal), National Insurance Company
Limited, Divisional Office, Himland Hotel, Circular Road,
Shimla.

..... Appellant/Opposite party.

Versus

Sh. Atma Ram, S/O Sh. Ram Krishan, R/O Sameer Cottage,
Below BCS, Shimla, H.P.

..... Respondent/Complainant.

Coram

Hon'ble Justice Inder Singh Mehta, President

Whether approved for reporting?¹ Yes.

For the Appellant: Mr. Jagdish Thakur, Advocate.

For the Respondent: Mr. Dheeraj Bansal, Advocate.

Justice Inder Singh Mehta, President

ORDER

Instant appeal is arising out of the order dated
24.01.2018 passed by learned District Consumer Forum,
Shimla, in Consumer Complaint No.16/85, titled Atma Ram vs.
National Insurance Company Ltd.

¹Whether reporters of the local papers may be allowed to see the order?

Brief facts of Case:

2. Briefly, the case of the complainant is that he is owner of vehicle/car bearing No.HR-49-7154. The said vehicle was insured with the opposite party/insurance company for the period from 01.07.2014 to 30.06.2015. On 01.06.2015 complainant had parked his vehicle on NH-22 near Jarnail Welding Shop, BCS Shimla, H.P. and forgotten keys of the car inside the car. On 02.06.2015, complainant found that some unknown person had taken away his car during the intervening night between 01/02.06.2015. Upon this, complainant reported the matter to the police vide FIR No.37/2015 dated 04.06.2015, but the police failed to recover his vehicle. Intimation regarding theft was also given to the opposite party/insurance company. After completion of all formalities complainant submitted his claim to the opposite party/insurance company. The claim was repudiated illegally vide letter dated 01.12.2015 on the ground that the keys of the vehicle were kept inside the vehicle at the time of parking the vehicle. Hence, this complaint.

3. The complaint was contested by the opposite party/Insurance Company by filing a reply. It has been pleaded that the complainant himself was negligent as he (complainant) failed to take care of his vehicle and left the keys in the vehicle which is violation of insurance policy. There was no deficiency in

service or unfair trade practice. A prayer for dismissal of the complaint is made.

4. No rejoinder was filed.

5. Thereafter, the parties led evidence in support of their respective pleadings.

6. After hearing the parties, learned District Forum allowed the complaint of the complainant.

7. Feeling aggrieved by the order of learned District Forum, the appellant/insurance company has preferred the instant appeal before this Commission.

8. I have heard learned counsel for the parties and have also gone through the record carefully.

9. Learned counsel of the appellant/insurance company has submitted that the complainant was negligent by keeping the keys inside the vehicle which resulted into theft of the vehicle. He further submitted that the learned District Forum below has not directed the complainant to execute the subrogation letter in favour of the appellant/Insurance company. He further submitted that impugned order is bad in law as the same does not talk about the subrogation letter and cancellation of R/C. He prays that impugned order be set aside and appeal of the appellant be allowed. He has relied upon judgments of Hon'ble National Consumer Commission in Revision petition No. 1893 of 2016

titled Cholamandalam Ms General Insurance Company Vs. Ashish Kumar Walecha and Revision Petition No. 796 of 2017 Royal Sundaram General Insurance Company Ltd. Vs. Sh. Ashok Kumar Somani & Ors.

10. On the other hand, learned counsel for the respondent/complainant has submitted that the impugned order does not require any interference and prays that appeal of the appellant/insurance company be dismissed.

FINDING

11. The admitted fact which emerges on record is that the complainant is owner of the vehicle/car bearing No. HR-49-7154. The said vehicle was insured with opposite party/insurance company for the period from 01.07.2014 to 30.06.2015.

12. It is also an admitted fact that vehicle of the complainant was stolen during the existence of the insurance policy. Further, the vehicle in question was not recovered till date by the police or any other agency or the person.

13. The insurance company has mainly repudiated the claim of the complainant on the ground that the complainant failed to take care of his vehicle and left the keys in the vehicle which is violation of insurance policy.

14. The complainant had not intentionally or willfully left the keys of the car in the ignition of car. It was an inadvertent act on the part of the complainant and an inadvertent act at a particular moment ipso facto does not always constitute negligence. The car in question was admittedly stolen, which was beyond the control of the complainant.

15. In view of the above stated facts, the opposite party/insurance company was not legally right to repudiate the genuine claim of the complainant.

16. The judgments relied upon by the learned counsel for the insurance company are not applicable in the facts and circumstances of the present case.

17. Admittedly, the vehicle in question could not be traced till date and the learned District Commission below did not pass any order regarding handing over of subrogation letter and cancelled RC of the vehicle in question in favour of the insurance company. Consequently, the respondent/complainant is directed to handover the subrogation letter and cancelled RC of the vehicle in question in favour of the insurance company within 45 days from the date of receipt of copy of this order.

18. Appeal is disposed of accordingly and the impugned order is modified in the aforesaid term.

19. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of District Commission along with certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.

Justice Inder Singh Mehta
President

Manoj

H.P. State Consumer Commission