

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 453 OF 2018

(Against the Order dated 11/09/2017 in Appeal No. 741/2013 of the State Commission Delhi)

1. HDFC ERGO GENERAL INSURANCE COMPANY LTD.

Stellar IT Park Tower-1, 5th Floor, C-25, Sector-62,

NOIDA - 201 301

U.P.

.....Petitioner(s)

Versus

1. RAJIV KUMAR AGARWAL & ANR.

R/o. H. No. A-222, DDA Flats, Near P.S., Vivek Vihar, Jhilmil,

DELHI - 110 095

2. M/S. REGENT AUTOMOBILES

B-1/H-1, Mohan Co-operative Industrial Estate,

NEW DELHI - 110 044

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER :

MR. NAVNEET KUMAR, ADVOCATE

MR. SAURABH TIWARI, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENT NO.1 : MS. NEENA MALHOTRA,
ADVOCATE

FOR RESPONDENT NO.2 : MS. A. SUBHASHINI, ADVOCATE

Dated : 25 July 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents, as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 11.09.2017 of the State Consumer Disputes Redressal Commission Delhi (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 741 of 2013 in which order dated 03.04.2013 of District Consumer Disputes Redressal Forum VI New Delhi (hereinafter referred to as District Forum) in Consumer Complaint (CC) no 1823 of 2008 was challenged, inter alia praying for setting aside the Order dated 11.09.2017 of the State Commission.

2. While the Revision Petitioner (hereinafter also referred to as OP No.1) was Appellant and the Respondent No.1 (hereinafter also referred to as Complainant) was Respondent-1 in the said FA No. 741 of 2013 before the State Commission, the Revision Petitioner was OP-1 and Respondent No.1 was Complainant before the District Commission in the CC no.1823 of 2008. While the Respondent No.2 was OP No.2 before the District Forum (hereinafter also referred to

as OP No.2). Notice was issued to the Respondents on 16.02.2018 Parties filed Written Arguments/Synopsis on 04.07.2023 (Petitioner) and 14.10.2019 (Respondent No.1).

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that Complainant had purchased Chevrolet TAVERA bearing engine No. 3LF-49097 and chasis no. MAGAB6G766HM48508 on 23.01.2007 from the OP No.2 on Hire Purchase Agreement through ICICI Bank Ltd which was insured with OP No.1 for Rs.6,57,000/-. The Complainant had paid premium of policy of Rs.19,107/- which was effective w.e.f. 23.01.2007 to 22.01.2008.. The said vehicle was handed over to Complainant by OP No.2 on 23.01.2007. The Complainant alleged that the said vehicle was stolen from the parking lot of the residence of complainant on 22.02.2007. He lodged the report at PS Vivek Vihar and intimation of theft was also given to OP No.1 / Insurance Company through telephone / letters. However, OP No.1 repudiated the claim of the complainant vide letter dated 11.01.2008 on the ground that vehicle was being driven on the public road without any valid registration at the time of theft and terms and conditions of the policy was not complied with. Complainant also sent legal notice to OP No.1. Thereafter, Complainant filed a CC before the District Forum which was allowed. Vide Order dated 03.09.2013 the CC no. 1823 of 2008 the District Commission has allowed the Complaint and directed that Complainant is entitled to Rs.6,57,000/- along with interest @ 9% from the date of filing of claim till its realization and Rs.25,000/- towards compensation for harassment and litigation charges. Aggrieved by the said order, the OP No.1 filed an appeal before the State Commission which was dismissed vide order dated 11.09.2017. Hence the OP No.1 is before this Commission now in the present revision petition. IA No. 2202 of 2018 for condonation of delay in filing the RP was allowed.

4. Petitioner has challenged the said Order dated 11.09.2017 of the State Commission mainly/inter alia on following grounds:

- i. The order of the State Commission is erroneous and is based on conjunctures and surmises. The State Commission ignored the settled law that non registration of the insured vehicle takes the same beyond the protection of the Insurance Policy.
- ii. The vehicle was not registered on the date of theft and State Commission did not consider the fact that registration of vehicle is mandatory obligation under section 39 of the Motor Vehicle Act and absence of registration of vehicle does not entitle the insured for coverage under the policy.

iii. Respondent No.2 (Authorized Dealer) had violated the provisions of Motor Vehicles Act 1988 by handing over the insured vehicle to the Complainant without registration.

5. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

5.1 Counsel for the Petitioner repeated the points which are stated in para 4, grounds for challenging the order of the State Commission, hence the same are not being repeated here.

5.2 Counsel for the Complainant / Respondent No.1 argued that since Complainant has paid the premium of the policy, risk is covered and petitioner should indemnify the insured against the loss of the vehicle by burglary, theft and as per the law, when a policy holder purchases the policy and pays the premium, the contractual responsibility as a consumer with the Company establishes. It is the responsibility of the Dealer to hand over the registered vehicle to the complainant and, therefore, it is not the responsibility of the Complainant to do the same. Respondent No.2 has not provided any temporary registration to the Complainant when it was delivered to him and Petitioner has insured the same knowing fully well that for the said vehicle insurance was done on the basis of engine and chasis number and knowing fully well at the time of insurance that said vehicle was not having any registration number. The fact that vehicle was not having registration number at the time of insurance was known to the petitioner and the petitioner neither at the time of insurance nor in their further endorsements ever informed the Complainant that registration of vehicle is condition precedent. Petitioner did not place on record the investigator report or the material on which it has been alleged that vehicle was being driver on the public road at the time of theft and no such report was filed before the District Forum and State Commission. The burden is upon the petitioner to show that vehicle was being plying on public road.

6. The main reason for repudiating the claim by the Petitioner / Insurance Company is that on the date of incident of theft, the vehicle in question was not registered, neither temporary nor regular registration. This, according to the Petitioner, is violation of the statutory provisions of Motor Vehicle Act / Rules which takes the insured vehicle beyond the protection of the Insurance Policy. The Petitioner has relied on Section 39 of the Motor Vehicles Act 1988 in this regard, relevant extract of which is reproduced below:

“Necessity for registration.—No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner: Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.”

7. The Petitioner further contended that even the action of respondent no.2 (the authorized dealer) in delivering the vehicle to respondent no.1 (the complainant) without registration is in violation of Rule 42 of the Central Motor Vehicle Rules, extract of which is reproduced below:

“42. Delivery of vehicle subject to registration.—No holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent.”

8. According to the Petitioner, although it is permissible to insure a vehicle based on its chasis and engine number only before the registration, as insurance is a mandatory requirement even for the registration of the vehicle, under Rule 47 of the Central Motor Vehicle Rules 1989 but it is not permissible for the authorized dealer to deliver the vehicle to the purchaser without registration and / or for the purchaser to ply the car on the road without valid registration. The Petitioner has further contended that it is / was not the case of the respondent no.1 (complainant) that the insured vehicle was being carried / has been carried in a truck from dealer’s place and kept in his home garage and hence was never plied in public place. Hence, the excuse that vehicle was stationary is irrelevant. In this case, the vehicle was purchased on 23.01.2007 and remained unregistered till the date of theft i.e. 22.02.2007. In this regard, the Petitioner has relied upon following judgments of the Hon’ble Supreme Court / NCDRC.

a. **Kaushalendra Kumar Mishra Vs. Oriental Insurance Co. Ltd.** 1 (2012) CPJ 559 (NC).

b. **Classic Bakery & Anr. Vs. Tata AIG Gen. Ins. Co. Ltd. & Anr.,** FA No. 362 of 2015 decided on 26.04.2019.

- c. **Narinder Singh Vs. New India Ass. Co. Ltd. & Ors.** (2014) 9SCC 324.
- d. **The Manager, Bharati AXA GIC Ltd. Vs. B.A.Lokesh Kumar,** MANU/CF/0488/2013.
- e. **Oriental Insurance Co. Ltd. & Anr. Vs. Vikram Kanada** (RP No. 1264 of 2014)
- e. **Lokesh Kumar Vs. Bharti AXA GIC Ltd.,**SLP (C) 9053 of 2014.

9. Respondent no.1 (complainant) has not been able to give any satisfactory response as to why the vehicle in question was plied on the road without a valid registration. He has simply stated that he has paid premium for the policy in question, hence the risk is covered, stating further that petitioner had insured the vehicle knowing fully well that for the said vehicle, the insurance was done on the basis of engine and chasis number and at the time of insurance, the vehicle was not registered. Respondent no.1 argued that the vehicle in question was stolen on 22.02.2007 and immediately a complaint was lodged with the police who had sent untraced report later on. It is the case of respondent no.1 that on the date of incident of theft, vehicle was not on public road or driven on the public road but was parked at his home garage. Respondent no.1 further argued that it is the responsibility of the dealer to hand over the registered vehicle to the purchaser and not that of purchaser to do the same. Respondent no.2 has not provided any temporary registration to respondent no.1 when the vehicle was delivered to respondent no.1.

10. In **Kaushalendra Kumar Mishra** (supra), this Commission has held that use of the vehicle in violation of the law itself will take it beyond the protection of the policy. In **Classic Bakery and Anr.** (supra), in which the temporary registration of the vehicle has expired, the complainant had applied for regular registration, but not deposited the requisite fee till the date of incident and did not have a valid registration as on the date of incident, this Commission has observed that non-registration of a vehicle is not only a violation of provisions of Motor Vehicle Act 1988, but it is also a fundamental breach of terms and conditions of the Motor Insurance Policy because the policy contract becomes voidable at the discretion of the insurer due to the violation of the relevant law i.e. Motor Vehicles Act 1988. In **Narinder Singh** (supra), Hon'ble Supreme Court held that a vehicle on the public road without any registration is not only an offence punishable under section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract. In **Manager Bharti Axa General Insurance Co.** (supra) also, which has been upheld by the Hon'ble Supreme Court, this Commission observed that registration of the vehicle is a mandatory requirement of the law. In **Oriental Insurance Co. Ltd. and Anr. Vs. Vikram Kanada**, RP No. 1264 of 2014 decided on 01.09.2016, this Commission has held that irrespective of the fact, whether, the vehicle is parked or stationary, it is mandatory that the vehicle is registered, as stipulated under

section 39 of the Motor Vehicles Act 1988. In **Naveen Kumar Vs. National Insurance Company Ltd.** (RP No. 250 of 2019) decided on 26.11.2019 NCDRC decided a reference to its Bench and held that :

“9. For the reasons stated hereinabove above, the reference is answered in the following terms:

(i) If a vehicle without a valid registration is or has been used / driven on a public place or any other place that would constitute a fundamental breach of the terms and conditions of the contract of insurance even if the vehicle is not being driven at the time it is stolen or is damaged;

(ii) If a vehicle without a valid registration is used / driven on a public place or any other place, it would constitute a fundamental breach of terms and conditions of the policy even if the owner of the vehicle has applied for the issuance of a registration in terms of Section 41 of the Act before expiry of the temporary registration, but the regular registration has not been issued.”

In **Ramesh Patel Vs. Manager Bajaj Allianz General Insurance Co. Ltd. and Anr.**, this Commission held that Insurance Company cannot be held liable in any manner for payment of claim, as the vehicle did not have a valid registration at the time of incident..... However,the dealer was clearly negligent in releasing the vehicle in contravention of Rule 42 of the Central Motor Vehicle Rules 1989 and not getting the registration done..... On the other hand, the complainant is equally guilty for plying the vehicle in contravention of Section 39 of the Motor Vehicle Act 1988. (In the instant case, as the Complainant has not made any claim against the dealer, no order can be passed against the dealer.)

11. The respondent on the other hand relied upon judgments of Hon’ble Supreme Court in **National Insurance Co. Ltd. Vs. Nitin Khandelwal IV** (2008) CPJ 1 (SC), in which Hon’ble Supreme Court held “ that Appellant Insurance Company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer. The respondent’s submission that even assuming that there was a breach of condition of the Insurance Policy, the Appellant Insurance Company ought to have settled the claim on non-standard basis. This was reiterated by Hon’ble Supreme Court in **Amalendu Sahoo Vs. Oriental Insurance Co. Ltd.** in II (2010) SLT 672. In this case, the vehicle was used for hire and did not involve the issue of non registration of the vehicle. Hence, this is not applicable to

the facts of the present case. Respondent also relied upon orders of this Commission in **New India Assurance Co. Ltd. Vs. Narayan Prasad Appaprasad Pathak II** (2006) CPJ 144 NC and **United India Insurance Co. Ltd. Vs. Gian Singh II** (2006) CPJ 83 (NC) to press for settlement of claim on non standard basis even if there was some violation of conditions of Insurance Policy. However, these cases did not involve issue of non-registration of the vehicle.

12. We have carefully gone through the entire facts and circumstances of the case, rival contentions of the parties, the relevant provisions of the Motor Vehicles Act / Rules and related case laws cited by the parties and are of the view that action of respondent no.1 / complainant in taking the vehicle on public road without valid registration, either temporary or permanent, is in clear violation of the provisions of Motor Vehicle Act / Rules and as per the case laws laid down by Hon'ble Supreme Court in various cases. This will take the vehicle beyond the protection of the insurance policy. Further, we agree that insurance is a pre requisite for registration in view of Rule 47 of the Central Motor Vehicle Rules, 1989. It is a normal practice that for any new vehicle to be delivered to the purchaser and to allow the vehicle to come on the road, insurance, which is mandatory requirement, is issued based on chasis and engine number. Generally registration number is added later on either in the form of endorsement or by way of issuing revised policy document. Merely holding of a valid insurance policy but plying the vehicle in violation of Motor Vehicle Rules / Act will make the claim under insurance policy, which is valid otherwise, non admissible. Hence we find that action of the petitioner Insurance Company in repudiating the claim on the ground that on the date of incident vehicle was not registered, is justified and is a lawful action and both the Fora below committed a material irregularity, District Forum in allowing the complaint of the complainant and State Commission in dismissing the First Appeal of the Petitioner herein. Accordingly, both the orders of District Forum and State Commission are, hereby, set aside. The Revision Petition is allowed. The repudiation order dated 11.01.2008 of the Petitioner is upheld.

13. Parties to bear their respective costs.

14. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER