

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 264 OF 2015**

(Against the Order dated 17/10/2014 in Appeal No. 3256/2012 of the State Commission  
Gujarat)

1. ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.  
SUNDARAM TOWER, 45-46 WHITE ROAD,  
CHENNAI - 600 002  
TAMIL NADU

.....Petitioner(s)

Versus

1. M/S. PATEL TOURS & TRAVELS & 2 ORS.  
8 SHROFF CHAMBERS, NEAR NAVCHETAN HIGH  
SCHOOL, PALDI,  
AHMEDABAD  
GUJARAT

2. M/S PATEL INN AND TRAVELS PVT LTD.,  
8 SHROFF CHAMBERS, NEAR NAVCHETAN HIGH  
SCHOOL, PALDI,  
AHMEDABAD  
GUJARAT

3. SHRI PARIN MANSUKHLAL SHETH,  
401, JUNI RAVAL VADI, TAH, BHUJ,  
DISTRICT : KUTCH  
GUJARAT

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER**

FOR THE PETITIONER : MR. S.M. TRIPATHI, ADVOCATE.

FOR THE RESPONDENT : NEMO

**Dated : 26 March 2024**

**ORDER**

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

This Revision Petition has been filed against the impugned Order dated 17.10.2014 passed by the Ld. State Consumer Disputes Redressal Commission, Gujarat in Appeal No. 3256/2012, vide which the Appeal filed by the Respondent No. 1 & 2 was allowed and the Order of the Ld. District Forum was upheld with modified directions.

2. The factual background, in brief, is that the Complainants had booked two tickets for themselves and their luggage on a private bus service operated by the Respondent No. 1 and 2. While en route from Ahmedabad to Bhuj on 31.05.2011, the bus caught fire near Ramdevpir early in the morning of 01.06.2011. In the chaos that ensued, all passengers, including the Complainants, were forced to evacuate the bus without their luggage.

Consequently, the Complainants' luggage, containing valuable items worth Rs. 50,000/- was completely destroyed in the fire. Subsequently, the Complainants issued a Legal Notice to the Bus Agency seeking compensation for their loss, but received a frivolous reply. They were also advised to file a claim with the relevant insurance company. Dissatisfied with this response and the deficiency of service, the Complainants filed their Complaint before the Ld. District Forum, Kutch-Bhuj.

3. The District Forum vide its Order dated 14.08.2012 allowed the Complaint and directed the Respondent No. 1 and 2 to pay to the Complainant Rs. 50,000/- towards the loss of luggage with interest @ 9% p.a. from 01.06.2011 along with Rs. 3,000/- towards litigation costs. The Respondent No. 1 and 2 then filed their Appeal before the Ld. State Commission, which vide the impugned Order dated 17.10.2014 allowed the same and modified the Order of the District Forum to the extent that the Petitioner/Insurance Company was directed to pay the amount instead of the Respondent No. 1 and 2. The relevant extracts of the impugned Order are set out as below -

“10) With regard to the representations made by the parties and taking the judgment of the Learned Forum and produced documents for reading it seems that, the learned Forum has resolved that the complainant is entitled to obtain an amount of Rs.50,000/- (Rupees Fifty Thousand Only) is proper and legal and we agree with the same. The complainant/Defendant NO.1 had purchased the ticket of the bus by paying money thereof. Under the above mentioned circumstances, such he becomes the customer of the plaintiff Bus Company, further, the plaintiff has availed the insurance of the aforesaid bus from the defendant NO.2 Insurance Company and according to Section II-1(ii) under the head of Limit of Liability of the said insurance policy NO.VPU-0060246000/00 Rs.7,50,000/- is mentioned in the column of Damage to Third Party property in respect of any one claim or series of claims arising out of one event is being read which means that under the aforesaid policy the Third Party risk has been covered. According to our opinion, the complainant/defendant NO.1 has availed the service by paying for the same and hence, they are bounded to pay for the loss and damage due to deficiency in service, but the Insurance Company has taken such responsibility by accepting the premium for paying the compensation and hence, as mentioned herein above in the policy at II-1(ii) Damage to Third Party Property is shown, hence, as per our opinion the Insurance Company has by obtaining the premium has accepted the said responsibility hence, the responsibility compensation to to the pay the complainant/defendant No.1 is of the Insurance Company and not of the plaintiff.

The Learned Forum has stated at Para No.11 of its judgment as well the judgment of the Honourable Supreme Court of India and National the Commission Judgment of wherein the the Insurance Company is relying upon as per our opinion those judgments are applicable in present case because, in the aforesaid case on not hand due to the accident either the Third Party has to expired or has sustain deformity these case are with regard to the physical deformity, while case on in hand the luggage present of the complainant is destroyed in fire, any fact with regard to compensation for any physical damages is not found besides, as per our opinion Consumer Protection Act, 1986 is an additional remedy and hence, a complain can be filed before this Consumer Forum.

On the basis of the above discussion, the arguments made by the plaintiff are allowed and by resolving the judgment of the Learned Forum to be appropriate it is resolved that as the Insurance Company has accepted the responsibility to pay the compensation by accepting the premium the final order is passed as herein under.

**ORDER**

- 1) The Consumer Dispute No.3256/2012 is allowed.
- 2) By carrying out amendment in the order dated 14/08/2012 passed by the Learned Consumer Disputes Redressal Forum, Bhuj Kutch in Consumer Complaint NO.239/2011 the original opponent and 2 No.1 (M/s. Patel Tours and Travels) are released from the responsibility of payment of the amount as stated in the judgment of the Learned Forum to be paid with interest and in stead of that the defendant NO.2/original NO.3 Royal Sundaram opponent Alliance Insurance Company Ltd. will have to pay the amount as stated by the Learned Forum with interest to the complainant/Defendant No.1.
- 3) The parties to bear their own costs.
- 4) The amount paid by the plaintiff before this Commission on 11/10/2012 in No.3256/2012 Appeal returned verification back by cheque, for and on after account shall be proper payee behalf of the plaintiff signature of their learned Advocate Shri H.N.Bhrahmbhatt shall be obtained.”

4. Ld. Counsel for Petitioner has argued that the District Forum had correctly determined that the Consumer Fora lack jurisdiction to adjudicate claims by third parties against insurers for damages arising from the use of a motor vehicle. Such matters fall within the purview of Motor Accident Claims Tribunals (MACT) established under the Motor Vehicles Act (MV Act); That the insurance policy in question covers only the legal liability of the insured, and there was no evidence presented regarding the value of the loss or negligence on the part of the vehicle owner in this case; That while Section 175 of the MV Act bars the jurisdiction of Civil Courts, Section 165 excludes the Consumer Fora from adjudicating third-party claims. Therefore, the State Commission erred in assuming jurisdiction where none existed by virtue of operation of the MV Act.

5. Ld. Counsel for Respondent No. 1 & 2 has argued that the insurance policy in question includes a provision for "Damage to Third Party Property" with a specified limit of liability. According to this provision, the insurance company is obligated to compensate for damages arising from third-party property risk, such as the loss of the Complainant's luggage in the bus fire incident. The State Commission's decision to hold the insurance company liable for compensation aligns with the terms outlined in the insurance policy, and therefore, the insurance company cannot evade its responsibility in this regard.

6. Ld. Counsel for Respondent No. 3 has argued that that the provisions of Section 175 of the Motor Vehicles Act only bar Civil Courts from entertaining claims for compensation, leaving the jurisdiction of Consumer Fora intact. The Consumer Protection Act, 1986, provides additional remedies beyond those offered by other laws; That regarding the exclusion clause in the insurance policy, no such clause exists, and Section II of the policy clearly states about the Insurer's liability to pay for damages to third-party property caused by the use of the vehicle. Therefore the insurance company cannot evade its responsibility to compensate the Complainants for the damages incurred.

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

8. It was the specific contention of the Petitioner/ Insurance Company in Para 5 of its Written Statement filed before the Ld. District Forum that the claim for Third Party Property damage charges constitute Third Party Liability claim charges which are not payable as those charges can be claimed only before Motor Accident Claim Tribunal (MACT) and that the Consumer Forum has no jurisdiction to entertain the matter as per the Statutory provisions under Section 165 of the Motor Vehicles Act. The Petitioner is now aggrieved that this contention

was not considered properly by the Ld. State Commission. It has relied firstly upon the decision of the Hon'ble Supreme Court in "The Chairman, Thiruvalluvar Transport Corporation Vs. The Consumer Protection Council, I(1995) CPJ 3SC", in which the Hon'ble Apex Court had held that in a case in which the Legal Representative of the deceased who had died in an accident had filed a complaint seeking compensation from the Appellant/Transporter, the National Commission had no jurisdiction to entertain the same since exclusive jurisdiction was conferred only on the MACT constituted under the Motor Vehicles Act, 1988. The relevant extracts of the observations of the Hon'ble Apex Court in this regard are set out as below –

"5. The question which then arises for consideration is whether the National Commission had jurisdiction to entertain the claim application and award compensation in respect of an accident involving the death of Shri K. Kumar caused by the use of a motor vehicle. Clearly the Claims Tribunal constituted for the area in question, had jurisdiction to entertain any claim for compensation arising out of the fatal accident since such a claim application would clearly fall within the ambit of Section 165 of the 1988 Act. The 1988 Act can be said to be a Special Act in relation to claims of compensation arising out of the use of a motor vehicle. The 1986 Act being a law dealing with the question of extending protection to consumers in general, could therefore, be said to be a general law in relation to the specific provisions concerning accident arising out of the use of motor vehicles found in Chapter XII of the 1988 Act. Ordinarily the general law must yield to the special law. Besides, the complaint in question cannot be said to be in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided to the deceased. The expression "service" as defined by the 1986 Act means service of an description which is made available to potential users and includes the provision of facilities inter alia in connection with transport. The accident that occurred had nothing to do with service provided to the deceased. This becomes obvious when one reads the provision along with the definition of complaint in Section 2(c) and service in Section 2(0) of the 1986 Act. Complaint according to Section 2(c) means any application in writing in relation to an unfair trade practice or as a restrictive trade practice adopted by any trader or in relation to goods bought by him or agreed to be bought by him. Both these Clauses have no application whatsoever. The third clause relates to the services hired or availed of or agreed to be hired or availed of by a consumer. Therefore, at best it can be said the complaint in question related to the service hired or availed of by the deceased. The complaint in the instant case cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him but the fatal injury was the direct result of the accident on account of which he was thrown out of his seat and dashed against an iron handle of the seat in front of him. We have, therefore, no manner of doubt that this case squarely fell within the ambit of Section 165 of the 1988 Act and the Claims Tribunal constituted thereunder for the area in question had jurisdiction to entertain the same. As pointed out earlier, the 1988 Act and, in particular, the provisions in Chapter XII thereof creates a Forum before which the claim can be laid if it arises out of an accident caused by the use of a motor vehicle. That being a special law would prevail over the relevant general law such as the 1986 Act but in the instant case even that question does not arise for the simple reason that the dispute in question did not attract the jurisdiction of the National Commission, whatsoever, and the National Commission has not shown how it had jurisdiction. The issue was pointedly raised and for reasons best known to the National Commission it failed to come to grip with it. Surprisingly, there is no discussion whatsoever

in the order of the National Commission in this behalf. We are, therefore, of the opinion that the National Commission did not have jurisdiction and as Counsel for the appellant put it this was a case of unwarranted exercise of jurisdiction.

6. In fact only a few month ago i.e., on 15th April, 1993, Union of India & Anr. Vs. M. Adai Kalam, II (1993) CPJ 145 (N.C.) the National Commission held that it had no jurisdiction to entertain complaints of loss, destruction, damage or non-delivery of goods by railway on account of deficiency in service since such claims fell within the exclusive jurisdiction of the Railway Claims Tribunal constituted under the Railway Claims Tribunal Act, 1987. Yet it is difficult to comprehend how it exercised jurisdiction in the present case.”

9. The aforesaid decision was thereafter also followed by this Commission in “National Insurance Company Ltd. Vs. Bolem Rama Devi & Ors., I (2009) CPJ 273 (NC)”, in which similarly the Complaint filed by the Legal Representative of the deceased who had died in a motor accident had been allowed by the Ld. District Forum as well as the State Commission. But this Commission relying upon the aforesaid decision in The Chairman, Thiruvalluvar Transport Corporation (supra) considered the provisions of Section 165 of the Motor Vehicles Act which read as follows –

“165. Claims Tribunals (1)- A State Government may, by notification in the Official Gazette, constitute one or more Motor Accident Claims Tribunal (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicle, or damages to any property of a third party so arising, or both.

Explanation .- For the removal of doubts, it is hereby declared that the expression claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles includes claims for compensation under Section 1 [and Section 163A].”

10. Thereafter, this Commission allowed the Revision Petition by observing inter alia –  
“8. In view of the judgment of the Apex Court for seeking compensation for death and injury, the claimants have to approach Motor Accident Claims Tribunal in their State. Therefore, award of compensation to the tune of Rs. 2 lakh with interest, etc. by the Fora below is not justified. Accordingly, the revision petition is allowed. There shall be no order as to costs.”

11. The facts and circumstances of the present case are squarely covered by the ratio of the aforesaid decisions especially in “National Insurance Company Ltd. Vs. Bolem Rama Devi & Ors. (supra). In this case also, the damage had occurred to the luggage of the Complainants who were the passengers in the Bus belonging to the Respondents/Opposite Party Nos. 1 & 2, and who had no privity of contract with the Petitioner/Insurance Company at any stage. Breakdown of the Bus and destruction of the Complainants’ luggage in the consequential fire could have at best been the case of deficiency in service on the part of the concerned Transporters whose services the Complainants had hired for consideration. However, liability of the Insurance Company qua such Third Party claim could have been invoked only under Section 165 of the Motor Vehicles Act for which the appropriate Forum happens to be the concerned MACT, in view of the position of law expounded by the Hon’ble Supreme Court in the case of “The Chairman, Thiruvalluvar Transport Corporation” (supra) which was rightly relied upon by this Commission in the National Insurance Company Ltd. Vs. Bolem Rama Devi & Ors.” (supra).

12. Consequently, this Commission is of the opinion that the Ld. State Commission fell into error by modifying the well-reasoned Order of the Ld. District Forum in which liability for compensation had been rightly found to be that of the Opposite Party Nos. 1 & 2 alone, and not of the Insurance Company, which was the Opposite Party No. 3 in the Complaint Case.

13. For the aforesaid reasons, the Revision is allowed after setting aside the impugned Order of the Ld. State Commission, and affirming the original Order passed by the Ld. District Forum on 14.8.2012.

14. Parties to bear their own costs.

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

.....J  
**SUDIP AHLUWALIA**  
**PRESIDING MEMBER**