

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

FIRST APPEAL NO. 159 / 2022

Regional Branch Manager, National Insurance Company Limited
Branch Office, 5/222, Canal Road, Tikonia
Haldwani, District Nainital through its
Authorised Signatory at its Regional Office
Jai Plaza, 56, Rajpur Road, Dehradun

..... Appellant / Opposite Party

Versus

Sh. Kunwar Singh Dev S/o late Mohan Singh Dev
R/o Talla Niglat, Post Bhowali
District Nainital

..... Respondent / Complainant

Sh. Deepak Ahluwalia, Learned Counsel for the Appellant
Sh. Shailendra Pundir, Learned Counsel for Respondent

Coram: Hon'ble Mr. Justice D.S. Tripathi, President
Mr. Udai Singh Tolia, Member-II

Dated: 16/08/2023

ORDER

(Per: Justice D.S. Tripathi, President):

This appeal under Section 41 of the Consumer Protection Act, 2019 has been preferred against the impugned judgment and order dated 30.06.2022 passed by the District Consumer Disputes Redressal Commission, Nainital (in short "The District Commission") in consumer complaint No. 73 of 2020; Sh. Kunwar Singh Dev Vs. Regional Branch Manager, National Insurance Company Limited, by which the consumer complaint was allowed and the appellant – opposite party was directed to pay compensation of Rs. 2,09,500/- to the respondent – complainant on the basis of total loss assessed by the surveyor, besides to pay Rs. 10,000/- towards mental agony and Rs. 5,000/- towards litigation expenses. The complainant was held

entitled to the salvage of the vehicle. The aforesaid amount was directed to be paid within a period of 45 days', failing which the complainant was further held entitled to interest @8% p.a. from the date of impugned judgment and order till actual payment.

2. Facts giving rise to this appeal, in brief, are that according to the consumer complaint, the respondent – complainant is the registered owner of vehicle bearing registration No. UK04-CA-6536. On 13.06.2020, the driver – Sh. Deepak Singh, son of the complainant, who was holding a valid and effective driving licence, was driving the vehicle loaded with the goods of shopkeepers and coming from Bharari to Baghar. In the way, when the vehicle reached Kapkote Karmi, Bageshwar, by chance, due to non-applying of gear, the vehicle fell in a deep ditch and got completely damaged along with the goods transported therein. The online intimation of the accident was given to Kotwali, P.S. Kapkote, District Bageshwar on telephone. The vehicle was insured with the appellant – opposite party (insurance company) for the period from 22.10.2019 to 21.10.2020 at an I.D.V. of Rs. 2,70,000/-. On being intimation of accident to the insurance company, neither their official visited the spot, nor any surveyor was deputed. On 21.06.2020, the vehicle was taken to Bajrang Motors, Rampur Road, Haldwani, who gave an estimate of repairs to the tune of Rs. 5,54,115/-. The complainant lodged the claim with the insurance company on total loss basis and submitted all the required documents. However, the insurance company through letter dated 17.09.2020 on the ground that required documents have not been supplied by the complainant and further that on the date of the accident, the driving licence of the driver – Sh. Kishan Singh was not endorsed for hill roads, whereas the vehicle was being driven by Sh. Deepak Singh, which was duly mentioned in the investigation carried out by the police. Therefore, alleging deficiency

in service on the part of the insurance company, consumer complaint was filed by the complainant before the District Commission.

3. The appellant filed written statement before the District Commission, wherein it was pleaded that at the time of the accident, Sh. Kishan Singh was driving the vehicle, who was not holding driving licence to drive the vehicle in hilly area. The complainant himself has submitted the driving licence of Sh. Kishan Singh. The surveyor appointed by the insurance company in his report, has recommended for settlement of claim on net of salvage (without R.C.) basis. The online F.I.R. was lodged after five days' of the accident. The affidavits showing Sh. Deepak Singh as driver at the time of accident, is a clear manipulation on the part of the complainant in order to obtain the claim. Since there was no hill endorsement in the driving licence of the driver, hence the claim was rightly repudiated and by doing so, no deficiency in service was committed by the insurance company.

4. After giving opportunity of hearing, the consumer complaint has been decided by learned District Commission vide impugned judgment and order dated 30.06.2022, thereby allowing the consumer complaint in the above terms. Feeling aggrieved, the present appeal has been set in motion by the appellant.

5. We have heard arguments advanced by learned counsel for the parties and perused the record.

6. It is an admitted that the subject vehicle was insured with the insurance company for the period from 22.10.2019 to 21.10.2020 at an I.D.V. of Rs. 2,70,000/-. It is also admitted that the insured vehicle met with an accident on 13.06.2020, i.e., during the currency period of

the insurance policy. It is further admitted that the claim was repudiated by the insurance company through letter dated 17.09.2020, mainly on the ground that on the date of accident, there was no hill endorsement in the driving licence of the driver.

7. The only dispute in the present appeal is as to who was driving the vehicle at the time of the accident. As per the averment made in para 1 of the consumer complaint, the vehicle was being driven by Sh. Deepak Singh, son of the complainant, whereas as per the insurance company, the vehicle was being driven by Sh. Kishan Singh.

8. A perusal of the F.I.R. dated 13.06.2020, submitted online on 18.06.2020, copy whereof is Paper No. 29 as well as Paper No. 36, shows that in the said F.I.R., the name of the driver driving the vehicle at the time of the accident, was not disclosed therein. It was, however, mentioned that the driver could save himself by jumping out of the vehicle. In the information dated 22.06.2020 given to the insurance regarding the accident, copy whereof is Paper No. 30, the name of the driver at the time of accident has been mentioned as Sh. Kishan Singh Danu. On claim being reported to the insurance company, the insurance company appointed Sh. Rajendra Singh Bisht, surveyor & loss assessor, who submitted his Motor (Spot) Survey Report dated 08.07.2020 to the insurance company, copy whereof is Paper Nos. 31 to 33. In the said report, the name of the driver has specifically been mentioned as Sh. Kishan Singh S/o Sh. Bahadur Singh. In the claim form dated 12.06.2020, copy whereof is Paper No. 57, the driver's name mentioned is Sh. Kishan Singh Dev.

9. The record shows that upon lodging of online F.I.R. dated 13.06.2020/18.06.2020, investigation was carried out by the police and the investigation report dated 21.06.2020, copy whereof is Paper

No. 58, reveals that on inquiry being made by the police, some persons told that Sh. Deepak was bringing the goods of villagers and in the way, due to non-application of gear, the vehicle fell in a ditch, while certain persons told that Sh. Deepak parked the vehicle. It was also stated that in the accident, no person sustained any injury, while the vehicle got damaged.

10. From above, it is clear that in the intimation regarding accident of insured vehicle; claim form as well as spot survey report, the name of the driver driving the vehicle at the time of accident, has been mentioned as Sh. Kishan Singh. It is true that in the consumer complaint dated 12.10.2020, the complainant has stated that Sh. Deepak Singh was driving the vehicle at the time of the accident, but the same clearly appears to be an afterthought with an intent to meet the ground taken by the insurance company in the claim repudiation letter dated 17.09.2020.

11. The reasons for our above inference are that a bare perusal of the consumer complaint shows that in the same, it was nowhere mentioned that at the time of accident, Sh. Kishan Singh was sitting in the vehicle as an Assistant of the driver. This apart, there is nothing on record to show that at the time of the accident, two persons were sitting in the vehicle. In the letter dated 15.09.2020, copy whereof is Paper Nos. 70 to 71, written by the complainant to the insurance company, it was admitted by him that in the claim form submitted to the insurance company, the name of Sh. Kishan Singh, Assistant, was inadvertently mentioned as driver of the vehicle, while Sh. Deepak Singh Dev was driving the vehicle. The same clearly appears to be a version afterthought on the part of the complainant. As is stated above, there is no such pleading in the consumer complaint that at the time of accident, two persons were sitting in the vehicle or that

Sh. Kishan Singh was available in the vehicle as an Assistant / Helper. In the light of the above factual position, no reliance can be placed on the affidavit dated 15.09.2020 of Sh. Kishan Singh, copy whereof is Paper Nos. 76 & 77, as he is an interested witness in the case, being connected / related to the complainant.

12. Thus, it is amply clear that at the time of accident, Sh. Kishan Singh was driving the vehicle. The District Commission has completely fell in error by holding that at the time of accident, Sh. Deepak Singh and Sh. Kishan Singh both were sitting / available in the vehicle and further that on account of inadvertent mistake, the complainant has mentioned the driver's name as Sh. Kishan Singh in the claim form. The finding so recorded by the District Commission is beyond documentary evidence available on record.

13. There is no dispute that there was no hill endorsement in the driving licence of the driver – Sh. Kishan Singh, making him authorised to drive the vehicle on hill roads / hilly area. Rule 193 of the Uttar Pradesh Motor Vehicles Rules, 1998 provides for hill endorsement on the driving licence and the said Rule reads as under:

“193. Endorsement of certain licences for hill roads – No person shall drive a public service vehicle or a goods vehicle on a hill road unless his licence to drive such public service vehicle or goods vehicle has been endorsed by a registering authority with a permission to drive upon hill roads situated within the jurisdiction of such registering authority or in the case of a public service vehicle hired by tourists, by the registering authority of the State with which reciprocal arrangements on the point have been agreed upon.”

14. Hon'ble National Commission in the case of **Rajinder Singh Negi Vs. Oriental Insurance Company Limited; IV (2008) CPJ 250 (NC)**, cited by learned counsel for the appellant, has held that the "hill road endorsement" on driving licence is not a mere formality, which can be brushed aside in a State, which is generally hilly. In the said case, there was no hill endorsement in the driving licence of the driver at the time of the accident. It was held that the driving licence was not in conformity with the Motor Vehicles Act and relevant Motor Vehicle Rules and the absence of hill endorsement in the driving licence, would render the driving licence invalid and the insurance company was justified in repudiating the claim. Learned counsel for the appellant also cited judgment dated 30.07.2015 passed by Hon'ble National Commission in **Revision Petition No. 510 of 2015; Sh. Neelkanth Dimri Vs. Branch Manager, National Insurance Company Limited**, wherein under similar circumstances, repudiation of the claim by the insurance company was held to be justified.

15. For the reasons aforesaid, we are of the considered opinion that the impugned judgment and order passed by learned District Commission suffers from material illegality, warranting interference by this Commission. Consequently, the appeal deserves to be allowed and the impugned judgment and order passed by learned District Commission is liable to be set aside.

16. Appeal is allowed. Impugned judgment and order dated 30.06.2022 passed by the District Commission is set aside and consumer complaint No. 73 of 2020 is dismissed. No order as to costs. The amount deposited by the appellant with this Commission, be released in its favour.

17. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties.

(U.S. TOLIA)
Member-II

(JUSTICE D.S. TRIPATHI)
President

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