

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 2009 OF 2016**

(Against the Order dated 05/04/2016 in Appeal No. 676/2014 of the State Commission  
Rajasthan)

1. UNITED INDIA INSURANCE CO. LTD.  
THROUGH THE REGIONAL MANAGER, DRO-1,  
KANCHANJUNGA BUILDING 8TH FLOOR, 18,  
BARAKHAMBA ROAD,  
NEW DELHI-110001

.....Petitioner(s)

Versus

1. GIRI RAJ PRASAD  
S/O. SH. CHIRANJILAL GUJAR R/O. GUJJAR THIKRIYA  
TEHSIL GANGAPUR CITY,  
DISTRICT-SAWAIMADHOPUR,  
RAJASTHAN

.....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING  
MEMBER**

FOR THE PETITIONER :	FOR THE PETITIONER : MR.HARSH KUMAR AND MR. ANUJ KUMAR, ADVOCATES
FOR THE RESPONDENT :	FOR THE RESPONDENT: MR. SANDEEP SHARMA, ADVOCATE

**Dated : 23 April 2024**

**ORDER**

1. The present Revision Petition is filed by the Petitioner/ OP/Insurer under Section 21(b) of the Consumer Protection Act, 1986 ("the Act") against the impugned order dated 05.04.2016, passed by the learned Rajasthan State Consumer Disputes Redressal Commission, Jaipur ('the State Commission') in First Appeal No. 676/2014 wherein the State Commission allowed the Appeal filed by the Respondent/ Complainant against the order dated 21.03.2014 passed by the District Consumer Disputes Redressal Forum, Sawaimadhopur, ('the District Forum') wherein the District Forum had dismissed the Complaint.

2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

3. Brief facts of the case, as per the Complainant, are that he had purchased a Tractor MF 1035, DITR registration No.RJ25-RA-3805 on 18.06.2010 from Gehlot Motors, Gangapur City. The vehicle was insured by United India Insurance Co. Ltd vide Police No.141483/47/10/96/ 0000036 valid from 24.06.2010 to 23.06.2011. On 27.06.2010, the

Complainant went to Banas River by his Tractor to bring Sand for repairing work of his Well. While he was passing near a plant at Sawat Road, some unknown person forcefully took away the tractor from him. He intimated the Police Control Room Swaimadhapur on 28.06.2010 through Rojnamcha about the theft of the vehicle. Subsequently, the FIR was lodged on 06.07.2010 vide FIR No.135 dated 06.07.2010. He had also intimated the Insurance Company on 07.07.2010 about the theft of the vehicle and filed a claim for IDV value of the vehicle in question. However, the Insurer repudiated his claim on the ground of delay in intimation to the Insurance Company and also to the Police about the theft of the vehicle which is violation of the terms and conditions of the insurance policy. The act of OP amounts to deficiency in service and unfair trade practice. Due to repudiation, he suffered financial loss and agony. He filed a Consumer Complaint before District Forum praying for insured amount of Rs.3,60,000/- with interest and litigation costs.

4. In their reply before the District Forum, OP admitted the ownership of the Complainant with respect to vehicle No. RJ25-RA-3805 as well as issuance of the insurance policy, subject to terms and conditions laid down and notified to him. The OPs contested the theft of the vehicle in question on 27.06.2010 and asserted that the FIR dated 06.07.2010 was lodged with the considerable delay making the FIR suspicious and based on concocted story of theft only to claim unlawful claim from the OPs under the garb of the policy. The police did not find any evidence of theft of the alleged vehicle. Therefore, the claim for alleged loss of the vehicle is entirely unsubstantiated and thus the claim was rightly repudiated by the OP as there was a specific breach of condition of insurance policy. In this case, however, theft was reported to OP after 10 days delay. Therefore, the claim for alleged theft is not payable under the policy. The claim was not paid as the fact of theft has not been proved and also due to breach of specific condition of the policy. Since the theft has not been reported to OP within the period prescribed, no cause of action accrued. The repudiation of claim is legal and bonafide and cannot be termed deficiency in service by the OP.

5. The learned District Forum vide Order dated 21.03.2014 dismissed the complaint with the following observations:-

***“We have to see whether the ground on which basis the claim of theft of tractor of complainant has been repudiated by opposite party are justified or not?”***

***In the matter in hand the complainant had lodged FIR regarding theft of his tractor No. RJ25-RA3805, MF 1035 (DI) on 27.06.2010 by some unknown accused on 06.07.2010 with delay of 9 days. In the same manner, intimation of theft was given to opposite party on 07.07.2010 with delay of 10 days. In this regard photocopy of claim intimation and FIR is produced. Beside this, the photocopies of investigation report of Sh Gopal Chand Singhal and statements of witnesses has been produced on record. As per terms and conditions of insurance policy it is mandatory to give immediate intimation to insurance company and lodging immediate FIR in police regarding incidence. The complainant has not produced any justified reason for delay in intimation to insurance company and delay in lodging FIR so that delay could be***

***justified and condoned. Form all these things, it is confirmed that there was delay in intimation to insurance company and delay in lodging FIR. Our above averment is supported by the legal citations produced by the learned counsel of opposite parties. On this ground, we are of the opinion that repudiation of claim of complainant by opposite parties is justified. Beside this the opposite party has stated that the insured tractor was being used for commercial purpose. In this regard the complainant himself has stated that he had gone to bring sand for repairing work of his well of his fields. But he has not proved this with concrete evidences. Under these circumstances it could not be said that the complainant was using the tractor for agriculture purpose. On these ground, the complainant of complainant is not admissible.***

## **ORDER**

***Hence the complaint of complainant is dismissed against opposite parties. The parties will bear the cost of litigation at their own level.”***

6. Being aggrieved by the Order of the learned District Forum, the Complainant filed an Appeal No.676/2014 and the State Commission vide order dated 05.04.2016 allowed the Appeal and set aside the order of the District Forum with the following observations:

***“We heard arguments of both the parties and perused the records available on file.***

***It is not disputed that the tractor of complainant was insured with opposite party and stolen on 27.06.2010 during insurance period. The Rojnamcha report of police control room Sawaimadhapur is available in file according to which the complainant had given intimation of theft of tractor to police on 28.06.2010 at 6.30 AM but police registered FIR on 06.07.2010. The complainant had informed police on next day of the incidence but police registered FIR after eight days for which complainant cannot be held responsible. Hence in our opinion, it could not be said that there was delay in intimation to police***

***The opposite party also argued that the complainant was using the tractor for commercial purpose by way of supplying sand through it and violated the terms and conditions of insurance policy but the opposite party has not produced any such bill or cash memo to prove that the tractor was being used for commercial purpose by way of supplying sand through it.***

***The opposite party also argued that the complainant given intimation of claim to opposite party on 07.07.2010 with delay of 10 days. In our opinion, delay in intimation to insurance company in case of theft is not so important as the complainant had informed police on next day of theft. The hon'ble Supreme Court of India in the matter of National Insurance Company Vs Nitin Khandelwal, IV (2008) CPJ 01 (SC) has decided that in case of theft claim, violation of terms and conditions of insurance policy has not importance. Hence while admitting the appeal of appellant, we find it justify to allow Rs. 3,60,000/- (rupees three lac sixty thousand) IDV of the vehicle with interest and Rs.10,000/- (Rupees ten thousand )for mental agony.***

***Hence appeal of the appellant is admitted and order dated 21.03.2014 in case No. 73/2013 of District Forum Sawaimadhopur is set aside. While admitting complaint of complainant, the opposite party is ordered to pay Rs.3,60,000/- (Rupees three lac sixty thousand) the IDV of tractor with interest @ 9% w.e.f. 03.09.2012, the date of filing complainant. It will also pay Rs. 10,000/- (Rupees ten thousand) as mental agony and cost of litigations.”***

7. Being dissatisfied by the Impugned Order dated 05.04.2016 passed by the State Commission, the Petitioner / OP has filed the instant Revision Petition.

8. In his arguments, the learned Counsel for Petitioner/OP asserted that there was clear violation of terms & conditions of the insurance policy by the Complainant. The policy issued to him explicitly states that the Claim for theft of vehicle is not payable if theft is not reported to the Insurance Company immediately. However, OP was informed about the incident only on 07.07.20109 with the delay of 10 days and also lodged the FIR with the delay of 9 days which is clearly violation of the terms and conditions of the Insurance Policy in question. It is also vehemently argued that the vehicle was being used for commercial purpose. The learned Counsel argued in favor of the order passed by the District Forum and sought to set aside the impugned order dated 05.04.2016 passed by the State Commission. He cited the following judgments:

***(i) National Insurance Co. Ltd. Vs. Sukram Pal, R.P. No.3765 of 2014 decided by NCDRC on 14.01.2015;***

***(ii) Sagar Kumar Vs. United India Insurance Co. Ltd., R.P. No.2341 of 2012, decided by NCDRC on 2341 of 2012;***

***(iii) Budha Ganesh Saket Vs. New India Assurance Co. Ltd., RP No.3936 of 2012 decided by NCDRC on 21.01.2014;***

***(iv) New India Assurance Co. Ltd. Vs. Trilochan Jane, FA No.321 of 2005, decided by NCDRC on 09.12.2009.***

9. On the other hand, the arguments of the learned Counsel for the Complainant were centred on the rejection of a claim due to a delay in notifying OP about the theft. He asserted that the vehicle was stolen on 27.06.2010. The intimation of the theft was given to the police on 28.06.2010 through Roznamcha. However, the Police registered the FIR On 06.07.2010. The Intimation to the Insurance Company was also given on 07.07.2010 about the theft of the vehicle. However, the insurance company repudiated the claim citing a violation of the policy's terms and conditions. He argued in favour of the impugned order passed by the State Commission and sought to dismiss the Revision Petition. The learned counsel for the Respondent/Complainant also relies on the following judgments of the Hon'ble Supreme Court:

***(a) Jaina Construction Committee V. Oriental Insurance Company Ltd., 2022 SCC OnLine SC 175;***

***(b) Dharmender Vs. United India Insurance Co. Ltd. & Ors., Civil Appeal No.5705 of 2021 decided on 13.09.2021'***

***(c) Gurshinder Singh Vs. Shriram General Insurance Company Ltd., 2020 (11) SCC 612;***

***(d). Om Prakash Vs. Reliance General Insurance & Anr., Civil Appeal No.15611 of 2017 arising out of SLP (C) No.742 of 2015, decided on 04.10.2017.***

10. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

11. It is the contention of the Complainant that the insured vehicle was stolen on 27.06.2010. The intimation of theft was given to the Police Control Room, Swaimadhapur on the next day on 28.06.2010 through Roznamcha. The copy of this intimation certified by the official of Office Control, District Sawai Madhopur dated 17.09.2014. However, the FIR No.135 was lodged only on 06.07.2010 at PS Sawai Madhopur. As regards the intimation to the insurance company, the Petitioner/ Complainant asserted that he informed the insurance Company on 07.07.2010. On the other hand, OP asserted that there was a clear 10-day delay in intimating the OP and 9 days in lodging the FIR about the alleged theft, violating the terms and conditions of the insurance policy and they were justified in repudiating the claim.

12. In the present case, the intimation to the police station was promptly given on the next date of the incident on 28.06.2010 itself through Roznamcha of PS Swai Madhopur. It is uncontested position that the Petitioner formally intimated the insurance company in writing on 07.07.2010. In view of the judgment of the Hon'ble Supreme Court in the case of **Gurshinder Singh (Supra) and Dharmender (Supra)**, the delay in intimation to the Insurance Company is no more issue. Therefore, the insurance company is not justified in

repudiating the genuine claim of the Petitioner/ Complainant on the ground of delay intimation.

13. In view of the foregoing deliberations, the impugned order of the learned State Commission dated 05.04.2016 in Appeal No.676/2014 does not suffer any illegality or irregularity and the same is hereby upheld. Consequently, the Revision Petition No.2009 of 2016 is **dismissed**.

14. There shall be no order as to costs. All pending Applications, if any, also stand disposed of accordingly.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)**  
**PRESIDING MEMBER**