

Latest HLJ 2025 (HP)(1) NC 193

National Consumer Disputes Redressal Commission, New Delhi

Revision Petition No. 2676 of 2023 Date of Order:22.11.2024. (Against the Order dated 02/08/2023 in Appeal No. A/96/2019 of the

State Commission Himachal Pradesh)

Consumer Protection Act, 2019 Section–58(1)(b) read with Section 13 (4) of the Consumer Protection Act, 1986–Revision–Mandate to file affidavit in support of evidence–Total loss–Documentary evidence– Complaint allowed–Burden of proof on insurance company–The insurance company based its repudiation on the alleged intoxication of the deceased driver at the time of the accident, supported by a post-mortem and RFSL report–Admissibility of Report–Held–That, the veracity of the RFSL report had not been established by of any affidavit to establish the admissibility of the report itself or to either doctor who conducted the post-mortem–repudiation of the claim is not based on documentary evidence–Petition was dismissed, affirming the State Commission's order, as the insurance company did not discharge the burden of proof, and the repudiation was deemed deficient in service and unfair trade practice. (Para 8) Cases referred:

- (1) Iffco Tokio, General Insurance Co. Ltd. vs. Pearl Beverages Ltd., 2021 SCC Online SC 309.
- (2) Vikram Green Tech (I) Ltd. and others vs. New India Assurance Co. Ltd., (2009) 5 SCC 599.
- (3) Modern Insulators Ltd. vs. Oriental Insurance Co., 2000 (2) SCC 734.
- (4) Bhawna Gupta vs. United India Insurance Co., 2021 (1) CPJ 23.
- (5) Reserve Bank of India Bangalore vs. S. Mani 2005 (5) SCC 100.
- (6) Dr. J.J. Merchant and others vs. Srinath Chaturvedi 2002 (6) SCC 635.

Parties represented by:

For the Petitioner: Ms. Aishwarya, Advocate (VC). For the Respondent: Ms. Aruna Mehta and Mr. Sanjeev Mehta, Advocates.

PER SUBHASH CHANDRA

O R D E R:

1. This revision petition under Section 58 (1)(b) of the Consumer Protection Act, 2019 (in short, the "Act") challenges order dated 02.08.2023 of the Himachal Pradesh State Consumer Dispute Redressal Commission, Shimla (in short, "State Commission") setting aside order dated

27.02.2018 of the District Consumer Dispute Redressal Forum, Mandi (in short, "District Forum").

2. We have heard the learned counsel for the parties and perused the records carefully.

3. The relevant facts of the case, in brief, are that the petitioner had insured the respondent's Mahindra Bolero Pickup Jeep bearing registration no. HP 65-4188 under an Auto-Secure Commercial Vehicle Package Policy (the 'Policy'). The insurance was valid from 13.04.2014 to 12.04.2015 and the Insured Declared Value (IDV) was Rs. 5,08,250/-. The petitioner had employed one Hukum Chand as driver. The vehicle met with an accident on 26.11.2014 on Mandi-Pandu Road. An FIR was registered on the same date with Police Station, Mandi. The driver expired in the accident. A claim for settlement on total loss basis was filed by the petitioner which was repudiated on 15.05.2015 on the ground that ethyl alcohol was detected in the blood sample of the deceased driver. The District Forum, vide order in Consumer Complaint No. 134/2015 dated 27.02.2018, held that as per the Surveyor's Report the deceased driver had been detected with 159.98 mg% of ethyl alcohol in his blood as per blood sample taken and sent to RFSL, Mandi for examination as part of the post-mortem examination. The District Forum held that in view of the fact that the vehicle was being used in breach of policy conditions and Section 185 of the Motor Vehicles Act 1988, the repudiation of the claim did not constitute deficiency in service or unfair trade practice on the part of the respondent. The complaint was therefore dismissed without costs.

4. In appeal, the State Commission returned the finding that the petitioner/insurance company had failed to discharge the onus of proving that the driver was driving the vehicle in a drunken state since the respondent had denied the allegations that her driver was under the influence of liquor at the time of the accident. The State Commission noted that the petitioner/insurance company had placed on record a copy of the post-mortem report of the deceased driver but had not filed the affidavit of the doctor who had conducted the medical examination and post-mortem of the driver to prove that he was the author of the post-mortem report or that he had sent the viscera of the deceased driver to RFSL, Mandi. It was held that the fact that the viscera sent for chemical analysis was not established to be that of the deceased driver the burden of proof for which lay upon the petitioner/ insurance company, and which had not been discharged, the repudiation was bad in law. It was held by the State Commission that the petitioner/insurance company had merely stated that the driver was under the influence of liquor and that a bald statement was not sufficient to discharge the onus of proof upon it. It was, therefore, held that the repudiation of the claim on the ground that the driver was under the influence of liquor at the time of accident was not acceptable and hence the repudiation of the claim amounted to deficiency in service and unfair trade practice. It was further held that the surveyor appointed by the insurance company, one Rajendra Kumar Sharma, had assessed the loss of Rs. 4,57,750/- on net of salvage basis. The failure of the petitioner/insurance company to pay this amount to the complainant while repudiating a genuine claim

was held to be deficiency in service by the State Commission. The order of the District Forum was set aside and the petitioner/insurance company on the basis of the assessment by the surveyor directed to pay Rs. 4,57,750/- along with interest at 9% from the date of filing of the complaint till realization along with Rs. 20,000/- as compensation and Rs. 10,000/- as litigation expense within 45 days from the date of receipt of the order. This order is impugned before us,

5. The petitioner contended that the repudiation of the claim was on the basis of the RFSL report dated 13.05.2015 following the post-mortem of the deceased driver. State Commission had erred, according to the respondent, in ignoring the terms and conditions of the policy as per which, under Section 12D, "any accident, loss or damage suffered whilst the insured or any person driving the vehicle with the knowledge and consent of the insured is under the influence of intoxicating liquor or drug" was excluded. Reliance was placed on the ratio laid by the Hon'ble Supreme Court in *Iffco Tokio, General Insurance Co. Ltd. v Pearl Beverages Ltd.*, 2021 SCC Online SC 309 which held that under Section 185 of the Motor Vehicles Act, in view of the contention of the insurer that the driver was driving the vehicle under influence of alcohol, it would not be open to the insurer to set up the case of exclusion.

6. It was contended that the Surveyor's Report and the repudiation of the claim was based on the Post-mortem and RFSL reports, which indicated that not only was there consumption of alcohol but the level of ethyl alcohol in the blood of the deceased driver was far beyond the permissible limits. It was, therefore, contended that the State Commission had exceeded its jurisdiction and that it had granted relief in excess of what was covered by the insurance policy.

7. Reliance was placed on the Hon'ble Supreme Court's decision in *Vikram Green Tech (I) Ltd. and others Vs. New India Assurance Co. Ltd.*, (2009) 5 SCC 599 wherein it was held that "the endeavour of the court must always be to interpret the words in which the contract is expressed by the parties and the court, while construing the terms of policy is not expected to venture into extra liberalism that may result in rewriting the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy."

8. On the other hand, it is the case of the respondent that the petitioner/insurance company had failed to discharge the burden of proof with regard to establishing that the deceased driver was under the influence of liquor while driving the vehicle at the time of the accident since no affidavit of the person who had taken the viscera or the doctor who conducted post mortem or the person who prepared the RFSL report had been brought on record. It was averred that since the respondent had specifically denied the driver being under the influence of alcohol, therefore the onus of proving the same lay on the petitioner. It was also submitted that the petitioner had not provided the terms of the policy and that only the cover note had been supplied. Therefore, as held in *Modern Insulators Ltd. Vs. Oriental Insurance Co.*, 2000 (2) SCC 734 by the Hon'ble Supreme Court, if terms and conditions were not supplied to the insured, then the same could not be considered part of the contract. Reliance was also placed on the State Commission's own order in *Bhawna Gupta vs United India Insurance Co.*

(FA no.192 of 2019 dated 04.11.2020) 2021 (1) CPJ 23 Himachal State Commission which held that a photocopy of the RFSL report was not good evidence. No certified copy of the police record or a copy obtained under RTI had been brought on record. Therefore, the Xerox copy of the said RFSL report was not admissible. Reliance was placed on the judgment of the Hon'ble Supreme Court in *Reserve Bank of India Bangalore Vs. S. Mani* 2005 (5) SCC 100 to argue that pleading not substantiated by evidence could not be considered as admissible evidence. Reliance was also placed on *Dr. J.J. Merchant and others Vs. Srinath Chaturvedi* 2002 (6) SCC 635 as per which under Section 13 (4) of the Consumer Protection Act, 1986 an affidavit was required to be filed by the party with regard to documents being relied upon. It was argued that

the State Commission had failed to do so. It was, therefore, contended that the order of the District Forum had been rightly set aside and that the order of the State Commission be upheld.

9. From the foregoing it is evident that the claim of the respondent that an Auto-secure Commercial Vehicle Package Policy was obtained by the petitioner, by the respondent for her Mahindra Bolero Pick-up jeep. It is not in dispute that the Policy was valid on the date of accident i.e. 26-11-2014. It is also not in dispute that the driver Hukum Chand was in the employ of the respondent. The moot point is whether the said Hukum Chand was under the influence of liquor at the time of the accident while driving the vehicle and whether the claim was excluded for this reason.

10. Based on the post-mortem report and the RFSL report dated 13.05.2015, the surveyor concluded that the driver was under the influence of liquor at the time of the accident. The RFSL report which recorded that the ethyl alcohol content in the blood of the deceased driver was 159.98 mg%. The repudiation by the petitioner is based on the condition of the policy. However, the respondent contends that the policy itself was not valid since only the cover note had been shared with her and therefore the terms and conditions could not be held against her. It was also argued that the veracity of the RFSL report had not been established by way of any affidavit to establish the admissibility of the report itself and that no evidence had been led on affidavit relating to either the doctor who conducted the post-mortem or the concerned at the RFSL facility to establish that the viscera was that of the deceased Hukum Chand, the driver. It was, therefore, argued that the repudiation of the claim was wrongly done by the petitioner/insurance company. It was submitted that while the District Forum had failed to appreciate its contentions, the State Commission had rightly held in its favour.

11. From the foregoing it is apparent that no evidence has been led to establish that the viscera belonged to the deceased Hukum Chand. The surveyor and the insurance company have relied upon a report which is not established as a document of the RFSL. It is not denied by the insurance company that the policy document in its entirety had not been shared with the insured.

12. In light of the fact that the repudiation of the claim is not based on documentary evidence, the revision petition is liable to fail. We find no reason to disturb the findings of the State Commission in appeal No. A/96/2019, dated

02.08.2023. The revision petition is therefore dismissed and the order of the State Commission affirmed. There shall be no order as to costs. Pending IAs, if any, stand disposed with this order.