

SUPREME COURT OF INDIA

National Insurance Co. Ltd.

Vs.

Nitin Khandelwal

C.A.No.3409 of 2008

(Tarun Chatterjee and Dalveer Bhandari JJ.)

08.05.2008

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.
2. This appeal is preferred against the order dated 21st September, 2006 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the National Commission) in R. P. No. 2638 of 2006.
3. Brief facts of the case which are necessary to dispose of the matter are recapitulated as under:-
4. The respondent Nitin Khandelwal had purchased the vehicle Mahindra Scorpio bearing No.HR-18-8743 on 28.5.2003. On 27.9.2003, he had sent his vehicle to bring his children from Jaipur. On the way, some unknown people stopped the vehicle, tied the driver and dumped him on the way and snatched away the vehicle. The report was lodged by the driver at the police station and the appellant Insurance Company was informed of the same. Thereafter, on 2.10.2003, the respondent filed an insurance claim, which was rejected by the Insurance Company.
5. The appellant's version was that the vehicle was being used as a taxi and the four passengers had hired the vehicle for going from Gwalior to Karoli and those passengers, on the way, snatched the vehicle from the driver. The vehicle was insured for personal use and it was being used by the respondent as a taxi. According to the appellant, the respondent had violated the terms of the insurance policy and, therefore, rejected the claim. The respondent filed a complaint before the District Consumer Disputes Redressal Forum, District Gwalior, M.P. (hereinafter referred to as "the District Forum").
6. According to the District Forum, the respondent had violated the terms and conditions of the insurance policy and that the appellant Insurance Company was justified in rejecting the

claim of the respondent. The respondent, aggrieved by the said order of the District Forum, filed an appeal before the M.P. State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission").

7. The State Commission observed that the theft of the vehicle has not been denied by the Insurance Company. However, the claim of the respondent under the policy was repudiated by the Insurance Company solely on the ground that the vehicle though registered and insured as a private vehicle, at the time of theft, was being used as a taxi for carrying passengers on payment. So, the said vehicle was being used contrary to the terms and conditions of the insurance policy.

8. The State Commission placed reliance on the decision of *United India Insurance Co. Ltd. v. Gian Singh*¹ wherein it was held by the National Commission that in a case of violation of condition of the policy as to the nature of use of the vehicle, the claim ought to be settled on non-standard basis. Similar view was taken by the State Commission in Appeal No.1463 of 2004 (Track Way Securities & Finance Pvt. Ltd. v. National Insurance Co. & Others) decided on 23.3.2006. Relying on the said judgment, the State Commission observed that the claim of the respondent herein ought to be settled on non-standard basis and the complainant respondent was thus entitled to the 75% of the sum insured. Consequently, the State Commission directed the appellant herein to pay 75% of the amount i.e. Rs.4,83,000/- with interest @ 6% from the date of the complaint till payment.

9. The appellant, aggrieved by the said order of the State Commission, preferred a revision petition before the National Consumer Disputes Redressal Commission (hereinafter referred to as "the National Commission"). The National Commission, after considering the fact that the vehicle was used for commercial purpose, granted reimbursement on the non-standard basis as per the policy of the insurance company and observed that the order of the State Commission did not call for any interference.

10. The appellant, aggrieved by the impugned order of the National Commission, preferred this appeal before this court.

11. Pursuant to the notice issued by this court, the respondent has filed a comprehensive counter affidavit. The appellant relied upon the judgment of this court in the case of *National Insurance Co. Ltd. v. Kusum Rai & Others*². According to the respondent, this case has no application so far as the instant case is concerned. The aforesaid case relates to the accident where the main or contributory cause of accident was negligent driving at the relevant time of the accident. The instant case relates to the theft of the car. It is not a case of third party risk. In the instant case, the vehicle has not been recovered. It is also incorporated in the counter affidavit that it is not disputed that the vehicle was comprehensively insured. Since the vehicle in question had been stolen, therefore, in the case of theft of vehicle, the breach of condition is not germane. In Kusum Rai's case (supra), the cases of *Jitendra Kumar v. Oriental Insurance Co. Ltd. & Another*³ and *National Insurance Co. Ltd. v. Swaran Singh & Others*⁴ were also considered. This court in Jitendra Kumar's case, in paras 9 and 10, observed as under:-

"9. The question then is; can the Insurance Company repudiate a claim made by the owner of the vehicle which is duly insured with the company, solely on the ground that the driver of the vehicle who had nothing to do with the accident did not hold a valid licence? The answer to this question, in our opinion, should be in the negative. Section 149 of the Motor Vehicles Act, 1988 on which reliance was placed by the State Commission, in our opinion, does not come to the aid of the Insurance Company in repudiating a claim where the driver of the vehicle had not contributed in any manner to the accident. Section 149(2)(1)(ii) of the Motor Vehicle Act empowers the Insurance Company to repudiate a claim wherein the vehicle in question is damaged due to an accident to which driver of the vehicle who does not hold a valid driving licence is responsible in any manner. It does not empower the Insurance Company to repudiate a claim for damages which has occurred due to acts to which the driver has not, in any manner, contributed i.e. damages incurred due to reasons other than the act of the driver.

10. It is the case of the parties that the fire in question which caused damage to the vehicle occurred due to mechanical failure and not due to any fault or act, or omission of the driver. Therefore, in our considered opinion, the Insurance Company could not have repudiated the claim of the appellant."

12. Similarly, in Swaran Singh's case (supra), this court has held as under:

"If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

13. In the case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle breach of condition is not germane. The 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 submitted 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. The Insurance Company cannot repudiate the claim in toto in case of loss of vehicle due to theft.

14. In the instant case, the State Commission allowed the claim only on non-standard basis, which has been upheld by the National Commission. On consideration of the totality of the facts and circumstance in the case, the law seems to be well settled that in case of theft of vehicle, nature of use of the vehicle cannot be looked into and the Insurance Company cannot repudiate the claim on that basis.

15. In the facts and circumstances of the case, the real question is whether, according to the contract between the respondent and the appellant, the respondent is required to be

indemnified by the appellant. On the basis of the settled legal position, the view taken by the State Commission cannot be faulted and the National Commission has correctly upheld the said order of the State Commission.

16. The State Commission has allowed only 75% claim of the respondent on non-standard basis. We are not deciding whether the State Commission was justified in allowing the claim of the respondent on non-standard basis because the respondent has not filed any appeal against the said order. The said order of the State Commission was upheld by the National Commission.

17. In our considered view, no interference is called for. This appeal is accordingly disposed of. In the facts and circumstances of the case, the parties are directed to bear their own costs.

¹[2006 CTJ 221 (CP) (NCDRC)]

²(2006) 4 SCC 250

³(2003) 6 SCC 420

⁴(2004) 3 SCC 297