

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 645 OF 2021

(Against the Order dated 04/02/2021 in Appeal No. 985/2019 of the State Commission
Rajasthan)

1. BHARTI AXA GENERAL INSURANCE COMPANY LTD.
MERCANTILE HOUSE 7TH FLOOR 15 KASTURBA
GANDHI MARG NEW DELHI 110001
CENTRAL
DELHI

.....Petitioner(s)

Versus

1. MOOL CHAND LALWANI
S/O SHRI LAL CHAND LALWANI, R/O 3 DHA 6 JAWAHAR
NAGAR, JAIPUR, RAJASTHAN
JAIPUR
RAJASTHAN

.....Respondent(s)

BEFORE:

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

FOR THE PETITIONER :	FOR PETITIONER: MR. NAVNEET KUMAR AND MR. HARSH SHARAN, ADVOCATES
FOR THE RESPONDENT :	FOR RESPONDENT: MR. AVNISH DAVE AND MR. AADHAR SAHA, ADVOCATES

Dated : 25 November 2024

ORDER

1. This Revision Petition No.645 of 2021 is filed under Section 21(b) of the Consumer Protection Act, 1986 (the Act) challenging the order of Rajasthan State Consumer Disputes Redressal Commission, Jaipur ('State Commission') dated 04.02.2021. Vide this order, the learned State Commission dismissed Appeal No.985 of 2019 and upheld the order of the learned District Consumer Disputes Redressal Forum, Jaipur-First, Jaipur ('District Forum') dated 22.08.2019 wherein the complaint was allowed on non-standard basis.

2. As per report of the Registry, there is 107 days delay in filing this Revision Petition. As the delay occurred during the suspended period of limitation due to Covid-19, the same is treated to have been filed within limitation. Therefore I.A. No. 6163 of 2021 is allowed.

3. For convenience, the parties in the present matter are being referred to as mentioned in the Complaint before the District Forum. Mool Chand Lalwani is complainant (Respondent herein) whereas Bharti Axa General Insurance Co. Ltd. is the Opposite Party (OP - Petitioner herein).

4. Brief facts of the case, as per the complainant, are that he insured their vehicle No. RJ 14 CV 0841 with the Opposite Party (OP) (Insurer) from 29.05.2013 to 28.05.2014. On 23.01.2014, the vehicle was stolen and on 24.01.2014 a First Information Report (FIR) was filed. The complainant informed the insurance company of the theft via their toll-free number on 23-24.01.2014. The insurance company's authorized recovery agent requested documents and the vehicle's key, which the complainant provided. However, the insurance company did not pay the claim amount, which the complainant alleged shown a deficiency in service and unfair trade practice. Being aggrieved the complainant filed a consumer complaint before the District Forum sought relief accordingly.

5. The OP insurer in their written version filed before the District Forum, confirmed the policy validity but argued that, upon notification of the theft, they appointed an investigator. The investigation revealed that at the time of theft, the vehicle had been left unsecured, without supervision, and with the key in it, which they claim violated policy conditions. Based on this alleged violation, the insurance company repudiated the claim, arguing there was no deficiency in service and requesting that the complaint be dismissed.

6. The District Forum, vide Order dated 22.08.2019, allowed the complaint and directed the Opposite Party as under:

ORDER

Consequently the complaint of the complainant against the opposite party being admitted, the opposite party is ordered to pay Rs. 7,07,513/- within one month and interest @ 9% per annum from the date of claim repudiation dated 19.3.14 till realisation.

Keeping in view the facts of the case the parties will bear cost on their own.
(Extract from translated copy)

7. On appeal, the State Commission, vide order dated 04.02.2021, dismissed the Appeal No.985/2019 and affirmed the Order dated 22.08.2019 of the District Forum with the following observations:

“05. We considered the arguments of both the parties, studied the judicial citations furnished on behalf of both the parties and perused the File.

06. In the matter under consideration this fact is completely undisputed that at the time of incident the vehicle of the respondent-complainant was insured with the appellant-opposite party Insurance Company. However, in this matter this fact has come that at the time of incident the respondent-complainant had left his vehicle with key put in it but in such type of matter only on this fact that the insured left his vehicle with key put

in it and during that period the vehicle stood stolen, violation of condition No. 5 of the insurance Policy cannot be deemed until the insurance company proves that by the insured knowingly violation of conditions would have been done. Ld. District Forum also in its conclusion treating the leaving of key in the vehicle by the respondent-complainant not leaving willingly and admitted dismissal of entire claim by the appellant-opposite party Insurance company. In the citations produced by Ld. Advocate for Appellant-Non applicant, New India Assurance Co. Ltd. Girish Gupta and New India Assurance Co. Ltd. Vs Pravin Krushna Takari(both as above), by the National Consumer Disputes Redressal Commission this opinion has been expressed. In this matter more or less this is also undisputed that the respondent-complainant gave information of theft of his vehicle to concerned Police Station and Insurance Company both immediately. Under such circumstances only to leave by putting the key in the vehicle and during that period theft to have taken place, in support of the appellant-opposite party insurance company this act of the respondent-complainant of violation of the condition of insurance policy "convincing carefulness/security" cannot, be deemed. Keeping in view this act of the respondent-complainant Ld. District Forum by not awarding entire claim amount passed order for payment of 75% amount on non-standard basis, which according to our humble opinion is not worth to say wrong in the facts/circumstances of the case.

07. The judicial citations which the appellant-opposite party insurance company have produced, in it in most of the matters the theft of commercial vehicle is involved, in which taking the ground that by the insured or by the driver deficiency caused in security of the vehicle claim not payable have admitted. In our humble opinion on behalf of the appellant-opposite party insurance company the judicial citations filed, due to difference in facts/ circumstances are not worth effective in this matter.

08. Therefore, as per above discussions this appeal filed by the appellant-OP insurance company against the respondent-complainant is not worth admission, is disallowed. The parties themselves will bear cost of appeal."

(Extract from translated copy)

8. Being dissatisfied from the impugned State Commission order, the Petitioner/OP filed the instant Revision Petition.

9. The learned Counsel for the Petitioner-Insurer argued that there is negligence on the part of the complainant /driver of the vehicle while left the key unattended in the vehicle at the time of stolen. The burden is on the complainant to prove his allegations in the complaint. He breached the conditions No.4 stipulated in the Insurance policy. He sought to allow the present Revision Petition and set aside the concurrent finding of the Fora below. He has relied upon the following judgments:

A. Shakuntla Devi vs. Reliance General Insurance & Ors., RP No.2091 of 2012 decided on 05.06.2015 by the NCDRC;

B. Bajaj Allianz General Insurance Co. Ltd. v. Astha Cement Pvt. Ltd., RP No.2765 of 2015 dated 18.08.2020 by NCDRC;

C. Reliance General Insurance Company Ltd. vs. Nitin Lamba, RP No.1480 of 2016 dated 31.08.2016 by NCDRC;

D. Export Credit Guarantee Corpn. of India Ltd. vs. Garg Sons International, 2013 (1) Scale 410;

E. Kanwarjit Singh Kang vs. M/s. ICICI Lombard General Insurance Co. Ltd. & Anr., Petition(s) for SLP (C) No(s). 6518/ 2018, decided on 29.03.2022 by the Hon'ble Supreme Court.

10. In his arguments, the counsel for Respondent/Complainant argued in favour of the concurrent findings of the Fora below. He sought to dismiss the present Revision Petition with costs. He relied upon the following judgments:

A. Sunil Kumar Maity vs. State Bank of India & Anr., Civil Appeal No.432/2022, decided on 21.01.2022 by the Hon'ble Supreme Court;

B. Sharda Associates vs. United India Insurance Company Ltd., Civil Appeal No.4910 of 2022, decided on 25.07.2022;

C. Rubi Chandra Dutta vs. United India Insurance Company Ltd., Civil Appeal No.2588 of 2011.

D. Sukhwinder Singh v. cholamandalam MS General Insurance Company Ltd., 2013 SCC OnLine NCDRC 770;

E. New India Assurance Company Ltd. vs. Praveen Krushna Tatkari, 2017 SCC OnLine NCDRC 250;

F. Rujdar Khan vs. National Insurance Company Ltd., 2023 SCC OnLine NCDRC 734;

G. National Insurance Co. Ltd. vs. Kamal Singhal, IV (2010) CPJ 297 (NC);

H. Bajaj Allianz General Insurance Co. Ltd vs. M/s. Sagar Tour & Travels, 2011 SCC OnLine P&H 10098; (2012) 5 RCR (Civil) 705;

I. New India Assurance Company Ltd. v. Girish Gupta, 2014 SCC OnLine NCDRC 400;

J. Oriental Insurance Company Ltd. v. Shree Balaji Steel & Cement Traders, 2017 SCC OnLine NCDRC 181;

K. National Insurance Company Limited v. Nitin Khandelwal, (2008) 11 SCC 259.

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

12. The central issue is whether leaving the key in the vehicle constituted a fundamental breach of Condition No.4 of the insurance policy, warranting a total repudiation of the claim?

13. It is an admitted position that the Complainant insured his vehicle with the OP from 29.05.2013 to 28.05.2014, paying Rs.32,585.94 as premium. The vehicle was stolen on 23.01.2014, and an FIR was lodged promptly. There is no dispute that the IDV of the insurance vehicle is Rs.9,43,350/- as per the Policy in question. The insurance claim was filed on 25.02.2014, but the insurer repudiated the claim on 19.03.2014, citing a violation of Condition No. 4 of the policy because the driver left the key in the vehicle. The Petitioner's/OP Counsel defended the repudiation, arguing that the complainant had breached Condition No. 4 of the policy by leaving the key in the vehicle, and that this negligence justified the rejection of the claim. They cited relevant judgments supporting their stance that the insurer was justified in its actions. On the other hand, the complainant's counsel argued that even if there was a breach of the policy, the insurer should have settled the claim under the principle of non-standard settlement. The Counsel relied on various judgments to support the claim that the repudiation was unjustified.

14. In the recent judgment, the Hon'ble Supreme Court in the case of ***Ashok Kumar versus New India Assurance Co. Ltd., 2023, LiveLaw (SC) 587*** has held as under:

*“14) It is well settled in a long line of judgments of this Court that any violation of the condition should be in the nature of a fundamental breach so as to deny the claimant any amount. [see **Manjeet Singh vs. National Insurance Company Limited and Another, [(2018) 2 SCC 108]**; **B.V. Nagaraju vs. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, [(1996) 4 SCC 647]**, **National Insurance Co. Ltd. Vs. Swaran Singh and Others, [(2004) 3 SCC 297]** and **Lakhmi Chand vs. Reliance General Insurance, [(2016) 3 SCC 100]**]*

15) It is an admitted position in the Repudiation Letter and the Survey Report that the theft did happen. What is alleged is that the Claimant was negligent in leaving the vehicle unattended with the key in the ignition. Theft is defined in Section 378 of the IPC as follows:-

“378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.”

As will be seen from the definition, theft occurs when any person intended to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking. It is not the case of the Insurance Company that the Claimant consented or connived in the removal of the vehicle, in which event that would not be theft, in the eye of law. Could it be said, as is said in the repudiation letter, that the theft of the vehicle was totally the result of driver Mam Chand leaving the vehicle unattended with the key in the ignition? On the facts of this case, the answer has to be in the negative. It is noticed in the repudiation letter that the driver Mam Chand had, after alighting from the vehicle, gone to enquire about the location of Mittal's Farm and that after he went some distance, he heard the sound of the starting of the vehicle and it being stolen away. The time gap between the driver alighting from the vehicle and noticing the theft, is very short as is clear from the facts of the case. It cannot be said, in such circumstances, that leaving the key of the vehicle in the ignition was an open invitation to steal the vehicle.

*16) The Court of Appeal in England, in the case of **David Topp vs. London Country Bus (South West) Limited**, [1993] EWCA Civ 15 had occasion to consider the issue, though in the context of liability of the owner of the vehicle for a fatal accident. The facts as set out in the judgment are as follows:-*

"In accordance with usual practice, the driver, Mr. Green, left the bus in that lay-by at the bus stop at about 2.35 p.m. on 24th April 1988. He left it unlocked, with the ignition key in it. He had then a 40 minute rest period before resuming his duties, driving a different bus. There was an arrangement under which the drivers could spend their rest period in the hospital. 23 The expectation was that another driver, about eight minutes after Mr. Green had left the bus in the lay-by, would pick the bus up and drive the same route. But the other driver, who should have picked the bus up at about 2.43 p.m., did not do so because he was feeling unwell. His shift would have been non-compulsory overtime, and he did not report for his overtime. The bus therefore remained in the lay-by. Mr. Green saw it there later and reported that it was still standing there. Therefore, there is no doubt that the depot knew that the bus was there. But, possibly because of shortage of drivers or available staff, nothing was done to pick the bus up that evening. It was taken by somebody who has never been traced just before 11.15 at night, driven for a relatively short distance until the point where Mrs. Topp was knocked down and killed, and it was abandoned round the corner from there."

Referring to the judgment of Lord Justice Robert Goff in P.Perl (Exporters) Ltd. vs. Camden London Borough Council [1984] QB 342, the Court of Appeal held as under:-

"In so far as the case is put on the basis that to leave the bus unlocked and with the key in the ignition on the Highway near a public house is to create a special risk in a special category, it is pertinent to refer to a passage in the judgment of Lord Justice Robert Goff (as he then was) in P. Perl (Exporters) Ltd. V. Camden London Borough Council [1984] QB 342 at page 359E-F where he said:

"In particular, I have in mind certain cases where the defendant presents the wrongdoer with the means to commit the wrong, in circumstances where it is

obvious or very likely that he will do so – as, for example, where he hands over a car to be driven by a person who is drunk, or plainly incompetent, who then runs over the plaintiff...”

But the sort of cases to which Lord Justice Robert Goff was there referring are far different from the present case. It may be added that that there is no evidence that the malefactor had been frequenting the public house that is shown in the picture; we do not know who he was, nor is there any evidence or presumption that persons who do frequent that particular public house are particularly likely to steal vehicles and engage in joy-riding.” (underlining is ours)

The above reasoning appeals to us to conclude that the present case was an eminently fit case, where the claim at 75% ought to have been awarded on a non-standard basis. Even if there was some carelessness, on the peculiar facts of this case, it was not a fundamental breach of Condition No.5 warranting total repudiation. It was rightly so ordered by the District Forum and affirmed by the State Commission.

17) Learned counsel for the Insurance Company, in his written submissions, has placed before us an unreported order dated 29.03.2022 passed by this Court in SLP (C) No. 6518 of 2018 titled **Kanwarjit Singh Kang vs. M/s ICICI Lombard General Insurance Co. Ltd. & Anr.** to support his case on the breach of Condition No.5. We have carefully perused the order. In the said order, it is recorded that concurrently the Claimant lost before the fora below and it is also recorded that the State Commission did not find the ground of leaving the ignition keys in the vehicle to be a valid reason to repudiate the claim. However, on the ground of unexplained and inordinate delay in lodging the FIR, the repudiation was upheld. In that case, while the loss was on 25.03.2010, the intimation to Police was only on 02.04.2010 so clearly it was a breach of Condition No.1. No doubt, in the penultimate paragraph of the order it is recorded that the want of reasonable care on the part of the petitioner in that case operated heavily against the petitioner and it was concluded that the repudiation could not be faulted. However, the primary reason for repudiation was the violation of condition No.1 viz. the delay in intimation to the Police. Further since there was a fundamental breach of Condition No.1, there was no occasion to raise points for settlement of claim on non-standard basis. There is no whisper about the breach of Condition No.5 being not a fundamental breach. We find the present case, on facts, completely different as there is no breach of Condition No.1 because the intimation to the police was immediate. There have been concurrent awards by the District Forum and State Commission on non-standard basis by applying **Nitin Khandelwal (supra)** and **Amalendu Sahoo (supra)**. Hence, the order will in no manner assist the respondent-Company.

18) In **Amalendu Sahoo (supra)**, this Court noticed the guidelines issued by the New India Assurance Co. Ltd. in settling claims on non-standard basis. The guidelines read as under:-

Sl.No	Description	Percentage of settlement

(i)	<i>Under declaration of licensed carrying capacity.</i>	<i>Deduct 3 years' difference in premium from the amount of claim or deduct 25% of claim amount, whichever is higher.</i>
(ii)	<i>Overloading of vehicles beyond licensed carrying capacity.</i>	<i>Pay claims not exceeding 75% of admissible claim.</i>
(iii)	<i>Any other breach of warranty/condition of policy including limitation as to use.</i>	<i>Pay up to 75% of admissible claim."</i>

*The above guidelines were followed by this Court in **Amalendu Sahoo (supra)** as is clear from para 14 of the said judgment. The District Forum and the State Commission have rightly applied **Amalendu Sahoo (supra)** to the facts of the present case and awarded 75% on non-standard basis.*

*19) **Nitin Khandelwal (supra)** and **Amalendu Sahoo (supra)** lay down the correct formula that where there is some contributory factor, a proportionate deduction from the assured amount would be all that the Insurance Company can aspire to deduct. We are inclined to accept the plea of the appellant that in the case at hand, on the facts governing the scenario, Clause (iii) of the table set out in para 14 of **Amalendu Sahoo (supra)** is attracted and the District Forum and the State Commission were justified in awarding the entire 75% of the admissible claim."*

15. Applying the Hon'ble Supreme Court's reasoning, this Commission determined that although there was some carelessness in leaving the key in the ignition, this did not constitute a fundamental breach of the insurance policy. Therefore, the Complainant is entitled to 75% of the Insured Declared Value (IDV).

16. Based on the discussions and findings, the State Commission's order dated 04.02.2021, and the District Forum's order dated 22.08.2019, do not reveal any material irregularity or jurisdictional error that would require intervention. As a result, the Revision Petition No.645 of 2021 is dismissed.

17. There shall be no order as to costs.

18. All pending Applications, if any, stand disposed of.

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