STATE CONSUMER DISPUTES REDRESSAL COMMISSION, U.T., CHANDIGARH

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Appeal No.	:	A/382/2024
Date of Institution	:	22.11.2024
Date of Decision	:	04.12.2024

1. **The New India Assurance Company Limited**, Registered Office Address 87, M.G. Road, Fort Mumbai – 400001, through its Managing Director.

2. **The New India Assurance Company Limited**, Regional Office (Claim Hub), S.C.O. No. 36-37, Sector 17-A, Chandigarh, through its Manager.

   Now represented by:

   The New India Assurance Co. Ltd., S.C.O. No. 36-37, Sector 17-A, Chandigarh – 160017, Regional Office, through its Authorized Signatory.

... Appellants

Versus

Shubham Khattar son of Ramesh Khatter, Resident of Flat No. 1009, Gillco Height, Gillco Valley, Sector 127, Kharar, District Mohali, Punjab.

…Respondent

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT
MR.RAJESH K. ARYA, MEMBER

Argued by: *Ms. Shiti Jain Dutt, Advocate for the Appellants.*

PER JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT

[1] The moot question involves in the present case is as to whether repudiation of the insurance claim solely on the ground that at the time of admission of the Complainant in an unconscious condition on the basis of unreliable information regarding consuming alcohol is sufficient?

[2] The challenge in the instant appeal is the order dated 07.10.2024 passed by the District Consumer Disputes Redressal Commission-I, U.T. Chandigarh (for brevity hereinafter to be referred as “the Learned District Commission”), vide which, it partly allowed the

Consumer Complaint bearing no.CC/201/2024 filed by the Complainant Sh.Shubham Khattar.

[3] For the convenience, the parties are being referred to, in the instant Appeal, as position held in Consumer Complaint before the Learned District Commission.

[4] Undisputedly, Honda Jazz car bearing registration No. KA 01-MS-4997 was insured with the insurance company for the period from 15.12.2022 to 14.12.2023 for IDV of ₹4,80,000/-. The Complainant was driving the subject vehicle on 04.02.2023 between 4/4:30 AM, when all of sudden street dogs came in front of the car and when he tried to save them, he lost control over the car and the same hit the road divider and then to Sector 33/34, 44/45 roundabout and finally stopped after hitting the pole, as a result of which he suffered head injuries and the subject vehicle was also badly damaged. The Complainant was taken by the Police to PGIMER, Chandigarh in an unconscious state. The complainant had to undergo head surgeries and the complainant was declared fit to give statement to the police on 09.02.2023. He suffered statement giving details of the accident. Later on, claim was lodged with the insurance company and all the requisite documents were also submitted to the Surveyor. However, the claim of the Complainant was repudiated on the ground that he was under the influence of liquor.

[5] The complaint was strongly contested by the Opposite Parties (Appellants herein) on the grounds (inter alia) that as per the record of the PGIMER, Chandigarh the Complainant was under the influence of alcohol at the time of accident, therefore, as per exclusion clause 2(c) under

Section 1 of the Insurance Policy, the claim of the Complainant was correctly repudiated.

[6] The contesting parties led evidence by way of affidavits and numerous documents before the District Commission.

[7] On appraisal of the pleadings of the parties and the evidence adduced on the record, the Learned District Commission, partly allowed the consumer complaint by passing the following order:-

> "4. *In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and the OPs are directed as under:-*
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> *i) to pay aforesaid ₹4,79,000/- to the complainant along with interest @ 9% per annum from the date of repudiation of the claim i.e. 21.02.2024 onwards. The wreck/salvage of the subject car shall, however, be retained and disposed of by the OPs/insurer at their own.*
>
> *ii) to pay an amount of ₹20,000/- to the complainant as compensation for causing mental agony and harassment;*
>
> *iii) to pay ₹10,000/- to the complainant as costs of litigation.*
>
> *5. This order be complied with by the OPs within forty five days from the date of receipt of its certified copy, failing which, the payable amounts, mentioned at Sr. No.(i) & (ii) above, shall carry interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr. No.(iii) above.*

[8] Aggrieved against the aforesaid order passed by the Learned District Commission, the instant Appeal has been filed by the Appellants/ Opposite Parties.

[9] We have heard the Learned Counsel for the Appellants and have gone through the record of the Learned District Commission, as well as the grounds of appeal with utmost care.

[10] After giving our thoughtful consideration, to the contentions raised and scanning the material on record, we are of the considered opinion, that the instant Appeal is liable to be dismissed in limine for the reasons to be recorded hereinafter.

[11] Learned Counsel for the Appellants has submitted that as per exclusion clause 2(c) under Section 1 of the Insurance Policy, the Complainant is not entitled for any compensation, but this fact has not been considered by the Learned District Commission. In order to prove the consumption of liquor by a human being, his breath analyzer test or blood test is mandatory. This fact can also be proved by Alco Meter/ Drinko Meter, but for the extent or degree of alcohol, the blood test is mandatory. In this case, no blood test was taken for the purpose of determination of alcohol in the blood of the Complainant/Patient.

[12] The Appellants/Opposite Parties strongly relied upon the history of the case made at the time of admission in the out-patient record. Admittedly, at the time of accident, no person was available, as the accident took place in the odd hours of early morning at about 4/4:30 a.m. It has come on record that immediately after the accident, the Complainant/Patient became unconscious and he was brought to the hospital by a Sub Inspector and C. Ranjit in PCR van. However, at the time of informing the police, the doctor has categorically stated that the information supplied to him is unreliable being provided by a person who is not related to the insured and who has not seen the accident. In the MLR (Annexure R-4), it is simply stated 'A/H/O RSA influence of alc', but this information was not reliable as per the version of the doctor who attended the patient at the first instance. On such unreliable information, the insurance claim cannot be repudiated. We are of the view that there is no

reliable evidence available on record to establish if the Complainant has consumed alcohol before the accident. Thus, to our mind, the impugned order does not suffer from any infirmity or illegality rather the same is based upon proper appreciation of evidence.

[13] No other point was urged, by the Learned Counsel for the Appellants.

[14] In the wake of the position, as sketched out above, we are dissuaded to interfere with the impugned order passed by the Learned District Commission. Consequently, the instant appeal is dismissed in limine and the order of the Learned District Commission is upheld.

[15] All the pending application(s), if any, also stand disposed off accordingly.

[16] Certified Copies of this order be sent to the parties, free of charge.

[17] The file be consigned to Record Room, after completion and the Learned District Commission be sent back immediately.

Pronounced
04th Dec. 2024

Sd/-
[JUSTICE RAJ SHEKHAR ATTRI]
PRESIDENT

Sd/-
(RAJESH K. ARYA)
MEMBER

"Dutt"