STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 03.07.2019
Date of Final Hearing: 04.12.2024
Date of Pronouncement: 13.12.2024

**FIRST APPEAL NO. 235 / 2019**

United India Insurance Company Limited
Regional Office through Chief Regional Manager
Hotel Lalit Palace, Kaulagarh Road
Dehradun

(Through: Sh. Rajesh Kumar Devliyal, Advocate)
…… Appellant

Versus

Sh. Manu Sharma S/o late Hariram Sharma
R/o House No. P-71, Phase-3
Shivalik Nagar, Ranipur, District Haridwar

(Through: Sh. Chetan Jain, Advocate)
…… Respondent

**Coram:**
**Ms. Kumkum Rani,** **President**
**Mr. B.S. Manral,** **Member**

**ORDER**

**(Per: Ms. Kumkum Rani, President):**

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against the impugned judgment and order dated 22.05.2019 passed by learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as "The District Commission") in consumer complaint No. 12 of 2018, styled as Sh. Manu Sharma Vs. Branch Manager, United India Insurance Company Limited and others, wherein and whereby the consumer complaint was allowed, directing the appellant / opposite parties to pay an amount of Rs. 9,50,500/- to respondent / complainant along with interest @6%

p.a. from the date of filing of the consumer complaint till actual realization and Rs. 5,000/- towards litigation expenses.

2. The facts giving rise to the present appeal, in brief, are, as such that on 16.09.2015, the respondent / complainant, after availing finance facility, had purchased a car (Volkswagen Vento) at discounted rate of Rs. 9,50,500/-, which bears registration No. UK08-AK-3330, which was insured with Bharti AXA General Insurance Company Limited. Due to persuasion by the appellant – insurance company, the complainant took insurance policy of the vehicle for 2nd year from the appellant on 12.09.2016 upon payment of premium of Rs. 26,246/-. The said policy was valid for the period from 15.09.2016 to 14.09.2017. On dated 25.11.2016, the complainant was coming from Bijnor to Haridwar and an accident took place in the night at about 1:30 a.m. on main highway before Chidiyapur by an unknown truck, which collided with the insured vehicle, with the result that all the persons sitting in the vehicle sustained injuries and the insured vehicle got badly damaged. The complainant immediately made a call at the toll free number of the insurance company and the vehicle was towed to the workshop at Dehradun with the help of crane. Subsequently, the complainant submitted claim with the insurance company, whereupon surveyor was deputed by the insurance company, who asked the complainant to complete the formalities and stated that the insurance company will pay Rs. 8,00,000/- as compensation. However, the insurance company did not come and after a lapse of long time, the complainant met the surveyor – V.P. Singhal & Co., who made inspection of the vehicle and took photographs of the insured vehicle and obtained relevant documents from the complainant. The surveyor also stated to the complainant that he will get Rs. 7,00,000/- as

compensation. The said surveyor has also stated that he has wrongly mentioned the value of the insured vehicle. The complainant stated that the vehicle was damaged to the extent of more than 75%. After several requests, the surveyor made a telephonic call in the month of May, 2017, stating that as of now, the insurance company can pay Rs. 3,43,000/- and the remaining amount of Rs. 3,07,000/- would be paid later on and blank papers were got signed by the insurance company. Thereafter, the complainant was told to get the vehicle repaired and he would be paid an amount of Rs. 6,50,000/-. The complainant got the vehicle repaired, incurring an expenditure of more than Rs. 6,50,000/-. The vehicle is standing in the authorised workshop at Dehradun. After several requests, the insurance company did not settle the claim and forfeited the policy, causing mental agony and financial loss to the complainant. The complainant sent a legal notice dated 31.10.2017 to the insurance company, but no action was taken, therefore, the consumer complaint was submitted by the complainant before the District Commission.

3. The appellant – insurance company filed written statement before the District Commission, stating that the consumer complaint filed by the complainant is baseless. The complainant has given false information that he has not taken any claim in the year 2014, whereas he has obtained the claim. Thus, the consumer complaint is liable to be dismissed.

4. After hearing both the parties and after taking into consideration the material available on record, the District Commission passed the impugned judgment and order dated 22.05.2019, thereby allowing the consumer complaint in the above terms.

5. On having been aggrieved by the impugned judgment and order, the present appeal has been submitted on behalf of the appellant – insurance company, stating that the impugned judgment and order is against law, facts and merits of the case and learned District Commission has overlooked the pleas taken by the insurance company in the written statement as well as documentary evidence and also overlooked the fact that the complainant has concealed true facts and wrongly availed No Claim Bonus to the extent of 20%. It was also stated that the surveyor appointed by the insurance company has assessed the loss to the tune of Rs. 3,43,000/- on repair cash loss basis, regarding which consent was given by the complainant, but the same was ignored by the District Commission.

6. We have heard learned counsel for the parties and also perused the record. Paper Nos. 56 to 57 are the e-mail dated 11.09.2017 sent by Bharti AXA General Insurance Company Limited regarding No Claim Bonus confirmation, wherein it was mentioned that the claim was paid by the said insurer in respect of the previous insurance policy. Learned counsel for respondent / complainant has also conceded the fact that the complainant has obtained claim from the previous insurer of the vehicle. Paper Nos. 27 to 32 is the insurance policy, according to which, the appellant – insurance company has given No Claim Bonus @20% amounting to Rs. 4,909.09/-. The above documentary evidence has revealed that the complainant has wrongly availed No Claim Bonus inspite of getting the claim from the previous insurer of the vehicle.

7. The survey report is on record, which bears Paper Nos. 33 to 39), wherein the surveyor has assessed the net loss on repair basis to the tune

of Rs. 5,32,676/-. Learned counsel for the appellant has stated that 20% amount of No Claim Bonus has to be deducted from the amount of loss assessed by the surveyor. Learned counsel for the appellant – insurance company has cited judgment dated 31.07.2018 passed by this Commission in **First Appeal No. 110 of 2015; United India Insurance Company Limited Vs. Sh. Pankaj Kumar Jain** and **First Appeal No. 114 of 2015; Sh. Pankaj Kumar Jain Vs. United India Insurance Company Limited**, wherein the percentage of No Claim Bonus availed by the complainant was reduced from the amount awarded by the District Commission. In the said judgment, reliance was placed upon the judgment of Hon'ble National Commission in the case of **New India Assurance Company Limited Vs. Shinder Pal Singh and another** reported in **III (2017) CPJ 559 (NC)**, wherein it was held in para Nos. 5 & 7 that the complainant had paid 20% less premium, equity demands that insurance company should have allowed claim on *pro rata* basis, i.e., by reducing entitlement under claim by 20%, which amounts to Rs. 3,43,200/-. Thus, we are of the considered view that there should be deduction of 20% from the assessed loss of Rs. 5,32,676/- and by reducing 20% amount from Rs. 5,32,676/-, the net amount comes to Rs. 4,26,140/-, which the complainant is entitled to get from the insurance company. Thus, the amount of Rs. 9,50,500/- awarded by the District Commission is to be reduced to Rs. 4,26,140/-. So far as the interest and litigation expenses awarded by the District Commission are concerned, the same are perfectly justified and do not warrant any interference. Therefore, the appeal is to be partly allowed in the above terms.

8. Appeal is partly allowed. Impugned judgment and order dated 22.05.2019 passed by the District Commission is modified to the extent

that the amount of Rs. 9,50,500/- awarded by the District Commission, is hereby reduced to Rs. 4,26,140/-. Rest of the impugned judgment and order passed by the District Commission shall remain intact. No order as to costs of the appeal.

9. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information.

10. File be consigned to record room along with a copy of this Order.

(**Ms. Kumkum Rani**)
**President**

(**Mr. B.S. Manral**)
**Member**

Pronounced on: 13.12.2024