

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 379 OF 2015**

(Against the Order dated 09/10/2014 in Complaint No. 73/2014 of the State Commission  
Chandigarh)

1. JASPAL SINGH

s/o Shri Narang Singh R/o H.No.49, Sector 26, Village  
Madanpur, P.O. Ramgarh, Sector 26, Panchkula

.....Appellant(s)

Versus

1. TATA AIG GENERAL INSURANCE COMPANY LIMITED

Through its Branch Manager, S.C.O 232-234, 2 Floor, Sector-  
34A,

CHANDIGARH.

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT**

**HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT : MS ANUNAYA MEHTA, ADVOCATE WITH  
MR. VINAYAK THAKUR, ADVOCATE

FOR THE RESPONDENT : MS. ANJALLI BANSALL, ADVOCATE

**Dated : 25 September 2023**

**ORDER**

**I.A. No. 3481 of 2015 (for condonation of delay).**

1. This appeal is reported to be delayed 178 days which was entertained on 12.05.2015 and notices were issued both on the appeal as well as on the delay condonation application. The case appears to have been listed for hearing at the admission stage itself without passing any formal order on the delay condonation application. It appears that the matter was adjourned during the COVID-19 pandemic period and the case was listed thereafter and to be taken up for final arguments on 30.08.2023.

2. Perused the delay condonation application, which has been objected by the leaned counsel for the opposite party-Insurance co. even though no formal objection to the same has been filed. The reasons given for the delay in the delay condonation application are that the appellant's cousin passed away on 25.09.20214 and then he was busy in the hospitalization of his sister where he continued to attend her till 18.10.2014. He further states that he was involved in a legal battle with the Investor, Religare Finvest Ltd. as he was contesting an *ex parte* award in the arbitration proceedings. It is in these surrounding circumstances, he could not immediately rush to this Commission to file the appeal against the impugned Order dated 09.10.2014.

3. Having considered the said reasons given for the delay, the events on which reliance has been placed are almost prior to the impugned Order dated 09.10.2014. Learned counsel for the appellant contends that it was on account of certain emotional circumstances and subsequent involvement that the appellant who is a layman could not realize the consequences of the delay and after being properly advised, he has filed this appeal without losing further time.

4. Learned counsel for the opposite party-Insurance co. however vehemently opposed this application for condoning the delay and has submitted that the appellant might have been under some difficulties but the same were after the impugned Order dated 09.10.2014. There is no plausible explanation and hence the delay condonation application deserves to be rejected.

5. In the light of these contentions, the reasons for condoning the delay may not be very clinching but nonetheless the delay deserves to be condoned in the interest of justice and discretion should be exercised in such matters in order to advance the cause of justice and to draw the curtain on a litigation without denying accessibility to justice. The appellant also has a stable case on merits and even otherwise there is no lengthy inordinate or huge delay which may prevent this Commission to exercise its discretion in condoning the delay. There is one more reason as to why the delay deserves to be condoned, namely that the appeal was entertained in 2015 on the promise of being finally heard at the admission stage itself which could not be achieved for one reason or the other including the time period of two years during the COVID-19 pandemic. In such circumstances, the appellant deserves a lenient view. The attempt should be to advance the cause of justice and facilitate resolution of disputes and not avoid them on a narrow, restrictive approach.

6. Consequently, the delay of 178 days is, thus, condoned and the appeal shall be treated to be within time. Accordingly application I.A. No. 3481 of 2015 is allowed.

### **First Appeal No. 379 of 2015**

7. The appeal questions the correctness of the Order of the State Consumer Disputes Redressal Commission dated 09.10.2014, whereby an insurance claim pertaining to the loss of a truck which was damaged on account of fire has been rejected and its repudiation by the Insurance co. has been upheld by the State Commission on the ground that the complainant did not have an insurable claim as he had ceased to be the owner on the date of accident as he had already sold off the vehicle to another person and, therefore, the insurance policy did not cover the claim as raised by the complainant.

8. Learned counsel for the appellant has urged that the complainant/ appellant purchased a truck which was insured by the opposite party-Insurance co. under a policy that was valid from 07.03.2013 to 06.03.2014 for a risk coverage valued at Rs.23,08,000/-. The truck was being driven by one Sh. Darshan Singh son of Sh. Pritam Singh and while on its way at village Khera Jattan, suddenly its engine caught fire and the vehicle hit a tree, resultantly the driver also received injuries. It was alleged that the said accident took place in the night hours at about 3.00 a.m. on 27.07.2013. A report at the police station was lodged later by one Mr. Harjashan Preet Singh along with the driver.

9. The claim was lodged with the Insurance co. on which a surveyor was appointed but copy of the survey report was not provided to the complainant. Another Investigator was appointed, namely M. K. Kukreja and relying upon the said Loss Assessor, the claim of the appellant was repudiated.

10. The grounds of repudiation are that the complainant had already sold the vehicle to Sh. Harjashan Preet Singh on 24.09.2012, much earlier to the date of the accident and therefore with the transfer of the ownership of the vehicle with Mr. Harjashan Preet Singh, there was no insurable interest left to be assessed at the instance of the complainant. Once the possession of the vehicle had been handed no rights remained with the complainant to seek any relief from the Insurance co. The State Commission has also travelled into the issue of obtaining of the insurance policy by the complainant without disclosing the fact of sale of vehicle on 24.09.2012, which is an act of suppression of relevant information on the part of the complainant.

11. Learned counsel for the complainant has urged that the letter of repudiation does not indicate any such reason or cause for repudiation of the claim and as such the State Commission has committed an error while travelling beyond the terms of repudiation.

12. Learned counsel for the Insurance co. has invited the attention of the Bench to the letter of repudiation, letter of agreement to sell and other documents to urge that once the complainant had abandoned all his rights of his vehicle by its transfer to Sh. Harjashan Preet Singh, there was no insurable claim left, as such the claim has been rightly repudiated by the Insurance co.

13. Responding to the said argument, learned counsel for the complainant at the very outset has cited the judgment of the Apex Court in the case of **Surender Kumar Bhilava Bhilawae vs. New India Assurance Company Limited (2020) 18 Supreme Court Cases 224** to

contend that the mere agreement to sell will not amount to transfer in terms of the Motor Vehicles Act, 1988 and therefore ownership will continue with the complainant. He has further invited the attention of the Bench to the judgment of Delhi High Court in the case of **Pawan Hans Helicopters Ltd. vs. Aes Aerospace Ltd. 2008 (103) DRJ 174** to urge that in view of the provisions of the Sale of Goods Act, 1930, it is the intention of the party which has to be gathered and while interpreting the said provisions, the Delhi High Court held that movable property / goods do not automatically get transferred unless the intention is proved. He, therefore, submitted that a bare perusal of the document dated 24.09.2012 which is quoted in the impugned Order, it is apparent that the terms and conditions of the document had intended to transfer the ownership only on the execution of the transfer documents which was dependent on the payment schedule that was to take place much later and beyond the tenure of the insurance policy. He has further submitted that there was no transfer stipulated before the execution of the documents nor any transfer of vehicle had been actually effected through documents or otherwise as on the date of accident or even before. To support his submissions, he has further submitted that a sum of Rs.1,00,000/- has been received from Sh. Harjashan Preet Singh and the balance of the amount was never paid nor disbursed in the bank account as agreed upon in terms of letter dated 24.09.2012. Thus there was neither any intention to transfer the existing vehicle on the date of accident nor the vehicle actually had been transferred either in terms of the Motor Vehicles Act, 1988 or even in terms of Section 19 of the Sale of Goods Act, 1930. The conclusion drawn by the State Commission is, therefore, erroneous and contrary to the aforesaid legal position, hence the same deserves to be set aside.

**14.** The Bench has considered the submissions raised and the first issue that needs to be clarified is about the repudiation of the claim by the Insurance co.

To understand this one will have to go through the terms of repudiation which is extracted herein blow:

**Registered Post**

31, Dec 2013

**Mr. Jaspal Singh,**

**H. NO 49, Sec-26, Madanpur,**

**Panchkula**

**Haryana 134113**

**Dear Sir,**

**Ref : claim no – 620669748-A under policy no. 0100738685**

**Sub:Accident Claim of your vehicle no. HR68A6175 MAN CLA 40.280 4 x 2**

We invite reference to your claim for the above vehicle, for damages in the accident on **27 Jul, 2013**. We draw your attention to the policy conditions. As per GR.17. Transfers of All India Motor Tariff, the claim is not admissible

The provision of GR17 is under.

*On transfer of ownership, the Liability Only cover, either under a Liability Only policy or under a Package policy, is **deemed to have been transferred in favour of the person to who the motor vehicle is transferred with effect from the date of transfer.***

*The transferee shall apply within fourteen days from the date of transfer in writing under recorded delivery to the insurer who has insured the vehicle, **with the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy so that the insurer may make the necessary changes in his record and issue fresh Certificate of Insurance.***

*In case of package Policies, transfer of the "Own Damage" section of the policy in favour of the transferee, shall be made by the insurer only on receipt of a specific request from the transferee along with consent of the transferor. If the transferee is not entitled to the benefit of the No Claim Bonus (NCB) shown on the policy, or is entitled to a lesser percentage of NCB than that existing in the policy, recovery of the difference between the transferee's entitlement, if any, and that shown on the policy shall be made before effecting the transfer.....*

In this particular case **we have not received any request for transfer of policy** either from **Mr. Harjashan Preet Singh who is the current owner** of the car or from your good self, **hence no insurable interest exist** for you in this vehicle and **no policy exist in the name of Mr. Jaspal Singh thus** we regret out inability to pay the claim amount to entire of you.

We regret, therefore, that we are unable to entertain this claim. We look at this as an opportunity lost to serve you.

The foregoing declination of insurer's liability is issued based on the facts as presently known. We reserve the right to extend or modify this declination, should additional facts or circumstances become known to us.

Should you believe that we have overlooked any material fact or circumstances, or should you wish to present an alternative interpretation of any relevant policy provision, [please draw the same to our attention for our further consideration within 15 days of receipt of this letter.

It you any further clarification and or assistance, please do not hesitate to contact us.

*Yours truly,*

*Sd/-*

***For TATA AIG General Insurance Co. Ltd.***

## Deputy Manager Claim

15. The recital of GR17 to treat the vehicle to be deemed to have been transferred overlooks the fact of details of transfer, registration of vehicle and other specifics so as to apply the deeming fiction. It appears that the Insurance Company as well as the State Commission have misconstrued the said general rule in breach of its true meaning.
16. A perusal of the said document of the opposite party-insurance co. leaves no room for doubt that the claim has been repudiated only on an incorrect assumption of change in ownership noticing the impact of the document dated 24.09.2012 but without mentioning the agreement to sell that was made for negotiating a proposed transfer of the vehicle in favour of Sh. Harjashan Preet Singh. There is no whisper in the letter of repudiation about any circumstances of suppression of information so as to disentitle the complainant from raising his claim. The opposite party-Insurance co. cannot take any plea for disallowing the claim beyond the terms of the repudiation letter. This law is now settled by the Apex Court in the case of *Saurashtra Chemicals Limited (presently known as Saurashtra Chemicals Division of Nirma Limited) versus National Insurance Company Limited (2019) 19 Supreme Court Cases 70*.
17. There is no further communication by the Insurance co. for repudiation of claim on the ground of suppression. It is for the first time that this plea has been taken up before the State Commission and the State Commission has ignored this legal aspect that the Insurance co. cannot travel beyond the letter of repudiation and hence in the opinion of the Bench the impugned Order suffers from this legal infirmity and is liable to be set aside.
18. The major ground for contest of the claim is the alleged transfer of ownership of the vehicle. The document dated 24.09.2012 clearly records that it is an agreement to sell and not a bill of sale. Secondly, it remains undisputed that only Rs.1,00,000/- was paid in cash on 24.09.2012. Apart from this 42 installments of 47,010/- was to be paid by the purchaser to M/s Religare Finance Co. Ltd. which was never paid and the complainant remained the owner and was entitled to repossess the vehicle which was done in 2014. It is also clear from the agreement that the complainant was to execute the transfer after getting clearance from the financier through Form-35 for transfer of ownership. The registration certificate and insurance policy continued in the name of the complainant and since Sh. Harjashan Preet Singh had defaulted and had not paid any amount, there was no transfer at all much less a transfer of possession of the vehicle, so as to disentitle the complainant to seek his insurance reimbursement of the vehicle from the Insurance co. under a valid policy. The policy was intact and operational in favour of the Complainant as on the date of the accident.
19. Learned counsel for the opposite party-Insurance co. has contended that the same agreement clearly mentions that the purchaser had to pay all kinds of dues, taxes, challan including the insurance costs or police case or any kind of dues against the said vehicle after 24.09.2012. The vehicle stood hypothecated with M/s Religare Finance Co. that is entitled /

empowered to repossess the same if the purchaser fails to pay two consecutive installments to it in time.

**20.** We have examined the documents and scrutinized the terms thereof, where the intention to transfer the vehicle in favour of Sh. Harjashan Preet Singh was clearly contingent upon the payments stipulated therein to the financier and thereafter the Complainant had to execute the transfer documents. This never took place and therefore in the absence of any such evidence of lawful or actual transfer of the vehicle, the conclusion drawn either by the surveyor, or in the letter of repudiation or even by the State Consumer Disputes Redressal Commission are all erroneous. Transfer cannot be presumed or assumed on the basis of certain circumstances of the involvement of Sh. Harjashan Preet Singh in lodging the police complaint or even otherwise making a small payment of a paltry amount of Rs.1,00,000/-. In the given circumstances, the conclusion drawn by the Surveyor, the Insurance Co. or the State Commission on the basis of general principles of Transfer of Property Act are not acceptable, moreso keeping in view the judgment of the Apex Court in the case of **Surender Kumar Bhilava Bhilawae (Supra)**.

**21.** There is yet another argument which deserves reference that has been advanced by the Ld. Counsel for the Appellant with the aid of the judgment of the Delhi High Court in the case of Pawan Hans Helicopter Limited (Supra). The passing of and transfer of property as envisaged under Section 19 of the Sale of Goods Act, 1930, was interpreted as follows:

“17. Section 19 of the Sale of Goods Act, 1930 specifically provides that the **property passes when it is intended to pass**. Section 19(1) stipulates that where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at **such time as the parties to the contract intend it to be transferred.**”

Applying the said principle it would be safe to presume that the ownership of the vehicle was intended only upon the full payment of the 47 installments to the financier and upon the execution of the transfer documents consequent to such payment. This event never occurred and accordingly there was no transfer of ownership of the vehicle. Neither the surveyor nor the Insurance Company nor the State Consumer Commission have addressed themselves to this line of reasoning and the rationale thereof. The Complainant, therefore, continued to be the owner of the vehicle as per terms contained in the document dated 24.09.2012.

**22.** Learned counsel for the opposite party-Insurance co. vehemently urged that the Judgement in the case of **Surendra Kumar Bhilawe versus The New India Assurance**

***Company Ltd. (supra)*** has been incorrectly decided and the Ld. Counsel went to the extent of persuading us to treat the ratio of the judgment as per incuriam. To understand this sole argument, this Bench may reproduced paras 39, 47 and 48 of the said judgment which are quoted herein below:

39. The finding of the National Commission that the fact of registration of the said truck in the name of the appellant was inconsequential is also not sustainable in law. **Section 2(30) of the Motor Vehicles Act, 1988 defines “owner” to mean the person in whose name the motor vehicle stands registered. The definition of “owner” has been overlooked and ignored by the National Commission. Had ownership of the said truck intended to be transferred forthwith, the registration would have been transferred in the name of the transferee, as also the permit to operate the said truck for carriage of goods.**

47. In *Naveen Kumar v. Vijay Kumar*, a three-Judge Bench of this Court held that in view of the definition of the expression “owner” in Section 2(30) of the Motor Vehicles Act, 1988, it is the person in whose name the motor vehicle stands registered, who, for the purposes of the said Act, would be treated as the owner of the vehicle. **Where the registered owner purports to transfer the vehicle, but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of his liability as owner.**

48. The judgment of this Court in *Pushpa v. Shakuntala* and *Naveen Kumar v. Vijay Kumar* were rendered in the context of liability to satisfy third-party claims and as such distinguishable factually. However, the dictum of this Court that the registered owner continues to remain owner and when the vehicle is insured in the name of the registered owner, the insurer would remain liable notwithstanding any transfer, **would apply equally in the case of claims made by the insured himself in case of an accident.** If the insured continues to remain the owner in law in view of the statutory provisions of the Motor Vehicles Act, 1988 and in particular Section 2(30) thereof, the insurer cannot evade its liability in case of an accident.

**23.** Paragraph 48 quoted above, conclusively clinches the issue inasmuch as even though the earlier judgments were with regard to third party liabilities, yet the very same ratio has been specifically applied in the present category of cases where the insured continues to remain the owner in law and in view of Section 2(30) of the Motor Vehicles Act, 1988 the insurer cannot evade its liability in case of an accident. Thus, it is not possible for this Commission to appreciate the argument of the learned counsel for the opposite party-Insurance company that the aforesaid decision does not lay down the law correctly.

**24.** The law as declared has to be complied with as it is a binding precedent and therefore, this aspect having been dealt with by the State Commission contrary to the law referred to herein above, the impugned Order is not sustainable on this ground well.



**25.** In view of the facts and circumstances as well as the above discussion, it is found that the insurance claim of the appellant was admissible for reimbursement and the insurance policy was very much valid on the date of accident and, therefore, an insurable interest survived for entertaining the claim for reimbursement. The vehicle was insured for a declared value of Rs.23,08,000/-. The estimate of damage as displayed by the Complainant before the Insurance Company and the State Consumer Disputes Redressal Commission was Rs.22,44,153/-. The said estimate or damage does not appear to have been contested presumably, because the entire stand of the Insurance Company was to disown any liability. The aforesaid facts indicate that there was a total loss of the vehicle and in these circumstances the Complainant is entitled for the entire amount claimed and covered as risk under the policy which was valid on the date of the accident and stood in favour of its owner namely the Complainant.

**26.** Consequently, the impugned Order dated 09.10.2014 of the State Commission is set aside and the complaint of the appellant / complainant is allowed and the appellant / complainant shall be entitled to the full reimbursement of Rs.23,08,000/- along with interest at the rate of 9% per annum from the date of loss till the date of actual realization.

**27.** The appellant / complainant has faced harassment mental, financial and litigative since 2013 and the deficiency in service rendered by the opposite party is established, therefore, the appellant / complainant is also entitled to sum of Rs.1,00,000/- as compensation and Rs.50,000/- as litigation costs. The appeal is accordingly allowed.

.....J  
**A. P. SAHI**  
**PRESIDENT**

.....  
**DR. SADHNA SHANKER**  
**MEMBER**