

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 399 OF 2019**

(Against the Order dated 01/01/2019 in Complaint No. 141/2017 of the State Commission  
Uttar Pradesh)

1. NATIONAL INSURANCE COMPANY LTD.

THROUGH ITS DULY CONSTITUTED ATTORNEY,  
MANAGER, NATIONAL INSURANCE COMPANY LTD,  
LEGAL VERTICAL, 2E/9, JHANDEWALAN EXTENSION  
NEW DELHI 110055

.....Appellant(s)

Versus

1. M/S. VINEEMEE CONSTRUCTION PVT. LTD.

THROUGH ITS PARTNER BHUPESH CHANDRA MISHRA,  
213-A, SECOND FLOOR SAHARA SHOPPING CENTRE ,  
FAIABAD ROAD

LUCKNOW

.....Respondent(s)

**BEFORE:**

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

FOR THE APPELLANT : MR. ANSHUL KUMAR, ADVOCATE  
WITH AUTHORITY LETTER

FOR THE RESPONDENT : MR. PRATUL SRIVASTAVA, ADVOCATE

**Dated : 27 September 2023**

**ORDER**

1. The present First Appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") against the Order dated 01.01.2019 passed by the State Consumer Disputes Redressal Commission, Uttar Pradesh (hereinafter to be referred as "the State Commission"), in Consumer Complaint No. 141 of 2017, wherein the Complaint filed by the Complainant (Respondent herein) was partly allowed.

2. There was a delay of 25 days for filing the present appeal by the Appellant. For the reason stated in the application being IA/3899/2019 for condonation of delay, the same is condoned.

3. For the sake of convenience, the parties in the present matter being referred to as mentioned in the Complaint before the State Commission. The Complainant - M/s. Vineemee Construction Pvt. Ltd. is a firm having three partners and registered owner of the vehicle i.e., Transit Mixture under the class of Multi Axle Good Vehicle bearing registration no. UP-30-

T-4332 and earn income by supplying ready mix concrete through the above vehicle. The National Insurance Co. Ltd. is referred to as the Opposite Party /Insurer (OP in short).

4. Brief relevant facts of the case as per the Complainant are that the Complainant's vehicle was insured with the OP/Insurer for the period from 13.06.2014 to 12.06.2015, with an IDV of Rs.19,85,300/-, against which a premium of Rs.23,923/- was paid. On 21.08.2014, while being driven by the complainant's experienced and licensed driver, Shri Manjeet Singh, the vehicle overturned and fell into a river while avoiding a collision with a motorcycle. Unfortunately, the accident resulted in the total loss of the vehicle and the tragic drowning of the vehicle's helper, Shri Charan Singh Yadav. The incident was reported to Dannahaar Police Station on 23.08.2014, and the promptly informed the OP and filed a claim, providing all requested documents.

5. Thereafter, the OP insurance company appointed Sri S.B. Sharma, the authorized Surveyor who conducted a spot survey of the vehicle on 23.08.2014. The claim investigation was carried out by M/s Agile Associates, who confirmed the accident, vehicle damage, and the helper's unfortunate demise in their report dated 16.12.2014. The final survey report by Sri Jai Prakash Barry on 25.02.2015 also acknowledged that it was a total loss case. Despite the clear facts and efforts of the Complainant to clarify every query, the OP failed to honor the claim promptly.

6. Ultimately, the OP arbitrarily repudiated the claim, on the ground that the policy did not cover overturning. Additional premium was required for such coverage, which the Complainant had not paid. The Complainant averred that IMT-47 of All India Motor Tariff is not applicable on this present case. Importantly, the OP never provided the relevant regulation and endorsement IMT-47 of India Motor Tariff to the complainant, nor was this endorsement a part of the policy schedule.

7. Being aggrieved by the repudiation of claim, alleging deficiency in service by the OP, the Complainant (Respondent herein) filed a Consumer Complaint (No. 141 of 2017) before the learned State Commission with the following prayer: -

***i- The sum insured Rs. 19,85,300/- with 12% interest from the date of accident that is 21.08.2014, and***

***ii- Rs. 1,50,000/- as damages for mental physical agony, and***

***iii- Rs. 7,00,000/- for loss/ expenses occurred to arrange another vehicle to carry the work, and***

***iv- Rs. 55,000/- as the cost of the case. Against the opposite parties and in favor of the complainant and***

***v- Any other relief which this Hon'ble Commission deems fit and proper may be allowed in favor of the complainant and against the opposite parties.***

8. The OPs/Insurer countered the claim by contending that the vehicle was used for commercial purpose. Therefore, the Complainant did not fall within the definition of consumer under Section 2(1)(d) of Consumer Protection Act, 1986. Furthermore, it was stated that IMT 14 of Indian Motor Tariff was applicable to the vehicle in question and the claim's repudiation was based on the provisions of Rule IMT-47. Additionally, the OPs/Insurer emphasized that the survey report and investigation report both indicated that at the time of the accident, Shri Charan Singh was driving the vehicle without a valid driver's license.

9. Considering the facts and the circumstances of the case, the learned State Commission partly allowed the complaint with following observation: -

***"I observed the arguments of the advocate for the complainant. The complainant filed the claim against the opposite party in the said claim the driver of the offending vehicle was Manjeet Singh S/o Sohan Singh and he has a valid driving license. Whereas the investigator of the insurance company stated that at the time of accident the driver was Charan Singh and died in the accident. Still the insurance company in its repudiation letter, which is annexure-12 of the complaint, has not taken the ground of the driver having no effective & valid driving license or the driver was Charan Singh and not Manjeet Singh. In this stage we assume that the insurance company accepts these facts, that at the time of accident the driver was Manjeet Singh and had an effective & valid driving license. The insurance company cannot take any grounds other than which was mentioned in the repudiation letter at this stage.***

***The above conclusion is based on the judgment of Hon'ble Supreme Court Glada Power and Telecommunication Ltd. Vs. Untied India Insurance Co. Ltd. 85 Anr. IV (2016) C.P.J 5 S.C.***

***That the complainant vehicle was insured at amount of Rs. 19,85,300.00. That Sri Jai Prakash Barry has made the final survey of the claim and admitted vide his report dt,25.02.2015 that it is a case of total loss. The salvage value of the vehicle of Rs. 4,25,000.00 and therefore, the insurance company is liable to pay insured amount of Rs. 19,85,300.00 less the salvage amount of Rs.4,25,000/- i.e. Rs. 15,60,300.00, to the complainant firm alongwith 9% interest from the date of institution of the case till the***

***realization of the award. The insurance company is liable to pay of Rs. 10,000/- towards the allied expenses.***

***Based on the above conclusion the court directed the insurance company to pay Rs. 15,60,300.00 as total compensation towards the loss of insured vehicle to the complainant alongwith 9% interest same is allowed and Rs. 10,000/- as allied expenses.”***

***(Extracted from English Translated Copy)***

10. Being aggrieved by the impugned order of the learned State Commission, the OP/insurer (Appellant herein) filed this present Appeal no. 399 of 2019 with the following prayer:

***(A) Set aside the impugned judgment and order dated 01.01.2019 passed by the Hon'ble State Commission, in Complaint Case No. 141 of 2017***

***(B) Allow the present First Appeal and award the cost of the Appeal to the Appellant.***

***(C) Pass any other or further order(s) as this Hon'ble Commission deems fit and proper in the facts and circumstances of the present case.***

11. The Appellant raised mainly the following grounds:

A. The learned State Commission failed to consider that the accident occurred due to the overturning of the vehicle while transiting a 5.00-meter stretch of M-30 type concrete mixture. According to NB-3 read with IMT-47 of the Indian Motor Tariff, the insurer is not liable to compensate when an accident is caused by the overturning of a vehicle during its use, as is considered as use as a tool of trade.

B. The State Commission did not consider the exclusion specified in endorsement IMT-47, which states that losses resulting from overturning are not covered. They also mentioned the exclusion related to the limitation of use, as per the tariff for miscellaneous and special type of vehicles under point No.7(A)(v), in addition to condition No.5.

12. Upon notice on the memo of Appeal, the Respondent has not filed any Reply/Objections. However, the Respondent/ Complainant reiterated the facts of the case that repudiation of claim is against the terms and condition of the policy as well as not in accordance with the law which falls within the definition of “Deficiency in Services” coupled with Unfair Trade Practice. Therefore, appeal is liable to be dismissed with punitive costs.

13. In his arguments, the learned Counsel for the Appellant/OP reiterated the grounds outlined in Para 11 and asserted that the Appellant rightly rejected the claim as per details brought out in the repudiation letter dated 06.02.2013. It was emphasized that the Respondent failed to provide any reasoning or evidence to counter the grounds for repudiation. There was no deficiency in service on the part of the Appellants, as they acted diligently and in accordance with the terms and conditions of the policy, including reliance on the surveyor's report and related documents. The learned Counsel further contended that the learned State Commission failed to acknowledge the fact that at the time of the accident, the vehicle was being driven by the deceased, Shri Charan Singh, and not Shri Manjeet Singh. This is supported by the statements of Smt Rajansri (wife of the deceased) and Shri Dharamendra Kumar (brother of the deceased), both stated that Shri Charan Singh was the driver of the transit mixer on the date of the accident. According to the police intimation provided by Shri Nagina Singh (supervisor at M/s Vineemee Constructions Ltd.), the vehicle was driven by Shri Charan Singh. This suggests that the Respondent fraudulently substituted a driver, who had a valid driving license to take undue advantage of the insurance policy.

14. He further argued that the learned State Commission erred in not deducting Rs. 9,926.50/- from the total loss assessment as per the Compulsory Clause of the insurance policy. The surveyor had assessed the loss at Rs. 15,50,373.50/- after accounting for this deduction, but the State Commission mistakenly awarded Rs. 15,60,300/- as compensation without this deduction. The learned Counsel has also relied on the following judgements:-

***A. The judgment dated 29.03.2012 passed by NCDRC in M/s Green Valley Plywood Ltd. Vs. National Insurance Co. Ltd. (RP/104/2012).***

***B. The judgment dated 13.04.2015 passed by Hon'ble Supreme Court in M/s Green Valley Plywood Ltd. Vs. National Insurance Co. Ltd.***

***C. The judgment dated 05.07.2011 passed by learned State Commission, Hyderabad in National Insurance Co. Ltd. Vs. Sambhavi Engineers (FA/1277/2009).***

***D. The judgment dated 23.09.2008 passed by Hon'ble Supreme Court in Deokar Exports Pvt. Ltd. Vs. New India Assurance Co. Ltd. (Civil Appeal No. 5103 of 2002).***

15. The Learned Counsel for the Respondent reiterated the facts of the case and affidavit of evidence filed before the State Commission and argued that the insurance companies are bound by the grounds mentioned in their letter of repudiation and cannot go beyond them. In the present case, the condition IMT-47 is not applicable to the admitted facts and circumstances. The vehicle was not being used as a tool; instead, it was merely moving on the road when the accident occurred. Therefore, the argument that overturning only applies when the vehicle is used as a tool is entirely untenable in the present case. It was further contended that the repudiation by the Appellant is in gross violation of the terms and conditions of the policy and is not in accordance with the law. The Appellant committed a deficiency in service, coupled with unfair trade practices, to harass the Respondent/Complainant. The Appeal is an attempt to continue this harassment. Therefore, the Counsel argued that the Appeal should be dismissed with punitive costs in the interest of justice.

16. I have gone through the pleadings placed on record and the associated documents placed on record and have given a thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

17. The main issue raised by the Appellant in this case is whether the repudiation of the insurance claim is legal. In this regard, the Appellant specifically argued that the insurance claim was rightfully repudiated based on the grounds outlined in the repudiation letter. Therefore, the key contention is whether the circumstances of the accident, involving the overturning of the insured vehicle, fall within the policy exclusions, specifically those related to the use of the vehicle as a "tool of trade" and the application of IMT-47 of the Indian Motor Tariff. The Appellant maintained that these exclusions apply and, therefore, the insurance claim should not be honored. Additionally, the Appellant raised concerns about the substitution of the driver's identity and contended that this was an attempt to fraudulently obtain insurance benefits. Ultimately, the central issue is whether the Appellant's repudiation of the claim was legitimate or it constituted a deficiency in service and unfair trade practice, as argued by the Respondent.

18. There is no dispute about the fact that the validity of the insurance terms, which were in force from 13.06.2014 to 12.06.2015. Section I of the policy, *inter alia*, provides as follows:

**“SECTION-I: Loss of or Damage to the Vehicle Insured:**

1. The Company will indemnify the insured against loss or damage to the vehicle insured hereunder and/or its accessories thereon:

- I. by fire explosion self-ignition or lightning;
- II. by burglary housebreaking or theft;
- III. by riot and strike;

- IV. by earthquake (fire and shock damage);
- V. by flood typhoon hurricane storm tempest inundation cyclone hailstorm frost;
- VI. by accidental external means;
- VII. by malicious act;
- VIII. by terrorist activity;
- IX. whilst in transit by road rail inland waterway lift elevator or air;
- X. by landslide/rockslide.”

Furthermore, in regard to the application of IMT 47 in the following terms:

“IMT 47: Mobile Cranes/ Drilling Rigs/ Mobile Plants/ Excavators/ Navvies / Shovels/ Grabs/ Rippers

It is hereby declared and agreed notwithstanding anything to the contrary contained in this Policy that in respect of the vehicle insured the insurer shall be under no liability:

a) Under Section I of this policy in respect of loss or damage resulting **“from overturning arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto** except for loss or damage arising directly from fire, explosion self-ignition or lightening or burglary housebreaking or theft.

b) Under Section II except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, in respect of liability incurred by the insured arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto.

N.B.: Omit paragraph (a) for :

- I. Liability only Policies.
- II. Package Policies where an additional premium has been paid for inclusion of damage by overturning.

NOTE:

\* Insert make, number or some other means of identification.

Where a premium reduction is allowed for exclusion of damage when in use as a tool of trade omit from paragraph (a) the words “resulting from overturning” and “except for loss .... or theft”.”

19. In the recent judgement by the Hon'ble Supreme court in *Sharda Associates Vs. United India Insurance Company Ltd.*, Civil Appeal No. 4910 of 2022, decided on 25.07.2022, it was held that: -

***“9. In order to attract the applicability of IMT 47, certain specific conditions have to be fulfilled. IMT 47 excludes liability:***

***I. Where the loss or damage has resulted from “overturning arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto”.***

***II. Unless the loss or damage is directly arising from fire, explosion, self-ignition, lightning, burglary, house breaking or theft.***

***10 It is important to note that clause 1 of the insurance policy, which has been extracted earlier, specifically covers a loss or damage which arises as a consequence of a landslide. IMT 47 applies to a situation where the loss or damage has been caused due to ‘overturning’ arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or forming a part thereto. In other words, for the provisions of IMT 47 to be applied, it is essential to establish that the loss or damage was caused due to overturning and that the overturning should arise out of the operation as a tool of such vehicle.....”***

20. In the present case the Complainant/ Respondent asserted that the accident happened on 21.08.2014 on the road on the way to Ikri to Saifai (Etawah) and the vehicle overturned during transit and fell into the river, while avoiding a motorcycle. The accident had not occasioned at the worksite as alleged by the Appellant. A police complaint was filed into the case at Dhanahar Police Station Maujpuri on 23.08.2014. The report had contained the details of the accident and the circumstances under which Shri Charan Singh died. The complainant also brought out that it was Shri Manjeet Singh who was driving the vehicle and not Shri Charan Singh, as wrongly communicated earlier.

21. The Appellant strongly contested that the claim was repudiated as the accident had occasioned due to **overturning arising out of the operation as a tool of trade**. However, while so asserting and repudiating the claim, no corroborative evidence was led to establish the same. Further, in addition to the Surveyor Report in the matter, the Appellant caused an independent investigation by Agile Associates. The Appellants themselves placed on record the Investigation Report dated 16.12.2014. In the said report it was clearly brought out that on 21.08.2014 while the said vehicle in question UP30-T-4332 was moving on a temporarily built road skidded due to rain and the vehicle ran into bridge side ditch, which was filled with water. It is also alleged negligence of driver due to which the driver of the vehicle Shri Charan Singh died in this mishap on the spot.

22. The contents of the report brought on record including the conclusion explicitly establishes that accident had happened on a road and not at the worksite and during the operation of the vehicle as alleged. Further, the issue pertaining to Shri Charan Singh driving



the vehicle at the time of accident has not been taken at all as a ground while repudiating the claim of the Complainant vide the letter of the Respondent dated 20.04.2015. Thus, it is clear that at the time of repudiation the insurer accepted that the driver of the vehicle possessed a valid driving licence. Therefore, the Appellant cannot take ground which are entirely different from those relied upon while repudiating the claim at a subsequent stage.

23. Intriguingly, as part of the said investigation, statements of the wife and brother of the deceased Shri Charan Singh were recorded and were relied upon for supporting the repudiation of the claim of the Complainant. Perusal of the aforementioned statements the deceased's brother and wife, brought on record by the Appellant indicates that she has stated *“That on 21.08.2014 went to plant for duty and from there driven the Transit Mixture Machine and was going to Isan River Ikri. That at the time of crossing the bridge suddenly a motorcyclist comes in front of the vehicle and in order to save a motorcycle the vehicle lost its balance and overturned into the river, due to the above incident he died”*. The statement of the brother of the deceased is that *“That on 21.08.2014 my brother Charan Singh S/o Bharat Singh by driving the vehicle no. UP-30-T-4332 went to Ikri from RMC Saffai suddenly the motorcyclist comes in front of the vehicle in order to save a motorcycle driver he hit the brakes and vehicle slipped, unbalanced, and overturned into the river, due to which he died.”*

24. It is evident that these statements were recorded privately post the unfortunate demise of Shri Charan Singh. While it is unclear as to whether they were apprised of the scope and purpose of recording their statements, it is clear that they were not eyewitnesses to the accident happened at on 21.08.2014 on the road on the way to Ikri to Saifai (Etawah) and the vehicle overturned during transit and fell into the river. No affidavits attesting the veracity of these statements were submitted.

25. In view of the discussion above, we are of the considered view that the Order of the State Commission does not suffer from any infirmity and therefore, the F.A. No.399 of 2019 is dismissed.

26. There shall be no order as to costs and all pending Applications, if any, are disposed of accordingly.

27. The Registry is directed to release the Statutory deposit amount, if any, in favour of the Appellant on compliance of the orders.

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