Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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Queries & Answers through the Web

(*www.advantageconsumer.com* is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Continued from August 2025 issue.....

Medical negligence established, based on lack of appropriate pre-operative tests and post-operative care, and hence penalised.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

REVISION PETITION NO. 3109 OF 2017

(Against the Order dated 16/06/2017 in Appeal No. 338/2017 of the State Commission)

DR. A.K. RAI
C/O SHYAMA HOSPITAL S-8/34 2KA, AIRPORT ROAD SHIVPUR,
VARANASI .....Petitioner(s)

Versus

PRADEEP KUMAR SINGH
S/O SRI KALPANATH SINGH R/O D-64/47, A-2, MADHOPUR SHIVPURA,
VARANASI .....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER

Dated : 15 January 2025

ORDER

AVM J. RAJENDRA, AVSM, VSM (RETD), MEMBER

20. Based on the facts, evidence, and legal precedents presented, it is concluded that the petitioner failed to exercise the degree of skill and care expected from a qualified orthopaedic surgeon. The allegations of medical negligence are substantiated, and the orders of the District Forum and State Commission do not suffer from any legal infirmity. In light of the foregoing discussions, the order of the learned District Forum dated 17.01.2017 as was modified by the learned State Commission vide order dated 16.06.2017 is upheld, and the Revision Petition No.3109 of 2017 is dismissed.

21. Considering the facts and circumstances of the case, there shall be no order as to costs.

22. The Petitioner/OP is directed to make the entire payments due to the complainant within a period of two months from the date of this order. In the event of delay, the interest rate applicable shall be @ 9% per annum for the entire period.

23. All pending Applications, if any, stand disposed of accordingly.■

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Insurance Company provided relief, as the vehicle was not registered and had violated the terms of the Insurance Policy.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

REVISION PETITION NO. 827 OF 2017

(Against the Order dated 09/01/2017 in Appeal No. 1225/2016 of the State Commission, Haryana)

TATA AIG GENERAL INSURANCE COMPANY LTD.
4TH FLOOR, DLF TOWER B, JASOLA DISTRICT CENTRE,
NEW DELHI-110025 .....Petitioner(s)

Versus

NARESH & ANR.
S/O. SHRI OM PRAKASH R/O. VILLAGE BAHU, TEHSIL MATANHAIL,
DISTRICT-JHAJJAR
HARYANA .....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER

Dated : 23 January 2025

ORDER

PER SUBHASH CHANDRA

1. This Revision Petition under Section 21 (b) of the Consumer Protection Act, 1986 (in short, "the Act") challenges order dated 09.01.2017 of the Haryana State Consumer Dispute Redressal Commission, Panchkula (in short, the "State Commission") dismissing Appeal No. 1225 of 2016 and affirming the order of the District Consumer Disputes Redressal Forum, Jhajjar (in short, "District Forum") in Complaint Case No. 192 of 2015 dated 17.10.2016.

2. We have heard the learned counsel for the parties and given careful consideration to the material placed on record and the arguments urged before us.

3. The relevant facts of this case, in brief, are that respondent's Marka Swaraj-724 tractor purchased on 19.06.2015 was insured by the petitioner for the period 23.06.2015 to 22.06.2016 for an IDV of Rs 3,65,750/- subject to terms and conditions of the Policy. On the night of 06-07.07.2015 the tractor was stolen from outside the house of the respondent and an FIR lodged the same day. The petitioner was intimated on 14.07.2015.

respondent and an FIR lodged the same day. The petitioner was intimated on 14.07.2015. As per the report of the investigator appointed by the petitioner, the respondent had not obtained even a temporary registration for the tractor and the same had been parked with the keys in the ignition on the night of the theft. No explanation was provided by the respondent to its queries. Accordingly, the claim was repudiated on 02.09.2015 which was challenged before the District Forum. It was held, on contest, that the respondent was entitled to the IDV of the tractor with interest @ 9% p.a. from the date of theft and litigation costs of Rs 5500/- in view of the fact that an FIR had been lodged. Appellant's appeal before the State Commission was dismissed *in limine* on the ground that the affidavit of the respondent stating that the tractor had the key in the ignition and that he was responsible for the same could not be considered to be tenable or to be a prudent statement. The petitioner has impugned this order before us.

4. Petitioner contended that the State Commission committed a material irregularity in failing to appreciate that the tractor in question had been in use without registration with the Regional Transport Office which was a violation of Section 39 of the Motor Vehicles Act, 1988. It was also contended that the State Commission had erroneously held that since an FIR had been filed, the delay in intimating the petitioner insurance company was not relevant since this was contrary to the terms and conditions of the Policy. It was further contended that the State Commission erred in not considering the admission of negligence by the insured on affidavit. Reliance was placed on the following judgments: (i) ***Narinder Singh Vs. New India Assurance Co. Ltd.,*** Civil Appeal No. 8463/2014, IV (2014) CPJ 11 (SC); (ii) ***United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal***, Civil Appeal No. 6277/2004, IV (2004) CPJ 15 (SC) and (iii) ***New India Assurance Co. Ltd. Vs. Trilochan Jane,*** First Appeal No. 321/2005. It was argued that violation of the Motor Vehicles Act resulted in the violation of the Policy terms and that the Policy has to be read "as is" and therefore the orders of the *fora* below suffered from a material irregularity. It was contended that the violation of the Policy condition of immediately notifying the petitioner had also not been considered. Reliance was also placed on the judgment of the Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Vs. Sushil Kumar Godara***, Civil Appeal No. 5887 of 2021 decided on 30.09.2021, wherein it was held that if on the date of theft, the vehicle lacked a valid registration it was a violation of Sections 39 and 192 of the Motor Vehicles Act, 1988 and therefore a fundamental breach of the terms and conditions of the Policy.

5. *Per contra,* respondent no. 1 argued that the theft occurred while the tractor was parked and that the process of registration takes some time. The FIR was lodged immediately and the intimation to the petitioner was within a reasonable time of 7 days. It was also contended that the State Commission had rightly held that the affidavit relied upon by the petitioner could not be considered as that of a prudent person. On behalf of respondent no. 2 who financed the purchase of the tractor it was contended that it was entitled for the refund of its loan.

6. This Commission, in exercise of its revisional jurisdiction, is not required to re-assess and re-appreciate the evidence on record when the findings of the lower *fora* are concurrent on facts. It can interfere with the concurrent findings of the *fora* below only on the grounds that the findings are either perverse or that the *fora* below have acted without jurisdiction. Findings can be concluded to be perverse only when they are based on either evidence that have not been produced or based on conjecture or surmises i.e. evidence which are either not part of the record or when material evidence on record is not considered. The power of this Commission to review under section 21 of the Act is, therefore, limited to cases where some *prima facie* error appears in the impugned order. As laid down by the Hon'ble Supreme Court in ***Rubi (Chandra) Dutta*** (2011) 11 SCC 269 decided on 18.03.2011, ***Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors*** (2016) 8 SCC 286 decided on 02.08.2016 and ***T Ramalingeswara Rao (Dead) Through LRs & Ors Vs. N Madhava Rao and Ors***, Civil Appeal No. 3408 of 2019 decided on 05.04.2019, revisional jurisdiction is warranted to be exercised in cases of concurrent findings on facts by the lower *fora* only where there is either a jurisdictional error or a material irregularity resulting in miscarriage of justice. In the instant case, the findings of the *fora* below have relied upon the fact of delay in intimation to the insurance company to not be fatal to the claim of the respondent since the intimation to the police through an FIR was timely. However, they have fallen into the error of not considering that the insured was in breach of the policy terms and

conditions in that the provisions of the Policy mandating registration under the Motor Vehicles Act amounted to violation of Policy conditions. This constitutes a material irregularity which, despite concurrent findings of the *fora* below, warrants exercise of revisional jurisdiction.

7. The Policy requires that the insured shall comply with the provisions of the Motor Vehicles Act, 1988. It is admitted by the respondent that the vehicle was not covered by either a temporary or regular registration on the date of the theft, although it is attributed to the delay on part of the registration authority. No evidence is however, brought on record that an application for registration was pending with the Regional Transport Office. The relevant Sections of the Motor Vehicles Act read as under:

39. Necessity for registration.—No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

43. Temporary registration.—(1) Notwithstanding anything contained in section 40 the owner of a motor vehicle may apply to any registering authority or other prescribed authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable:

Provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or any unforeseen circumstances beyond the control of the owner, the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period or periods as the registering authority or other prescribed authority, as the case may be, may allow.

(3) In a case where the motor vehicle is held under hire-purchase agreement, lease or hypothecation, the registering authority or other prescribed authority shall issue a temporary certificate of registration of such vehicle, which shall incorporate legibly and prominently the full name and address of the person with whom such agreement has been entered into by the owner.

In view of the law laid down by the Hon'ble Supreme Court in ***Narinder Singh*** (supra) that using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract, it is evident that the tractor insured was in breach of the Policy. The *fora* have clearly fallen in error in not considering this aspect while adjudicating the issue.

8. In view of the discussion above, and the facts and circumstances of this case, we are of the view that the revision petition has merits and is liable to be upheld. The revision petition is therefore allowed and the impugned order set aside with no order as to costs.

9. Pending IAs, if any, stand disposed with this order.■

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No favourable response to treatment does not mean negligence by doctor.

SC sets aside NCDRC's order of compensation. The NCDRC built up a new case, going beyond pleadings and transgressing its jurisdiction, SC pointed out.

The Supreme Court has on September 9, 2025 emphasised that simply because a patient did not favourably respond to the treatment given by a physician or if a surgery failed, the doctor cannot be held liable per se by applying the doctrine of res ipsa loquitur.

A bench of Justices Sanjay Kumar and Satish Chandra Sharma also underscored that no sensible professional would intentionally commit an act or omission which would result in harm or injury to a patient as the reputation of that professional would be at stake and a single failure may cost him or her dear in that lapse.

Relying upon Jacob Mathew Vs State of Punjab and another (2005) and Martin F D'Souza Vs Mohd Ishfaq (2009), the court said, it was also pointed out that sometimes, despite best efforts, the treatment by a doctor may fail but that does not mean that the doctor or surgeon must be held guilty of medical negligence, unless there is some strong evidence to suggest that he or she is.

It was also said that courts and consumer fora are not experts in medical science and must not substitute their own views over that of specialists. While acknowledging that the medical profession had been commercialised to some extent and there were doctors who depart from their Hippocratic Oath for their selfish ends of making money, this Court held that the entire medical fraternity cannot be blamed or branded as lacking in integrity or competence just because of some bad apples, the bench said.

The court made references to those judgments while allowing an appeal filed by Deep Nursing Home and another. It set aside the order of May 09, 2012 passed by the National Consumer Disputes Redressal Commission, New Delhi, as well as the judgment of January 31, 2007 by the State Consumer Disputes Redressal Commission, Union Territory, Chandigarh.

The court found in the matter, the NCDRC built up a new case, going beyond pleadings and transgressing its jurisdiction by making its ultimate conclusion that there was negligence on the part of Dr Kanwarjit Kochhar only in the antenatal care and management of patient Charanpreet Kaur.

Dismissing the consumer complaint, the court directed Manmeet Singh Mattewal, respondent No 1, to return and refund the sum of Rs 10,00,000 received by him, pursuant to the orders passed in this litigation, to Dr Kanwarjit Kochhar, Dr G S Kochhar and New India Assurance Company Ltd, as the nursing home was no longer in existence.

As per facts of the matter, Mattewal lost his wife, Charanpreet Kaur, and his newborn son within the span of a few hours.

On his complaint, State Consumer Disputes Redressal Commission, Chandigarh had on January 31, 2007 found Dr (Mrs) Kanwarjit Kochhar, appellant No.2, the Obstetrician and Gynaecologist who conducted the delivery and the nursing home as guilty of medical negligence and deficiency in service. It directed them to pay Rs 20,26,000 to the complainant Mattewal and his older son.

The National Consumer Disputes Redressal Commission, New Delhi by order on May 09, 2012 dismissed the appeals. It pinned the entire responsibility of paying Rs 20,26,000 upon Dr Kochhar.

Examining the appeals, the court noted the NCDRC reserved judgment in the appeals on July 27, 2010 but the order was pronounced by it nearly two years later, on May 09, 2012.

Deceased, Kaur, a co-operative bank manager on deputation as a lecturer in the Punjab Institute of Cooperative Training, was aged about 32 years and was earning a monthly salary of Rs 25,682.

She was admitted on December 21, 2005 at about 11.00 AM but the newborn baby died instantly immediately after the birth next day. This resulted in her going into shock and caused profuse bleeding. She was taken to PGI Chandigarh next day, where she was declared brought dead.

It was alleged the nursing home was not equipped to handle emergencies and complications during deliveries; the record of the treatment was fabricated later to escape prosecution; the blood group of Charanpreet Kaur was not checked and this led to delay in blood transfusions; the death of the newborn child was also due to negligence; there was negligence in causing trauma to Kaur.

It was alleged the nursing home was not equipped to handle emergencies and complications during deliveries; the record of the treatment was fabricated later to escape prosecution; the blood group of Charanpreet Kaur was not checked and this led to delay in blood transfusions; the death of the newborn child was also due to negligence; there was negligence in causing trauma to Kaur.

In its findings, the NCDRC opined that, though all the Medical Boards had opined that there did not appear to be any gross medical negligence in the management of the patient by the treating doctors after the delivery, the same did not mean that there was no medical negligence before the delivery. It found several instances of departure from standard protocols in the antenatal care of the patient on the part of Dr Kochhar.

The court noted five reports by different medical boards came about upon the instigation and at the behest of Mattewal himself, who approached various authorities voicing his grievance against Dr Kochhar and the nursing home in relation to the death of his wife and child.

However, except for one report which, owing to lack of sufficient data, left one question open, i.e., the possible pre-existing conditions that may have led to the death of Charanpreet Kaur, none of the reports held Dr. Kanwarjit Kochhar negligent, the bench pointed out.

"Given the settled legal position that every failure in the treatment of a patient does not automatically lead to an assumption of medical negligence, we find that the opinions expressed by the doctors and experts, who constituted these Medical Boards/Committees, clearly tilted the balance in favour of Dr Kochhar, as none of them found any medical negligence on her part. As these bodies were constituted at the behest of Mattewal himself and he cannot, therefore, fight shy of the conclusions and findings rendered by them,'' the bench said.

The court noted, the NCDRC decided the matter by building up a new case altogether, despite giving a clear finding of no medical negligence in the handling of Kaur's labour, including her delivery; the management of the baby's problem; and the postdelivery management at the nursing home.

It held the NCDRC clearly erred in building up a new case on behalf of complainant in pinning negligence and liability upon Dr Kochhar in the context of antenatal care and management of the patient, which was never the subject matter of the complaint case.

"In doing so, the NCDRC overstepped its power and jurisdiction as it was not for it to travel beyond the pleadings in the complaint case and build up a new case on its own,'' the bench said.

The court finally held the NCDRC clearly transgressed its jurisdiction in building a new case for the complainants, contrary to their pleadings. However, its finding that there was no negligence in the delivery and the post-delivery treatment of Kaur have attained finality as no separate appeal was preferred by the complainants. The impugned order passed by the NCDRC, confirming the SCDRC's judgment on the new grounds made out by it, therefore, cannot be sustained, it said.

Case Title: Deep Nursing Home and another Vs Manmeet Singh Mattewal and others. ■

Courtesy: **Lawbeat News Desk -SC**. Edits by **Sanya Talwar**

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