

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 626 OF 2013**

(From order dated 26.10.2012 in First Appeal No. 1779 of 2010 of the  
State Consumer Disputes Redressal Commission, Haryana, Panchkula)

1. M/s. Aroma Paints Ltd.

Through, Mr. Rajiv Seth, Director  
4B, Industrial Area  
Sonapat - 131001

Haryana

2. Mr. Trajiv Sethi, S/o Sh. T.R.Seth

R/o 230-C, Model Town

Sonapat

Haryana

..... Petitioners

Versus

1. The New India Assurance Co. Ltd.

A-2/3, Lusa Tower, Azadpur

Delhi

2. The New India Assurance Co Ltd.

Vardhman Complex. Opp.General Hospital

Delhi Road

Soenpat

Haryana

3. Tata Motor Finance Ltd,

Cyber Tech House , Plot No - B-63/65 Road

21/34 TB Savant Marg, Wage Estate

Thane (w)

Maharastra

Respondents

...

**BEFORE:**

**HON'BLE MR.JUSTICE J. M. MALIK , PRESIDING MEMBER**

**HON'BLE DR. S. M. KANTIKAR, MEMBER**

For the Petitioners : Ms. Niharika Ahluwalia, Advocate

For the Respondent Nos. 1 & 2 : Mr. Navdeep Singh, Advocate

For the Respondent No.3 : Mr. T.V.George, Advocate

**PRONOUNCED ON 07.08.2013**

## **ORDER**

### **JUSTICE J.M. MALIK**

1. This revision petition pivots around the question, “Whether the insurance company can repudiate the claim of the claimant/insured because he was having temporary registration only and was not carrying Registration Certificate, under Section 39 of the Motor Vehicles Act?”.
2. Aroma Paints Ltd., the complainant, in this case, obtained insurance policy, in respect of its Indigo XL “Dicor”, for a sum of Rs.7,35,548/-, from the New India Assurance Co. Ltd., OPs/ Respondent Nos. 1 & 2. On 01.07.2007, i.e., during the subsistence of the policy, the above said car met with an accident. The Surveyor of the Insurance Company inspected the vehicle and assessed the loss on, ‘total loss’ basis, in the sum of Rs.6,85,941/- . The Respondents/OPs repudiated the claim, on the ground that the complainant had not got done registration of the car. The complainant had purchased the vehicle on 09.02.2007. He had temporary registration of the vehicle which was valid up to 08.03.2007, as per Section 43 of the Motor Vehicles Act. The accident took place after the elapse of four months, approximately, from the date of purchase.
3. The District Forum allowed the complaint and directed the respondent Nos.1 & 2, Insurance Company, to make payment of Rs.7,35,548/-, along with interest @ 9% p.a., compensation in the sum of Rs.10,000/- for deficiency of service, mental agony and harassment and a sum of Rs.5,000/-, towards litigation expenses.
4. Aggrieved by that order, the OPs/Insurance Company, filed appeal before the State Commission. The State Commission, vide its order dated 26.10.2012, accepted the appeal and dismissed the complaint. The State Commission held that the provisions of Section 39 of the Motor Vehicles Act, 1988, were mandatory. It has cited the following authorities, in support of the case. (1) United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal (2004) 8 SCC 644 and (2) Surajmal Ram Niwas Oil Mills (P) Ltd. Vs. United India Insurance Co. Ltd. & Anr., (2010) 10 SCC 567.
5. We have heard the learned counsel for the parties. In support of his case, the learned counsel for the Insurance Co., has placed

reliance on the following two cases of this Commission.

**(1) RP No.4951 of 2012, decided on 19.03.2013, (Narinder Singh Vs. New India Assurance Co.Ltd. & Ors.),** wherein it was held:

***“..... At the time of accident on 02.02.2006, the vehicle was being driven without registration, which is prohibited under Section 39 of the Motor Vehicles Act, 1988 and is also an offence under Section 192 of the said Act. The State Commission, have rightly quoted the judgments given by the National Consumer Disputes Redressal Commission in Kaushalendra Kumar Mishra Vs. Oriental Insurance Co.Ltd., as report in II (2012) CPJ 189 (NC), saying that the damaged vehicle, although insured, is not entitled to claim indemnification, under the insurance policy”.***

6. He has also referred to another judgment of this Commission, titled in ***Kaushalendra Kumar Mishra Vs. Oriental Insurance Co.Ltd., II (2012) CPJ 189 (NC)***, wherein it was held as under :-

***“8. In our view, these arguments are neither legally correct nor acceptable. Registration of the vehicle is mandatory requirement of the law. The relevant provision, Section 39 of the Motor Vehicles act, 1988, reads :***

***“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.***

***Clearly, therefore, till the vehicle receives this Certification of Registration, from the competent authority, it is not legally useable, on roads. Averments in the complaint petition itself, show that the Motor Cycle was used by the complainant for dropping his uncle to the Railway Station, Satna, and that the incident had happened on its return journey. This use of the motor cycle, was in clear violation of the statutory requirement of registration”.***

7. The learned counsel for the Opposite Party, i.e., Insurance Company, also referred to Section 43 of the Motor Vehicles Act, 1988, which runs, as follows:-

**“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:**

8. The other Benches of this Commission have taken the opposite view, which we will discuss, subsequently. It, however, appears that the Apex Court has set at rest, the controversy racked up by the judgments rendered by the National Commission by dismissing the Special Leave Appeal, in limine, in favour of the Consumer.

9. The same view was taken by this Commission in **RP No.171 of 2012, IFFCO Tokio General Insurance Co.Ltd., Vs. Pratima Jha, decided on 27.04.2012.**

10. **Against the order passed in RP No.171 of 2012, Special Leave Petition was filed before the Hon’ble Supreme Court, by the Insurance Company. The Hon’ble Apex Court was pleased to dismiss the Special Leave Petition (Civil) Appeal No. 27660 of 2012.**

11. The counsel for the petitioner/complainant, has cited the following three judgments of this Commission.

**(1) RP No.52 of 2012, Oriental Insurance Co.Ltd. & Anr. Vs. Pearls Buildwell Infrastructure Ltd. & Ors., headed by the Bench, Hon’ble Mr.Justice Ashok Bhan, decided on 27.02.2012, reported as II (2012) CPJ 102 (NC).**

**(2) In HDFC Chubb General Insurance Co. Ltd. Vs. Ila Gupta & Ors., I (2007) CPJ 274 (NC), decided on 14.12.2006, in Para 2 of the judgment, it was observed :**

**“As far as getting a Permanent Registration Number is concerned, admittedly, for want of a good Registration Number, more time was**

***taken and the respondent got it registered later. In the present case, non-registration of the Vehicle did not lead to this accident. It was just a damage arising out of a car falling into the pothole. It is not the case of the petitioner that they were not aware of the car being registered under the Temporary Registration Number, while the policy was issued. An amount of Rs.81,476/- was paid as a premium for getting the car comprehensively insured. As it was very much within the knowledge of the petitioner Insurance Company that the policy could not continue to be valid due to non-provision of the Permanent Registration Number, they should have cancelled the policy in order to make the respondent take another policy or revalidate the same according to the policy conditions or whatever that was required to be done. This has not been done by the petitioner Insurance Company***".

and (3) ***RP No. 497 of 2012, The Oriental Insurance Co.Ltd. Vs. Swami Devi Dayal, the Bench headed by Hon'ble Mr. Justice Ashok Bhan, decided on 14.02.2012, wherein it was held :-***

***"Petitioner being aggrieved, filed an appeal before the State Commission. State Commission dismissed the appeal by observing as under :-***

***It has not been disputed that complainant purchased new vehicle on 24.09.2007 and cover note was issued by insuring the new vehicle with engine number and chassis number. The vehicle met with an accident on 02.11.2008. The claim of the complainant was repudiated on the sole ground that the complainant failed to get the vehicle registered within the specified period of 30 days from the date of sale. Contention was raised that the temporary registration was valid for 30 days, i.e., up to 23.10.2007 and District Forum observing that not getting vehicle registered was not a disability, disentitling the complainant of indemnification of charges for repair allowed the complaint. Admittedly, the vehicle was registered with engine number and chassis number along with the name of owner. Registration authority has registered the vehicle with permanent registration number HR-03-J-3077 on 18.01.2008 by compounding the delay. Thus provision of MVA stood complied with. When the contract of insurance company was by engine number and chassis number of the vehicle and the delay, if any, in getting the permanent registration, stood condoned by the registration authority, OPs admitting the factum of accident and the damage, could not have repudiated the claim on the sole ground that***

**vehicle was not permanently registered within the period of 30 days. Hon'ble National Commission in similar situated case reported as *HDFC Chubb General Insurance Co.Ltd., Vs. Ila Gupta & Ors., 1 (2007) CPJ 274, held as under :-* [already referred].**

12. Otherwise too, the whole gamut of the facts and circumstances leans on the side of the consumer. First of all, this is not a condition laid down in the insurance policy. If the complainant did not have the registration number, he is liable to be punished under Section 192, which provides that, whosoever drives a motor vehicle, or causes or allows a motor vehicle, to be used in contravention of the provisions of Section 39, shall be punishable for the first offence, with a fine, which may extend to five thousand rupees, but shall not be less than two thousand rupees, for a second or subsequent offence, with imprisonment, which may extend to one year or with fine, which may extend to ten thousand rupees, but shall not be less than five thousand rupees or, with both.

13. It is difficult to fathom as to why Section 192 can be made applicable under the circumstances. The insurance company does not enjoin the powers of traffic police. They cannot dismiss the claim under the guise of Section 192 of Motor Vehicles Act, 1988. Section 192 of the said Act, pertains to the powers of the traffic police and the court. It does not give any power to the insurance company to press this Section into service, while dismissing the claim of the claimant/complainant. Thirdly, it is mere negligence and in-action on the part of the complainant. There is no evidence to show that he had an ulterior motive. It is difficult to understand, why he should be deprived of the claim made by him, before the Insurance Company. Except under Section 192, he has not committed any offence. Negligence on his part, cannot be equated with *mens rea*. He did not obtain the Registration Certificate for his own detriment. The insurance Company is not affected by the said negligence on his part.

14. Under these circumstances, we accept the revision petition and restore the order of the District Forum, with the modification that the petitioner/complainant will get the claim as per Surveyor's report, in the sum of Rs.6,85,941/-, without any interest or compensation. He has to be punished for his negligence. The Law of Land has to be followed strictly. The said amount be paid,

within 90 days, from the receipt of this order, otherwise, it will carry interest @ 9% p.a., till realization. It is also made clear that the insurance company will not pay the said amount to the complainant, unless and until he produces the original Registration Certificate, along with its photocopy, to the

insurance company. The complainant will be entitled to retain the original Registration Certificate, after showing it to the insurance company.

The revision petition is disposed of, in above terms.

Copy of this order shall be sent to the parties, for compliance, immediately.

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**(J. M. MALIK, J)**  
**PRESIDING MEMBER**

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**(DR.S. M. KANTIKAI**  
**MEMBE**

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