

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2405 OF 2013

(Against the Order dated 15/03/2013 in Appeal No. 1364/2009 of the State Commission Gujarat)

1. SHREE DHAIN AUTO TRANSPORT
CORPORATION
SINGHAL COMPOUND, DARJIPURA , OPP
AIRFORCE, POST AMLIYARA, NH-8,
VADODARA
GUJARAT - 390022

.....Petitioner(s)

Versus

1. UNITED INDIA INSURANCE COMPANY LTD.
UNITED INDIA HOUSE, 24 WHITE ROAD,
CHENNAI
TAMIL NADU

.....Respondent(s)

BEFORE:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER

For the Petitioner : Mr. Hemant Gupta, Advocate

For the Respondent : Ms. Nanita Sharma, Advocate

Dated : 13 Jan 2021

ORDER

1. The present Revision Petition has been filed by the Petitioners against order dated 15.03.2013 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (for short "the State Commission") in First Appeal No.1364/2009 whereby Appeal filed by the Respondent was allowed.

2. The case of the Complainant/Respondent is that he purchased Eicher vehicle from V.G. Automobiles, bearing Registration No.GJ 6 X 8858, Engine No.20575898, Chasis No.205013100, for an amount of Rs.5,55,000/-. Vehicle was insured with the Petitioner/Opposite Party from 22.05.2002 to 21.05.2003, vide Policy No.18100/02209/2002 dated 22.05.2002, for a sum of Rs.6,78,000/-. The vehicle met with an accident on 03.07.2002 at Bhilwara Road near Jharwala Village, and got badly damaged. The Complainant had consulted V.G. Automobiles, who had given an estimate of Rs.5,55,000/-. On the basis of the said estimate, Complainant filed Insurance Claim with the Petitioner on 19.07.2002, claiming an amount of Rs.5,55,000/-. Petitioner/Opposite Party got the vehicle inspected and informed the Complainant that as per the Survey Report, labour charges for repair would be Rs.21,700/- alongwith Rs.1,61,611 towards replacement cost of parts with Rs.11,500/- deduction for salvage. Claiming deficiency in service on the part of the Opposite Party, the Complainant filed Complaint before the District Forum with the following prayer: -

(1) *The Hon'ble Forum may grant the following reliefs in favour of the Complainant:*

1. *The amount of Rs.5,55,000/- being the damages caused to the vehicle business may be awarded with interest @ 18% per annum till the realization of claim amount.*
2. *Rs.1,00,000/- may be awarded for mental torture and agony.*
3. *The expenses of the complaint may be awarded."*

3. The Complaint was contested by the Petitioner/Opposite Party by filing written statement. It was stated that that the Complaint was not maintainable. On merit, Opposite Party appointed a Surveyor and as per the Survey Report, the damaged vehicle was to be repaired requiring Rs.21,700/- for labour charges and Rs.1,61,611/- towards replacement of parts. As per the claim manual, when the damage to the vehicle is 75% or more, the claim can be considered on total loss basis.

4. The District Forum after hearing the Learned Counsel for the Parties and perusing the record, allowed the Complaint in part and directed the Petitioner/Opposite Party as follows: -

"The complaint is partly allowed. The opponents are directed to pay Rs.5,44,912.00 (rupees five lacs forty four thousand nine hundred twelve only) with 9% interest, from 23.8.2002 i.e. the date of report of Shri Mahendra R. Patel the opponent's surveyor since the claim has not been repudiated till realization. The opponents are further directed to pay Rs.3,000.00 (rupees three thousand only) for mental agony and inconvenience and another sum of Rs.1,500.00 (rupees one thousand five hundred only) towards the cost of this proceedings. This award be complied with within one month from the date of receipt of copy hereof. On payment of the money awarded, the Complainant shall give the vehicle to the Opponent."

5. Aggrieved by the order of the District Forum, Petitioner/Opposite Party filed an Appeal before the State Commission. State Commission allowed the Appeal and set aside the order passed by the District Forum and granted compensation of Rs.1,61,611/- with 9% interest till realization. Further Rs.3,000/- for mental agony and inconvenience and Rs.1500/- towards cost of other expenses was also given. Against this order of the State Commission, the Petitioner/Complainant filed the present Revision Petition.

6. Heard the learned Counsel for the Petitioner as well as the Respondent and carefully perused the record. Learned Counsel for the Petitioner submitted that the State Commission failed to appreciate that the Surveyor had submitted the report without dismantling the vehicle, and therefore, the said report could not be relied. Surveyor had also overlooked the estimate prepared by V.G. Automobiles, authorised dealer of Eicher vehicles. It was also

submitted that the impugned order had been passed on conjectures and surmises, without application of judicial mind. Learned Counsel further submitted that the order passed by the State Commission was a non-speaking order, without any reasoning.

7. Learned Counsel for the Respondent submitted that the impugned order passed by the State Commission was justified because the District Forum failed to take into consideration the Surveyor's Report, which is an important document. It was submitted that there was no expert report of Automobile Engineer or any other expert which could bypass the Surveyor Report. She submitted that the Revision Petition is liable to be dismissed.

8. Regarding maintainability, whether the Complainant can be said to be a consumer as defined in Section 2(1)(d) of the Consumer Protection Act or not, it has been held by this Commission in *Harsolia Motors v. National Insurance Co. Ltd. I, (2005) CPJ 27 (NC) decided on 03.12.2004* that since an Insurance Policy is taken for reimbursement or for indemnity of the loss which may be suffered on account of insured perils, the services of the insurer cannot be said to have been hired or availed for a commercial purpose. This Commission does possess the requisite jurisdiction to entertain a Consumer Complaint wherever a defect or deficiency in the services rendered by an insurer is made out. In view of the above, the Complaint is held maintainable.

9. It is an admitted fact that the vehicle met with an accident on 03.07.2012. The vehicle was a new one, only 2 months old. The only dispute in the matter relates to the quantum of loss. Surveyor appointed by the Insurance Company assessed the loss at Rs.1,61,611/- plus labour charges, whereas the claim filed by the Complainant was Rs.5,55,000/-, cost of repair of the vehicle estimated by M/s V.G. Automobiles, authorised dealer of Eicher. Though the Surveyor had mentioned about the estimate of repair submitted by M/s V.G. Automobiles, there is no discussion at all on this estimate. The Surveyor ought to have given reasons for disagreeing with the estimate. Moreover, in the Survey Report it is clearly mentioned that the assessment was carried out without dismantling the vehicle and there were chances of an additional estimate after dismantling the same. The District Forum observed 'that the surveyor who is expert in branch of assessing damages is required to give reasons as to on what basis and for what reasons claim of the Complainant was not justified. In such absence, the Surveyor's Report cannot be accepted.' The District Forum therefore rightly allowed the Complaint. The State Commission, however, without going into the estimate, has gone by the Surveyor's Report, which is very sketchy and shallow.

10. In view of the foregoing discussion, the orders of the State Commission are set aside, upholding the orders of the District Forum. Respondent/Opposite Party is directed to comply with the orders within eight weeks from today.

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C. VISWANATH
PRESIDING MEMBER