**(2015) 07 NCDRC CK 0040**

**In the National Consumer Disputes Redressal Commission**

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| BAJAJ ALLIANZ GENERAL INSURANCE CO LTD | APPELLANT |
| Vs | |
| Anita Zilu Chodankar | RESPONDENT |

**Date of Decision :** 21-07-2015

**Acts Referred:**

**Citation :** 2016 1 CPJ 93

**Hon'ble Judges :** AJIT BHARIHOKE , Rekha Gupta J.

**Final Decision :** Revision allowed

## Judgement

1. THIS revision is directed against the order of the Goa State Consumer Disputes Redressal Commission, Panaji (in short, "the State Commission") dated 23.1.2014 in first appeal No.61/2013 whereby the State Commission dismissed the appeal against the order of the District Forum, North Goa in CC/38/2008.

2. BRIEFLY stated, facts relevant for the disposal of the revision petition are that the respondent/complainant filed a consumer dispute alleging that the complainant being owner of Tata Tipper Truck No.GA -03/T/0306 insured the said truck with the petitioner/opposite party under commercial vehicles package policy. The last insurance policy expired on 3rd August, 2007. The complainant after a gap of about 15 days obtained a fresh policy for the said vehicle after pre - inspection by the authorized surveyor by showing the IDV of the vehicle as 5,39,600/ -. The premium for the insurance policy was paid vide a cheque for Rs.12,011/ - dated 18th August, 2007. The insurance company after receiving the cheque issued a cover note insuring the vehicle for the period w.e.f. 18.8.2007 to 17.8.2008. The insurance certificate, however, was issued on 20.8.2008.

3. THE insured truck met with an accident on 19.8.2007 resulting in death of the driver and damage to the truck. The complainant submitted his claim with the opposite party on 23.8.2007. On the advice of the petitioner/opposite party the complainant took the vehicle to M/s Durga Motors at Porvorin and the M/s Durga Motors after inspecting the vehicle assessed the loss at Rs.9 Lakhs. On 8.1.2008, the petitioner/opposite party wrote a letter to the complainant seeking certain

clarifications. The queries raised by the petitioner were answered. Despite that the petitioner/opposite party repudiated the claim. Feeling aggrieved the respondent/complainant raised the consumer dispute.

4. THE petitioner/opposite party in their written statement justified the repudiation of the insurance claim on the plea that the respondent/complainant had obtained the subject insurance policy by practising fraud on the insurance company. The petitioners alleged that upon expiry of the previous policy on 3rd August, 2007 the complainant for the first time approached the opposite party on 18.8.2007 with a view to insure the truck for a further period. Since a considerable time had elapsed the complainant was requested to produce the truck for pre -inspection by the opposite party or their appointed agents. The complainant produced some other truck with registration plate of subject truck for pre -inspection on 20.8.2007 representing it to be the truck sought to be insured and after pre - inspection of said truck the petitioner/opposite party accepted the cheque for premium in good faith and issued the cover note insuring the truck for a period w.e.f. 18.8.2007. In nutshell, the case of the petitioner/opposite party before the District Forum was that the insurance contract is null and void as it was obtained by misrepresentation and fraud.

5. THE District Forum on consideration of the pleadings and the evidence allowed the complaint and directed the petitioner/opposite party to pay to the complainant a sum of Rs.5,39,600/ - as insurance claim alongwith 12% interest p.a. from the date of accident till realization of the amount. Besides compensation of Rs.2 Lakhs was also awarded on account of financial loss, mental tension and agony and Rs.25,000/ - as cost of litigation.

6. BEING aggrieved of the order of the District Forum, the petitioner/opposite party preferred an appeal. The State Commission, Goa dismissed the appeal with exemplary cost of Rs.25,000/ -. This has led to filing of the revision petition.

7. LEARNED Shri Parinay T. Vasandani, Advocate for the petitioner has contended that the impugned orders of the foras below are liable to the set aside for the reason that both the foras below have failed to appreciate that the insurance cover was obtained by the respondent/complainant by misrepresentation and practising fraud on the insurance company. In support of this contention, learned counsel for the petitioners has drawn our attention to copy of the inspection report of Auto Risk Management Services Pvt. Ltd. dated 20th August, 2007. On perusal of this document, it transpires that the inspection of vehicle produced by the complainant was conducted on 20.8.2007 at 2pm. As per this report the vehicle was having registration No. GA -03/T/0306 and was found to be in good condition but for some portion being rusted. From the report it transpires that chassis number of the above noted vehicle was 382323JOZ7644483 and as per the meter reading the vehicle had run 94,655 kms.

8. THE above details mentioned in the pre -inspection report do not tally with the details of the accidental vehicle for which the insurance claim has been filed. On

perusal of the report of the surveyor Sri R.R. Prabhu, who inspected the vehicle pursuant to the insurance claim, it transpires that the accidental vehicle had chassis No.721252 and on the date of inspection by the surveyor it had run 50263 miles. Although the registration number of the vehicle inspected by the surveyor is the same as the registration number of the vehicle produced by the complainant for pre -inspection on 20.8.2007. The deviation in the chassis number as also the mileage covered by the vehicle in the pre -inspection report and the report of surveyor dated 5.11.2007 makes it clear that for the purpose of pre -inspection the complainant has produced a different vehicle by putting the registration number of the insured vehicle on the same. Thus, it is clear that the complainant has obtained the insurance policy by practising fraud and misrepresentation of facts as such the insurance contract is not valid and binding on the parties.

9. THUS , in our view, the petitioner/insurance company was well within its rights to repudiate the insurance claim. In our aforesaid view, we are supported by the judgments of the Supreme Court in the cases of P.C. Chacko and Anr. Vs. Chairman, LIC of India, 2008 1 SCC 321, Satwant Kaur Sandhu Vs. New India Assurance Company, 2009 8 SCC 316 and judgment of this Commission in the matter of Crown Consultants Pvt. Ltd. Vs. Oriental Insurance Company Ltd., 2011 3 CPJ 439 (NC).

10. IT may not be out of place to mention that even on perusal of the proposal form submitted by the complainant for getting the subject vehicle insured there is over -writing in respect of the period of insurance. It appears that in the column of "from" the date has been changed from 20.8.2007 to 18.8.2007 and in the column of "to" the date has been changed from 19.8.2008 to 17.8.2008 by over -writing. This also raises a suspicion that the insurance policy was obtained by the complainant by practising fraud after the accident which took place on 19th August, 2007.

11. FROM the above, it is clear that foras below have failed to appreciate the evidence correctly and they have ignored the basic documentary evidence. Thus, the impugned orders are not sustainable. We accordingly, allow the revision petition, set aside the impugned orders and dismiss the complaint.