UNITED INDIA INSURANCE CO. LTD. A

v.

SUSHIL KUMAR GODARA

(Civil Appeal No. 5887 of 2021)

SEPTEMBER 30, 2021 B

[UDAY UMESH LALIT, S. RAVINDRA BHAT AND BELA M. TRIVEDI, JJ.]

Motor Vehicles Act, 1988: ss.39 and 192 – Insurance claim – Repudiation of – Respondent-complainant obtained an insurance policy for his Bolero car, in Punjab, though he was a resident of Rajasthan – The vehicle had a temporary registration (from 20-06-2011 to 19-07-2011) – On 28-07-2011, he travelled outside his residence, to Jodhpur, in his car, and stayed overnight in a guest house and parked the car outside the guest house premises in Jodhpur – Next morning, he discovered that the car was stolen – Claim for loss – Held: When an insurable incident occurs that potentially results in liability, there should be no fundamental breach of the conditions contained in the contract of insurance – The temporary registration of the respondent's vehicle had expired on 19-07-2011 – However, not only was the vehicle driven, but also taken to another city, where it was stationed overnight in a place other than the respondent's premises – There is nothing on record to suggest that the respondent had applied for registration or that he was awaiting registration – It is of no consequence, that the car was not plying on the road, when it was stolen; the material fact is that concededly, it was driven to the place from where it was stolen, after the expiry of temporary registration – But for its theft, the respondent would have driven back the vehicle – On the date of theft, the vehicle was driven/used without a valid registration, which amounted to a clear violation of ss.39 and 192 of the Motor Vehicles Act, 1988 – There was fundamental breach of the terms and conditions of the policy, as held in *Narinder Singh *entitling the insurer to repudiate the policy – Consumer Protection – Insurance claim.* C D E F G

******Narinder Singh v. New India Assurance Co. Ltd.* **(2014) 9 SCC 324 : [2014] 9 SCR 551 – relied on.** H

A *Naveen Kumar v. National Insurance Company Ltd.* **[RP/250/2019] decided on 26.11.2019 – referred to.**

Case Law Reference

[2014] 9 SCR 551	**relied on**	**Para 4**

B CIVIL APPELLATE JURISDICTION: Civil Appeal No.5887 of 2021.

From the Judgment and Order dated 11.12.2020 of the National Consumer Dispute Redressal Commission in RP No.1984 of 2015.

Amit Kumar Singh, Mrs. K. Enatoli Sema, Ms. Chubalemla Chang,
C Advs. for the Appellant.

Ms. Gauri Puri, Adv. for the Respondent.

The Order of the Court was passed by

S. RAVINDRA BHAT, J.

D 1. Counsel for parties were heard, with their consent, for final disposal of the appeal. The appellant (hereby "insurer") questions the judgment and order of the National Consumer Disputes Redressal Commission, New Delhi[1] ("hereafter the NCDRC"). In the impugned order, the NCDRC dismissed the appellant's revision petition, that
E challenged the order[2] of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench at Bikaner (hereafter "the State Commission").

2. The respondent-complainant obtained an insurance policy[3] from the insurer for his Bolero car, somewhere in Punjab, though he was a
F resident of Sri Ganganagar, Rajasthan. The vehicle had a temporary registration (No. PB-11-T-5101 from 20-06-2011 to 19-07-2011). The sum insured was ₹ 6,17,800/-. The temporary registration of the vehicle, however, expired on 19-07-2011.

3. As the respondent/complainant was engaged in business as a
G private contractor, for business purposes he had to be outside the city.

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[1] Dated 11/12/2020 in Revision Petition No. 1984/ 2015

[2] dated 20/03/2015, in FA No. 244/2013

[3] bearing policy no. 200104/31/11/0100000947

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On 28-07-2011 the complainant went to Jodhpur for business purposes; and stayed in Geeta Guest House at night. Whilst there, his vehicle was parked outside the guest house premises. When the respondent awoke in the morning, he found that the Bolero car had been stolen. He lodged a first information report (FIR) on 29-07-2011 with PS Ratanada, Jodhpur alleging commission of offences under Section 379, IPC. However, on 30-09-2011 the police lodged a final report stating that the vehicle was untraceable.

4. The respondent claimed the loss, from the appellant/insurer. The insurance claim, however was repudiated by order dated 23-01-2013 on three grounds:

(i) Intimation of theft of vehicle was given to the insurer after delay which was in violation of the policy condition.

(ii) The temporary registration of the vehicle expired on 19-07-2011 and the respondent did not get the vehicle permanently registered; and

(iii) The complainant left the vehicle unattended outside the guesthouse in violation of the policy conditions.

5. Aggrieved by the repudiation of his claim the respondent/complainant filed a complaint before the District Forum Consumer Protection, Shri Ganganagar (hereafter the "District Forum") for a direction that the insurer ought to pay him the sum insured for the vehicle with rent amount of ₹ 1,40,000/- and also claimed relief for mental agony and costs of litigation.

6. The insurer's position before the District Forum was that till the incidence of theft, the complainant's vehicle was not registered which was in violation of conditions of insurance policy; the insurer therefore requested for dismissal of the complaint. The District Forum dismissed the complaint against the insurer while observing that on 28-07-2011 (date of the incident) the vehicle's temporary registration had expired and relying upon two previous orders of the NCDRC had concluded that if at the time of theft, the vehicle was not registered then the claim was not payable to the complainant. It was held that repudiation of the claim by the insurer did not amount to deficiency in service on its part. Aggrieved by the dismissal of his complaint, the respondent/complainant approached the State Commission. The State Commission set aside the

A order of the District Forum and allowed the appeal, and held that as the insurer had covered the complainant's vehicle with particular engine and *chassis* number, and issued a policy during the currency of which, the vehicle was stolen it could not repudiate the insured's genuine claim on technical, petty and frivolous grounds of absence of permanent registration certificate from the competent authority and thus escape its
B liability to indemnify the insured for the loss of the vehicle. The State Commission directed the insurer to pay to the respondent/complainant an amount of ₹ 6,17,800/- (Rupees Six Lakhs Seventeen Thousand Eight Hundred Only) along with 9% interest per annum from the date of filing of the complaint and also pay to the respondent/complainant ₹ 20,000/-
C as litigation costs. The insurer preferred a revision petition before the NCDRC which was dismissed, affirming the State Commission's reasoning.

7. This Court issued notice; despite service, the respondent did not cause appearance to be entered. In the circumstances, Ms. Gauri
D Puri was appointed to assist the Court, as *amicus curie.* The Court heard the learned counsel for the petitioner Mr. Amit Singh, AOR and learned *amicus*.

8. It was argued by Mr. Amit Singh that the NCDRC committed an error in not appreciating the judgment of this Court in *Narinder Singh*
E *Vs. New India Assurance Co. Ltd*[4]. He also relied on a previous order of the NCDRC, i.e., *Naveen Kumar Vs. National Insurance Company Ltd*[5]. It was urged that the impugned order should be set aside, since the NCDRC ignored a binding judgment of this court, and disregarded the circumstance that the vehicle in question, had no registration. This constituted a fundamental breach of the policy, entitling the insurer to
F repudiate the claims under it.

9. The learned *amicus,* on the other hand, urged that this Court should not disturb the findings of the State Commission or the NCDRC. It was argued by the learned counsel that the judgment in *Narinder Singh* (supra) pertained to claim for compensation for a damaged vehicle
G on account of accident, and not on account of theft of a vehicle, and was thus not applicable to the present case. She urged that in the present case, it could not be said that the policy holder's vehicle was an

[4] (2014) 9 SCC 324.
H [5] [RP/250/2019] decided on 26.11.2019

unregistered one; rather a temporary number had been assigned to it, but a few days after its expiry, the theft occurred. In the given circumstances, the preclusion of liability, in the manner expressed in *Narinder Singh (supra)* by this court, was inapplicable.

10. What is discernible from the above narration of facts, is that the policy holder had purchased a new Bolero which had a temporary registration. That registration lapsed on 19-07-2011. The respondent/ complainant never alleged or proved that he applied for a permanent registration, or sought extension of the temporary registration beyond 19-07-2011. He travelled outside his residence, to Jodhpur, in his car, and stayed overnight in a guest house. In the morning of 28-07-2011, he discovered that the car had been stolen, when parked outside the guest house premises in Jodhpur.

11. In *Narinder Singh* (supra), the claim was in the context of an accident, involving a vehicle, the temporary registration of which had expired. This Court held that the insurer was not liable, and observed that:

> *"12. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act.*
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> *13. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such a further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which 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 unforeseen circumstances beyond the control of the owner.*
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> *14. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11.1.2006 and the alleged accident took place on 2.2.2006*

when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, 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."

12. In *Naveen Kumar (supra),* NCDRC decided a reference, to its bench, and held that:

"9. For the reasons stated hereinabove, the reference is answered in following terms:-

(i) If a vehicle without a valid registration is or has been used/ driven on a public place or any other place that would constitute a fundamental breach of the terms and conditions of the contract of insurance even if the vehicle is not being driven at the time it is stolen or is damaged:

(ii) If a vehicle without a valid registration is used/driven on a public place or any other place, it would constitute a fundamental breach of terms and conditions of the policy even if the owner of the vehicle has applied for the issuance of a registration in terms of S.41 of the Act before expiry of the temporary registration, but the regular registration has not been issued".

(emphasis supplied)

13. In the present case, the temporary registration of the respondent's vehicle had expired on 28-07-2011. Not only was the vehicle driven, but also taken to another city, where it was stationed overnight in a place other than the respondent's premises. There is nothing on record to suggest that the respondent had applied for registration or that he was awaiting registration. In these circumstances, the *ratio* of *Narinder Singh (supra)* applies, in the opinion of this court. That *Narinder Singh (supra)* was in the context of an accident, is immaterial. Despite this,

the respondent plied his vehicle and took it to Jodhpur, where the theft took place. It is of no consequence, that the car was not plying on the road, when it was stolen; the material fact is that concededly, it was driven to the place from where it was stolen, after the expiry of temporary registration. But for its theft, the respondent would have driven back the vehicle. What is important is this Court's opinion of the law, that when an insurable incident that potentially results in liability occurs, there should be no fundamental breach of the conditions contained in the contract of insurance. Therefore, on the date of theft, the vehicle had been driven/used without a valid registration, amounting to a clear violation of Sections 39 and 192 of the Motor Vehicles Act, 1988[6]. This results in a fundamental breach of the terms and conditions of the policy, as held by this Court in *Narinder Singh (supra)*, entitling the insurer to repudiate the policy.

14. This Court is of the opinion that the NCDRC's order cannot be sustained. Furthermore, the NCDRC should not have overlooked and disregarded a clear binding judgment of this Court – it also should not have disregarded its ruling in *Naveen Kumar* (supra), as well. Before

[6] ***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.
192. Using vehicle without registration.—*(1) Whoever 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:*
Provided that the court may, for reasons to be recorded, impose a lesser punishment.
(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:
Provided that the persons using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.
(3) The court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.
Explanation.—Use of a motor vehicle in contravention of the provisions of section 56 shall be deemed to be a contravention of the provisions of section 39 and shall be punishable in the same manner as provided in sub-section (1).

A parting, this Court expresses its appreciation for the assistance rendered by the learned *amicus,* Ms. Gauri Puri.

15. For these reasons, the impugned order and the order of the State Commission are hereby set aside; the respondent's complaint is dismissed. The appeal is allowed in these terms, without order on costs.

B

Devika Gujral Appeal allowed.