

Vs.

Mr. Sandeep Garg

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 12.12.2018

Date of Final Hearing : 27.05.2025

Date of Pronouncement : 17.06.2025

SC/5/A/231/2018

National Insurance Company Ltd.

Through its Branch Manager / Divisional Office,

1-B, Govindpuri, Ranipur Marg, Hardwar Branch, Hardwar, Uttarakhand

Through its Authorized Signatory, Regional Office,

Jai Plaza, 56, Rajpur Road, Dehradun

(Through: Sh. Deepak Ahluwalia, Advocate)

.....Appellant

VERSUS

Mr. Sandeep Garg S/o Mr. Lal Chand Garg

R/o House No. 535, Type -2 Sector-3, BHEL

Ranipur, Haridwar, Uttarakhand

None for Respondent

Coram:**Ms. Kumkum Rani,****President****Mr. C.M. Singh,****Member****ORDER****(Per: Ms. Kumkum Rani, President):**

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against judgment and order dated 14.11.2018 passed by the learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as the District Commission) in consumer complaint No. 237 of 2015 styled as Sh. Sandeep Garg vs. Branch Manager / Manager, National Insurance Company Ltd., wherein and whereby the complaint was allowed directing the opposite party to pay Rs. 4,32,701/- alongwith interest @ 6% per annum and Rs. 5,000/- for litigation charges

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to the complainant within one month from the date of filing of the complaint case till the date of actual payment.

2. The facts giving rise to the present appeal, in brief, are as such that the complainant's registered Tata Indigo bearing No. UK08-AB-5007 was insured with the opposite party – Insurance Company vide policy No. 462200/31/14/6100000354 valid from 11.04.2014 to 10.04.2015 after payment of Rs. 8,820/- as premium. The said insured vehicle met with an accident on dated 12.10.2014. An information of the said accident was immediately given by the complainant to the Insurer, thereupon the Insurer instructed the complainant to park the damaged insured vehicle to the authorised garage of Tata Motors after inspection & survey of the damaged insured vehicle to submit the bill to the Insurer for the payment. Subsequently, the surveyor inspected the said damaged insured vehicle and directed the complainant to get it repaired from Tata Motor's authorised service center "Singh Automobile, Roorkee". Upon the instructions of the Surveyor, the complainant got the damaged insured vehicle repaired and had incurred Rs. 51,216/- in repair work. A bill of repair of the damaged insured vehicle was submitted to the Insurer, and the claim number is 46220/31/14/61/90000218. The Insurer assured the complainant to pay the claim amount very shortly. Unfortunately, prior to payment of the said amount of Rs. 51,216/-, the said insured vehicle again met with another accident at Bareilly on dated 05.12.2014 and its information was given to the Insurer. Thereupon, the Insurance Company got the insured vehicle inspected on the spot through its Surveyor Sh. A.S. Nanda, who took Rs. 1,600/- as fees from the complainant. The Surveyor has also instructed the complainant to tow the said damaged insured vehicle through crane from the spot to Singh Automobile, Roorkee. The complainant has incurred Rs. 10,000/- in towing of the damaged insured vehicle to Singh Automobile, Roorkee. In the service center, the estimated repair cost of the damaged insured vehicle was to the extent of Rs. 4,32,401/- and Rs.

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40,000/- as garage charges. Thus, the Surveyor of the Insurer has again inspected and surveyed the vehicle in question and found that the vehicle is total loss and assured that the Insurer will pay Rs. 3,50,000/- to the complainant. Saying this, the Surveyor obtained the signatures of the complainant in the claim paper of Claim No. 462200/31/14/61/90000223. After several request, the payment was not made and later on the Insurer denied to pay the claim amount. Such act amounts deficiency in service and unfair trade practice on the part of the Insurer, therefore, the complainant dispatched a legal notice to the Insurer, but no action was taken, thereupon, the complainant was constrained to file the complaint in the District Commission, Haridwar.

3. The Insurance Company has submitted its written statement, wherein it is stated that the complainant has no cause of action to file the present complaint which is not legally tenable. It is further stated that the complainant filled in proposal form before signing contract of insurance wherein he has made a declaration specifically on serial No. 20 to the effect that he had taken any claim in previous year policy please allow me no claim bonus @ 20%. This proposal form has duly been signed by the insured. It is pertinent to mention that proposal form is an integral part of contract of insurance and without acceptance of proposal form policy does not come into effect. Apart from it, in regular way policy and proposal form is issued and premium payment was charged as per previous insurance as required. It is further stated that the contract of insurance is document which is based on utmost good faith but in present case insured / complainant has concealed rather misrepresented the material fact that he has not availed of any claim in the previous year policy rendering the contract void disqualifying himself from indemnification by the insurer. The answering opposite party on receipt of intimation of the accident deputed surveyor who assessed the loss to the tune of Rs. 34,526/- subject to the terms and conditions of the policy. The answering opposite party

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enquired from the previous insurer, i.e. The New India Assurance Co. whether any claim has been availed of by the insured / complainant under policy No. 34090031130100000569 and previous insurer vide no claim bonus certificate revealed that there was one claim reported under the policy as on 28.01.2015 hence insured is entitled to 0% NCB. This way, the complainant made false declaration in the proposal form to the affect that he is entitled for 20% NCB against his actual entitlement for 0% NCB. This way the complainant made a false declaration in the proposal form that he is not entitled to 0% NCB, so that he is earlier entitled to 20% NCB, hence he be entitled to get the same. On such specification, the answering opposite party vide its registered A.D. letter dated 23.02.2015 conveyed to insured / complainant that claim in question has been treated as no claim for misrepresentation of material fact of complainant availing one claim with previous insurer which entitled him for 0% NCB in place of 20% NCB which he availed from answering opposite party by making false declaration / misrepresentation. Therefore, the complaint is liable to be quashed against the answering opposite party, but also complainant be directed to pay cost under Section 24 of Consumer Protection Act.

4. After hearing both the parties and after taking into consideration the facts and evidence on record, the District Commission has passed the impugned judgment and order on dated 14.11.2018 whereby the District Commission has allowed the complaint in the above terms.

5. On having been aggrieved by the aforesaid judgment and order of the District Commission, the opposite party has preferred the present appeal as appellant.

6. Learned counsel Sh. Deepak Ahluwalia for the appellant has appeared. None has appeared on behalf of the respondent, hence vide order dated 03.07.2023 the appeal was proceeded ex-parte against the respondent.

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7. We have heard learned counsel for the appellant and perused the material available on record.

8. In the appeal, the learned counsel for the appellant – opposite party has contended that the proposal form was signed by the respondent – complainant making a declaration wherein he specifically submitted that no claim has arisen in the expiring policy undertaken from New India Assurance. The said policy was accepted by the appellant on the basis of proposal form so submitted. Thereby the respondent at the time of opting to purchase the said policy on the basis of declaration so given had obtained 20% No Claim Bonus. It is further stated on behalf of the appellant that the respondent availed No Claim Bonus by giving false declaration and the position infact subsequently when checked from previous insurer New India Assurance Company Limited, it was found to be untrue and it was gathered that the respondent entitled to 0% bonus as No Claim Bonus, since he had availed of a claim from it, i.e. New India Assurance Company. Thus, it is further submitted on behalf of the Insurance Company that the said policy was obtained from the appellant by deliberate concealment of material facts, therefore, the claim was rightly repudiated by the Insurer and there exists no deficiency in service on the part of the appellant.

9. We have perused the record available before us.

10. It is an admitted fact that the incident of dated 12.10.2014 as well as another incident of dated 05.12.2014 took place in the currency of the insurance policy of the appellant. The insurance policy papers are available on record vide paper Nos. 21 to 23 which have revealed that the insurance policy in question was accepted for the period commencing from 11.04.2014 to 10.04.2015 by the appellant – Insurance Company after accepting the premium of Rs. 8,820/-. In the said cover note, the Insurer has also given No Claim Bonus of 20%, i.e. Rs. 2,184.97 to the respondent.

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In the policy paper, previous policy of The New India Assurance Company (paper No. 24) has transpired that the previous insurance company covering the period commencing from 11.04.2013 to 10.04.2014 and No Claim Bonus of 20% was given to the respondent. It is also admitted from paper No. 25 of the appeal file, that the appellant company dispatched a letter to the Divisional Manager, New India Assurance Co. Ltd. (previous insurer) asking the percentage of No Claim Bonus, if any, thereupon, the New India Assurance Co. Ltd. replied the same to the appellant (National Insurance Co. Ltd.) stating that the respondent insured under the policy No.34090031130100000569 covering the vehicle No. UK08-AB-5007 was enjoying 0% NCB for the policy year 2014, therefore, there was 1 claim(s) reported under the policy as on 28.01.2015; policy period: 11.04.2013 to midnight of 10.04.2014 and the insured is entitled to 0% NCB. The repudiation letter (paper No. 27) has transpired that the claim of the respondent was repudiated which is reproduced as under:-

“We refer to your above mentioned claim we would like to inform you that you are entitled 0% NCB instead of 20% due to wrong information that you have not taken any claim from previous insurer, i.e. New India Assurance Co., Haridwar. So due to misrepresentation of material fact claim may be treated as ‘No Claim.’”

11. Thus, it is proved that on wrong information about the No Claim Bonus claimed by the respondent to the Insurer (appellant), the claim was repudiated. It is established on record that the appellant company came to the knowledge after correspondence with the previous insurance company that the respondent was entitled to 0% NCB from the appellant for the policy year 2014 because his claim was reported under the policy as on 28.01.2015 (which should be 28.01.2014 as this is a typographical error).

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12. Learned counsel for the appellant has referred the following cited case laws, which are as under:-

1. **Sh. Anjani Gupta Vs. Future Generally India Insurance Company, Revision Petition No. 1051 of 2017, decided on 12.12.2017**
2. **Rajeshwari Devi Garg Vs. United India Insurance Co. Ltd. & Anr., II (2024) CPJ 484 (NC)**

13. In the case of **Sh. Anjani Gupta** (supra) the Hon'ble National Commission has held as under:-

Para 4. “The legal issue involved in this petition is no more res-integra the same having already been decided by a Three-Members Bench of this Commission in RP No. 1836 of 2016, Branch Manager, National Insurance Company Ltd. Vs. Naresh Kumar decided on 20.02.2017. The Three-Members Bench took the following view in the above referred matter:

“a. The cases in which it is established that the insured by making wrongful declaration has taken benefit of No Claim Bonus and the insurer had means to verify the correctness of the declaration of the insured seeking No Claim Bonus by exercising ordinary diligence of verifying the truthfulness of the claim from the insurer's own record, Exception to 19 of Indian Contract Act would come into play and the insurer would not be justified in repudiating the insurance claim on the

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ground of misrepresentation or concealment of fact. However, because the insured had taken benefit of No Claim Bonus and paid less premium, the insurance claim would be reduced proportionately.

b. In cases of the insured taking the insurance policy of the vehicle from new insurance company and it is established that the insured by making wrongful declaration has taken benefit of No Claim Bonus and where the insurer had failed to seek confirmation regarding correctness of the declaration submitted by the insured in support of plea for No Claim Bonus within the stipulated period as provided in GR 27 of Indian Motor Tariff, the insurer would not be justified in repudiating the insurance claim. However, because the insured had taken benefit of No Claim Bonus by making false declaration his insurance claim would be reduced proportionately.”

It would therefore be seen that if No Claim Bonus is wrongfully taken by the insured, the claim would still be payable on a non-standard basis, if the insurer had the means to verify the correctness of the declaration made by the insured, while claiming the No Claim Bonus. In the present case also, the respondent had an opportunity to verify the correctness or otherwise of the declaration made by the petitioner/complainant by making necessary enquiry from the concerned

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insurer. That having not been done, the complainant is entitled to reimbursement of the loss sustained by him, subject of course to proportionate deduction. Since the No Claim Bonus was availed by the complainant @ 25%, the amount payable to the complainant/petitioner has to be reduced in the same proportion.”

14. In the case of **Rajeshwari Devi Garg (supra)** the Hon’ble National Commission has held as under:-

Para 9 “The Respondent / Insurance Company has rejected the claim on the ground of suppression of material facts with respect to the No Claim Bonus. In this case the fact of having received the No Claim Bonus was well in the knowledge of the Petitioner herein but he did not disclose the same to OP-1 at the time of obtaining insurance from OP-2 / Insurance Company. State Commission and District Forum have correctly relied upon the judgment of this Commission in **RP No.1255/2009 in TATA AIG General Insurance Co. Ltd. & Anr. Vs. Gulzari Singh**. Further State Commission has also correctly relied upon the judgment of Hon’ble Supreme Court in **LIC of India Vs. Smt. G.M. Channabasamma (1991) 1 SCC 357** in which it was held that a contract of ‘insurance’ is a contract of ‘*uberrima fides*’ and there must be complete good faith on the part of the assured.

Para 10 In **Manmohan Nanda Vs. United India Assurance Company Limited and Anr. (2022) 4**

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SCC 582, Hon'ble Supreme Court observed that Insurance contracts are special contracts based on the general principles of full disclosure inasmuch as a person seeking insurance is bound to disclose all material facts relating to the risk involved. Law demands a higher standard of good faith in matters of insurance contracts which is expressed in the legal maxim *uberrimae fides*. Similar observations were made by Hon'ble Supreme Court in **Branch Manager, Bajaj Allianz Life Insurance Company Limited & Others Vs. Dalbir Kaur (2021) 13 SCC 553**, wherein the Hon'ble Supreme Court held that the insurance claim can be repudiated on the grounds of non-disclosure of true and full material information sought in the proposal form.

Para 11 In view of the foregoing, we tend to agree with the findings of the State Commission that the Respondent/Insurance Company was justified in repudiating the claim on account of non-disclosure of facts with respect to the 'No Claim Bonus' under the earlier policy."

15. We are of the considered view that the principle laid down in the **Rajeshwari Devi Garg (supra)** is applicable to the instant case. The respondent concealed the material fact from the Insurance Company that he was entitled or enjoying 0% NCB, but he has mislead the Insurance Company – appellant by submitting in the proposal form that he is entitled to 20% No Claim Bonus. Thus, we are of the considered view that the respondent has mislead the appellant - Insurance Company, so he is not entitled to any compensation from the appellant. Hence, the impugned

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judgment and order dated 14.11.2018 is liable to be set aside and the appeal is also liable to be allowed.

16. Accordingly, the appeal is allowed. Impugned judgment and order dated 14.11.2018 passed by the District Commission, Haridwar is hereby set aside. Consumer complaint shall stand as dismissed. No order as to costs of the appeal.

17. Statutory amount, if any, deposited by the appellant be returned to the appellant.

18. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 /2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. The copy of this order alongwith original record of the District Commission, Haridwar be sent to the concerned District Commission for record and necessary information.

19. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. C.M. Singh)
Member

Pronounced on: 17.06.2025