

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

REVIEW APPLICATION NO. NC/RA/64/2024

IN

NC/RP/1189/2020

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.

PRESENT ADDRESS - -

.....Appellant(s)

Versus

KHUSHBOO

PRESENT ADDRESS - -

.....Respondent(s)

BEFORE:

HON'BLE MR. BINOY KUMAR , PRESIDING MEMBER

HON'BLE MRS. JUSTICE SAROJ YADAV , MEMBER

FOR THE APPELLANT:

NEMO

FOR THE RESPONDENT:

NEMO

DATED: 06/03/2025

ORDER

Binoy Kumar, Presiding Member

1. The Delhi High Court by its Order dated 05.11.2024 requested this Commission to “reconsider the above said Review Application moved by the Petitioner and dispose it of in accordance with law, after giving due opportunity of hearing to both sides”.

2. The matter relates to disposal of the Revision Petition filed by the Petitioner, ICICI Lombard General Insurance Co. Ltd. (hereinafter referred to as Insurance Company) against the concurrent findings of the District Consumer Disputes Redressal Forum, North West, Delhi (hereinafter referred to as District Forum) dated 06.07.2019 and of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as State Commission) dated 15.09.2020, which had allowed the Complaint filed by the Respondent Khushboo, D/o Insured Late Sunita Rani for grant of the insured amount towards theft of the vehicle during

the currency of the Insurance Policy. This Commission after hearing both parties in its Order dated 26.10.2023 had dismissed the Revision Petition and partly allowing the Orders of the State Commission and the District Forum modifying the same to the extent that “the Petitioner shall pay to the Complainant/ Respondent an amount of Rs.9,19,604/- within a period of eight weeks, failing which it shall pay an interest @ 9% per annum from the date of this Order”. The Respondent filed a Review Petition on the ground that when the Revision Petition was dismissed, no reason was given as to why the interest rate was reduced from 10% per annum to 9% and the period of payment. This Review Petition was dismissed on 26.03.2024 observing that all the grounds raised had already been considered at the time of passing of the Order dated 26.10.2023 and that no error apparent on record was found in passing such Order. In a Petition filed before the Delhi High Court [CM (M)/3357/2024], the Petitioner (Respondent in the Revision Petition) raised the issue of reduction in the rate of interest as well as the period for which the interest was to be paid. The Delhi High Court in its Order dated 05.11.2024 has observed that this Commission has not given any reason for reduction of the rate and the period for which the interest is to be payable.

3. The matter was heard on 28.01.2025 at length. Learned Counsel for the Petitioner/ Insurance Company submitted that his Revision Petition needs to be allowed and the Orders of the State Commission and District Forum set aside in view of an Order of this Commission in *Revision Petition No.2037 of 2018 ‘Oriental Insurance Co. Ltd. Vs. Sujap Singh & Ors.’* decided on 03.03.2023, wherein it was held that the Complainant was not tenable on account of “non-compliance of relevant Policy conditions, which required him to get the Policy transferred in his name within the time specified”. He submitted that in the Revision Petition under consideration the Policy was not transferred within the specified period and, therefore, there is a violation of the Policy Terms and Conditions, which in Clause 9 of Section 3 states “in event of the death of the sole Insured, the Policy will not immediately lapse but will remain valid for a period of three months from the date of death of Insured or until the expiry of the Policy (whichever is earlier)”. The death of the Policy Holder/ Insured took place on 09.08.2016. The vehicle was stolen on 07.07.2017. Till this date the Complainant did not take care to get the Insurance Policy changed in her name. There is a huge delay and definitely more than three months permitted under the Policy. No

Policy exists after three months of the death and, therefore, there is no contract and the claim was accordingly repudiated.

4. Learned Counsel for the Petitioner cited the Order of this Commission in *Oriental Insurance Co. Ltd. (Supra)*, wherein the Order of the Apex Court in *Export Credit Gurantee Corporation of India Limited Vs. Garg Sons International, Civil Appeal No.1557 of 2004*, decided on 17.01.2013 was quoted and wherein it has been held as under:-

“8. It is a settled legal proposition that while construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. It is also well settled, that since upon issuance of an account of risks covered by the policy, its terms have to be strictly construed in order to determine the extent of the liability of the insurer. Therefore, the endeavour of the Court should always be to interpret the words used in the contract in the manner that will best express the intention of the Parties (Vide Suraj mal Niwas Oil Mills (P) Ltd. V. United India Insurance Co. Ltd., MANU/SC/0814/2010 :(2010) 10 SCC 567).

9. The insured cannot claim anything more than what is covered by the insurance policy. “...the terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the Parties adversely.” The clauses of an Insurance Policy have to be read as they are..... Consequently, the terms of the Insurance Policy, that fix the responsibility of the Insurance Company must also be read strictly. The Contract must be read as a whole and every attempt should be made to harmonize the terms thereof, keeping in mind the rule of contra proferentem does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon. (Vide: Oriental Insurance Co. Ltd. v. Sony Cheriyan MANU/SC/0495/1999: AIR 1999 SC 3252; Polymat India P. Ltd. v. National Insurance Co. Ltd. MANU/SC/1019/2004: AOR 2005 SC 286; Sumitomo Heavy Industries Ltd. v. Oil and Natural Gas Co. MANU/SC/0540/2010: AIR 2010 SC 3400; and Rashtriya Ispat Nigam Ltd. v. Dean Chand Ram Saran MANU/SC/0327/2012: AIR 2012 SC 2829).

10. In Vikram Greentech (I) Ltd. and Anr. v. New India Assurance co. Ltd. MANU/SC/0519/2009 SC 2493, it was held: An Insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself.... The Endeavour of the Court must always be to interpret the

words in which the contract is expressed by the Parties. The Court while construing the terms of policy is not expected to venture into extra liberalism that may result in rewriting the contract or substituting the terms which were not intended by the Parties.

(see also Sikka Papers Limited v. National Insurance Co. Ltd. and Ors. MANU/SC/0907/2009: AIR 2009 SC 2834)

11.Thus it is not permissible for the Court to substitute the terms of the contract itself, under the garb of construing terms incorporated in the agreement of insurance. No exceptions can be made on the ground of equity. The liberal attitude adopted by the Court, by way of which it interferes in the terms of an insurance agreement, is not permitted. The same must certainly not be extended to the extent of substituting words that were never intended to form a part of the agreement.”

5. Learned Counsel appearing for Respondent submitted that the only issue involved in the matter to be decided remains why the interest rate from 10% was reduced by this Commission to 9% and the period of its payment. He further submitted that this is a case of concurrent finding and scope of this Commission in Revision Petition is very limited. He also submitted that in the Petition filed by the Respondent before the High Court, the Petitioner (Respondent in Delhi High Court) did not challenge the Order of this Commission dated 26.10.2023 but only submitted that it would have no objection if the matter is remitted back to this Commission to consider the Review Petition afresh. Therefore, the Revision Petition should not be reopened as the matter has already been decided. Only the Review Application needs to be decided.

6. Heard the arguments of learned Counsel for both parties. Perused the record. The District Forum, North West, Delhi by its Order dated 18.06.2019 had allowed the Complaint of the Respondent by directing the payment of Rs.9,19,604/- being IDV of the Car, compensation of Rs.70,000/- for mental agony and harassment and Rs.10,000/- toward litigation cost, and the above amount to be paid within 30 days, failing which the Insurance Company was liable to pay interest on the entire awarded amount at the rate of 10% per annum from the date of receiving a copy of the Order. The State Commission partly allowed the Appeal filed by the Insurance Company modifying the Order of the District Forum to the

extent of payment of Rs.9,19,604/- to the Complainant/ Respondent, Rs.20,000/- as compensation for mental agony and harassment and Rs.10,000/- as cost of litigation and in case of failure, the entire amount would carry an interest @ 10% per annum from the date of the impugned judgment.

7. This Commission in its Order dated 26.10.2023 had considered all the facts in the case including the Terms and Conditions of the Policy. It had also noted that there was a breach insofar as non-transfer of the Insurance Policy was concerned. A view was taken that though there was a breach of the Policy Terms and Conditions, the Complainant (Respondent) did approach the Agent and on its advice applied for transfer of Registration Certificate in her name and thereafter time was taken to obtain the NOC from the Financing Company from which the vehicle in question was purchased. The fact of concurrent finding was also noted. However, considering that there was a breach but the same was not held not fundamental and, therefore, it was a conscious decision to direct the Insurance Company to pay the amount of Rs.9,19,604/- to the Respondent/ Complainant. However, no amount towards mental harassment or cost of litigation was imposed on the Insurance Company as the situation did not warrant such payment and that there was no delay on the part of the Insurance Company in repudiating the claim. Insofar as the question of interest to be paid, it is noted that in most of the Orders of this Commission compensation to be paid for a deficiency of service ranges from 6% to 9%. In most of the Orders of this Commission relating to insurance cases, the rate of interest hovers around 6% per annum. In this case, 9% rate of interest has been directed to be paid, which in our considered opinion is more than enough as compensation. 10% rate of interest is definitely on the higher side as no reason has been given by either District Forum or State Commission to give such high interest rate.

8. Finally this rate of interest as per this Commission's Order was to be paid after allowing only eight weeks' time to the Insurance Company to make payment of the insured amount of Rs.9,19,604/- and for delay beyond such period interest @ 9% was to be paid from the date of the Order. It is to be noted that the District Forum also had given such an Order and the only difference was that this Commission gave eight weeks for making payment by the Insurance Company, whereas the District Forum gave 30 days from the date of receiving the

copy of the Order. In our considered opinion, in the circumstances of the case, the awarding of interest @ 9% by giving eight weeks' time to the Insurance Company and such interest to be paid only when the payment has not been made within eight weeks, which shall be from the date of the Order, is very reasonable and, therefore, we affirm the Order of this Commission dated 26.10.2023 and also dispose of the Review Petition No.64 of 2024 accordingly.

.....
BINOY KUMAR
PRESIDING MEMBER

.....J
SAROJ YADAV
MEMBER