STATE CONSUMER DISPUTES REDRESSAL COMMISSION, MAHARASHTRA, MUMBAL

APPEAL NO. SC/27/RBT/FA/777/2023

(Arising out of order dated 21/03/2007 in Consumer Complaint No. 256 of 2005 of the Additional Consumer Disputes Redressal Forum, South Mumbai District,)

TATA AIG GENERAL INSURANCE CO. LTD.
Having its office at:
1304, Raheja Centre, Free Press Journal Marg,
Nariman Point,
Mumbai - 400 021. **…Appellant.**

VERSUS

SHRI. NIRMAL PRATAP BHOGILAL
Through his Constituted Power of Attorney Holder
Mr. Ramesh K. Chiniwar,
Gold Craft, 5th Floor,
Bhulabhai Desai Road,
Mumbai - 400026. **…Respondent**

BEFORE:
Dr. Nisha Amol Chavhan, Presiding Member.
Mr. Vijay C. Premchandani, Hon'ble Member.

APPEARANCE :
For Appellant : Adv. Jagruti Thakkar
For Respondent : Adv. Anita Marathe

ORDER
(Date 05/11/2026)

Per : Dr. Nisha Amol Chavhan, Hon'ble Presiding Member

1. This appeal has been preferred under Section 15 of the Consumer Protection Act, 1986 by the Appellant/Insurance Company against the judgment and order dated 21/03/2007 passed by the Additional Consumer Disputes Redressal Commission, South Mumbai District, in Consumer Complaint No. 256 of 2005, whereby the Ld. District Commission partly allowed the complaint and directed the Appellant to pay Rs. 16,49,370/– (after deducting 15% depreciation) along with interest @ 12% p.a. from 20/07/2005 till realization, besides awarding Rs. 20,000/ towards mental harassment, Rs. 20,000/ towards

garage charges, and Rs. 5,000/ towards litigation expenses.

Fact of the Case:

2. That the Respondent (Original Complainant) had obtained an "Autosecure Private Car Package Policy" (Policy No. 010022258100) from the Appellant i.e. Insurance Company for his Honda Accord V6 car bearing registration No. MH-01-NA-173 for the period covering 26/06/2004 to 25/06/2005.

3. That, on 14/05/2005 at approximately 6:30 AM, the insured vehicle met with an accident near Mahim, Mumbai, while being driven by the Complainant's son, Mr. Kabir Bhogilal. An FIR was registered at the instance of one Mr. Javed Ahmed Ali Mohd Kolsawala under Sections 279, 338 of the IPC and Sections 183, 184, and 185 of the Motor Vehicles Act, 1988, alleging that the driver was under the influence of alcohol.

4. That, after the accident, the police referred the driver to K.B. Bhabha Hospital, where a blood sample was collected for medico-legal examination. The sample was subsequently forwarded to the Directorate of Forensic Science Laboratory (FSL), Mumbai. The FSL issued an Alcohol Examination Certificate reporting an ethyl alcohol content of 0.126% w/v (126 mg per 100 ml of blood).

5. That, based on the said report and the FIR, the Appellant repudiated the insurance claim vide letter dated 20/07/2005, invoking Clause 2(c) of Section I of the policy terms and conditions, which exempts the insurer from liability if the vehicle is driven by the insured or any person with their knowledge and consent while under the influence of intoxicating liquor or drugs.

6. Appellant submitted that, aggrieved by the repudiation, the Respondent filed Consumer Complaint No. 256 of 2005 before the District Commission claiming a total compensation of Rs. 18,40,000/– (including IDV of the vehicle, garage charges, and damages for mental agony).

7. The Ld. District Commission partly allowed the complaint, holding that the Appellant failed to substantiate the defence of drunken driving through conclusive, tamper-free evidence, noting discrepancies regarding the sample quantity (2 ml instead of the standard requirement), the absence of a breath analyser test, and questions surrounding preservation and the timing of analysis dissatisfied with the said order, the Appellant i.e. Insurance Company has filed the present appeal before this state Consumer commission.

8. The Ld. Advocate for the Appellant argued that the FSL report is an authentic statutory document issued by a competent Government authority proving beyond doubt that the driver had 126 mg of alcohol per 100 ml of blood, which heavily exceeds the statutory threshold of 30 mg under Section 185 of the M.V. Act.

9. Ld. Advocate for the Appellant was contended that the FIR was lodged immediately after the accident, noting the reckless driving and apparent intoxication, which attracted the principle of *res ipsa loquitur* i.e. the accident speaks for itself, given that the vehicle climbed a footpath and overturned on a clear, traffic-free morning road.

10. Ld. Advocate for Appellant relying on the landmark judgment of the Hon'ble Supreme Court in ***Iffco Tokio General Insurance Co. Ltd. Vs. Pearl Beverages Ltd.***, argued that the standards of proof in civil/consumer Commission are governed by preponderance of probabilities, and the exclusion clause under the insurance contract is distinct from criminal prosecutions.

11. The Appellant further submitted that the District Commission gravely erred in initiating an inquisitorial process by seeking independent medical opinions from KEM and GT Hospitals without statutory backing, and summarily rejecting the Appellant's request for adjournment on 20/03/2007. With this, Appellant prayed to allow the appeal.

12. The Learned Advocate for the Respondent appeared and supported the

impugned order passed by District Commission arguing that the burden of proof to establish breach of an exclusion clause lies squarely on the insurer, which the Appellant miserably failed to discharge.

13. Advocate for Respondent highlighted that no breath analyser test was conducted on the spot, no urine sample was collected, and the blood sample collected was an only 2 ml. Furthermore, procedural gaps regarding the exact time of analysis exceeding 72 hours without certified preservation logs render the FSL report untrustworthy.

14. The Ld. Advocate for the Respondent pointed out that the criminal proceedings initiated against the driver were eventually quashed by the Hon'ble High Court pursuant to an amicable settlement and affidavit filed by the injured party clarifying the factual context of the accident avoiding a stray scooter/tyre burst.

15. Further with the support of the present case, Respondent has filed various judicial precedents i.e. ***Kozy flex Mattresses Pvt. Ltd. vs. SBI General Insurance Co. Ltd.,(Civil Appeal No.7966 of 2022), Neelam Deshmukh V/sState Bank of India & Ors,(RP/1100/2022), and National Insurance Co. Ltd. v. Kantilal(RP/241/2018).***

16. Advocate for the Respondent urged those forensic reports under Section 293 of Cr.P.C. are admissible only in criminal trials and require strict corroboration or opportunity of rebuttal in consumer adjudications. With this, Advocate for Respondent prayed for the dismissal of the appeal.

17. We have carefully examined the record, memo of appeal, written notes of arguments, the impugned order and on the basis of oral arguments of Ld. Advocates, this commission has following observations

OBSERVATIONS

18. In the present matter it is not disputed that, Respondents have purchased

the insurance policy from the appellant by paying the premium. The core issue for determination is whether the Appellant Insurance Company successfully established that the vehicle was being driven under the influence of intoxicating liquor at the time of the accident, thereby validating the repudiation under Section I, Clause 2(c) of the insurance policy.

19. This commission having opinion that, it is a well-settled principle of insurance Law that when an insurer invokes an exclusionary clause to repudiate a claim such as driving under the influence of alcohol, the burden of proof rests heavily on the insurer. The standard of proof in consumer complaints is based on the preponderance of probabilities. However, mere reliance on a police FIR or a disputed chemical analysis report, without establishing the foundational chain of custody, preservation protocol, and procedural integrity, is insufficient.

20. The Appellant its entire defence on the FSL report indicating an alcohol concentration of 0.126% w/v. While the Hon'ble Supreme Court in *Iffco Tokio General Insurance Co. Ltd. Vs. Pearl Beverages Ltd.* held that the presence of alcohol in the body satisfying the statutory limits under the M.V. Act can justify the invocation of policy exclusions, the Court concurrently emphasized that the totality of circumstances and reliability of the medical evidence must be examined. In the present case, the record reflects critical infirmities:

- The blood sample collected was only 2 ml, whereas standard medical protocols require a larger specimen for exhaustive multi-stage verification.
- No spot breath analyser test was conducted by the traffic or investigating police authorities to corroborate immediate post-accident physical intoxication symptoms prior to hospital transit.
- The District Consumer commission rightly noted concerns regarding the precise elapsed time between collection and laboratory analysis, and whether temperature-controlled preservation was rigorously

maintained throughout the transit period.

21. Further this commission observed that, District commission, faced with ambiguities in the FSL report, sought clarifications from premier medical institutions (KEM Hospital and GT Hospital). Their expert opinions underscored that timely collection within 2 hours, adequate sample volume, and stringent refrigeration are vital to prevent fermentation or evaporation artifacts that skew blood-alcohol readings. The procedure adopted by the District Commission to test the veracity of a disputed technical document cannot be termed perverse; rather, it was a legitimate exercise of judicial discretion to uncover the truth in a summary proceeding.

22. We also take note of the fact that the criminal case registered against the driver *Mr. Kabir Bhogilal* under Section 185 of the M.V. Act and IPC provisions did not culminate in a conviction; rather, the proceedings were quashed by the Hon'ble High Court following an amicable settlement and compounding between the parties, where the injured party clarified the situational mechanics of the accident. While criminal acquittal does not automatically bind a consumer Commission, the complete absence of independent eyewitness testimony or medical examination establishing active impairment i.e. loss of balance, disorientation at the precise time of the mishap weakens the insurer's absolute stance.

23. The Ld. District Commission evaluated the surveyor’s assessment report *Mr. R.R. Thampi*and computed the loss at Rs. 16,49,370/- after applying a 15% depreciation. We find the assessment of damages to be fair and reasoned based on the surveyor's loss computation.

24. Further, this Commission does not find any illegality or infirmity in the impugned judgment. We do not see any reason to interfere in the findings of impugned judgment. It is liable to be confirmed and appeal will have to be dismissed. Hence, we pass the following order.

O R D E R

1. The appeal is hereby dismissed.
2. The order dated 21/03/2017 passed by the Ld. Additional District Consumer Disputes Redressal Commission, South Mumbai in Consumer Complaint No.CC/256/2025 is hereby confirmed.
3. Certified copies of this order be furnished to the parties free of cost.

[Dr. Nisha Amol Chavhan]
Presiding Member

[Vijay C. Premchandani]
Member

NAC/aj