IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

Date of Institution: 09.07.2024

Date of Hearing: 12.05.2026

Date of Decision: 07.09.2026

FIRST APPEAL NO.-498/2024

IN THE MATTER OF

ORIENTAL INSURANCE CO. LTD.,
LEGAL HUB, A-25/27,
ASAF ALI ROAD,
NEW DELHI-110002.

(Through: Mr. Bhupesh Kumar Chandna, Advocate)

…Appellant

VERSUS

MR. SUNIL SHAH,
S/O SH. SHATRUGHAN SHAH,
R/O H. NO. 1421,
TYPE 2, GULABI BAGH,
NEW DELHI – 110007.

(Through: Mr. Sunil Choudhary & Preeti Shah, Advocate)

…Respondent

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE BIMLA KUMARI, MEMBER (FEMALE)

Present: Mr. Bhupesh Kumar Chandna, counsel for the Appellant appeared through VC.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

"...1. Facts necessary for the disposal of the present complaint are that the complainant being the owner of Maruti EECO Car, silver colour, bearing No.DL1CR0146 with Chassis No.MA3ERLF1S00CC4144; Engine No.G12BN310418 got it insured vide policy no. 131300/31/2019/72826 for a period from 28.02.2019 to 27.02.2020 for IDV of Rs.1.87,000/- from OP.

2. On 19.02.2020, the insured vehicle was stolen, an e-FIR No. 005949/20 with PS: Civil Lines was immediately registered and OP was duly informed. However, the claim was not settled even after the expiry of 90 days.

3. In the month of December 2020, the complainant was telephonically informed by PS: Civil Line that one car having registration No.DL3CCE5683 was recovered in e-FIR No.12168/17. After recovery of the said vehicle bearing No. DL3CCE5683 it was found that though the recovered vehicle had number plate as DL3CCE5683 but the engine and chasis number were of the insured vehicle owned by the complainant.

4. OP was again informed and the complainant got the insured vehicle released on Superdari vide order dated 11.01.2021 passed by the Ld. MM, Tis Hazari Court, Delhi. IO in his reply had stated before the concerned court that the accused person changed the colour of the insured vehicle from 'silver' to 'white' and was using the same with wrong number plate.

5. Upon prayer of the complainant, the Ld. MM. Tis Hazari Court, Delhi passed colour in his RC from 'silver' to 'white' then the concerned RTO shall consider his application.

6. OP was duly informed about the recovery and subsequent events; however, despite several emails the claim was not settled. In the month of June 2021, after the relaxation of nationwide lockdown due to COVID-19, the complainant again car was sent for repair at M/s Rana Motors Pvt Ltd. G.T. Karnal Road. wrote a letter to OP. The Complainant was asked to estimate the loss for which the 13.07.2021, surveyor was appointed but till 14.01.2022. the OP continued to raise one or other objections in order to avoid their liability.

7. The surveyor filed his report after two months from the date of his appointment and raising vague, false frivolous and baseless objections that the claim with respect to the change of colour of the car cannot be proceeded as there is a direction of the court to the RTO to change the colour in RC. Hence, it will amount to contempt of court.

8. The complainant was also asked to furnish the recovery/seizure memo of the insured vehicle with regard to

other damages, which is unnecessary requirement. Same was clarified vide letter dated 24.12.2021 that there is no procedure or mechanism mandated under the law that the recovery memo of the vehicle will record/mentioned about the kind and shall be recorded on extent of damage in the recovered vehicle.

9. The estimate of repairs has already been shared with the OP. Again the court of Ld. MM, Tis Hazari Court, Delhi sought status report dated 28.10.2021 from the IO/SHO, PS:Civil Lines, Delhi wherein it has been clearly stated:

"during the course of investigation, it is revealed that the car No.DLICR0146 has already been recovered in FIR NO.012168 dated 24.07.2017, under section 379 IPC PS Civil Lines and accused had also been arrested in the case. During further investigation it came to knowledge that the car No. DLICR0146 had been used by the accused with fake number plate of NO.DL3CCE5683 (Echo with different colour), however, engine number and chassis no. were not changed. So it was confirmed that in fact the car recovered in the case FIR No.012168 dated 24.07.2017 under Section 379 IPC PS Civil Lines is actually the car, stolen vide FIR No.05949 dated 19.02.2020 under section 379 IPC PS Civil Lines. Later, the car was released on superdari to its owner/complainant (FIR no.05949) namely Sunil Shah by the order of Hon'ble Court.

It is pertinent to mention here that now through this application complainant is requesting for certified copy of recovery memo/seizure memo of the vehicle, no DLICR0146, the

copy of the memo has been attached with the reply and there is no objection in respect of it."

Further the Ld. MM, Tis Hazari Court, Delhi, clarified its order dated 16.12.2021, that the order dated 11.01.2021 was not a directive to the surveyor or the insurance Company not to consider the complainant's claim.

10. The OP rejected the claim vide letter dated 14.01.2022 on the ground mentioned in the surveyor report. Meanwhile the workshop also issued a legal notice to the complainant for recovery of Rs.62,000/- as parking charges. Feeling aggrieved by the rejection of the claim, the complainant has prayed for directions to OP to pass the claim and to make the payment towards the repair of the car, and/or in alternative to pay Rs.1,87,000/- (IDV) alongwith interest @12% p.a. from 09/07/2021; pay Rs.62,000/- or any other amount which became due or found payable or recovered by the workshop towards parking charges; Rs.3,00,000/-alongwith interest @12% p.a. since 09/07/2021 till realization as compensation; Rs.1,00,000/- towards litigation expenses and any other further relief which this commission deemed fit and proper.

11. Complaint has filed as annexure the copy of Aadhaar Card of the complainant, copy of the insurance and copy of the RC, copy of the fir, copy of the first letter sent to. OP, copy of the surveyor report, copy of the emails sent to the OP, copy of the Superdari order dated 11.01.2021, copy of estimate given by workshop, copy of the application filed by the complainant in the court, copy of the status report submitted by the police in court,

copy of order dated 16.12.2021, copy of repudiation letter by the OP, copy of reply of repudiation letter, copy of the rejection of the claim letter, copy of the legal notice, reply of the legal notice, copy of the suit filed by the complainant against workshop.

12. Notice of the present complaint was issued to OP. Written statement was filed on their behalf upon service. Several preliminary objections have been raised in their defence such as OP has acted in a bonafide manner and operated and processed the claim as per applicable law, rules and regulations as amended to date; OP is not líable to pay interest or compensation as the claim was unjustifiable.

13. It has been submitted that OP could not make timely assessment and survey on account of forced majeure i.e. COVID-19 and nationwide lockdown extended from time to time.

14. Investigator was appointed in August 2020, while investigation was going on, in December 2020 the complainant himself reported to the OP about the recovery of the insured vehicle. The complainant failed to share a copy of recovery memo. It has been further submitted that as per the provision of Section 457 Cr.PC the complainant was responsible to lay his claim to the seized/recovered vehicle and OP had no role or responsibility to discharge unless it were to be expressly called upon by Hon'ble Court with appropriate Section of 451 of Cr.PC.

15. The complainant was granted liberty by the Court of Ld. MM, Tis Hazari Court, Delhi vide order dated 11.01.2021 to move an appropriate application before concerned RTO for endorsement to the effect of change in the colour of the insured

vehicle however, the complainant sought to repaint the vehicle in a different colour and laid a claim with OP.

16. Since the insured vehicle has been recovered the complainant is not entitled to the claim for theft. OP could not have honoured a claim for repainting of the vehicle in a different colour without an endorsement from the concerned RTO approving the same. Rest of the content of the complaint have been denied with the prayer for dismissing the complaint with cost."

2. The District Commission after taking into consideration the material available on record passed the order dated **01.05.2024**, whereby it held as under:

21. The OP has repudiated the claim of the complainant vide Repudiation letter dated 13.01.2022 on the ground :-

1. *No recovery memo has been produced by the insured in this case so far, hence missing parts have not been considered by the Surveyor as the court order in this is issued on 11.01.2021. The survey was done on 13.07.2021.*
2. *The colour of the vehicle in this case has been changed to white and the same has been ordered by the Hon'ble court for modification in the RC. Thus, the same has not been considered by surveyor in his assessment.*

22. As far as first ground of repudiation is concerned, the complainant has placed on record the copy of General Diary No.0047A in e-FIR No.012168/17 wherein, the factum of recovery of the insured vehicle has been explained in detail. Further, if we go through the letter dated 12.07.2021 addressed to the Manager,

Oriental Insurance. Company, in para 5, the complainant has stated that the IO refused to give the release memo of the damaged vehicle and released the vehicle to the complainant without providing recovery memo. Further in para 6 & 7 the complainant has reiterated that the recovery memo has not been provided by the PS: Civil Lines despite written request. Thus, it is clear that the recovery memo was not in custody of the complainant and the police officials refused to give the same. Therefore, the supply of the said document was beyond the control of the complainant. Thus, it is not a valid ground of rejection.

23. For second ground of repudiation, an order dated 11.01.2021 passed by the Ld.MM -06 (C)/THC/Delhi, in e-FIR no.005949/20 becomes important. Relevant portion is being reproduced hereunder:

"So far as the grievance of the applicant regarding change of colour of his vehicle by the accused is concerned, the applicant may move an appropriate application before the RTO, concerned for getting the colour of the vehicle changed in the RC. RTO, concerned is directed to consider the said application in view of this order."

Similarly, it has been further clarified by the Ld.MM-06 (C)/THC/Delhi in order dated 16.12.2021 that :-

"It is submitted by Ld. Counsel for applicant that vehicle bearing No. DL ICR 0146 Maruti Ecco Car belonging to the applicant which was stolen on 19.02.2020 ws recovered and released to the applicant on superdari order dated 11.01.2021. However, it is submitted that since seizure memo of the vehicle has not been

prepared by IO in the present FIR, the claim of applicant is withheld by the insurance company. Upon query made by Court, IO as well as SHO submit that since. the recovered vehicle contained the number plate of vehicle bearing No. DL 3C CE 5683 stolen in case e-FIR No.012168/2017, recovery memo was prepared in e-FIR NO.012168/2017 and not in the present FIR. However, SHO has placed on record GD No.0047A dated 05.01.2021 wherein the aforesaid facts have been stated in detail and it has been stated that vehicle bearing No. DL 1CR 0146 Maruti Ecco Car was stolen in the present e-FIR, copy of GD No.0047A has been supplied to Ld. Counsel for applicant.

As regard the grievance of the applicant regarding change of colour of the vehicle, it is hereby clarified that vide order dated 11.01.2021, liberty was given to concerned RTO to consider the application moved on behalf of the applicant as per rules and no directive was issued as stated by the Surveyor in e-mail dated 09.09.2021 placed on record. It is further clarified that insurance Company is at liberty to consider the claim of applicant as per rules.

Accordingly, application stands disposed of with above observations.

Copy of this order be given dasti to applicant/Ld. Counsel for applicant.

25. It has been clarified by the Ld.MM -06 (C)/THC/Delhi vide order dated 11.01.2021, liberty was given to concerned RTO to consider the application moved on behalf of the complainant. Thus, it is clear that as the accused had changed the original

colour of the insured vehicle from 'silver' to 'white', it was direction to the RTO to consider the application of the applicant (the complainant herein) for endorsement of the change in colour on RC.

26. Once, the queries have been clarified by the Court of Ld. MM-06(C)/THC/Delhi, the OP should have settled the claim within stipulated period of 30 days .OP has not placed on record the Surveyor Report. It is only at the stage of argument OP has filed the Investigation report dated 25.10.2023, wherein it has been stated by the investigator, Allied Technical Services that the subject vehicle was bearing So damage at the time of recovery. Alongwith, the said investigation report certain photographs have also been annexed. It is settled principle of law that OP cannot travel beyond the repudiation letter. Thus, this defence/document cannot be considered.

27. We have gone through the estimate of repairs dated 11.07.2021 for Rs.3,74,250/-filed alongwith the complaint [Ex.CW1/13(Colly)]. Even if assuming the OP was not liable to pay for the change of body colour of the insured vehicle they are still liable to pay for repairs. Since, the IDV is Rs.1,87,000/- and the estimated cost of repairs being more than the 75% of the IDV, it is to be considered as constructive total loss.

28. To substantiate the claim made in the prayer clause for parking charges, the complainant has also placed on record the demand letter issued by M/s Rana Motors Pvt. Ltd. (Ex.CW1/14). The complainant has paid Rs. 10,000/- as full and final settlement towards the dispute on 23.03.2022 in suit No.311-22 titled as Sunil

Shah v/s Rana Motors, Workshop" vide order dated 25.03.2022 before Ld.CJ-08(Central). Tis Hazari Court. Delhi. The receipt for the same alongwith the payment for crane charges for Rs. 1,500/- is Ex.CW1/16 (Colly).

29. Therefore, in the facts and circumstances of the present complaint, we hold that OP has indulged in deficiency in services not only by rejecting the claim on baseless and arbitrary ground but also delayed the settlement of the claim.

30. Hence, we direct OP to pay to the complainant :-

(a) Rs.1,87,000/- being the IDV of the insured vehicle alongwith interest @9% p.a. from 09.07.2021 i.e. date of claim intimation till realization.

(b) Rs.10,000/- paid by the complainant towards the parking charges.

(c) Rs.50,000/- as compensation on account of mental harassment and agony.

(d) Rs.21,000/- as litigation expenses.

31. The order be complied with in 30 days from the date of receipt of order. In case c non-compliance within a stipulated period, OP shall be liable to pay interest @12% p.a. on Rs.2,68,000/- (a+b+c+d) from the date of order till realization."

3. Aggrieved by the aforesaid order passed by the District Commission, the Appellant has preferred the present Appeal, contending that the District Commission erred in treating the claim as one pertaining to theft/total loss and in awarding the entire IDV along with interest and compensation, without properly appreciating the evidence available on record. It is submitted that the Respondent failed to establish any loss or damage to the insured vehicle and

also failed to comply with the requirements relating to change of color of the vehicle as contemplated under the order dated 11.01.2021 passed by the Ld. MM Tis Hazari Court, Delhi. The Appellant has further contended that the Investigator's Report dated 25.10.2023, prepared by M/s Allied Technical Services, recorded that no damage was found on the vehicle at the time of its recovery. It is also submitted that the Respondent failed to produce any documentary evidence or repair bills to substantiate the alleged damage. Pressing the aforesaid, the counsel for the Appellant prayed for setting aside the impugned order passed by the District Commission.

4. The Respondent, on the other hand, filed the reply to the present Appeal, whereby, denied all the allegations of the Appellant and submitted that there is no error in the impugned order as the entire material available on record was properly scrutinized before passing the said order.

5. The Appellant, in its written submissions, has reiterated that the vehicle bearing registration No. DL1CR0146 was insured with the Appellant Insurance Company and was allegedly stolen on 19.02.2020. It is submitted that the vehicle was subsequently recovered by the police authorities in December 2020. However, during the processing of the claim, the Respondent failed to furnish the requisite documents, including the Recovery Memo, and also failed to comply with the requirements concerning the change of color of the recovered vehicle. It is further submitted that despite repeated opportunities, the Respondent failed to furnish the documents sought by the Appellant for proper assessment of the claim. Consequently, the claim was repudiated vide letter dated 13.01.2022 in accordance with the terms and conditions of the insurance policy. The Appellant has, therefore, contended that the repudiation was lawful, justified and in accordance with the applicable

terms of the policy. The counsel for the Appellant has relied upon the following judgments in support of his case:

a) *"Deokar Exports Private Limited Vs. New India Assurance Company Limited [(2008) 14 SCC 598];*

b) *Suraj Mal Niwas Oils Mills (P) Limited VS. United India Insurance Co. Limited [(2010) 10 SCC 577]."*

6. Per contra, the Respondent, in its written submissions, has submitted that he was the registered owner of the Maruti Eeco bearing registration No. DL1CR0146, which was duly insured with the Appellant Insurance Company. It is submitted that the vehicle was stolen on 19.02.2020, pursuant to which an E-FIR was registered at Police Station Civil Lines, Delhi. The vehicle was subsequently recovered by the police authorities in December 2020 and was identified as the insured vehicle on the basis of its engine and chassis numbers. The Respondent has further submitted that, although the colour of the vehicle had been changed and a fake registration number had been affixed by the offenders, the identity of the insured vehicle stood duly established. It is contended that despite the recovery and identification of the vehicle, the Appellant unjustifiably repudiated the claim vide letter dated 13.01.2022, principally on the grounds of non-submission of the Recovery Memo and change in the colour of the vehicle.

7. We have perused the material available on record.

8. The ***main question*** for consideration before us is ***whether the District Commission has erred in establishing deficiency on the part of Appellant.***

9. In the present case, the undisputed position is that the vehicle bearing registration No. DL1CR0146 was insured with the Appellant for the relevant period for an IDV of Rs.1,87,000/- and was stolen on 19.02.2020, pursuant to which an e-FIR was registered at Police Station Civil Lines, Delhi. The

vehicle was subsequently recovered by the police authorities and, despite the fact that it was found bearing a different registration number and colour, its identity was established on the basis of its engine and chassis numbers. The status report submitted by the police before the Ld. MM also categorically recorded that the vehicle recovered in the earlier FIR was, in fact, the same vehicle which had been stolen from the Respondent.

10. Further, the first ground on which the claim came to be repudiated was the alleged non-submission of the Recovery Memo. In this regard, the record reveals that the Respondent had specifically brought to the notice of the Appellant that the Recovery Memo had not been supplied to him by the police authorities despite his requests. More importantly, the subsequent proceedings before the Ld. MM make the position clear. Vide order dated 16.12.2021, the concerned police officials explained that since the vehicle had been recovered in connection with the earlier FIR, the Recovery Memo had been prepared in that FIR and not in the FIR relating to the theft reported by the Respondent. The Court also placed on record the relevant General Diary entry recording the recovery of the vehicle. Thus, the non-production of the Recovery Memo by the Respondent, in the facts of the present case, could not by itself constitute a justifiable basis for repudiating the claim, particularly when the recovery and identity of the insured vehicle stood established from the police record.

11. Furthermore, the second ground of repudiation related to the change in color of the vehicle. It is not in dispute that the original color of the vehicle was silver and during the period when it remained in the possession of the offenders, its color was changed to white and a different registration number was affixed. However, the order dated 11.01.2021 passed by the Ld. MM merely granted liberty to the Respondent to approach the concerned RTO for

necessary endorsement regarding the change of color. The subsequent order dated 16.12.2021 further clarified that no direction had been issued restraining the Insurance Company from considering the claim and that the Insurance Company was at liberty to consider the claim in accordance with the applicable rules. Therefore, the mere fact that the vehicle had undergone a change of color pursuant to the acts of the offenders could not, in itself, furnish a valid ground for repudiating the claim, particularly when the vehicle had admittedly been recovered and its identity had been duly established.

12. We also find substance in the observation of the District Commission that, once the aforesaid issues had been clarified by the criminal court, the Appellant was required to process and decide the claim on the basis of the material available before it. The District Commission specifically noted that the Appellant had not placed the Surveyor Report on record and that the Investigation Report dated 25.10.2023, sought to be relied upon by the Appellant, was produced only at the stage of arguments. The said report, therefore, could not be permitted to constitute a new ground for justifying a repudiation which had already been made on the grounds specifically mentioned in the repudiation letter. The Appellant cannot improve upon or supplement the grounds of repudiation at a subsequent stage by relying upon material which was neither the basis of the repudiation nor produced before the District Commission at the appropriate stage.

13. The contention of the Appellant that the Respondent failed to establish any damage to the vehicle also does not persuade us. The Respondent had placed on record an estimate of repairs dated 11.07.2021 amounting to Rs.3,74,250/- The said estimate was substantially higher than the IDV of the insured vehicle, i.e. Rs.1,87,000/-. The District Commission, taking the said estimate into

consideration, concluded that the estimated cost of repairs exceeded 75% of the IDV and, accordingly, treated the vehicle as a constructive total loss.

14. At this stage, it is also pertinent to note that the Appellant's own case is not that the vehicle recovered by the police was not the insured vehicle. Rather, the vehicle was admittedly recovered and released to the Respondent on superdari, with its identity being established through its engine and chassis numbers. Thus, the controversy was not regarding the identity of the insured vehicle but essentially concerned the assessment of the loss suffered by the Respondent after its recovery. In such circumstances, the Appellant, having undertaken to indemnify the insured against the insured risks, was required to assess the loss on the basis of the material available on record and the terms of the policy, rather than reject the claim on technical grounds which had already been clarified by the competent criminal court.

15. We are, therefore, of the considered view that the grounds relied upon by the Appellant for repudiating the claim were not sufficient to justify the complete rejection of the claim of the Respondent. The failure to furnish the Recovery Memo, when the Respondent had demonstrated that the same was not in his possession and that the police record itself established the recovery, could not reasonably be attributed to the Respondent. Similarly, the change in color of the vehicle was a consequence of the acts of the offenders and the criminal court had expressly clarified that the Insurance Company was at liberty to consider the claim in accordance with law. The Appellant, however, failed to satisfactorily process the claim even after the relevant issues stood clarified and ultimately repudiated the same. Such conduct, in the facts and circumstances of the present case, amounts to deficiency in service.

16. In view of the forgoing, we are in agreement with the reasons given by the District Commission and fail to find any cause or reason to reverse the

findings of the District Commission. ***Consequently, we uphold the order dated 01.05.2024 passed by the District Consumer Disputes Redressal Commission-I, (North District) Ground Floor, Court Annexe -2 Building. Tis Hazari Court Complex, Delhi-110054.***

17. ***Resultantly, the present Appeal stands dismissed with no order as to costs.***
18. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
19. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
20. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

BIMLA KUMARI
MEMBER (FEMALE)

Pronounced On:

07.09.2026

LR-AJ