STATE CONSUMER DISPUTES REDRESSAL COMMISSION

WEST BENGAL

CONSUMER COMPLAINT NO. SC/19/CC/310/2019

Nitu Barnwal
PRESENT ADDRESS - W/o Santosh Kr. Barnwal, Vill. - Kola, P.O. & P.S. - Kolaghat, Dist. Purba Medinipur, Pin - 721 134.,WEST BENGAL.

.....Complainant(s)

Versus

The National Insurance Co. Ltd. & Another
PRESENT ADDRESS - 3, Middleton Street, Kolkata - 700 071, service through Regional Manager.,WEST BENGAL.
The Sr. Br. Manager, National Insurance Co. Ltd.
PRESENT ADDRESS - Tamluk Br., Padumbasan, P.O. & P.S. - Tamluk, Dist. Purba Medinpur, Pin - 721 636.,WEST BENGAL.

.....Opposite Party(s)

BEFORE:
HON'BLE MR. RAJES GUHA RAY , JUDICIAL MEMBER
HON'BLE MR. SANTANU SAHA , MEMBER

FOR THE COMPLAINANT: Nitu Barnwal, Mr. Kushal Das (Advocate)
FOR THE OPPOSITE PARTY: The National Insurance Co. Ltd. & Another, Mr. Debojit Dutta. (Advocate)
DATED: 01/09/2026

ORDER

HON'BLE MR. RAJES GUHA RAY, JUDICIAL MEMBER

1. This complaint application has been filed u/s 19 of the Consumer Protection Act, 1986. Due to intervention of the COVID-19 pandemic and want of full bench and other reasons, the delay has been caused for disposal of this case.

1.1. The complainant is owner of a truck bearing Registration No. WB-29A-9383. He purchased the vehicle after taking loan from

Contai Cooperative Bank Ltd., Kolaghat, Purba Medinipur and it was insured from the National Insurance Co. Ltd. i.e. the OP which was valid up to 01.03.2017. On 25.10.2016 the vehicle was stolen by some miscreants injuring the driver of the vehicle. Immediately, thereafter, on 31.10.2016 an FIR was lodged by the complainant u/s 328/342/395 of Indian Penal Code.

1.2. The complainant made application to the OPs for releasing of the insured amount in favour of the complainant but of no effect in spite repeated reminders. Thereafter, OP No.2 by letter dated 08.08.2018 informed the complainant that the claim was at the regional office-II for doing the needful. On 05.10.2018 by letter the OP No.2 informed the complainant that the claim did not seem to fall within the purview of consideration for settlement due to the reasons mentioned therein; the main reason for such non consideration was not giving immediate notice to the company upon occurrence of damage and theft or criminal act. Thereafter the complainant by letter dated 25.10.2018 informed OP No.2 that in due time all intimations were given to the company regarding theft of the vehicle and lodging of the criminal case. After receiving the same letter, the OPs reconsidered the claim of the complainant and by letter dated 19.11.2018, the OP No.2 requested the complainant to submit documents relating to the proof of ownership of the vehicle at the time of accident. Pursuant thereto, the complainant by letter dated 13.12.2018 submitted all documents relating to proof of ownership of the vehicle to the OP No.2. Thereafter, the complainant received letter dated 24.12.2018 repudiating the claim by the OPs on the ground that the name of the complainant in the insurance policy was transferred after the loss/damage/theft already being occurred. The said impugned letter dated 24.12.2018

was communicated to the Bank and pursuant thereto, the Bank by letter dated 14.03.2019 requested the complainant to repay the loan in full with up-to-date interest within March, 2019 as the original asset was stolen.

1.3. The complainant submits that Section 157 of the Motor Vehicles Act, 1988 provides that where a person in whose favour the certificate of insurance has been issued in accordance with the provision of the chapter transfers to another person, the ownership of the motor vehicle in respect of which such transfer was taken together with the policy of insurance relating thereto etc. It is further submitted that in terms of Section 157 of that Act, the policy certificate issued in favour of the earlier owner has been deemed to be transferred from the date of transfer of ownership of the said vehicle i.e. from 03.10.2016 and the loss/theft took place on 25.10.2016. So, the said vehicle was insured in the name of the complainant on 25.10.2016 and accordingly, the complainant is entitled to get the insured amount.

1.4. Ultimately, the complainant has filed this case against the National Insurance Company as O.P. nos. 1 and 2 praying for direction to the OPs to release the insured amount in favour of the complainant for theft of the insured vehicle, to pay compensation of Rs.5,00,000/- and litigation cost of Rs.30,000/-.

2. The OPs have contested the case by filing written version contending inter alia that admittedly the vehicle was hypothecated to Contai Co operative Bank Ltd. and till now the hypothecation has not been released by the bank and therefore, the law of the land in absence of the bank as a party in this case, the present case is

liable to be dismissed on the ground of non joinder of the necessary parties. It is contended that the policy of insurance was subject to certain terms and conditions; it is admitted by the complainant that after occurrence of alleged theft on 25.10.2016, she lodged FIR on 31.10.2016; though the intimation of theft came to her knowledge on 27.10.2016 itself which she intimated to the investigator in writing. It is stated that from the contents of the FIR, it is though clear that the allegation made by the complainant by virtue of said FIR does not and cannot convert the nature of alleged offence to be theft of vehicle and there has been an unjustified and unexplained delay of 05 days in lodging the FIR. Such act or omission on the part of the complainant in giving timely intimation to the OPs as well as lodging FIR immediately after occurrence of the alleged incident is a specific and wilful violation of terms and conditions of the policy for which the OPs have been deprived of their legal right to arrange for necessary investigation and make a necessary arrangement for recovery of the said car which is the first ground for which the present complaint is liable to be dismissed and such ground has duly been taken in the repudiation letter.

2.1 The O.Ps. have also raised the issue of jurisdiction of this Commission as it is outside the purview of Consumer Protection Act. It is contended that there was no valid insurance policy on the alleged date of loss of the vehicle issued by the O.Ps. in favour of the complainant; after request for transfer of said policy from erst while owner Rupali Dey by virtue of letter dated 28.10.2016 with proof of transfer of change of registered ownership of said vehicle in favour of the complainant on 27.09.2016, the name of insured in said policy of insurance was changed to Nitu Barnwal i.e. the

complainant from its erst while owner namely Rupali Dey giving effect from 28.10.2016 i.e. after the occurrence of alleged loss. There was no privity of contract between the complainant and the opposite parties in respect of said vehicle and therefore the complainant has no locus standi to maintain the present complaint. As regards the application of Section 157 of the Motor Vehicles Act it has been stated that the provision laid down in Section 157 of that Act, is applicable for third party claims only and such benefit cannot be provided to the owner of the vehicle in case of a claim lodged on account of damage/loss caused to the insured vehicle etc. So the opposite parties have prayed for dismissal of the case.

3. The following points are framed for consideration in deciding this case:

POINTS FOR CONSIDERATION

1. whether the complaint case is maintainable.

2. whether the complainant is a consumer under the O.Ps. in respect of the alleged loss of the subject vehicle.

3. whether the case is bad for non joinder of necessary party.

4. whether the opposite party is guilty of deficiency in service towards the complainant.

5. is the complainant entitled to get the reliefs as prayed for ?

D E C I S I ON W I T H R E A S O N S

4. All the point nos. 1 to 5 are taken together for the sake of convenience and avoiding unnecessary repetition.

Both the parties have filed their respective evidences on affidavit in support of their respective cases and questionnaires and replies thereto by the complainant side.

5. From the materials on records, undisputed position in this case is that Rupali Dey was the erst while registered owner of the subject vehicle. On 03.10.2026 the present complainant purchased that vehicle from her taking loan from the bank and transferred the name of the ownership in her favour. As per complainant case the alleged theft of the vehicle was on 25.10.2016. Admittedly, the policy of insurance stood in the name of erst while owner namely Rupali Dey on the date of alleged theft or loss. The vehicle was insured as per insurance policy issued by the O.Ps. on the date of alleged theft. The complainant being the registered owner of said vehicle made insurance claim before the insurer and the claim has been repudiated. So, apart from the other issues involved in this case, the present complainant filed this case to ventilate her grievance which needs adjudication. So, the case is maintainable.

Thus, the point no. 1 is decided in favour of the complainant.

6. Now, it is to be decided whether the case is bad for non joinder of necessary party and whether the complainant i.e. the present owner namely, Nitu Barnwal is entitled to get benefit of said insurance policy.

As per complaint case the subject vehicle was purchased by the complainant taking loan from the Contai Co operative Bank Ltd. and the vehicle was hypothecated to it. It is the plea on behalf of the O.Ps. that said bank is a necessary party to this case and as such the case is bad for non joinder of necessary party. It is of no doubt that the vehicle in question was hypothecated to the financier bank as a security for repayment of loan. So the bank has a stake or interest in the subject vehicle. But, it has no direct relation with

the matter of insurance claim. So, in our view the said bank may be a proper party to the case but, not a necessary party.

Thus, the point no. 3. is decided against the O.Ps.

7. It has been argued by Ld. Advocate for the complainant that Section 157 of the Motor Vehicles Act, 1988 provides that where a person in whose favour the certificate of insurance has been issued in accordance of the provision of the Chapter transfers to another person the ownership of the motor vehicle in respect of which such transfer was done, it was together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. It is argued that in terms of section 157 of said Act the policy certificate issued in favour of earlier owner has been deemed to be transferred from the date of transfer of ownership of said vehicle i.e. from 03.10.2016 and the loss /theft took place on 25.10.2016, so the said vehicle was insured in the name of the complainant on 25.10.2016 and as such the complainant is entitled to insured amount.

7.1. On the other hand Ld. Advocate for the opposite parties has argued that the copy of insurance certificate so annexed to the complaint proves the policy in her name was issued by the opp. Parties with effect from 28.10.2016 and prior to that the policy eas valid in the name of Mrs. Rupali Dey. It proves that on the date of alleged loss i.e. on 25.10.2016 there was no privity of contract between the complainant and the opposite parties. It is submitted that Section 157 of the Motor Vehicles Act, 1988 pertains to chapter

XI of said Act which exclusively deals with third party claim cases only. In support of his argument Ld. Advocate has referred and relied upon the decisions of the Hon'ble Supreme Court reported in ***AIR 1999 SC 3252*** and ***1996 (1) SCC 221***. He has also referred the decisions of Hon'ble NCDRC reported in ***2021 (1) TAC 67*** and passed in ***R.P. 1528 of 2007***. Ld. Advocate has also referred the GR- 17 of India Motor Tarif prescribing the procedures to be followed regarding transfers of vehicles.

8. It is found from the evidences on records including the reply given by the complainant against the questionnaire that on the relevant date of alleged theft the insurance policy of the insured subject vehicle stood in the name of erst while owner, not in the name of the present owner complainant. Though she had insurable interest in the vehicle but there was no privity of contract between the insurer i.e. the O.Ps and complainant. Policy of insurance is a contract so, both the parties to the contract are bound by the terms of it. Now, it is to be decided whether the present complainant was a party to that contract i.e. policy of insurance. In this case, admittedly and also it is found from the evidences on records that on the date of alleged theft of the insured vehicle, the insurance certificate stood in the name of erst while owner namely Rupali Dey, though she sold said vehicle to the present owner complainant namely, Nitu Barnwal

9. The complainant has put emphasis and relied upon the provision of section 157 of the Motor Vehicles Act, 1988 and has taken the plea that in terms of section 157 of said Act the policy certificate issued in favour of earlier owner has been deemed to be

transferred from the date of transfer of ownership of said vehicle i.e. from 03.10.2016.

9.1. So far the applicability of section 157 of the M.V. Act, 1988 to this case is concerned, this provision comes under the Chapter 11, bearing title *"Insurance of motor vehicles against third party risks"*. Therefore, the provision of section 157 of said Act is meant for the cases concerning loss to third party, not the insured vehicle or person. In the case of ***Complete Insulations (P) Ltd. versus New India Assurance Company Ltd***. in Civil appeal No. 2131 of 1994 reported in ***1996 (1) SCC 221*** the Hon'ble supreme Court held as hereunder:

> *"Section 157 of the Motor Vehicles Act, 1988, which provides for the automatic transfer of a certificate of insurance and the policy of insurance described therein along with the transfer of the motor vehicles, applies only to third party risks.*"

Ultimately the Hon'ble Court dismissed that appeal, holding that the insurer was not liable to make good the damage to the vehicle since there was agreement between the insurer and the transferee to cover the risk or damage to the vehicle.

9.2. The Hon'ble supreme Court in a case reported in ***AIR 1999 SC 3252*** has opined as follows:

> *"15. The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy. That being so, the insured has also to act strictly in accordance with the statutory limitations or terms of the policy expressly set out therein."*

9.3. The Hon'ble National Commission in the decision in Revision Petition No. 1528 of 2007 between ***New India Assurance Company Ltd. vs. Dalip Kumar*** referred the above referred decision of the Hon'ble Supreme Court reported in (1996) 1 SCC 221 and has held the following:

> *"In view of the provisions of the Motor Vehicles Act and the Tariff Regulations and the decisions of the Supreme Court, if transferee fails to inform the Insurance Company about transfer of Registration Certificate in his ame and the policy is not rtransferred in the name of the transferee, the the Insurance Company cannot be held liable to pay the claim in the case of own damage of the vehicle. The Petitioner Insurance Company was justified in repudiating the claim"*

9.4 As per GR. 17. of India Motor Tariff the transferee shall shall apply within fourteen days from the date of rtransfer in writing under recorded delivery to the insurer who has insured the vehicle, with the details of the registration of the vehicle, the date of rtransfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy so that the insurer make necessary changes in his record and issue fresh Certificate of Insurance. In the instant case in hand though the complainant on 03.10.2016 purchased the subject vehicle from the erst while registered owner prior to the alleged occurrence of theft on 25.10.2018 but, the complainant i.e. the present owner of the vehicle did not apply within said 15 days from the date of transfer in writing and consequently, the insurance policy in respect of the insured vehicle was not duly transferred to the name of the present owner/complainant though subsequently, it was transferred but it was with effect from 28.10.2016. Thus, on the date of alleged incident there was no privity of contract between the insurer - O.P. and the present owner/complainant.

10. Therefore, the complainant though became a consumer of the O.Ps. later with effect from 28.10.2016, but in absence of privity of contract of insurance in between her and the O.Ps. covering the date of alleged occurrence of theft, the O.Ps. have no liability to render service to her and as such they cannot be held guilty of deficiency in service. Accordingly, the complainant is not entitled to get the benefits of insurance on account of loss to that vehicle.

11. Accordingly, having taken into consideration all the materials on records and the position of laws in the light of the opinion of the Hon'ble Supreme Court and the Hon'ble National Commission, we are inclined to hold that though the complainant became a consumer of the O.P. insurance company but, as on the date of alleged incident of theft she was not a consumer in strict sense and as such there is no deficiency in service on the part of the O.Ps. towards the complainant. Thus she is not entitled to get any relief in this case.

Thus the point nos. 2, 4 and 5 are decided against the complainant.

Accordingly, the complaint case fails.

12. Hence, it is

o r d e r e d

that the complaint case being no. CC/310/2019 is hereby dismissed on contest without cost.

Supply copy of this judgement and order to the parties free of cost.

Office is to needful.

RAJES GUHA RAY , JUDICIAL MEMBER

MR. SANTANU SAHA , MEMBER