

# INSURANCE INSIGHT

Signing discharge voucher ends privity of contract

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**Signing discharge voucher ends privity of contract**

Hon'ble National Consumer Disputes Redressal Commission ("NCDRC") in *Vaanix Industries Pvt. Ltd. v SBI General Insurance Company & 4 Others*, CC/1270/2015 through its judgement dated 02.03.2023 discussed the relevance of signing of the discharge vouchers. A 'discharge voucher' is a form of settlement intimation which stands in proof of the claim having amicably been settled between the insurer and the insured. In the above-mentioned case, the complainant did not deny that he had signed the discharge vouchers. It was argued that the discharge vouchers were signed under duress as his business was under financial stress following the losses in the fire. However, the complainant failed to place on record any evidence in support of the discharge voucher having been signed under duress or protest. Furthermore, the complainant had approached the Hon'ble Commission after nearly 14 months of having signed the discharge vouchers. Therefore, the Hon'ble Commission dismissed the complaint citing its judgment in the case of *MJRJ Medichem Surgical vs National Insurance Company Ltd.* [I (2015) CPJ 681 (NC)] wherein it was held that once the claim is settled without protest, and the complainant has accepted the amount unconditionally, the privity of contract or relationship of consumer and service provider between the parties comes to an end and the insured ceases to be a "consumer" under the Act.

**Social welfare interpretation v. policy terms : A nuanced balance**

The Hon'ble National Consumer Disputes Redressal Commission has, in the matter of *Oriental Insurance Co. Ltd. v Sujap & Anr* [RP/2037/2018], observed in its judgement dated 03.03.2023 that the Commission which decides on an insurance claim cannot go beyond the specified terms and conditions of the insurance policy or scheme. The Commission cannot, under the guise of a social welfare interpretation, extend the meaning and scope of the terms & conditions of the policy artificially. However, nothing prevents the Commission from taking judicial notice of the mental pain & harassment suffered by the complainant. Accordingly, the Commission awarded a compensation of Rs. 1,00,000/- to the Claimant on account of the dilatory and harassing tactics adopted by the insurer before belatedly repudiating his insurance claim.

In the instant case, the insured had passed away and in terms of the policy, his legal representatives had to get the policy transferred in their name within three months of the death of the insured. The policy was not so transferred within the prescribed time. The insurance company argued that in the event of any failure on the part of a transferee of an insured vehicle to comply with the relevant terms and conditions in the insurance policy within the time limit provided therein, the insurer is not liable to satisfy his claim.

The insurance company, in support of its argument, cited this Hon'ble Commissions judgment in *United India Insurance Co. Ltd. Vs. Goli Shridhar & Another* (RP No. 2964 of 2007, decided on 22.11.2011) and *New India Assurance Co. Ltd. Vs. A. Kalavathi*, (RP No. 877 of 2011, decided on 8.8.2012) along with the Judgment of the Hon'ble Supreme Court in *Complete Insulation (P) Ltd. Vs. New India Assurance Co. Ltd.* [1996 AIR 586].

The complainant, on the other hand, argued that the insurance was taken in respect of the vehicle and not its owner and therefore, the insurance company was liable to honour the complainant's claim. The complainant relied upon this Hon'ble Commissions Judgment in *New India Insurance Co. Ltd. Vs. Jagjit Singh* (RP No. 4688 of 2008), *National Insurance Co. Ltd. Vs. Ram Gopal Sharma* (First Appeal No. 1140 of 2006) and *National Insurance Co. Ltd. Vs. Nitin Khandelwal* (Civil Appeal No. 3409/2008) where the compensation was awarded for the stolen vehicle on a Non-Standard Basis at 75% of the insured amount despite breach of the policy terms and conditions.

### **Intimation of Loss: how relevant?**

The Hon'ble National Consumer Disputes Redressal Commission ("NCDRC") in its judgment dated 06.03.2023 in the matter of *New India Assurance Company Ltd. v Manoj Kumar* [RP/214/2014] adjudicates the claim of an insured who, having obtained an insurance coverage for

his vehicle, had his claim against theft of the insured vehicle repudiated on the grounds of delay in intimation of loss.

In the present case, the insured vehicle was stolen while it was parked in a public place. The complainant lodged an FIR after 4 days and intimated the insurance company after a period of 44 days from the date of the incident. The insurance company repudiated the claim for breach of the terms and conditions of the policy requiring immediate intimation of loss. The Hon'ble NCDRC while deciding the dispute reiterated its decision in *Jaina Construction Co. Vs. Oriental Insurance Co. Ltd.* [II (2022) SLT 119] and *Gurshinder Singh Vs. Shriram General Insurance Co. Ltd. & Anr.* [I (2021) SLT 657] that in case of theft, the intimation to the police and the filing of an FIR is relevant only to the extent of the investigation of the theft and that the insurance company could not have repudiated the claim merely on the ground that there was delay in intimating the insurance company of incident.

The Hon'ble Commission also observed that it cannot re-assess and re-appreciate the evidence as upheld in the Hon'ble Supreme Court in *Rubi (Chandra) Dutta vs United India Insurance Company* [(2011) 11 SCC 269], *Lourdes Society Snehajali Girls Hostel and Ors. vs H & R Johnson (India) Ltd., and Ors* [(2016) 8 SCC 286] and *T Ramalingeswara Rao (Dead) Through LRs and Ors vs N Madhava Rao and Ors*, [through its judgment dated 05.04.2019, especially where where the two fora below have recorded concurrent findings of facts.

**Endorsements on Insurance Policy – Whether prospective?**

Hon'ble National Consumer Disputes Redressal Commission ("NCDRC") in its recent judgment in *M/s Kurian Abraham (P) Ltd. v M/s National Insurance Company Ltd.* [CC/231/2013] dated 06.03.2023 discussed the significance of endorsement on insurance policies. The Hon'ble Commission observed that endorsements on an insurance policy shall not be deemed to have a prospective effect unless so specifically stated along with the endorsement.

In the above matter, the insurance company did not dispute the endorsement issued by it nor produced any evidence in support of its argument of the effect of its endorsement being prospective. It was held that in the absence of the same, it was not open for it to reject a claim based upon its own endorsement. It was the case of the complainant that though the policy document did not initially mention that the policy was on reinstatement value basis, subsequently an endorsement based on the insured's request recorded that "Notwithstanding anything stated to the contrary it is hereby declared and agreed that the policy is subject to reinstatement value clause as from inception of the policy and not as otherwise stated therein". Therefore, the surveyor was wrong in assuming that reinstatement value clause had only prospective application.

The Hon'ble NCDRC, while awarding enhanced claim on re-instatement basis, relied upon the judgement of the Hon'ble Supreme Court in *Sri Venkateswara Syndicate Vs. Oriental Insurance Company Ltd. & Anr.* in CA No. 4487 of 2004 dated 24.08.2009 (2009) 8 SCC 507, where it was held that the insurer is not to rely blindly on the surveyor's report since "the insurer is not prohibited from appointing another surveyor for fresh estimation of loss since non consideration of material facts that ought to have been taken into consideration can be a ground for the conduct of a fresh survey and that this Commission can intervene since rejection is arbitrary and not based on acceptable reasons".





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