

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION (EAST)**GOVT. OF NCT OF DELHI****CONVENIENT SHOPPING CENTRE, FIRST FLOOR,****SAINI ENCLAVE, DELHI – 110 092****C.C. No.175/2018****ADWAIT HALDAR****S/O SHRI JUGAL HALDAR****H. NO. 22, C BLOCK CHANDER VIHAR****MANDAWALI,****DELHI - 110092****....Complainant****Versus****M/S MAGMA HDI GEN. INSURANCE CO. LTD.****UNIT NO.473, 4TH FLOOR,****NETAJI SUBHASH PLACE.****PITAMPURA, NEW DELHI - 110034****.....OP****Date of Institution : 30.05.2018**
Judgment Reserved on : 25.09.2023
Judgment Passed on : 31.10.2023**QUORUM:****Sh. S.S. Malhotra (President)**
Ms. Rashmi Bansal (Member)
Sh. Ravi Kumar (Member)

Order By: Ms. Rashmi Bansal (Member)

JUDGMENT

By the present order, this commission decides the complaint of the complainant against OP for deficiency in service and rejecting his insurance claim w.r.t. his stolen vehicle.

1. It is the case of the complainant that his vehicle, an E- Rikshaw, was insured with OP for a period from 30.06.2017 to 29.06.2018 for an IDV of Rs. 99,970/- and paid a premium of Rs.6468/- to the OP. On 05.01.2018 at about 12– 12:30 PM, the said vehicle was stolen by some unknown persons by intoxicating him with a hanky on his mouth when he was taking a tea at tea stall and the vehicle was standing near the tea shop, due to which he became unconscious and thieves took his vehicle. The complainant submits that he was admitted into hospital by some public persons on the same day and remained admitted till 11.01.2018 and after discharge from Hospital he visited the concerned police station for lodging the FIR, which could not be registered due to technical error in the server and could be lodged only on 14.01.2018. Complainant submits that thereafter he immediately intimated to OP about the incident. The claim was filed on 17.01.2018 with OP. All the documents were also supplied to the OP including the untraced report dated 15.02.2018, however, on 08.03.2018, OP has rejected his claim without any sufficient reason which conduct of OP is highly illegal, uncalled and unwarranted and OP is deficient in its service in rejecting his claim. Complainant submits that his claim be released to him along with compensation for suffering mental harassment and agony.
2. Upon notice, OP has filed its reply admitting the insurance policy of the complainant vehicle and submits that complainant has not come with clean hands. The claim of the complainant is rejected on the grounds of delayed information to OP after a delay of 12 days and delayed registration of FIR after nine days and the keys of the vehicle was left inside the ignition of the vehicle, which fact was clearly mentioned in the FIR and which are in violation of the conditions of the insurance policy as the complainant failed to take reasonable safeguards to protect the vehicle from getting it stolen and has given advantages to the thief. Therefore, there is no deficiency in services on the part of OP and the present complaint is not maintainable and liable to be dismissed.
3. Complainant has filed his rejoinder negating the contentions of the OP and reiterated his version in the complaint. Both the parties have filed their respective evidences along with documents.
4. In support of his case, complainant has filed copy of the RC of the vehicle, copy of the insurance policy, medical record, copy of confirmation of technical error, E-FIR, bill of the vehicle and untraced report.
5. OP has filed the copy of the policy.
6. The Commission has heard the arguments and perused the record.
7. The policy issued to the complainant is not disputed. The repudiation letter dated 08.03.2018 shows that the claim of the complainant was rejected by the OP due to ‘gross negligence i.e. the key was left in the vehicle and secondly delay in intimation to company and police.’
8. The issue to decide is whether there was ‘any negligence on the part of the complainant?’

9. The fact of the intoxication of the complainant is not disputed by OP. Moreover, the complainant has produced medical record from the govt hospital, wherein he is shown admitted on the day of incident and reason mentioned was 'intoxication'. The Complainant is able to show through his medical documents that he was intoxicated on the date of incidence of theft, i.e. 05.01.2018 and was discharged on 11.01.2018 and has lodged the FIR with police on 14.01.2018, which shows that under the stated circumstances, effectively there was delay of 3 days in registration of the FIR. Untraced report of the vehicle filed by the complainant establishes theft of the vehicle.
10. From the facts of the case it is revealed that it is basically not a case of stolen vehicle rather it is a case of looting vehicle after administering toxicating object to the driver. In such incident taking the plea that the driver did not take proper care of his vehicle is beyond imagination. Even a diligent person can be looted forcefully as explained.
11. It is undisputed that at the time of incidence of looting the vehicle was having a valid insurance policy. Though there is delay in intimation to OP. Hon'ble Supreme Court decision in Civil Appeal No.653 of 2020 (Arising Out of S.L.P.(C) No. 24370 of 2015) **Gurshinder Singh vs Shriram General Insurance Co. Ltd. & Anr**, has filed that delay in providing information to the Insurance Company is not fatal to seeking of claim. Therefore, although there was some delay in lodging the claim with the OP but OP cannot reject the claim of the complainant in a mechanical manner and the repudiation of the claim amounts to a deficiency in service on the part of the OP. Moreover, OP also failed to show that complainant did not intimate OP about theft of the vehicle without any reason.
12. Leaving the key in the ignition of the vehicle on all occasions cannot be termed as so serious breach, so as to disentitle the insured from seeking a claim under the insurance policy. Moreover, a person takes insurance policy to get indemnified in the event of any mis-happening.
13. In the case of **National Insurance Company Ltd. V/s Nitin Khandelwal, IV (2008) CPJ 1 (SC)**, Apex Court has observed as under:-

"12. In the case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle breach of condition is not germane. The appellant Insurance Company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer.

14. Therefore, in view of the above-stated judgments and the facts and circumstances of the case, this Commission is of the considered opinion that rejection of the claim of the complainant amounts to deficiency in service on the part of OP and directs OP to pay the IDV of the vehicle to complainant i.e. Rs. 99,970/- with interest @ 6% p.a. and a compensation of Rs.20,000/- for harassment and mental agony suffered by the complainant and Rs.10,000/- towards litigation cost.
15. The above-stated orders be complied with within a period of 30 days from the date of receipt of the order, failing which the entire amount accrued till the 30th day shall carry interest at the rate of 9%, per annum till its actual realization by the complainant.
16. A copy of the order be sent to the parties concerned as per CPA rules and thereafter file be consigned to the record room after all the formalities.
17. The order contains 06 pages each bearing our signature.
18. Pronounced on -31.10.2023.