

BEFORE THE ANDHRA PRADESH STATE CONSUMER DISPUTES
REDRESSAL COMMISSION AT VIJAYAWADA

F.A.No. 138 of 2018 against the order in C.C. No. 24 of 2017 on the file of
the District Consumer Disputes Redressal Forum-I, Krishna at
Machilipatnam

Between:

1. National Insurance Company Limited,
Rep. by its Branch Manager,
Branch Office, D. No. 29-10-10,
1st Floor, Vijaya Complex,
Opp: Gowthami Grandhalayam,
Rajahmundry,-533 104,
East Godavari District.
2. National Insurance Company Limited,
Rep. by its Branch Manager,
Vijayawada Road,
Machilipatnam-521 001,
Krishna District, Andhra Pradesh.

...Appellants/Opposite parties

AND

Smt. Buragadda Sridevi,
W/o. Dr. Buragadda Srinadh,
46 years, D. No. 4/122, Rajupeta,
Machilipatnam-521 001,
Krishna District, Andhra Pradesh.

...Respondent/Complainant

Counsel for the Appellants : M/s. N.V.R. Krishna Kumar
Counsel for the Respondent : M/s. K. Venkateswarlu

CORAM:

**SMT. C.V.S.BHASKARAM, HON'BLE WOMAN MEMBER
AND
SRI B.SRINIVASA RAO, HON'BLE MEMBER (JUDL)**

Oral Order, dated 21.11.2023:

(Per Smt.C.V.S.Bhaskaram, Hon'ble Woman Member (Non-Judl.))

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1) This appeal is filed, under Section 15 of the Consumer Protection Act, 1986 (herein after referred to as 'Act'), assailing the Order dated 07.11.2017, passed in C.C.No. 24 of 2017, on the file of the District Consumer Disputes Redressal Forum-I, Krishna at Machilipatnam (herein after referred to as 'District Forum'), wherein the complaint filed by the complainant was allowed in part.

2) The parties herein after will be referred to as they were arrayed before the District Commission, for the sake of convenience.

3) The facts, leading to filing of the complaint, in nutshell, are as follows:-

Originally, the husband of the complainant purchased Honda City car bearing Registration No. AP-09-BX-6474 and the same was insured with the opposite parties vide Comprehensive Policy No. 560401/31/14/6100002778 for the period from 09.11.2014 to 08.11.2015. Subsequently the husband of the complainant transferred the said vehicle in the name of the complainant herein, who is his wife. While so, the said vehicle met with an accident due to rash driving of the opposite vehicle bearing No. AP-29-TB-9754. The driver of the opposite party vehicle gave a complaint in the concerned policy station, who registered a case in Crime No. 196 of 2015, under Section 337 & 338 IPC against the driver of the complainant. The complainant informed the factum of accident to the insured vehicle to the opposite parties. The complainant got repaired the damaged vehicle by spending an amount of Rs. 1,88,070/-. Later, the complainant submitted claim form along with necessary bills and vouchers to the opposite parties, with a request to

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settle the claim. The opposite parties repudiated the claim of the complainant on the ground that she has no insurable interest as the policy was lying in the name of the husband of the complainant. The complainant submitted that due to oversight the policy was not transferred in her name by her husband. The complainant and her husband approached the opposite parties personally and informed that the policy was in force at the time of accident, thus, the complainant is entitled for claim amount and requested the opposite parties to settle the claim, but in vain. Having vexed with the attitude of the opposite parties, the complainant got issued a legal notice, dated 28.04.2017 demanding to settle the claim. The opposite parties got issued a reply notice, dated 08.05.2017 with false allegations. There is deficiency in service on the part of the opposite parties. Hence, the complaint.

4) The 1st opposite party filed counter, *inter alia*, contending that the vehicle was transferred in the name of the complainant by her husband, but the policy was not transferred in her name. As per the Motor Vehicles Act and All India Motor Tariff Guidelines, the transferee shall approach the Insurance Company within 14 days from the date of transfer of ownership and shall submit a proposal with new owner's name and address and remit the prescribed fee for transfer of ownership to enable the Insurance Company to pass an endorsement accordingly. The complainant herself admitted in the complaint that due to oversight the policy was not transferred in her name. Though the policy was in force at the time of accident, as the policy was not transferred in the name of the complainant, she has no insurable interest to claim damages of the vehicle. The opposite parties repudiated the claim of the

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complainant as per the terms and conditions of the policy. There is no deficiency in service on the part of the opposite parties. Hence, the complaint is liable to be dismissed.

5) The 2nd opposite party filed a memo adopting the counter filed by the 1st opposite party.

6) Before the District Commission, both parties filed evidence affidavit, in support of their respective stand. On behalf of the complainant, Exs.A-1 to A-8 were marked. On behalf of the opposite parties, Ex.B-1 was marked.

7) After perusing the material on record, the District Forum arrived at a conclusion that there is deficiency in service on the part of the opposite parties, consequently, allowed the complaint and directed the opposite parties jointly and severally to pay Rs.1,88,070/- with interest at 12% per annum from the date of complaint till the date of order and interest at 6% per annum from the date of order till the date of payment; Rs.10,000/- towards mental agony and Rs.5,000/- towards litigation expenses to the complainant.

8) Feeling aggrieved with the order, dated 07.11.2017, passed in C.C.No.24 of 2017, the opposite parties preferred the appeal.

9) Heard both the counsel and perused the record.

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10) Now, the points that arise for consideration are:

1. Whether there is deficiency in service on the part of the opposite parties; and
2. Whether there are any grounds to set aside the impugned order.

11) **POINT NO.1:-**

The following admitted facts can be culled out from the material available on record. The husband of the complainant owned Honda City car bearing registration No. AP-09-BX-6474 and he insured the said vehicle with the opposite parties under Private Car Package Policy bearing No. 560401/31/136100002464, for the period from 09.11.2014 to 08.11.2015, for a sum assured of Rs.3,78,947/-. Ex.B-1/A-2 is the policy issued by the opposite parties in favour of the husband of the complainant. Later he transferred the vehicle in the name of the complainant. Ex.A-1 is the certificate of registration in the name of the complainant. While the matter stood thus, the insured vehicle met with an accident due to rash and negligent driving of the driver of the opposite vehicle bearing No. AP-29-TB-9754. The factum of accident was informed to the concerned policy, who registered a case in Crime No. 196 of 2015 under Sections 337 and 338 IPC. In the said accident the insured vehicle was badly damaged. The complainant got repaired the damaged vehicle by spending an amount of Rs.1,88,070/-, for which one S.K. Motors (Sri Kanadurga Motors) issued a cash bill, Ex.A-8, dated 16.09.2015. Ex.A-7 are the photographs and C.D. of the damaged vehicle. The complainant submitted claim form along with necessary documents to the opposite parties, with a request to settle the claim.

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The opposite parties repudiated the claim of the complainant vide its letter, Ex.A-3, dated 26.10.2015 stating that the complainant has no insurable interest on the subject vehicle since the accident occurred to the vehicle after it was transferred with RTA Hyderabad to other person. On 28.04.2017, the complainant got issued a legal notice, Ex.A-4 directing the opposite parties to settle the claim. Ex.A-5 is the postal acknowledgement. The opposite parties issued a reply, Ex.A-6 reiterating their stand taken in the repudiation letter.

12) It is an admitted fact that though the vehicle was transferred in the name of the complainant, the policy was not transferred in her name. The complainant herself averred in the complaint that due to oversight the policy was not transferred in her name. The learned counsel for the complainant contended that the policy was in force at the time of accident, thus, the complainant is entitled to claim the repair charges of the damaged vehicle.

13) The learned counsel for the opposite parties vehemently argued that the complainant has no insurable interest as the policy was not transferred in her name. As per the Motor Vehicles Act, the transferee shall approach the Insurance Company within 14 days from the date of transfer of ownership. The opposite parties rightly repudiated the claim of the complainant as per the terms and conditions of the policy. The District Forum passed the order contrary to the pleadings, terms and conditions of the policy and settled principles of law. The District Forum failed to consider that there is no insurance interest between the complainant and the opposite parties at the time of accident, i.e.,

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27.06.2015. Moreover, the District Forum referred a citation, National Insurance Company Ltd., Vs. Lakshmi, 1997 ACJ 7, their Lordships of Supreme Court held in page No.4 of its order, but in fact the said decision was not rendered by Supreme Court, it was rendered by Karnataka High Court at Bangalore reported in ACJ 1997 Page 7.

14) The learned counsel for the opposite parties contended that the complainant has no insurable interest as the policy was not transferred in her name at the time of accident of subject vehicle. To substantiate their stand the learned counsel for the opposite parties has drawn the attention of this Commission to the following decisions:

1. M/s. Complete Insulations (P) Ltd., Vs. New India Assurance Company Limited, AIR 1996 Supreme Court 586, wherein it was held that:

"Motor vehicles Act (59 of 1988), Ss. 157, 147 - Scope - Liability of insurance company - Fiction of S.157 is limited of third party risks only - Transfer of vehicle - Transferee cannot be said to be third party qua the vehicle - No former undertaking to cover the risk or damage to vehicle - No policy in relation thereto transferred by insurer to transferee - Insurer would not be liable to make good the damage to the vehicle".

2. Satwant Singh Vs. United India Insurance Co., CPR 2017 (1) National Consumer Disputes Redressal Commission, wherein it was held that:

"Consumer Protection Act, 1986 - Sections 15, 17, 19 and 21 - Insurance - Damage caused to vehicle in accident - Complainant did not obtain insurance coverage in his own

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name – in such circumstances, complainant was not entitled to claim reimbursement of expenses incurred in repair of damaged vehicle – State Commission has not committed any error in allowing the appeal and dismissing the complaint – Revision petition dismissed.*

As per the principle enunciated in the cases cited supra, a person is not entitled to claim damages of the accident vehicle, when the policy was not transferred in his name.

15) Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, we are of the considered view that the opposite parties rightly repudiated the claim of the complainant and there is no deficiency in service on their in repudiation of the claim. This point is answered in favour of the opposite parties and against the complainant.


16) **POINT NO.2:-**


The District Forum misconstrued the pleadings and documentary evidence and arrived at a conclusion that there is deficiency in service on the part of the opposite parties. The findings recorded by the District Forum are contrary to the terms and conditions of the policy. The findings recorded by the District Forum are based on assumptions and presumptions. If the order of the District Forum is allowed to stand, certainly it would amounts to mis-carriage of justice. Viewed from any angle, the order under challenge is liable to be set aside. Hence, this

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point is answered in favour of the opposite parties and against the complainant.

16) In the result, the appeal is allowed, setting aside the order dated 07.11.2017, passed in C.C. No. 24 of 2017, on the file of the District Consumer Disputes Redressal Forum-I, Krishna at Machilipatnam, consequently C.C. No. 24 of 2017 stands dismissed.


MEMBER (JUDICIAL)


PRESIDING MEMBER (NON-JUDL.)

21/11/2023.

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