

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, KARNAL.

Complaint No. 279 of 2020

Date of instt.07.08.2020

Date of Decision:14.12.2023

Rajesh Kumar, aged 41 years son of Shri Shyam Lal, resident of house no.1824-A, sector-6, Urban Estate, Karnal. Aadhar card no.3957 3780 3918. Mobile no.9992171384.

.....Complainant.

Versus

1. The New India Assurance Company Limited, through its Divisional Manager, opposite Bus Stand, G.T. Road, Karnal.
2. Metro Motors Pvt. Ltd. 112/60 KM Mile Stone, near Arpana Hospital, G.T. Road, Kutail, District Karnal: 132031.

.....Opposite Parties.

Complaint Under Section 35 of Consumer Protection Act, 2019.**Before Shri Jaswant Singh.....President.****Shri Vineet Kaushik.....Member****Dr. Suman Singh.....Member**

Argued by: Shri Kanavdeep Singh, counsel for the complainant.

Shri Rohit Gupta, counsel for the OP no.1.**Shri Rajesh Gutpa, counsel for the OP no.2.****(Jaswant Singh, President)****ORDER:**

The complainant has filed the present complaint Under Section 35 of Consumer Protection Act, 2019 against the opposite parties (hereinafter referred to as 'OPs') on the averments that complainant is the registered owner of car bearing registration no.HR-05/AT-7960 (TATA ZEST) the same was insured with the OP no.1, vide insurance policy no.12220031181350047831, valid from 29.08.2018 to 28.08.2019. The policy was comprehensive/package. The insured declared value of the car was Rs.5,21,500/- with zero depreciation. The said car was used by complainant for his personal use. On 07.09.2018, complainant was coming from Meerut (UP) to his house at Karnal in the said car, which was being driven by him with all care and caution and observing all the traffic rules, in the midnight of 7-8.09.2018 at about 1.00 a.m. when the car reached within the area of village Kertu, District Shamli (UP) on Karnal Meerut Road, the car struck against the roadside stone pillar (Burji). Due to impact of this, the car suffered heavy damages and it was total loss. The complainant also suffered minor injuries in this accident. From the place of accident, the car was brought to the workshop of OP no.2 at Karnal with the help of crane and complainant spent Rs.5000/- to the crane owner. The complainant informed the OP no.1 regarding the said accident. OP appointed a surveyor to investigate the matter. All the relevant documents were submitted to the OP no.1 as well as to the surveyor. Lateron, complainant suffered from Dengu fever himself and the entire family and they got treatment from various hospitals. Despite all this, OP no.1 did not settle the claim of complainant intentionally and deliberately. The complainant time and again contacted the OP no.1 and requested to settle the claim but OP did not pay any heed to the request of complainant and lingered the matter on one pretext or the other. The car is still lying in the workshop of OP no.2 and is now totally destroyed due to junk and rust and pilferage of various parts. The vehicle is beyond repair. It is further averred that the official of the OPs revealed orally that the claim of the complainant is not payable, but no written intimation was given despite repeated calls and request. In this way there is deficiency in service and unfair trade practice on the part of the OP. Hence this complaint.

2. On notice, OP no.1 appeared and filed its written version, raising preliminary objections with regard to maintainability; jurisdiction locus standi; cause of action and concealment of true and material facts. On merits, it is pleaded that complainant had intimated and submitted a claim on 12.09.2018 with the OP on account of alleged loss/damage of vehicle in question and same had been registered by the OP. The said claim of complainant has been duly processed by OP by way of appointment of M/s Chhatwal and Associates, an IRDA approved independent insurance surveyors and loss assessor for conducting the survey and assessment of loss of vehicle, who had conducted the survey, assessed the loss and submitted Motor Final Survey Report dated 15.03.2019. Mr. Shubham Arora, an independent Insurance Claims Investigator to investigate into the claim on seeing the complexity of claim, who had investigated the claim and submitted investigation report dated 25.10.2018. The claim of the complainant stands repudiated as not maintainable/payable on the ground that the policy in question against the insured vehicle was issued as an private car package policy whereas the said vehicle was being used exclusively for the commercial purposes in accordance to the statement given by the complainant, which is an fundamental breach of terms and conditions of the insurance policy and further the complainant has neither complied with any of the claim formalities nor the complainant has allowed the repairer to start the repair over vehicle in question despite of various reminders sent by M/s Chhatwal and Associates, an IRDA approved independent Insurance Surveyors and Loss Assessors. There is no deficiency in service and unfair trade practice on the part of the OP. The other allegations made in the complaint have been denied and prayed for dismissal of the complaint.

3. OP no.2 appeared and filed its separate written version stating there in that there is no liability, no deficiency in service or unfair trade on the part of the OP. Complainant is liable to pay parking and estimation charges, as the car is lying parked since 07.09.2018 and complaint was filed on October,2020. Although a registered letter dated 07.12.2018 was sent to the complainant. Mr. Rajesh either to allow the OP no.2 to start the work and or to take his vehicle back, but of no use, hence complainant is liable to pay parking charges @ of Rs.250/- per day and one percent estimation charges which comes to Rs.40,000/- etc. which may kindly be ordered to be paid to the OP no.2 and prayed for dismissal of the complaint qua OP no.2.

4. Parties then led their respective evidence.

5. Learned counsel for the complainant has tendered into evidence affidavit of complainant Ex.CW1/A, affidavit of Iqbal Singh Arora Ex.CW2/A, copy of RC Ex.C1, copy of insurance policy Ex.C2, copy of private package policy add on cover Ex.C3, copy of driving licence Ex.C4, copy of estimate Ex.C5,

copy of licence of surveyor Iqbal Singh Ex.C6, survey report Ex.C7, copy of survey fee bill Ex.C8, photographs of vehicle Ex.C9 to Ex.C12 and closed the evidence on 11.05.2022 by suffering separate statement.

6. On the other hand, learned counsel for the OP no.1 has tendered into evidence affidavit of Kamal Kishore Sachdeva Ex.OP1/A, affidavit of Shubham Arora, Insurance Claims Investigator Ex.OP1/B, affidavit of Ashok Kumar partner of Chhatwal and Associates Ex.OP1/C, copy of insurance policy alongwith terms and conditions Ex.OP1, copy of survey report Ex.OP2, copy of investigation report Ex.OP3, copy of No claim letter dated 22.03.2019 Ex.OP4 and closed the evidence on 12.07.2023 by suffering separate statement.

7. Learned counsel for the OP no.2 has tendered into evidence affidavit of Ajay Sharma Body Shop Manager Ex.OPW2/A, copy of estimate Ex.OP2/1, copy of letter dated 07.12.2018 Ex.OP2/2, copy of job slip Ex.OP2/3 and closed the evidence on 12.07.2023 by suffering separate statement.

8. We have heard the learned counsel for the parties and perused the case file carefully and have also gone through the evidence led by the parties.

9. Learned counsel for complainant, while reiterating the contents of the complaint, has vehemently argued that complainant is the registered owner of car bearing registration no.HR-05/AT-7960 (TATA ZEST) and the same was insured with the OP no.1. During subsistence of the insurance policy, the car in question was met with an accident and become total damage on 07.09.2018. The car was brought to the workshop of OP no.2 at Karnal. The complainant informed the OP no.1 regarding the said accident. OP appointed a surveyor to investigate the matter. All the relevant documents were submitted to the OP no.1 as well as to the surveyor but despite that the claim of the complainant has been repudiated on false and frivolous grounds. The car is still lying in the workshop of OP no.2 and now totally destroys due to junk and rust and due to pilferage of various parts, the vehicle is beyond repair and lastly prayed for allowing the complaint.

10. Per contra, learned counsel for the OP No.1, while reiterating the contents of written version, has vehemently argued that complainant had intimated a claim on dated 12.09.2018 with the OP on account of alleged loss/damage of vehicle in question. The said claim was duly processed, the surveyor had conducted the survey, assessed the loss and submitted Motor Final Survey Report dated 15.03.2019 and Mr. Shubham Arora, an independent Insurance Claims Investigator to investigate into the claim, who had investigated the claim and submitted investigation report dated 25.10.2018. The claim of the complainant stands repudiated as not payable on the ground that the policy in question against the insured vehicle was issued as an private car package policy whereas the said vehicle was being used exclusively for the commercial purposes, which is an fundamental breach of terms and conditions of the insurance policy. There is no deficiency in service and unfair trade practice on the part of the OP and lastly prayed for dismissal of complaint.

11. Per contra, learned counsel for the OP No.2, while reiterating the contents of written version, has vehemently argued that OP is entitled for parking and estimation charges, as the car is lying parked since 07.09.2018 and lastly prayed for dismissal of the complaint qua OP no.2.

12. We have duly considered the rival contentions of the parties.

13. Admittedly, the vehicle in question met with an accident during the subsistence of the insurance policy. It is also admitted that the IDV of the car in question is Rs.5,21,500/-.

14. The claim of the complainant has been repudiated by the OP No.1, vide repudiation letter Ex.OP4 dated 22.03.2019, the relevant portion of the said letter is reproduced as under:-

“That on perusal of the claim documents while processing the claim we have observed that policy in question against the insured vehicle was issued as an private car package policy whereas, in accordance to the statement given by your goodself and vehicle was being used exclusively for the commercial purpose, which is an fundamental breach of term and conditions of the insurance policy and further despite of various reminders sent by your attending surveyor till date you have neither complied with any of the claim formalities nor you have allowed to repairer to start the repair over vehicle in question. We regret our inability to consider your claim on the above ground. Hence, your claim is not payable and does not require any further consideration”.

15. The claim of the complainant has been repudiated by the OP on the above mentioned ground. The onus to prove its version was relied upon the OP but OP has miserably failed to prove the same by leading any cogent and convincing evidence. Admittedly, the vehicle was insured under private package policy and not for commercial. The OP had relied upon the statement of complainant attached with the surveyor report Ex.OP2. The said statement has been denied by the complainant. Moreover, the said statement of complainant is a photocopy, which has no value in the eyes of law. During the course of evidence, the OP has tendered the affidavit of Ex.OP1/B of Shri Shubham Arora, Insurance Claim Investigator and affidavit Ex.OP1/C of Shri Ashok Kumar, Partner/authorized signatory of Chhatwal and Associates, Insurance Surveyors and Loss Assessors. Both the said affidavits are photocopies. The OP has not placed on record original affidavits of the above said witnesses for the reason best known to them. The said affidavits being photocopies is having no value in the eyes of law. The OP has also alleged that the complainant failed to complete the formalities but the OP had never explained that what formalities were to be completed by the complainant. Hence, the pleas taken by the OP is having no force.

16. The Insured Declared Value of the vehicle is Rs.5,21,500/- and the complainant has claimed the said amount. The complainant has placed on file motor survey report Ex.C7 dated 25.12.2021, prepared by Iqbal Singh Arora, Surveyor and Loss Assessor. As per the said report net payable loss is Rs.3,24,000/- after deducting wreck value of Rs.1,50,000/-. On the other hand, OP has relied upon final surveyor report Ex.OP2 dated 15.03.2019, prepared by Chhatwal and Associates, Insurance Surveyor and Associates, wherein the net assessed amount is Rs.1,48,746/-.

17. The accident took place on 07.09.2018. The present complaint was filed on 07.08.2020. The surveyor of the OP has prepared his survey report on 15.03.2019 and the surveyor of the complainant has prepared his report on 25.12.2021 i.e. during the pendency of the present complaint without seeking any permission from this Commission and after a gap of more than three years from the date of accident. The condition of the vehicle has become deteriorated after a gap of three years. The possibility of missing the parts and destroyed due to junk and rust after passing of long time, cannot be ruled out. Hence, surveyor report placed on record by the complainant cannot be given more weightage than the report submitted by the OP. Hence, the surveyor report of the OP Ex.OP2 will prevail.

18. Further, Hon'ble Punjab and Haryana High Court in case titled as **New India Assurance Company Ltd. Versus Smt. Usha Yadav & others 2008 (3) RCR (Civil) 111**, has held as under:-

“It seems that the Insurance Companies are only interested in earning the premiums which are rather too stiff now a days, but are not keen and are found to be evasive to discharge their liability. In large number of cases, the Insurance companies make the effected people to fight for getting their genuine claims. The Insurance Companies in such cases rely upon clauses of the agreements, which a person is generally made to sign on dotted lines at the time of obtaining policy. This is, thus pressed into service to either repudiate the claim or to reject the same. The Insurance Companies normally build their case on such clauses of the policy, but would adopt methods which would not be governed by the strict conditions contained in the policy”.

19. The OP No.2 has claimed the parking charges at the rate of Rs.250/- per day. The OP No.2 has placed on record only rough estimate Ex.OP2/1, letter dated 07.12.2018 address to the complainant Ex.OP2/2, copy of job card Ex.OP2/3. The OP No.2 has not placed on record any document from which it can be ascertained that an amount of Rs.250/- per day as parking charges is payable to them. Hence, the OP No.2 is not entitled for the parking charges.

20. Keeping in view, the ratio of the law laid down in aforesaid judgments, facts and circumstances of the present complaint, we are of the considered view that act of the OP while repudiating the claim of the complainant amounts to deficiency, which is proved otherwise genuine.

21. In view of the above discussion, we partly allow the present complaint and direct the OP No.1 to pay Rs.1,48,746/- the loss assessed by the surveyor of the OP No.1 alongwith interest @ 9% per annum from the date of repudiation of the claim till its realization to the complainant. We further direct the OP No.1 to pay Rs.25,000/- to the complainant on account of mental agony and harassment suffered by him and Rs.11000/- for the litigation expenses. This order shall be complied within 45 days from the receipt of copy

of this order. The parties concerned be communicated of the order accordingly and the file be consigned to the record room after due compliance.

Announced

Dated: 14.12.2023

President,
District Consumer Disputes
Redressal Commission, Karnal.

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| (Vineet Kaushik) | (Dr. Suman Singh) |
| Member | Member |