

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
8TH FLOOR, B.W.S.S.B BUILDING, K.G.ROAD,BANGALORE-09**

**Complaint Case No. CC/215/2022
(Date of Filing : 13 Sep 2022)**

1. M/s. Jeevan Road Lines

No.B-32, DDUTT, Yeshwanthapura, Bangalore-560022. Rep
by its Prop. Yogisha

.....Complainant(s)

Versus

1. Reliance General Insurance Company Limited

No.28, 5th floor, Southern Portion East Wing, Centenary
Building, M.G. Road, Bangalore-560001. By its Manager

2. Reliance General Insurance Company Limited,

6th floor, Oberoi Commerz, International Business Park,
Oberoi Garden City, Off. Western Express Highway Goregaon,
Mumbai-400063

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. M. SHOBHA PRESIDENT
HON'BLE MRS. K Anita Shivakumar MEMBER
HON'BLE MRS. SUMA ANIL KUMAR MEMBER**

PRESENT:

Dated : 01 Aug 2023

Final Order / Judgement

Complaint filed on:13.09.2022

Disposed on:01.08.2023

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION AT
BANGALORE (URBAN)**

DATED 01ST DAY OF AUGUST 2023

PRESENT:-

SMT.M.SHOBHA

: PRESIDENT

B.Sc., LL.B.

SMT.K.ANITA SHIVAKUMAR

MEMBER

:

M.S.W, LL.B., PGDCLP

SMT.SUMA ANIL KUMAR

: MEMBER

BA, LL.B., IWIL-IIMB

COMPLAINT No.215/2022

COMPLAINANT		M/s Jeevan Road Lines, No.B-32, DDUTTL, ▪ ▪ Rep. by its prop. Yogisha.
		(SRI.C.Mallikarjunaiah, Advocate)
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OPPOSITE PARTY	1	Reliance General Insurance Company Limited, No.28, 5 th Floor, Southern Portion East Wing, Centenary Building, M.G.Road, Bangalore 560 001. By its Manager.
	2	Reliance General Insurance Co. Ltd., 6 th Floor, OBeroi Commerz, International Business Park, Oberoi Garden City, Off. Western Express Highway Goregaon, Mumbai 400 063.
		(Sri.Lakshminarayan C., Advocate)

ORDER

SMT.M.SHOBHA, PRESIDENT

1. The complaint has been filed under Section 35 of C.P.Act (hereinafter referred as an Act) against the OP for the reliefs against the OP to pay a sum of Rs.14,00,000/- as claimed towards the value of the vehicle Eicher Pro Canter Lorry bearing Reg. No.KA-02-AG-2878 with interest and cost and to pass such other directions.
2. The case set up by the complainant in brief is as under:-

It is the case of the complainant that he is owner of EICHER Pro Canter Lorry bearing Reg. No.KA-02 AG-2878 and the lorry was used for carrying goods from all over India and also having all India permit bearing permit NO.KA-NP/102/2017-18 and it was issued by additional secretary, RTA, Rajajinagar, Bangalore and the said permit was valid from 13.10.2017 to 12.10.2022 and the vehicle was duly insured with the OP bearing policy No.RL2110040246 valid from 05.10.2021 to 04.10.2022.

3. It is the specific case of the complainant that the lorry was met with an accident near Miduturu village, opp.to hotel Amogh, NH44 Bangalore Hyderabad Road, Ramarajupalli, Pamadi, Ananthapur, Andhra Pradesh, on 01.04.2022 at about 2.45 AM wherein the driver of the lorry bearing No.AP21TB6300 stopped the lorry in the middle of the road negligently without keeping any indicator or any precautionary measures and without watching the same the vehicle of the complainant hit to the stationed lorry and as a result the trally portion of the Eicher canter lorry has come into the bus and hit to the front portion of the bus bearing No.TS-08-Z-0207 which is coming on the back side of Eicher canter lorry, as a result the drivers of the lorry and bus died on the spot and others have sustained bleeding injuries and due to the said accident the vehicle belonging to the complainant has completely damaged and has become unworthy road usage and in this regard the Peddavadugur police have registered the case against the driver in CR No.38/2022 u/s 337 and 304A of IPC. As such the complainant has claimed total loss of the vehicle with OP on 11.04.2022 vide claim No.3122100282.
4. The OP after received the claim petition of the complainant has sent a letter to the complainant on 28.05.2022 rejecting the request made by the complainant on the ground that the vehicle permit has expired but in fact the permit was valid till 12.10.2022 and thereafter the complainant has issued legal notice to OP demanding to settle the claim of the complainant through his counsel along with permit copy of the vehicle on 27.06.2022. In spite of service of legal notice the OP without settled the claim nor issued reply to the notice as such rejecting the claim of the complainant is illegal and improper. The OP refused to pay the claim amount to the complainant and it amounts to deficiency in service. The complainant is the consumer and the OP has committed deficiency of service within the definition of the C.P.Act.
5. The complainant has claimed total amount of Rs.11,60,000/- and Rs.1,00,000/- towards causing inconvenience and further claimed Rs.1,00,000/- towards loss of income and damages and Rs.40,000/- towards towing in all pay a sum of Rs.14,00,000/- with current interest. Hence the complainant as filed this complaint.
6. In response to the notice, OP appears and files version. It is the case of the OP that the complaint is not maintainable and the complainant has suppressed the material facts and it is a vexatious complaint. The complainant is not entitled for any relief.
7. It is further case of the OP that the said vehicle was insured with this OP and the policy was in force from 05.10.2021 to 04.10.2022 and the liability of this OP is limited to the terms and conditions of the insurance policy and also as per the motors vehicles act.

8. The complainant has informed this OP that the vehicle was met with an accident on 01.04.2022 at about 2.45 AM and the vehicle was completely damaged. This OP after intimation of the claim from the complainant has duly registered the claim and during the careful verification of the documents and the investigations in the matter it was found that the permit for the insured vehicle had expired as on the date of accident wherein the authorization certificate of the National permit bearing No.NP/KA/2/032021/16850 expired on 11.10.2021 and the same as not in force as on the date of accident. The said permit was renewed by the complainant only on 01.04.2022 at 5.31 pm., i.e., after occurrence of the accident on 01.04.2022 at 2.45 AM. Hence it is clear that there was no valid permit to the insured vehicle at the time of the accident and it is only an afterthought on the part of the complainant who inspite of having knowledge on expiry of the permit and only renewed it after the accident. As per the provisions of the motors vehicle act

No owner of the vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him to use of the vehicle in that place in the manner in which the vehicle is being used.

9. As per the above provision it is mandatory to obtain the permit and use permit in accordance with the conditions of the permit granted are signed by the regional or state transport authority. However in this case the insured vehicle was being plied on the road without valid and effective permit which is in contravention of motors vehicle act as well as terms and conditions of the policy. This OP based on the above reasoning has rightly repudiated the claim of the complainant for breach of limitation to use clause as per the policy and for breach of the provisions of motor vehicle act vide their letter dated 28.05.2022. Hence the complainant has failed to make the case of deficiency of service and unfair trade practice in the complaint. If any liability is fixed on this OP then it may be limited to and as per the loss assessed by the independent surveyor i.e., Rs.16,43,895/-. Hence the OP prayed to dismiss the complaint with cost.

10. The complainant has filed his affidavit evidence and relies on 14 documents. Affidavit evidence of official of OP has been filed and OP relies on 05 documents.

11. Heard the arguments of advocate for both the parties. Perused the written arguments.

12. The following points arise for our consideration as are:-

1. Whether the complainant proves deficiency of service on the part of OP?
2. Whether the complainant is entitled to relief mentioned in the complaint?
3. What order?

13. **Our answers to the above points are as under:**

Point No.1: Affirmative

Point No.2: Affirmative in part

Point No.3: As per final orders

REASONS

14. **Point No.1 AND 2:** These two points are inter related and hence they have taken for common discussion. We have perused the allegations made in the complaint, version, evidence, written arguments and documents filed by both the parties.

15. It is undisputed fact that the complainant is the owner of EICHER Pro Canter Lorry bearing Reg. No.KA-02 AG-2878 and the lorry was used for carrying goods from All Over India and also having all India permit bearing permit NO.KA-NP/102/2017-18 and it was issued by additional secretary, RTA, Rajajinagar, Bangalore and the said permit was valid from 13.10.2017 to 12.10.2022 and the vehicle was duly insured with the OP bearing policy No.RL2110040246 valid from 05.10.2021 to 04.10.2022.

16. In support of his contention the complainant has produced the RC Ex.P1, copy of the insurance policy marked as Ex.P2 and Ex.P3 is the copy of the permit.

17. It is also clear from the evidence and documents produced by the complainant Ex.P8 the FIR with complaint and also the Ex.P9 the accident inspection report copy and the copy of the charge sheet Ex.P10 that the vehicle of the complainant was met with accident on 01.04.2022 at about 2,45 AM near Miduthara village, Bangalore Hyderabad Road, Andhra Pradesh.

18. It is the specific contention taken by the complainant that the driver of the lorry bearing No.AP21TB6300 has stopped the lorry in the middle of the road negligently without keeping any indicator or any precautionary measures and without watching the same, the lorry of the complainant hit the stationed lorry and as a result the trolley portion of the canter lorry has come into the bus and hit the front portion of the bus bearing No.TS 08 Z 0207, which was coming on the back side of the lorry. As a result both the drivers of the lorry and the bus died on the spot and others have sustain bleeding injuries. In view of the accident the lorry of the complainant has completely damaged and has become unworthy road usage and in this regard Peddavadugur police have registered the complaint in CR No.38/2022 for the offence u/s 337 and 304 A of IPC. Hence the complainant has claimed the loss of the vehicle with the OP on 11.04.2022. The OP has rejected the claim of the complainant on the ground that the vehicle permit was not in force as on the date of accident and it was expired.

19. In support of his contention complainant has produced the letter as Ex.P4, issued by the OP rejecting the claim of the complainant on the ground that the permit was not in force on the date of accident and hence they are not liable to entertain the claim of the complainant. The complainant got issued legal notice as per Ex.P5 and it was served on the OP as per

Ex.P6 and P7, inspite of the service of the notice and even though the permit was valid till 12.10.2022, the Ops repudiated the claim of the complainant.

20. On the other hand, in order to prove their contention the law officer of the OP company has filed his affidavit and along with Ex.R1 to R5.
21. The main contention taken by the OP is that the permit of the complainant lorry had expired on 11.10.2021 and the same was not in force on the date of the accident. The said permit was renewed by the complainant only on 01.04.2022 at 05.31 PM., i.e., after the occurrence of the accident on 01.04.2022 at 2.45 am. It is clear from this that there was no valid permit to the insured vehicle at the time of the accident and it is only an afterthought on the part of the complainant who inspite of having knowledge on the expiry of the permit has only renewed it after the accident.
22. The OP has also relied on the provisions of the Motors vehicles act, which read as;
- No owner of the vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him to use of the vehicle in that place in the manner in which the vehicle is being used.***
23. The OP has rejected the claim of the complainant only on the ground that the permit was not in force on the date of the accident and it was renewed after the accident on the same day and hence they have rejected the claim on the basis of the provisions of the M.V.Act stated above.
24. In support of their contention they have produced the copy of the policy as Ex.R1 and authorized certificate of National permit as Ex.R2 and surveyor report as per Ex.R3 and copy of the repudiation letter as ex.R4 and authorization letter as per Ex.R5.
25. On these back ground, *we have gone through the decision of Hon'ble High court of Karnataka in MFA No.202022/2016(MV) between Dr.Narasimulu Nandini Memorial Education Trust –vs- New India Assurance Co. Ltd., & others.*

26. *It is clearly held in the above decision that the insurer cannot escape from the liability of paying compensation even when the fitness certificate and permit of the vehicle is not renewed but the insurance policy is in force. The Hon'ble High Court has also directed the insurance company to indemnify the petitioner in the above case.*

27. *In the above referred decision though the insurance policy was in force on the date of the accident the permit and validity of the fitness certificate had expired. The Hon'ble High Court has observed that the fitness certificate was obtained after the accident. The insurance company would not have issued the policy unless fitness certificate was in force and it appears that the fitness certificate expired after the issuance of the policy.*

28. *The Hon'ble High Court further made an observation that*

When the permit is applied for after the existing one expired, temporary permit is issued for the interregnum period, and it is nothing to do with renewal. It should be deemed that on the day when the accident took place the permit was in force. Adding to that the insurance company cannot disown its responsibility to indemnify the liability of the appellant.

29. The facts and circumstances in the above referred decision and the facts and circumstances in this case are similar. In this case also the permit was not in force at the time of the accident and as per the contention taken by the OP it was renewed after the accident on the same day after four hours of the accident on 01.04.2022.

30. In view of the decision of the Hon'ble High Court of Karnataka the OP being the insurance company cannot disown its responsibility to indemnify the liability of the complainant only on the ground that the permit was not in force at the time of the accident even though the policy was in force at the time of the accident.

31. From the above facts and circumstances, it is clear that even though the policy was in force the OP repudiated the claim of the complainant on the ground that the permit was not in force. The repudiation made by the OP amounts to deficiency of service and negligence on their part. Therefore the complainant is entitled for the relief claimed in this complaint. Hence we answer point No.1 in affirmative and point No.2 partly in affirmative.

32. **Point No.3:-** In view the discussion referred above the complaint is liable to be allowed in part. The complainant is entitled for the value of the vehicle of Rs.11,60,000/- and he is also entitled for R.40,000/- for towing of the vehicle and Rs.1,00,000/- towards loss of income and damages and Rs.50,000/- towards inconvenience suffered by him due to rejection of the claim by the Ops. hence we proceed to pass the following;

ORDER

1. The complaint is allowed in part.
2. The OP is directed to pay the value of the vehicle of Rs.11,60,000/- with interest at 10% p.a., from the date of accident till realization with towing charges of Rs.40,000/- to the complainant.
3. OP is further directed to pay Rs.1,00,000/- towards loss of income along with damages of Rs.50,000/- and Rs.10,000/- towards litigations expenses to the complainant.
4. The OP shall comply this order within 60 days from this date, failing which the OP shall pay interest at 12% p.a. after expiry of 60 days on Rs.11,60,000/- till final payment.
5. Furnish the copy of this order and return the extra pleadings and documents to the parties.

(Dictated to the Stenographer, got it transcribed and corrected, pronounced in the Open Commission on this 01st day of August, 2023)

(SUMA ANIL KUMAR) (K.ANITA SHIVAKUMAR)

(M.SHOBHA)

MEMBER

MEMBER

PRESIDENT

Documents produced by the Complainant-P.W.1 are as follows:

1.	Ex.P.1	Copy of the Registration Certificate
2.	Ex.P.2	Copy of the insurance policy
3.	Ex.P.3	Copy of permit
4.	Ex.P.4	Letter issued to OP dated 28.05.2022
5.	Ex.P.5	Copy of legal notice dated 27.06.1011
6.	Ex.P.6	Postal receipt & acknowledgements
7.	Ex.P.7	Copy of FIR and complaint

8.	Ex.P.8	Copy of charge sheet
9.	Ex.P.9	Copy of Accident Inspection Report
10.	Ex.P.10	Copy of the charge sheet
11.	Ex.P.11	Photos

Documents produced by the representative of opposite party – R.W.1;

1.	Ex.R.1	Insurance policy along with terms and conditions
2.	Ex.R.2	Authorization certificate of National permit
3.	Ex.R.3	Copy of the survey report
4.	Ex.R.4	Copy of repudiation letter dated 28.05.2022
5.	Ex.R.5	Copy of the Authorisation letter

(SUMA ANIL KUMAR) (K.ANITA SHIVAKUMAR)

MEMBER

MEMBER

(M.SHOBHA)

PRESIDENT

**[HON'BLE MRS. M. SHOBHA]
PRESIDENT**

**[HON'BLE MRS. K Anita Shivakumar]
MEMBER**

**[HON'BLE MRS. SUMA ANIL KUMAR]
MEMBER**