

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PALAKKAD
Near District Panchayath Office, Palakkad - 678 001, Kerala

Complaint Case No. CC/165/2017
(Date of Filing : 17 Nov 2017)

1. Shanavas K V

S/o. K. V Mohammed, Koduvally House, Thrikalloor (PO),
Mannarkkad, Palakkad. Represented through his Power of
Attorney Holder K. V Mohammed S/o. Unneen, Koduvally
House, Thrikalloor (PO), Mannarkkad, Palakkad.

.....Complainant(s)

Versus

1. The National Insurance Co. Ltd.

Regd Office Divission No. 10, Flate No. 101-106, N- B.M. C
House, Connaught Place, New Delhi, Pin 110 001

2. The National Insurance Co. Ltd.

Rep by it's Branch Manager, Branch Office at Kanoos East Fort
Resort, 18/77 3rd Floor, Kunnathumedu Post, Palakkad 678
013

Palakkad

Kerala

3. The Senior Divisional Manager,

National Insurance Co.Ltd., Divisional Office-1, Parco Tower,
PM Taj Road, Calicut-673 001.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. Vinay Menon.V PRESIDENT
HON'BLE MRS. Vidya A MEMBER
HON'BLE MR. Krishnankutty. N.K MEMBER

PRESENT:

Dated : 09 Aug 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PALAKKAD

Dated this the 9th day of August, 2023

Present : Sri. Vinay Menon V., President

: Smt. Vidya A., Member

: Sri. Krishnankutty N.K., Member

Date of Filing: 17/11/2017

CC/165/2017

Shanavas K.V.

S/o.K.V.Mohammed,

Koduvally House, Thrikalloor,

Mannarkkad, Palakkad

Rep. by his Power of Attorney Holder,

K.V.Muhammed, S/o.Unneen

(By Adv. K.Balasubramanian)

- Complainant

Vs

1. The National Insurance Company Ltd.,

Regd. office at Division No.10,

Flat No.101-106, N-1, BMC House,

Connaught Place, New Delhi – 110 001

2. The National Insurance Company Ltd.,

Rep. by its Branch Manager,

Branch office at Kanoos,

18/77, 3rd Floor, East Fort Resort,

Kunnathurmedu, Palakkad – 678 013

3. The Divisional Manager,

National Insurance Company Ltd.,

Divisional Office 1, Parco Tower,

PM Taj Road, Calicut – 673 001

(By Adv.P.K.Devadas)

- Opposite parties

ORDER

By Sri. Vinay Menon V., President

1. Abridged essential pleadings of complainant are that his vehicle, while under a valid and subsisting policy coverage issued by the opposite party suffered a fall into a low lying property while being driven by his brother. The opposite party repudiated the claim of the complainant for damages caused to the vehicle on the grounds that there was a delay of more than 10 days in intimating the above accident to the insurance company and that the driver was under the influence of alcohol at the relevant point of time.
2. Opposite parties admitted the pleadings of the complainant and held fort stating that the driver of the vehicle had violated the terms and conditions of the policy and that there was an inordinate delay in filing of the claim.
3. The following issues were framed for consideration:
 1. Whether the reasons for repudiation of claim are valid?
 2. Whether the O.P. is entitled to go beyond/behind the findings of the surveyor?
 3. Whether there is any deficiency in service / unfair trade practice on the part of OP in repudiating the claim?
 4. Whether the complainant is entitled to any reliefs sought for?
 5. Any other reliefs?

4. (i) Complainant filed proof affidavit and marked Ext.A1 to A28. Exts.A27 & 28 were marked through PW4.

Oral evidence comprised of depositions of Sri. Muhammed K.V. (de-jure complainant, PW1), Sri. Saseendran, (Surveyor appointed by the opposite party,PW2), Sri. Muhammed P.A.(person to whose compound the vehicle fell, PW3), and Sri. Raveendran (investigator appointed by the opposite party,PW4).

- (ii) OP filed proof affidavits. Exts. B1 to B13 were marked. Ext.B12 was marked through chief of DW1.

Issue No. 1

5. Complainant's case is that while the vehicle fell into a low lying property while trying to avoid another vehicle with a blinding light, the vehicle was under a valid and subsisting policy issued by the opposite party. Exts.A3 & A4 are copies of the certificate of insurance and private car package policy respectively. Claim by the complainant was rejected on two grounds.

1) The driver of the insured vehicle, Mr. Shihab K.V., at the time of reported accident, was under the influence of intoxicating liquor which is a violation of the insurance policy terms and conditions.

2) There is a delay of more than 10 days in intimating the above loss to the insurance company which is violation of the insurance policy condition.

6. In order to arrive at a studied understanding of the disputes involved and to adjudicate the issues, each of the two reasons for repudiation of the claim has to be assayed.

Ground 1 : The driver of the insured vehicle, Mr. Shihab K.V., at the time of reported accident, was under the influence of intoxicating liquor which is a violation of the insurance policy terms and conditions.

7. This Commission has to ascertain whether the driver of the vehicle was under the influence of alcohol.

8. Ext.A4 is the private car package policy applicable to the vehicle of the complainant. Clause 5 of Ext.A4 is that the company shall not be liable to make any payment in respect of (c) any accidental loss or damage suffered whilst the insured or any person driving the vehicle with the knowledge and consent of the insured is under the influence of intoxicating liquors or drugs. It is based on this condition in the policy document that the claim is rejected.

9. The reason for such a rejection can be found in Ext.B13 medical record. Ext.B13 is unequivocal when it comes to showing that there was smell of alcohol. The OP ticket contains an observation that smell of alcohol is present.

Ext.B6 is a communication from the Superintendent, DH, Palakkad, to the Senior Divisional Manager of OP3. In this communication it is stated that smell of alcohol is recorded in the above document. Ext. B6 is clarificatory in nature and does not bring out anything original.

DW2, Superintendent of DH, Palakkad, wherein the driver was admitted also deposed that entries in Ext. B13 shows that smell of alcohol was present.

PW1, who is the father of the complainant and the driver, deposed that the driver was not in the habit of consumption of liquor.

10. Counsel for opposite party argued vehemently based on the contents of Ext. B13 to nail hard his case that the driver was under the influence of alcohol. In support of his arguments, counsel for OPs submitted the judgment rendered by the Hon'ble Supreme Court of India in **SLP (Civil) No.12489/2020 (IFFCO TOKIO GIC Ltd. V/s Pearl Beverages Ltd.)** The relevant paragraphs, in-so-far-as the facts and circumstances of this case are concerned, are paragraphs 57 & 58. Since the paragraphs are voluminous we are not resorting to reproduction of the paragraphs in its entirety, but the gist of the said paragraphs is that even if scientific tests are not carried out to prove that the driver was under the influence of alcohol, the insurer can resort to other forms of circumstantial evidences. This is to help the insurer establish their right to repudiate a claim under the contract of insurance. But the important factor is that the insurance company has to establish that the driver was '**under the influence**' of alcohol.

Relevant material is not that the driver had consumed alcohol, but that the driver was under the influence of the alcohol that he had consumed.

11. Even though there are evidence to prove that smell of alcohol was present (and presumably the driver had consumed alcohol) there is no evidence to prove that he was driving the vehicle 'under the influence' of alcohol.

12. Resultantly we hold that the OP has not proved by cogent evidence that the driver was under the influence of intoxicating alcohol or drugs at the time of driving of the car.

Ground 2: There is a delay of more than 10 days in intimating the above loss to the insurance company which is violation of the insurance policy condition.

13. The second ground for repudiation of the policy is that there is a delay of more than 10 days in intimating the above loss to the insurance company. Ext. A4 is the copy of private car package policy. Page 2 of Ext. A4 contain the 'Conditions'. Condition No.1 is reproduced herein below:

"1) Notice shall be given in writing to the company immediately upon the occurrence of any accidental loss or damage in the event of any claim and there after the insured shall give all such information and assistance as the company shall require "

14. What we have to ascertain is whether such a delay had prevented the company from assessing the loss occurred in its right perspective. From the date of receiving the claim till its repudiation some time during September 2017, the Insurance Company had made various investigations by way of its surveyor, investigator and various correspondences to the complainants and the District Hospital, Palakkad. Upon receiving the materials, the opposite party repudiated the claim on 2 grounds which were already stated supra. There is no mention of the opposite party being unable to come to a conclusion regarding the validity of the claim because there was a delay of 10 days in intimating the company. The surveyor or investigator also has no case that the delay has caused fetters to their survey or investigation. Thus the delay is not vital or fatal insofar as the circumstances of this case is concerned and will not ipso facto render the contract invalid.

15. Had the case of the opposite party been that non intimation of the accident is vital, they could have informed the complainant the said factum of delay and closed the claim immediately upon receipt of the claim. They need not have gone through the entire procedural formalities to rely on this ground. Hence we hold that repudiation of claim based on this ground is only an after- thought and hence illegal.

Issue No. 2

16. Though we are not blind to the legal precedents upheld by various High Courts and Apex court that the Insurance company can vary from or reject a finding arrived at by a Surveyor or Investigator, based on cogent, legal and reasonable grounds, in view of the findings in the prior issue, in the present facts and circumstances, this issue needs no consideration at this point of time. The insurance company has not arrived at a figure that the claimant is entitled to. They had merely repudiated the claim on the basis of the terms and conditions of the contract. Considering the course and method of valuation that the insurer should adopt is premature at this point of time.

17. Hence we refrain from answering this Issue.

Issue No. 2

18. Resultantly, we hold that there is deficiency in service on the part of opposite parties in not honouring the claim of the complainant.

Issue Nos. 4 & 5

19. Even though we have held that there is deficiency in service on the part of opposite parties, we cannot hold that the complainant is entitled to the entire reliefs sought for. The complainant has sought for an order to the opposite parties to pay Rs.19,09,346/- being the on road price of the vehicle or to indemnify the complainant with the new vehicle of the same standard and to pay cost of this litigation and for any other incidental reliefs that the complainant may seek.

20. We therefore order that:

- 1) The opposite parties shall indemnify the complainant with admissible amounts payable to the complainant overlooking the contents of the letter of repudiation.
- 2) The said amount so arrived at shall carry an interest of 10% from the date of claim till the date of payment.
- 3) Complainant is entitled to a cost of Rs.15,000/-

Comply with the above order within 45 days from the date of receipt of a copy of this order.

Pronounced in open court on this the 9th day of August, 2023.

Sd/-

Vinay Menon V

President

Sd/-

Smt. Vidya A.

Member

Sd/-

Krishnankutty N.K.

Member

APPENDIX

Exhibits marked on the side of the complainant :

Ext.A1 – Original POA dated 06/05/2017

Ext.A2 – Copy of certificate of registration

- Ext.A3 – Copy of certificate of insurance
- Ext.A4 – Copy of private car package policy
- Ext.A5 – Copy of certificate dated 15/11/2016
- Ext.A6– Printout of driving licence particulars
- Ext.A7 – Original manual repair order form
- Ext.A8 – Copy of application dated 10/11/2016
- Ext.A9 – Original Communication dated 7/2/2017
- Ext.A10 – Copy of communication dated 26/2/2017
- Ext.A11 - Copy of treatment certificate dated 22/2/2017
- Ext.A12 – Original discharge summary pertaining to MRD No.28872/2016
- Ext.A13 – Original communication dated 17/3/2017
- Ext.A14 – Copy of communication dated 28/3/2017
- Ext.A15 – Original Renewal Advise
- Ext.A16 – Original communication dated 25/4/2017
- Ext.A17 – Copy of communication dated 7/5/2017
- Ext.A18 – Original communication dated 18/5/2017
- Ext.A19 – Copy of communication from complainant to Dr.Amit Agarwal
- Ext.A20– Copy of lawyer’s notice dated 19/7/2017
- Ext.A21 – Original reply notice dated 27/7/2017
- Ext.A22 – Original letter of repudiation dated 26/9/2017
- Ext.A23 – Original lawyer’s notice dated 13/9/2017
- Ext.A24 – Original Private and confidential motor (final) survey report dt.23/8/2017
- Ext.A25 – Original communication from insurance ombudsman
- Ext.A26 – Original possession notice dated 22/6/2018
- Ext.A27 – Original investigation report dated 29/11/16 on own damage claim.
- Ext.A28 – Original investigation final report dated 1/2/17 on own damage claim.

Exhibits marked on the side of the opposite party:

- Ext.B1 – Copy of certificate of insurance cum policy schedule
- Ext.B2 – Copy of certificate dated 15/11/16
- Ext.B3 – Original accident information slip dtd.21/11/16
- Ext.B4 - Copy of communication dated 28/2/17
- Ext.B5 – Copy of communication dated 17/3/17
- Ext.B6 – Copy of communication bearing No.MRL2279/17 dt/17/4/17
- Ext.B7 – Copy of communication dated 25/4/2017
- Ext.B8 – Copy of repudiation letter dated 26/9/17
- Ext.B9 – Original communication dated 26/2/2017
- Ext.B10 – Original treatment certificate dated 22/2/2017
- Ext.B11 – Original discharge summary
- Ext.B12 - Original motor (preliminary survey report) dated 12/12/2016
- Ext.B13 – Original hospital records of DH, Palakkad

Court Exhibit: Nil

Third party documents: Nil

Witness examined on the side of the complainant:

- PW1 – Muhammed KV (Dejure Complainant)
- PW2 – Saseendran (Surveyor)
- PW3 – Muhammed P.A (witness of accident)
- PW4 - Raveendran (Panel investigator for OP)

Witness examined on the side of the opposite party:

- DW1 – Navya P Deviprasad (OP1)
- DW2 – Dr.Jayasree (Superintendent, DH Palakkad)

Court Witness: Nil

NB : Parties are directed to take back all extra set of documents submitted in the proceedings in accordance with Regulation 20(5) of the Consumer Protection (Consumer Commission Procedure) Regulations, 2020 failing which they will be weeded out.

**[HON'BLE MR. Vinay Menon.V]
PRESIDENT**

**[HON'BLE MRS. Vidya A]
MEMBER**

**[HON'BLE MR. Krishnankutty. N.K]
MEMBER**