

**DISTRICT CONSUMER DISPUTES REDRESSAL FORUM. BOLANGIR
ODISHA**

**Complaint Case No. CC/45/2022
(Date of Filing : 02 Dec 2022)**

1. Sri Swapnashish Panna , age 35 years, S/o- Bhakta Charan
Panna

At:- Sargiguda pada Titilagarh town po/ps:- Titilagarh
Bolangir
Odisha

.....Complainant(s)

Versus

1. 1. The Head of the Department Bajaj Allianz General
Insurance Co. Ltd.

Regd Office Bajaj allianz House Air port Road Yarawada,
pune-411006

pune

pune

2. 2. The Head of the Department Bajaj allianz General
Insurance Co.Ltd. Motor Claim(Bhubaneswar)

At-Over plot No.9/10,Opposite to Big Bazaar above south
Indian Bank Po/Ps:- Bhubaneswar

BHubaneswar

Odisha

3. 3. Maruti Suzuki India Ltd.

Plot No.1, Nelsan Mandala Road Vasant Kunj, New Delhi-
110070

New Delhi

New Delhi

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. Sri Rabindra Kumar Tripathy PRESIDING MEMBER
HON'BLE MRS. Smt Jyotshna Rani Mishra MEMBER**

PRESENT:

Dated : 15 Jul 2023

Final Order / Judgement

Adv. For the Complainant :- Sri Malaya Ranjan Gadatya and Others

Adv. For O.Ps : - Lingaraj Padhi and Others

Date of filing of the Case : -02.12.2022

Date of Order :- 15.07.2023

JUDGEMENT

Facts of the case in nutshell : -

The complainant is the owner of the vehicle namely Maruti Suzuki Dezire VXi car bearing registration no vide OD08P0823 bearing the chassis number no. MA3C2FB3SLJ692982 and the engine no. K12NN9032351. The complainant purchased the said vehicle from Maruti Suzuki India Ltd who is OP No 3 in this case , by paying Rs.6,79,258/- with hypothecation from Cholamandalam Investment and finance co Ltd. on dt.11.09.2020.

The complainant obtain private case package policy from OP No3 and insured with Bajaj Allianz General Insurance Company Ltd who are OP No 1 and 2 in the case by paying premium amount of Rs.13,416/- and OP No1 and 2 issued the policy certificate bearing no. OG-22-9910-1870-0026046 which was valid from 11.09.2021 to 10.09.2022.

On dated 15/03/2022 while the complainant was at Sambalpur for shopping he parked the car at city central mall (Big Bazar Sambalpur) at about 4.50 PM all of a sudden accidental fire broke out in the car and the car started burning . The complainant informed the matter to town P.S. Sambalpur as well as the fire Brigade Sambalpur. The Fire brigade arrived at the spot and extinguished the fire but by that time the car was totally burnt. As the insurance was valid on the date of incident the complainant applied the claim form before the insurance OP No 2 vide claim no OC-222403-1870-00000698. The Op No 2 appointed a surveyor for the loss assessed and the complainant extend his full support and co-operation to OP No 2 regarding claim settlement . many times the complainant approached the Op No 1 and 2 for the settlement of claim but in vain. The Op No 2 thereafter vide letter dated 22.06.2022 repudiate the claim.

Hence this case.

2. To substantiate his case the complainant relies on the following documents.

1. Xerox copy of the Insurance policy certificate.
2. Xerox copy of the retail invoice issued by Maruti Suzuki Arena.
3. Xerox copy of the agreement of fiancé with Cholamandalam Investments finance co. Ltd.
4. Xerox copy of the repudiation letter dated 22.06.2022.
5. Xerox copy of the Fire incident certificate issued by Odisha Fire service , Sambalpur.
6. Xerox copy of the FIR before Town P.S. Sambalpur dated 15/03/2022.
7. Xerox copy of the burnt photo of the said car.

3. Having gone through the complaint and the accompanied document, on hearing the complainant prima facie it seemed to be a genuine case hence admitted and notice to the Ops

were served and in response they appeared through their counsel and filed written version.

4. On the rival contention OP No3 denied totally and submitted to dismissed the case. The Op No1 and 2 contested the case also denied all the allegation of the complainant and clarify their thoughts which submitted in Para 8 i.e. on the basis of the OEM report there is an extra connection taken from the battery negative terminal, hence tempering of wire alteration and system is in violation of policy condition for which states "the insured shall take all responsible steps to safeguard the vehicle from loss or damage and maintain it in efficient condition.

As per the technical observation and evidence, Exhaust system of the claimed vehicle found in severely burnt condition and earlier manufacturer have recommended for catalytic converter replacement but the same was being denied by the claimant. And the surveyor has made assessment of loss to the tune of Rs.5,04,690/- as there is neither any deficiency in service nor there was any basis of allegation of the complaint liable to be dismissed.

No document have been filed by the OPS to strengthen their case except the surveyor report.

5. Heard the complainant and perused the material on record with submission and vehement denials of the learned advocates for the Ops with arguments.

6. We have heard counsels of both the parties and have carefully gone through the evidence and written version. Available on the record the following issues are framed for proper adjudication of the case to meet the ends of Justice.

Issue No 1 whether the complainant is a consumer and the case is maintainable.

Issue No.2 whether it was an accidental fire or any criminal activity behind it.

Issue No.3 is there any paper filed by the Ops in support to the expert report.

Issue No.4 whether the insurance policy covered the fire accidental claim.

Issue No.5 whether the loss assessment made by the surveyor is reasonable towards compensation.

Issue No.6 is there any deficiency of service on the part of the Ops.

7. On perusal of the evidence on record and after hearing both the parties this commission observed and found to settle the issues framed. To meet the issue No.1 the complaint is a consumer as because he purchased the vicle with a consideration of Rs.6,79,258/- and regarding maintainability of the case it is maintainable which comes with in the jurisdiction of this commission. To meet the issue No.2 it is pertinent to mention here that the report of the Fire Brigade Sambalpur as well as the Town P.S. Sambalpur no where mention that any criminal activity behind the incident of fire. As such this presumed that the fire was accidental arised due to the excess heat and fault of the mechanism of the vehicle due to short circuit.

As per Para No 8 of its written version of the Ops Quotes the observation of the surveyor as follows “ the root cause of fire and technical report from the manufacturer” It is found from the OEM technical report that extra connection was taken from battery negative terminal . Hence tempering of wire alteration and modification in electrical system is in violation of policy condition for which states. “The insured shall take all responsible steps to safeguard the vehicle from loss or damage and maintain it in efficient condition.”

Further as per technical observation and evidence , exhaust system of the claimed vehicle found in severely burnt condition and earlier manufacturer have recommended for catalytic converter replacement but the same was being denied by the complainant.

The written version filed by OP No.3 no where it is found that OP No.3 advice for replacement of catalytic converter neither any where it is found that there is an extra connection from the battery’s negative terminal nor any report filed by the OPS in the shape of evidence to strengthen his counter allegation. Not a single paper filed by the OPS in support of the said defect to strong his case. No report from the part of Maruti Suzuki Servicing center Bolangir has given regarding the extra connection from the battery negative panel. As such the OPS failed to prove the allegation raised against the complainant As such issue No.3 meet accordingly.

To meet the issue No.4 the insurance policy was valid from 11.09.2021 to 10.09.2022 and the accidental fire was broken out on dt.15/03/2022 . As such the incident occur within the coverage period and also the policy cover fire accident also As such the OPS are liable for the loss sustained by the complainant because the contract of insurance is a contract of indemnity where the happening of the event is uncertain.

The last issue of this case is that is the compensation assessed by the surveyor is reasonable . As per the version of the OP No.3 in Para 2 as per annexure 1. As per vehicle history from the date of purchase of the vehicle i.e. 12.09.2020 till 10 & 2022 the vehicle had already runs 92,482 K.M. The invoice sleep reflect the total consideration of Rs.6,79,258/- as purchase value . The incident occurred on dt.15/03/2022. So as per the depreciation value of the

vehicle @ 5 % for two year comes to Rs.68,000/- approximately . and the salvage of the burnt car Fixed to Rs.30,000/- and the compulsory excess of Rs.1,000/- total comes to Rs.99,000/- but the surveyor has given Rs.5,04,690 in his loss assessment report which is unreasonable and also a deceptive practice. More over in the condition of insurance in “ commonly used add on covers” point No.3 states in case of total loss of vehicle the insurance company will replace the damaged insured vehicle with a new equivalent or near equivalent vehicle of similar make model and features in case the vehicle model is discontinued the difference between the IDV and the ex-showroom price of damaged vehicle would be paid to the customer.

As such this commission thinks it proper to raise the compensation amount to Rs.5,80,258 /- as because the assessment is calculated from the actual loss and also the surveyor report is not the final one , it is just a scale of measurement for compensation As such this commission feels and think it proper to compensate Rs.5,80,258 /- which is just , proper and reasonable to compensate the loss.

The OPs are definitely made foul play with the complainant by non paying of the compensation amount and technically cheat the complainant which is mischievous as well as deceptive trade practice.

Earning money by pocketing premium orally cannot be the ultimate Moto of the insurance policy Hon’ble S.C. in Gurumet Singh V. B.M. National insurance company in civil appeal No.407 of 2022 date of judgment 20.05.2022 where in it was held that “ Insurance company should not be too technical while settling the claim and as for document that the insured in not in a position to produce due to circumstances beyond his control”.

More over rejection of claims on purely technical grounds in a mechanical fashion will result in policy holder losing confidence in the insurance industry giving rise to excessive litigation. The insurers decision to reject a claim shall be based on sound logic and valid grounds. It may be noted that such limitation clause does not work in isolation_and is not absolute.

The Hon’ble Apex court in Judgment in the case of Dharmendra Goel V.S. Oriental Insurance Co Ltd. iii (2008) CPJ 63 (S.C) held as under.

Insurance company being in dominant position often acts, In an unreasonable manner after having accepted the value of a particular insured goods disowns that very figure on one pretext or the other when they are called upon to pay compensation This “ take it or leave it attitude is clearly unwarranted not only as being bad in law but ethically in defensible “ it is

generally seem that the insurance companies are only interested in earnings the premiums and find ways means to decline claims.

As such the unreasonable act done by the insurer towards the insured is amounts to deficiency in service and the complainant deserves the remedies.

Taking all the above facts and evidence on record we are of the consideration view that the reasonable and Just compensation as mentioned above is to be awarded to the complainant to meet the ends of Justice. Hence order.

ORDER

The OP No1 and 2 is directed to pay a sum of Rs.5,80,258/-@ 9 % interest per annum from the date of incident till the date of order and Rs.40,000/- towards mental agony and Rs.5,000/- towards litigation expenses within one month from the date of order failing which the entire amount should be paid by the OP @ 12% interest per annum from the date of incident till realization.

PRONOUNCED IN THE OPEN COMMISSION TO-DAY 15th day of July ' 2023.

**[HON'BLE MR. Sri Rabindra Kumar Tripathy]
PRESIDING MEMBER**

**[HON'BLE MRS. Smt Jyotshna Rani Mishra]
MEMBER**