

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,**U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/549/2022
Date of Institution	:	26/05/2022
Date of Decision	:	04/09/2023

Anil Dhamey aged 26 years s/o Sh. Jai Kishan resident of House No.1003, Sector-17, Panchkula.

... Complainant

V E R S U S

1. The New India Assurance Co. Ltd., SCO No.58, Sector 26-C, Chandigarh, through its Divisional Manager.
2. The New India Assurance Co. Ltd., SCO No.36-37, 4th Floor, Sector 17-A, Chandigarh, through its Deputy Manager, Claim Hub.

... Opposite Parties

CORAM :

**SHRI PAWANJIT SINGH
MRS. SURJEET KAUR**

**PRESIDENT
MEMBER**

ARGUED BY : Sh. Suresh Pal, Advocate for complainant
: Sh. J.P. Nahar, Advocate for OPs

Per Pawanjit Singh, President

1. The present consumer complaint has been filed by Anil Dhamey, complainant against the aforesaid opposite parties (hereinafter referred to as the OPs). The brief facts of the case are as under :-
 - a. It transpires from the allegations, as projected in the consumer complaint, that on 30.8.2021, complainant had purchased a Polo car bearing registration No.HR-26BD-9895 (hereinafter referred to as "*subject car*") from Mrs. Aditi Dixit and the same was insured with OP-1 w.e.f. 12.9.2020 to 11.9.2021 vide insurance policy (Annexure C-3). Thereafter the subject car was transferred in the name of the complainant and his name was also incorporated in the registration certificate. On 26.12.2020, when the subject car was being driven by the complainant, the same met with an accident and was damaged due to sudden appearance of a stray dog in front of it. The matter was reported to the police, as a result of which DDR/GD No.11 dated 26.12.2020 (Annexure C-2) was recorded at Police Station, Sector 14, Panchkula. Immediately after the accident, the matter was reported by the complainant to OP-1, but, the OPs repudiated the genuine claim of the complainant on the ground that at the time of accident the insurance policy was not transferred in the name of the complainant and further that the subject car was not got insured by him. Thereafter the complainant had filed a complaint before the Insurance Ombudsman, but, the claim of the complainant was declined on the

ground that the insurance policy was not found in the name of the complainant. The complainant had already applied for transfer of ownership of the subject car, but, due to COVID-19, the same could not be transferred in his name. Thereafter, the complainant had sent a legal notice (Annexure C-5) to the OPs, but, with no result. In this manner, the aforesaid act of the OPs amount to deficiency in service and unfair trade practice on their part. OPs were requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.

- b. OPs resisted the consumer complaint and filed their written version, inter alia, taking preliminary objections of maintainability, concealment of material facts and also that there is no privity of contract between the complainant and the answering OPs. On merits, admitted that the subject car was insured by the OPs for period from 12.9.2020 to 11.9.2021. However, it is alleged that the claim of the complainant was repudiated by the OPs as he did not get the subject policy transferred in his name after the transfer of RC. It is further alleged that though the surveyor was deputed by the OPs who submitted his report dated 2.3.2021 (Ex.OP1&2/2), but, the claim was closed as the insurance policy was not in the name of the complainant at the time of accident. It is also admitted that the Insurance Ombudsman had also passed an order. The cause of action set up by the complainant is denied. The consumer complaint is sought to be contested.
 - c. In rejoinder, complainant re-asserted the claim put forth in the consumer complaint and prayer has been made that the consumer complaint be allowed as prayed for.
2. In order to prove their case, parties have tendered/proved their evidence by way of respective affidavits and supporting documents.
 3. We have heard the learned counsel for the parties and also gone through the file carefully, including the written arguments.
 - i. At the very outset, it may be observed that when it is an admitted case of the parties that Mrs. Aditi Dixit was the registered owner of the subject car and she also got the same insured from the OPs vide subject policy (Annexure C-3) which was valid w.e.f. 12.9.2020 to 11.9.2021 and also that the complainant had purchased the subject car from the erstwhile owner, Mrs. Aditi Dixit and after its purchase, the same was transferred in the name of the complainant, as is also evident from copy of Registration certificate (Annexure C-7) and also that the subject car met with an accident on 26.12.2020, the case is reduced to a narrow compass as it is to be determined if the OPs are unjustified in repudiating the claim of the complainant on the ground that the subject insurance policy was not got transferred by the complainant in his name and the same was not in the name of the complainant at the relevant time i.e. at the time of accident and the complainant is entitled for the reliefs prayed for in the consumer complaint, as is the case of the complainant, or if the OPs are justified in repudiating the claim of the complainant on the ground that there was no privity of contract between the complainant and the OPs and the consumer complaint of the complainant is liable to be dismissed, as is the defence of the OPs.
 - ii. Perusal of Annexure C-7 clearly indicates that the registration certificate of the subject car had already been transferred in the name of the complainant after the sale of the same by the erstwhile owner, Mrs. Aditi Dixit. However, perusal of the subject insurance policy (Annexure C-3) clearly indicates that the same was in the name of Mrs. Aditi Dixit i.e. the erstwhile owner and the same was valid w.e.f. 12.9.2020 to 11.9.2021. As it is an admitted case of the parties that the subject car met with an accident on 26.12.2020 and the subject policy could not be got transferred either by the seller or by the purchaser/complainant in his name, nor there is any evidence, except one copy of application (Annexure C-8), alleged to have been moved before OP-1, not showing any endorsement that the same was received/acknowledged by OP-1, it is safe to hold that, at the time of accident, the subject policy remained in the name of the erstwhile owner, Mrs. Aditi Dixit and the same was not transferred in the name of the complainant. Not only this, it further stands proved on record that as the complainant could not get the subject policy transferred in his name, there was no privity of contract between the complainant and the OPs qua the subject policy. Even copy of application (Annexure C-8) itself seems to be suspicious as in the original complaint, complainant has not whispered about said application and has produced the same in the case file only when OPs came with specific defence that complainant could not get the insurance certificate transferred in his name after purchase of subject car. Moreover, GR-17 of Motor Tariff Rules of Tariff Advisory Committee describes procedure for transfer of policy and relevant portion of the same is reproduced as under :-

“GR.17. Transfers

On transfer of ownership, the Liability Only cover, either under a Liability Only policy or under a Package policy, is deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of transfer.

The transferee shall apply within fourteen days from the date of transfer in writing under recorded delivery to the insurer who has insured the vehicle, with the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy so that the insurer may make the necessary changes in his record and issue fresh Certificate of insurance.....”

- iii. In support of their case, OPs have relied upon the order passed by the Hon’ble National Commission in the case of ***Oriental Insurance Co. Ltd. Vs. Enamul Haque***, R.P. No.3270 of 2018 decided on 4.9.2019, in which it was held as under :-

“Consumer Protection Act, 1986 Section 21 Motor Vehicles Act, 1988 Section 157 Theft of vehicle – There was no contract of insurance between the petitioner and the complainant on the date the vehicle was stolen, since the insurance policy had not been transferred in the name of that date – ‘Insurer could not be liable in respect of damage to the vehicle – No claim for third party – Concurrent orders are not sustainable and set aside – Revision dismissed.”

- iv. OPs have further relied upon the orders passed by the Hon’ble National Commission in ***Divisional Manager, United India Insurance Co. Ltd. & Anr. Vs. Mangu Singh***, R.P. 2204 of 2013 decided on 7.2.2019 and ***IFFCO Tokio General Insurance Co. Ltd. Vs. Ashok Laxman Mane and 2 Ors.***, R.P. No.3896 of 2013 decided on 20.7.2020 on similar proposition of law.
- v. It was also held by the Hon’ble Apex Court in the case of ***Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd., 1996 (1) SCC 221*** that -

deemed transfer under Section 157 of the Motor Vehicles Act is restricted to third party risks and does not apply to other risks like damage caused to the vehicle of the insured himself which falls outside Chapter XI of the new Act and is in the realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle.

- vi. Thus, one thing is clear from the provisions as laid down in Section 157 of the Motor Vehicles Act and the ratio of law laid down in the aforesaid judgments/orders passed in ***Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd.(supra)***, ***Oriental Insurance Co. Ltd. Vs. Enamul Haque (supra)***, ***Divisional Manager, United India Insurance Co. Ltd. & Anr. Vs. Mangu Singh (supra)*** and ***IFFCO Tokio General Insurance Co. Ltd. Vs. Ashok Laxman Mane and 2 Ors. (supra)***, that as there was no contract of insurance between the complainant and the insurer/OPs on the date the subject car met with an accident, since the insurance policy admittedly had not been transferred in the name of the complainant on the relevant date i.e. the date of damage, OPs/insurer cannot be held liable in respect of damage to the vehicle, especially when there was no claim for the third party and the own damage is not covered under the policy. Hence, it is safe to hold that the complainant has failed to prove on record any deficiency in service on the part of the OPs and the present consumer complaint deserves to fail.

4. In the light of the aforesaid discussion, the present consumer complaint, being devoid of any merit, is hereby dismissed, leaving the parties to bear their own costs.
5. Pending miscellaneous application(s), if any, also stands disposed of accordingly.
6. Certified copies of this order be sent to the parties free of charge. The file be consigned.

Announced

Sd/-

04/09/2023

[Pawanjit Singh]

hg

President

Sd/-

[Surjeet Kaur]

Member