

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,**

**U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/342/2023
Date of Institution	:	18/07/2023
Date of Decision	:	07/03/2024

Vijesh Bahadur, age 71 years, R/o Flat No.189-D4, Sandwood Opulencia, Sector 110, Mohali.

... Complainant

**V E R S U S**

1. Future Generali India Insurance Co. Ltd., SCO 4-5, 2nd Floor, Sector 8-C, Madhya Marg, Chandigarh, through its Chief General Manager (Claims).

2. Naveen Kumar (Surveyor), C/o Future Generali India Insurance Co. Ltd., SCO 4-5, 2nd Floor, Sector 8-C, Madhya Marg, Chandigarh.

3. M/s Anil Corporation (Workshop), through Sh. Anil Gupta, Executive Member cum Manager, Plot No.816, Industrial Area, Phase-II, Chandigarh (near Kalibari Mandir).

... Opposite Parties

**CORAM :**                   **SHRI PAWANJIT SINGH**  
                                  **MRS. SURJEET KAUR**

**PRESIDENT**  
**MEMBER**

**ARGUED BY**           : Sh. Vinod Chaudhri, Advocate for complainant  
                              : Sh. Chetan Gupta, Advocate for OP-1  
                              : OPs 2 & 3 ex-parte.

**Per Pawanjit Singh, President**

1. The present consumer complaint has been filed by Vijesh Bahadur, 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 the complainant is the registered owner of car bearing registration No.HR-03-T-6255 (hereinafter referred to as “*subject car*”), which was insured by him from OP-1 vide policy (Annexure C-1) which was valid w.e.f. 8.1.2023 to 7.1.2024 with IDV of ₹4,24,000/-. On 24.2.2023, the subject car met with an accident and the exterior parts of the same were badly damaged in the said accident. Immediately after the accident, subject car was taken to M/s Joshi Autozone, Chandigarh, but, the repair work could not be carried out as the garage did not have cashless tie up with OP-1. However, on its suggestion, OP-3 offered to repair the subject car. On this, complainant, had taken the subject car to the workshop of Ultimate Hyundai, Panchkula and informed OP-1. On this OP-2 was deputed as surveyor by OP-1 who took photographs and submitted his report with regard to the cost of repair to the extent of ₹1,60,000/-. OP-1 in connivance with likeminded people and malafide intention wanted to declare the subject car as total loss in order to cause wrongful loss to the complainant despite of the fact that the engine and other vital parts of the subject car were in excellent condition. The intention of the OP-1 was to sell the subject car as salvage in connivance with the probable purchaser who would have got the subject car repaired and sold it at exorbitant price keeping in view the foreign status of the complainant who has been residing in Canada. On 22.3.2023, complainant sent Whatsapp message (Annexure C-2). Later on, complainant got the subject car repaired from OP-3 workshop and paid an amount of ₹1,20,000/- vide receipt (Annexure C-3). The letter addressed to OPs 1 & 3 is Annexure C-4. Even at the time of accident, the subject car had only covered 38000 kms. Thereafter complainant sent legal notice (Annexure C-5) to OP-1 to refund the full amount, but, it was only willing to pay ₹30,000/- which was conveyed vide letter dated 20.6.2023 (Annexure C-6) which was assessed by OP-1 on net of salvage basis. Even after that, on 27.6.2023 complainant had sent a registered letter (Annexure C-7) to OP-1 for final payment, but, with no result. As OP-1 has not settled the claim of complainant as per terms & conditions of the subject policy, the said act of OP-1 amounts to deficiency in service and unfair trade practice. OPs were requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.
- b. OP-1 resisted the consumer complaint and filed its written version, inter alia, taking preliminary objections of maintainability, cause of action and concealment of facts. However, it is admitted that the subject car was got insured by the complainant from the answering OP vide subject policy which was valid w.e.f. 8.1.2023 to 7.1.2024. As per the insured’s statement dated 24.2.2023, the subject car was hit by another vehicle from its left side, as a result of which the subject car was toppled and was damaged. On receipt of claim intimation, surveyor Naveen Kumar was deputed by the answering OP who conducted the survey and submitted his report that the “vehicle was inspected as per repair invoice and observed repair liability was exceeding 75% of the Insured Declared Value” and accordingly it was found case of total loss of vehicle and he recommended to settle the claim on net of salvage basis. Accordingly, OP-1 company was of the opinion to settle the claim on net of salvage basis, which was also agreed upon by the complainant and the complainant was

accordingly informed about the same vide letter dated 20.3.2023. As per calculation on net of salvage basis settlement basis, the settlement was arrived at by deducting the wreck value and excess value from the IDV of the insured vehicle i.e. subject car and liability of OP-1/insurer was arrived at ₹30,000/-. It is further alleged that the complainant had also submitted his consent in the form of affidavit that he would settle the claim at ₹30,000/- and later on complainant got the subject car repaired without the consent of the answering OP and thereby made payment of ₹1,20,000/- without even submitting the estimate/repair invoice for such repair done after giving his consent for settlement at ₹30,000/-. In this manner, as complainant himself has got the subject car repaired without informing the answering OP despite of the fact that earlier he had given his consent for settlement of claim on net of salvage basis and accept an amount of ₹30,000/-, the consumer complaint of the complainant is not maintainable. On merits, the facts as stated in the preliminary objections have been reiterated. The cause of action set up by the complainant is denied. The consumer complaint is sought to be contested.

- c. OPs 2 & 3 did not turn up before this Commission, despite proper service, hence they were proceeded against ex-parte vide order dated 12.9.2023.
  - d. Complainant chose not to file the rejoinder.
2. In order to prove their case, contesting parties have tendered/proved their evidence by way of respective affidavits and supporting documents.
  3. We have heard the learned counsel for the contesting parties and also gone through the file carefully, including written arguments.
    - i. At the very outset, it may be observed that when it is an admitted case of the parties that the complainant was the registered owner of the subject car, which was got insured by him from OP-1/insurer vide subject policy (Annexure C-1) and earlier the claim was settled for ₹30,000/- by the complainant with OP-1 on net off salvage basis and had agreed to accept an amount of ₹30,000/- and later on the complainant got the subject car repaired from OP-3 and paid an amount of ₹1,20,000/- and further complainant has sold the same to some third person and has already left for Canada, as has been stated by learned counsel for complainant in his statement recorded on 13.2.2024, the case is reduced to a narrow compass as it is to be determined if OP-1/insurer is unjustified in not paying total amount of ₹1,20,000/- being repair cost of the subject car and the complainant is entitled to the reliefs prayed for in the consumer complaint, as is the case of the complainant, or if the consumer complaint is not maintainable on the ground that the complainant is no more consumer and he has filed the instant consumer complaint after finally settling the claim with OP-1 and by giving his consent vide affidavit dated 13.3.2023, copy of which is Annexure E, as is the defence of OP-1.
    - ii. As the factum of earlier settlement of the claim by the complainant with OP-1 on net of salvage basis has not been disputed by the complainant and further when it stands proved on record that the complainant himself has got the subject car repaired without even intimating OP-1 and thereafter sold the same to some third person, it is clear that the complainant is not entitled for an amount of ₹1,20,000/-, alleged to have been spent by him for the repair of the subject car, especially when he is no more a consumer after the sale of the subject car. Here we are strengthened by the order

passed in **Tata Motors Ltd. & anr. Vs. Hazoor Maharaj Baba Des Rajji Chela Baba Dewa Singhji (Radha Swami), 2013 SCC ONLine NCDRC 883**, in which it was held as under :-

*"15. In the light of above observations, we find that as complainant did not remain consumer after sale of vehicle and he has sold the vehicle without permission of the District Forum and has suppressed this fact and has not approached the courts with clean hands, complaint is liable to be dismissed and revision petition is to be allowed."*

iii. Further, in **M/s. Honda Cars India Ltd. Vs. Jatinder Singh Manda, 2013 SCC ONLine NCDRC 934**, it was held as under :-

*"6. We have held in R.P. No. 2562 of 2012 Tata Motors Ltd. & Anr. Vs. Hazoor Maharaj Baba Des Rajji Chela Baba Dewa Singhji (Radha Swami) & Anr. decided on 25.09.2013 that once vehicle is sold during pendency of the complaint, complainant does not remain consumer for the purposes of Consumer Protection Act. In that judgment, we have placed reliance on I (2008) CPJ 249 (NC) Hoshiarpur Improvement Trust Vs. Major Amrit Lal Saini and judgement dated 23.4.2013 passed by this Commission in Appeal No. 466 of 2008 Mr. Rajiv Gulati Vs. Authorised Signatory M/s. Tata Engineering & Locomotive Co. Ltd. & Ors. In this case, as vehicle has been sold by complainant during pendency of appeal which was filed in the year 2007 and decided in the year 2012, complainant ceases to be a consumer under C.P. Act and complaint is liable to be dismissed. Had Respondent No. 1 brought this fact to the notice of State Commission learned State Commission would not have directed petitioner to replace the steering wheel and gear box assembly and other connected parts because Respondent no. 1 was not possessing vehicle at the time of passing the judgement."*

iv. In **M/s. General Motors India Pvt. Ltd. Vs. A. Jayakrishnan @ Animon & 2 Ors., 2015 SCC OnLine NCDRC 3286**, it was held as under :-

*"Learned counsel for the parties present. Arguments heard.*

*It has now transpired that the consumer/petitioner/A. Jayakrishnan @ Animon has sold the car in the year 2014. Consequently, he is no more a consumer. The case of the petitioner is not maintainable.*

*Therefore, we set aside the orders passed by fora below and dismiss the complaint. However, liberty is given to the petitioner to approach the civil court for redressal of his grievances, as per law.*

*The revision petition stands disposed of."*

- v. Further, the Hon'ble National Commission in ***Ramesh Vs. M/s Scoda Auto India Pvt. Ltd. & Ors., First Appeal No.390 of 2014***, decided on 26.4.2019, by relying upon its earlier orders passed in the cases of *Tata Motors Ltd.(supra)*, *M/s. Honda Cars India Ltd. (supra)* and *M/s. General Motors India Pvt. Ltd. (supra)* held that the complainant ceased to be a consumer when he had sold his vehicle during the pendency of the appeal in the year 2017 surprisingly that too when he had not taken any permission from the Commission before selling the vehicle nor he had informed the Commission after the sale.
  - vi. Not only this, complainant has not whispered even a single word in his consumer complaint that he has already sold the subject car to a third person nor has disclosed the said fact in the written arguments and the consumer complaint is even otherwise bad for suppression and concealment of material facts from this Commission.
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.

07/03/2024

hg

Sd/-

[Pawanjit Singh]

President

Sd/-

[Surjeet Kaur]

Member