

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
GURGAON-122001.**

Consumer Complaint No: 520 of 2020

Date of Institution: 02.12.2020

Date of Decision: 09.04.2024

Rohtash Singh aged 52 years son of Shri Gajraj Singh, resident of House No.14, Village Fazilpur Badli, Tehsil Farrukhnagar, District Gurugram.

.....Complainant

Versus

1. National Insurance Company Ltd., having its office at Nelson Mandela Road, Vasant Kunj, New Delhi-110070.
2. National Insurance Co. Ltd., SCO No.41-43, Sector-31, Gurugram. (Through its Divisional Manager).

.....Opposite Parties

Complaint under Section 35 of Consumer Protection Act, 2019.

**BEFORE: SHRI SANJEEV JINDAL, PRESIDENT.
MS. JYOTI SIWACH, MEMBER.
MS. KHUSHWINDER KAUR, MEMBER.**

Present: Shri B.S.Nain, Advocate for the complainant.
Shri Jasmeet Singh, Advocate for the Opposite Parties.

ORDER SANJEEV JINDAL, PRESIDENT.

Heard on the complaint in question. The record placed on the present case file has been perused, carefully.

2. Briefly stated, it is the own case of the complainant that on 01.05.2020 at about 8.00 a.m., his son namely Rohit drove his car in question through an underpass filled with water on the road of Pahari Maujabad, District Gurugram without knowing how much water was in flow in the underpass during the rainy season and due to high water flow in the underpass, the subject car got stuck in the water. When the car in question could not be brought outside the underpass as it

did not start, the complainant's son left the car at that place only, and informed the OP after lapse of about 2½ hours. Pursuant to it, the OPs got conducted the survey and reported the matter to Platinum Motor Corp. Pvt. Ltd. with whom the car had been insured. The OPs also sent the crane and pulled the car from the water. Thereafter, the complainant took the estimate of the damaged vehicle from Platinum Motor Corp. Pvt. Ltd. through bill to the amount of Rs.85,978/-. Thus, the OPs were liable to pass the aforesaid claim submitted by the complainant in respect of the damage suffered by the subject vehicle, but they refused to do so illegally and unjustifiably against the principle of natural justice. Hence, this complaint.

3. The OPs in their joint written statement while denying any deficiency in service on their part, contended, inter-alia, specifically that after the perusal of the manner in which the loss and damage had occurred to the subject car, the subject claim was not found to be payable as the loss to the subject insured vehicle had occurred not from any accident but from the gross negligence on the part of the insured's son who had knowingly taken the insured vehicle in the water-logged underpass which resulted in loss to the subject insured car. If the complainant/insured's son had not taken the subject car in the water-logged underpass, the loss so occurred would not have taken place. Thus, such a negligence on the part of the insured cannot make the insurance company liable or answerable for such a loss.

It has been further pleaded by the OPs-Insurance Company that the surveyor appointed by them had also concluded in his report to the effect that "*As this is not an accidental act but the vehicle taken in the underpass filled with water knowing fully well that going in the water will damage the vehicle, this claim in my*

opinion is not maintainable and is subject to terms and conditions of the policy and insurer admitting liability”.

In the end, the OPs-Insurance Company prayed that the complaint in question be dismissed with costs.

4. After having gone through all the peculiar facts and circumstances of the present case, in the light of the pleadings of the parties and the record placed on the record of this file by the parties, this court is of the considered view that the subject claim to the amount of Rs.85,978/- submitted by the complainant in respect of the damage suffered by the subject insured vehicle had been legally, validly and justifiably rejected by the OPs-Insurance Company because it is an admitted fact between the parties that the complainant's son had, intentionally and willfully, driven the subject vehicle into the underpass which was visibly filled with high flow of water, due to which, the insured vehicle got stuck therein and later on had to be pulled out therefrom with the help of the crane.

5. This Court is fully convinced and it finds every reason to believe that the damage to the subject insured vehicle had occurred from the gross negligence of the insured's son who had knowingly and willfully took/drove the insured vehicle through the water-logged underpass, which resulted in subject loss/damage to the insured vehicle. Since, the act aforesaid does not come within the ambit of accidental act, it being deliberate, intentional and willful act, as the complainant's son had taken the subject insured vehicle in the underpass filled up with the water knowing fully well that going into water could damage the vehicle, so, in the given peculiar circumstances of the present case, the present subject claim submitted by the complainant cannot be held maintainable as the damage to the subject vehicle had

been caused not accidentally but due to the willful and intentional act of the insured's son as discussed above.

6. Thus, in view of our aforesaid discussions in the light of the peculiar facts and circumstances of the present case, the present complaint has to be dismissed being not maintainable. That being so, the present complaint is hereby dismissed with no order as to costs. The copy of this order be supplied to the parties free of cost as per the rules. The Order be promptly uploaded on the website of this Commission. File be consigned to the record room, after due compliance.

Announced.
09.04.2024

(Jyoti Siwach)
Member

(Khushwinder Kaur)
Member

(Sanjeev Jindal)
President,
District Consumer Disputes
Redressal Commission, Gurgaon