

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, AMBALA.

Complaint case no. : 162 of 2022
 Date of Institution : 26.05.2022
 Date of decision : 05.04.2024

Kaptan son of Sh. Bhure Lal resident of Jhuggiyan pul ke niche Kanch Ghar, Ambala City.

..... Complainant

Versus

United India Insurance Company Ltd. 2nd floor, Triloki Chamber opposite Municipal Council, Division Office, Ambala Cantt. through its Branch Manager

..... Opposite Party

Before: Smt. Neena Sandhu, President.

Smt. Ruby Sharma, Member,

Shri Vinod Kumar Sharma, Member.

Present: Shri Suresh Bhola, Advocate, counsel for the complainant.

Shri Harshit Kapoor, Advocate, counsel for the OP.

Order: **Smt. Neena Sandhu, President.**

1. Complainant has filed this complaint under Section 35 of the Consumer Protection Act, 2019 (hereinafter referred to as 'the Act') against the Opposite Party (hereinafter referred to as 'OP') praying for issuance of following directions to it:-

- i. To pay the IDV of Rs.2,00,000/-, alongwith interest @ 18% per annum from 24.03.2021, till its realization.
- ii. To pay Rs.1 lac on account of mental torture, mental tension and deficiency in service.
- iii. To pay cost of litigation to the tune of Rs.25,000/-.
- iv. Grant any other relief, which this Hon'ble Commission may deems fit.

2. Brief facts of the case are that the complainant purchased car make Maruti Suzuki Swift Dezire LDI bearing registration no. HR02AA-0789 from its previous owner Sh. Shuham s/o Sh. Karan Singh resident of Jagadhri Distt. Yamuna Nagar for his personal use and got it transferred in his name from the office of SDM Ambala. The complainant thus became the registered owner of the above said vehicle. The said vehicle was insured with the OP vide policy no. 21101023120P111753419 valid from 12-1-2021 to midnight of 11-1-2022 with Insurance Declare Value of Rs.2,00,000/- for which he had paid premium of Rs.7268/- to the OP. On 24-2-2021 the complainant along with his brother Aliya Avitabh had gone to new Grain Market Ambala City for their personal work and the vehicle in question was driven by Aliya Avitabh. At about 10:00 p.m. when they reached near Gate no.2 of New Grain Market, brother of the complainant parked the car outside the park of Grain Market. Thereafter, when they walked towards park and the brother of the complainant left the key in the car, they walked only few steps and saw that some unknown person started the car and drove away, who could not be identified due to darkness. They made an alarm and chased the car. The said car had been stolen by some unknown person. The complainant and his brother tried to find out the car themselves and thereafter, the brother of the complainant namely Aliya Avitabh reported the matter to police. The

police of Police Station Ambala City registered FIR no.106 dated 25-3-2021 under section 379 regarding the theft of above said car. The complainant after taking the copy of FIR from the police visited the office of the OP and furnished copy of FIR and others documents for insurance claim. After taking the copy of FIR and others documents the OP told that the claim will be settled. Thereafter, the complainant visited the OP number of times for settlement of insurance claim, but the OP always postponed the matter on one pretext or other. The complainant wrote a letter to the OP on 29-3-2021 and thereafter on 5-4-2022 for paying the insurance claim, but to no avail. Hence, the present complaint.

3. Upon notice, the OP appeared and filed written version wherein it raised preliminary objections to the effect that there is no "Deficiency in Services" on part of the OP; the complainant has concealed material facts from this Commission; this complaint is not maintainable; the complaint is bad for misjoinder and non joinder of necessary parties; the complainant has suppressed the material facts from this Commission; etc. On merits, it has been stated that the complainant never lodged any claim with the OP with regard to the alleged theft of the vehicle in question. The alleged sale/purchase if any, the purchaser is bound to inform the Insurance Company about the said purchase and to update/modify his name in the Insurance policy. All the claims are payable subject to the terms and conditions of the Insurance Policy which is not in the name of the complainant. As per the terms and conditions of the Insurance Policy, the Insured had to inform the Police and the Insurance Company about the alleged loss immediately and in the present case there was inordinate and unexplained delay of 30 days to inform the police. No DDR was lodged by the complainant or the insured. Further, the complainant as per the allegations in the complaint behaved very negligently and failed to take reasonable care as was legally expected from him as he left the vehicle in question carelessly unattended that too at an isolated place at the mercy of god with keys inside the vehicle. Rest of the averments of the complainant were denied by OPs and prayed for dismissal of the present complaint with heavy and special costs.
4. Learned counsel for the complainant tendered affidavit of complainant as Annexure CW1/A alongwith documents as Annexure C-1 to C-6 and closed the evidence on behalf of complainant. On the other hand, learned counsel for the OP tendered affidavit of Shrija Jain, Assistant Manager of the OP-Company-United India Insurance Company as Annexure OP-1/A alongwith documents as Annexure OP-1 & OP-2 and closed the evidence on behalf of OP.
5. We have heard the learned counsel for the parties and have also carefully gone through the case file.
6. Learned counsel for the complainant submitted that the theft of the vehicle in question took place during the subsistence of the policy in question, and all the documents required were submitted with OP alongwith claim form, as such, OP was under legal obligation to pay the claim amount under the policy in question but OP did not pay the claim amount, which act amounts to deficiency in providing service, negligence and adoption of unfair trade practice on the part of OP.
7. On the contrary, the learned counsel for the OP submitted that in the first instance, the complainant failed to inform about purchase and transfer of the vehicle in question to the OP; secondly there was an unexplained delay of more than 30 days in informing the police regarding theft of the vehicle in question and thirdly, the complainant was negligent and careless in handling his insured vehicle because admittedly, the vehicle in question was left unattended and by leaving the key in the ignition, as a result of which its theft took place.
8. The moot question which arises in this case is as to whether the complainant is entitled to get any relief in this case or not. It may be stated here that firstly the complainant himself has stated in his complaint that the brother of the complainant left the key in the car and when they walked only few steps, they saw that some unknown person started the car and drove away, who could not be identified due to darkness, which shows that the complainant was negligent and careless, in taking care of his insured vehicle.
9. Secondly, it is also coming out from the record that though the vehicle in question was stolen on 24.02.2021 yet, intimation in that regard was given to the Police for the first time on 25.03.2021, vide FIR No.106, Annexure C-3. The complainant has failed to explain as to why such a delay of more than 30 days, took place in lodging of FIR qua theft of the vehicle in question. This negligence on the part of the complainant had deprived of the Police machinery to set in motion, so that necessary immediate steps for tracing and recovering of the vehicle could be expedited. In **Kanwarjit Singh Kang vs. M/s ICICI Lombard General Insurance Co. Ltd. & Anr. SLP (C) No. 6518 of 2018, decided on 29.03.2022**, the Hon'ble Supreme Court upheld the repudiation of the claim by the insurance company on account of unexplained delay in lodging FIR qua theft of the vehicle with the police, especially, on account of the reasons that the keys of ignition were left in the vehicle, considering it as a fundamental

breach. In our considered opinion, had the keys of ignition been not left in the vehicle in question, the theft could not have taken place, but the complainant is clearly negligent and careless and left the keys in the vehicle, which gave invitation to theft. The principle of law down by the Hon'ble Supreme Court in **Kanwarjit Singh Kang's case** is squarely applicable to the present case and as such it is held that the complainant is not entitled to get any relief in this consumer complaint qua theft of his vehicle.

10. In view of peculiar facts and circumstances of this case, this complaint stands dismissed with no order as to cost. Certified copies of the order be sent to the parties concerned as per rules. File be annexed and consigned to the record room.

Announced:- 05.04.2024

(Vinod Kumar Sharma)
Member

(Ruby Sharma)
Member

(Neena Sandhu)
President