

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, SOUTH MUMBAI**

Puravatha Bhavan, 1<sup>st</sup> Floor, General Nagesh Marg,  
Near Mahatma Gandhi Hospital, Parel, Mumbai- 400 012

**Consumer Complaint no: 216/2016**

**Complaint Filed on: 08/09/2016**

**Final Order on: 14/06/2024**

**M/s. Sumit Tours & Travels**

Through it's Proprietor Mr. Pramod Gupta

Age-47 years, Occ-Self employment

R/at- Mhada Murarji Mill Compound

Flat no.2303, Building No.1-B

Ashok Nagar, Kandivali (East),

Mumbai-400 101

..... **Complainant**

**V/S**

**Bajaj Allianz General Insurance Co.Ltd.**

Through it's Manager

GE Plaza, Airport Road,

Yerwada, Pune-411 006

..... **Respondent**

**BEFORE: HON'BLE PRESIDENT-IN-CHARGE SHRI.P.G. KADU**

**HON'BLE MEMBER SMT. S. A. PETKAR**

**HON'BLE MEMBER SMT. G. M. KAPSE**

**ADVOCATE ON RECORD:**

For Complainant: In person/ Complainant's daughter Ratan Gupta

For Respondent: Adv. Devendranath Joshi

**J U D G M E N T**

**(Decided on 14/06/2024)**

**HON'BLE MEMBER SMT. G. M. KAPSE**

1. This is an action under **Section 12 of the Consumer Protection Act 1986**, the briefly stated case is as follows:
2. The Complainant has purchased Maruti Swift Dezire Car no.MH-04-GD-3586 for his livelihood. He has purchased insurance policy from the Respondent for the period 23/02/2015 to 22/02/2016 by paying premium of Rs.26,233/- for sum assured of Rs.5,95,380/-.
3. On 2/09/2015 the said car was stolen by the person at the time of travelling at Mumbai Central. Hence, before lodging an incident of theft was reported to the Respondent. The Complainant has filed criminal complaint against one Rajesh Sharma, who is the main accused before Nagapada Police Station, Mumbai. Thus, the Complainant has submit the claim of Rs.5,95,380/-with requisite documents, with the Respondent. The Respondent has denied the claim.
4. Thus, the Complainant has been constrained to file present complaint with following prayers:
  - a. To pay the claim of Rs.5,95,380/- with 15%p.a. from the date of theft of the vehicle i.e. 02/09/2015 till its realization.
  - b. To pay compensation of Rs.4,00,000/- towards mental agony and Rs.1,00,000/- towards costs of litigation.
5. The Complainants has placed reliance on true copies of following documents:

- a. FIR
- b. Final Report
- c. Driving License
- d. Insurance policy
- e. Repudiation letter

6. The **Respondent** has filed written version wherein it has denied all the allegations leveled in the complaint; the following are the main defenses:

a. The insured/ Complainant has failed to take reasonable care. The Complainant had left the key in vehicle; it is clear shows negligence on the part of driver. It was the duty of the driver to lock the vehicle while he was getting out of the vehicle. Thus, the insured has failed to take reasonable care as per condition no.4 of Policy terms and condition which is reproduce as under:

*i. The insured shall take all reasonable steps to safeguard the Vehicle from loss or damage and to maintain it in efficient condition and the Condition shall have at all times free and full access to examine the Vehicle or any part thereof or any driver or employee of the Insured. In the event of any accident or breakdown the Vehicle shall not be left unattended without proper precautions being taken to prevent further damage or loss and if Vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the Vehicle shall be entirely at the Insured's own risk".*

b. The statement of the driver of the Complainant given to the Police Authorities on 02/09/2015, the driver of the vehicle left

the ignition key in the vehicle itself when he was carrying unknown passenger with him and thus has failed to take reasonable care. For the act of the driver the owner of the Vehicle is vicariously liable. Hence, the notice dt.03/02/2016 was issued to the Complainant to clarify the position with respect to leaving the ignition key by the driver in the vehicle itself which has directly contributed to the theft. The Complainant has never replied to the said letter.

- c. Hence, on all the above reasons, the Complainant is not entitled to receive insurance claim, therefore it has prayed for dismissal of case with costs.

7. Both the parties filed their Evidence affidavit and written argument. Heard argument of both the parties.

8. Thus, on the rival contentions of all the parties, following points arise for determination on which we record findings with the reasons given below:

<b>Sr.no.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether Complainant is entitled to the insurance claim?	...Yes....
2.	Whether complainant entitled to claim compensation towards mental torture with costs of litigation?	...Yes....
3.	What Order?	As per final order...

### **REASONS FOR FINDINGS**

#### **Point no.1 to 3**

9. Admittedly the Complainant is policy holder of the Respondent and thereby consumer of the Respondent. It is not in dispute that during the period of insurance cover, the theft took place.
10. The said vehicle was stolen in the intervening night of 01/09/2015-02/09/2015 from Mumbai Central Junction. Intimation was given by the Complainant/ Driver to the Police Station of Nagapada, immediately. FIR bearing No. 361/2015 was registered on 02/09/2015 for the offence under Section 379 of the Indian Penal Code, 1860, against one Rajesh Sharma. On 25/05/2016, police concluded the investigation and reported that there is no possibility of recovery of the stolen vehicle. Awaiting recovery of the vehicle when it could not be traced out, the Complainant submitted a claim to the Respondent indicating theft of vehicle and asked for compensation. The Respondent has asked clarification as to theft, the ignition key on the vehicle and failed to take reasonable care through letter dt. 03/02/2016; till date the Complainant has never replied to the said letter.
11. The passenger Sharma was in the car and on his request car engine was kept on so to keep car cool. Thus, though the driver of the car has made statement that the key of the car was kept ignited for the reasons that stated supra it can't be said that no due care was taken by the driver to prevent theft of the car. It's matter of fact the passenger Sharma has stolen the car by taking undue advantage of absence of the driver, who had out of the car for a moment to purchase food by keeping the machine and AC on of the car as per instruction of the passenger Sharma. It's manifest from the statement of the car driver, car has been seen by the passenger by whom car was hired at the instance of the Complainant/driver twice. Thus, it can be inferred that passenger was known to the

Complainant. However, evidence of the Complainant speaks that when phone of passenger was tried it was switched off. Thus, no negligence can be attributed either to the driver or to the Complainant as the theft of the car. It's common knowledge that when passenger insist for A.C. of the car to be on and driver leaves car transitory for purpose of food, pan, cigar or for washroom etc. has to keep the key of car ignited so that A.C as per instruction of passenger remains on.

12. Thus considering all facts, circumstances, entire oral and documentary evidence it's clear that due care was taken to prevent theft of the car. It is manifest that car with key was not abandoned so to facilitate its theft. Hence the very order of repudiation or clarification of claim on the above stated ground found wholly unsustainable. Indeed it was duty of so called police of Mumbai to trace out the car ; but no diligence thereto found to be shown by the police for the reasons known to them. On the facts and evidence Complainant can't be caused suffer loss due to the theft of his car.

13. Thus, Complainant is justified to the insurance claim considering IDV of the stolen car to the tune of Rs. 5,95,380/-likewise he/its justified to reasonable interest on the above said amount from the date of filing this case i.e. 08/09/2016 till its realization. So far as compensation towards mental torture and costs of litigation of amount of Rs.50,000/- is allowed on both the heads, it would meet the ends of justice. **Hence, we have answered the findings on all the points accordingly and proceed to pass following order.**

#### **FINAL ORDER**

1. The **Consumer Case no.216/2016** is hereby partly allowed.

2. The Respondent is hereby directed to pay insurance claim amount of Rs.5,95,380/- with interest of 6% p.a. from the date of filling the case i.e. from 08/09/216 till its actual realization to the Complainant within 30 days from the date of this order.
3. If the Respondent failed to pay the above said amount (order clause no.2) within 30 days from the date of this order, then it shall be liable to pay 9% interest p.a. on the above said amount till its actual realization.
4. The Respondent do pay compensation of Rs.50,000/- towards mental agony and costs of litigation to the Complainant.
5. The copy of order be sent to both the parties free of costs.

**Place: South Mumbai, Parel**

**Date: 14/06/2024**

**(SMT. G. M. KAPSE)**  
**MEMBER**

**(SMT. S. A. PETKAR)**  
**MEMBER**

**(SHRI.P.G. KADU)**  
**PRESIDENT- IN-CHARGE**

**DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSION,**  
South Mumbai, at Parel