

H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA.

First Appeal No.: 162/2023
Date of Presentation: 21.07.2023
Order reserved on: 20.04.2024
Date of Decision: 26.04.2024

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Brij Bhushan son of Shri Jagdish Chand, R/O Village
Tanda, Post Office Rajpur, Tehsil Palampur, District
Kangra, H.P.

..... **Appellant/Complainant.**

Versus

1. Manager IFFCO Tokio General Insurance Company
Limited, IFFCO Sadan, C-1, District Centre Saket,
New Delhi-110017.
2. Barjeshwari Honda, Thakurdwara, Tehsil Palampur,
District Kangra, H.P.

.....**Respondents/Opposite parties.**

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Coram

Hon'ble Justice Inder Singh Mehta, President

Whether approved for reporting?¹ Yes.

**For the Appellant: Mr. Praveen Sharma, Advocate
vice Mr. Aditya Sood, Advocate.**

¹ *Whether Reporters of the local papers may be allowed to see the order?*

**For the Respondent No.1: Ms. Monika Singh, Advocate
vice Mr. Virender Sharma,
Advocate.**

For the Respondent No.2: None.

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Justice Inder Singh Mehta, President

ORDER:

Instant appeal is arising out of the order dated 02.06.2023 of learned District Commission, Kangra at Dharamshala, in Consumer Complaint No.16/2020 titled Brij Bhushan Vs. Manager IFFCO Tokio General Insurance Company & Anr.

Brief facts of Case:

2. Brief facts of the case are that the complainant is registered owner of vehicle (Scooter Activa) bearing registration No.HP-37-9464, which was duly insured with the opposite party No.1/insurance company w.e.f. 21.09.2018 to 20.09.2019. On 31.08.2019, the vehicle in question met with an accident and got damaged. Intimation regarding the

accident was given to the agent of opposite party No.1/insurance company. The vehicle in question was repaired by the opposite party No.2/dealer for an amount of Rs.15,721/-. The opposite party No.1/insurance company repudiated the claim of the complainant on the ground that intimation regarding the accident was given late to the opposite party/insurance company. The aforesaid acts of opposite parties amount to deficiency in service and unfair trade practice. Hence, the present complaint.

3. The opposite party No.1/insurance company resisted and contested the complaint by filing reply, wherein it is alleged that the policy (MA327563) under which the claim was reported do not cover the date of loss. At the time of accident, the complainant/driver was under the influence of liquor. There is also an inordinate delay in intimation of claim

by the complainant, as the loss dated 31.08.2019 was reported to the insurance company on 24.11.2019 i.e. after about 85 days and the same is violation of the terms and conditions of insurance policy. There is no deficiency in services on the part of opposite party No.1/insurance company and prayed that complaint may be dismissed.

4. The opposite party No.2/dealer has alleged in its reply that the vehicle in question was repaired by the opposite party No.2/dealer and received the repaired amount from the complainant. There is no deficiency in services on the part of opposite party No.2/dealer. A prayer for dismissal of the complaint was made.

5. Rejoinder denying the contents of the reply filed by the opposite party No.1/insurance company and reiterating those of the complaint was filed.

6. Thereafter, the parties led evidence in support of their respective pleadings.

7. After hearing the parties, learned District Commission dismissed the complaint of the complainant.

8. Feeling aggrieved by the order of learned District Commission, the appellant/complainant has preferred the instant appeal before this Commission.

9. I have heard learned counsel of the parties and have also gone through the record carefully.

10. Learned counsel of the appellant/complainant has submitted that the complainant is registered owner of the vehicle in question which met with an accident on 31.08.2019 during the subsistence of the insurance policy. At the time of accident complainant was driving the vehicle/scooty. The complainant was not under the influence of liquor at the time of the accident and this fact has also not been proved by the respondent/insurance

company. He further submitted that the impugned order is bad in law and prays that appeal of the appellant/complainant be allowed. He has also relied upon the judgment of Hon'ble Supreme Court in case titled **Om Prakash Vs. Reliance General Insurance & Anr., Civil Appeal No.15611 of 2017** and orders of this Commission in case titled **Bharti Axa General Insurance Co. Ltd. Vs. Sh. Basant Singh, F.A. No.81/2018 dated 21.04.2023**, case titled **Rakesh Kumar Vs. United India Insurance Co. Ltd., F.A. No.114/2019 dated 04.07.2023** and case titled **Smt. Nirmla Devi & Ors. Vs. The New India Assurance Company Ltd., F.A. No.48/2021 dated 05.01.2023**.

11. On the other hand, learned counsel of the respondent No.1/insurance company has submitted that on the date of accident i.e. on 31.08.2019, there was no insurance policy of the vehicle in question. She further submitted that there is an inordinate delay of 85 days in

informing the insurance company. At the time of accident, complainant/driver was under the influence of liquor which fact is also proved from the police report as well as from statement of one witness. She further submitted that the impugned order does not require any interference and prays that appeal of the appellant be dismissed.

FINDING

12. The admitted fact which emerges on record is that the complainant is registered owner of the vehicle/scooty bearing registration No.HP-37-9464, which was insured with the opposite party No.1/insurance company w.e.f. 21.09.2018 to 20.09.2019 vide insurance policy No.1-UQ2RJH4 P400 Policy: M3134315 (Annexure C-9).

13. It is also an admitted fact emerging on record that on 31.08.2019, the vehicle/scooty in

question met with an accident. Information regarding the accident was given to the police as well as to the insurance company.

14. On receipt of intimation regarding the accident, the opposite party No.1/insurance company appointed a Surveyor Sh.Rajeev Razdan, who inspected the vehicle in question and assessed the loss to the tune of Rs.11,846.33/- on repair basis.

15. The present complaint is filed by the complainant for claiming repair charges of accidental scooty on which he has incurred expenses of Rs.15,721.61/- as per tax invoice Annexure C-5.

16. The opposite party No.1/insurance company did not settle claim of the complainant on two grounds that intimation regarding the accident was given to the opposite party No.1/insurance company after a gap of three months i.e. after about 85 days of the accident

and secondly, at the time of accident, the complainant/driver was driving the vehicle/scooty in question under the influence of liquor.

17. Both the above said pleas which have been taken by the opposite party No.1/insurance company loses its significance on the following grounds:

1. The insurance company has failed to file the affidavit of the medical officer who medically examined the complainant/driver to prove that the complainant was under the influence of alcohol at the time of the accident.
2. There is no urine and blood samples' report proved on record to show that while driving the vehicle in question the complainant was under the influence of liquor.
3. MLC Ext.P/1 does not prove that injured/complainant Brij Bhushan was under the influence of liquor in absence of positive report of blood and urine samples.

4. So far as the delay in intimating the insurance company too is concerned, the same is insignificant, as intimation regarding the accident was also given to the police of Police Station Palampur on the same day i.e. on 31.08.2021, which is evident from GD entry No.056 Annexure OP-1/2.

18. In view of the above stated fact, the repudiation of claim by the opposite party/insurance company is not justified and the impugned order is bad in law on the material points.

19. The complainant has not filed affidavit of repairer of the vehicle who could explain that the complainant has spent Rs.15,721.61/- on repair of his vehicle/scooty. In the absence of affidavit of the repairer, the complainant is only entitled to the amount of Rs.11,846.33/- as assessed by the Surveyor in his report Annexure OP1/1.

20. Consequently, appeal of the appellant/complainant is partly allowed against the insurance company and the order passed by the District Commission below is set aside.

21. The opposite party No.1/insurance company is directed to pay amount of Rs.11,846.33/- (Rs. Eleven thousand eight hundred forty six and thirty three paise) to the complainant alongwith interest @ 9% per annum from the date of filing of the complaint till the realization of aforesaid amount.

22. The opposite party No.1/insurance company is further directed to pay a sum of Rs.5,000/- (Rs.five thousand) to the complainant as compensation for mental agony and harassment.

23. The opposite party No.1/insurance company is also directed to pay the sum of Rs.5,000/- (Rs.five thousand) to the complainant as litigation costs.

24. The opposite party No.1/insurance company is directed to comply the aforesaid order within 45 days from the date of receipt of copy of this order.

25. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of District Commission alongwith certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.

Justice Inder Singh Mehta
President

Veena