

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, FEROZEPUR.**

C.C. No.399 of 2021

Date of Institution: 01.10.2021

Date of Decision 21.08.2023

Mohinder Singh aged 28 years son of Lakha Singh, resident of Village Lakha Hazi,
Tehsil and District Ferozepur 98724-23498.

..... Complainant

Versus

National Insurance Company Limited, Branch office Malwal Road, Ferozepur City
through its Branch Manager.

..... Opposite party

Complaint under Section 35 of
the Consumer Protection Act.

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PRESENT :

For the complainant : Sh Pankaj Malhotra, Advocate

For the opposite party : Sh A.K. Sharma Advocate

QUORUM

Smt. Kiranjit Kaur Arora , President.

Smt. Suman Khanna, Member

ORDER**KIRANJIT KAUR ARORA PRESIDENT:-**

Complainant has approached to this Commission seeking directions to the opposite party to pay Rs.49,362/-i.e. sum insured with interest, to pay Rs.20,000/- as compensation for mental agony, pain and harassment and Rs.65000/- as litigation expenses.

2. Brief facts made out from the complaint are that the complainant being owner of the motor cycle bearing RC No.PB05-AA/4247 got the same insured from opposite party by paying the premium. The IDV of the motor cycle was declared at Rs. 49,362/- by the opposite party. It has been pleaded that unfortunately the motor cycle of the complainant was stolen on 26.07.2021 at Guruharsahai and rapat No.19 dated 20.06.2021 was recorded in the police station, Guruharsahai under Section 379 IPC. It has been pleaded that one Raj Kumar son of Sohan Lal who was well known to the complainant in need of the motorcycle for some days and as such the motor cycle was given to Raj Kumar and when the motor cycle was parked in the front of the house of Raj Kumar at 4.48 some unknown persons took away the motor cycle and despite best efforts the same could not be traced. Information was given to the police vide application dated 20.06.2021 by Raj Kumar. Since Raj Kumar was in possession of the motor cycle

at the time of the theft. The insurance company has misinterpreted this. After lodging of the complaint, all the documents required by the opposite party were given by the complainant. The opposite party wrote a letter to Raj Kumar dated 26.07.2021 writing therein that the insurance of the vehicle was in the name of Mohinder Singh complainant and Mohinder Singh has given a statement that he had sold the vehicle to Raj Kumar as there was no insurable interest and Raj Kumar was asked to explain regarding the insurable interest of Raj Kumar . Mohinder Singh given the reply dated 30.07.2021 wherein he clarified that complainant had given the motorcycle to Raj Kumar as Raj Kumar was in need of the motor cycle since his motor cycle was lying defective. The complainant further clarified that investigator appointed by the insurance company has taken his signatures on blank paper and wrote his statement on his own and never explained the same to Mohinder Singh. After this , the opposite party rejected the claim of the complainant stating therein that claim of the complainant has been repudiated on the ground that complainant has sold the vehicle to Raj Kumar. Repudiation of the claim by the opposite party is illegal and against the insurance norms and the provisions of the Insurance Act and Motor Vehicle Act. Pleading deficiency in service and unfair trade practice on the part of the opposite parties, hence this

complaint.

3. Upon notice, the opposite party has appeared and filed its written reply to the complaint raising certain preliminary objections interalia that there is no deficiency in service on the part of the opposite party; that the complainant has suppressed the material facts from this Commission; that while going through the claim document, the opposite party Insurance Company observed that the vehicle was insured in the name of Mohinder Singh resident of Village Lakha Hazi, Mohinder Singh had given a statement in writing that he has sold his vehicle to one Raj Kumar son of Mohan Lal, whereas, the insurance and RC of the vehicle was still in the name of Mohinder Singh. Raj Kumar who was claiming for the theft loss has insurance interest in the vehicle and as per terms and conditions of the policy, only that person can claim who has insurance interest. To enable the company to proceed further, the opposite party gave seven days time to said Raj Kumar to prove his insurable interest, otherwise the company would assume that he has no interest in pursuing the claim and the same would be closed as “No claim”. It has been pleaded that the plea of the complainant that the investigator got his signatures on the blank papers or he wrote his statement on his own or he never explained the same to Mohinder Singh is totally false as Raj Kumar lodged the complaint to the SHO P.S. Guruharsahi dated 20.06.2021 and he also

intimated the opposite party about the theft of the vehicle on 20.06.2021. The motor cycle was not transferred in the name of Raj Kumar from whose possession the motor cycle was stolen. On merits, the preliminary objections have been reiterated and the other allegations of the complaint have been denied.

4. Learned counsel for the complainant tendered into evidence Ex.C-1 to Ex.C-7 on behalf of the complainant. On the other hand, the learned counsel for the opposite parties have tendered into evidence Ex. OPs/1 to Ex. OPs/7 on behalf of the opposite party

5. We have carefully examined all the documents/evidence produced on record for its contained statutory merit and have also judiciously considered and perused the arguments duly put forth by the learned counsels for the parties.

6. It is the admitted case of the parties that the complainant got his vehicle bearing registration certificate No.PB-05AA/4247 insured from opposite party after paying requisite premium for the period from 24.11.2018 to 23.11.2023 vide bearing policy No.39010231186202475944, which is Ex.C-2. It is not disputed the fact that the IDV of the vehicle is Rs.36,372/- for the period w.e.f. 24.11.2020 to 23.11.2021 It is also admitted fact of the parties that on 20.06.2021 the vehicle in question was stolen. It is also admitted fact that after

stolen the vehicle, intimation in this regard was given to the opposite party as well as to the Police authorities. The plea of the opposite party is that the vehicle was insured in the name of Mohinder Singh resident of Village Lakha Hazi, Mohinder Singh had given a statement in writing that he has sold his vehicle to one Raj Kumar son of Mohan Lal, whereas, the insurance and RC of the vehicle was still in the name of Mohinder Singh. Raj Kumar who was claiming for the theft/loss has no insurable interest in the vehicle and as per terms and conditions of the policy, only that person can claim who has insurable interest. So the opposite party rightly repudiated the claim vide letter dated 26.07.2021, which is Ex.OP/2.

7. The learned counsel for the complainant has argued that the complainant is still registered owner of the motor cycle in question. He never sold the vehicle. The registration certificate as well as insurance policy is also in the name of the complainant. The vehicle in question on the day of theft was in possession of Raj Kumar, who was well known to the complainant. Merely parking of the vehicle in question on the day of theft, it cannot be presumed that the vehicle in question was sold to Raj Kumar. He relied upon the citation of the Hon'ble National Consumer Disputes Redressal Commission dated 23.10.2019 titled as

New India Assurance co. Ltd Versus Sandeep, wherein it was held:-

“Consumer Protection Act, 1986 Section 21 Insured Vehicle-Theft of Complainant filed a claim with petitioner, but his claim was repudiated on the ground that he had no insurable interest in subject vehicle since he had allegedly sold said vehicle to a person who negligently given car to an unknown person-On basis of evidences on record For a below reached to conclusion that there was no evidence on record to establish that vehicle had been sold by complainant to any other person. Insurance Company had opportunity to cross examine witness and confront him with his previous statement given by him before police while getting FIR recorded and also before Chief Judicial Magistrate at time of closure of investigation, yet it chose not do so- Petitioner failed to point out any wrong exercise of jurisdiction by For a below or that any miscarriage of justice done in this case-Revision petition has no merit and same in dismissed in limine.”

8. We have gone through the file, evidence produced on the file by the parties , it is established that the registration certificate of the motor cycle in question is still in the name of complainant and insurance policy is also issued by the opposite party in the name of the complainant. It is never transferred in the name of any person. The opposite party miserably failed to prove that the complainant ever sold the vehicle in question to Raj Kumar or any other else. Investigator Mr Harish Chawla in his investigation report i.e. Ex.OP/3 also mention that he has recorded the statement of Raj Kumar son of Sohan Lal, but the said statement was not placed on file by the opposite party best reason known to the opposite party.

9. It has been observed by the Commission that the claim of the complainant has been repudiated on the ground that the vehicle in question had already been sold. He had no insurable interest in subject vehicle since he had sold the said vehicle to Raj Kumar. There is no such document placed on file qua the sale of vehicle by registered owner except to make a reference of the statement of complainant to the Investigator of the insurance company. The vehicle in question is still in the name of the insured/complainant. Registration certificate has not been changed in the name of alleged buyer i.e. Raj Kumar. The opposite party is failed to bring in our notice any document of sale purchase showing that the subject

vehicle had been sold by the complainant in favour of Raj Kumar In spite of that the complainant gave clarification regarding his ownership to the opposite parties vide letter dated 30.07.2021. The opposite party repudiated the genuine claim of the complainant which amounts to deficiency in service on the part of the opposite party.

10. From the above discussion and keeping in view the case law produced by complainant, this Commission is of considered opinion that complainant has succeeded in proving his case and hence, complaint in hand is hereby partly allowed. Opposite party is directed to pay an amount of Rs.36272/- after applying deduction of compulsory excess clause i.e. Rs.100/- (Rs.36372/- minus Rs.100/- = Rs.36,272/-) alongwith interest @6% per annum from 1.10.2021 i.e. from the filing of present complaint till final realization within 45 days from the receipt of the copy of this order, failing which the rate of interest 9% yield on the amount till its realization. The opposite parties are further directed to pay Rs. 5000/- as consolidated compensation on account of mental agony, pain and harassment as well as litigation expenses. Complainant shall transfer the certificate of registration in the name of opposite party and shall also execute other required papers. The complaint could not be decided within the stipulated period due to heavy pendency

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of cases and incomplete of quorum. A copy of this order be communicated to the parties concerned free of costs. File be consigned to the record room.

Announced

21.08.2023

(Suman Khanna)
Member

(Kiranjit Kaur Arora)
President