

BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
SHIMLA (H.P.)

Complaint No.: 235/2018
Presented on: 02.08.2018
Decided on : 07.06.2024

1. Smt. Sunoru Devi, Wife of Shri Ramesh Chand,
Resident of Village Dhagali, Post Office Balag,
Tehsil Theog, District Shimla, H.P.
 2. Smt. Mushi, Wife of Shri Dhanian,
Resident of Village Dhagali, Post Office Balag,
Tehsil Theog, District Shimla, H.P.
 3. Shri Sunil, Son of Late Shri Ramesh Chand,
Resident of Village Dhagali, Post Office Balag,
Tehsil Theog, District Shimla, H.P.
 4. Master Sanjay, Son of Shri Ramesh Chand,
Resident of Village Dhagali, Post Office Balag,
Tehsil Theog, District Shimla, H.P.
 5. Kumari Ranjana, Daughter of Shri Ramesh Chand,
Resident of Village Dhagali, Post Office Balag,
Tehsil Theog, District Shimla, H.P.
- (Complainants No.4 & 5 being minors through their mother
and natural guardian Smt. Sunoru Devi/complainant No.1)

....Complainants

Versus

Reliance General Insurance Company Limited,
Rain Basera Building, 1st Floor, Khalini, Shimla, H.P.,
Through its Branch Manager.

....Opposite Party

Coram :

Dr. Baldev Singh, President.
Ms. Janam Devi, Member.

For the Complainants:	Mr. R.S. Chandel, Advocate.
For the Opposite Party:	Mr. Chandan Goel, Advocate.

ORDER:

Present complaint has been filed by Smt. Sunoru Devi & Ors. (hereinafter referred to as the complainants) under Section 12 of the Consumer Protection Act 1986 (hereinafter referred to as the Act) against Reliance General Insurance Company Limited (hereinafter referred to as the OP), on account of deficiency in service and unfair trade practice, seeking relief therein that the OP be directed to pay Rs.1,00,000/- alongwith interest etc.

2. The case of the complainant in brief is that the husband of the complainant No. 1, who was father of complainants No. 3 to 5 and son of complainant No. 2, was the owner of vehicle bearing No. HP-03A-0461 (Maruti Car) and the said vehicle was insured with the OP from 09.07.2014 to the midnight of 08.07.2015. It is stated that the aforesaid vehicle met with an accident on 10.08.2014 at Village Dhagali, Tehsil Theog, District Shimla, H.P. and at the time of accident the vehicle was being driven by Shri Ramesh Chand, who was the owner of the said vehicle and in this way he was owner cum driver of the aforesaid vehicle. It is stated that after accident FIR No. 109/2014, u/s 279, 337, 304-A of IPC was registered against the deceased Shri Ramesh Chand at P.S. Theog. It is stated that registration certificate of vehicle HP-03A-0461 was in the name of Ramesh Chand S/o Sh Dhani Ram R/o Village Dhagali, P.O. Balag, Tehsil Theog, District Shimla, H.P. but the insurance policy of said vehicle could not be transferred in his name because he died during that period and the said insurance is existing in the name of its previous owner namely Shri Kamal Jeet Singh, however, the aforesaid vehicle was sold by Shri Kanwar Jeet Singh to Shri Ramesh Chand and in this way the insurance policy was in existence and valid at the time of aforesaid accident. It is stated that the OP has not settled the genuine claim of the complainants. It is stated that aforesaid acts on the part of OP amount to deficiency in service and unfair trade practice. It is prayed that the complaint may be allowed.

3. After admission of complaint, notice was issued to the OP. The complaint so filed has been opposed by the OP by filing reply taking preliminary objections therein regarding maintainability, claim has never been lodged, complainants have no insurable interest, complaint is barred by limitation, misstatement of facts, suppression of facts, complicated question of law and facts are involved etc. It is stated that the complainants never lodged any claim with insurance company

alongwith requisite documents and thus, no question of deficiency establishes against insurance company in absence of any repudiation or rejection of claim. It is stated that the complainants are trying to make concocted story just to take benefit from insurance company without any logic and base. It is stated that Shri Ramesh Chand, who is stated to be registered owner of the vehicle in question, had no insurable interest as the insurance policy was in the name of the previous owner namely Shri Kamal Jeet Singh and as such the replying OP has no liability to indemnify the legal heirs of deceased Shri Ramesh Chand under Personal Accidental cover. It is stated that deceased Shri Ramesh Chand got the registration certificate changed in his name, which registration certificate was printed on 7.7.2014 and the insurance policy was obtained on 9.7.2014 i.e. after getting the registration changed in his name. It is stated that the replying OP denies the accident as well as death of Shri Ramesh Chand in an accident also, as the accident is stated to have occurred on 11.8.2014, whereas the FIR has been lodged on 14.08.2014. It is stated that accident is stated to have occurred on 11.8.2014 and the present complaint has been filed on 01.08.2018. It is admitted that the vehicle in question was insured with the respondent company, but it is stated that the same was procured in the name of Shri Kamal Jeet Singh and the deceased Shri Ramesh Chand never got the policy in his name and as such the deceased Shri Ramesh Chand had no insurable interest. It is denied that any claim was filed by the complainants before the replying OP or any notice was served upon the replying OP. It is denied that any letter dated 18.08.2017 was sent to replying OP. It is stated that there is neither any deficiency in service nor unfair trade practice on the part of the replying OP and prayed that the complaint may be dismissed.

4. The parties adduced evidence in support of their contentions. On behalf of the complainants affidavits of complainants were tendered in evidence. Complainants have also

filed documents in support of their contentions. On behalf of OP affidavit of Suryadeep Thakur was tendered in evidence. OP has also filed documents in support of its contentions.

5. We have heard learned counsels for the parties and have also gone through the entire record, carefully.

6. After hearing the submissions made by Ld. Counsel for the parties and perusing the entire record carefully, it is clear that the stand of the OP is that the complaint may be dismissed on the grounds that the complaint is time barred, complainants have not lodged the claim and the complainants are having no insurable interest. However, the plea of the complainants is that earlier the vehicle was in the name of Kamaljeet, which was purchased by the husband of the complainant No.1 Ramesh Chand and the same met with an accident on 10.08.2014. It is stated that at the time of accident Shri Ramesh Chand, being owner of the vehicle was driving the vehicle and in the said accident he sustained injuries and ultimately died. It is stated that the complainants informed the OP about the accident and also lodged FIR with the police station Theog. It is stated that the vehicle was transferred in the name of husband of the complainant No.1, but the insurance policy could not be transferred and remained in the name of previous owner Shri Kamaljeet. It is stated that when the vehicle had been transferred in the name of husband of the complainant No.1 then the insurance policy is deemed to have been transferred in his name. It is stated that when the claim was not settled by the OP, then legal notice dated 08.06.2016 was issued to OP and thereafter letter dated 18.08.2017 with the request to OP to settle the claim of complainants, but even then the claim was not settled. It is stated that as the legal notice was issued within the period of two years from the date of accident and thereafter, the complaint has been filed also within the period of two years, therefore, the present complaint is within limitation. It is also stated by the complainants that as the vehicle was in the name of Shri Ramesh

Chand, hence, as per law contained in section 157 of the Motor Vehicles Act, husband of the complainant No.1, being owner has insurable interest because insurance policy stands deemed to be transferred in the name of the registered owner. The specific plea of the complainants is that the complainants after accident informed the OP about the accident and furnished all the documents, but even then the claim was not settled. The plea of the OP is that the complainants have no insurable interest, the complaint is barred by limitation and no claim has been lodged by the complainants with the OP and complaint may be dismissed.

7. It is very much clear from the foregoing discussion of pleadings and evidence of parties on record that the plea of the complainants is that deceased Ramesh Chand was owner of the vehicle in question and he himself was driving the vehicle at the time of accident, in which he sustained injuries, regarding which accident FIR was lodged with police station Theog and he was got treated at Theog and IGMC, Shimla, but ultimately he died due to injuries sustained in the accident. It is stated that the deceased Ramesh Chand was holding valid and effective driving license at the time of accident. Further plea of the complainants is that they requested the opposite party for settlement of PA claim and issued legal notice dated 8th June, 2016 and letter dated 18th August 2017 thereafter, but even then the claim was not settled by opposite party. The plea of opposite party, on the other hand, is that the vehicle was in the name of Kamal Jeet Singh, who was the previous owner of the vehicle and vehicle, in question, was transferred in the name of the deceased on 7th July, 2014, whereas the insurance policy, in question, covers the period from 19th July 2014 to 18th July 2015, which has been issued in the name of Kamal Jeet Singh and on the basis of this the plea of the OP is that the complainants have no insurable interest so for PA claim is concerned. Further plea of the opposite party is that accident took place on 10th August 2014,

FIR has been lodged on 14th August 2014 and the present complaint has been filed on 2nd August 2018 and is not within limitation. Hence, it is first to be seen whether the complaint is within limitation or not. The specific plea of the complainant is that the accident has taken place on 10th August 2014 and in this regard FIR was lodged, all the formalities were completed by the complainants by informing the opposite party, but when the claim was not settled, then legal notice dated 8th June, 2016 was issued and thereafter representation dated 18th August, 2017 was made by the complainants to the opposite party. The opposite party in reply has not specifically denied the legal notice as well as representation made by the complainants to the opposite party, however, has stated that complainants have misstated the facts in this regard, meaning thereby that when there is no specific denial regarding notice and representation on the part of the opposite party, then taking the date of accident i.e. 10th August 2014, legal notice dated 8th June, 2016, and representation dated 18th August 2017 into consideration keeping in view the date of filing of the complaint i.e. 2nd August 2018, the complaint appears to be within limitation. Hence, it is held that the complaint has been filed by the complainants within the prescribed period of limitation and the complaint is not barred by limitation.

8. Now comes the question of merits whether the complainants are entitled for PA cover on account of death of owner of the vehicle. The plea of the opposite party is that Kamal Jeet Singh was previous owner of the vehicle and the vehicle has been transferred in the name of deceased, as printed on RC on 7th July 2014 and insurance policy covers the period from 9th July 2014 to 8th July 2015 and in it Shri Kamal Jeet Singh has been mentioned as owner of the vehicle. The plea of the opposite party that complainants have no insurable interest in respect of PA claim of the deceased cannot be accepted for the reason that insurance company must have issued the insurance policy after going through the documents of the vehicle more particularly

registration certificate pertaining to the ownership of the vehicle. As per pleaded case of the opposite party, registration certificate has been transferred in the name of the deceased on 7th July, 2014, then why the insurance company issued insurance policy in the name of previous owner. The opposite party has failed to explain in this regard. Moreover, the law is very much clear in this regard that if the vehicle has been transferred and the insurance policy is in subsistence, the same got transferred in the name of new owner, but in the present case insurance policy has been issued subsequent to the transfer of the ownership of the vehicle, therefore, mistake regarding mentioning the name of previous owner appears to be on the part of the opposite party or may be due to clerical mistake because opposite party must have issued the policy after verifying the documents of the vehicle, more particularly ownership of the vehicle, hence, if the name of previous owner is on the insurance policy then complainant may not suffer for such mistake, because the same cannot be attributed to the complainants, rather, it was the responsibility of the opposite party in this regard to issue the insurance policy after looking properly the documents such as RC etc. and thereafter issue the insurance policy on receipt of premium. In this case, receipt of premium is not denied by the opposite party.

9. The Ld. Counsel for the complainant has relied upon the judgment of Hon'ble SC in case titled Surendra Kumar Bhilawe Versus NIAC, Civil Appeal No. 2632 of 2020, decided on 18.06.2020, and stated that case of the complainant is covered by the said judgment of the SC. The Hon'ble SC has held that Section 157 of the MV Act provides that where a person, in whose favour the certificate of insurance has been issued in accordance with the provisions of Chapter XI of the Motor Vehicles Act, transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and policy described in the certificate are

to be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred, with effect from the date of its transfer. It is also held that the explanation to Section 157 clarifies for the removal of all doubts, that such deemed transfer would include transfer of rights and liability of the said certificate of insurance and policy of insurance. Hence, it is very much clear from the provisions contained in Section 157 and as held by the Hon'ble SC mentioned supra that when ownership of the vehicle was transferred by the previous owner in favour of complainant then the insurance also stands deemed to have been transferred with all rights and liabilities. Assuming that the policy of insurance is in the name of previous owner and not in the name of deceased, it cannot be said that there is no insurable interest in the present case. Reason being that the OP after receipt of premium has issued the insurance policy, in question, and also after verifying the documents of the vehicle like RC etc. and if there is any mistake about the name of insured, for the same complainants may not suffer for their no fault. Moreover, it is not the case of the OP that premium amount was paid by the previous owner and not by the present owner of the vehicle. Further there is no other violation of terms and conditions of the policy because the deceased was holding valid and effective driving licence to drive the vehicle at the time of the accident. Therefore, we are of the considered opinion that the complainants have insurable interest and the opposite party is under obligation to indemnify the complainants with respect to PA claim as per terms and conditions of the policy.

10. Now comes the question of quantum of compensation. As per policy, Annexure A-3, the PA cover for owner-cum-driver is Rs.1,00,000/- and hence, the complainants are entitled for such amount from the OP.

11. In view of the foregoing discussion and reasons assigned therein the complaint is ordered to be allowed and the OP is directed to pay Rs.1,00,000/- to the complainants

alongwith interest @9% per annum from the date of filing of complaint till its payment. The OP is also directed to pay a sum of Rs.10,000/- to the complainants as compensation for mental harassment and agony and Rs.10,000/- as costs of litigation. The OP is directed to comply this order within 45 days from the date of passing of order. Copy of this order be supplied to the parties free of cost as per rule. The file after its due completion be consigned to the Record Room.

Announced on this the 7th day of June, 2024.

(Dr. Baldev Singh)
President

(Janam Devi)
Member

GUPTA