

**BEFORE THE DISTRICT CONSUMER DISPUTES  
REDRESSAL COMMISSION, VIJAYAPUR**

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**COMPLAINT NO:123/2023**

**Date of Filing :21/07/2023**

**Date of Disposal :19/08/2024**

P r e s e n t

**1) SHRI AMBADAS KULKARNI. G., B.A., LLB (Spl)**

**President.**

**2) SMT V.B. MUTALIK DESAI, B.Sc., LLM (Spl)**

**Lady Member.**

**Complainant/s :**

- 1) Sri.Basavaraj S/o Mudakappa Kumbar,  
Age: 44 years, Occ: Business,  
R/o: Basava Nilaya, Ganesh Nagar,  
Talikota, Dist.Vijayapur.

(By Shri.V.H.Galappagol, Adv.)

**Opposite Party/ies**

- 1) The Manager,  
The Reliance General Insurance Co. Ltd.,  
Rammandir Road, Vijayapur.

(By Smt.V.P.Jamangoudar, Adv.)

**JUDGEMENT DELIVERED BY****HON'BLE SHRI AMBADAS KULKARNI G., PRESIDENT**

This complaint filed by the complainant U/Sec. 35 of the Consumer Protection Act, 2019 against the OP (hereinafter referred to as "OP") to pay an amount of Rs.5,81,198/- with interest @ 18% p.a. from the date of claim till realization, Rs.50,000/- compensation for mental agony and cost of the proceedings.

**Brief facts of the case are as under:**

**2)** The complainant is the owner and R.C. holder of car bearing No.KA-51/AB-5656 and OP has issued commercial package policy bearing No.1701221233800088803, which covers own damages of the said vehicle and the said policy was in-force from 27.06.2021 to 26.06.2022.

It is further stated that on 13.12.2021 at about 8-00 PM, the driver Prashank Shirur was driving the said car from Sarawad to Babaleshwar Road, Near Nayi Halla, the said vehicle met with an accident, due to this vehicle was damaged. In this regard case was registered in Babaleshwar Police Station under PS CR.No.163/2021. Immediately, same was informed to OP and thereafter OP advised the complainant to take the car to Maruti Showroom, Vijayapur. As per advise of OP, complainant

took the vehicle to said showroom and furnished all the required documents to him for settlement under Claim No.3122138354.

It is further stated that OP taken signatures on various forms and documents and told that they will settle the claim. Thereafter, OP's authorised surveyor visited the spot and submitted the report, but OP has repudiated the claim of the complainant on 30.08.2022 with reason that "delay in communicating the accident". But, the complainant has immediately reported about the accident to OP on 14.12.2021 and OP after 3 days called to him to submit the documents. Then, complainant took his car to Rohan Garage and got estimated the damages of Rs.5,81,198/- including spare parts and labour charges.

It is further stated that OP is very well known about the accident, but repudiated the claim without verifying the records. Finally, complainant got issued legal notice to OP calling upon him to settle the claim, in-spite of service of notice OP neither reply nor settle the claim. So the attitude and acts of OP it amounts to deficiency in service. Hence, complainant filed this complaint.

3) After the service of the notice, OP appeared through his counsel and filed written denying the contents of the claim petition.

OP admitted that complainant has obtained the insurance policy from him and there is a definite procedure for settlement of a claim. The OP has to follow the procedure; any claim cannot be settled without considering surveyor report, validity of the documents of the vehicle and driving license of the driver, permit and fitness of the vehicle.

It is submitted that, complainant has given intimation to the OP-Insurance Company for accident on 17.05.2022. After 170 days of alleged loss which caused on 13.12.2021 and he has violated the terms and conditions of the policy Condition No.1. The complainant has used the vehicle on the public road without any valid permit and driving license for driver is not only offence. But, also a fundamental breach of terms and conditions of policy. In view of facts, OP has repudiated the claim of the complainant for the reasons mentioned in the letter dtd:30.08.2022 and there is no deficiency in service on the part of the OP.

It is further submitted that if this Hon'ble Commission comes to the conclusion that this OP is liable for any compensation then Commission may kindly consider the survey report as part and parcel of this objection. Hence, OP prays to dismiss the complaint with compensatory costs.

4) In order to prove the case, the complainant examined as PW-1 to 3 and Ex.P-1 to Ex.P-16 documents

are marked. OP examined as RW-1 and got marked documents as Ex.R-1 to R-5.

5) Heard the oral arguments and perused the written arguments submitted by both the parties.

6) The points that arise for consideration are:

**Point No. 1 :** Whether the complainant proves the OP committed the deficiency in service?

**Point No. 2 :** Whether the complainant is entitled for the reliefs as sought for?

**Point No. 3 :** What order?

7) Our answer to the above points are:

**Point No. 1 :** Partly in the Affirmative.

**Point No. 2 :** Partly in the Affirmative.

**Point No. 3 :** As per final order.

### **REASONS**

8) **POINT No. 1 & 2** :- The complainant has filed affidavit evidence in support of the case and reiterated same facts of the case and claim of compensation as stated in complaint. OP filed affidavit evidence and reiterated the

same facts whatever he has stated in his written version. The complainant has filed the documents as Ex.P-1 to Ex.P-16. OP has filed written version and produced the relevant documents at Ex.R-1 to Ex.R-5.

9) Looking to the exhibited documents of complainant at Ex.P-1 is Aadhar card of the complainant, Ex.P-2 is copy of insurance policy, Ex.P-3 is repudiation letter dtd:30.08.2022 issued by OP to complainant, Ex.P-4 is legal notice dtd:17.02.2023 issued by Advocate for complainant to OP, Ex.P-5 is track consignment details, Ex.P-6 is postal receipt, Ex.P-7 is motor vehicle accident report issued by Babaleshwar PS, Ex.P-8 is Registration Certificate bearing No.KA-51/AB-5656, Ex.P-9 is D.L. in the name of Prashant R. Shirur, Ex.P-10 is F.I.R., Ex.P-11 is copy of complaint given by Ramappa Shirur father of the driver to P.S.I. Babaleshwar PS, Ex.P-12 is crime details form, Ex.P-13 is charge sheet submitted by Babaleshwar PS to 1 Addl. Civil Judge & JMFC Court, Vijayapur, Ex.P-14 is estimation bill issued by Rohan Garage, Ex.P-15 is survey report dtd:14.12.2023 and Ex.P-16 is photographs of damage vehicle.

10) Looking to the exhibited documents of OP-Insurance Company at Ex.R-1 is attested copy of policy along with wordings, Ex.R-2 is survey report dtd:28.08.2022, Ex.R-3 is repudiation letter

dtd:10.08.2022, Ex.R-4 is copy of claim form submitted by complainant and Ex.R-5 is track consignment details.

11) After careful consideration of the case on hand, it is not disputed that OP has issued the policy in the name of complainant as per Ex.P-2 & Ex.R-1 and on the date of accident the policy was in-force and in the name of complainant.

12) It is not disputed that the complainant vehicle bearing No.KA-51/AB-5656 is insured with the OP. The contention of the complainant that his vehicle was damaged in the accident and repaired charges to the extent of Rs.5,81,198/-, the said charges is denied by the OP. On the other hand the OP has not denied the accident fact and damages to the vehicle. The surveyor Nagappagouda Patil examine the complainant's vehicle and assessed the loss of Rs.3,44,188/- and in this regard he submitted the documents i.e. survey report. The complainant denied the survey report, but not produced rebuttal evidence to discard the survey report in the present case, surveyor conducted the survey and submitted the report, net assessed loss is Rs.3,44,188/-.

13) It is pertinent to note that as per the citation of the Hon'ble State Commission and Hon'be National

Commission, wherein it is observe that the surveyor report is having more value and the same is to be looked into. Therefore, we are of the consider opinion that the complainant is entitled Rs.3,44,188/- in the repair charges. With this opinion, we answer Point No.1 & 2 partly in the affirmative.

**14) POINT No. 3**:- In view of our answers on point No. 1 and 2 and for the reasons stated above, we proceed to pass the following:

**ORDER**

- 1) The complaint filed U/Sec. 35 of C. P. Act 2019 is partly allowed.
- 2) The OP is directed to pay the amount of Rs.3,44,188/- **(Rupees Three lack Forty Four Thousand One Hundred and Eighty Eight Only)** for damages of the vehicle with interest @ 6% p.a. from the date of complaint till its realization.
- 3) The OP is directed to pay a sum of Rs.5,000/- towards mental agony and Rs.2,000/- towards cost of litigation.
- 4) The order shall be complied within 2 months from the date of Judgment, failing which the carrying interest at the rate of 9% p.a. on Rs.3,44,188/- **(Rupees Three lack Forty Four Thousand One Hundred and Eighty Eight Only)**.



6) Send free copy of order to all parties.

(Order dictated on online, corrected and then pronounced in the open Commission on **19<sup>th</sup> day of August, 2024**)

**(SRI. AMBADAS  
KULKARNI. G.)  
President.**

**(SMT. V.B. MUTALIK  
DESAI)  
Lady Member.**

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**\\ANNEXURE//**

**Witnesses examined on behalf of the complainant.**

CW-1 — Sri.Basavaraj Mudakappa Kumbar,  
CW-2 — Sri. Naheem Bepari, Owner of Rohan Garage,  
CW-3 — Sri.Nagangouda Pati, Authorized Surveyor,

**Documents marked on behalf of the complainant.**

- Ex. P-1 is Aadhar card of the complainant.  
Ex. P-2 is copy of insurance policy.  
Ex.P-3 is repudiation letter dtd:30.08.2022 issued by OP to complainant.  
Ex.P-4 is legal notice dtd:17.02.2023 issued by Advocate for complainant to OP.  
Ex.P-5 is track consignment details.  
Ex.P-6 is postal receipt.  
Ex.P-7 is motor vehicle accident report issued by Babaleshwar PS.  
Ex.P-8 is Registration Certificate bearing No.KA-51/AB-5656.  
Ex.P-9 is D.L. in the name of Prashant R. Shirur.  
Ex.P-10 is F.I.R.,

- Ex.P-11 is copy of complaint given by Ramappa Shirur father of the driver to P.S.I. Babaleshwar PS.
- Ex.P-12 is crime details form.
- Ex.P-13 is charge sheet submitted by Babaleshwar PS to 1 Addl. Civil Judge & JMFC Court, Vijayapur.
- Ex.P-14 is estimation bill issued by Rohan Garage.
- Ex.P-15 is survey report dtd:14.12.2023.
- Ex.P-16 is photographs of damage vehicle.

Witnesses examined on behalf of the OP

RW-1 — Sri.Amaranath D.V. Executive Manager,

Documents marked on behalf of the OP

- Ex.R-1 is attested copy of policy along with wordings.
- Ex.R-2 is survey report dtd:28.08.2022.
- Ex.R-3 is repudiation letter dtd:10.08.2022.
- Ex.R-4 is copy of claim form submitted by complainant.
- Ex.R-5 is track consignment details.

**(SHRI AMBADAS  
KULKARNI G)  
President.**

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Lady Member.**

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