

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ANANTHAPURAMU.

Date of filing: 20.12.2019

Date of final hearing: 04.11.2024

Date of Disposal: 23.11.2024

C.C.No.34/2022**Between:**

Chinthapanti Siva Sankar Reddy,
S/o Chennai Reddy, Aged about 46 years,
Transport Business, D.No.5-108,
O.C.Colony, Potlamarri (V),
Bathalapalli (M), Ananthapuramu District.

... Complainant.



(Through: Sri A.V.Siva Reddy and Sri A.Dasthagiri Basha, Advocates)

Vs.

The Shriram General Insurance Company Limited,
Rep. by its Authorized Signatory/Manager,
10012, E-8, RIICO Industrial Area Sitapura,
Jaipur, Rajasthan.

... Opposite Party

(Through: Sri T.Ramakrishna, Advocate)

CORAM:

Present: Smt.M.Sreelatha, President
Kum.D.Grace Mary, Member
Sri B.Gopinath, Member

(PER SRI B.GOPINATH, MEMBER)
JUDGEMENT

1. Complaint has been filed by the complainant under Section 35 of the Consumer Protection Act, 2019 to direct the opposite party to pay a sum of Rs.3,50,000/- towards expenditure made repair the damaged vehicle along with interest from the date of filing of this complaint till realization, Rs.50,000/- towards mental agony and deficiency in service and Rs.5,000/- towards cost of this litigation.

2. Brief facts of the complaint are that: The complainant is a registered owner of the Eicher Van bearing No.AP-02-Y-4293, the said vehicle was insured with the opposite party and the opposite party issued a policy bearing No.10012/3118/008696 valid from 31.07.2017 to 30.07.2018. On 14.10.2017 on the way to Ananthapuramu from Hyderabad as an empty vehicle at about 11.30 P.M., near Rayakallu Tollage, on Hyderabad to Ananthapuramu Road, the driver of the complainant's vehicle drove the vehicle in rash and negligent manner and dashed against the tollage wall, as a result the said vehicle was totally damaged. Immediately after the accident

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VEHICLE DAMAGE DATE OF DISPOSAL: 23.11.2024

the complainant informed about the accident to the opposite party. The complainant made a claim application under claim No.10000/31/18/C/046756, the opposite party refused complainant's request and on 23.12.2017 the opposite party issued a letter repudiating the claim of the complainant. The complainant got repaired his damaged vehicle by spending a total amount of Rs.3,50,000/- The said vehicle was repaired by one Mahaboob Subhani of Auto Garage, Near Rajahamsa Apartment, Gooty Road, Ananthapuramu. But the opposite party not paid the accidental insurance amount to the complainant so far despite many reminders. Hence, the present complaint.

3. The opposite party filed counter the policy covers, use only under a permit within the meaning of Motor Vehicles Act, 1988. Using/plying the vehicle without valid permit to ply is a clear violation as per terms and conditions of the insurance policy and also as per M.V.Act. The driver of the complainant vehicle, dashed against the tollgate wall, as a result the complainant Eicher Van bearing registration No.AP-02-Y-4293, got totally damaged, is totally false and the same is only a concocted story of the complaint only to have some unlawful gain. If at all the version of the complainant is to be true and correct, nothing prevented the complainant to inform the same to the nearest police station and if not the complainant, as per the version of the complainant, the vehicle hit the tollgate and got damaged, if at all if it were to be true, the tollgate authorities concerned will definitely give information to the policy, surprisingly, the said things had not taken in this case and this clearly shows that, the version of the complainant is totally false and the same is created only for the purpose of the case to have unlawful gain. The complainant except alleging that he informed the same to the insurance company, no documentary evidence has been filed by complainant. If the allegations of the complainant were to be true nothing prevented the complainant, to make complaint to the police or two the insurance company. No accident spot photographs or vehicle damages photos have been taken and submitted by the complainant. The bill submitted by the complainant does not bear the date on which date it was got repaired. The complainant instead of taking the vehicle to a authorized show room, the complainant alleged that, he took his vehicle to a private mechanic at a private Garage, which is totally against to the terms and conditions of the insurance policy.

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4. On behalf of the complainant, the complainant filed his chief examination affidavit as PW1 and marked Ex.A1 to A6 documents.

Sri K.Bangarayya filed his chief examination affidavit as RW1 and marked Ex.B1 & B2 documents are marked on behalf of the opposite party. Sri S.Vasudeva Rao filed his chief examination affidavit as RW2 and marked Ex.B3 to B6 documents are marked on behalf of the opposite party.

5. Now, the points for consideration and determination are:

1. *Whether there is any deficiency in service on the part of the Opposite party?*
2. *Whether the complainant is entitled to the reliefs as prayed?*
3. *To what relief?*

6. Heard both sides.

7.POINT No.1:- Brief facts of the case are that the complainant is the owner of the Eicher vehicle by No.AP-02-Y-4293 and he obtained insurance policy with the opposite party with a policy No.10012/3118/008696 which is valid from 31-07-2017 to 30-07-2018, the complainant submits that while the policy was in force period, on 14.10.2017 while his Eicher van on the way to Ananthapuramu from Hyderabad as an empty vehicle at about 11.30 P.M., near Rayakallu Tollgate, the driver of the vehicle drove the vehicle in rash and negligent manner and dashed against the tollgate wall, as a result the complainants vehicle got totally damaged. The complainant further states that he immediately informed to the opposite party and made a claim application under claim No.10000/31/18/C/046756 under Ex.B3. The complainant further submits that he got repaired his Eicher vehicle in private garage by spending a total amount of Rs.3,50,000/- and he also states that he requested the opposite party to pay the repairs expenditure amount, but the opposite party repudiated the same under Ex.A1/B2. As the complainant got vexed with the failure efforts towards payment of expenditure bill, he came to this commission for his grievance.

8. On the other hand the learned counsel of the opposite party submits that the complainant himself agreed that due to rash and negligent driving the driver of the Eicher vehicle dashed the toll gate which was resulted heavy damages to the said vehicle, then what prevented the complainant to inform the same in concerned police station, if so what prevented the complainant to produce those documents in this commission. The opposite party further submits that the complainant except alleging that he informed the same to the insurance company, and police station, no documentary evidence has been filed by him. The opposite party further submits that no

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accident spot photographs or vehicle damages photos have been taken and submitted by the complainant before this commission. If at all if it was true that the vehicle hit the toll gate then the authorities of the toll gate will definitely informed to the police station, surprisingly the said step was not taken by toll gate staff it shows that the total accident was concocted story for the propose of the wrongful gain. The opposite party submits that because of non- following the mandatory provision of policy in case of damage to the vehicle, and the complainant has not filed police intimation letter, FIR or damages certificate of the vehicle, hence this opposite party had lost the opportunity to investigate and to ascertain the genuinely of the claim of the complainant. The opposite party further submits that the bill submitted by the complainant does not having any date on when it was issued, and when the vehicle got repaired, whether the bill discloses the estimation, repair costs, or, invoice, is not clear. The opposite party filed some documents which received from the R.T.O. Ananthapuramu. Documents by RTO clearly disclose that the vehicle was in inactive status when the date of accident was alleging under Ex B4. Due to all these reasons opposite party states that they are not liable for the damages, and there is no deficiency in service on the part of the opposite party, and they prayed to dismiss this complaint.

9. Upon reviewing documents, evidence and affidavits, we noted that the complainant states that the Eicher vehicle was involved in an accident on 14.10.2017, at Rayakallu toll gate, it is an admitted fact that the vehicle was insured under policy No.10012/3118/008696 under Ex.A2. The complainant states that he expended Rs.3,50,000/- for car repairs at private garage. The complainant further states that he approached the opposite party for so many times to get refund of the car repairs amounts, but they repudiated the claim under Ex.A1 on 23-12-2019. After all efforts the complainant got issued a legal notice to opposite party under Ex.A4 on 05.12.2019. The opposite party averred that the car accident is a created story for wrongful gain, they also submits that the complainant mentioned the date of accident was on 05-04-2018 and in his statement he mentions the date of accident is on 10-04-2018, which is suspicious, though the documents produced by the opposite party under Ex.B3, B4,B5, are clearly discloses that the vehicle was in inactive status when the date of accident of the vehicle i.e. on14.10.2017, so the opposite party counsel argued that when the vehicle was in inactive status how the vehicle got damaged with that accident, the opposite party

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counsel also argued that the said accident was created story for wrongful gain, if so, the opposite party further pleaded that the opposite party admitted to appointing an independent IRDA approved surveyor to inspect the damaged vehicle. This surveyor estimated the damages of Rs.56,485/-, which indicating that the opposite party did indeed have knowledge of the said accident. when the opposite party itself agreed that they appointed a surveyor, it discloses that they have attended the vehicle to survey the damages, as the opposite party contentions that the alleged car accident was not happened at Rayakallu toll gate, or at any place else, and they also averred that the said accident was a concocted story for wrongful gain, both statements are contradictory with each other, it clearly shows that there was an accident of Eicher vehicle on so and so date, it was fact that the complainant had communicated about the accident to opposite party. Basing on the claim form the opposite party appointed IRDA surveyor and he got issued a report disclosing the damages of the vehicle and gave a report to an extent of Rs.56,485/-, and it is very surprising that the opposite party has not filed the survey report. Here the burden lies on the opposite party to establish this, Hence it is clear that the vehicle got damaged. If so, here the immediate duty of the opposite party to provide written intimation confirming their acceptance of the IRDA approved survey report findings and their commitment to pay the estimated amount of Rs.56,485/- However, instead of providing such intimation, they repeatedly cited unsubstantiated reasons and prolonged the matter, ultimately leading to the filing of this complaint. Hence the deficiency in service clearly appears on the opposite party and for that the opposite party is liable to pay compensation. The learned counsel of the opposite party filed a citation as the case details are that the complainant contention that he paid toll tax and goods tax while entering in to the state of Himachal Pradesh, and he argued that by these payments itself he got permit to ply in the state of Himachal Pradesh, and here he is not having permit to ply within Himachal Pradesh, and also no temporary permit was taken to enter in the state, Thus there was clear violation of Sections 66, 87, and 88 of the motor vehicle act, 1988. The facts and circumstances of the case are not related with this instant case, and this point is answered accordingly in favour of the complainant and against the opposite party.

10. POINT No.2:- With regard to entitlement of the compensation the complainant prayed this commission to direct the opposite party to pay

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Rs. 3,50,000/- towards vehicle repair charges, and interest on such amount from the date of filing this complaint, and to direct the opposite party to pay Rs.50,000/- as compensation for mental agony and deficiency in service, and to pay Rs.5,000/- towards legal expenses. As it was discussed in above Para's though the complainant failed to produce any required documents to establish the accident, it was proved that the deficiency in service clearly appears on the part of the opposite party, for which the complainant is entitled for compensation of Rs.20,000/- towards mental agony and deficiency in service. Here the complainant prayed to direct the opposite party to refund the vehicle repair charges i.e., Rs.3,50,000/- but, the complainant failed to establish the expenditure bill of vehicle repairs, and said bill paper doesn't flashes that either the bill contains the estimation bill for repairs or invoice or repairs bill, and also the seal and signature of the service center is not in proper procedure, it shows that it is a fabricated bill for wrongful gains, the complainant instead of repair the said vehicle in a authorized service center why he approached the private garage is also suspicious. The complainant simply prayed to grant such amounts is not permissible, how he may entitled the expenditure bill without producing a slip of any authenticated bill, the complainant failed to establish the expenditure bill, hence he is not entitled to get the repair charges as he prayed, and the opposite party is directed to pay the vehicle repair charges as per their surveyor's report i.e. Rs.56,485/- with an interest payable @6 p.a., from the date of repudiation of the claim. This point is answered accordingly.

11.POINT No.3:- In the result, the complaint is allowed in part by directing the opposite party to pay Rs.56,485/- towards vehicle repair charges with interest @6% p.a., from the date of repudiation i.e., on 23.12.2017 till realization. The opposite party is also liable to pay compensation of Rs.20,000/- towards deficiency in service and mental agony and Rs.3,000/- towards legal costs within 45 days from the date of this judgment.

Dictated to the steno directly on desktop, corrected and pronounced by us in open Commission, this the 23rd day of November, 2024.

B. Gowind 23/11/24
B.GOPINATH
MEMBER,
DISTRICT CONSUMER COMMISSION,
ANANTHAPURAMU

D. Grace 23/11/24
D.GRACE MARY,
MEMBER
DISTRICT CONSUMER COMMISSION,
ANANTHAPURAMU

M. Sreelatha 23/11/24
M.SREELATHA
PRESIDENT
DISTRICT CONSUMER COMMISSION
ANANTHAPURAMU



**APPENDIX OF EVIDENCE
WITNESSES EVIDENCE ON CHIEF AFFIDAVIT
ON BEHALF OF THE COMPLAINANT:**

PW1: Sri Chinthapanti Siva Sankar Reddy, complainant

ON BEHALF OF THE OPPOSITE PARTY

RW1: Sri K.Bangarayya, on behalf of the opposite party.
RW2: Sri S.Vasudea Rao, on behalf of the opposite party.

EXHIBITS MARKED ON BEHALF OF THE COMPLAINANT

Ex.A1: Attested copy of letter dt.23.12.2017 sent by the opposite party to the complainant.
Ex.A2: Attested copy of Certificate cum policy schedule issued by the opposite party valid from 31.07.2017 to 30.07.2018.
Ex.A3: Attested copy of Certificate of registration of vehicle bearing No.AP-02-Y-4293.
Ex.A4: Office copy of the legal notice dt.05.12.2019 got issued by the complainant to the opposite party.
Ex.A5: Postal acknowledgement.
Ex.A6: Attested copy of driving license of N.Adinarayana.

EXHIBITS MARKED ON BEHALF OF THE OPPOSITE PARTY

Ex.B1: Attested copy of Certificate cum policy schedule issued by the opposite party valid from 31.07.2017 to 30.07.2018.
Ex.B2: Attested copy of letter dt.23.12.2017 sent by the opposite party to the complainant.
Ex.B3: True copy of claim intimation sheet.
Ex.B4: Primary Permit Details of the vehicle issued by the Registering Authority, Ananthapuramu.
Ex.B5: Xerox copy of vehicle history report for registration No. AP-02-Y-4293.
Ex.B6: Xerox copy of B-register for vehicle.

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ANANTHAPURAMU

M. Sreelatha
M.SREELATHA
PRESIDENT
DISTRICT CONSUMER COMMISSION
ANANTHAPURAMU

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25.11.24