

M. P. STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

# **PLOT NO.76, ARERA HILLS, BHOPAL**

## **FIRST APPEAL NO. 1303 OF 2017**

**(Arising out of order dated 25.05.2016 passed in C.C.No.255/2016 by District Commission, Mandla)**

ALOK KHANDELWAL,

S/O SHRI HARISHANKAR KHANDELWAL,

R/O UMARIA, MOHALLA WARD NO.03 NAINPUR,

TEHSIL-NAINPUR, DISTRICT-MANDLA (M.P.)

... APPELLANT.

Versus

1. BRANCH MANAGER, IFFCO TOKYOG GENERAL

INSURANCE COMPANY LIMITED,

BRANCH-MANDLA DISTRICT-MANDLA (M.P.)

2. AUTHORISED DEALER, MAHINDRA & MAHINDRA.

ACCORD MOTORS, PARASIA ROAD, PARTALA,

TEHSIL & DISTRICT-CHHINDWARA (M.P.)

3. BHAGWATI INDIA MOTORIZER PVT.LTD.

AUTHORISED SELLER MAHINDRA MOTORS,

JABALPUR ROAD, TINDNI,

TEHSIL & DISTRICT-MANDLA (M.P.)

.... RESPONDENTS.

### **BEFORE :**

**HON'BLE SHRI A. K. TIWARI : ACTING PRESIDENT**

**HON'BLE DR. SRIKANT PANDEY : MEMBER**

**COUNSEL FOR PARTIES :**

Shri Sunil Tiwari, learned counsel for the appellant.

Shri Harpreet Singh Gupta, learned counsel for the respondent no.1.

None for the respondent no.2 and 3.

**ORDER**

(Passed On 22.07.2024)

The following order of the Commission was delivered by A. K. Tiwari, Acting President:

This appeal by the complainant/appellant arises out of the order dated 25.05.2016 passed by the District Consumer Disputes

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Redressal Commission, Mandla (for short 'District Commission) in C.C.No.255/2016 whereby the complaint filed by him has been dismissed.

2. The brief facts of the case as per the complainant/appellant (hereinafter referred to as 'complainant') are that on 24.04.2015 after availing finance he had purchased a bolero SLX bearing registration no. MP-51 CA-1057 from the opposite party no.3, the authorized dealer of the Mahindra Motors. The subject vehicle was insured with the opposite party no.1/respondent no.1-insurance company (hereinafter referred to as 'insurance company') for the period w.e.f. 28.04.2015 to 27.04.2016. It is submitted that during insurance cover on 22.11.2015 the subject vehicle while returning from Chhindwara near Parasia was collided with the divider and got damaged. The insurance company was informed. The opposite party no.2 gave an estimate of Rs.2,97,916/- towards repairs of the vehicle. As per complainant he submitted the claim with the insurance company. The opposite party no.2 on 25.11.2015 paid a sum of Rs.2,000/- and on 22.12.2015 paid a sum of Rs.28,000/- whereas he spent Rs.2,12,050/- towards repairs of the subject vehicle. The complainant therefore alleging deficiency in service against the insurance company approached the District Commission seeking relief.

3. The opposite party no.1-insurance company denying the allegations made in the complaint submitted that as per policy terms and

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conditions after assessment of actual loss caused to the vehicle, the amount was paid to the repairer. Since the complainant himself recommended the name of opposite party no.2 Accord Motors for repairs of the subject vehicle, therefore as per invoice issued by the Accord Motors, the amount as assessed by the surveyor Rs.1,50,411/- was paid to Accord Motors with consent of the complainant. There has been no deficiency in service on part of the opposite party no.1-insurance company. It is thus prayed that the complaint be dismissed.

4. The opposite party no.2 and 3 in their joint reply submitted that the complainant after getting finance had purchased the subject vehicle from the opposite party no.3 as also got the vehicle insured with the opposite party no.1-insurance company through opposite party no.3. The opposite party no.2 submitted that on 23.05.2016 when the complainant approached to take the vehicle after repairs, one consent letter was signed by the complainant wherein it is specifically mentioned that the complainant is satisfied with the repairs and will not made any claim further. The delay so caused is due to the complainant himself as despite

repeated calls, the complainant was not interested to take the subject vehicle after repairs. It is therefore prayed that the complaint be dismissed against them.

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5. The District Commission dismissed the complaint holding that the opposite party no.2 the repairer of the subject vehicle issued final bill on 12.05.2016 and the insurance company had already paid the amount as assessed by the surveyor to the opposite party no.2 on 19.05.2016 thus the complainant failed to prove that the insurance company paid the amount belatedly.

6. Heard learned counsel for the parties. Perused the record.

7. Learned counsel for the complainant/appellant argued that the District Commission erred in relying the contention of the insurance company that they paid the amount as assessed by the surveyor to the opposite party no.2 on 19.05.2016 whereas no such intimation was given by the insurance company to the complainant. The District Commission did not consider this aspect that the complainant parked the subject vehicle in the workshop of opposite party no.2 on 22.11.2015 but the opposite party no.2 delayed in repairing the vehicle and the vehicle remained there till 23.05.2016. He argued that due to negligence of the opposite parties he suffered immense loss for such a long period but the District Commission dismissed the complaint. He therefore prayed for allowing the appeal and for grant of relief as claimed in the complaint.

8. Learned counsel for the opposite party no.1/respondent-insurance company supporting the impugned order argued that the

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insurance company had already paid the amount as assessed by the surveyor to the repairer as and when the final bill was received. There has been no deficiency in service on part of the insurance company. He argued that the District Commission has rightly dismissed the complaint as aforesaid and prayed for dismissal of appeal.

9. The complainant has filed his affidavit and affidavits of Santram Rathore, Vijay Nag along with documents as per list. On behalf of opposite parties affidavits of Sanjeev Joshi, Puroshattam Nigiani and Mandeep Singh along with documents as per list.

10. Having heard learned counsel for the parties and on going through the record we find that it is an admitted position that the complainant had obtained insurance policy for his vehicle for the period 28.04.2015 to 27.04.2016 (Page 33). On 22.11.2015, the subject vehicle met with an accident of which intimation was given to the insurance company. On receipt of intimation the insurance company immediately appointed the surveyor who vide his report dated 17.05.2016 (page 74) assessed the net loss to the tune of Rs.1,50,411/- which was paid to the opposite party no.2 repairer on 19.05.2016.

11. It is pertinent to mention here that the complainant has not filed any copy of FIR even then the insurance company helped him by appointing surveyor who assessed the loss. Spot surveyors and final

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surveyors though appointed by the insurance company under statutory provisions and they are independent authorities. It is well settled that the insurance claim can only be settled on the basis of survey report unless it was challenged by cogent evidence. Here in the instant matter, the complainant has not challenged the survey report, therefore without any reason and basis, the surveyor's report cannot be discarded.

12. Hon'ble National Commission in *Iffco Tokio General Insurance Co. Ltd. Vs Beena Raghav III (2015) CPJ 75 (NC) and United India Insurance Co. Ltd. Vs East Indian Produce Limited & Anr, I (2015) CPJ 409 (NC)* has held that 'In terms of Section 64UM(2) of the Insurance Act, 1938 the surveyor was an independent professional engaged by the insurance company to assess the loss suffered by the complainant with respect to his vehicle. The report prepared by the Surveyor is of a significant and evidentiary value

cannot be ignored and dismissed as such by saying that the assessed loss cannot be considered trustworthy, without giving valid reasons.

13. It is also pertinent to mention here that the insurance company paid the loss caused to the vehicle as per assessment made by surveyor.

14. Thus in view of the above discussion we are of a considered view that the complainant is entitled to get the amount as assessed by the Surveyor and the same has already been paid by the insurance company.

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Thus, we find that the District Commission has rightly dismissed the complaint holding that the complainant had already received the amount as assessed by the surveyor and therefore he is not entitled to get any further relief. We do not find any illegality or perversity in the impugned so as to interfere with the impugned order.

15. In the result, the appeal fails and is hereby dismissed with no order as to costs.

(A. K. Tiwari)

(Dr. Srikant Pandey)

Acting President

Member