

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
KOLKATA UNIT - II (CENTRAL)
8-B, NELLIE SENGUPTA SARANI, 7TH FLOOR,
KOLKATA-700087.**

**Complaint Case No. CC/306/2018
(Date of Filing : 03 Jul 2018)**

1. Kapil Deo Singh

14, Bhairav Datta Lane, Salkia, Howrah-711106.

.....Complainant(s)

Versus

1. National Insurance Co. Ltd.

Regd. office 3, Middleton Street, Kolkata-700071, P.S.

Shakespeare Sarani and 79/10, K.B.Bose Road (1st Floor),
(Haritala), Barasat, North 24 Parganas, West Bengal-700124,
P.O.Barasat.

.....Opp.Party(s)

BEFORE:

HON'BLE MRS. Sukla Sengupta PRESIDENT

HON'BLE MR. Reyazuddin Khan MEMBER

PRESENT: Jyoti Singh, Advocate for the Complainant 1

Anjan Chakraborty, Advocate for the Opp. Party 1

Dated : 24 Jun 2024

Final Order / Judgement

FINAL ORDER/JUDGMENT

SMT. SUKLA SENGUPTA, PRESIDENT

This is an application filed by the complainant U/s 12 and 13 of the CP Act, 1986.

The fact of the case in brief is that the complainant is the owner of the vehicle (truck) having registered No. WB 23 A 9307 which is manufactured by TATA Motors Ltd., having model No. TATA TRUCK 2515 TC, bearing chassis No. 426031BTZ203284 and engine No. 60b62457833, the registration No. of the vehicle in question is WB 23 a 9307(the registration certificate is marked as annexure "A")

The complainant insured the vehicle in question with National Insurance Company Ltd. being policy No. 154500/31/15/6300004282 for a period of 1 year starting from 00.01 hrs starting on 11.06.2015 to the midnight of 10.06.2016 . Having insured declared of Rs. 5,00,000/- against annual premium of Rs 28,436/- on receipt of the required premium the OP Insurance Company issued the insurance certificate, which is annexed as annexure "B".

The complainant stated that he purchased the vehicle to earn his livelihood and got the permit it from the Govt. of West Bengal being permit authorized No. NP/WB/23/042015/53356 dated 21.04.2015 valid through the territory of India up to 30.04.2016 (annexure "C")

The complainant further stated that on 29.09.2015 at about 22.00 hrs the driver of the said vehicle namely Ashoke Yadav kept the vehicle in front of garage of one Joginder Singh at Dulaghar but on the next morning i.e. on 30.03.2015 at about 6.00 hrs. he could not find the vehicle therein and tried his level to search it out in the locality but in vain then the driver lodged the complaint on 01.10.2015 at Sankrail PS . A case was filed as Sankrail P.S. GD/FIR No. 737/2015 U/s 379 of IPC and U/s 173 Criminal Procedure Court against a unknown person. Police submitted final report and the copy of FRT Issued by Sankrail PS is annexed as annexure "B".

Thereafter the complainant informed the matter to OP Insurance Company and placed the claim in motor claim form to the OP Insurance Company (annexure "E").

It is the further case of the complainant that the insurance company sent a letter dated 19.10.2015 to the complainant stating inter alia that the vehicle was stolen on 29.09.2015 at midnight and the claim was intimated to the concerned PS on 13.10.2015 after 13 days of the alleged incident, the Insurance Company also stated that the matter was informed to the Sankrail PS after 2 days of the incident and they asked for reason of delay intimation to Insurance Company. and PS (annexure-"F").

The complainant replied the same vide 23.11.2015 and also submitted GD No. and photocopy of FIR (annexure-"G").

it is further stated that the Insurance Company, vide letter dated 29.06.2016 asked the complainant to submit the relevant documents registered the claim and thereafter, the Insurance Company appointed an investigator in respect of the incident and vide its letter dated 19.05.2017. The Insurance Company. stated that some more documents to submit and also stated that during the investigation the statement of the driver and khalasi differs and some fact are not mentioned in the petition of complaint. The copy of letter issued by the Insurance Company dated 08.04.2019 and 19.05.2017 is annexed as annexure " J and K".

The complainant vide its letter dated 07.05.2017 stated the Insurance Company that he could not provide the parking receipt /slip because the parking authority does not provide parking receipt/slip (annexure "L").

Thereafter, the Insurance Company vide its letter dated 25.10.2017 has repudiated the claim of the complainant on the ground that the complainant violated the motor package policy condition Nos. 1 and 5 of the Insurance Company and therefore, the Insurance Company has decided to repudiate the claim of the complainant (annexure-"M").

The complainant thereafter, again requested the OP Insurance Company vide letter dated 05.01.2018 to reconsider the matter of the claim but the Insurance Company stated that they have given reason for rejection of claim in their letter dated 25.10.2017.

Under such circumstances without having any other alternative, the complainant has filed this case with a prayer to give direction to the OP Insurance Company to approve the claim of the

complainant and to make payment of Rs. 5,00,000/- to the complainant. The complainant further prayed for giving direction to the OP to pay compensation @ Rs. 1000/- per day to the complainant from 29.09.2015 till the date of realization of the compensation.

The OP Insurance Company has contested the claim application by filing a WV denying all the material allegation leveled against it.

It is the case of the OP that the complainant has no cause of action for filing the instant application. The application is baseless, harassing, motivated concocted and false and it is not sustainable in the eye of law.

Admittedly, the complainant purchased the insurance policy for the vehicle in question from the OP .

It is further case of the OP that as per FIR and FRT, the insured vehicle was parked by its driver in front of garage of one Joginder Singh at Dulagarh on 29.09.2015 at about 2.00 hrs within the jurisdiction of Snarkrail PS. On the next morning at about 6.00 am, the driver allegedly could not find the vehicle at that place and he realised the vehicle was stolen but he lodged FIR at Sankrail PS and on 01.10.2015 after the delay of 36 hrs and intimated to the OP Insurance Company on 13.10.2015 i.e. after delay of 13 days from the date of alleged loss which is a clear violation of policy conditions No. 1 of the commercial vehicle package policy which states that “notice shall be given in writing to the Insurance Company immediately, after the occurrence of any incident loss and damage and in the event of any claim and thereafter, the insured shall give all such information and assistance as company shall required..... in case of theft or criminal act and which may be subject of a claim under this policy the insured shall give immediate notice and to the police co-operate the company in securing the conviction of the offender”. It is alleged by the Insurance Company that the insured did not take all reasonable steps to safeguard the vehicle insured from loss or damage which is breach of policy condition 5 on his part and the violation of terms and conditions of the policy as aforesaid has resulted in the said claim.

it is the case of OP Insurance company that there was no deliberate latches on the part of Insurance Company and there was no deficiency in service on its part rather the complainant has violated his terms and conditions of the policy condition. Thus, he is not entitled to the claim as prayed for and the petition of complaint is liable to be dismissed.

In view of the above stated facts and circumstances, the points of consideration are as follows:-

1. Is the case maintainable within the ambit of law?
2. Is complainant a consumer?
3. Has the complainant cause of action to file this case?
4. Is there any deficiency in service on the part of the OP?
5. Is the complainant entitled to get relief as prayed for?

Decision with reasons

All the points of considerations are taken up together for convenience of discussion and to avoid unnecessary repetition.

On a close scrutiny of the facts and circumstances, materials and evidence on record it is revealed that this Forum has got the ample jurisdiction of pecuniary as well as territorial to try this case.

The case is filed well within the period of limitation.

From the WV and evidence on record as filed by the OP Insurance Company, it appears that admittedly the complainant purchased the insurance policy from the OP insurance Co. for the subject Tata Truck Model No. 2515 TC, bearing chassis No. 426031BTZ203284 and engine No. 60B62457833 having registration No. WB-23A-9307 being Policy No. 154500/31/15/6300004282 for a period of one year, starting from 00.01 hrs of 11.06.2015 to the mid night of 11.06.2016, having insured declared value of Rs. 5,00,000/- against annual premium of Rs.28,436/-. Being satisfied the OP insurance Co. issued the insurance certificate (annexure-B) . It is also admitted fact that the complainant got the national permit authorization being authorization certificate NP/WV/23/042015/53356 dated 21.04.2015 valid throughout the territory of India upon 30.04.2016 (Annexure – C).

It is case of the complainant that on 29.09.2015 at about 22.00 hrs the driver being named as Ashok Jadav of the vehicle in question kept the said vehicle in front of garage of one Joginder Singh at Dulagarh but on the next morning i.e. on 30.09.2015 he did not see the vehicle thereon. the driver tried his level best to search the subject vehicle in the surrounding places but in vain then without having any other alternative he lodged a GD / FIR at Sankrail PS within the district Howrah being Sankrail P.S. GD/ FIR No. 737/15 U/S 379 of Indian Penal Code and U/S 173 of Criminal Procedure Code (Annexure – D) and thereafter the complainant informed the matter to the OP Insurance Co. by submitting the motor claim form on 16.10.2015 before Insurance Company but the OP Insurance Co. on receipt of the said claim directed the complainant to submit the relevant documents regarding his letter dated 29.03.2016 and ultimately repudiated the claim on the ground of violation of Policy Condition No. 1 of commercial motor package and Policy Condition No. 5 that complainant did not take care to safeguard of the insured vehicle from any loss or damage.

On a close scrutiny of the evidence on record it appears that the incident took place in the night of 29.09.2015 the driver kept the subject vehicle being WB-23A-9307 in front of garage of one Joginder Singh at Dulagarh but in the morning on 30.09.2015 he found that the subject vehicle has been stolen by some unknown person and informed the local PS on 01.10.2015 that is immediately after the occurrence, the matter of theft was informed to the Local P.S. It is also the views of the Hon'ble Apex Court in several cases that in case of condition no. 1 of the policy the situation has to be considered that whether in case of theft or criminal act, if any, which is the subject matter of the case under the policy, the insured shall give immediate notice to the police in the instant case it appears that the occurrence took place in the night on 29.09.2015 and the driver of the subject vehicle informed the matter to the local PS in the morning on 01.10.2015

which is immediately after the occurrence and when the complainant got the copy of the FIR, informed the insurance Co. and placed the claim. The OP insurance co. repudiated the claim on the ground that to the complainant informed the incidence the OP insurance company on 13.10.2015 which is a delay of 13 days but the matter was informed matter to the local PS immediately after the occurrence. So on the basis on the observation of the Hon'ble Apex Court in several cases it has to be considered whether the complainant informed matter to the local PS immediately after the occurrence or not.

In this instant case it is found that the driver of the subject vehicle informed the Local PS immediately after the incident took place but in that case 13 days delay to inform the OP insurance Co. cannot be fatal for getting the claim as made by the complainant to the OP insurance Co. When the claim is genuine one, the insurance co. cannot repudiate the same whimsically on the ground of giving belated intimation by the complainant.

On the other hand, it is alleged by the OP that the complainant did not take proper care to safeguard the loss and damage of the vehicle in question but no such cogent evidence has come from the end of the OP from which it can be held by this forum that the complainant did take the proper care to safeguard the loss and damage of the subject vehicle. So, it is held by this forum that in the instant case the OP insurance co. arbitrarily repudiated the claim of the complainant and such conduct of the OP insurance co. should be considered as deficiency in service to the complainant who is a consumer as per provision of CP Act, 1986 and when there is consumer and service provider relationship between the complainant and OP insurance Co.

In view of the discussion made above this forum is opined that the complainant in the instant case is a consumer and the OP insurance co is the service provider. The OP insurance co. deliberately repudiated the claim of the complainant. Such conduct of the OP insurance Co. is considered by this forum as deficiency in service and for that reason the OP insurance Co. is liable to pay compensation to the complainant.

On the basis of discussion made above, it is held by this forum that being a consumer the complainant could be able to prove his case against the OP Insurance Company beyond all reasonable doubt and is entitled to get relief as prayed with for.

All the points are considered and decided favorably to the complainant.

The case is properly stamped.

Hence,

Ordered

that the case be and the same allowed on contest against the OP with cost of Rs. 5,000/-.

the complainant do get decree as prayed for.

The OP insurance co. is directed to pay the insured value of the subject vehicle to the tune of Rs.5,00,000/- to the complainant within 45 days from the date of passing of this order and also directed to pay compensation of Rs.1,00,000/- to the complainant within 45 days from this date of order id the complainant would be at liberty to execute the decree as per law.

Copy of the judgment be uploaded forthwith on the website of the commission for perusal.

[HON'BLE MRS. Sukla Sengupta]
PRESIDENT

[HON'BLE MR. Reyazuddin Khan]
MEMBER