

**BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, KULLU (H.P.)**

Complaint No.: 14/2022
Date of Institution: 15.09.2022
Decided on : 24.07.2024

Smt. Chhering Dolma wife of late Shri Amar Chand Negi,
R/O Village Matyana, P.O. Bandrol, Tehsil and
District Kullu, HP.

.....Complainant

Versus

The New India Assurance Co. Ltd., Branch Office
at Gaur Complex Dhalpur, Tehsil and District
Kullu, HP through its Branch Manager.

.....Opposite party.

**Complaint under Section 35 of the
Consumer Protection Act, 2019.**

Coram:

Sh.Purender Vaidya, President.
Ms. Manchali, Member.

For the complainant: Sh. D.G.Negi, Adv.
For the opposite party: Sh. R.K.Thakur, Adv.

ORDER:

This complaint under Section 35 of the Consumer Protection Act, 2019 has been filed by one Smt. Chhering Dolma (hereinafter referred to as the complainant) against the opposite party stating that she is registered owner of Maruti Alto K10 vehicle bearing registration No.HP-34C-2892. On 21.09.2020 it was being driven by one Shri Chhering Negi son of Shri Ram Singh and he was coming from Peej to Kullu. When the vehicle reached near Gour Nallah, suddenly a cow came in front of the vehicle and in order to save the cow, the driver applied brakes and the vehicle got skidded. As a result, it went off the road towards down side and was totally damaged. The accident was reported to the police and the FIR was registered in Police Station, Kullu. The vehicle was insured with the opposite party and the complainant lodged a claim with the opposite party and submitted all the relevant documents. The opposite party vide letter dated 12.10.2021 repudiated the claim

of the complainant. So, there is deficiency in service on the part of the opposite party. Consequently, the present complaint has been filed with the prayer that opposite party be directed to pay insured value of the vehicle to the tune of ₹2,29,110/- to the complainant. The complainant also prayed for compensation to the tune of ₹1,00,000/- on account of mental harassment and litigation cost to the tune of ₹50,000/-.

2. The opposite party contested the complaint by filing a reply, wherein, preliminary objections as to no deficiency in service and suppression of material facts by the complainant were raised. On merits, it is not disputed that the vehicle of the complainant is insured with the opposite party and the complainant had lodged a claim regarding the accident. However, it is stated that the complainant misrepresented the facts of the accident. As per FIR, the accident took place due to rash and negligent driving of the car driver, whereas, the complainant has stated that in order to save the cow, the driver applied brakes and as a result, the vehicle skidded and went off the road and was damaged. So, the true facts were concealed by the complainant. The injuries sustained by the occupants of the vehicle are not possible in the accident as revealed by the complainant. So, there was misrepresentation as well as concealment of true facts on the part of the complainant. Hence, her claim was rightly rejected. Consequently, the opposite party prayed for dismissal of the complaint.

3. The complainant filed rejoinder to the reply filed by the opposite party, wherein complainant denied the preliminary objections taken by the opposite party and further reasserted the averments already made in the complaint.

4. Both the parties have led evidence in support of their contentions.

5. We have heard learned counsel for the parties and have gone through the record of the case carefully.

6. After due consideration, we are of the opinion that the opposite party is not justified in repudiating the claim of the

complainant. Thus, we find deficiency in service on the part of the opposite parties, for the reasons to be recorded hereinafter.

7. It is undisputed fact that the complainant is registered owner of vehicle bearing registration No.HP-34C-2892 and it was insured with the opposite party w.e.f. 15.06.2020 to 14.06.2021. The copy of RC on record is revealing that the complainant is registered owner of vehicle bearing registration No.HP-34C-2892 and copy of policy schedule-cum-certificate of insurance is revealing that the vehicle was insured with the opposite party. It is also undisputed fact that on 21.09.2020 during the currency of insurance policy, the vehicle met with an accident.

8. The sole objection taken by the opposite party i.e. insurance company is that the complainant misrepresented the facts of the case and she concealed the true facts and only on this ground the claim of the complainant was repudiated. We are of the opinion that the aforesaid plea taken by the opposite party is not sustainable.

9. In this complaint, the complainant has stated and also deposed in her affidavit that at the time of accident in question, one Shri Chhering Negi son of Shri Ram Singh was driving the vehicle and when the vehicle reached near Gour Nallah, suddenly a cow came in front of the vehicle and in order to save the said cow, the driver applied brakes and the vehicle got skidded and met with an accident in question. As per opposite party, in the FIR, the aforesaid version has not been stated. The copy of FIR has also been filed by the complainant. The perusal of the same is revealing that the detailed facts of the case have not been mentioned. In fact, the FIR has been lodged by one Shri Gola Ram, who was present on the spot and he saw that the vehicle had fallen into a Nallah. The said Shri Gola Ram has revealed in the FIR that four persons were sitting in the vehicle and the accident occurred due to rash and negligent driving of the driver. So, one fact stands established that the FIR has not been lodged by any of occupants of the vehicle. The informant Shri Gola Ram has stated the version as per his perception. It would be possible that he might not have seen the cow appearing on the

spot, but the FIR is corroborating the version of the complainant that the vehicle fell down into a Nallah and was damaged. On the top of it, FIR is not a substantive piece of evidence. The informant Shri Gola Ram is a stranger. The FIR was neither lodged by the owner/driver nor any of the occupants of the vehicle. So, solely on the basis of facts stated in the FIR, the genuine claim of the complainant could not be rejected by the opposite party.

10. The complainant has categorically stated that at the time of accident one Shri Chhering Negi son of Shri Ram Singh was driving the vehicle and the opposite party has filed on record the final report prepared by the police under Section 173 Cr.P.C. Annexure-R1. This final report is revealing that after completion of investigation, the police filed challan against one Shri Chhering Negi son of Shri Ram Singh in the Court of law. So, the affidavit of complainant is corroborating the final report prepared by the police as far as the identity of driver Shri Chhering Negi son of Shri Ram Singh is concerned. The complainant has also filed on record the copy of driving licence of said Shri Chhering Negi son of Shri Ram Singh, which is revealing that it is valid for LMV i.e. the car w.e.f. 14.03.2001 to 11.03.2030. So, the driver was possessing a valid and effective driving licence at the time of accident in question.

11. Consequently, in the light of our aforesaid discussion, the repudiation of genuine claim of the complainant vide letter dated 11.010.2021 by the opposite party is not sustainable under law. The opposite party has taken the services of surveyor Shri Rajinder Kumar Khajuria, whose report is Annexure-R2. It is revealing that as per insurance certificate, the IDV of the vehicle is ₹2,29,110/-, but the correct IDV of the vehicle has been assessed at ₹2,04,500/- by the surveyor-cum-loss assessor. After deducting the excess clause of ₹1,000/-, the assessment on total loss basis is ₹2,03,500/-. The same report is revealing that the net liability on repair basis has been assessed to the tune of ₹3,32,356/-. Since the expected liability of the insurer on repair basis is more than the IDV of the vehicle, so, the assessment on total loss basis has been worked out. As per said

report Annexure-R21, the liability on net of salvage basis has been assessed to the tune of ₹1,78,500/- after deducting the wreck value of the vehicle without RC to the tune of ₹25,000/-. Annexure-R2 is a document relied upon by the opposite party. So, it could be looked into while assessing the loss. Although, on behalf of opposite party, there is affidavit of Shri Satyam Rawal alleging the misrepresentation of facts on the part of the complainant, but for the aforesaid reason, said plea of the opposite party is not sustainable and is hereby rejected.

12. For the aforesaid reason, we find deficiency in service on the part of the opposite party by repudiating the genuine claim of the complainant. So, there is deficiency in service on the part of the opposite party.

13. Consequently, in the light of our aforesaid discussion, the present complaint is allowed to the effect that the opposite party is directed to pay a sum of ₹1,78,500/- on net of salvage basis to the complainant along with interest @ 6% per annum from the date of filing of present complaint till its realization.

14. Since the complainant was forced to file the present complaint and his genuine claim was rejected on imaginary and unsustainable grounds, therefore, the opposite party is further directed to pay damages to the tune of ₹25,000/- and litigation cost to the tune of ₹5,000/- to the complainant. With these observations, the present complaint stands disposed of.

15. Copy of this order be supplied to the parties free of cost as per Rules.

16. File, after its due completion be consigned to the Record Room.

Announced on this the 24th day of July, 2024.

(Purender Vaidya)
President

(Manchali) Member