

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/20/416
(Date of Filing : 15 Dec 2020)**

1. PREETHY GLORIA

HOUSE NO 11/581 MULLAPARAMBIL HOUSE,
MECHENZIE GARDEN, FORT KOCHI

.....Complainant(s)

Versus

1. THE UNITED INDIA INSURANCE CO LTD

DOOR NO 3, 21 ST FLOOR, BUILDING NO 30/1273, JAZZ
ARCADE, BYEPASS ROAD, VYTILO

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 24 Jun 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM

Dated this the 24th day of June, 2024.

Filed On: 15.12.2020

PRESENT:

Shri. D.B. Binu	President
Shri. V. Ramachandran	Member
Smt. Sreevidhia T.N	Member

C. C. No. 416/2020

COMPLAINANT:

Preethy Gloria, Wio. Antony Anil Cleetus, aged 37 years, House No. 11/581, Mullaparambil House, Mechenzie Garden, Fortkochi, Kochi-682 001.

(by Adv.Mathew Skaria and Thomas Mathew, V.Krishna Menon Road, Near Lenin Centere,
Kaloore, Kochi-682 017)

V/S

OPPOSITE PARTIES :

1. The United India Insurance Co. Ltd., represented by its Divisional Manager, Divisional Office, Door No.3, First Floor, Building No.30/1273, Jazz Arcade, Bye-pass Road, Vyttila, Ernakulam, Kochi-682 019.
2. The Regional Manager (the Grievance Officer), Regional Office, The United India Insurance Co. Ltd. "Sharanya", Hospital Road, Kochi-682011.

(Op rep. by Adv.P.V.Sasikumar)

FINAL ORDER

D.B. Binu, President

1) A brief statement of facts of this complaint is as follows:

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The complainant owns a commercial motor vehicle, "New Verna," with Registration No. KL-43/F-1881, having a taxi permit. The first opposite party is New India Insurance Co. Ltd., represented by its Divisional Manager, and the second opposite party is the Regional Manager and Grievance Officer of the first opposite party.

The complainant had a motor vehicle package policy from New India Insurance Co. Ltd. for the period from November 27, 2016, to November 26, 2017. During this period, the vehicle was involved in an accident, and a claim was made for own damage.

Upon the policy's expiration, Sonika Jain, an agent of the opposite party, canvassed for its renewal. The complainant entrusted the policy document to her and paid a premium of Rs. 26,306/- for the period from November 27, 2017, to November 26, 2018. A new policy was generated with an Insured Declared Value (IDV) of Rs. 6,00,000/-.

On December 14, 2017, the vehicle met with another accident, causing significant damage. The vehicle was taken to M/s MGF Motors Ltd., an authorized workshop, which estimated the repair costs to be Rs. 5,09,117/-. However, the first opposite party rejected the claim, citing reasons such as the complainant's failure to sign the declaration form, non-disclosure of the previous accident claim, and alleged suppression of material facts. The surveyor assessed the damage at Rs. 2,29,787/- only.

The complainant contends that there was no suppression of material facts and that the insurance company had all necessary information. The policy was valid at the time of the accident, and the rejection of the claim was due to negligence on the part of the insurance company in not obtaining the declaration form or verifying facts before issuing the policy.

After the claim rejection, the complainant filed a grievance on March 27, 2018, which was also rejected by the second opposite party without proper consideration. Due to the rejection, the complainant could not afford the full repair costs and had to take a loan of Rs. 2,75,000/-. The incomplete repairs led to a loss of potential income and additional financial burdens, including loan interest of Rs. 1,10,000/-.

The complainant seeks the following reliefs:

1. An order directing the first opposite party to reconsider and allow the claim for the complete repair costs amounting to Rs. 5,33,800/- with 12% interest per annum from December 15, 2017.
2. Compensation of Rs. 2,90,000/- for the loss of income and additional financial burdens due to the wrongful claim rejection.
3. Rs. 50,000/- towards the costs of the proceedings.

The total claim amount is Rs. 8,23,800/-. The cause of action arose on December 14, 2017 (the date of the accident), March 20, 2018 (the date of the claim rejection), and January 9, 2019 (the date of the grievance rejection).

2) Notice

The commission sent notices to the opposite parties and the opposite parties filed their versions.

3) THE VERSION OF THE OPPOSITE PARTIES

The opposite parties deny the complainant's allegation that their agent canvassed for the renewal of the policy initially held with New India Assurance Company Limited. However, the opposite party admits that they generated a policy for the complainant's vehicle, valid from November 27, 2017, to November 26, 2018, with an IDV of Rs. 6 Lakhs. This policy was based on the complainant's assertion that there were no previous accidents and a claim for a No Claim Bonus (NCB).

The opposite party states that the complainant did not submit the signed proposal form and NCB form, which are mandatory for completing the insurance contract. As a result, the original policy was not issued to the complainant, who only had a downloaded copy of the policy after the accident.

The opposite party admits to rejecting the complainant's claim for damages amounting to Rs. 5,09,117/-. The rejection was based on several reasons, including the absence of a signed declaration form, non-disclosure of previous accidents, and an FIR report indicating that the accident was caused by the complainant's driver due to careless and rash driving. The opposite party argues that these factors amount to a violation of the insurance policy's "Utmost Good Faith" principle.

The opposite party also disputes the complainant's assertion that M/s MGF Motors Ltd. issued a repair estimate on December 3, 2020, stating that MGF Motors had ceased operations in Ernakulam by June-July 2020. The opposite party contends that this estimate is bogus and intended to extort more money. They also argue that the repair works were completed by March 2, 2019, as evidenced by the renewal of the vehicle's fitness certificate.

The opposite party denies any responsibility for the complainant's loan taken to pay for the repairs and argues that the insurance policy is not merely a product purchased by paying a premium; it is a contract that requires proper documentation. The opposite party claims that the complainant failed to submit the necessary forms and misrepresented facts during the policy renewal.

The opposite party reiterates that the claim rejection was justified due to the non-disclosure of previous accidents and asserts that the complainant's claims for additional repair costs are baseless and exaggerated. They also argue that the complainant's vehicle was fully repaired by March 2019, contradicting the claim that the vehicle was taken from the workshop in September 2019 with incomplete repairs.

The opposite party requests the Commission to dismiss the complaint, stating that the complainant has made false and baseless allegations to mislead the Commission and extract more money. They emphasize that the complainant's actions violated the fundamental principle of "Utmost Good Faith" in insurance contracts.

The opposite party has submitted various documents, including an FIR report, photos taken by the surveyor, and the vehicle's fitness certificate, to support their position and requests the right to submit additional statements and evidence if necessary.

The opposite party prays that the Commission dismiss the complaint in its entirety and grant any other relief deemed appropriate, including costs, based on the facts and circumstances of the case.

4) Evidence

- The complainant submitted a proof affidavit along with 16 documents, which are marked as Exhibits A1 to A16. The complainant was examined as PW1.
- Exhibit A1: True copy of the Motor Vehicle Package Policy No. 1021003117P112184862 dated 27-11-2017 for the period from 27-11-2017 to 26-11-2018.
- Exhibit A2: True copy of the Repair Estimate dated 15-12-2017 issued by M/s. MGF Motors Ltd., Kochi-682 029 to the complainant.
- Exhibit A3: True copy of letter No. MOTOR/59/2017-18 dated 20-03-2018 issued from the Divisional Office of the opposite party to the complainant.
- Exhibit A4: True copy of letter No. CNRO: GRV: 007:2018 dated 09-01-2019 issued from the Grievance Officer of the opposite party to the complainant.
- Exhibit A5: True copy of the Certificate of Registration of the MOTOR CAB (TAXI) bearing Register No. KL-43-F-1881 is owned by the complainant.
- Exhibit A6: True copy of the bill for materials and labour dated 31-05-2018 for Rs. 2,13,428/- issued by M/s. MGF Motors Ltd. to the complainant.
- Exhibit A7: True copy of the bill for materials and labour dated 31-07-2018 for Rs. 23,966/- issued by M/s. MGF Motors Ltd. to the complainant.
- Exhibit A8: True copy of the bill for materials and labour dated 02-03-2019 for Rs. 2,665/- issued by M/s. MGF Motors Ltd. to the complainant.
- Exhibit A9: True copy of receipt for Rs. 50,000/- dated 13-03-2018 issued by M/s. MGF Motors Ltd. to the complainant.
- Exhibit A10: True copy of receipt for Rs. 1,00,000/- dated 03-12-2018 issued by M/s. MGF Motors Ltd. to the complainant.
- Exhibit A11: True copy of receipt for Rs. 10,000/- dated 02-03-2019 issued by M/s. MGF Motors Ltd. to the complainant.
- Exhibit A12: True copy of receipt for Rs. 20,000/- dated 02-03-2019 issued by M/s. MGF Motors Ltd. to the complainant.

- Exhibit A13: True copy of receipt for Rs. 42,000/- dated 02-03-2019 issued by M/s. MGF Motors Ltd. to the complainant.
- Exhibit A14: True copy of receipt for Rs. 18,059/- dated 02-03-2019 issued by M/s. MGF Motors Ltd. to the complainant.
- Exhibit A15: True copy of the estimate for the parts and labour for the repair works remaining to be completed, issued by M/s. MGF Motors Ltd. to the complainant.
- Exhibit A16: The statement issued by Sriram Transport Finance Co. Ltd., Ernakulam Branch, Chittoor Road, Ernakulam regarding the loan obtained by the complainant for the repair of her vehicle bearing Reg. No. KL-43/F-1881 on 22-03-2019.

The opposite parties submitted a proof affidavit along with 7 documents, which are marked as Exhibits B1 to B7. The first opposite party was examined as DW1.

- Exhibit B1: Copy of the FIR No. 5926 dated 15/12/2017.
- Exhibit B2: Copy of the photographs of the damaged vehicle.
- Exhibit B3: Copy of the survey report.
- Exhibit B4: Copy of the Certificate of Registration showing fitness certificate dates.
- Exhibit B5: Copy of the investigation report.
- Exhibit B6: Copy of the charge sheet filed against the driver.
- Exhibit B7: Copy of the AMVI's report.

5) The main points to be analysed in this case are as follows:

- I. Whether the complaint is maintainable or not?
- II. Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- III. If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- IV. Costs of the proceedings if any?

6) The issues mentioned above are considered together and are answered as follows:

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. True copy of the Motor Vehicle Package Policy issued by the opposite parties (Exhibit A-1). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019 (Point No. i) goes against the opposite parties.

Argument Notes Filed by the Counsel for the Complainant

The complainant's vehicle, a New Verna with registration number KL-43/F-1881, was insured with New India Insurance Co. Ltd. from 27/11/2016 to 26/11/2017. The vehicle was involved in an accident during this period, and a claim for its damage was made. Upon the expiry of the policy, the complainant was approached by Sonika Jain, an agent of the Opposite Parties, for policy renewal through the 1st Opposite Party. The complainant, through her husband, handed over the policy documents to Sonika Jain for renewal and paid a premium of Rs. 26,306/- on 24-

11-2017. Consequently, Exhibit A1 Motor Vehicle Package Policy No. 1021003117P112184862 was issued, covering the period from 27/11/2017 to 26/11/2018.

On 14-12-2017, the vehicle met with another accident-causing heavy damage. M/s. MGF Motors Ltd. prepared an estimate of Rs. 5,09,117/- for the repairs and submitted a claim to the 1st Opposite Party. The claim was rejected by the 1st Opposite Party through Exhibit A3 letter dated 20/03/2018, citing reasons such as the complainant not signing the required form, not disclosing the previous accident claim, and other reasons which were incorrect.

The complainant submitted a grievance on 27-03-2018 before the 2nd Opposite Party, which upheld the rejection of the claim without proper consideration. The rejection of the claim left the complainant unable to complete the repair works due to lack of funds, leading to partial repairs costing Rs. 2,40,059/- as evidenced by Exhibits A6 to A14.

The remaining repairs, estimated at Rs. 2,93,741/- as per Exhibit P15, could not be completed. The complainant lost a potential income of Rs. 15,000/- per month for more than two years due to the vehicle's incomplete repairs. To pay for the partial repairs, the complainant took a loan of Rs. 2,75,000/-, incurring interest of Rs. 1,10,000/- as evidenced by Exhibit A16.

The complainant is entitled to reimbursement for the repairs under the policy. The rejection of the claim by the 1st Opposite Party was improper and illegal. The complainant seeks compensation for the complete repair costs, loss of income, and other expenses incurred due to the wrongful rejection of the claim.

The Opposite Parties' reasons for claim rejection were based on incorrect assumptions and failure to verify facts. The evidence presented includes oral testimonies and documentary evidence (Exhibits A1 to A16 for the complainant and B1 to B7 for the Opposite Parties).

Ext. A1 is a 4-wheeler Package Insurance Policy issued on 27-11-2017, valid from 27-11-2017 to 26-11-2018. The terms and conditions state that the policy stands cancelled or void in the event of cheque dishonour, and the company may cancel the policy with 7 days' notice in case of any fraud, misrepresentation, non-disclosure of material fact, or non-cooperation of the insured.

The accident occurred on 14-12-2017. Ext. A2 is an estimate by MGF Motors Ltd. for the repair, totalling Rs. 5,09,116.71. Ext. A3 is a letter from the First Opposite Party rejecting the claim, citing reasons such as the proposal form not being signed, suppression of material fact regarding previous claims, and an external damage assessment of Rs. 2,29,787/- by their surveyor.

Ext. A4 is a letter from the Second Opposite Party upholding the rejection. The rejection prevented the complainant from completing the vehicle repairs due to lack of funds, managing only Rs. 2,40,059/- worth of work as evidenced by Ext. A6 to A14. The complainant had to take a loan of Rs. 2,75,000/- from Shriram Transport Finance Company, incurring Rs. 1,10,000/- in interest (Ext. A16).

The complainant requests a direction to pay Rs. 5,33,800/- for the complete repairs, Rs. 2,90,000/- for loss of income due to the wrongful rejection of the claim, Rs. 50,000/- towards the cost of proceedings, and other reliefs in the interest of justice.

Documents from the Opposite Parties include Ext. B1 (copy of FIR), Ext. B2 (photographs), Ext. B3 (survey report), Ext. B4 (Certificate of Registration), Ext. B5 (investigation report), Ext. B6 (charge sheet against the driver), and Ext. B7 (AMVI's report). The total cost of repairs for external damage is stated as Rs. 3,91,822/- by the Opposite Parties, with internal damage not assessed as per Ext. A3.

The key points urged are that there was no cheque dishonour, fraud, misrepresentation, non-disclosure of material fact, or non-cooperation by the insured. The policy was valid on the date of the accident, and the reasons for rejection are insufficient to repudiate the claim. The complainant could not complete the repairs due to a lack of funds, and the incomplete vehicle was taken from the workshop in September 2019. The complainant limited the claim for loss of income to one-year, totalling Rs. 2,90,000/-. The complainant is also entitled to Rs. 50,000/- as the cost of proceedings.

It is just and necessary to direct the 1st Opposite Party to allow the claim as per Ext. A1 Motor Package Policy No. 1021003117P112184862 dated 27-11-2017, pay Rs. 5,33,800/- with interest at 12% per annum from 15.12.2017 till realization, pay Rs. 2,90,000/- for the loss sustained due to the wrongful rejection, pay Rs. 1,10,000/- for the interest incurred on the loan, and Rs. 50,000/- towards the cost of the proceedings.

The complainant requests the commission to direct the 1st Opposite Party to pay Rs. 5,33,800/- for complete repairs, compensate Rs. 2,90,000/- for loss of income, pay Rs. 50,000/- towards the cost of proceedings, and pay interest at 12% per annum from 20-03-2018 until realization.

Argument Notes Filed by the Counsel for the opposite party.

The complainant had a commercial vehicle package policy for her taxi car (Reg. No. KL-49F-1881) issued by M/s New India Assurance Company Limited. Just before the policy expired, the complainant renewed it with OP1 through an agent, providing an oral confirmation that no claim had been made on the previous policy. Based on this, the agent renewed the policy with a 25% No Claim Bonus (NCB), pending the proposal form and NCB declaration. The complainant did not sign the proposal and declaration form or collect the original policy from OP1. When the accident occurred on 14/12/2017, the complainant did not have the original insurance policy.

The complainant claimed damages of Rs. 5,09,117/- but OP1 repudiated the claim, stating suppression of material facts and violation of "Utmost Good Faith." The grievance officer (OP2) upheld the rejection. The complainant then filed a petition before the Hon'ble Commission.

The grounds raised by the complainant include the incorrect rejection of the claim by OP1, improper handling of the grievance by OP2, inability to complete repairs due to the claim rejection, and financial loss incurred. The total repair cost was Rs. 5,33,800/-, and the complainant had to take a loan of Rs. 2,75,000/-, incurring additional financial strain.

The competent surveyor assessed the net loss at Rs. 2,29,787/- against the estimated damage of Rs. 5,09,117/-. The complainant requests the Hon'ble Commission to direct OP to pay Rs.

5,33,800/- for complete repairs, Rs. 2,90,000/- for loss sustained due to wrongful rejection, and Rs. 50,000/- towards the cost of proceedings.

OP1 strongly objects to the claims, stating no delay or deficiency in service. The objections include the non-submission of the proposal form and declaration by the complainant, the lack of the original policy at the time of the accident, and the complainant's false confirmation regarding the previous claim. OP1 asserts that the claim was rightfully repudiated due to suppression of material facts and violation of "Utmost Good Faith."

The documents submitted include Annexures I to XV from the complainant and R-1 to R-7 from opposite party 1. Both parties provided proof affidavits and cross-examinations were conducted.

Key issues include the validity of the claim repudiation, the complainant's inability to complete repairs, the correctness of the repair estimate, the sustainability of the prayers made by the complainant, and any intentional delay or deficiency in service by opposite party.

Opposite party 1 justifies the repudiation based on the complainant's false confirmation, non-submission of mandatory documents, and failure to disclose the previous claim. The investigation revealed the accident caused significant third-party damage due to rash driving, further justifying the claim's rejection. The fitness certificate issued for the vehicle confirms it was fully repaired by 2/3/2019, contradicting the complainant's claims of incomplete repairs.

Opposite party 1 requests the Commission to dismiss the complainant with costs paid to the opposite party, citing the complainant's misrepresentation and attempts to extract undue compensation.

We have meticulously considered the detailed submissions of both parties, as well as thoroughly reviewed the entire record of evidence, including the argument notes.

We determine that issue numbers (I) to (IV) are resolved in the complainant's favour due to the significant service deficiency and the unfair trade practices on the part of the opposite party. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite party.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite party is liable to compensate the complainant.

Hence the complaint is partly allowed as follows:

I. The opposite party is directed to pay the complainant the insurance amount of ₹2,50,000 (Two Lakh Fifty Thousand Rupees).

II. The opposite party is directed to pay the complainant compensation of ₹25,000 (Twenty-Five Thousand Rupees) for mental agony, deficiency in service, and unfair trade practices on the part of the opposite party.

III. The opposite party is directed to pay the complainant ₹10,000 (Ten Thousand Rupees) towards the cost of proceedings.

The Opposite Party is mandated to comply with the directives mentioned above within 45 days from the date of receipt of this order. Failure to comply with the payment orders under points I and II will result in the accrual of interest at the rate of 9% per annum, applicable from the date of filing the complaint (15.12.2020) until the date of full payment realization.

Pronounced in the Open Commission on this 24th day of June 2024.

Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded by Order

Assistant Registrar

APPENDIX

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**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**