

**District Consumer Disputes Redressal Commission Rohtak.
Haryana.**

**Complaint Case No. 480/2018
(Date of Filing : 04 Oct 2018)**

1. Rani

W/o Sh. Surender Singh R/o H.No. 334, Jagat Colony, Bhiwani.Complainant(s)

Versus

1. New India Assurance Company.

R/o Divisional Office Rohtak, 313, Model Town, Delhi Road,
Rohtak.

.....Opp.Party(s)

BEFORE:

Sh. Nagender Singh Kadian PRESIDENT

Dr. Tripti Pannu MEMBER

Sh. Vijender Singh MEMBER

PRESENT:

Dated : 04 Apr 2024

Final Order / Judgement

Before the District Consumer Disputes Redressal Commission, Rohtak.

Complaint No. : 480

Instituted on : 04.10.2018

Decided on : 04.04.2024

Rani w/o Sh. Surender Singh R/o H. No.334, Jagat Colony, Bhiwani.

.....Complainant.

Vs.

New India Assurance Company Ltd. Resident of Divisional Office : (353800) Rohtak, 313,
Model Town, Delhi Road, Rohtak.

.....Respondent/opposite party.

COMPLAINT U/S 12 OF CONSUMER PROTECTION ACT.

BEFORE: SH.NAGENDER SINGH KADIAN, PRESIDENT.

DR. TRIPTI PANNU, MEMBER.

DR. VIJENDER SINGH, MEMBER

Present: Sh.J.S.Saroha, Advocate for the complainant.

Sh.R.K.Bhardwaj, Advocate for the opposite parties.

ORDER**NAGENDER SINGH KADIAN, PRESIDENT:**

1. Brief facts of the case as per the complainant are that she is registered owner of an I20 SPORTZ car bearing registration no. HR-16Q-0177. She has got her above said vehicle insured from the opposite party vide policy no. 11300031160300571338 for the period from 11.03.2017 to 10.03.2018. It is further submitted that on 14.05.2017, relative of complainant namely Sumits/o Sh. Jai Singh had taken the said vehicle from Rohtak (Haryana) to Ahmadabad (Gujarat) and in between met with an accident in Bichhiwada, Rajasthan. In this accident Sumit and his friend Manjeet Singh were injured and both were admitted in the Govt. Hospital, Bichhiwada and Udaipur, Rajasthan. After that the damaged car was brought from Bichhiwada to Gurgoan and Gurgoan to Rohtak by DSR transport Co. The complainant immediately informed the opposite party and survey was also conducted by the surveyor appointed by opposite party. Complainant lodged his claim with opposite party and submitted all the documents in the office of opposite party but till today the claim has not been paid by the opposite party despite repeated requests of the complainant. The complainant had submitted an estimate of damaged car to the opposite party, but opposite party lost the said estimate and the opposite party again asked for estimate from the complainant. The complainant also submitted the second estimate as demanded by opposite party, but the opposite party did not accept the same. The estimated loss in the vehicle is about Rs.8,50,000/-. The act of opposite party is illegal and amounts to deficiency in service. Hence this complaint and it is prayed that opposite party may kindly be ordered to pay for repair charges of vehicle as per estimate Rs.8,50,000/-, compensation of Rs.200,000/- on account of mental agony and harassment and Rs.11,000/- as litigation expenses to the complainant.

2. After registration of complaint notice was issued to the opposite party. Opposite party in its reply has submitted that the vehicle in question met with an accident on 14.5.2017 and intimation to the insurance company was given on dated 9.6.2017. Thus there is a violation of terms and condition of the insurance policy specially condition No.1 of the insurance policy, therefore the insurance company is not liable to pay any compensation. A surveyor was appointed by the company and he sent many letters to the complainant on dated 24.6.17, 8.7.17, 19.7.17, 12.8.17, and 16.9.17 and requested the complainant to supply the relevant documents for settlement of the case, but no reply was given by the complainant. After that two letters dated 8.2.18 and 20.2.18 were given to the insured but he did not reply and she never co-operated for settlement of the claim and there is no compliance of usual formalities thus there is a violation of terms and condition of the insurance policy. It is further submitted that there is a compromise between the insured and the owner of the offending vehicle and insured received the money from the owner of the offending vehicle. It is the main cause that no FIR or DDR was lodged by the insured and only a compromise letter was given to the police for settlement of the claim. As the insured had taken the money for the damages of his vehicle therefore he cannot demand

twice from the insurance company and the claim should be dismissed on this ground alone. The final survey was conducted by Sh.Raj Kumar Singhal Charter Engineer surveyor and loss assessor who assessed the loss of Rs.1,74,310/-. According to the complainant, the insured is not residing at Distt.Rohtak and nor the accident took place in the jurisdiction of Distt.Rohtak, therefore she cannot file the complaint in this Hon'ble Commission. Therefore the insurance company is not liable to pay any compensation to the complainant. All the other contents of the complaint were stated to be wrong and denied and opposite party prayed for dismissal of complaint with costs.

3. Ld. counsel for complainant in his evidence has tendered affidavits Ex.CW1/A & Ex.CW1/B, documents Ex.C1 to Ex.C21 and closed his evidence on dated 16.01.2020. Ld. Counsel for opposite party has tendered affidavit Ex.RW1/A, documents Ex.R1 to Ex.R8 and closed his evidence on 21.03.2022.

4. We have heard learned counsel for the parties and have gone through material aspects of the case very carefully.

5. We have perused the documents placed on record by both the parties. The main contention of the respondent officials is that this Commission has no territorial jurisdiction to entertain and try the present complaint. On this point we have perused the documents placed on record by both the parties. As per our opinion the estimate has been issued by Rajendra&Jogindra Motor Works Subhash Road, Rohtakon 27.08.2018. Survey of the vehicle has been conducted at Auto Market, Rohtakby the independent surveyor Raj KumarSingal on the instruction of Divisional office Rohtak on dated 12.06.2017. 'No Claim' letter has been issued by the Senior Divisional Manager, Rohtak on dated 27.09.2018. So as per our opinion this Commission has territorial jurisdiction to entertain and try the present complaint. The main contention of the respondent insurance company is that the relevant documents have not been supplied by the complainant to settle the claim of the complainant. They further submitted that the surveyor wrote 5 letters dated 24.06.2017, 08.07.2017, 19.01.2017, 12.08.17and 16.09.2017 with the request to supply the relevant documents with the surveyor or the insurance company but the complainant failed to submit the documents. Hence the claim has been closed as 'No Claim' vide letter dated 27.09.2018. It has been submitted that there was a collusion between two vehicles and the another vehicle was offending vehicle. It has been submitted by the insurance company in his affidavit that the complainant has received some amount from the owner of offending vehicle to settle the police complaint. A compromise letter was given by the complainant in the police station regarding the settlement. So she cannot take benefit twice for the one claim i.e. one from the owner of offending vehicle and other from the insurance company. The insurance company presumed that an amount has been taken by the complainant regarding the damages of the vehicle in question from the owner of offending vehicle and thereafter filed the claim with the insurance company. We have minutely perused the documents placed on record by both the parties. The insurance company placed on record only 2 letters Ex.R3 & Ex.R4(same letters) i.e. 'No claim letter' and other letters dated 24.06.207, 08.07.2017, 19.07.2017, 12.08.2017 and 16.09.2017 have not been placed on record by the opposite party. Opposite party has not placed on record any document to prove that these letters were ever served by the surveyor to the complainant. Moreover the letter dated 27.09.2018 Ex.R3/Ex.R4 is not supported with any registered post, courier receipt etc. so it cannot be believed that these letters have been issued by the insurance company to the complainant. Opposite party has also placed on record two documents Ex.R7 & Ex.R8 but the same cannot be believed because these are merely photocopy and not supported with affidavit. No document has been placed on record by the opposite party to prove that how much amount has been received by the driver of the car

from the owner of offending vehicle. Hence the repudiation of claim by the opposite party is illegal and amounts to deficiency in service.

6. As per respondent the complainant has suffered a loss of Rs.173310/- in the vehicle in question as per survey report, whereas the IDV of the vehicle is Rs.420000/-. On the other hand, the complainant has placed on record an estimate of repair Ex.C17 amounting to Rs.995163/- and the estimate was also mentioned by the surveyor in his report amounting to Rs.994164/- which is more than IDV. We have minutely perused the photographs the vehicle. The vehicle was not repaired as the cost of repair is more than 75% of IDV of the vehicle, which comes under total loss. Hence the complainant is entitled for the IDV of vehicle(Rs.420000/-) after deducting the salvage value which we have assessed as Rs.50000/- i.e. for Rs.370000/- (Rs.420000/- less Rs.50000/-). Perusal of RC itself shows that the vehicle is hypothecated with Punjab National Bank Bhiwani. NOC has not been placed on record by the complainant to prove the fact that the loan amount has been repaid by the complainant.

7. In view of the facts and circumstances of the case, we hereby allow the complaint and direct the opposite party to pay the amount of Rs.370000/-(Rupees three lac seventy thousand only) alongwith interest @ 9% p.a. from the date of filing the present complaint i.e. 04.10.2018 till its realization and shall also pay a sum of Rs.5000/-(Rupees five thousand only) as compensation on account of deficiency in service and Rs.5000/-(Rupees five thousand only) as litigation expenses to the financier Punjab National Bank, Bhiwani for the settlement of loan account of the complainant within one month from the date of decision. After settlement of loan amount, if any amount remains as surplus, the same shall be paid to the complainant. However, complainant is directed to move an application to the Registration Authority for cancellation of RC within 15 days. Complainant is further directed not to ply the vehicle on road.

7. Copy of this order be supplied to both the parties free of costs. File be consigned to the record room after due compliance.

Announced in open court:

04.04.2024.

.....
Nagender Singh Kadian, President

.....
TriptiPannu, Member.

.....
Vijender Singh, Member

**[Sh. Nagender Singh Kadian]
PRESIDENT**

**[Dr. Tripti Pannu]
MEMBER**

**[Sh. Vijender Singh]
MEMBER**