IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 19.05.2017
Date of hearing: 18.07.2024
Date of Decision: 29.11.2024

COMPLAINT CASE NO.- 933/2017

IN THE MATTER OF

MR. SANJAY SHARMA (DECEASED),
THROUGH LR'S

1. **MS. SAIRA SHARMA**
   D/O LATE MR. BASANT LAL SHARMA,
2. **MS. LALITA SHARMA,**
   S/O LATE MR. BASANT LAL SHARMA,
3. **MR. MITTER SAIN SHARMA,**
   S/O LATE MR. BASANT LAL SHARMA

ALL RESIDING AT:
D-99, GROUND FLOOR, MANSAROVAR,
GARDEN, NEW DELHI – 110015.
(Through: Mr. Bhaskar Tiwari, Advocate)

…Complainant

VERSUS

IFFCO-TOKIO GENERAL INSURANCE CO. LTD.,
REGISTERED OFFICE:
IFFCO SADAN, C-1, DISTRICT CENTRE,
SAKET, NEW DELHI – 110017.
ALSO, AT:
CUSTOMER SERVICE CENTRE:
UNIT NO. A & B4, 3RD FLOOR,
TDI CENTRE, JASOLA,
NEW DELHI – 110025.
(Through: Mr. Deepak Kumar Vijay & Ms. Neeru Sharma, Advocates)

… Opposite Party

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Ms. Saira Sharma, LR of the Complainant.
None for the OP.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The present complaint has been filed by the Complainant before this commission alleging deficiency of service and unfair trade practice on the Opposite Party and has prayed following reliefs: -

   a. *Pass an award in favour of the Complainant and against the Opposite Party for Rs.41,08,464 (Rupee Forty One Lakh Eight Thousand Four Hundred And Sixty Four) including interest calculated @ 12% per annum from 9th January, 2015 upto 8th May, 2017 of Rs.7,97,164/- (Rupee Seven Lakh Ninety Seven Thousand One Hundred And Sixty Four) alongwith pendent lite and future interest 12% per annum from the date of filing of this Complaint till its realisation; and damages on account of demurrage charges, loss of business due to non-utilisation of the Said Vehicle and mental agony suffered by the Complainant of Rs.5,00,000/- (Rupees Five Lakh).*

   b. *Cost of the Proceedings may also be awarded to the Complainant.*

   c. *Pass any other order which the Hon'ble Commission may deem fit and proper in the interest of ensuring justice as per the facts and circumstances of the case."*

2. Brief facts necessary for the adjudication of the present complaint are that in the year 2012, the Complainant purchased a refrigerated van, Make – ICV Class A1, GVW GT 4000, bearing registration no. HR-55R-5180, Engine no. CRPZ 110396, Chassis No.

MB1UPMJB6CPPF8087. Thereafter, the Complainant obtained an insurance policy bearing no. 82535096 for the said vehicle for the period from 04.01.2013 to 03.01.2014. Subsequently, the Complainant renewed the policy, bearing no. 86557652, for the period from 27.01.2014 to 26.01.2015, with an insured declared value (IDV) of Rs. 28,11,300/-. On 06.06.2014, the Complainant transported a consignment of perishable goods from Muzaffarnagar (U.P.) to Navi Mumbai, Maharashtra. However, on 09.06.2014, the insured vehicle met with an accident near Baroda, Gujarat, due to a sudden drop in the speed of a car that overtook the insured vehicle. To avoid a collision, the driver, Mr. Sharwan Kumar, had to take a sharp turn to the left, resulting in the vehicle veering off the road and overturning, causing substantial damage to the insured vehicle as well as the goods.

3. The Complainant immediately informed the Opposite Party about the incident, whereupon the Opposite Party appointed M/s Parikh & Associates as the surveyor and assessor to inspect and assess the loss. Mr. Sailesh Shah, representing M/s Parikh & Associates, visited the accident site and, after inspection, instructed the Complainant to remove the vehicle. Accordingly, the Complainant arranged for the vehicle to be removed to a workshop, namely Landmark Commercial Vehicle Pvt. Ltd., through Jagdamba Crane Service at a cost of Rs. 18,000/-. Mr. Sailesh Shah revisited the Landmark workshop, took photographs of the vehicle, and obtained copies of all relevant documents. On 14.06.2014, the damaged vehicle was re-inspected by the surveyor in the presence of mechanics from the Landmark workshop. After inspecting the damaged vehicle, the Landmark

workshop estimated the repair cost to be Rs. 17,08,807/-, which included labour charges and the cost of parts to be replaced. Additionally, on 21.06.2014, M/s Aape Overseas Refrigerated Cargo Body Builder estimated the repair cost of the refrigerator section to be Rs. 14,00,000/-.

4. Accordingly, the Complainant lodged a claim based on the estimates provided by the Landmark Workshop and M/s Aape Overseas for the damage to the vehicle. On 27.11.2014, the Complainant sent an email to the surveyor along with the claim papers. On 26.12.2014, upon a request from the Landmark workshop, the Complainant again submitted all the necessary documents to the surveyor. Despite furnishing all the documents and completing the necessary formalities, the Complainant did not receive any response from the Opposite Party. The Complainant also sent letters dated 26.03.2015 and 15.04.2015, informing the Opposite Party that all necessary documents had been submitted to the surveyor appointed by the Opposite Party. The Complainant also mentioned in these letters that the vehicle was financed by DCB Bank and that the Complainant was facing significant financial hardship due to the dual burden of paying EMIs and loss of business caused by the non-settlement of the insurance claim. However, the Opposite Party failed to give any reply to the Complainant.
5. On 18.12.2015, the Opposite Party issued a letter seeking additional documents instead of settling the claim. Although the Complainant had already submitted all necessary documents to the surveyor, the Complainant complied with this request and submitted the all the

relevant documents to the Opposite Party and also requested the Opposite Party for the settlement of the claim. Moreover, as per the Indian Motor Tariff, if the cost of repairs exceeds 75% of the IDV under the insurance policy, compensation is payable at par with the IDV. However, the Opposite Party has failed to settle the claim till date. As a result, the Complainant sent a legal notice dated 08.04.2017 to the Opposite Party, seeking settlement of the claim, but was of no avail.

6. The Opposite Party has contested the present case and raised certain preliminary objections regarding the maintainability of the complaint. The counsel for the Opposite Party submitted that the Complainant does not qualify as a *"consumer"* under the Consumer Protection Act, 1986, as the insurance was purchased for commercial purposes. The Complainant is admittedly engaged in the business of transporting perishable goods and commodities across India, thus indulging in commercial activity. He further submitted that the present complaint is barred by the law of limitation under the Consumer Protection Act, 1986, as the alleged accident occurred on 09.06.2014, and the present complaint was filed in May 2017, exceeding the two-year limitation period.

7. The counsel for the Opposite Party also contended that the present complaint involves complicated questions of fact and law, which cannot be adjudicated through summary proceedings. Lastly, He submitted that the Complainant’s claim could not be processed due to the Complainant's failure to provide necessary information, despite reminder letters dated 18.12.2015, 04.01.2016, and 13.01.2016.

Finally, by letter dated 21.01.2016, the Opposite Party closed the claim. More so, the Complainant concealed the same information from the Commission. Therefore, there is no deficiency in its service. Pressing the aforesaid contentions, the counsel appearing on behalf of the Opposite Party prayed that the present complaint should be dismissed.

8. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Parties. Both the parties have filed their Evidence by way of Affidavit in order to prove their averments on record.
9. The Complainant has filed written arguments reiterating the same allegations against the Opposite Party as raised in the complaint. The Complainant has emphasized that despite submitting all required documents and fulfilling necessary formalities, the Opposite Party failed to settle the genuine insurance claim, causing financial and mental hardship.
10. On the other hand, the Opposite Party, in its written arguments, has reiterated the contentions raised in its written statement. It has argued that the claim was closed due to the Complainant's alleged failure to provide necessary documents and maintained that there was no deficiency in service on its part.
11. We have perused the material available on record and heard the arguments of the counsel for the Complainant.
12. The fact that the Complainant had purchased an insurance policy bearing no. 82535096 from 04.01.2013 to 03.01.2014 with the Opposite Party towards his vehicle bearing registration no. HR-55R-

5180 and the same was renewed by the Complainant vide policy no. 86557652 from period 27.01.2014 to 26.01.2015 is clear from the annexure attached at pg. 21 of the present complaint.

13. The first question for consideration before us is ***whether complainant falls under the definition of 'consumer' under the consumer protection act, 1986?***

14. The first and the preliminary contention raised by the Opposite Party that the Complainant is not *'Consumer'* as defined under the Consumer Protection Act, 1986 as he was using the insurance for commercial purpose. To resolve this issue, we deem it appropriate to refer to ***M/S. Harsolia Motors vs M/S. National Insurance Co. Ltd, I (2005) CPJ 27 (NC)*** wherein it is held as under:

> *"In Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, (2000) 1 SCC 98, the Court elaborately considered the provisions of Section 2(1)(d) and 2(1)(o) as well as earlier decisions and held that the combined reading of the definitions of consumer and service under the Act and looking at the aims and object for which the Act was enacted, it is imperative that the words consumer and service as defined under the Act should be construed to comprehend consumer and services of commercial and trade-oriented nature only. Thus, any person who is found to have hired services for consideration shall be deemed to be a consumer notwithstanding that the services were in connection with any goods or their user. Such services may be for any connected commercial activity and may also*

relate to the services as indicated in Section 2(1)(o) of the Act.''

15. In the present case, the Opposite Party has merely made a statement that the Complainant took the insurance cover for commercial purposes and therefore, it should not be considered as 'consumer' under the definition of consumer. On relying on the above-mentioned dicta by National Consumer Commission, which says that, if the commercial purpose is used by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods will come under the definition of a consumer. In the present case, it is clear that the Complainant had bought the insurance policy for the purposes of protecting and securing his livelihood, thereby he will fall within the definition of consumer under the Consumer Protection Act, 1986. Consequently, the objection raised on behalf of the Opposite Party is answered in the negative.

16. The second issue to be adjudicated is ***whether the present complaint time barred under Consumer Protection Act'1986?*** It is imperative to refer to Section 24A of the Consumer Protection Act, 1986 wherein it is provided as under:-

> "***24A. Limitation period.-***
> *(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed **within two years from the date on which the cause of action has arisen**.*
> *(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the Complainant satisfies the District*

Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint as this such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay."

17. Analysis of Section 24A of the Consumer Protection Act, 1986 leads us to the conclusion that this commission is empowered to admit a complaint if it is filed within a period of two years from the date on which cause of action has arisen.
18. Returning to the facts of the present case, it is evident from the record that the last cause of action arose when the Opposite Party, via letter dated 21.12.2016, closed the Complainant's claim. The present complaint was filed on 19.05.2017, which is within two years from the date the claim was closed. Therefore, the Complainant is within their rights to file the present complaint before this Commission.
19. The third question for consideration before us is ***whether the present case involves complicated question of facts and law which cannot be decided in summary procedure adopted by this commission.***
20. The Consumer Protection Act, 1986, came into being in order to protect the interests of *Consumers* who are affected by the acts of the service providers, who in order to attract the Consumers, tend to make lucrative offers but when it comes to actually providing the offered services, they take a step back.
21. Deficiency has been defined under section 2 sub-clause (g) which reads as follows:

> *"(2) (g)"deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;"*

22. Returning to the facts of the present complaint, it is clear that the Complainant availed the services of the Opposite Party by purchasing said insurance policy. Thereafter, the said insured vehicle met with the accident and the Opposite Party failed to settle the claim. Aggrieved by which, the Complainant has filed the present case and sought recovery of the claim and compensation suffered by him. Since the only allegation against the Opposite Party to settle the insurance claim, we do not see any complication of facts and law to decide the present case.
23. Moreover, nothing cogent has been brought on record by the Opposite Party which would reflect that there are such complicated questions involved which could not be settled on the basis of the pleadings filed on behalf of the contesting parties. Consequently, we are of the view that the present complaint falls within the four corners of the jurisdiction of this commission and there is no bar with respect to the jurisdiction of this commission to entertain cases related to the compensation with respect to repudiation of claim of the Complainant.
24. The main ***question for consideration*** before us is ***whether the Opposite Party is deficient in providing its services to the Complainant***.
25. The counsel for the Opposite Party submitted that the Complainant failed to provide the necessary information to process his claim

despite reminder letters dated 18.12.2015, 04,01,2016 and 13,01,2016 and finally vide letter dated 21.01.2016, closed the claim of the Complainant. Therefore, there is no deficiency on the part of the Opposite Party.

26. The expression deficiency of services is defined in Section 2 (1) (g) of the Consumer Protection Act, 1986 as:

> *(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.*

27. The expression 'service' in Section 2(1)(o) of the Consumer Protection Act, 1986 is defined as:

> *(o)"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service"*

28. On perusal of the record, it is evident from ***Annexure-I*** that the Complainant vide email dated 27.11.2014, submitted the relevant documents to the surveyor. Furthermore, upon the request of Landmark Worship, the Complainant again sent the said documents to the surveyor on 26.12.2014 ***(Annexure-J).*** Additionally, it is clear from the letters dated 26.03.2015 and 15.04.2015, sent to the Opposite Party, that all the relevant documents had been forwarded to the surveyor, and the Complainant had requested the Opposite Party to

settle the claim at the earliest. However, we failed to find any evidence suggesting that the Opposite Party responded to these letters or raised any queries regarding the documents. Despite this, the Opposite Party did not even make an effort to reply to the Complainant.

29. Further, after the passage of a few months, the Opposite Party vide letter dated 18.12.2015 ***(Annexure-N)***, sought documents from the Complainant. The Complainant duly provided the requested documents to the Opposite Party on 24.12.2015 ***(Annexure-O).*** However, instead of settling the claim, the Opposite Party, through letters dated 04.01.2016 and 13.01.2016, again sought the same documents from the Complainant. More importantly, the Opposite Party vide letter dated 21.12.2016 closed the claim of the Complainant on the ground that the required documents had not been provided.

30. Therefore, it is pertinent to note that the Complainant had already submitted the relevant documents to the surveyor on two occasions and had also forwarded the same to the Opposite Party, as evidenced by the letter dated 18.12.2015 but the Opposite Party failed to settle the claim. The Opposite Party has failed to place any evidence to demonstrate that the documents submitted by the Complainant were incomplete or deficient. On the contrary, the Opposite Party continued to seek the same documents repeatedly, as is evident from their letters. Thus, there is no fault on the part of the Complainant, as they had submitted all the required documents.

31. Relying upon the aforesaid discussion, we hold that the Opposite Party was deficient in providing its services to the Complainant by failing to settle the genuine claim of the Complainant.

32. Furthermore, it is evident from the report submitted by Landmark Commercial Vehicle that the loss suffered by the insured vehicle amounted to Rs. 17,08,807/-, and the report dated 21.06.2014 estimated the repair cost of the refrigerator section at Rs. 14,00,000/-. Therefore, the total loss incurred due to damage to the insured vehicle amounts to Rs. 31,08,807/-. However, the IDV of the said vehicle is Rs. 28,11,300/-. At this stage, it is pertinent to reproduce GR 8 of the Indian Motor Tariff and the terms and conditions of the insurance policy, which state that the IDV of the vehicle shall be determined as follows:

> ***GR.8. Insured's Declared Value (IDV)***
> *The Insured's Declared Value (IDV) of the vehicle will be deemed to be the 'SUM INSURED' for the purpose of this tariff and it will be fixed at the commencement of each policy period for each insured vehicle.*
> *The IDV of the vehicle is to be fixed on the basis of manufacturer's listed selling price of the brand and model as the vehicle proposed for insurance at the commencement of insurance /renewal and adjusted for depreciation (as per schedule specified below). The IDV of the side cars) and /or accessories, if any, fitted to the vehicle but not included in the manufacturer's listed selling price of the vehicle is also likewise to be fixed.*
> *The schedule of age-wise depreciation as shown below is applicable for the purpose of Total Loss/ Constructive Total Loss (TL/ CTL) claims only.*
> *A vehicle will be considered to be a CTL, where the aggregate cost of retrieval and /or repair of the vehicle subject to terms and conditions of the policy exceeds 75% of the IDV."*

33. As per the Indian Motor Tarriff, A vehicle will be considered to be Constructive Total loss, where the aggregate cost of retrieval and/or repair of the vehicle subject to terms and conditions of the policy exceeds 75% of the IDV. Therefore, it is clear that if the cost of repair

exceeds 75 % of the IDV under the Insurance Policy, then the compensation would be a payable at par with the IDV. In the present case, the cost of repairing exceeding the limit of 75% of the IDV. Therefore, the Complainant is entitled for full IDV of the insured Vehicle.

34. Keeping in view the facts of the present case and the extensive law as discussed above, we direct the Opposite Party to pay Rs.28,11,300/- along with interest as per the following arrangement:

    A. An interest **@ 6 %** calculated from the date on which the claim was closed by the Opposite Party i.e., **21.12.2016** till **29.11.2024** (being the date of the present judgment);

    B. The rate of interest payable as per the aforesaid clause **(A)** is subject to the condition that the Opposite Party pays the entire amount on or before **29.01.2025**;

    C. Being guided by the principles as discussed above, in case the Opposite Party fails to pay the amount as per the aforesaid clause **(A)** on or before **29.01.2025**, the entire amount is to be refunded along with an interest **@ 9% p.a.** calculated from the date on which the claim was repudiated by the Opposite Party and till the actual realization of the amount.

35. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party is directed to pay a sum of

    A. Rs. 1,00,000/- as cost for mental agony and harassment to the complainant; and

    D. The litigation cost to the extent of Rs. 50,000/-.

36. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
37. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
38. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

PINKI
MEMBER (JUDICIAL)

Pronounced On:
29.11.2024

LR-ZA