GOVERNMENT OF JAMMU & KASHMIR
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
BARAMULLA/BANDIPORA

District Consumer Disputes Redressal Commission Baramulla
President

Coram: -

1. **Peerzada Qousar Hussian** .... **President**
2. **Ms Nyla Yaseen** ...... **Member**

Consumer Complainant No: 24/2023

1. **Asifa Begum**
   W/o Ghulam Hssan Dar
   R/o Sheeri Baramulla
   Proprietor Dar Traders and suppliers

.....(Complainant)

Versus

1. **General Manager, Fear Deal Tata Motors Parimpora Srinagar**
2. **General Manager, Reliance General Insurance Company Ltd. Munawar Plaza, Munawarabad, Srinagar**
3. **Sundeep Baghi, Surveyor, Reliance General Insurance Company Ltd, Narwal, Jammu**
4. **Malkait Singh, Team Leader, Reliance General Insurance Company Ltd, Chandigarh, A/P SCO-21, 3rd Floor, B block District shopping complex, near Union Bank of India, Ranjit Avenue, Amritsar, 143001**
5. **Nadeem Ashraf, 9419403623, District Sales Manager, Fair Deal Tata Motores, Parimpora bypass.**
6. **Adil Ahmad, 7889737747, Agent Reliance General Insurance Company.**

......(Opposite parties)

Date of Institution: 26-04-2023
Date of Decision: 02-12-2024

Appearing Counsel:
Ld Adv. Neelofar Masood for the complainant
Ld Adv. Farooq Din Bhat for O.P.No.2, 3 &4
Nemo for O.P.No.1, 5 & 6

ORDER

The instant complaint has been filed by the complainant before this Commission on 26-04-2023 alleging therein deficiency in service on the part of the O.Ps and has accordingly prayed for the following relief:-

1. The respondents may be directed to pay an amount of Rs.1 crore as compensation for deficiency in service and negligence.
2. The respondents be directed to pay an amount of Rs.50 Lacs for forcing the complainant to get his newly purchased vehicle insured by the Reliance General Insurance Company through respondent No.6 who is an agent.

Respondents may be directed to pay compensation of Rs.20 Lacs for subjecting the complainant and her family into mental trauma, with further direction to settle the insurance claim of the complainant and payment of the unpaid insurance claim amount.

Brief facts necessary for the adjudication of the present complaint are as under:

The complainant is a resident of Sheeri Baramulla and proprietor of M/S Dar Traders and suppliers Baramulla, who purchased a vehicle, Tata Singna, Model No. 1923KBS62STR bearing Chassis No.2G638/09173 from the respondent No.1. The said vehicle was insured with the Reliance General Insurance Company, herein after referred to as respondent No.2 & 3, however, the ill-fated vehicle bearing Registration No. JK05K 5222 being driven by driver namely Ghulam Mohi-deen, met with an accident at Udhampur due to which the vehicle got extensively damaged and consequently the driver died and the FIR was accordingly registered with Police Station Roun Domail, Udhampur under FIR No.462/2021. Pertinent to mention over here that the perusal of the driving license of the driver who died in the accident reveals that the deceased had a valid license.

The complainant's contention is that since the vehicle was seized by the concerned Police Station, which was later on released on the direction of the Court. However, after release of the vehicle in question, the vehicle was handed over to the O.Ps on the instructions of the insurance company for repairments. In the meanwhile, the complainant registered a claim before the insurance company and requested the insurance company to settle the insurance claim of the complainant, however, despite submitting all the requisite documents as asked for by the O.Ps, the matter was not settled and surprisingly, the claim of the complainant was closed without providing her any chance or opportunity to be heard. Even the complainant was not informed about the closure of the insurance claim as alleged by the complainant, she was kept in dark on one pretext or the other for about 5 months to avoid the payment. The complainant's contention is further that since the insured vehicle was purchased on finance and she has to pay a monthly instalment of Rs.56,600/- towards the bank, besides, Rs.15,000/- towards the O.Ps as parking fee for stationing the vehicle in the workshop of O.Ps. Additionally, she has to pay an amount of Rs.15,000/- towards the family of the deceased driver who died due to the accident of the complainant's vehicle, as such, the complainant has to pay an amount of Rs.71,600/- in total for the damaged vehicle which is not in a position to ply on the road. The complainant is also not in a position to bear the expenses on major repairs of the damaged vehicle which is pending in the workshop of the O.Ps due to non-settlement of the insurance claim. The complainant's averment is further that she has suffered heavy loss as alleged to have been deliberately cheated by influencing the complainant to get referred insured through their company viz Reliance Insurance Company. The complainant's contention is further that she is suffering loss of an amount of Rs.40,000/- due to the non-repairment of the damaged vehicle, and she has been subjected to hardships due to the alleged cheating by the O.Ps and there seems to be a nexus and mafia behind all the plot as the innocent customers are being asked to get the vehicles insured by the Reliance Insurance Company, herein after referred to as O.P.No.1 & 5, allegedly for their personal benefits and the said company is not providing the due services to the customers. Further the complainant alleges that due to non-settlement of insurance claim she has suffered loss of Rs.4 Lacs monthly from the date of incident viz 04-12-2021 which amounts to Rs.64 Lacs till the institution of the complaint. Besides, the vehicle is presently in the workshop of the O.Ps which has been kept in deteriorating conditions since a long time. The non-settlement of the claim of the complainant has put the whole family of the complainant into harassment and mental agony which constrained her to approach the District Consumer Commission for redressal of her grievances.

Per contra the respondents filed the written statement, contending therein that the complainant is estopped by her own act and conduct to file the present complaint as there is no deficiency in service on the part of the O.P.No.2, 3 & 4 (Reliance Insurance). The O.P's contention is further that the complainant has failed to submit the requisite documents despite the requests and reminders, even the complainant on 30-01-2022, 06-02-2022, 13-02-2022 and 20-02-2022 was asked to submit the requisite documents directly to the insurance company but all the times she failed to submit the same. As such, there is no locus standi to the complainant to file the present complaint for deficiency in service or unfair trade practice as she has failed to process the claim as per the terms and conditions of the policy. The answering respondent admits to the extent of the issuance of the insurance cover, but it is submitted that the documents regarding the alleged loss suffered by the complainant had not been received by the O.Ps. The contention of the respondent is further that in absence of any proof as to the settlement of the claim, the answering O.P denies all the allegations raised by the complainant in the instant complaint. The complainant be put to strict proof as to establish the submission of documents of the claim. The complaint is denied as being false and frivolous with the soul purpose of deriving the undue benefit out of the benevolent provisions of the Consumer Protection Act, 2019. The complainant has neither submitted any hard copy of the documents personally nor has submitted any soft copy to the answering respondent due to which the claim of the complainant was closed due to document deficiency.

The complainant adduced 3 witnesses in support of her claim by way of witness affidavits namely Ghulam Hassan Dar S/o Mohammad Shafi Dar R/o Gulistan Pehliharan, Abdul Waheed Dar S/o Ghulam Nabi Dar R/o Gulistan Pehliharan and Asifa Begum W/o Ghulam Hassan Dar, R/o Sheeri Baramulla, the complainant as witness in her own case, who were cross examined by the counsel appearing for respondent No.2.

The witness, Ghulam Hassan Dar on cross examination stated that the complainant is his wife, the accident took place on 04-12-2021 and the vehicle was driven by their driver namely Ghulam Mohideen for which an FIR was lodged on 04-12-2021 in Police Station Roun Domail, Udhampur. The vehicle in question was insured by Reliance General Insurance Company. The complainant filed a written complaint with the company of the respondents, however they didn't depute any surveyor, although they approached them through WhatsApp, seeking some documents. Later on, after six months' period the complainant's claim was rejected.

Another witness, namely Abdul Waheed Dar on cross examination stated that it was a white colour dumper heaving **Registration No. JK05K 5222**. The accident took place on **04-12-2021** at Darsu Road, Udhampur. After coming to know about the accident he reached the spot and there was only one person in the vehicle at the time of accident. The claim was filed in Motor Accident Claim Tribunal (MACT) regarding death of the driver and the said tribunal awarded compensation to the family of the deceased driver. The vehicle was lying on the spot for more than a month. An FIR was lodged on the same day at Udhampur Police Station. The complainant submitted email to the insurance company and also intimated the same through WhatsApp. Besides, the complainant submitted the documents to the insurance company through registered post, however, no official from the respondent company came on spot, although the company was intimated in written form about the occurrence of the accident of the vehicle.

The complainant as witness in her own case on cross examination stated that the accident of the vehicle took place on 04-12-2021. The vehicle was a dumper bearing Registration No. JK05K 5222 and the driver died in the accident which occurred at Udhampur. The vehicle was insured with the Reliance General Insurance Company. The complainant as witness further stated that the dependents of the driver who died in the accident had filed a claim before the MACT, however, they received the compensation. Moreover, we are paying some amount to the widow of the deceased driver on our own on humanitarian grounds. The vehicle was lying on the accident spot for one month which was later on stationed in the work shop of Lala Enterprises Jammu, for which we are being charged Rs.500/- per day as parking charges of the vehicle. The witness has further stated that no written information was given to the insurance company but afterwards the witness stated that the written information about the accident has been given to the insurance company. However, no surveyor was deputed on spot and no one visited there from the company. Although we submitted all the required documents to the company through WhatsApp, even legal notice was also served to the insurance company. Furthermore, we are depositing an installment of Rs.56,600/- as the installment towards the loan account of the vehicle for which we were constrained to sell our residential house.

We have heard the counsel for the parties, perused the documents placed on record along with the written arguments advanced by the complainant's counsel, which reveals that the complainant Ipto Facto purchased a Dumper vehicle Model No. 1923KBS62STR bearing Registration No. JK05K 5222 from O.P.No.1 & 5. which was insured by the O.Ps on 08-09-2021 for an amount of Rs.29 Lacs for which an amount of Rs.22,283/- was charged as premium. The said insurance policy was effective from 08-09-2021 to 07-09-2022, however, during the subsistence of the insurance policy the vehicle in question met an accident at Udhampur on 04-12-2021. The driver of the vehicle died on spot and the vehicle was damaged, subsequently the FIR was registered at Roun Domail Police Station, Udhampur on 04-12-2021. The complainant thereafter got the said vehicle released from the police station concerned on the directions of the Judicial Magistrate, thereafter on the instructions of the O.Ps, the vehicle was stationed at Lala Enterprises channi, Jammu for repairments. Subsequently, the complainant registered the insurance claim with the O.Ps through online mode on 15-12-2021 under claim No.3121262806, consequent upon which the complainant was asked to submit the requisite documents in terms of communication vide dated 13-02-2022, which were accordingly submitted by the complainant through registered post. The complainant thereafter approached the O.Ps for settlement of her insurance claim, however the matter was delayed on one pretext or the other and eventually the complainant was informed that the claim has been closed without providing her a chance to be heard.

Perusal of the documents further reveals that the complainant is depositing regular installments of Rs.56,600/- towards the bank loan of the insured vehicle. Moreover, the complainant is being charged an amount of Rs.15,000/- monthly as parking fee for the vehicle which stands stationed in the workshop of the O.Ps for repairments.

Since, the complainant after occurrence of the incident has registered her claim with the O.Ps under Registration No.3121262806 and the requisite documents were accordingly submitted by her for settlement of the claim, contrary to which, the claim of the complainant has not been settled. Ironically, the claim of the complainant is stated to have been closed by the O.Ps as no claim. The O.Ps were under bounden duty to settle the genuine claim of the complainant within the stipulated period of 45 days after receiving the requisite documents from the complainant which has not been done, as such, the insurer has failed to comply with the policy terms and the claim of the complainant has been repudiated arbitrarily. Furthermore, the insurer company viz the O.Ps have not submitted any cogent or plausible evidence to substantiate that the complainant has not registered the claim. Therefore, non-settlement of the genuine claim of the complainant and failure to comply with the standards and guidelines amounts to deficiency in service on the part of the O.Ps in accordance with the Section 2(11)c of the Consumer Protection Act, 2019.

In view of the aforesaid facts and circumstances of the case and relying on the judgements passed by the Hon'ble National Commission in the relevant cases titled "National Insurance Company Ltd. versus Smith Sunita, 2016, Bajaj Allianz General Insurance Company versus Smith Rekha, 2014 and New India Assurance Company Ltd. versus Smith Urmila Devi, 2019", I am of the considered view that the insurance company has repudiated the claim of the complainant arbitrarily and without any valid grounds. The complainant is entitled to be compensated for the damages caused to her insured vehicle. As such, the complaint of the complainant is allowed and disposed-off with the following directions:

1. The O.Ps (insurers) are directed to pay the insured amount of Rs.29 Lacs (Rupees Twenty Nine Lacs) to the complainant for the damaged vehicle along with interest @8% from the date the claim was registered with the O.Ps till its realization.
2. The O.Ps (insurers) are further directed to pay an amount of **Rs.20 Lacs** (Rupees Twenty Lacs) to the complainant as compensation for putting her into mental agony and harassment.
3. The O.P.No.1 & 5 are directed to refund the parking charges to the complainant if any paid by her from the date the damaged vehicle was stationed in the workshop of the O.Ps.
4. The O.Ps (insurers) are further directed to pay an amount of Rs.50,000/- (Rupees Fifty Thousand) to the complainant as litigation charges and an amount of Rs.20,000/-(Rupees Twenty Thousand) towards the Consumer Welfare Fund Baramulla.

This order shall be complied with by the O.Ps within a period of four weeks from the date the copy of this order is served upon them.

The complainant shall however be at liberty to approach the concerned ARTO/RTO for maintenance of record reference and documentation if required so.

Order announced
Date: 02-12-2024

02/12.
Nyla Yaseen
Member
Member
District Consumer Disputes
Redressal Commission
Baramulla

Peerzada Qousar Hussain
President
President
District Consumer Disputes
Redressal Commission
Baramulla

Certified copy of this order be communicated to the parties free of cost and after compliance, file be consigned to records.