DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-VI (NEW DELHI), 'M' BLOCK, 1ST FLOOR, VIKAS BHAWAN, I.P.ESTATE, NEW DELHI-110002.

Case No. CC/705/2013

IN THE MATTER OF:

Anil Kumar
S/o Sh. Surender Singh,
R/o H.No. 290, Village Mandora,
District Sonepat, Haryana.

….Complainant

Versus

The Bajaj Allianz General Insurance Company
through its General Manager,
Having its address at
B.O.C. 31/32, 1st Floor,
Connaught Place, Delhi – 110001.

....Opposite Party

Quorum:
Ms. Poonam Chaudhry, President
Mr. Bariq Ahmad, Member
Mr. Shekhar Chandra, Member

Date of Institution: 31.07.2013
Date of Order : 26.10.2023

ORDER

SHEKHAR CHANDRA, MEMBER:

1. The present complaint has been filed under Section 12 of the Consumer Protection Act, 1986 (in short CP Act) against Opposite Party (in short OP) alleging deficiency of services.

2. The facts as borne out from the record in brief are that the complainant is owner of Truck No. HR- 69A-6926 which was insured with the OP vide Cover Note No. BZ803423890 and policy No. OG-10-1104-1803-00002238 *from 09.03.2010 to 08.03.2011* against a sum of Rs.11,00,000/- for which the complainant paid premium of Rs.22,978/-.

3. On 31.03.2010 after loading the empty bottles the driver of this truck had moved from Delhi to Chhajli, (District Sangroor, Punjab) and he was supposed to return on the next day. On the next day the complainant contacted the driver through telephone/mobile, but he could not be contacted as the mobile phone of the driver was switched off.

4. On 01.04.2010 the complainant contacted the company whose articles were uploaded in the said truck. On enquiry, the official of the company informed that the driver uploaded his truck in the night and moved to his destination, but the driver did not reach at the destination till 04.04.2010.

The complainant personally went to Chhalji, (District Sangroor, Punjab) on 04.04.2010 and met the S.H.O. of the area - Mr. Har Gopal Singh to register the case, but he flatly refused to register the case and stated that the case should be registered in Delhi Jurisdiction as the above said vehicle had moved from Delhi. As per the advice and instruction of SHO/Police at Chhalji, (District Sangroor, Punjab), the complainant approached the Delhi Police at their Uttam Nagar Police Station on 10.04.2010 for lodging an FIR/ Complaint but they also flatly refused to register the FIR. On 15.04.2010 the complainant went to his home station, Kharkhoda, (District Sonepat, Haryana) to register the case and they also told that the FIR should be register in Chhajli (District Sangroor, Punjab) as the vehicle had gone missing from there. The complainant went to Chhajli (District Sangroor) alongwith his advocate and met with S.P. of Sangroor and S.P., Sangroor directed the complainant to meet the S.H.O. concerned. The concerned S.H.O. enquired from the complainant as to which place the truck had moved and where the articles were unloaded. Ultimately the FIR could not be registered as the owner of the said company whose articles were being taken by the said truck was Commissioner of Police as the Commissioner of Police was apprehensive of his reputation.

5. Thereafter the complainant on the instructions and advice of his counsel filed a private complaint before the Illaqa Magistrate, Sunam, District

Snagroor, Punjab against S.H.O. Chhajli District Sangroor and others for registration of FIR. It is submitted that the S.H.O. P.S. Chhajli recorded the D.D. entry No.24 dated 03.05.2010. The complainant also filed the claim of the above said lost vehicle before the OP. It is submitted that the complainant did not find out the driver or his Truck despite making his best efforts. The complainant went to the house of driver, but he did not reach at his home. The complainant met several times to the P.S. Chhajli, District Sangroor, but they did not lodge the FIR of the above said Vehicle.

6. On 06.08.2010 the concerned learned Magistrate directed the SHO, P.S. Chhajli, District Sangroor to register FIR. On the directions of the Hon'ble Court, the S.H.O. of P.S. Chhajli registered FIR on 13.08.2010. It is submitted that thereafter on 09.09.2010 the investigator of the OP company namely Shri H.S. Bedi met the complainant at Patiala and the complainant handed over all the relevant documents.

7. On 24.09.2010 the S.H.O. of P.S. Chhajli District Sangroor submitted un-traceable report regarding the above said vehicle before the Court. On 08.12.2010 the Crime Branch Police, R.K. Puram, New Delhi also submitted their un-traced report. The untraced report was submitted before the Court on 12.03.2011 and said copy of the un-traced report was accepted by the learned Judicial Magistrate, 1st Class on 12.03.2011.

8. It is stated by the complainant that he submitted all the relevant documents along with claim to the OP but the OP repudiated the claim of the complainant of the above said vehicle on 09.11.2010.

9. On 23.07.2011 the complainant also served a legal notice through his counsel. Though the OP received the said notice but did not pay any heed towards the genuine request of the complainant. The complainant submits that the wrongful and illegal act of the OP has caused a great harassment, humiliation, mental agony, pains, sufferings and financial loss to the complainant and there is also deficiency in service on the part of the OP and thus the complainant further claims for an amount of Rs.50,000/- as compensation from the OP on the above mentioned accounts.

10. Aggrieved by the inaction of the OP, the complainant herein filed the complaint petition under Section 12 of the CP Act, before the President, District Consumer Dispute Redressal Forum, Sonepat. The OP after appearance filed their respective reply as well as application under Section 11 and Section 26 of the Act. It is submitted that the complainant thereafter filed the reply to application under Section 11 and Section 26 of the Act. The complaint was withdrawn by the complainant with liberty to approach the competent Court/forum vide order dated 28.05.2013 Hence, the present complaint with the following reliefs:-

a) *Direct the OP to pay Rs.11,00,000/- being the cost of the vehicle alongwith interest @ 18% oper annum from the date of complaint:*
b) *Direct the OP to pay the compensation of Rs.50,000/- on account of harassment, humiliation, mental agony, pains, sufferings and financial loss caused to the complainant and also due to deficiency in service on the part of the OP; and*
c) *Grant cost for present legal proceedings to the tune of Rs.15,000/-.*

11. Notice of the complaint was issued to OP, upon which OP entered appearance and filed written statement contesting the case on various grounds inter alia that the present complaint is barred by limitation; the District Consumer Forum has no power to enhance the period of limitation as enumerated in the Consumer Protection Act. It is further submitted by the OP that there is no deficiency in service on the part of the OP. It is further submitted by the OP that this Commission has no jurisdiction to entertain and try the present complaint as the claim has already been repudiated and conveyed to the complainant vide letter dated 09.11.2010. It is alleged by the OP that the present complaint has been filed for unlawful gain, which shows the lust for money of the complainant. The OP submits that there is no relationship of consumer under the CP Act, between the complainant and OP after the claim has already been repudiated. The OP alleges that the complainant has not come with clean hands before this Commission and has concealed the material facts.

12. The OP submits that the claim of the complainant was duly processed by the OP/Bajaj Allianz General Insurance Co. Ltd. The OP submits that the theft allegedly took place on 01.04.2010 and the claim was intimated to the company/OP on 18.08.2010 which has prejudiced possibilities of recovery of the vehicle and constitutes serious breach of condition No. 1 & 9 of Insurance policy. The complainant was requested by the answering OP vide letters dated 18.08.2010, 30.09.2010, 11.10.2010 & 29.10.2010 to clarify the following observations:-

> i. *"As per out policy Condition No. 1 "Notice shall be given in writing to the company immediately upon the occurrence of any accident or loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the company shall require."*
>
> ii. *From the documents submitted by your goodself it is observed that we were intimated after 139 days of theft. By doing, so the condition No. 1 of the above noted policy is breached".*

13. However, the complainant failed to clarify to the queries as raised above, therefore, the claim of the complainant was repudiated vide letter dated 09.11.2010. The OP, therefore, argues that the complainant is now estopped by his own act and conduct to file the present complaint; hence it is not maintainable and liable to be dismissed on this score alone.

14. We have heard the parties and gone through the material placed on record. The main thrust of argument of the OP is that since there is unreasonable

delay in lodging the complaint/FIR, therefore, the complainant has no case for claim.

15. After minutely examining the evidence and pleadings of the parties, we cannot accept the argument of the OP that there is unreasonable delay in lodging FIR or raising claim before the OP. The complainant has narrated the facts in detail which cannot be disbelieved. The complainant did his best to lodge FIR promptly but due to hindrance created by the Police, the FIR could not be registered till there was judicial intervention and finally the learned Judicial Magistrate had to direct to register FIR. Therefore, we do not find any fault in pursuing the claim by the complainant. The objection raised by the OP is rejected.

16. As regard the delay in lodging the FIR, the Hon'ble Supreme Court of India in '***Jaina Construction Company Vs. Oriental Insurance Company'***, decided on 04.02.2022 has held that the claim cannot be repudiated on the ground of delay. The same view has been tken by the Hon'ble National Consumer Commission in '***Gurshinder Singh Vs. Shriram General Insurance Co. Ltd.***', Civil Appeal No. 653 of 2020

17. After carefully considering the facts of the case, we direct the OP to pay claim amount of Rs. 11,000,00 to the complainant with interest @ 9% per annum from the date of lodging of claim till realization. Further the complainant will be entitled to compensation of Rs. 50,000/- for causing

mental harassment and agony. A sum of Rs. 15,000/- is awarded as cost of litigation expenses to the complainant. The sum must be paid within six weeks from the date of receipt of this order, failing which the OP shall pay interest at the enhanced rate of 12% per annum.

18. A copy of order be given to all the parties free of costs. The order be also uploaded on the website of this Commission.

The complaint case is accordingly disposed of. File be consigned to the record room.

[Poonam Chaudhry]
President

[Bariq Ahmad]
Member

[Shekhar Chandra]
Member