STATE CONSUMER DISPUTES REDRESSAL COMMISSION, U.T. CHANDIGARH

[Additional Bench]

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Consumer Complaint No.	:	CC/55/2024
Date of Institution	:	13/05/2024
Date of Decision	:	19/11/2024

1. **Renu Bala** wife of Gajraj Singh, #2553, Sector 20-C, Chandigarh – 160020. Presently residing at #601, Block-H, Royal Mansion, Peer Muchalla, Zirakpur, Mohali.

2. **Parminder Singh Rana** son of Sh. T.S. Rana, resident of #165, Sector 26, Chandigarh – 160019.

…. Complainants

Vs.

1. **New India Assurance Co. Ltd.**, 4th Floor, SCO 36-37, Sector 17-A, Chandigarh – 160017, through its Manager.

2. **Sh. Bhavesh Passi**, Surveyor/Investigator, C/o New India Assurance Co. Ltd., 4th Floor, SCO 36-37, Sector 17-A, Chandigarh – 160017.

3. **Sh. Ravinder Goel,** Surveyor, C/o New India Assurance Co. Ltd., 4th Floor, SCO 36-37, Sector 17-A, Chandigarh – 160017.

Second Address:

Sh. Ravinder Kumar Goyal, C/o Indian Stationers, Shop No.6, M.S. Enclave, Opp. Gurjivan Vihar, Dhakoli, Zirakpur - 160104.

4. **M/s Kogta Financial (India) Ltd.**, SCO 19, 1st Floor, Sector 7-C, Madhya Marg, Chandigarh - 160019.

5. **M/s HDFC Bank,** through its Manager, SCO 48, Sector 47, Chandigarh – 160047.

…… Opposite Parties

BEFORE: PADMA PANDEY PRESIDING MEMBER

PREETINDER SINGH MEMBER

PRESENT : Sh. Pankaj Chandgothia, Advocate for the Complainants.
Sh.S.S. Sidhu, Advocate for Opposite Party No.1.
Respondents No.2, 3 & 5 ex-parte vide order dated 11.07.2024.
None for Opposite Party No.4.

PER PADMA PANDEY, PRESIDING MEMBER

1. In brief, the facts necessary for the disposal of the instant Consumer Complaint are that the Complainant took comprehensive vehicle insurance valid from 14.07.2023 to 10.04.2024 with an IDV of ₹22,00,000/- vide policy cover note Annexure C-1. The said vehicle met with an accident on 01.08.2023 while it was driven by Complainant No.2 (nephew of the Complainant No.1). The Opposite Party (Insurance Company) was duly informed immediately and a claim was lodged. Various details and documents as required were duly provided, but the Opposite Party (Insurance Company) dilly dallied the clearance of the claim even though it was an admitted case of total loss as the repair estimate given by the workshop was ₹35,00,000/- as against the IDV of ₹22,00,000/-. The Complainants were continuously reminding the Opposite Parties to process their genuine claim, but they compelled the Complainant No.1 to furnish an affidavit which binds them to accept only an amount of ₹16,50,000/- against the due claim IDV of ₹22,00,000/-, which according to the Complainants tantamount to unfair contract. Further, the Opposite Party (Insurance Company) had taken full premium for one year, but issued a policy valid for only about 9 months, which put the insured/Complainants to unfair losses. Eventually, the Opposite Party (Insurance Company) repudiated the claim of the Complainants vide letter dated 25.04.2024 on frivolous grounds (Annexure C-11).

Alleging the aforesaid acts amount to deficiency in service and unfair trade practice on the part of the Opposite Parties, the Complainant has preferred the instant Consumer Complaint under Section 47(1)(a)(ii) of the Consumer Protection Act, 2019.

2. Notice of the complaint was sent to Opposite Parties seeking their version of the case. However, nobody appeared on behalf of Opposite Parties No.2, 3 & 5 despite service, therefore, they were proceeded ex-parte on 11.07.2024.

3. Opposite Party No.1 filed its written statement, admitting the basic facts of the case. It has been pleaded that the Complainant did not cooperate with the Surveyor and did not supply the documents and replied to the queries raised by the Surveyor. The driving license of the alleged driver (Parminder Singh Rana) was never submitted to the Surveyor for the purpose of verification and submission of the survey report. Moreover, the alleged estimate is contradictory for the reasons that the alleged repair mentioned the report cost approx. of ₹35,00,000/-. The Surveyor, investigator and the answering Opposite Party never sought any affidavit or undertaking from the Complainant to agree to settle the claim for ₹16,60,000/-. The policy Annexure C-1 was transferred in the name of Complainant No1 (Renu Bala) for the remaining period of the said policy with effect from 14.07.2023 after charging ₹59/- for the transfer of insurance policy. Pleading that there was no deficiency in service or unfair trade practice on its part and no case is made out for invocation of Section 47(1) (a) (ii), a prayer has been made by the Opposite Party No.1 for dismissal of the complaint.

4. Opposite Party No.4 filed its separate written statement, pleading that the main dispute was between the Complainant and New India Assurance Co. Ltd. (Opposite Party No.1). Moreover, the answering Opposite Party was only the Financier of the insured vehicle and cannot be held liable for repudiation of the insurance claim by the Insurance Company, especially when no relief has been claimed qua it. Pleading that there was no deficiency in service or unfair trade practice on its part Opposite Party No.4 has prayed for dismissal of the complaint.

5. Controverting the allegations contained in the written statement filed by Opposite Parties and reiterating the pleadings in the complaint, the Complainants filed the rejoinder.

6. Parties led evidence by way of affidavits and documents.

7. We have heard the learned counsel for the contesting parties and gone through the record of the case with utmost care and circumspection.

8. After scanning of record our findings are as under:-

9. The Complainant has brought the instant Complaint under Section 47(1)(a)(ii) of the Consumer Protection Act, 2019, alleging that the insurance contract Annexure C-1, which is an indemnification contract is an unfair contract as it contained an unfair clause in as much as full premium due for an IDV of ₹22,00,000/- was taken from the Complainant, but limited the liability of the Insurance Company to only ₹7,50,000/-. The insurance policy also does not contain the name of the Financier even though the same was duly mentioned in the registration certificate of the vehicle. Further, the

Affidavit Annexure C-8 obtained by the Insurance Company constituted an unfair contract as it bound the Complainant to accept only an amount of ₹16,50,000/- as against the due claim IDV of ₹22,00,000/-.

10. It may be stated here that the provisions of Section 47 of Consumer Protection Act, 2019 (under which the present Complaint has been filed) speak about the jurisdiction of this Commission. It is necessary to reproduce relevant provisions of Section 47 of CPA 2019, which reads thus:-

"……47. (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

a. *to entertain—*

i. *complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;*

ii. *complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees; appeals against the orders of any District Commission within the State…*

iii. *xxxxxx……"*

A bare perusal of Section 47 (1) (a) (ii) provides that this Commission shall also have the jurisdiction to entertain and decide the complaint(s) against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees, (pecuniary jurisdiction of State Commission has now been decreased to rupees two crores vide Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021 dated 30.12.2021. Definition of "unfair contract" has been provided under Clause 2 (46) of CPA 2019, which reads thus:-

(46) "unfair contract" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:—

(i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or

(ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or

(iii) refusing to accept early repayment of debts on payment of applicable penalty; or

(iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or

(v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or

(vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage…."

11. Learned Counsel for the Complainant argued that the Opposite Party No.1 (Insurance Company) acted surreptitiously as it issued the insurance policy for a period less than a year, but annual full premium was taken, therefore, the insurance contract tantamount to unfair contract. However, per material available on record, we do not find any merit in this argument, as the car in question on being registered in the name of Complainant No.1 (Renu Bala), the insurance policy was transferred in her name with effect from 14.07.2023 to the expiry of the policy (Annexure C-1) after charging ₹59/- for the transfer of insurance policy in her name, which was deposited by the Complainant No.1 vide Receipt (Annexure OP1/8). Thus, it is evident that the Policy (Annexure C-1) was transferred in the name of Complainant No.1 for the remaining period of the said policy with effect from 14.07.2023 in terms of GR 17 of Indian Motor Tariff which mandated issuance of fresh certificate in the name of the transferee on receipt of the requisite fee. We also do not concur with the contention of the Complainant that the Opposite Party No.1 (Insurance Company) took full premium due for an IDV of ₹22,00,000/-, but limited the liability to only ₹7,50,000/-. To our mind, the liability of ₹7,50,000/- is only qua the third party property damage and it cannot remotely be inferred that the liability of the IDV of ₹22,00,000/- is restricted to ₹7,50,000/-.

12. However, we find sufficient force in the argument raised by the Learned Counsel for the Complainants that there is element of unfair contract involved in the present matter as the investigator/ surveyor of OP – Insurance Company forced the Complainant to give an affidavit in favour of the insurance company regarding acceptance of ₹16,50,000/- as full and final payment. The affidavit (Annexure C-8) obtained by the Insurance Company prima facie constituted an unfair contract as it bound the Complainants to accept only an amount of ₹16,50,000/- as against the due claim IDV of ₹22,00,000/-. In other words, the Complainant No.1 was coerced to furnish a consent on affidavit that she accepts the amount of ₹16,50,000/- as full and final settlement and would not claim any further amount from the insurance company and only thereafter, the insurance company would pay the said amount, which tantamounts to taking away the fundamental and legal rights of the Complainants. As such, the instant complaint qualifies under the provisions of Section 47(1)(a)(ii) of the Consumer Protection Act, 2019.

13. Admittedly, per Policy Schedule-cum-Certificate of Insurance (Annexure C-1), the vehicle in question was insured with the OP-Insurance Company from 14.07.2023 to 10.04.2024 with an IDV of ₹22,00,000/-. Learned Counsel for Opposite Party No.1 submitted that the above said policy was wrongly taken, but we do not find any merit in the same for the simple reason that it was issued by Opposite Party No.1 after following due process and getting the vehicle inspected from Autoinspekt – the authorized agency of the insurance company. As such, the Opposite Party No.1 is stopped from raising any an issue that the policy was wrongly taken. It is not disputed that the said vehicle met with

an accident on 01.08.2023, while it was being driven by Complainant No.2 (nephew of the Complainant No.1). As per General Diary Details dated 02.08.2023 (Annexure C-3) the accident took place while trying to avoid an animal which suddenly appeared before the vehicle and no third party was involved in the accident. In the accident the vehicle got extensively damaged and accordingly, claim was lodged with the OP – Insurance Company vide Motor Vehicle Claim Form Annexure C-5. Perusal of the same reveals that repair estimate amounting to ₹35,00,000/- was given by repairer M/s C.K. Automobiles which accounts for Annexure C-6. It is apparent from the protracted correspondence exchanged between the parties available at Annexure C-7 that the Surveyor had submitted his report endorsing that the accident was genuine. Thus, there is no denying the fact that it is an admitted case of total loss, as the repair estimate given by the repairer/workshop was ₹35,00,000/- as against the IDV of ₹22,00,000/- and it is settled proposition of law that if the estimated repair cost happens to be more than 75% of the IDV, the claim has to be admitted as total loss, where under the IDV amount is payable. The Complainant was continuously reminding the Opposite Parties to admit her claim, but to no avail as the Opposite Parties kept on lingering the matter and rather compelled her to furnish a consent in the shape of an affidavit to the effect that she accepts the amount of ₹16,50,000/- towards full and final settlement and would not claim any further amount from the insurance company, which is contrary to the basic principle of insurance. Virtually, after the long gap, the Opposite Parties repudiated the claim of the Complainants vide letter dated 25.04.2024, due to which they certainly have suffered tremendous physical and mental harassment. It is thus, seen that though the vehicle got damaged badly in the accident, the Opposite Party No.1 (Insurance Company) was not willing to concede to declare total loss of the vehicle and give the IDV to the Complainant.

14. The above conspectus of facts reflects the typical attitude of the insurance company in shying away from their obligation under the contract of insurance. Even though the estimate was prepared that the repairs to the accidental vehicle would cost approx. ₹35,00,000/- which was more than the value of the vehicle and that the major parts of the vehicle needed to be replaced, the Opposite Party No.1 Insurance Company categorically opined that there was not a constructive total loss as the damage caused in the accident could be repaired. In such case, it is highly inappropriate that the OP - Insurance Company opt for repair of the vehicle in order to curtail its liability despite the fact that the repairs carried out on an accidental vehicle need not necessarily restore it to its original condition and make it capable of normal use. Moreover, the Opposite Party No.1 in no way been able to justify or give the details of as to how the estimate of the workshop/ repairer amounting to ₹35,00,000/- had been ignored. Not only that, instead of declaring the vehicle as total loss on the basis of the estimate Annexure C-6, has unilaterally decided that the vehicle was repairable and has in order to add salt to injury also repudiated the genuine claim of the Complainants.

15. It is pertinent to mention here that in the realm of risk and uncertainty, individuals and organizations seek solace in the bastion of insurance – a covenant based on the bedrock of trust. Trust serves as the cornerstone, forming the essence of the insurer- insured relationship. The fundamental principle is that insurance is governed by the doctrine of *uberrimae fidei* – there must be complete good faith on the part of the insured. The heart and soul of an insurance contract lies in the protection it accords to those who wish to be insured by it. This understanding encapsulates the foundational brief that insurance accords protection & indemnification, preserving the sanctity of trust within its clauses. Effectively, the insurer assumes a fiduciary duty to act in good faith and honour their commitment. This responsibility becomes particularly pronounced when the insured, in their actions, have not been negligent. In light of the vital role that trust plays in insurance contracts, it is important to ensure that the insurer adequately fulfils the duty that has been cast on it, by virtue of such a covenant.

16. In the wake of above, it is established beyond all reasonable doubts that the complaint of the Complainants is genuine. The harassment suffered by the Complainants is also writ large. The Opposite Parties have has certainly and definitely indulged into unfair trade practice as they ought to have redressed the grievance of the Complainants forthwith, which they miserably failed to do and

propelled this unwarranted, uncalled for litigation upon the Complainants. Thus, we have no other alternative, but to allow the present complaint against the Opposite Parties. Had, Opposite Parties been vigilant in resolving the issue promptly, complainants would not have been put to unnecessary harassment and mental tension, who otherwise had to knock at the door of this Commission for seeking redressal by spending money on litigation. In this backdrop, we are of the considered view that the ends of justice would be met if the complainants are awarded a sum of ₹1,00,000/- on account of compensation for mental agony and physical harassment and ₹33,000/- as litigation expenses. However, we do not find any deficiency in service on the part of Opposite Parties No.4 & 5, as such; the complaint is liable to be dismissed qua them.

17. For the reasons recorded above, the present complaint of the Complainants deserves to succeed against the Opposite Parties No.1 to 3, and the same is partly allowed. The Opposite Parties are, jointly & severally, directed:-

[i] To pay the IDV of the vehicle in question of ₹22,00,000/- to the Complainants, along with interest @ 9% p.a. from the date of repudiation of the claim, till realization to the complainants.

[ii] To pay ₹1,00,000/- as compensation to the complainants for deficiency in service, unfair trade practice and for causing harassment caused to them.

[iii] To pay a sum of ₹33,000/- to the complainants as litigation expenses.

The complaint against Opposite Parties No.4 & 5 fails and is accordingly dismissed with no order as to costs.

18. This order shall be complied with by the Opposite Parties within 45 days from the date of receipt of its certified copy, failing which Opposite Parties No.1 to 3 shall be liable for an interest @12% per annum on the amount mentioned in sub-para [i] above from the date of repudiation of the claim, till it is paid. The compensation amount as per sub-para [ii] above, shall carry interest @12% per annum from the date of institution of this complaint, till it is paid, apart from cost of litigation of ₹33,000/-, apart from compliance of directions contained at Sr.No.[iii] above.

19. The Complainants shall on payment on the said amount take necessary steps to transfer the registration in the name of Opposite Party No.1 Insurance Company and hand over the keys, etc.

20. The pending application(s), if any, also stands disposed off.

21. Certified copies of this order, be sent to the parties, free of charge. The file be consigned to Record Room, after completion.

Pronounced

19th November 2024

Sd/-

(PADMA PANDEY)

PRESIDING MEMBER

Sd/-

(PREETINDER SINGH)

MEMBER

“Dutt”