

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

Website : www.advantageconsumer.com

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ADVANTAGE - VI

Queries & Answers through the Web

(www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Subject: REJECTION OF MEDICLAIM BY NATIONAL INSURANCE Ltd.

National Insurance Co. Mediciclaim Policy details are as under:

PATIENT NAME: MR VINAY KUMAR GUPTA POLICY No 163300501810000693

The case study sequence wise details are detailed below: -

- (1) I got admitted on 21/1/2020 at 7.25 P.M in MANIPAL HOSPITAL- BANGALORE for tongue biopsy.
- (2) It was carried out after giving LOCAL ANESTHESIA DUE TO STITCHES REQUIRED and subsequent rest for a day in Hospital and relieved at 7.36 P.M. on 22/1/2020 after making payment of Rs 30375/-, as per bill enclosed.
- (3) After submitting my Mediciclaim, additional documents/ information were asked by the TPA, M/s Medi Assist, vide enclosed letter dt. 4/3/2020.
- (4) The said relevant documents & information was forwarded to Medi Assist, vide enclosed letter through D.T.D.C. Couriers, Bangalore on 13/3/2020.
- (5) After a lot of follow up, vide letter dt. 13/5/2020, National Insurance Co. Ltd. Informed 'REJECTION' of the "Claim", and stating the reasons.
- (6) I arranged to get a Certificate stating the "REASON FOR HOSPITALISATION" "from the concerned ENT Surgeon, Dr E.V. Raman, through an e-mail dt. 27/5/20. The same was submitted, on 29/5/2020 to the National Insurance Local Office.
- (7) In order to get the response from National Insurance, I sent reminder mails, on 10/8/2020 and 1/9/2020.
- (8) Finally, vide letter dt. 24/9/2020, the National Insurance repeated the SAME REASON OF REJECTION, in spite of the Certificate of "REASON FOR HOSPITALISATION" having been issued by the concerned Surgeon, Dr E.V.RAMAN, on 27/5/2020.

Now at this stage, I really fail to understand what more can be done except seeking LEGAL HELP and thus kindly request you to guide and assist me in this regard so that I am able to get my justified actual claim amount Rs 30375/-. Awaiting your guidance in this matter please.

VINAY KUMAR GUPTA
ROURKELA 769012

Ans: I have gone through the details shared by you. The main issue on which the National Insurance Company repudiated your claim is based on the recommendation of the TPA, M/s Medi Assist, which concluded that the Diagnosis and Evaluation which were required, could have been done as an outpatient and that no hospitalisation was necessary for such procedures. As you may be aware, to bring in objectivity in assessing the claims TPAs are being involved and Claims are settled, only based on their recommendations.

It is not clear, whether you shared the details of the Doctor's recommendation and pursued with the TPA. If not, arrange to get the Hard Copy of Doctor's certificate/recommendations, not depending on an email as proof, which at times are discounted. Though, in normal circumstances, such Hospitalisation (as per clause 4.19, as stated in the Policy conditions) are not allowed, as a special requirement, as advised by the Doctor, such a procedure could be allowed. In this regard, you will have to consult the TPA or an higher official of the Insurance Company, to sort out the issue.

In case, Manipal Hospital stand by their advice (of hospitalisation) and the Insurance Company is adamant as to not to allow the claim, you can consider approaching the District Forum, at Rourkela, for appropriate relief.

Subject: Deficiency in rendering services to the customers.

A LAPTOP COOLING TABLE ordered by my son from Hyderabad through AMAZON who delivered the article on 11/05/2021 which was opened and found in good condition and repacked in the same box and pasted an address paper on the top of the box and handed over to the DTDC Courier Centre, Hyderabad.

The parcel was received by me on 22/05/2021. Upon unpacking the article, the LAPTOP COOLING TABLE was found completely bent and in broken condition. The entire mistake happened by DTDC's deficiency / callousness and irresponsible activity ie., they have not taken care of and placed heavy weight materials on top of the package and sustained the damage that occurred to the package. Hence it is entire responsible by the DTDC authorities only.

For your kind information with evidence from DTDC, i.e., the consignment loaded vehicle met with an accident while transportation from HYD – ROU where my consignment was also placed in that vehicle and sustained the above damage due to suppression by a heavy package load on my consignment, the proof is enclosed.

Hence, I would fervently request your kind honour to advise our CPC Rourkela office to proceed in the matter to get refund of claimed amount and oblige.

P. SANKARA RAO,
ROURKELA-2.

Ans: Sorry to note that you had been delivered a damaged item and subjected to mental agony and financial loss. Being an aware consumer yourself, it is unfortunate that you should encounter such a bad experience. **I would appreciate if all the consumers, especially those who are in the Executive Committee of the Council, appreciate and remember the following, so that they can guide others:**

1. Consumer Courts, like any other Court of law, are supposed to decide a dispute based on the evidences placed before it.
2. Hence, the consumer, has to put in some extra efforts, if required, to generate and place the right evidences, which can be documents like bills/invoices, photographs, affidavits of eye-witnesses, envelopes, damaged packages, etc.
3. Further, as a responsible consumer group, it must be remembered that whenever a case is taken up, we should ensure that justice is done to the victim and hence be mentally prepared to fight the case through the three-tier quasi-judicial machinery, especially when the Opposite Party is a corporate entity.
4. There is no need to hurry up and do a patch work, but to do a thorough job, so that the Opposite Party is fixed, in case of any deficient service.

5. Consumer Law and Consumer Courts are there to help the common man. But the Law or the Court cannot be expected to be biased in favor of one individual or group.
6. **The prima facie evidence can never be ignored.**
7. It is only when you take up a case or pursue it like a professional, you are assured of success. It is because of the systematic and diligent whetting of the details and pursuing them professionally, the Council was rewarded with a success rate of over 90%, in all the cases that it pursued either through correspondence or legal means.
8. **Just because the Council, as a VCO has achieved some standing, it will not be proper to expect that it can take up any case and will be rewarded. Rather, there is a high risk of that image getting tarnished.**
9. Hence, on Sundays when individuals used to visit our Office at Sector-2, or on Wednesdays when they used to meet me at Sector-7, the complainants were invariably explained as to whether their case can be taken up or not and what other details they will have to collect/provide, so that the case can be taken up. So, utmost importance was given to understand the case and find ways and means of helping them, if possible. Thus, without showing any hurry to shoot out a letter, the thrust was to ensure that the complainant was getting the relief, if possible.
10. Since, our intention was to create an awareness among the public and to give them the confidence that systematically pursuing of the dispute will yield the desired results, Membership of the Council was never insisted upon and hence no distinction was made between a Member and a non-Member of the Council.
11. Last but not the least, one should never attempt to misuse the name of the Council, and leverage it only for genuine reasons, with abundant caution, so that no one in the public, can throw mud and tarnish the image of the Council.

Coming to your case, I have gone through all the details shared by you, right from 23rd May, though you had addressed your complaint to different Office-bearers, and sometimes marking a copy to me. There are inconsistencies even in the details shared by you on 28th May and on 4th June. While you stated that the product was delivered at Hyderabad on the 12/05/2021, in your mail dated 28th May, in yesterday's mail, you are claiming that the item was delivered by Amazon on 11/05/2021. Such inconsistencies in no way help your cause. Similarly, Courier Tracking details do not convey anything regarding your particular Consignment.

Probably, you are not convinced with the reply sent by our Secretary, Sri Pradhan. **A pre-requisite to be a smart consumer, is to be in a position to understand and appreciate dispassionately, the reasons advanced for not processing your complaint, by the Council.** Laptop table is a hardware item, which is owned by many of us (even I have one in my house). If the item is to be damaged by the courier, since the carton is not made of steel and made of cardboard, it must have suffered some damage, which must have been visible at the time of delivery. Since, there was no damage to the carton, as is evident from the narration made by you, *prima facie* there appears to be some shortcoming in the narration of the complaint.

Sometimes defective materials are supplied by the seller and such instances have indeed been noticed. Even, I had one such personal experience, with the supply of one LG Microwave Oven, which was supplied by a seller from Bhubaneswar. Appropriate relief was obtained through the District Forum, after placing the requisite evidences. (Incidentally, this case is also listed in my memoir "**An Aware Consumer**".) Since, you have been associated with the Council, I thought of explaining the reasons, in some detail, as to why we believe that it is not a fit case for taking up by the Council.

If you so wish, as an aware aggrieved individual, you can seek remedy under the Consumer Protection Act. But one fundamental thing which is not clear to me is as to why the consignment was not directly delivered to you by Amazon? You could have saved money and all the botheration.

B. Vaidyanathan

"A SMART CONSUMER IS AN EMPOWERED CONSUMER!!"

DTDC Courier penalised for non-delivery of consignment.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3124 OF 2017

(Against the Order dated 21/08/2017 in Appeal No. 638/2016 of the State Commission, West Bengal)

1. MANAGER, DTDC EXPRESS LTD. (FORMERLY
KNOWN AS DTDC COURIERS & CARGO LTD.) & ANR.
404-405 VIP ROAD RAGHUNATHPURA, DTDC BHAWAN
ZONAL OFFICE EAST VIP ROAD RAGHUNATHPUR
NAGUIATI
KOLKATA – 700059. WEST BENGAL

.....Petitioner(s)

Versus

RASHMI THACKER
5A/1A LORD SINHA ROAD
KOLKATA. WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE MR. PREM NARAIN, PRESIDING MEMBER

Dated : 06 Aug 2020

ORDER

1. This revision petition has been filed by the Petitioner, Manager DTDC Express Limited challenging the order dated 21st August 2017 passed by the State Consumer Disputes Redressal Commission, West Bengal (in short 'the State Commission') in First Appeal No. A/ 638/2016.
2. Brief facts of the case are that the respondent/complainant had booked a consignment for delivery to Guwahati from Kolkata on 4th March 2014 which was to be delivered on 8th March 2014. However, the consignment was not delivered to the consignee till the stipulated time. The complainant pursued with the opposite party however no response was there and therefore the complainant filed a consumer complaint before the District Forum being CC number 612/2014. The complaint was contested by the opposite party by filing the written statement in which it was mainly alleged that the complainant had given incomplete Postal address and therefore it was not possible for the opposite party to find out the address of the consignee. However, the District Forum partly allowed the complaint and directed the opposite parties to pay rupees 10,000/- to the complainant for mental harassment and rupees 1000/- towards the cost of litigation within one month from the date of this order failing which OPs will pay 9% per annum interest.
3. Aggrieved by the order of the District Forum dated 30th June 2016 the complainant as well as the opposite party filed the appeals before the State Commission. The State Commission vide impugned order dated 21st August 2017 dismissed the appeal of the opposite party and allowed the appeal filed by the complainant as under: -

“The Appeals are accordingly disposed of.

Hence,

That A/638/2016 A/703/2016 be and the same are dismissed and allowed on contest, respectively. The impugned order is modified as under:

The OPs shall pay the entire cost of goods, i.e., Rs.60,676/- to the complainant together with compensation for a sum of Rs.20,000/- and litigation cost amounting to Rs.1,000/- within 45 days hence. In default, OPs shall be liable to pay simple interest @9% on Rs.60,676/- from the date of filing of the complaint, i.e., 11-11-2014 till full and final payment is made.”

4. Hence the present revision petition.

5. Heard the learned counsel for both the sides and perused the record. Learned counsel for the petitioner stated that when the consignment was being booked it was suggested by the counterperson to take insurance for the consignment; however, no insurance was taken and the consignment was booked under D series. It is mentioned on the receipt that for every consignment the liability of the petitioner will only be up to rupees 5,000. Therefore, the petitioner cannot be burdened with more compensation than the liability arising out of the contract between the parties. Moreover, the petitioner is not concerned with the valuation of the consignment if no insurance premium is paid. If a person is sending valuable item, then precaution should be taken to send the same by obtaining the insurance cover as well. Otherwise for normal items, the liability is up to rupees 5,000/- only as mentioned in the receipt which forms the contract between the two parties.

6. It was further argued by the learned counsel for the petitioner that as alleged, the consignment consisted of a makeup kit which was sold by the complainant to the consignee and the transaction was of commercial nature and the service of the petitioner was availed for commercial purpose. Consequently, the complainant is not a consumer under the provisions of the Consumer Protection Act 1986.

7. On the other hand, the learned counsel for the respondent/ complainant stated that the complainant has not done any commercial business with the petitioner and it was a sale to the consignee by the complainant who is running this business for earning her livelihood by means of self-employment. Since, State Commission has already dealt with this issue and has reached to the conclusion that this was not a commercial transaction and it was only an availing of courier service which is covered under Section 2(1)(o) of the Consumer Protection Act 1986.

8. It was further argued by the learned counsel for the complainant that though it has been argued by the learned counsel for the petitioner that the complainant was suggested to take insurance, however, no such letter or any proof has been filed by the petitioner to prove the same. Hence no value can be attached to this assertion of the petitioner.

9. With respect to the argument of the learned counsel for the petitioner about the limited liability of the petitioner, the learned counsel for the complainant stated that this issue has been examined by the State Commission and it has been concluded that mere printing of a specific liability clause does not constitute any conscious agreement between the parties and therefore the argument of limited liability has not been accepted by the State Commission. In support of his argument, the learned counsel referred to the judgment of this Commission in **Roadwings International Vs. Hindustan Copper Limited &anr., III (1999) CPJ 23 (NC)** wherein it has been observed: -

“9. The plea taken on behalf of the appellant that there was a specific contract to oust his liability as a common carrier is not acceptable in the facts of the case. The owner of goods did not enter into any specific contract in writing with the appellant as required in Section 6 of the Act. The contention of the appellant is that there is a printed Terms and Conditions of the carriage. These Terms and Conditions were binding on the owner of the goods. But, from what has been produced before us we do not find any signature of the owner in the document containing terms and conditions of the carriage of goods. It will be wrong to presume that the owner had consented to these terms and conditions before the delivery of the goods to the common carrier. Condition mentioned in a goods receipt issued by the carrier but not signed by the owner cannot constitute a special contract contemplated by Section 6 of the Act.”

10. The learned counsel for the complainant also referred to the judgment of this Commission in **Air Star Express Courier Vs. Inder Medical Store & anr., II (2012) CPJ 167 (NC)** wherein it has been observed:

“7. Counsel for the petitioner then invited our attention to Clause 2 of the terms and conditions printed on the receipt which provides that “this Company limits its liability to a maximum of Rs.100 per consignment in any case”. That the petitioner’s liability is limited and the petitioner is not liable to pay more than Rs.100 for the loss of consignment. We do not find any substance in this submission. Written statement filed by the petitioner before the District Forum has not been placed on record. From the order of the District Forum, it appears that in the written statement petitioner had nowhere stated that the liability of the petitioner was limited to Rs.100 only. We are not sure whether the receipt now shown to us was produced in evidence before the District Forum. Otherwise also, this point has neither been considered or decided either by the District Forum or the State Commission. Under these circumstances, the plea now taken by the petitioner that liability was limited to Rs.100 only, cannot be accepted.”

11. I have carefully considered the arguments advanced by the learned counsel for both the parties and have examined the material on record. District Forum in its order has mentioned the following: -

“We are satisfied that the complainant is able to prove that the deficiency in service of the O.Ps. Under such circumstances, we find it is a fit case wherein the complainant deserves the compensation and litigation cost because that the consignee has already received the goods.”

To be concluded in the next Issue...



Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of “ **Consumer Protection Council, Rourkela**”.

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