

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

Website : www.advantageconsumer.com

VOLUME – XXXVI

JULY 2024

ADVANTAGE - VII

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.)

Queries: Seeking relief through edaakhil.nic.in

I was planning to raise a consumer complaint on eDaakhil.nic.in. But wasn't sure of my format, I was looking around, that's when I came across your website. First of all, wanted to thank you for that. I had few doubts:

1. Is the format mentioned on your website still valid, as from some website I see a different format, specifically eDaakhil also wants an index page to be uploaded, which is not in the format you mentioned. If possible, please upload the format for eDaakhil.
2. I ordered a speaker from amazon.in (JBL speaker). Which was sold by Appario Retail Private Ltd, I want to complaint for wrong product + deficiency in services (Wrong product was delivered first and for 1.5 months the product was neither picked up nor the amount was refunded, the resolution is still in progress and amazon keeps postponing the dates of pickup). So, Do I send all 3 companies to my opposition? JBL, Amazon and Appario? Is it better to have 1 vs 3 companies.
3. How do I decide the compensation which is being asked as mental distress and other fee. Because I work full time as software engineer, is it reasonable to ask them following things (FYI - Product cost is around Rs 25,000)
 - 3.1. A mental distress fee as this was meant as a gift to parents for anniversary, and the day was ruined because of this (Rs. 5000/-)
 - 3.2. A daily penalty towards my money stuck with them, there is a notice for financial institutes to give out 100/- per day (Something similar to that so that every day they delay, it costs them more, until the release the money from there side).
 - 3.3. Personal and Profession work life balance was affected because of this issue - So I would like to request for 1 month pay check of my current salary (which might be more compared to product cost). But this is because my performance was affected and I had to take out a lot of time to call/chat with amazon customer care. (1 month for now, 2 months if the resolution is delayed and so on). And how do I word this in resolution sought?
 - 3.4. A refund of original payment and a fresh new product as penalty.

Sumit Badsara

**Hanuman Vihar A,
Jaipur. Rajasthan**

Answers

Mr. Badsara,

Please note that the Consumer Protection Act is a welfare Act, for basically providing relief to the affected people (consumers), through monetary compensation, in a time bound manner through the three tier quasi-judicial machinery, without the frills of the Civil Courts. Thus, judicial and non-judicial members preside over the hearings and pronounce the orders. Keeping these in mind, one should approach these Consumer Courts.

Now, the answers to your queries:

- 1) The sample Complaint Petition provided in our website is basically to guide the general public, as to how they should prepare the Petition, bringing out the case of defect in the product or deficiency in service and the relief sought, as illustrated in the "Prayer". (The sample shared is the format which we followed, since 1989 and the same is in place in our website since 2000.) Since "eDhaakil" is an online process, they could be asking for a "Index" page, which will ensure that all details are included in the Petition, in a particular order. An Index Page could be in a tabular form, as given below:

Sl. No.	ITEM	DATE	PAGES

- 2) The First Opposite Party in your case is M/s Amazon, with whom you had done the deal and paid the consideration (Cost of the speaker), for the supply of the product. Second Opposite Party is the Retailer (Appario), who had sent the wrong product. The manufacturer (JBL) is not directly connected with your transaction and hence need not be impleaded.
- 3) Regarding the Compensation and Cost for Mental agony, time loss, cost of capital, etc., an amount of Rs. 10,000/- should suffice.

Over and above, Amazon has to replace the wrong item supplied or refund the cost collected.

-----*-----

Insurance Claim not allowed due to violation of conditions of the Policy. But in a rare gesture, the Insurance Company also penalised for the inordinate delay in communicating the repudiation of the claim.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2037 OF 2018

(Against the Order dated 02/04/2018 in Appeal No. 740/2011 of the State Commission Delhi)

1. ORIENTAL INSURANCE CO. LTD.

HEAD OFFICE, 88, JANPATH 1ST FLOOR,
NEW DELHI-110001

.....Petitioner(s)

Versus

1. SUJAP SINGH & ANR.

S/O. LT. SH. AMARJEET SINGH, R/O. B-143, MIG FLATS,
ASHOK VIHAR
DELHI-110052

.....Respondent(s)

BEFORE:

**HON'BLE MR. BINOY KUMAR, PRESIDING MEMBER
HON'BLE MR. JUSTICE SUDIP AHLUWALIA, MEMBER**

Dated : 03 Mar 2023

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

This Revision Petition has been filed by the Petitioner/ Opposite Party No.2 challenging the impugned Order dated 02.04.2018 passed by the State Commission, Delhi, in First Appeal No.740/2011. Vide the said Order, the State Commission had allowed the Appeal while setting aside the Order dated 17.11.2011 passed by the District Consumers Disputes Redressal Forum (V) (North West District), Shalimar Bagh, Delhi in Case No. 828/07.

2. The brief facts of the case are that the Respondent No.1/Complainant's father, Late Sh. Amarjeet Singh, was the registered owner of the truck bearing No. HR-38-J-2818 and had taken an Insurance Policy bearing No. 31/2005/02960 for his truck for a period from 08.09.2004 to 07.09.2005 for a sum of Rs.7,00,000/-. The Policy holder, Late Sh. Amrajeet Singh, expired on 03.11.2004, and the truck was stolen on the night of 22nd/23rd May, 2005. It was submitted that the FIR was lodged in this regard and an intimation regarding theft was also given to the Insurance Company on 26.05.2005. However, the claim was repudiated vide letter dated 18.04.2007 despite submission of all relevant information and documents by the Complainant. Hence, the Complainant had filed a complaint before the District Forum being aggrieved by the act of the Opposite Party in repudiating the claim and had sought relief of the insured value of Rs.7,00,000/- along with other ancillary reliefs.

3. The Opposite Party No. 2 appeared before the District Forum and resisted the Complaint and denied all the allegations thereby denying deficiency in service on its part. It was submitted that the Complaint is without any cause of action and is liable to be dismissed. It was contended by the Opposite Party No. 2 that as per terms and conditions of the Insurance Policy in the event of death of the sole insured, the Policy does not lapse immediately but remains valid for a period of three months from the date of death of insured or until expiry of Policy (whichever is earlier) and during such period, the Legal Heirs of the Insured may apply for the transfer of Policy to their name or obtain a new Policy. And in the present case, the Policy of Late Sh. Amarjeet Singh was not transferred after his death on 03.11.2004 and subsequently the vehicle was stolen on 22.05.2005. It is further submitted that the Complainant got the vehicle transferred in his name on 18.05.2006 i.e., after the theft which is violation of condition No.10 of the Insurance Policy. It was further contended that there is no insurable right of the Complainant in the vehicle in question since the insurance of the vehicle had already expired after three months from the date of death of the Insured i.e. on 03.02.2005. It was further submitted that at the time of theft of the vehicle, the Policy was not in force and the same had already lapsed as per the terms of the Policy and the Opposite Party had rightly repudiated the claim. Hence, the Opposite Party No. 2 prayed for dismissal of the complaint.

4. The Ld. District Forum vide its Order dated 17.11.2011 dismissed the complaint of the Complainant and observed that:

“As is clear from a bare reading of clause 10 (ibid), on the death of the assured, the policy would remain in operation for a period of 3 months to allow the LRs of the deceased to get it transferred in their names or purchase a new policy. In the case in hand the assured had expired on 03.11.2004 which means the policy had lapsed on 03.02.2005 i.e. on the expiry of 3 months. It is not disputed that the complainant or for the matter any other LR of the deceased had not got the policy transferred in their names nor had they purchased another policy. It therefore, follows that there was no insurance policy in operation at the time the truck in question was stolen. The claims lodged by the complainant was, therefore, rightly repudiated by the insurance company. The complainant had no insurable interest in the vehicle in question.....

In the result, we hold that there are no merits in the complaint which is hereby dismissed.”

5. Aggrieved by the above Order, First Appeal bearing No.740/2011 was filed by the Complainant/Appellant (Respondent No.1 herein) against the Respondent No.1/ Opposite Party No.1 (Respondent No.2 herein) and Respondent No.2/ Opponent No.2 (Petitioner herein) before the State Commission, Delhi. 6. The Ld. State Commission vide impugned Order dated 02.04.2018 allowed the Appeal while setting aside the Order of District Forum. The Ld. State Commission placed its reliance on the Order dated 30.03.2016 passed by NCDRC in RP 4688 of 2008 and Order dated 29.01.2007 passed by State Commission, Delhi in FA 1140 of 2006 and observed that-

“Having regard to the discussion done and law laid down we are of the considered view that the repudiation of the claim is not sustainable. The insurance company cannot escape its responsibility and obligation to allow the claim. Accordingly, we set aside the orders passed by the Distt. Fora and direct the insurance company to settle and pay the claim within 30 days from the date of receipt of the order.”

7. Hence, the present Revision Petition has been filed by the Petitioner/ Opposite Party No. 2 against the above-mentioned impugned Order of the Ld. State Commission on the grounds-

- a. That at the time of accident, the vehicle was in the name of Lt. Sh. Amarjeet Singh and after the accident, it must be transferred in the name of Legal Heirs as per clause 10 of the Policy. At the time of theft, the Policy had already lapsed due to failure on the part of Legal Heirs for non-appliance for transfer in the name of Legal Heirs or Respondent;
- b. That the Insurance Company has not received any specific request from the Respondent in respect of transfer of insurance within 3 months from the death of the insured. Hence, the Policy lapsed on 03.02.2005;
- c. That the Ld. State Commission had wrongly placed reliance on the judgement dated 30.03.2016 passed in RP 4688 of 2008 in the case of '**New India Assurance Co. Ltd. v. Jagjit Singh**'. This Hon'ble Commission has already dismissed the complaint in a pre-decided case of **NIA v. Kalawati & Ors**', in **RP No. 122 of 2016**;
- d. That on the death of the insured, the son of the deceased insured ceased to be a consumer and their relationship as a consumer and the Insurance Company as service provider came to an end. It is incumbent on the part of respondent or the LR's to get the Policy transferred.

It is further submitted by the Petitioner in the Petition that the Insurance Company had appointed a surveyor to assess the loss of the insured vehicle and the surveyor had submitted its final report dated 13.09.2005 assessing the loss at Rs.7 Lacs.

8. In addition to the above contentions, the Petitioner has argued that while construing the terms of a contract of insurance, the words used therein must be given paramount importance and it is not open for the court to add, delete or substitute any word. It is further argued that the Delhi District Court in a case titled as "**Smt. Devwati v. The New India Assurance Co. Ltd.**" (**CS No. 292/12**) dismissed the suit on the ground that the plaintiff, being the wife of insured failed to transfer the Policy in her name within the period of 3 months.

9. Heard the Ld. Counsel for the parties. Perused the material available on record.

10. It has been argued on behalf of the Petitioner-Insurance Company that it is settled law that in the event of any failure on the part of a transferee of an insured vehicle to comply with the relevant terms and conditions in the Insurance Policy within the time period provided therein, the Insurer is not liable to satisfy his claim. This position of law has been accepted not only by this Commission in "**United India Insurance Co. Ltd. Vs. Goli Shridhar & Another**" (**RP No. 2964 of 2007, decided on 22.11.2011**) and "**New India Assurance Co. Ltd. Vs. A. Kalavathi**", (**RP No. 877 of 2011, decided on 8.8.2012**); but also by the Hon'ble Supreme Court in "**Complete Insulation (P) Ltd. Vs. New India Assurance Co. Ltd.**, 1996 AIR 586".

11. In "**New India Assurance Co. Ltd. Vs. A. Kalavathi**" (supra), this Commission had dismissed the complaint of the Respondent who happened to be the wife of deceased-owner-Mr. Arumugam and who had not got his Insurance Policy transferred in her name within the time of three months as required in the relevant terms of the Policy.

12. In "**United India Insurance Co. Ltd. Vs. Goli Shridhar & Another**" (supra), this Commission had similarly dismissed the complaint where the complainant who was the purchaser of the insured vehicle from its Erstwhile owner, had not applied for transfer of Policy in his name within 14 days from the date of transfer of ownership, which was one of the conditions laid down in the Policy.

13. In "**Complete Insulation (P) Ltd. Vs. New India Assurance Co. Ltd.**" (supra), the claim *qua* own damage suffered by the Complainant was similarly held to be not covered, although the Apex Court held that the indemnifying Clause *qua* 3rd party risk to indemnify was enforceable. On perusal of the following observations of the Apex Court -

“The moot question involved in the case is whether on the above facts, without the insurance policy being transferred in the name of the appellant, it was entitled to be indemnified by the insurer. The National Consumer Disputes Redressal Commission held that under Section 157 of the Motor Vehicles Act, 1988, (hereinafter called ‘the New Act’) a certificate of insurance is deemed to have been transferred in favour of the person to whom the vehicle is transferred but that the said provision applied only in relation to third party risk and did not apply to a policy covering risk of damage to the vehicle or person of the insured. The National Commission placed reliance on a judgment of the High Court of Andhra Pradesh in Madinani Kondaiah and Ors. etc. v. Yaseen Fatima and Ors. etc. MANU/AP/0221/1985: AIR 1986 AP 62.”

Thereafter, the Apex Court held *inter alia* –

“10. Section 157 appears in Chapter XI entitled ‘Insurance of Motor Vehicles against Third Party Risks’ and comprises sections 145 to 164. Section 145 defines certain expressions used in the various provisions of that chapter. The expression ‘Certificate of Insurance’ means a certificate issued by the authorised insurer under section 147(3). ‘Policy of Insurance’ includes a certificate of insurance. Section 146(1) posits that ‘no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this chapter’. Of course, this provision does not apply to vehicles owned by the Central or State Government and used for Government purposes not connected with any commercial enterprise. This provision corresponds to section 94 of the Old Act. Section 147 provides that the policy of insurance to be issued by the authorised insurer must insure the specified person or classes of persons against any liability incurred in respect of death of or bodily injury to any person or damage to any property of a third party as well as against the death of or bodily injury caused to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. This provision is akin to section 95 of the Old Act. It will be seen that the liability extends to damage to any property of a third party and not damage to the property of the owner of the vehicle, i.e. the insured. Sub-section (2) stipulates the extent of liability and in the case of property of a third party the limit of liability is rupees six thousand only. The proviso to that sub-section continues the liability fixed under the policy for four months or till the date of its actual expiry, whichever is earlier. Sub-section (3) next provides that the policy of insurance shall be of no effect unless and until the insurer has issued a certificate of insurance in the prescribed form. The next important provision which we may notice of is Section 156 which sets out the effect of the certificate of insurance. It says that when the insurer issues the certificate of insurance, then even if the policy of insurance has not as yet been issued, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured a policy of insurance conforming in all respects with the description and particulars stated in the certificate. It is obvious on a plain reading of this provision that the legislature was anxious to protect third party interest. Then comes Section 157 which we have extracted earlier. This provision lays down that when the owner of the vehicle in relation where to a certificate of insurance is issued transfers to another person the ownership of the motor vehicle, the certificate of insurance together with the policy described therein shall be deemed to have been transferred in favour of the new owner of the vehicle with effect from the date of transfer. Sub-section (2) requires the transferee to apply within fourteen days from the date of transfer to the insurer for making necessary changes in the certificate of insurance and the policy described therein in his favour. These are the relevant provisions of Chapter XI which have a bearing on the question of insurer’s liability in the present case.

11. There can be no doubt that the said chapter provides for compulsory insurance of vehicles to cover third party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party i.e. a person other than the insured. This is clear from Section 147(1)(b) (i) which clearly refers to ‘damage to any property of a third party’ and not damage to the property of the ‘insured’ himself. And the limit of liability fixed for damage to property of a third party is rupees six thousand only as pointed out earlier.

That is why even the claims Tribunal constituted under Section 165 is invested with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both. Here also it is restricted to damage to third party property and not the property of the insured.

Thus, the entire chapter XI of the New Act concerns third party risks only. It is, therefore, obvious that insurance is compulsory only in respect of third-party risks since Section 146 prohibits the use of a motor vehicle in a public place unless there is in relation thereto a policy of insurance complying with the requirements of Chapter XI. Thus, the requirements of that chapter are in relation to third party risks only and hence the fiction of Section 157 of the New Act must be limited thereto. The certificate of insurance to be issued in the prescribed form (See Form 51 prescribed under Rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the New Act and the Old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in Kondaih's case because the transferee-insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks that Section 157 of the New Act provides that the certificate of insurance together with the policy of insurance described therein "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred"

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**".

<p>Editor : Sri B Pradhan Editorial Committee : Sri P.Ravi Krishnan Sri Rajib Ku. Nayak Sri A. Samantray Sri Sanjay Kumar Pradhan</p> <p>Circulation Manager : Sri Amitava Thakur</p> <p>Remittance for subscription may be sent to the Secretary, Consumer Protection Council, B/90, Sector-7, Rourkela-769003, through crossed D.D/M.O or Cheque (local only), payable in favour of</p> <p>'CONSUMER PROTECTION COUNCIL, ROURKELA'. For tariff and other details regarding advertisement, contact Editor.</p>	<p>ADVANTAGE CONSUMER ENGLISH MONTHLY</p> <div data-bbox="1326 1386 1493 1534" style="border: 1px solid black; width: 100px; height: 66px; margin: 10px auto;"></div> <p>JULY 2024</p> <p>To</p> <div data-bbox="1054 1682 1437 1765" style="border-bottom: 1px solid black; height: 37px; margin: 10px auto; width: 240px;"></div>
<p>Printed & Published by Sri B Pradhan, Consumer Protection Council, Rourkela at B/90, Sector-7, Rourkela – 769003 E.mail : bpradhan.cpcrkl@gmail.com (or) vaidya@advantageconsumer.com</p>	<p>If undelivered, please return to : Consumer Protection Council, Rourkela B/90, Sector-7, Rourkela -769003. Odisha</p>