

**IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,
THRISSUR**

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

26th day of March 2025
CC 255/09 filed on 31/03/2009

Complainant : V.A. Sunny, Vellara House, Njamanengad,
Vylathoor, Chavakkad Taluk, Thrissur.
(By Adv. C.K. Hariharaputhran, Thrissur)

Opposite Party : The Oriental Insurance Co. Ltd., Maheswary Building,
M.G. Road, Thrissur.
Rep. by The Divisional Manager, Thrissur.
(By Adv. C.R. Thomas, Thrissur)

FINAL ORDER

By Sri.Ram Mohan R, Member :

1) Complaint in brief, as averred :

The complaint is filed under Section 12(1) of Consumer Protection Act, 1986. The complainant's vehicle with Reg. No. KL-08/AF 3749 was statedly, insured with the opposite party insurer, for the period from 29/07/07 to 28/07/08, vide policy No.441104/31/2008/3613 issued by the latter. The income generated from plying the vehicle is claimed to be the complainant's means of livelihood. During the subsistence of the said policy the vehicle statedly met with an accident on 02/06/2008 and was repaired expending a sum of Rs.1,64,500/- (Rupees One lakh sixty four thousand five hundred only), which the complainant is statedly entitled to be reimbursed by the opposite party insurer. Though the complainant submitted claim for the same, the opposite party sanctioned only a sum of Rs.52,500/-. The opposite party having issued discharge voucher for the said amount, the complainant signed the same making an endorsement of "cheque received with protest" thereon. Having been

allegedly irked by the complainant's endorsement of protest, the opposite party statedly refused to make payment of even the sanctioned sum of Rs.52,500/- to him. The complainant alleges deficiency in service on the part of the opposite party. A lawyer notice caused by the complainant statedly elicited no result. Hence the complaint. The complainant prays for an order directing the opposite party to pay him the claimed sum of Rs.1,64,500/-, apart from other reliefs of compensation and costs.

2) Notice :

The Commission having issued notice, the opposite party filed their written version and contested the complaint.

3) Version :

The opposite party admits the policy, concerned, and also the occurrence of the accident. But they aver that the complainant's claim of Rs.1,64,500/- is unfounded. The sum of Rs.52,500/- was averred to be sanctioned by them on the basis of the report of the surveyor, concerned. The opposite party further admits that the sanctioned sum of Rs.52,500/- was not paid to the complainant owing to the latter's endorsement of "with protest" on the discharge voucher. It is also admitted that in spite of their repeated request for a "clean discharge voucher", the complainant has not given the same. Therefore the opposite party denies any deficiency in service on their part.

4) Evidence :

The complainant produced documentary evidence that had been marked Ext. P1 to P3, apart from affidavit, deposition and notes of argument. No affidavit or deposition in chief is seen given by the opposite party, but documental evidence marked Exts. R1 to R5 is seen adduced by them, apart from version and notes of arguments. Ext. R3 that was originally marked

“subject to proof” is seen subsequently confirmed through the examination in chief of the surveyor, concerned.

5) Deliberation of facts and evidence of the case :

The Commission has very carefully examined the facts and evidence of the case. Ext. P1 is the copy of opposite party’s letter dtd. 06/01/2009 addressed to the complainant. Ext. P2 is the copy of duplicate discharge voucher issued by the opposite party as mentioned in Ext. P1 letter. Ext. P3 is copy of the Discharge Voucher signed by the complainant which bears endorsement “Cheque received with protest”.

Ext. R1 is Policy No. 3613 dtd. 27/07/2007 issued by the opposite party in favour of the complainant in respect of the vehicle No. KL 08 AF 3749 for the period from 29/07/2007 to 28/07/2008. Ext. R2 (SP) is Motor spot survey report No. OIC/1702/08 dtd. 07/06/2008 in respect of the vehicle number KL 08 AF 3749 prepared by Surveyor and Loss Assessor namely Mr. Rasheed P.A., with a set of photographs. Ext. R3 (SP) is Motor Survey Report No.Ori/55/08 dtd. 30/06/08 in respect of Vehicle No. KL 8 AF 3749 prepared by Consulting Engineer, Valuer, Surveyor And Loss Assessor namely Mr. K.J. Philip, with a set of photographs. Ext. R4 is Motor Claim Form submitted by the complainant to the opposite party in respect of vehicle No. KL 8 AF 3749. Ext. R5 is Discharge Voucher dtd. 02/01/2009 in respect of Vehicle No. KL 8 AF 3749 signed by the complainant with endorsement of “Cheque received with protest”.

6) Points of deliberation :

- (i) Whether the complainant is entitled to receive reimbursement of the claimed sum of Rs.1,64,500/- in its entirety ?
- (ii) Whether the opposite party’s denial of payment of the sanctioned sum of Rs.52,500/- for the reason of the complainant’s having

endorsed 'protest' on Ext. R5 discharge voucher, lawful ? Also whether there is any deficiency in service or adoption of unfair trade practice on the part of the opposite party ? Further whether the complainant is entitled to receive the sanctioned sum of Rs.52,500/- from the opposite party, if the answer to point No.(i) above is found in the negative ?

(iii) Whether the complainant is entitled to receive any compensation from the opposite party ? If so its quantum ?

(iv) Costs ?

7) Point No.(i)

Though the complainant baldly claims that he had expended a sum of Rs.1,64,500/- for repairing the vehicle, he failed to adduce any evidence at all to substantiate this claim of his. In the absence of any evidence to that effect, we are not in a position to consider the complainant's prayer for reimbursement of the entire sum of Rs.1,64,500/- the he claims to have expended.

Hence Point No.(i) is not found in favour of the complainant.

8) Point No (ii):

The opposite party affirms that the complainant's claim was passed for a sum of Rs.52,500/- only, but admits to have declined the payment of the sum for the reason that the complainant had made an endorsement of "with protest" on Ext. R5 discharge voucher. *The right to freedom of speech and expression enshrined under Article 19 (1) (a) of our constitution invests every citizen with a fundamental right to publicly express his opinion on an issue and the right to protest is derived from the same. The Hon'ble Apex Court* by its significant judgment in *Kaushal Kishor Vs State of UP*, underscored that the fundamental rights under article 19 & 21 are enforceable against individual, as well, as these rights bear the features of both horizontality and verticality. In the instant case,

the complainant attempted only to exercise this right of his by making an endorsement of protest on Ext. R5 discharge voucher with a view to expressing his disagreement with the quantum of sum sanctioned against his Ext. R4 claim. One endorsing protest on a receipt of payment is obviously a very peaceful mode of expression of one's protest which does not anyway prejudice the rights of others. It simply means that the payee wishes to retain his legitimate liberty to subsequently dispute or litigate in respect of the sum he received. The opposite party was bound to honour the freedom of expression of citizens. But they consciously refused to pay the sanctioned sum of Rs.52,500/- to the complainant for the sole reason of his having endorsed his protest on Ext. R5 discharge voucher. The opposite party's insistence for an unconditional receipt without any kind of remarks as a pre-requisite for disbursement of the sanctioned amount, is unlawful and is tantamount to exercising distress, duress and undue influence or coercion on the complainant, which in turn certainly constitutes an unfair trade practice on their part. This fault and imperfection on their part at the same time is deficiency in service on their part, as well. Needless to say, the complainant is certainly entitled to receive the sanctioned sum of Rs.52,500/- from the opposite party.

9) Point No.(iii) :

Though the opposite party's surveyor on 30/07/15 while the complainant's counsel was not present, delivered his deposition-in-chief as RW1 and confirmed the issuance of Ext. R3 Survey Report, he has not cared to present himself for cross examination by the complainant despite repeated directions from the Commission. All the effort taken by the Commission to produce the witness for cross by the complainant turned futile. Nor did the opposite party take any earnest effort to produce him in the witness box for cross examination by the complainant. Right from 23/11/2015 till 07/09/23, the furtherance of the case is seen having been stumblingly blocked by the non-

appearance of the opposite party's witness for cross by the complainant, apart from the delay caused by the outburst of Covid 19 pandemic. It is trite law that if a witness after being examined-in-chief does not appear for cross examination by the other side, his evidence becomes valueless. The Hon'ble Apex court held the same view by its celebrated judgment in *Vidhyadhar Vs Manikrao*, AIR 1999 SC 1441. Consequently in the instant case, the opposite party's Ext. R3 Survey Report turned valueless owing to the RW1's conscious abstinence from appearance for cross by the complainant, and we are constrained not to look into it. It is relevant to note that this Commission has chosen to keep the case posted solely and persistently for the complainant's cross of the opposite party's witness right from 2015 till 2023, and the Commission's persistence for the same is indicative of its paramount relevance. If the cross examination were superfluous, the matter would not have been adjourned so repeatedly and lengthily for accomplishing the same. The abstinence of the opposite party's witness from presenting himself for cross, deprived the complainant of his legitimate opportunity to disprove the averments raised by the opposite party, through cross examination. The neglectful and lackadaisical attitude borne by the opposite party is obvious. The complainant who availed the opposite party's policy placing reliance on their service and made Ext. R4 claim, was not provided even with the sanctioned sum of Rs.52,500/- for the sole reason that he tried to express his constitutionally provided right to protest against the sum sanctioned. Obviously the opposite party's refusal to pay even the sanctioned sum of Rs.52,500/- to the complainant would certainly cause financial loss to the complainant. Moreover, while being denied of a legitimate right, the person who was so denied would certainly experience a whirlwind of emotions irrespective of the size of the sum he or she was denied with. Illegitimately denying someone a sum which he is otherwise entitled to, is, undoubtedly an act of exploitation. Such an act of arbitrariness from the part of the wrong-doer amounts to jeopardising the very dignity of the

consumer and his right to live a life free from exploitation. The wrong doings on the part of the opposite party might certainly have, as claimed, inflicted agony and hardship – both mental and physical, on the complainant apart from the financial loss that he suffered. Public accountability is essential for healthy growth of the society, as was aptly emphasised by the Hon'ble Apex Court in *Lucknow Development Authority Vs M.K. Gupta, 1994 AIR 87*. Being a sentinel on the qui vive as regards consumer rights, we cannot assume an ostrich's stance while we come across such arbitrary and unlawful actions on the part of authorities of the sort of the opposite parties, and hence cannot trivialise the agony, hardship and monetary loss suffered by the complainant. The opposite party has necessarily to suitably compensate the complainant. In the instant case, the complainant, originally while filing the complaint way back in the year 2009, sought for a compensation worth Rs.5,000/- only. But eventually, as elaborated supra, predominantly due to the negligent and lackadaisical act on the part of the opposite party, the complaint comes to a conclusion on the original side now only. The very Ext. R3 Survey Report beneath which the opposite party sought shelter to defend their curtailment of the complainant's Ext. R4 claim, stands shaken as the same turned to be of no probative value. A helpless consumer, who moved the Commission while he was denied of a relatively meagre sum sanctioned against a higher claim of his, for the sole reason of his having attempted to express his displeasure on the sanctioned sum, was further constrained to resort to a decade and a half long litigation to set his legitimate rights established. Axiomatically, the complainant cannot certainly be re-compensated with a trivial sum of Rs.5,000/-. It would be manifestly unfair to resolve the complainant merely by way of awarding the originally asked sum of compensation. The purpose of awarding compensation *u/s 14 (1) (d)* of the Consumer Protection Act, 1986 is to re-compensate for a loss or injury suffered and such compensation shall therefore be commensurate with the actual loss or injury. The Hon'ble apex court held the same stance by

its judgment in *M/s Suneja Towers Pvt. Ltd. & another Vs Anita Merchant*. We are of the considered view that the complainant is entitled to receive from the opposite party a sum of Rs.75,000/- (Rupees Seventy five thousand only) towards compensation for the agony and hardship – both mental and physical, and financial loss that he underwent.

10) Point No. (iv) :

The complainant herein is seen having been constrained by the opposite party to resort to more than a decade and a half long litigation even to get his legitimate right for availing payment of even the sum already sanctioned by the opposite party, established. Many a time the case is seen having been adjourned solely due to the reluctance of the opposite party's witness – Surveyor who deposed-in-chief, to appear before the Commission for cross examination by the complainant. The purpose of law is the advancement of justice. Public authorities are bound to behave as model litigants. The Hon'ble Apex court held the same view by its judgment in *Yerikala Sunkalamma and Another Vs the State of Andhra Pradesh, Department of Revenue and others*.

As Einstein famously said :

“If I had an hour to solve a problem I would spend 55 minutes thinking about the problem and 5 minutes thinking about solutions”.

He is believed to have suggested that the quality of the solution one generated has a bearing on one's ability to identify the problem. Drawing a parallel to Einstein's quote, if the issue had been properly identified by the opposite party after careful thought and application of mind, the litigation would not have surfaced and might not have reached this Commission. In view of the prolonged litigation pursued by the complainant, we are inclined to hold that the complainant is entitled to receive from the opposite party a sum of Rs.25,000/- (Rupees Twenty five thousand only) towards costs.

In the result, the complaint is allowed in part and the opposite party is directed to pay the complainant :

- a) a sum of Rs.52,500/- (Rupees Fifty two thousand five hundred only) towards payment of the sum sanctioned against his Ext. R4 Claim,
- b) a sum of Rs.75,000/- (Rupees Seventy five thousand only) towards compensation for the agony hardship and financial loss inflicted on him, and
- c) a sum of Rs.25,000/- (Rupees Twenty five thousand only) towards costs,

all with 9% interest p.a., from the date of filing of the complaint till the date of realisation. The opposite party shall comply with all the above directions within 30 days of receipt of a copy of this order.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 26th day of March 2025.

Sreeja S.
Member

Ram Mohan R
Member

C. T. Sabu
President

Appendix

Complainant's Exhibits :

Ext. P1 copy of opposite party's letter dtd. 06/01/2009 addressed to the complainant.

Ext. P2 copy of duplicate discharge voucher issued by the opposite party as mentioned in Ext. P1 letter.

Ext. P3 copy of the Discharge Voucher signed by the complainant which bears endorsement "Cheque received with protest".

Opposite Party's Exhibits :

- Ext. R1 Policy No. 3613 dtd. 27/07/2007 issued by the opposite party in favour of the complainant in respect of the vehicle No. KL 08 AF 3749 from 29/07/2007 to 28/07/2008.
- Ext. R2 (SP) Motor spot survey report No. OIC/1702/08 dtd. 07/06/2008 in respect of the vehicle number KL 08 AF 3749 prepared by Surveyor and Loss Assessor namely Mr. Rasheed P.A., with a set of photographs.
- Ext. R3 (SP) Motor Survey Report No.Ori/55/08 dtd. 30/06/08 in respect of Vehicle No. KL 8 AF 3749 prepared by Consulting Engineer, Valuer, Surveyor And Loss Assessor namely Mr. K.J. Philip, with a set of photographs.
- Ext. R4 Motor Claim Form submitted by the complainant to the opposite party in respect of vehicle No. KL 8 AF 3749.
- Ext. R5 Discharge Voucher dtd. 02/01/2009 in respect of Vehicle No. KL 8 AF 3749 signed by the complainant with endorsement of "Cheque received with protest".

Ram Mohan R
Member