

IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution : 14.03.2016
Date of Reserving the order: 14.02.2025
Date of Decision: 30.10.2025

CC No. 243/2016

IN THE MATTER OF

Sh. Vijay Gupta
Prop. M/s Aggarwal Zari House,
2904, Kinari Bazar,
Chandni Chowk, Delhi

(Through Mr Anil Kumar Pruthi, Advocates)

... Complainant

VS.

M/s Tata AIG General Insurance Co. Ltd
301-308, 3rd Floor,
Aggarwal Prestige Mall, Plot No.2
Road No.44, Near M2K Cinema,
Rani Bagh, Pitampura, Delhi-110034.

(Through Mr S.M. Tripathi, Advocate)

...Opposite Party

HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)

Present: Mr Anil Kumar Pruthi, Ld counsel for Complainant

Mr S.M. Tripathi, Ld counsel for Opposite party

MS. BIMLA KUMARI, PRESIDING MEMBER (FEMALE)

ORDER

1. By this judgment, I shall dispose of the complaint No. 243/2016 filed by the complainant under Section 12 of the Consumer Protection Act 1986 with the following prayers:

1 To direct the respondent company/opposite party to pay a sum of Rs. 22,09,275 along with interest @ 24% pa with effect from 1/2/2015 till its realization to the complainant being the insured value of the vehicle of the complainant.

2 To pass an order of compensation in regard with monetary loss, pain and agony of Rs.5,00,000/- in favour of the complainant.

3 To pass an award of Rs.55,000/- in favour of the complainant towards litigation charges and another expenses.

Any other relief or remedy which this Hon'ble Forum may deem fit and proper may also be passed in favour of the complainant and against the opposite party.

2. Brief facts of the case are that the complainant got his vehicle Toyota Fortuner bearing registration no. DL-10CE-7741, insured with the opposite party vide Policy No.015504955700 for the period w.e.f.13.11.2014 to 12.11.2015 and paid the premium of Rs.54,120/- for the insured value of Rs.22,09,275/-. The insured vehicle was stolen on 01.02.2015, while the same was parked in

front of the house of Complainant, at 261, Rajdhani Enclave, Pitampura, Delhi. The complainant intimated the police regarding theft of the vehicle and the FIR no.141/2015 was registered at Police station Saraswati Vihar Delhi. The complainant also intimated the opposite party regarding the theft of the vehicle. Later on, the complainant submitted non traceable report, issued by the concerned court and requested the opposite party to settle his claim.

3. It is the case of the complainant that vide letter dated 16.06.2015, his claim was repudiated by the opposite party on the ground that he did not adhere to the terms and conditions no.4 of the policy and there was gross negligence on the part of the complainant, as the original ignition key of the vehicle was kept in the dashboard. It is the case of the complaint that he duly informed the opposite party that he was using the second key with which the insured vehicle was properly locked and with the key which was lying in the dashboard of the vehicle, vehicle could not be opened. It was also submitted by the complainant that to have access to the key, which was lying in the dashboard, either of the doors of the vehicle, or the glass had to be broken or a master key for opening the door of the vehicle would have to be used and without which the theft of the vehicle could not have taken place. Apart from the above, there was no other way the vehicle could have been stolen. It is the further case of the complainant that the claim was rejected by the opposite party on the assumption that the vehicle was stolen due to the access to the ignition key but there has been no negligence on the part of the complainant and the action of the opposite party in repudiating the claim of the complainant is totally illegal, arbitrary,

malafide and is an attempt on part of the opposite party to absolve itself from the legal liabilities to pay the legal claim of the complainant and amounts to gross deficiency in service on the part of the opposite party. The complainant had availed the services of the opposite party by paying hefty premium for insurance of his vehicle with the assurance that in case of any claim, during the period of insurance, the same would be borne by the opposite party.

4. It is the further case of the complainant that repudiation of his claim has caused immense mental pain, torture and agony to him, for which the opposite party is liable to pay a sum of Rs.5,00,000/- to him. The action of the opposite party in repudiating his claim is against the norms of IRDA and amounts to utter deficiency in service on the part of the opposite party.
5. The opposite party has filed written statement wherein it is submitted that the claim of the complainant was denied on account of breach of the policy conditions by the complaint that there was no deficiency in service or negligence on part of the opposite party. The complainant has not acted as a prudent person and committed breach of the policy. No prudent person would leave one original key in the dashboard of the vehicle, while parking it unattended for hours together. The act of keeping a key inside the vehicle is an open invitation to the thieves to easily steal the vehicle away. A mere payment of premium does not give right to a complainant to make a claim tenable under the policy. The insurance policy is a contract between the parties and it is the contractual duty of the insured to comply with the conditions and obligations stipulated in the policy. The repudiation of the claim by the opposite party is legal and

justified. The complainant is not entitled to the claim and the complaint deserves to be dismissed.

6. The complainant has filed rejoinder to the written statement of the opposite party, wherein he denied the allegations levelled by the opposite party and re-affirmed and re-iterated the facts stated by him in the complaint.
7. The complainant has filed evidence by way of his affidavit.
8. The opposite party has also filed the evidence by way of affidavit of Mr Mohd. Azhar Wasi, who is the Head of claims North Zone of the opposite party.
9. The complaint as well as opposite party have filed their written synopsis.
10. I have heard learned counsel for the complainant as well as opposite party.
11. I have perused the material on record.
12. **The only question for consideration is whether the opposite party was justified in repudiating the claim of the complainant in toto.**
13. To resolve this issue, I would like to refer the judgment of **Hon'ble Supreme Court in Ashok Kumar Vs New India Assurance Co. Ltd. Civil Appeal Number 4758 of 2023 decided on 31.07.2023.**
14. In the above referred case, the appeal was filled by the appellant Ashok Kumar against the impugned order dated 24.01.2018 passed by Hon'ble National Consumer Disputes Redressal Commission in Revision Petition no. 3415 of 2016. By the said order, dated 24.01.2018 Hon'ble National Consumer Disputes

Redressal Commission reversed the concurrent judgments of the District Consumer Disputes Redressal Forum and the State Consumer Disputes Redressal Commission, which allowed the original complaint of the appellant Ashok Kumar and directed the respondent New India Assurance Company Limited to indemnify the appellant Ashok on non-standard basis to the extent of 75% of the sum assured, which was Rs. 8,40,000/-.

15. Brief facts of the above referred case of Ashok Kumar are that he was owner of the truck bearing Registration No. HR-55C-5385 and had a valid insurance policy for the period 20.02.2008 to 19.02.2009 and the insured declared value was Rs. 8,40,000. On 26.06.2008, the driver of the appellant Ashok Kumar, namely, Mamchand left the key in the key hole of the truck, when he parked the vehicle to find out the address of Mittal's Farm to unload the stone dust. When the driver had gone some distance he heard the sound of starting of the vehicle. He came back and noticed that two persons were sitting on the driver's seat and a car was at the back of the said vehicle, in which three persons were there. He further stated that they stole and took away the truck. The appellant Ashok Kumar intimated Bilaspur Police Station Gurgaon on 27.06.2008 itself and FIR no.77 was registered at the Police Station under section 379 IPC. The appellant also intimated the respondent insurance company about the theft on 02.07.2008. The complainant filed complaint No. 515/2009 before the Learned District Forum, Gurgaon. Later on, the said complaint, however, withdrawn by counsel for the complainant on 22.11.2010.

16. Thereafter, the appellant Ashok Kumar filed the fresh complaint bearing CC 134/2012 which was allowed by Learned District Forum on Non-Standard basis and a sum to the extent of 75% of the sum assured was awarded to the complainant.
17. Against the order of Learned District Forum, the respondent filed an appeal to State Commission and the State Commission while relying upon the judgment of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs Nitin Khandelwal (2008) 11 SCC 259] and Amalendu Sahoo Vs Oriental Insurance Company Ltd [2010 4 SCC 536]** dismissed the appeal of the Insurance Company by observing that even if there was breach of the clause, the claim could not have been repudiated in toto and applying the yard stick in Amalendu Sahoo's case 75% of the claim on non-standard basis was awarded in favour of Ashok Kumar.
18. Against the judgment of State Commission, the respondent filed Revision Petition before Hon'ble NCDRC, which was allowed by the National Commission by holding that the appellant had committed the breach of condition no. 5 of the policy and the vehicle was left unattended on the road side with keys in the key hole. Further, filing a fresh complaint by the appellant created a bar under Order XXIII Rule (1) (4) of Code of Civil Procedure.
19. Aggrieved by the judgment passed by Hon'ble National Consumers Disputes Redressal Commission, the appellant Ashok Kumar filed Civil Appeal before Hon'ble Supreme Court.
20. **One of the questions before the Hon'ble Supreme Court was whether there was breach of condition no.5 of the Insurance**

policy on the part of appellant to justify the rejection of the claim in toto.

21. It is significant to note that Hon'ble Supreme Court allowed the appeal filed by the appellant Ashok Kumar and set aside the judgment of Hon'ble National Commission and restored the judgment passed by Ld. District Forum and affirmed by State Commission by observing as under:-

"(14) It is well settled in a long line of judgments of this Court that any violation of the condition should be in the nature of a fundamental breach so as to deny the claimant any amount. [see Manjeet Singh vs. National Insurance Company Limited and Another, [(2018) 2 SCC 108]; B.V. Nagaraju vs. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, [(1996) 4 SCO 6471, National Insurance Co. Ltd. Vs. Swaran Singh and Others, [(2004) 3 SCC 297] and Lakhmi Chand vs. Reliance General Insurance, [(2016) 3 SCC 100]]

15) It is an admitted position in the Repudiation Letter and the Survey Report that the theft did happen. What is alleged is that the Claimant was negligent in leaving the vehicle unattended with the key in the ignition. Theft is defined in Section 378 of the IPC as follows:-

"378. Theft.-Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

As will be seen from the definition, theft occurs when any person intended to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking. It is not the case of the Insurance Company that the Claimant consented or connived in the removal of the vehicle, in which event that would not be theft, in the eye of law. Could it be said, as is said in the repudiation letter, that the theft of the vehicle was totally the result of driver Mam Chand leaving the vehicle unattended with the key in the ignition? On the facts of this case, the answer has to be in the negative. It is noticed in the repudiation letter that the driver Mam Chand had, after alighting from the vehicle, gone to enquire about the location of Mittal's Farm and that after he went some distance, he heard the sound of the starting of the vehicle and it being stolen away. The time gap between the driver alighting from the vehicle and noticing the theft, is very short as is clear from the facts of the case. It cannot be said, in such circumstances, that leaving the key of the vehicle in the ignition was an open invitation to steal the vehicle.”

22. I would also like to refer the judgement of **State Commission in FA No. 384/2017, titled as HDFC Ergo General Insurance Company Ltd. Vs Callisto Building Solutions Pvt. Ltd. Decided on 22.11.2021.**

23. In the above referred case, the key of vehicle was left by the General Manager of the respondent in the Laptop bag, which was stolen along with the car.

24. The District Forum observed that the opposite party was not justified in rejecting the claim of the complainant who had handed over one key to the opposite party and directed the insurance company to settle the claim of the complainant with IDV value of insured vehicle i.e. Rs.7,28,555/- along with compensation of Rs.25,000/-.
25. Aggrieved by the order passed by District Forum, the insurance company filed an Appeal No.384/2017 before the State Commission.
26. **The only issue before State Commission was whether the act of the respondent/complainant of leaving the key of the car inside the car itself, constitutes such a breach, making the Appellant/opposite party entitled to repudiate the claim in totality.**
27. The State Commission while relying upon the judgment in Nitin Khandelwal (supra) and of National Commission in Royal Sundaram General Insurance Company Ltd. Vs Ashok Kumar Somani & Ors. 11 (2019)CPJ 451(NC) and various other cases, modified the order dated 05.05.2017 passed by Learned District Forum by observing that there was negligence on the part of the complainant by leaving the keys in the car but the repudiation of the total claim by the insurance company was not justified and needed to be settled on non-standard basis. Hence, the State Commission held that the complainant/respondent was entitled for 75% of the insured declared value on non-standard basis.
28. Now, coming to the facts of the present case it is the case of complainant that he left one original key of the vehicle in the

dashboard of the insured vehicle and was using the second key by which the insured vehicle was properly locked.

29. Since, there was some negligence on the part of the complainant by leaving the keys of the car in the dashboard, I am of the considered view that opposite party was not justified in rejecting the claim of complainant in toto in view of the judgement of **Hon'ble Supreme Court in Ashok Kumar case (Supra) as well as of the State Commission in HDFC Ergo's case (supra)**, I am of the considered view that ends of justice would be met if the claim of complainant is settled on non-standard basis.
30. Accordingly, the complaint is allowed.
31. It is directed that the complainant is entitled to a sum to the extent of 75% of the sum assured i.e. an amount of **Rs.16,56,956.25/- (75% of Rs.22,09,275/-)** on non-standard basis.
32. The opposite party is directed to pay the aforesaid amount to the complainant on or before 30.12.2025 failing which the opposite party shall be liable to pay an interest @**6%**. P.A. from the date of filing the complaint till its realization).
26. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party is further directed to pay a sum of **Rs.1,00,000 /-** as compensation for mental agony and **Rs.50,000/-** towards cost of litigation.
27. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

28. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
29. File be consigned to record room along with a copy of this Judgment.

(BIMLA KUMARI)
Member (Female)

PRONOUNCED ON 30.10.2025