Complaint No: BNG-G-047-1617-0822

Case of: SHRI JAY MEHTA V/s TATA AIG GENERAL INSURANCE CO LTD

Date of Award: 10.05.2017

Repudiation of claim for damage to personal belongings – DISMISSED.

The Insured had availed Travel Guard Gold (OMP) from the above Respondent Insurer and had travelled to US. There he met with an accident while travelling in snow. His laptop and mobile phone were damaged while travelling in snow. His claim was rejected as the policy covers only personal liability and not personal belongings. The decision of the Insurer was as per policy conditions.

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Case no. CHD-G-049-1617-0569
In the matter of Mrs. Hardish Sandhu Vs New India Assurance Company Ltd.

ORDER DATED 06.07 .2017 **(Overseas Mediclaim)**

FACTS: On 07.10.2016 Mrs. Hardish Sandhu filed a complaint against New India Assurance Company Ltd. about the repudiation of her overseas mediclaim. She was insured under Policy No. 360500/34/15/0900000019 for the period from 12.07.2015 to 08.11.2015. The complainant was admitted in the hospital from 30.10.2015 to 07.11.2015 with the complaint of dysponea and lethargy and was diagnosed of Methotrexate induced pancytopenia. The claim was repudiated on the grounds of pre-existing disease as the patient was on folic acid and Methotrexate; which had resulted in inducing pancytopenia. The fact that the patient was on folic acid and Methotrexate was not disclosed to the insurance company. The patient was again admitted on 18.11.2015 for a day. The claim was not entertained as the policy had expired on 08.11.2015.

FINDINGS: The complainant had taken the policy for the period from 12.07.2015 to 08.11.2015. At the time of taking of the policy, the complainant had declared her past history and stated she was admitted in the PGI, Chandigarh for the treatment of arthritis. The patient had undergone knee replacement. The insurance company did not ask any question whether the proposer was on any medication or not. The complainant was again admitted in the hospital on 18.11.2015 for one day. The complainant stated though her policy had expired on 08.11.2015 yet she continued

to be held covered as provided in the period of insurance clause. The insurer maintained that the second admission was elective and beyond the scope of the cover as provided in period of insurance clause.

DECISION: The complainant had the history of knee replacement and in her proposal she had declared that she was admitted for the treatment of arthritis. The insurer had not asked for further details whether she was on any medication or not. The complainant was admitted from 30.10.2015 to 07.11.2015 being a case of dysponea and lethargy and was diagnosed of Methotrexate induced pancytopenia. Since it was not disclosed to the insurer that the proposer was on folic acid and Methotrexate, the claim was refused. It was held that there was no concealment of the facts by the complainant as she had declared her past medical condition. The insurer did not seek further clarifications. Therefore, the insurer was estopped to raise the issue of pre-existing condition. The submission of the complainant that her second admission on 18.11.2015 which was beyond the policy period was also covered was not accepted. As per period of insurance clause, automatic extension up to 7 days was allowed without any extra charges provided it was necessitated by delay of public transport services. It was further provided in the clause that if the injury/ illness/ accident covered under the policy was contracted during the policy period and the treatment had commenced during the policy period and continues beyond policy period; only emergency expenses would be paid up to 45 days. It was observed that the second admission was elective and only medical tests had been conducted. No treatment or medication was given or prescribed. Conditions as laid down in the period of insurance clause were not complied with. The complaint was allowed for the reimbursement of first admission and dismissed for the second admission.

Award No. IO/KOC/A/GI/0019/2017-2018

Complaint No. KOC-G-005-1718-0051

Award passed on : 15.06.2017

Mr. Kandiyil Damaodaran Vs Bajaj Allianz General Insc Co. Ltd.,

Repudiation of claim under medical travel insurance

Complainant had taken Medical Travel Insurance of the respondent Insurer before travelling to UK. After staying there almost 6 months, just 3 days before he was to leave for India, he collapsed due to heart attack. He was taken to hospital by an ambulance and had to go through emergency angioplasty procedures due to multiple blocks. He was hospitalised for 3 days and was discharged after that. He contacted the insurer for cashless settlement which was denied after asking many clarifications from him. The claim has been rejected on the ground that he had past Medical History of Diabetes Mellitus, Hyperlipedemia and Hypothyroidism which was pre-existing prior to the inception of the policy. While proposing for Insurance he had clearly informed the agent about the Diabetes and existing Medical conditions. The agent asked to write only name, address, passport number and signature and that he would fill the other details later himself and submit the application.

Decision : admit the claim.

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Brief Facts of the Case : The insured Vehicle under Private Car Package Policy for the policy period from 27.04.2016 to 26.04.2017 for an Insured Declared Value of Rs.1850875/-. On 11th September,2016 while returning from Malwan to Goa on highway road suddenly a cattle crossed the road to which he got panicked and to save the cattle he drove his vehicle to left side of the road and lost control on vehicle and crashed into the Electricity pole. Police Panchanama was filed as there was third party property damage (Electricity Department) and the vehicle was in police custody. The Electricity Department penalized the insured and after completing the formalities the vehicle was released four days after the accident. As he was to travel out of India the accidented vehicle was towed to the workshop. After his return from Dubai he went to the workshop and came to know that claim of the vehicle was registered by Dealer and the same was submitted along with claim form duly filled in. Then M/s B Investigator was appointed by the Company for investigation and the complainant answered all the questions with facts

and matters genuinely but later he realized that investigator wanted him to convince that claim is admissible on the grounds of facts declared are not to be true. Further he said that claim below Rs.60000/- is not to be claimed due to loss of No claim Bonus at the time of renewal and he managed to take a blank letter signed and said he shall revert through Company later. Then the complainant was shocked to receive a second letter dated 17th December,2016 that claim is not pursued on the basis of letter declaration signed by the insured and treated the same as claim withdrawal letter. The complainant has represented in his written statement that he is not agreeable with the decision of the Company.

Observations/Conclusion: The Forum observed in this case that though there is misrepresentation of facts on the part of the complainant with regard to claim form, withdrawal letter, etc, but the accident is genuine which is also surveyed and assessed by the Insurance Company. The Forum notes that there is no evidence that insured was under the influence of alcohol at the time of accident as per Company's contention. The Forum also observes that insured has sent a mail to the Company where he has informed them that the estimate would be more than Rs.200000/- and he is interested in pursuing the claim to which the Company has not given any reply to the insured and they have maintained their stand of claim being withdrawn by the complainant.

It is noted that complainant has repaired his vehicle from the workshop on 8th March,2017 and has paid Rs.258828/-. Under the circumstances Company's denial of claim on the ground of claim being withdrawn by the insured and misrepresentation of facts is not sustainable and the Company is directed to revisit the claim afresh and calculate the admissible claim amount and submit the same within a period of two working days and the complainant is directed to submit the required original documents by the Company immediately. Accordingly the Company has calculated the admissible claim amount payable as Rs.241797/-.

Dated: 29.08.2017

Brief Facts of the Case : Complainant's Scooter was stolen on 15.02.2013 for which he lodged a claim with the Respondent. The claim was repudiated on the ground that there was delay of 53 days in intimating the loss to the Company.

Observations/Conclusion: Analysis of the entire case reveals that the Company has based its repudiation mainly on the ground of delayed intimation amounting to violation of Condition No.1 of the Policy, besides the other points as raised by it. In the instant case, it is accepted that no immediate written intimation of theft was given by the insured to the Company. In this regard the complainant has clarified

that in the absence of availability of policy details with him, he had to rely on the dealer for proceeding with the claim formalities. However the police compliant was lodged on the same day. The police have investigated the case and submitted their final report as "true and undetected" to JMFC which has accepted the 'A' summary. Thus the genuineness of the theft is not in doubt and also the Respondent has not denied the fact of occurrence of theft.

As regards the other discrepancies pointed out by the Respondent that the policy was taken with a delay of 77 days of taking delivery, insurance was obtained by avoiding pre-inspection and fake insurance details were generated and submitted to the RTO for registration of the vehicle, there are no documents on record to show that the Respondent has carried out any investigations in this direction or questioned the dealer who is basically involved in completing all these formalities. The role of the complainant in all these alleged manipulations has not been established and therefore penalizing him for the same would not be justified.

Hence in the absence of concrete evidence which leads the Insurer to conclude that delayed intimation of the claim is an attempt to cover the fraudulent intention on the part of the insured, the Forum is of the view that total denial of liability under the claim only on account of delay in intimation does not seem justified when the fact of theft is not in dispute. However, in view of the fact that there has been some amount of lapse on the part of the complainant in not giving immediate intimation of loss to the Respondent, it would be in order that the complainant bears certain portion of the loss as well. Respondent is directed to settle the claim for 75% of the IDV which works out to Rs.35,000/- in favour of the complainant, towards full and final settlement of the complaint.

Dated: 12.04.2017

Brief Facts of the Case : Complainant's vehicle Maruti Swift Dzire – 2012 model was stolen on 23.08.2016 while it was parked in front of his residence. Respondent rejected the claim lodged under the policy on the ground that the policy-holder had sold his vehicle to the complainant on 24.04.2016; however the transfer was not effected in the R.C. as well as in the insurance policy which continued to be in the name of the old owner as on the date of theft.

Forum's Observations/Conclusion : On scrutiny of the documents produced on record coupled with the depositions of both the parties, it is observed that the complainant purchased the vehicle from the previous owner on 26.04.2016. He then gave the documents to the agent for completing the transfer formalities. The NOC for transfer of the vehicle was received from Thane RTO on 01.07.2016. After that he should have applied for transfer of the vehicle in his name to the RTO within whose jurisdiction his

place of residence falls within the stipulated time-limit. However, he failed to do so and consequently the insurance policy was also not transferred in his name. The vehicle was stolen on 23.08.2016. Thus, on the date of loss, the vehicle as well as the insurance policy was not transferred in the name of the purchaser i.e. the complainant. Consequently he was not recognized by the Insurance Company under the contract of insurance as the owner of the vehicle without corresponding effect of such change in the existing policy. There is no provision of automatic transfer of the "Own Damage" Section of the insurance policy in favour of the transferee subsequent to the transfer of ownership and the same shall be made by the insurer only on receipt of a specific request from the transferee along with consent of the transferor on getting acceptable evidence of sale. Insurance Policy is always a contract between the parties to the contract and any change in the existing status must be brought to the knowledge of the Insurance Company. The same was not done by the complainant in the instant case. The decision of the Respondent therefore to repudiate the claim cannot be faulted with and consequently no relief can be granted to the complainant.

Dated: 21.08.2017

Brief Facts of the Case :

Mr A had insured his Vehicle for an Insured Declared Value of Rs.120000/-. This vehicle met with an accident on 14th July,2016. The Company had appointed Mr K Surveyor to assess the loss and accordingly he has made survey and submitted the Surveyor Report with claim assessment of Rs.17900/-. The vehicle at the time of accident was more than ten years old and hence as per policy condition it attracted depreciation of around 50% for rubber/nylon/plastic parts, tyres and tubes, batteries and air bags, for fibre glass components – 30%. The complainant accepted Rs.17900/- under protest as he has actually incurred Rs.27897/- in the garage and he has represented in his written statement that he is not agreeable with the decision of the Company.

Observations/Conclusion

The Forum observed in this case that complainant has not been properly communicated the final assessment of his claim and therefore the Company was directed to send a detailed letter to the complainant explaining the assessment of the above claim with a copy to the Forum immediately.

Accordingly the Company has sent a mail to the complainant with a copy to us dated 28th April,2017 which reads as under :

"This is with reference to the above subject, wherein the hearing in respect of the above complaint took place on 27/04/2017 at the Office of the Insurance Ombudsman, Mumbai.
As per the directives of the Hon'ble Insurance Ombudsman, we are providing the Scanned Copy of the

Bill check Report of the Surveyor, which would explain the detailed assessment of your claim for vehicle. The said assessment is done by the surveyor based on the bill dated 10.10.2016 amounting to Rs. 27,897/-. Further, we would like to inform you that the vehicle at the material time of accident was more than 10 years old and hence as per the policy conditions, it attracts depreciation at the following rates:

1) For all rubber/nylon/plastic parts, tyres and tubes, batteries and air bags – 50%.

2) For all fibre glass components – 30%

3) For all parts made of glass -Nil

4) Rate of depreciation for all other parts including wooden parts for the age of the vehicle exceeding 10 years – 50%

Also the excess as per policy is Rs.1000/-.

In view of the above, as assessed by the surveyor, the claim was been approved for Rs. 17,900/- fully considering the invoice dated 10.10.2016 amounting to Rs. 27,897/-. Thus, any amount paid by you to the garage in excess of the said invoice, has to be recovered by you from your Garage".

Based on the above clarification given by the Company, the Forum do not find any ground to intervene with the same and pass the following Order. The complaint of Mr A against B in respect of partial repudiation of his Vehicle accident claim on 14.07.2016 does not sustain.

02.04.2017
