Vehicle Insurance Policy

Ahmedabad Ombudsman Centre
Case No. : 11-004-0042
Mr. P S Bhuta
Vs
United India Insurance Co. Ltd.

Award Dated : 6-10-2006

Repudiation of Claim under Motor O.D. Policy: The Complainant's Motor Car was damaged in an Accident. The Final Survey Report determined the loss as Rs. 143297/-. The Complainant in the meanwhile requested that the Salvage Value of Rs. 18325/- be paid to him in Cash. After having accepted the Payment and after having repaired the Car, he complained that since a total of Rs. 161622/- was paid to him which came to more than 75% of the Sum Insured of Rs. 214195/-, the Claim should be treated on a Total Loss basis. From the materials on record, it was seen that no fraud or misrepresentation had been done to the Complainant while sending him the Voucher for settlement and that the Voucher had been executed in full and final settlement of the Claim. As per judicial pronouncements, he is estopped from reopening the Claim. As such, the decision of the Respondent to repudiate the Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. : 14-005-0299
Mr. B R Doshi
Vs
Oriental Insurance Co. Ltd.

Award Dated : 9-10-2006

Repudiation of Claim under Motor O.D. Policy: The Complainant's Motor Car was damaged in an Accident. Since, some parts were not available with the authorised dealer, the Complainant's Car was repaired by using parts purchased from a local dealer. The Surveyor claimed that the local dealer has confessed that he had purchased the parts from local market and had inflated the bills on request of the Complainant so that he can settle the Claim for depreciation. A written confession was also exhibited during course of Hearing. Decision of such a case involving facts only requires the entire gamut of process to be gone through including admission and denial of documents, summoning of witnesses etc. for which the Forum is neither empowered by Law nor structurally equipped. As such, the Complainant was advised to consider taking up the matter with the Forum deemed appropriate for the purpose.

Ahmedabad Ombudsman Centre
Case No. : 14-002-0321
Mr. N M Savani
Vs
New India Assurance Co. Ltd.

Award Dated : 16-11-2006

Delay in Settlement of Motor OD Claim: The Respondent had admitted the Claim for Motor OD on receipt of an unqualified executed Voucher “in full and final settlement” and had issued the Cheque for settlement on Net Loss Basis. Since there is no evidence that the Voucher was obtained through Fraud, Misrepresentation etc., the grievance of reopening the Claim was not found sustainable.

Ahmedabad Ombudsman Centre
Case No. : 11-005-0162
Mr. M M Doshi
Vs
Oriental Insurance Co. Ltd.

Award Dated : 24-11-2006

Repudiation of claim under Motor OD Policy: The Insured’s Vehicle was inundated by Flood Water while in his Garage. While processing the Claim, the Respondent recovered 25% of the Claim Amount treating the Claim to be Non-Standard one as per their Corporate Guidelines, since the Vehicle did not have a valid Certificate of Periodical Inspection, which is a mandatory requirement in Gujarat for specified types of Vehicles, which included the Insured Vehicle. As such, the decision of the Respondent to treat the Claim as a sub-standard one was upheld.

Ahmedabad Ombudsman Centre
Case No. : 11-007-0197
Ms. P R Trivedi
Vs
TATA AIG General Insurance Co. Ltd.

Award Dated : 27-11-2006

Repudiation of Claim under Motor-OD Policy: The Complainant was looking out for a buyer of his eight months old Car. Two persons reportedly came to his Office, paid him a Token Money of Rs. 5000/- and assured to pay the balance for which they requested the Complainant to arrange for the Car to be taken to Indore. There was no documentation done in the nature of Agreement to Sale etc. No receipt was issued for receipt of the Token Money. The Complainant handed over the Car Keys and all the papers to his Driver. When the Complainant did not receive a telephone call from his Driver the next day, he enquired and was informed that the Driver had been stabbed and the Car was taken away. The Complainants are an established Travel Agent with a fleet of Automobiles owned and used for the purpose of business. To hand over the Car to total strangers without any information about their names, address, occupation or identity whatsoever amounts to negligence and failure to take proper care of the Vehicle. The Respondent also pointed out that the Token Money of Rs. 5000/- for a new Car worth Rs. 3.50 lacs is too small an amount to be believed. It strongly suggested that the Car was being used on a hire and reward basis and thus Violated Policy Condition relating to ‘limitations to use’. As such, the decision of the Respondent to repudiate the Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. : 11-004-0131
Mr. R H Humbal
Vs
United India Insurance Co. Ltd.

Award Dated : 11-12-2006

Repudiation of Claim under Motor OD Policy : The Insured Vehicle collided with an oncoming Tanker on 12-1-2005. Claim was repudiated on the fact of the Insured Vehicle to be allegedly carrying 'Hazardous Goods' while the Driver driving the Insured Vehicle at the time of accident was not having a valid, effective and legal Driving Licence to drive 'Hazardous Good carrying Vehicle'. The Tanker was carrying Petrol in three compartments and Diesel in one compartment. The Complainant submitted that as per the Notification of the Department of Road Transport and Highways, Government of India, the List of Hazardous Goods included Petrol and High Speed Diesel only from 1-6-2005, which is subsequent to the date of Accident. As such, the type of Licence of the Driver vis-à-vis Hazardous Goods becomes irrelevant. The said Notification also illustrated Flammable Liquids in terms of Flash Points if higher than 60ºC to 90ºC. As per Chemical Dictionary, Flash Point of Diesel is 43.33ºC and that of Petroleum is 32.22ºC. It thus follows that the liquids carried in the Tanker were Flammable liquids and as such Hazardous Goods. But, if the list of Hazardous Goods as on the Notification dated 19-1-2000 is referred to, the Chemical concerned is Non-Hazardous. The generic question of Law that arises is that in an analytical situation as stated above, should reference be limited to the list only, to determine the status of hazardousness of the Chemical or that it is appropriate to apply indicative criteria given in the Notification vis-à-vis Flash Point of the Chemical from authentic source to determine Hazardousness of the Chemical? The Forum within its limited resources does not consider itself geared up to get into such issues of Law with apparent depth which is in the realm of both Legal and Chemical expertise. As such, the Complainant was suggested to take up the grievance for redressal with any Forum as he may deem appropriate.

Ahmedabad Ombudsman Centre
Case No. : 11-002-0171
Mr. H F Thakor
Vs
New India Assurance Co. Ltd.

Award Dated : 11-12-2006

Repudiation of Motor OD Claim: The Respondent's Bus met with an Accident. Claim was repudiated on the ground that the Insured violated the provisions with regard to 'Limitations as to use'. Materials on record showed that the Contract Carriage Permit Certificate was valid for the period from 29-11-2000 to 28-11-2005 and was subsequently renewed with penalty from 10-1-2006 to 28-11-2010. The Accident took place on 9-1-2006, when the Bus was plying without a valid Contract Permit, thus violating the Policy Condition for 'Limitation as to use'. As such, the decision of the Respondent to repudiate the subject Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. : 12-002-0278
Smt. L M Sanghani
Vs
New India Assurance Co. Ltd.

Award Dated : 11-12-2006

Refund of Short Period Scale on cancellation of Motor OD policy: The subject Motor Vehicle was insured for the period from 5-6-2004 to 4-6-2005. The Complainant through her letter dated 18-8-2004 requested for cancellation of the said Policy. The

Respondent retained the Premium on Short Period Scales as per Indian Motor Tariff (IMT) GR 24(A)(b). The Complainant contested since the subject deduction was done on a “non-enforceable” policy. There being no such provision in the IMT, the decision of the Respondent to refund the balance Premium after retaining the Premium on Short Period Scales as per IMT was upheld.

Ahmedabad Ombudsman Centre
Case No. : 11-003-0259
Mr. N B Padia
Vs
National Insurance Co. Ltd.

Award Dated : 11-12-2006

Repudiation of claim under Motor OD Policy: The Insured’s Car dahed underneath with a stone hitting the Oil Chamber thereby causing extensive damage to the Engine. The Surveyor restricted Claim payment to replacement of Oil Sump, Oil pump and its Sealer, causing the Complaint. The Respondent pointed out that on being hit by the stone on the lower side, the Oil Pump and its sealer was broken. The Oil was drained away. Despite this, the Car was driven, which led to Engine seizure necessitating Engine Overhauling requiring higher amount. Thus, the Insured had not taken steps to safeguard the Vehicle from loss or damage. As such, the decision of the Respondent to restrict the Claim amount was upheld.

Ahmedabad Ombudsman Centre
Case No. : 11-002-0159
Mr. K J Patel
Vs
New India Assurance Co. Ltd.

Award Dated : 20-12-2006

Repudiation of claim under Motor OD Policy: The Insured’s Vehicle was damaged in an Accident. The Respondent sought to settle the Claim first for Rs.69260/- and then by Rs. 77200/- which was received by the Complainant on execution of a Discharge Voucher in full and final settlement. Since, there was no evidence of the Discharge Voucher having been obtained through improper means like fraud, mis-representation etc., as per the judicial precedents in such cases, the Complainant is estopped from reopening the issue. As such, the complaint failed to succeed.

Ahmedabad Ombudsman Centre
Case No. : 11-004-0155
Mr. V N Nimbavat
Vs
United India Insurance Co. Ltd.

Award Dated : 28-12-2006

Repudiation of Claim under Motor OD Policy : The Insured Vehicle overturned on 22-11-2004. Claim was repudiated on the fact of the Insured Vehicle to be allegedly carrying ‘Hazardous Goods’ while the Driver driving the Insured Vehicle at the time of accident was not having a valid, effective and legal Driving Licence to drive ‘Hazardous Good carrying Vehicle’. The Tanker was carrying Diesel at the time of the Accident. The Complainant submitted that as per the Notification of the Department of Road Transport and Highways, Government of India, the List of Hazardous Goods included High Speed Diesel only from 1-6-2005, which is subsequent to the date of Accident. As

such, the type of Licence of the Driver vis-à-vis Hazardous Goods becomes irrelevant. The said Notification also illustrated Flammable Liquids in terms of Flash Points if higher than 60ºC to 90ºC. As per Chemical Dictionary, Flash Point of Diesel is 43.33ºC and that of Petroleum is 32.22ºC. It thus follows that the liquids carried in the Tanker were Flammable liquids and as such Hazardous Goods. But, if the list of Hazardous Goods as on the Notification dated 19-1-2000 is referred to, the Chemical concerned is Non-Hazardous. The generic question of Law that arises is that in an analytical situation as stated above, should reference be limited to the list only, to determine the status of hazardousness of the Chemical or that it is appropriate to apply indicative criteria given in the Notification vis-à-vis Flash Point of the Chemical from authentic source to determine Hazardousness of the Chemical? The Forum within its limited resources does not consider itself geared up to get into such issues of Law with apparent depth which is in the realm of both Legal and Chemical expertise. As such, the Complainant was suggested to take up the grievance for redressal with any Forum as he may deem appropriate.

Ahmedabad Ombudsman Centre
Case No. : 11-005-0176
Mr. N N Patel
Vs
Oriental Insurance Co. Ltd.

Award Dated : 8-1-2007

Repudiation of Motor OD Claim: The Vehicle got damaged as the Driver lost control of the Vehicle in saving a pedestrian, consequently the Vehicle overturned. Spot Survey and Final Survey was carried out by accredited professionals. Claim for Rs. 1,29,846/- was settled. The Complainant insisted for payment of Rs. 1,35,000/-. Thus the dispute was for Rs. 5,514/-, which the Respondent had recovered since FIR had not been filed in the Police Station. The Complainant pointed out that since there was no third party injury, an FIR was not done. However, the cut was not justified. Since a spot survey, final survey and re-inspection was carried out, the Respondent was directed to pay the balance amount of Rs. 5514/- in full and final settlement of the Claim.

Ahmedabad Ombudsman Centre
Case No. : 11-014-0234
Mr. M H Maniar
Vs
Cholamandlam MS Genl Insurance Co. Ltd.

Award Dated: 15-1-2007

Repudiation of Claim under Motor Vehicle Policy: The Insured Motorcycle was stolen. Complaint was lodged next day in the Police Station. Claim Form though issued on the date of intimation, reached the Respondent 2 months later. The delay deprived the Respondent from the opportunity to immediately investigate the theft claim. The Complainant, during the course of Hearing could not bring forward any reasonable explanation to explain the delay. Again, the FIR was done by some person other than the Owner of the Vehicle as per the RC Book/Insurance Policy. Statements were available on record in several Official Documents by a different person. As such, it was clear that the Insured had ceased to have any insurable interest in the Vehicle on the date of loss. The Complainant argued that transfer of ownership was governed by Sale of Goods Act and even though the change is not reflected in the RC Book, which goes

contrary to M V Rules. As such, the decision of the Respondent to repudiate the claim was upheld.

Ahmedabad Ombudsman Centre
Case No. : 11-002-0238
Sri. V V Madia
Vs
New India Assurance Co. Ltd.

Award Dated : 15-1-2007

Repudiation of Claim under Motor Vehicle Policy: The Claim was repudiated on the basis of three grounds. Firstly, Cause of Accident did not tally with nature of damages. The allegation could not sustain since the Category A Surveyor had assessed that the cause of accident tallies with the cause of Accident. Secondly, the Investigator was prevented from taking evidence. There being no documentary backup for the allegation, the same gets rebutted. Thirdly, it was alleged that the Insured violated the provisions with regard to 'Limitation as to use', the Vehicle being used as a Taxi. There was no confirmation or evidentiary value for the same. Lastly, the Vehicle did not have Periodical Inspection Report. The last allegation is proved. However, as per the Guidelines of the Respondent Insurer, the case could have been settled on a non-standard basis. Keeping the same in view, the Respondent was directed to pay 75% of the Claim treating it on a non-standard basis.

Ahmedabad Ombudsman Centre
Case No. : 11-014-0231
Mr. R C Patel
Vs
Cholamandalam MS General Insurance Co. Ltd.

Award Dated : 15-1-2007

Repudiation of claim under Motor OD Policy: The Claim was repudiated on the ground of violation of 'Limitation as to Use' Clause of the Policy. On examination of the materials on record including the Investigation Reports submitted by the Respondent, it was concluded that the instant case raises complicated questions of facts for which there is need for Admission/Denial of documents, summoning of Witnesses, examination and cross examination, Affidavits on oath etc for which the Forum is neither infrastructurally equipped nor geared to judiciously get into such a task. As such, the Complainant was advised to take recourse to any other Redressal Forum considered appropriate for resolution of the subject grievance.

Ahmedabad Ombudsman Centre
Case No. : 12-002-0229
Mr. H H Mistry
Vs
New India Assurance Co. Ltd.

Award Dated : 22-1-2007

Repudiation of Claim under Motor Vehicle Policy. The Insured Vehicle was damaged in an Accident. Claim was repudiated on the ground that the Driver's Licence was not in force. From the Claim Papers, it got established that the Complainant was driving the Vehicle himself. His Licence expired on 10-8-2004 while the Accident took place on 18-2-2006. Thus, the breach of Policy conditions at the time of the Accident was clearly

established. As such, the decision of the Respondent to repudiate the Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. : 11-004-0144
Mr. A J Patel
Vs
United India Insurance Co. Ltd.

Award Dated : 31-1-2007

Repudiation of Claim under Motor Vehicle Policy: The Insured Auto-Rickshaw was stolen. FIR was lodged by a different person, who had in the statement to the Police authorities confirmed that he had purchased the Rickshaw from the Insured. Since, the Insured ceased to be the owner of the Vehicle, he is not entitled to the benefit of the OD Claim under the Policy. However, the Respondent had settled the Claim for Rs. 11735/- on having received a Discharge Voucher duly signed by the Insured and by the Bank, which had given the loan, in full and final settlement. Since, there was no evidence of the Discharge Voucher having been obtained through improper means like fraud, mis-representation etc., as per the judicial precedents in such cases, the Complainant is estopped from reopening the issue. As such, the complaint failed to succeed.

Ahmedabad Ombudsman Centre
Case No. : 11-004-0212
Mr. N J Shah
Vs
United India Insurance Co. Ltd.

Award Dated : 7-2-2007

Repudiation of Claim under Motor OD Policy:: The Complainant's Car met with an accident. The Respondent repudiated the claim since the Insured Vehicle did not have a valid Certificate of Periodic Inspection. As per Gujarat Government's notification in 1998, it is mandatory to have a periodical CPI for cars with seating capacity exceeding 6 persons. During the course of Hearing, the Respondent informed that they do settle Claims on non-standard basis even when valid CPI is not there, if the subject accident did not take place due to a mechanical problem in the Vehicle which can lead to a doubt about its fitness and road worthiness. However, the said relaxation is operative from 4-4-2006. Since the subject accident took place before that, the Complainant's Claim was not found to come under its purview. On scrutiny of the papers, it was ascertained that the Respondent had never alleged any mechanical infirmity to have contributed to the Accident. The Respondent too agreed that a lenient view could be taken in the present case. As such, it was decided to deduct 25% of the assessed loss and pay the balance claim on a non-standard basis.

Ahmedabad Ombudsman Centre
Case No. : 11-003-0251
Sri A B Khimani
Vs
National Insurance Co. Ltd.

Award Dated : 15-2-2007

Repudiation of Motor Own Damage Claim. The Complainant's vehicle met ith an accident. The Motor Own Damage Claim was repudiated on the grounds that the

Vehicle was not transferred to the new Owner in RTO records as on the date of accident. Since, the provisions of GR17 of the Indian Motor Tariff requiring the Insurance Cover to be transferred within 14 days of change of ownership was not complied with in the cited case, the decision of the Respondent to repudiate the subject Claim was upheld with no relief to the Complainant.

Ahmedabad Ombudsman Centre
Case No. : 11-004-0249
Mr. R P Modhia
Vs
United India Insurance Co. Ltd.

Award Dated : 6-3-2007

Repudiation of Claim under Motor OD Policy:: The Complainant's Car met with an accident. Claim was repudiated alleging that the bills submitted by the Complainant included fictitious bills. The Complainant pleaded that if the bill, as alleged, is fictitious, action should lie against the Garage and not against him, since the purchase was made by the Garage itself. However, the disputed Cash Memo had been drawn in the name of the Complainant as buyer. Hence the contention that the materials for the vehicle as in the disputed Cash Memo was not made by the Complainant does not hold good. As such, Repudiation of the Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. : 11-002-0261
Mr. M R Rajput
Vs
New India Assurance Co. Ltd.

Award Dated : 8-3-2007

Repudiation of Claim under Motor OD Policy:: The Complainant's Auto rickshaw was stolen from a Parking Place. The FIR was lodged with the Police Authorities after 8 days and an intimation to the Insurer was given still another 5 days later. Thus there had been a gross infirmity in complying with the preliminary obligation that rests on an insured when theft takes place. The Rickshaw being a Commercial Vehicle is required to have a Contract Carriage Permit. The said Permit is valid provided the Vehicle had a Certificate of fitness. The Certificate of fitness of the Vehicle had expired a year earlier to the Accident. As such, the decision of the Respondent to repudiate the Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. : 11-004-0036
Mr A V Patel
Vs
United India Insurance Co. Ltd.

Award Dated : 16-3-2007

Repudiation of Claim under Motor Vehicle Policy: The Insured Motor Car met with an accident. Despite repeated written communications, there was absolute lack of response on the part of the Complainant. On the other hand, the Respondent too did not decide about the Case on the basis of the available materials and even a decision of 'No Claim' was not taken by them. On the basis of study of the papers made available and the verbal submissions during Hearing together with aspects like Make of the Car, marketability of the Make, IDV etc., it was decided to settle the Claim on a

Total Loss Basis for an amount of Rs. 90000/- with the Salvage to be retained by the Complainant.

Ahmedabad Ombudsman Centre
Case No. : 11-013-0296
Mr. P G Thakkar
Vs
HDFC Chubb General Insurance Co. Ltd.

Award Dated : 22-3-2007

Repudiation of Claim under Motor OD Policy: The Insured Vehicle was damaged in an Accident. Claim was rejected on the basis of the Surveyor's Report which attributed the damage due to a Mechanical Failure of the Gear Box. The Complainant too did not ascribe the cause of damage to be of an external origin. The Motor OD Policy specifically excludes losses due to mechanical or electrical breakdown, failures or breakages. As such, the decision of the Respondent to repudiate the Claim was upheld.

Bhopal Ombudsman Centre
Case No. : GI/RGI/0906/061
Mr. Anoop Singh Gaur
V/s
Reliance General Insurance Co. Ltd.

Award Dated 29.11.2006

Mr. Anoop Singh Gaur (hereinafter called Complainant) informed that he had covered his vehicle MP-07-HA-8666 through Motor Insurance Cover-note No. 645752 from Reliance General Insurance Co. Ltd., Mumbai/Bhopal (hereinafter called Respondent). As per the Complainant he had covered his vehicle MP-07-HA-8666 which was registered at RTO Gwalior (whose insurance expired on 26.04.2006) by Respondent's Gwalior representative/Agent Mr. Rahul Sayal & Mr. Ashok Sahani through Motor Insurance Cover-note No. 645752 w.e.f. 06.06.2006 to 05.06.2007 after paying a cash premium of Rs. 25,000/-. In the cover-note they mentioned the premium as Rs.20, 942/-. When the Complainant objected to the same i.e. in respect of difference of premium shown in the policy and amount taken by them, the Respondent's representative informed that they are the agent of the Respondent and the Policy and receipt will be sent to his residential address by their Mumbai Head Office and the balance amount would be refunded later on. Thereafter the Respondent has not given the policy & receipt in-spite of his several reminders. The Complainant also informed that his driver went to Kanpur on 07.07.2006 and when his driver Mr. Prakesh Batham was returning from Kanpur he met with an accident at 7.00 hours near Kanpur. The Complainant also informed that he intimated about the accident to the Respondent's Gwalior office on phone who advised his to bring the vehicle to Kanpur for repair. At Kanpur repairer asked him to deposit Rs. 25000/- as an advance but at that time he was not having Rs. 25000/- and as such he informed the Respondent's Representative who advised him to shift the vehicle where he wanted to repair the same and as such he brought the vehicle at Gwailor. The Respondent's representative informed him that they are deputing the surveyor and asked him to complete the claim form but neither the surveyor visited nor the claim form was provided by them. The Vehicle was surveyed by Mr. R. K. Anand but he has neither contacted him at all nor has informed him about the claim. The Complainant also lodged a complaint with Police Station;

Inderganj Gwalior & Police is investigating the case. The Complainant has requested this office to provide him the Policy along with the claim amount.

The Respondent in its reply-dated 11.11.2006 mentioned as under:-

1. On receipt of a telephonic intimation from the Complainant on 8th July 2006 in respect of alleged accident of his vehicle near Kanpur & repairs to be carried out at Kanpur, our Office advised the Complainant to contact their representative at Lucknow to facilitate survey of the vehicle at his desired workshop. The Complainant preferred to bring the vehicle to Gwalior for repairs and informed their business associate about survey at Gwalior. In the meantime, their business associate gathered that the damage to the Complainant's car had taken place much earlier i.e. even prior to his taking the insurance policy from them. The Complainant informed them by fax dated 11.07.2006 and requested for the survey. They appointed Mr. R. K. Anand, an independent surveyor duly licensed by IRDA who visited repairer's workshop at M/S J. S. Motors Gwalior and inspected the vehicle on 12.07.2006. On preliminary inspection of the vehicle, surveyor convinced that the damages sustained in the vehicle were much older than mentioned by the claimant as there was rusting on the damaged portion and damages did not appear to be a fresh. The claimant was not available at the time of inspection of the vehicle at the Workshop. Surveyor advised Workshop representative to request the Complainant to contact them with duly completed claim form, Registration book, driving license, Police report to enable him to assess the loss. The surveyor subsequently tried contacting the Complainant through the repairer but the Complainant never turned up for discussion and verification of documents. Since the Complainant did not come forward, Surveyor wrote letter dated 21.07.2006 and 04.08.2006 sent under registered post to the claimant for compliance of the above mentioned formalities but no reply was received from the Complainant. Surveyor sent another reminder letter dated 01.11.2006 stating that despite letters and follow up, no compliance has been received to their requirements and gave the Complainant one week's time or else they will release their independent report to the company.
2. Due to the above mentioned doubts, Mr. Upendra Singh Bais, Investigator was deputed to investigate the genuinety of the accident/claim. Mr. Bais also inspected the vehicle and observed that DAMAGES OF THE VEHICLE WERE MUCH OLDER THAN REPORTED. He visited the Complainant's house three times as well as tried to contact him on phone on several times to know the details of the cause & place of accident, date and time of accident, name of the Police Station where report was lodged, but the Complainant avoided taking calls or talking to the Investigator. The Investigator even wrote a letter dated 23.07.2006 under registered post to the Complainant requesting him to furnish true facts of the accident/claim but the same was returned as undelivered. Since the Complainant did not respond to his calls and his three visits to the Complainant's residence where the Investigator left his visiting card also. The Investigator wrote another letter dated 04.09.2006 requesting the Complainant for submission of information & documents within 7 days followed by another reminder dated 24th September 2006 giving last opportunity to comply within 7 days failing which he would submit his finding to the Company. The Complainant neither responds any of the above letters nor did he extend any co-operation. The Investigator had released his Final report dated 22.10.2006. The Investigator has concluded that nature of rusty conditions, deep dust inside the vehicle and beneath portion clearly confirms that the vehicle had sustained damage long ago and these were not definitely a fresh damage reported to have occurred 3 or 4 days back.

3. The Respondent also wrote letter dated 18.07.2006 to the Complainant for completion of formalities which was returned to them as 'UNDELIVERED'. The Respondent wrote the Complainant again on 31.07.2006 which was presumably received by him.
4. Meantime, investigations made by their business associate, their officials & Investigator revealed that the copy of previous insurer's cover-note submitted by the Complainant at the time of obtaining the insurance cover on 3rd June 2006 shows MANUPULATION in period of insurance of M/S Cholamandalam Ins. Co.'s last year policy as " 06.06.2005 to 05.06.2006" to give impression that the insurance is being taken before expiry of the policy and as such requirement of pre-inspection of the vehicle is not applicable. On enquiry from M/S Cholamandalam's Insurance Co.'s office, it was found that the said policy was valid from 26.04.2005 to 25.04.2006 and not from 06.06.2005 to 05.06.2006. It was thus found to be a case of obtaining insurance cover from the Respondent through MISREPRESENTATION AND CONCEALMENT OF MATERIAL FACTS.

Further the Complainant did not co-operate either with the surveyor or with the Investigator and did not submit duly completed claim form along with copies of Registration Book and Driving license despite phone calls and letters written by Surveyors, Investigator and the Respondent as mentioned above. The Complainant failed to fulfill obligations under policy conditions for compliance of claim formalities.

From the foregoing facts/documents, it is clearly established that the Complainant has attempted to commit a fraud by claiming for the damages to his vehicle having taken place prior to obtaining insurance from the Respondent by MISREPRESENTATION his previous insurance details by MANIPUTATING DATES which has been confirmed on enquiry with previous insurance company. Further the Complainant has neither extended any co-operation to the Investigator, Surveyor and the Respondent nor has complied with policy conditions. In view of the same they had repudiated their liability vide their letter dated 10.11.2006 for the claim preferred by the Complainant.

It is observed that from the record submitted by the Respondent, the complainant had obtained the insurance cover through misrepresentation and concealment of material facts. Further it is also observed that the Complainant had not lodged any FIR at Kanpur on the contrary he brought the vehicle for repairs from Kanpur to Gwalior without prior intimation to the Respondent. Further the Complainant has also not submitted the claim form to the surveyor at the time of inspection of the vehicle along with copies of Registration Book and Driving license despite phone calls and letters written by Surveyors. The Complainant did not co-operate with the surveyor as well as with the Investigator. Hence the Complainant failed to fulfill obligations under policy conditions for compliance of claim formalities. It is further observed from the Surveyor's as well as Investigator's report that nature of rusty conditions, deep dust inside the vehicle and beneath portion clearly confirms that the vehicle had sustained damage long ago and these were not definitely a fresh damage reported to have occurred 3 or 4 days back. In view of the circumstances stated above, I am of the considered opinion that the decision of the Respondent to repudiate the claim on this ground is fair and justified. I found no reason to interfere with the decision taken by the Respondent. Hence the complaint is dismissed without any relief.

Bhopal Ombudsman Centre
Case No. : GI/ITG/1106/079
Mr. Santosh Kushwah
V/s

IFFCO-TOKIO General Insurance Co. Ltd.

Award Dated 19.01.2007

Mr. Santosh Kushwah (hereinafter called Complainant) informed that he had obtained a Motor Insurance Policy covering his vehicle registration no. MP 11 B 6096 under Cover note No. 32553447 for sum Insured of Rs. 50,000/- from IFFCO-TOKIO General Insurance Co. Ltd., Bhopal (hereinafter called Respondent). As per the Complainant he has taken the above policy for the period from 03.02.2006 to 02.02.2007 for covering his vehicle registration no. MP 11 B 6096. On the night of 14.08.2006 rain water entered in his house due to flood and as such he started his vehicle, which did not start as it was damaged. The Complainant also stated that till that time he has not received the policy copy. He has received the policy copy only on 26.08.2006. In view of the same he could not intimate about the loss to the Respondent in time. The Complainant also stated that he repaired the vehicle from M/S N. M. Motors and then only he came to know the address of the Respondent and then he intimated to the Respondent and submitted all the relevant documents, but the respondent only approved his claim for Rs. 2800/- orally while his loss is about 20,000/-. Since the claim was not settled, hence he has approached this office.

The Respondent in its reply-dated 21.12.2006 stated that the repairing job was already done prior to filing the claim form. The Complainant should have registered/intimated to the Respondent prior to the repair of the vehicle, so that the loss could be assessed by the surveyor. Intimation of the claim was received by them on 20.08.2006 & on the same day survey was arranged, hence there was no delay on their part. Yet it was found that some of the bills/cash memos submitted are dated 19.08.2006. The Respondent also stated that they are corresponding with the Complainant for compliance of requisite formalities which the Complainant has not yet complied. The Respondent also informed vide their letter dated 04.01.2007 that they had filed the claim as NO Claim as per surveyor's recommendation.

It is observed that the Complainant after repair of the vehicle informed the Respondent i.e. after occurrence of the loss the Complainant has not given any opportunity to inspect the vehicle before repair of the vehicle. However the Respondent appointed an independent loss assessor (licensed by IRDA) who has opinioned that "the vehicle in question was found in good running condition. The insured reportedly tried to start the vehicle & in this process hydrostatic lock sets jammed the engine which is fit case of negligence. The insured reportedly tried to start the vehicle & in this process hydrostatic lock sets jammed the engine which is fit case of negligence hence not covered/considered while assessing the loss." The same is also mentioned by the Complainant in his complainant that "On the night of 14.08.2006 rain water entered in his house due to flood and as such he started his vehicle, which did not start as the vehicle was damaged." In view of the circumstances stated above, I am of the considered opinion that the decision of the Respondent to repudiate the claim is fair and justified therefore; I found no reason to interfere with the decision taken by the Respondent. The complaint is dismissed without any relief.

Bhopal Ombudsman Centre
Case No. : GI/NIC/0107/090
Dr. N. K.Gaur
V/s
The National Insurance Co. Ltd.

Award Dated : 28.02.2007

Dr. N. K. Gaur (hereinafter called Complainant) has taken Motor Car Insurance policy No. 320200/31/06/610000686 covering his car MP-04-HC-8838 against accidental insurance cover with The National Insurance Co. Ltd., Bhopal (hereinafter called Respondent). As per the Complainant he had lodged a claim of his car on 13.09.2006 with the Respondent along with an estimate of Rs. 18000/- and was assured that the claim would be reimbursed as agreed in between surveyor and the repairer on the basis of actual damages due to multiple damage in accident on 13.09.2006. As per the Complainant the actual expenditure was Rs. 15716/- which he has paid to the repairer but his claim is approved for Rs. 3990/- by the Respondent which he has not agreed to accept.

The Respondent in its reply-dated 07.02.2007 stated that after getting the intimation of claim on 13.09.2006 along with claim form and estimate, they deputed the surveyor Mr. Sanjay Shrivastava to assess the loss. The loss assessed by the surveyor for Rs. 3990/- (after deduction of depreciation and policy excess) on the basis of cause and nature of accident and physical verification of the vehicle. The Respondent has also stated that they got the representation of the Complainant informing them that he is in disagreement with the Surveyor, hence the matter was referred to the surveyor again and according to him loss assessed is quite reasonable. Hence they requested the Complainant to submit them the duly signed claim discharge voucher.

It is also observed from the claim form page 3 item No. 5 wherein the Complainant has mentioned the short description of the accident, it is very clear that due to accident, the vehicle is damaged in front side, rear side as well as in the back also. It is also observed that from the survey's report dated 14.09.2006, the surveyor has disallowed item No. 3, 4, 5, & 6 under head labour charges for Rs. 850/- , 750/- , 1000/- & 4000/- without mentioning the reasons for disallowing these items although the estimate submitted by the Complainant pertains to the authorized dealer of Maruti. Besides the surveyor has reduced the charges of painting to bonnet, RH front door and partial painting the bumper from Rs. 8000/- to3000/-but have not mentioned any reasons for the same.

It is quite evident that the above items which were disallowed by the surveyor have been damaged due to the said accident. The Complainant has also submitted the repair cash memo of the Authorized Maruti Service Center i.e. M/S Vidya Automobiles Pvt. Ltd. paid in cash vide invoice No. 033554 dated 20.09.206 for Rs. 15716/- to the Respondent which cannot be disbelieved.

In view of the circumstances stated above, I am of the considered opinion that the decision of the Respondent to settle the claim for Rs.3990/- by the Respondent is unfair and unjust. Respondent is directed to pay the claim amount of Rs. 15,216/- (total claim
bill/cash memo amount of Rs.15216/- less policy excess of Rs. 500/-) to the Complainant. The Respondent is also directed to pay the award amount as mentioned above within 15 days from the receipt of the consent from the Complainant, failing which the Respondent shall be liable to pay the amount of award with interest @ 6% p.a. from the date of this order to the date of actual payment.

Bhopal Ombudsman Centre
Case No. : GI/ICI/0207/109
Mrs. Padma Jayaswal
V/s
ICICI Lombard General Insurance Co. Ltd.

Award Dated : 22.03.2007

Mrs. Padma Jayaswal W/O Shri Pratesh Jayaswal (hereinafter called Complainant) informed that he had obtained Motor Insurance Policy No. 3001/1334350/00/000 from ICICI Lombard General Insurance Co. Ltd., Bhopal (hereinafter called Respondent). As per the Complainant he had obtained Motor Insurance Policy covering her Santro Xing Car through the agent of the Respondent after paying premium of Rs. 12418/- who handed over the cover note No. 701857 & got the policy covering the risk for the period from 26.01.2006 to 25.01.2007. The said car met with an accident in May 2006 and again in Nov. 2006 & after submitting all the papers Respondent informed that her policy does not exist.

The complaint was registered on 09.02.2007 and prescribed forms were issued. Reply were received from the Respondent but the Complainant did not submitted the prescribed forms as desired by us vide our letter dated 09.02.2007 & registered letter dated 28.02.2007.

During the hearing the Respondent contended that they received the cheque No. 305316 for a sum of Rs.12417/- towards premium for issuing private Motor Insurance Policy. Accordingly cover note was issued in favor of the Complainant. However the cheque in question got bounced on presentation and in view of non-receipt of the premium cancellation letter dated 12.04.2006 (canceling the policy since inception) sent to the Complainant on 12.04.2006 under “certificate of posting”. Respondent also stated that in terms of section 64VB of insurance act 1938, they can not cover the risk unless the premium is received in advance. Accordingly in this case, where the cheque tendered towards premium, is not realized the policy shall be treated as void ab initio. In view of the above circumstances, it is prayed that the complaint be dismissed and they may be absolved of the alleged liability.

The Complainant was absent during the hearing. Notice was sent by registered post to the Complainant on 28.02.2007 at the last known address to which earlier correspondences were made. It appears that the Complainant is not interested in resolving the dispute; hence the case is filed as closed.

Bhopal Ombudsman Centre
Case No. : GI/RGI/0207/096
Mr. Shri Ram Sahu
V/s
Reliance General Insurance Co. Ltd.

Award Dated : 23.03.2007

Mr. Shri Ram Sahu (hereinafter called Complainant) informed that he had obtained Motor Insurance cover note No. 722698 from Reliance General Insurance Co. Ltd., Bhopal (hereinafter called Respondent). As per the Complainant he had obtained Motor Insurance cover note from the Respondent. He informed the Respondent that through oversight two insurance was taken by him, one from the Respondent and the other from ICICI Lombard Gen Ins. Co. Ltd. He requested the Respondent to cancel the policy issued by them. But Respondent had not refunded him the premium.

The complaint was registered on 01.02.2007 and prescribed forms were issued. Reply were received from the Respondent but the Complainant did not submit the prescribed forms as desired by this office vide letter dated 01.02.2007 & registered letter dated 28.02.2007.

The Respondent in its reply-dated 19.03.2007 as well as during the hearing contended that they had not issued any such policy to the Complainant as referred in the

complaint. With reference to the copy of the cover note bearing No. 722698 attached with the claim letter of the Complainant, it is stated that the cover note book which contains this particular leaf was meant for issuance to cover vehicles of our group company employees and/or walk-in customers. Policies have been issued on all other leaves excepting this leaf. It is noteworthy that we have neither received any premium on this cover note nor has this leaf been in-warded. Respondent also stated that in view of the same they investigated the matter through an investigator, who submitted his report on 08.03.2007 which is as follow:-

1. That the Complainant died on 17.11.2006 while the complaint filed before Hon'ble Insurance Ombudsman is dated 07.01.2007.
2. The signature and handwriting of the Complainant as appearing in the complaint letter differs from the signature and handwriting on the specimen copy furnished by the Complainant's brother Shri Umesh Sahu.
3. Shri Umesh Sahu brother of the Complainant has confirmed that the vehicle No. MP-05_K-4682 (covered under so called cover note) belongs to his brother (of the Complainant) which is insured only with ICICI Lombard Gen. Ins. Co. Ltd. He further confirmed that since this vehicle is under his custody/supervision, neither any insurance cover has been obtained from the Respondent nor any letter has been written by him or any person of his family for any refund or any complaint made to Insurance Ombudsman by his family member.

Responded also stated that it is abundantly clear that the demand of the Complainant is not justified as the vehicle was never insured with them & therefore any refund of premium is payable. It appears that some unscrupulous element has sent the above complaint and is unnecessarily encroaching upon valuable time of all.

The Complainant was absent during the hearing. Notice was sent by registered post to the Complainant on 28.02.2007 at the last known address to which earlier correspondences were made which was returned undelivered. It appears that the Complainant is not interested in resolving the dispute; hence the case is filed as closed.

Bhubaneshwar Ombudsman Centre
Case No. : 11 –002-0096
Mrs.Jyotirmoyee Mohapatra
Vs
New India Assurance Co. Ltd.

Award Dated : 11.10.06

Insured Complainant insured her Tata Indica Car under private car Policy B package policy with New India Assurance Co. Ltd . Insured vehicle met with an accident on 13—01-2004 and sustained a heavy loss. The insured complainant lodged a claim for Rs 86430/ which has been repudiated by insurer on the ground that driver of the vehicle had no effective driving licence.

During Hearing Complainant stated that driver had valid LMV driving licence to drive the insured vehicle .

Insurer stated that driver had no professional driving licence to drive as paid employee.

Hon'ble Ombudsman set aside the repudiation and directed the insurer to pay Rs 45,000/ as assessed by surveyor as the insured vehicle is a LMV and driver had the valid driving licence to drive LMV category of vehicle. Insurer failed to exhibit any

provision of Act, Rules, clause in the policy document which provides that professional licence is sine qua non for a paid driver.

Bhubaneshwar Ombudsman Centre
Case No. : 11 –002-0088
Sri Samar Das
Vs
New India Assurance Co. Ltd.

Award Dated 6.11.06

Insured Complainant insured his Ford Escort Car under Motor Comprehensive policy. with New India Assurance Co. Ltd. The insured vehicle met with an accident while it was on 29-12-2002.Insured lodged a claim of Rs 157100/ against the insurer. The Final surveyor assessed the loss for an amount of Rs 97,000/. Being dissatisfied with the assessment of final surveyor insurer sought a technical opinion from another surveyor. Insurer settled the claim for an amount of Rs 37,000/. Being dissatisfied with the quantum of assessment insured lodged this complaint.

During Hearing insurer stated that complainant removed the vehicle from the spot without giving opportunity for spot survey and first surveyor ignored many aspect of the claim relating to the cause and nature of accident for which technical opinion was sought and claim has been settled accordingly.

Stated that insured had no pre existing disease where as insurer proved with the documents that disease was preexisting.

Hon'ble Ombudsman awarded Rs 65,000/ in favour of complainant considering the final survey report and inspection surveyor's report.

Bhubaneshwar Ombudsman Centre
Case No. : 11 –003-0097
Sri Pradipta Kumar Panda
Vs
National Insurance Co. Ltd.

Award Dated : 8.11.06

Insured Complainant insured his minibus under Motor Comprehensive policy. with National Insurance Co. Ltd . The insured vehicle met with an accident on 31-08-2004.Insured lodged a claim of Rs 56042.45 against the insurer. The Final surveyor assessed the loss for an amount of Rs 6700/. Insurer settled the claim for an amount of Rs 6423/-. Being dissatisfied with the quantum of assessment insured lodged this complaint.

During Hearing complainant stated that spot surveyor found that lever of the gear box damaged. He has replaced the gear box. Insurer arbitrarily disallowed the parts and slashed the labour charges.

Insurer stated that final surveyor found the gear box functioning normally and labour charges given by the repairer is on higher side.

Hon'ble Ombudsman awarded Rs 17500/ in favour of complainant considering the spot survey report, final survey report and repairer's bills and cash memos.

Bhubaneshwar Ombudsman Centre

Case No. : 14 –011-0109
Sri Krushna Chandra Mohapatra
Vs
The Bajaj Allianz General Insurance Co. Ltd.

Award Dated : 9.11.06

Insured Complainant insured his Maruti Omni Van under Motor private car Comprehensive policy. with The Bajaj Allianz General Insurance Co. Ltd . The insured vehicle met with an accident on 29-02-2004while it was coming from Puri to Bhubaneswar. During the accident driver was injured along with some of the passengers on the board. Insured lodged a claim of Rs 151261.48 against the insurer. The Final surveyor assessed the loss for an amount of Rs 78500/. Insurer repudiated the claim on the ground that the vehicle was used for hire purpose at the time of accident.

Being dissatisfied with the decision of the insurer insured lodged this complaint.

During Hearing complainant stated that vehicle was not used for commercial purposes but the driver had given lift to some people on request. Insurer stated that vehicle was used for private and commercial purposes on the date of accident and the van was hired by Mr. B.Naidu of Bhubaneswar.

Hon'ble Ombudsman uphold the repudiation as the vehicle was used for hire purposes as the statement of one of the injured passenger who has stated categorically that the vehicle was used for hire purposes which violates the policy condition.

Bhubaneshwar Ombudsman Centre
Case No. : 11 –005-0225
Smt. Bijaylaxmi Parida
Vs
The Oriental Insurance Co. Ltd.

Award Dated : 5.12.06

Insured Complainant insured his truck under Goods carrying Commercial Vehicle policy. with The Oriental Insurance Co. Ltd . Insured vehicle met with an accident on 15-01-2005 causing death of a driver and damages to the vehicle. Complainant lodged a claim for Rs309,000/ where as surveyor has assessed the loss for Rs 230,000/. Insurer repudiated the claim as the driver had no effective driving licence at the time of accident.

Being dissatisfied with the decision of the insurer complainant lodged this complaint.

During Hearing complainant stated that she has engaged late Ramu Dhanuka as the driver after verifying the Driving Licence no: 126/95 issued by RTO, Koraput which was renewed by same RTO from time to time and driver was holding effective D/L at the time of accident.

Insurer stated that original D/L No: 975/993 issued by RTO, Vizag was in name of one Krishna Rao So, driver was holding a fak D/L and subsequent renewals by RTO . Koraput notwithstanding for which the claim was repudiated.

Hon'ble Ombudsman set aside the repudiation and directed insurer to pay Rs 230,000/ to the complainant as the insurer failed to prove that accident took place due to the fault of driver citing the Apex Court decision incase of United India Insurance Co. Ltd –

Vs- Lehru and Others (2003) 3SCC 388), National Insurance Co. Ltd – Vrs – Swaran Singh & Others (SLP © 9027 of 2003 reported in (2004) 27 OCR 540.

Bhubaneshwar Ombudsman Centre
Case No. : 14 –005-0255
Sri Rajeswar Thakur
Vs
The Oriental Insurance Co. Ltd.

Award Dated : 7.12.06

Insured Complainant insured his mechanical excavator Hitachi Ex-70 under Miscellaneous Type Vehicle Insurance policy with The Oriental Insurance Co. Ltd . The vehicle was damaged due to fire on 8-6-2004 while it was parked at the worksite after six days of insurance obtained..

Complainant lodged a claim for Rs17,69,072/ where as surveyor has assessed the loss for Rs 991, 500/. Insurer has not settled the loss despite of submission of necessary papers by complainant .

Being dissatisfied with the decision of the insurer complainant lodged this complaint.

During Hearing complainant's representative stated that despite submission of all the documents the claim has not been settled by the insurer.

Insurer stated that there being two conflicting fire brigade reports regarding the time of accident and electrical short circuits causing fire when the excavator was switched off being suspicious a thorough investigation is on and they asked for three months time to finalize the matter .

Hon'ble Ombudsman directed insurer to settle the claim by end of January 2007 positively.

Bhubaneshwar Ombudsman Centre
Case No. : 11 –002-0100
Sri Bairagi Charan Rout
Vs
The New India Assurance Co. Ltd.

Award Dated : 01.01.07

Insured Complainant insured his Telco Truck under Motor Commercial Insurance policy with The New India Assurance Co. Ltd . The vehicle met with an accident on 25-01-2003. Insurance Surveyor assessed the loss for Rs 229000/ against an estimate of Rs 344095/. Insurer repudiated the claim on the ground that the driver had no effective driving licence.

Being dissatisfied with the decision of the insurer complainant lodged this complaint.

During Hearing complainant' stated that driver had the valid driving licence at the time of accident.

Insurer stated that D/L No: 2036/91 (O) stands in name of Sanatan Swain.

Hon'ble Ombudsman directed insurer to settle the claim for an amount of Rs 229000/ as there is no room for doubt regarding the effective ness of D/L at the time of accident and the D/L of Sanatan Swain does not correspond with the D/L of Muralidhar Jena.

Bhubaneshwar Ombudsman Centre
Case No. : 14 –002-0060

Sri Kasinath Behera
Vs
The New India Assurance Co. Ltd.

Award Dated : 05.01.07

Insured Complainant insured his Ambassador Car under Motor Private Car Insurance policy with The New India Assurance Co. Ltd . The vehicle met with an accident on 26-05-2000. Insurance Surveyor assessed the loss for Rs 35000/ against an estimate of Rs 50,000/ Insurer repudiated the claim on the ground that the vehicle was plying on the road without payment of road tax at the relevant time.

Being dissatisfied with the decision of the insurer complainant lodged this complaint.

During Hearing complainant' stated that non payment of road tax is not a policy exclusion warranting repudiation of the claim.

Insurer stated that claim was repudiated due to non payment of road tax.

Hon'ble Ombudsman directed insurer to settle the claim for an amount of Rs 35,000/ as non payment of road tax is not the proximate cause of accident. The policy condition/clause does not prohibit plying of the insured vehicle without payment of tax.

Bhubaneshwar Ombudsman Centre
Case No. : 11 –005-0125
Sri Bhagaban Sahoo
Vs
The Oriental Insurance Co. Ltd.

Award Dated : 11.01.07

Insured Complainant insured his Truck with Oriental Insurance Co. Ltd under Comprensive Commercial Vehicle policy.The insured vehicle met with an accident on 11-08-2003. The surveyor assessed the loss foe an amount of Rs 29,000/ against an estimate of Rs 51250/. Insurer repudiated the claim on the ground that driver of the vehicle Simachal Tarei had no effective licence.

Being dissatisfied with the decision of the insurer complainant lodged this complaint.

During Hearing insurer stated that D/L No: 1492/86/CTC was issued in name of Purna Nanda Sahu which was subsequently renewed by RTO Chhatrapur in name of Simachal Tarei vide D/L No: 2207/92 as such it was a fake D/L.

Hon'ble Ombudsman directed insurer to pay Rs 29,000/ as the D/L of Simachal Tarei has been renewed by RTA , Chhatrapur since 11-08-92 till 25-08-2004. More over Insurer failed to prove that accident took place due to fault of driver. Hon'ble Ombudsman has also cited the Apex court Judgement in case of United Insurance Co. Ltd –Vrs- Lehru and Others (2003) 3SCC 388) and National Insurance Co. Ltd Vrs – Swaran Singh & Others (SLP) © 9027 of 2003 reported in (2004) 27 OCR 540.

Bhubaneshwar Ombudsman Centre
Case No. : 11 –004-0099
Mrs. Kulwant Kaur
Vs
The United India Insurance Co. Ltd.

Award Dated : 15.01.07

Insured Complainant insured her truck with United India Insurance Co. Ltd . Insured truck met with an accident on 30-05-2001 resulting the death of driver along with the

damage to the vehicle . Insured complainants claim has been repudiated by insurer on the ground that driver had no effective driving licence at the time of accident.

Being dissatisfied with the decision of the insurer complainant lodged this complaint.

During Hearing complainant stated that deceased driver was holding effective D/L which has been certified by RTO, Sundargarh.

Insurer stated that certified copy of D/L was obtained after the death of driver and as such the D/L issued is fake.

Hon'ble Ombudsman directed the insurer to pay RS 190,000/ as there is no room for doubt regarding the genuineness of D/L and repudiation is arbitrary since concerned authority has confirmed the genuineness of D/L.

Bhubaneshwar Ombudsman Centre
Case No. : 11 –004-0099
Mrs. Kulwant Kaur
Vs
The United India Insurance Co. Ltd.

Award Dated : 15.01.07

Insured Complainant insured her truck with United India Insurance Co. Ltd . Insured truck met with an accident on 30-05-2001 resulting the death of driver along with the damage to the vehicle . Insured complainants claim has been repudiated by insurer on the ground that driver had no effective driving licence at the time of accident.

Being dissatisfied with the decision of the insurer complainant lodged this complaint.

During Hearing complainant stated that deceased driver was holding effective D/L which has been certified by RTO, Sundargarh.

Insurer stated that certified copy of D/L was obtained after the death of driver and as such the D/L issued is fake.

Hon'ble Ombudsman directed the insurer to pay RS 190,000/ as there is no room for doubt regarding the genuineness of D/L and repudiation is arbitrary since concerned authority has confirmed the genuineness of D/L.

Bhubaneshwar Ombudsman Centre
Case No. : 11 –003-0120
Sri Debasis Mitra
Vs
National Insurance Co. Ltd.

Award Dated : 18.01.07

Insured Complainant insured his Maruti Wagon R car with National Insurance Co. Ltd under Motor Comprehensive policy . One Tata Sumo plying in reverse gear dashed the parked insured vehicle . Complainant lodged a claim for Rs 30190/ where as the surveyor of insurer assessed the loss for Rs 4695/ and insurer trimmed it to Rs. 3,841/- .

Being dissatisfied with the decision of the insurer complainant lodged this complaint.

During Hearing insurer stated that as per survey report damage to some of the parts like condense assembly is impossible to damage. Moreover surveyor has assessed the loss for Rs 4695/-.

Hon'ble Ombudsman directed the insurer to pay Rs. 10,500/- as surveyor has arbitrarily disallowed the replacement of parts like cross member, panel apronLH, member apron LH .

Bhubaneshwar Ombudsman Centre
Case No. : 11 –003-0260
Sri Bhimsen Behera
Vs
National Insurance Co. Ltd.

Award Dated : 19.01.07

Insured Complainant insured his Pick Up Vanr with National Insurance Co. Ltd under Motor Comprehensive policy . Insured vehicle met with an accident on 17-06-2005. Complainant lodged a claim for Rs 95038.66/ where as the surveyor of insurer assessed the loss for Rs 46000/ and insurer trimmed it to Rs 36137/.

Being dissatisfied with the decision of the insurer complainant lodged this complaint.

During Hearing insurer stated that insured complainant failed to produce the salvage of the parts allowed by the final surveyor for replacement.

Complainant stated that salvage of the damage parts are still with us and surveyor made adverse comment as he did not accede to surveyor's request.

Hon'ble Ombudsman directed the insurer to pay Rs 12981/ in addition to receipt of Rs 36137/ already received by complainant subject to production of salvage of parts allowed by final surveyor.

Chandigarh Ombudsman Centre
Case No. : GIC/54/UII/14/07
Tarsem Raj Monga
Vs
United India Insurance Co. Ltd.

Order dated: 22.11.06

FACTS : Tarsem Raj Monga's son Shri Amit Monga had taken a motor policy for his car from BO Kharar for the period 11.4.04 to 10.04.05 for sum insured of Rs. 2,50,000. The car met with an accident on 26.2.05. The claim was filed with the insurer and he was forced to get the car repaired from a particular workshop. As a result repairs were not to his satisfaction. He met the company officials at Mohali and Chandigarh but to no avail. He also represented to the head office of the company at Chennai but no reply was given.

FINDINGS : The complainant complained that he was forced to go to M/s Mars Motors to carry out the repairs to his damaged vehicle based on the telephonic conversation which he had with some official of UII. However there was nothing on record to prove that such a conversation had taken place or that the insurer had any tie up with such workshop to get the vehicle repaired. The insurer mentioned that they had tie up with one or two workshops in Panchkula and Chandigarh from 2006 only, wherein insurer pays to the workshop directly instead of reimbursing to the insured party. It was also mentioned by the insurer that complaint for unsatisfactory repairs done by M/s Mars Motors was lodged in this forum only after lapse of ten months after settlement of the claim.

DECISION : It was unfortunate that M/s Mars Motors did not repair the vehicle of Shri T. R. Monga to the entire satisfaction. However, it was not proper for anyone to blame the insurer for this lapse. While expressing sympathy about the unsatisfactory repairs to the vehicle as alleged by Shri Monga, no further action was called for on the complaint. The case was dismissed.

Chandigarh Ombudsman Centre

Case No. : GIC/146/NIC/11/07
Ravinder Singh
Vs
National Insurance Co. Ltd.

Order dated: 29.11.06

FACTS : Ravinder Singh was covered under Devi Rakshak Policy issued to the Government of Haryana for providing personal accident coverage to one bread earner in each family of Haryana in the event of death or permanent total disability. He met with an accident on 18.5.04 and remained admitted in PGI, Chandigarh for about 1 ½ month. He was reportedly bed ridden for one and half years, during which he was taken to PGI, Chandigarh for check up on a wheel chair/stretcher. PGI Medical Board issued him a disability certificate dated 17.8.05 showing 55% permanent disability in relation to his lower limb. He contacted the Welfare Deptt. Haryana Govt. for claim under the policy and submitted claim papers on 17.4.06 through CONFED to the insurer at Manimajra. The claim was however rejected on 18.7.06 on the grounds that the case is an old one. He contended that he is still undergoing treatment at PGI. He stated that due to deficiency of funds he could not be operated upon. He sought intervention for settlement of his claim.

FINDINGS : The accident had taken place on 5.4.04, but the intimation was given on 17.4.06. It was stated that as per terms and conditions of Group PA Policy immediate written notice is to be given to the company. Sr. Divisional Manager confirmed that disability suffered by the complainant is not covered under the policy as per the MOU which provides compensation for loss of one eye and/or one limb. Loss of one limb means amputation of limb or 100% disability of the limb, whereas in this case disability is 55%.

DECISION : Since the terms and conditions of the Devi Rakshak Scheme do not cover his disability, it was not possible for the insurer to make any payment under the terms and conditions of the policy. The complaint was, accordingly, dismissed.

Chandigarh Ombudsman Centre
Case No. : GIC/158/NIA/14/07
Nasib Singh
Vs
New India Assurance Co. Ltd.

Order dated: 29.11.06

FACTS : Nasib Singh had purchased a motorcycle from one Shri Raghuvir Singh, R/o Yamunanagar. It was insured from DO, Kurukshetra for the period 28.7.05 to 27.7.06 for sum insured of Rs. 24,800/-. On 8.8.05, he got the vehicle transferred in his name. He being a resident of a village was unaware of the fact that he had to transfer the insurance policy along with RC. The vehicle met with an accident on 17.5.06. The insurer was duly informed and surveyor was deputed. However, when he visited the office of insurer to enquire about the status of his claim he was informed by one Shri Sukhdev, AO that claim was not payable.

FINDINGS : The insurer while agreeing with the facts of the case stated that as per rules he should have applied for transfer of insurance of policy in his name which was not done by him. Hence they were not in a position to make payment only on the basis of RC.

DECISION : The insurance policy was not transferred in the name of Shri Nasib Singh although he was owner of vehicle on the date of accident as per RC. He was justified in filing the claim for reimbursement of amount spent on repairs of the vehicle to the extent admissible. Hence ordered to make payment to the claimant Shri Nasib Singh for the amount admissible.

Chandigarh Ombudsman Centre
Case No. : GIC/160/NIA/11/07
Sikander Singh
Vs
New India Assurance Co. Ltd.

Order dated: 8.12.06

FACTS : Sikander Singh got his truck bearing registration no. HR 37 B-6331 insured from DO Khanna for the period 18.8.05 to 17.8.06 for sum insured of Rs. 7 lakh. The truck met with an accident on 12.2.06. All claim formalities were completed, but the claim was not settled on account of “no claim bonus”.

FINDINGS : The insurer clarified the position by stating that while filling up the proposal form the insured had claimed NCB but on verification from previous insurer, it was found that he had already got an accidental claim and his NCB was not in order. As per declaration signed by the insured he would forfeit all claims in respect of the policy in case NCB was wrongly claimed. On verification it was found that NCB was not in order and the claim was rejected. On enquiry it was found that while the insurer got clarification from the previous insurer about NCB within two months, no remedial action was taken thereafter.

DECISION : While conceding that the declaration given by the insured was incorrect, it was also the duty of the insurer to inform them about the wrong declaration and to take corrective action accordingly, once it had came to their notice. Taking all circumstances into consideration and the fact that accident was genuine, it was ordered that the claim should be settled in favour of the claimant after deducting double the amount of NCB as a penal provision.

Chandigarh Ombudsman Centre
Case No. : GIC/159/UII/11/07
Ram Tirath
Vs
United India Insurance Co. Ltd.

Order dated: 8.12.06

FACTS : Ram Tirath had taken an insurance policy for his scooter Bajaj Chetak bearing registration no. PB 32 C-8056 from DO-I, Chandigarh for the period 21.4.05 to 20.4.06. During the currency of the policy his scooter was stolen on 12.10.05. He lodged an FIR with the police authorities and intimated the insurer about the loss, but his claim was not entertained on the plea that he did not have the original policy. It was contended that all the documents were kept in scooter and were stolen along with it. Again when he visited the office with duplicate copy of the policy given by the agent he was informed that claim cannot be entertained as he was late in intimating about the loss. He gave reasons for delay but his claim was not entertained.

FINDINGS : The insurer clarified that the claim could not be entertained because the reasons furnished for delayed intimation were found to be unsatisfactory. On query it was found that police authorities, Banga had given a statement on 6.2.06 that scooter

was untraceable. This document could form the basis for settling the claim by the insurer. The insurer presented a copy of guidelines issued by Head Office regarding payment of 75% claim on the basis of police report.

DECISION : After having perused the guidelines and report of Police Station, Banga, held that there was a genuine theft of the scooter and 75% claim should be released immediately based on the market value of the scooter on the date of theft and other formalities regarding investigator report and final police report should also be got completed expeditiously and balance payment should be settled after submission of final untraced report by the police to the CJM, Nawanshehar

Chandigarh Ombudsman Centre
Case No. : GIC/165/OIC/14/07
Rajinder Singh
Vs
Oriental Insurance Co. Ltd.

Order dated: 27.12.06

FACTS : Rajinder Singh had taken a motor policy for Toyota Qualis bearing registration no. HP-01A-3254 from DO, Shimla for the period from 22.8.05 to 21.8.06 for sum insured of Rs. 2 lakh. His vehicle met with an accident on 7.10.05. The insurer was intimated and M/s Arun & Co, Jalandhar were deputed as surveyor who assessed the vehicle as a total loss case. Despite submission of requisite documents his claim was not settled. On enquiry he was informed that claim was not settled, as vehicle's fitness had not been entered in the record of the RTA, Shimla. He contended that the vehicle was duly passed by the Motor Vehicle Inspector, the record of which had already been submitted to the insurer.

FINDINGS : The claim was repudiated on 20.3.06 on the ground that the vehicle was not passed at the material time i.e. breach of policy conditions. The vehicle fitness certificate was not entered in the records of RTA, Shimla whereas Motor vehicle Inspector certified the vehicle road worthy from 4.8.05 to 3.8.06

DECISION : After perusing the documents and hearing both the parties held that the claim has been repudiated on flimsy-technical grounds. The documents available with the complainant were sufficient to prove that vehicle was road worthy on the date of accident. The repudiation of claim by the insurer was not in order and insurer was liable to pay the claim amount due to the claimant. Hence ordered that amount due as per terms and conditions of the policy be paid to the complainant.

Chandigarh Ombudsman Centre
Case No. : GIC/176/NIC/11/07
Parvesh Sondhi
Vs
National Insurance Co. Ltd.

Order dated: 27.12.06

FACTS : Parvesh Sondhi had taken a motor policy for his vehicle bearing registration no. HR 26-L-3438 from DO-I, Chandigarh for the period from 23.1.06 to 22.1.07 for sum insured of Rs. 60,000/-. His vehicle met with an accident on 11.7.06 and as per directions of the insurer he took the vehicle to M/s Saluja Motors for cashless repairs. After repairs he paid Rs. 6000/- to the repairer and took the vehicle. The balance amount of Rs. 17,550/- on repairs was to be paid by the insurer. After a period of ten days he was contacted by the repairers informing him that the vehicle be sent for some additional photographs to be taken. When his driver took the vehicle to the repairer the

same was detained on the plea that full payment of repairs is required to be made as insurer refused to make any payment of the claim. Subsequently he received a letter from the insurer stating that the claim has been denied as the previous owner had taken a claim and he was not entitled to 'No Claim Bonus' (NCB), which was taken by him under the policy. He contended that he had purchased vehicle from previous owner and after expiry of previous policy he got the insurance cover in his name. It was not in his knowledge whether any claim was taken by the previous owner or not.

FINDINGS : The insurer stated claim has been rightly repudiated on the basis of misrepresentation of facts about NCB as per provisions of GR 27 of the Indian Motor Tariff. It was pointed out that the complainant did not declare anywhere in proposal form that vehicle was earlier in the name of one Mrs. Monika Sharma. It was on the principle of utmost good faith that NCB was allowed to the complainant on the basis of proposal form submitted by him.

DECISION : Held that the insurer not only erred in allowing him NCB, but also verification of the same from the previous insurer was not done within the stipulated time. In view of the above, the benefit of doubt should go in favour of the complainant. Hence ordered that the complainant should be paid the amount due after recovering the amount allowed for NCB earlier.

Chandigarh Ombudsman Centre
Case No. : GIC/178/OIC/11/07
Sushila Singla
Vs
Oriental Insurance Co. Ltd.

Order dated: 3.1.07

FACTS : Smt. Sushila Singla had taken a motor policy for Tata Indica bearing registration no. HR-45 T-0107 from DO-I, Gurgaon for the period from 24.12.04 to 23.12.05 for sum insured of Rs. 2,50,000/-. The vehicle met with an accident on 10.10.05. She submitted requisite documents to the insurer. She was assured that claim would be paid within twenty to twenty five days. Later the company raised objection that driver of the vehicle at the time of accident did not hold valid licence to drive a taxi. She contended that claim was wrongfully repudiated.

FINDINGS : The insurer informed that claim was repudiated on the ground that the driver of the vehicle was not authorized to drive a transport vehicle. It was stated that although the driver had licence for LMV, it was meant for personal use only.

DECISION : Held that the contention of the insurer that the driver was not holding valid licence for driving a taxi on the date of accident was upheld. The repudiation of the claim on this ground was in order. The case was, accordingly, dismissed.

Chandigarh Ombudsman Centre
Case No. : GIC/187/NIC/14/07
Chaman Kumar
Vs
National Insurance Co. Ltd.

Order dated: 3.1.07

FACTS : Shri Chaman Kumar had taken a policy for his motorcycle bearing registration no. HR 49-8876 from DO-II Chandigarh for the period 2.9.05 to 1.9.06 for sum insured of Rs. 23,400. The motorcycle was stolen on 26.2.06 from Sector-19, Chandigarh. After investigations, the police gave untraceable report. All claim papers were submitted to the insurer. However claim remained unsettled, even after a lapse of eight months.

FINDINGS : The insurer clarified the position by stating that doubt had been created as another vehicle with the same engine number was recovered by the Police Station, Tilak Nagar, Delhi. Later, on further investigations, it was found that the said vehicle was not the one which was stolen from Chandigarh. On a query whether they were satisfied about genuineness of the theft of vehicle, the insurer replied in the affirmative. It was also mentioned that they had approved the claim for settlement favourably. However, they had asked some documents viz. untraceable report accepted by the court, RC duly transferred in favour of insurance company, second ignition key of vehicle, letter of indemnity, letter of subrogation to be submitted.

DECISION : Held that:

i. The insurer should not insist on untraceable report accepted by the court. The police report should be sufficient to substantiate the claim.

ii. The complainant mentioned that second ignition key was not available as it had been lost earlier. The insurer should not insist on the second ignition key.

iii. The RC should be transferred in favour of insurance company at any convenient place by the complainant and should hand over RC duly transferred in the name of the insurer, the letter of indemnity and the letter of subrogation whenever these are ready.

Ordered that the insurer would pay Rs. 23,350 to the complainant on the day the documents mentioned were received from the complainant.

Chandigarh Ombudsman Centre
Case No. : GIC/191/NIC/14/07
Partap Singh
Vs
National Insurance Co. Ltd.

Order dated: 4.1.07

FACTS : Shri Partap Singh had taken a Motor policy for his Tata Sumo bearing registration no. HR 61-9580 for the period 21.4.05 to 20.4.06 for sum insured of Rs. 4,74,673 from BO, Faridabad. His vehicle was stolen from Gurgaon on 9.5.05. He lodged the claim with the insurer, which was not settled even after a lapse of 16 months.

FINDINGS : The insurer informed that the claim had been repudiated since the intimation was received late. Moreover the route permit and fitness certificate were not available on the date of theft. The complainant clarified the position by stating that he had applied for the said documents, but were received belatedly.

DECISION : Held that the repudiation of the claim solely on the basis of delayed intimation is not based on merit. It was a fact that the vehicle was stolen and untraced report has been given by the police. It was also a fact that the vehicle was insured on the date of the theft. These two facts justified the payment of the claim. However, the complainant was also at fault for not reporting the matter in time and also not having requisite documents on the date of theft. The complainant has suffered a genuine loss in the theft of his car but he should be penalized for delayed intimation to the insurer as well as the police. Hence ordered that 70% of admissible claim amount be paid to the complainant within 15 days of submission of requisite documents by the complainant.

Chandigarh Ombudsman Centre
Case No. : GIC/213/NIC/14/07

Teja Singh
Vs
National Insurance Co. Ltd.

Order dated: 17.1.07

FACTS : Shri Teja Singh got his Tata Indica DLX car bearing registration no. PB-10 BK-9974 insured from BO Ahmedgarh for sum insured of Rs. 3,91,453. On 28.2.05 his vehicle was stolen while parked outside PUDA office, Ferozepur Road, Ludhiana. He got the FIR registered on 1.3.05 in police station, Sarabha Nagar, Ludhiana. Despite all efforts the car could not be traced and untraced report was issued on 30.9.05, which was submitted in insurer's office. However the claim was not settled despite repeated requests. A fresh non traceable report U/s 173 CrPC was also submitted to the insurer on 7.8.06, but the claim was still not settled.

FINDINGS : The insurer informed that as per their information the claim was genuine but the untraceable report should be signed by an officer of rank of SSP at least. Hence they were not able to take action on untraceable report submitted by the complainant.

DECISION : Held that the insurer would get the untraceable report verified from the police and settle the claim by deputing investigator for the purpose. It was ordered that the admissible amount of the claim be paid to the complainant after completion of requisite documents by the complainant.

Chandigarh Ombudsman Centre
Case No. : GIC/264/OIC/14/07
Puran Chand
Vs
Oriental Insurance Co. Ltd.

Order dated: 13.2.07

FACTS : Shri Puran Chand got his Toyota Qualis bearing registration no. HP-03A-2789 covered under motor policy for the period 18.8.05 to 17.8.06 by DAB Chandigarh. His vehicle met with an accident on 16.4.06 whilst he was going to Shahbad to attend a marriage. He lodged claim with the insurer for damages to the vehicle and completed requisite formalities. However, the claim was not settled.

FINDINGS : The insurer informed that the claim could not be passed as there was doubt about the number of passengers being carried in the vehicle. As per a newspaper report the number of passengers being carried were thirteen as against authorized limit of eight. The complainant clarified the position by stating that the number of passengers were seven plus two minor children as per FIR no. 49 dated 16.4.06 prepared by Police Station, Lalru.

DECISION : Held that the FIR which was a signed document by a responsible person should have been taken as authentic proof of number of passengers travelling. Hence ordered that an amount of Rs. 1.5 lakh on cash loss basis which has been recommended by the surveyor should be paid to the complainant by the insurer.

Chandigarh Ombudsman Centre
Case No. : GIC/260/OIC/14/07
Rajinder Parshad Sharma
Vs
Oriental Insurance Co. Ltd.

Order dated: 13.2.07

FACTS : Shri Rajinder Parshad Sharma had taken a motor policy for his Maruti 800 car bearing registration no. HP-20B-3125 for the period 26.9.05 to 25.9.06 from BO Nangal. His vehicle met with an accident on 21.5.06 whilst he was traveling with his wife and daughter from Jammu to Mehatpur. His wife expired on the spot due to accident. He as well as his daughter suffered multiple fractures and injuries. The insurer's surveyor from Hoshiarpur visited the site of accident and the accidental car was brought to Mehatpur. The insurer was duly informed and the loss was assessed at M/s Budha Autos, Mehatpur, a Maruti Service Station. The estimate of loss was collected by Shri H.P. Singh, surveyor deputed by the insurer. However, despite a lapse of more than six months, settlement of claim was pending.

FINDINGS : The insurer informed that the vehicle has already been disposed off by the complainant as salvage, although he was insisting on getting the vehicle repaired. Since the vehicle has already been disposed off the question of settling the claim on repair basis cannot be done. There were only two options with the insurer (a) to settle the claim on total loss basis (net of salvage basis) (b) cash loss basis. The insurer opted for the second option which was economical. Accordingly, a cheque for Rs. 79,942 was issued to the complainant on 29.11.06. The complainant was not satisfied with the amount.

DECISION : Held that the request of the complainant for settling the claim on repair basis was not acceded to. Had the vehicle been repaired the amount to be paid by the company as per survey report would be Rs. 1,41,377 less salvage value of damaged parts assessed as Rs. 7,000. The net liability on the insurer works out to Rs. 1,34,377. However, since the vehicle has been sold off this option cannot be exercised now. The next best option was on total loss basis (net of salvage basis) which worked out to Rs. 1,70,000 (assessed market value) minus Rs. 55,000 (assessed salvage value). This works out to Rs. 1,15,000. Ordered that the insurer should make payment of Rs. 1,15,000 less amount already paid Rs. 79,942 to the complainant.

Chandigarh Ombudsman Centre
Case No. : GIC/222/OIC/14/07
Hari Dev Sharma
Vs
Oriental Insurance Co. Ltd.

Order dated: 14.2.07

FACTS : Shri Hari Dev Sharma got his truck bearing no. HP 20A-2441 covered under Comprehensive Motor Policy. The truck was stolen during the night of 28.12.04 whilst it was parked with the painter for some painting job. An FIR was registered with the Police Station, Mehatpur and the insurer was also informed about the theft. As the truck could not be traced, the police issued a non traceable certificate. All the requisite documents were handed over to the insurer and surveyor was deputed to assess the loss. The insurer rejected his claim vide letter dated 6.11.06 on the ground that the policy of the vehicle was in the name of Ram Pal which was not got transferred after the purchase of vehicle by him. Further as the vehicle was entrusted to the repairers who did not take reasonable steps to safeguard the same, the claim is not payable in violation of condition no. 5 of the policy.

FINDINGS : The insurer informed that the vehicle was registered in the name of one Shri Ram Pal. The RC was not transferred on the date of theft. Also no effort was made to get the insurance transferred in the name of the complainant. Since the insurer did not have any contract with the complainant, the claim was turned down as not admissible. The complainant informed that he was holding a Power of Attorney for

truck bearing no. HP 20A-2441 which was given in December'03 by Shri Ram Pal, the owner of the vehicle. The insurer further informed that the vehicle had been traced and claim should be only for the damages sustained by the vehicle during the period of theft.

DECISION : It was ordered that since the insurer had mentioned that the vehicle had been traced, the location of the same should be brought to the notice of the police and the complainant so that the vehicle could be recovered by them. In case of failure to give the location of the vehicle the admissible amount as assessed by the surveyor at the time of theft should be paid to the insured and /or to his banker as per terms and conditions of the policy.

Chandigarh Ombudsman Centre
Case No. : GIC/255/NIC/14/07
Vijayinder Singh
Vs
National Insurance Co. Ltd.

Order dated: 14.2.07

FACTS : Shri Vijayinder Singh had taken a motor policy for his Maruti Zen car bearing registration no. CH-01Z-2915 from BO-Sec-9, Chandigarh. His vehicle met with an accident and he lodged the claim with the insurer for repair of vehicle. The insurer however demanded recovery of Rs. 5817 on account of short premium due to NCB given to him under his various policies. He contended that the premium was paid on due date as per calculations made by the Development Officer, J.P. Singh and that no recovery was to be made as it was not his fault. However, the insurer closed the file as 'no claim'.

FINDINGS : The insurer informed that a claim was lodged in respect of this vehicle in 2002. After that NCB was supposed to be nil in first year, 20% in second year and 25% in the third year whereas he was allowed 50% NCB for each of the three years. As a result against an authorization of Rs 2456, NCB of Rs. 8273 was allowed for three years resulting in an excess allowance of Rs. 5817. When the claim was lodged with the insurer, the insurer requested for refund of this amount before the claim could be paid.

DECISION : Held that while the insurer had erred in allowing NCB to the complainant, the recovery being insisted by the insurer was in order as per rules. It was ordered that an amount of Rs. 5817 may be deducted by the insurer from the admissible amount of the claim and paid to the complainant. Also since the payment could have been made in May'06 the interest @8% should be paid on this amount from May 1, 2006 till the date of payment.

Chandigarh Ombudsman Centre
Case No. : GIC/259/ICICI/11/07
Tejpal Singh
Vs
ICICI Lombard

Order dated: 1.3.07

FACTS : Shri Tejpal Singh insured his Tata Indica car from the insurer. The claim filed by him was denied on the ground that it was being used for commercial purposes. He stated that he is a govt. employee and his brother who is working in Pfizer used his car for traveling to Ferozepur. His brother also does booking of taxies and earns

commission through it but the vehicle in question was used as private car and not for commercial purposes.

FINDINGS : The insurer informed that under the same policy two claims had already been lodged in the month of February'06 and October'06. The present claim related to October'06. They had suspected that the car was being used for commercial purposes and had appointed an investigator to investigate the same. A telephonic conversation between the complainant and the investigator was recorded which showed that the complainant was involved in supplying of taxis and the vehicle no. CH 03-R1753 was also offered for the purpose. The complainant did not deny the existence of this conversation. The insurer stated that even if the vehicle was not used as taxi on the date of accident for which the present claim was lodged, the terms and conditions of the policy had already been violated.

DECISION : Held that the vehicle had been used at times for commercial purposes and terms and conditions of the policy had been violated on that account. Hence, the repudiation of the claim was in order. The case was dismissed.

Chandigarh Ombudsman Centre
Case No. : GIC/289/NIC/11/07
Subhash Chander Khanna
Vs
National Insurance Co. Ltd.

Order dated: 9.3.07

FACTS : Shri Subhash Chander Khanna purchased a Private Car Package Policy for Opel Corsa bearing registration no. DL-3CR-2000 for the period 25.1.03 to 24.1.04 for sum insured of Rs. 4,50,000. The vehicle met with an accident on 2.4.03. He preferred the claim on the insurer which was kept pending for three years, whereafter he received a letter dated 2.1.06 repudiating the claim on unjustified reasons viz. lack of insurable interest as RC of the vehicle was not transferred in his name on the date of accident.

FINDINGS : The insurer informed that the vehicle was purchased on 5.1.03 and an insurance cover note was issued in the favour of the complainant on 25.1.03. However when the car met with an accident on 2.4.03, the RC had not been transferred in the name of the complainant and this was done on 8.4.03. On a query whether an application was made to the Registering Authority for transfer of RC, the complainant replied in affirmative and produced a document which showed that he had applied for RC on 31.1.03.

DECISION : Held that the claim was payable to the complainant as there was a valid insurance policy taken by the complainant for the vehicle on the date of accident and the technical hitch of RC not having been transferred on the date of accident should not stand in the way of settling the claim in favour of the complainant as he had applied for transfer of RC much before the date of accident. Hence ordered that the admissible amount of the claim should be paid to the complainant by the insurer.

Chandigarh Ombudsman Centre
Case No. : GIC/300/OIC/14/07
Anil Bansal
Vs
Oriental Insurance Co. Ltd.

Order dated: 13.3.07

FACTS : Shri Anil Bansal had taken a motor policy for LPG Tanker bearing registration no. HR-39A-0131 from BO Jind for the period 16.3.03 to 15.3.04 for sum insured of Rs. 4 lakh. His grievance is that the claim filed with the insurer is pending for over three years. His vehicle met with an accident on 26.6.03. He submitted all the required documents which were duly verified by the insurer but the claim was not settled. The complainant contended that the insurer is disputing over the name of the driver who died in the accident and demanded his PMR which has also been submitted in August'06. Despite repeated follow up, he has not received payment of the claim. Subsequently vide letter dated 23.2.07, the complainant informed that the claim file has been closed as 'no claim' by the insurer vide letter dated 15.2.07 on the ground of discrepancy in the name of driver in the PMR, claim form, FIR and DL.

FINDINGS : The insurer informed that the claim could not be considered favourably because the name of the driver appeared different in FIR, PMR, Driving Licence etc. On verification it was found that the name has either been mentioned as Tejwinder or Taljinder or Daljinder. The valid Driving License available shows name as Tejwinder.

DECISION : Held that the variation in the name could be because of phonetical variation and pronunciation by the persons who were giving statement at different points of time. Since the vehicle had met with an accident and there was a valid insurance on the date of accident, the claim was payable to the owner. Hence ordered that the admissible claim along with interest @8% per annum from 01.09.06 till the date of payment be paid to the complainant.

Chennai Ombudsman Centre
Case No. : 11.04.1061/2006-2007
Shri. C. Murugappa
Vs
United India Insurance Co. Ltd.,

Award Dated : 26.07.2006

The complainant represented that he purchased a car from Mr. K. Varathankumar and the same was covered with M/s United India Insurance Co. Ltd for the period from 25.12.2004 to 24.12.2005. The name transfer was effected in the RC book on 25.02.2005 and also in the policy. The vehicle met with an accident on 21.03.2005 and Police registered the case. After carrying out the repairs he submitted the claim papers to the insurer for reimbursement of his claim. The insurer repudiated the claim on the ground of misrepresentation and violatin of relevant proviisons of Indian Contract Act.

The insurer contended as per their investigation they understood that a claim was reported under previous year policy for the major accident of the vehicle, but the vehicle was repaired and the vehicle was sold 'As is where is' condition to one Mr. Mohan, who in turn sold the vehicle to one Mr. Praveen Kothari who repaired the car and subsequently Mr.Murugappa the insured, purchased the car from him. The insurer acceptance was with good faith. Since there was some misrepresentation and willful concealment of material facts, the policy becomes void, hence the claim is not admissible under the policy.

The forum perused the documents and relevant provisions of the Motor Vehicle Act 1988, Motor Tariff and all the relevant provisions have been complied with, hence the argument of the insurer was not tenable. Further the insurer was having full knowledge about the risk at the time of acceptance of risk, particularly the renewal is only from their office and the policy was transferred in favour of Dr C Murugappa. The Insurer

also failed to establish by way of documentary evidence that there was misrepresentation by the complainant. Hence direction was given to the insurer to settle the claim.

Chennai Ombudsman Centre
Case No. : 11.03.1150/2006-2007
Smt. C. Sankaramma
Vs
he National Insurance Co. Ltd.,

Award Dated : 03.10.2006

The complainant had purchased 2 goods carriers' vehicles one registered in her own name and other in the name of Nagamani Devi who is the daughter of Mrs. Sankaramma, through Meru Automobiles. The insurance was arranged through M/s Shriram Finance who is the corporate agent of the Insurer and they issued the insurance Cover notes and both the vehicles were covered for the same period from 26.08.2003 to 25.08.2004. Based on the cover notes issued by the agents, the Insurer also issued the policies. The vehicle registered under her name met with an accident during February 2004. After informing the insurer the formalities were complied with and a survey was conducted. It was noticed subsequently that there had been a mix up in Engine Number and chassis number mentioned in the insurance certificate, issued in the name of the complainant i.e. C. Sankaramma bore the engine number and chassis number of the vehicle registered in the name of Smt. Nagamani Devi. Hence the insurer repudiated the claim stating that the engine number and the chassis number of the vehicle and R.C.Book which is the identity of the vehicle, does not tally with the policy.

Insurer contended that they observed the engine number and chassis number of the vehicle, which met with an accident, was different from the engine number and chassis number mentioned in the policy and hence they are unable to consider the claim since the vehicle was not covered under the policy.

The registration certificate is the ultimate document, which establishes the ownership and identity of a vehicle, and it is very clear from the documents submitted that the vehicle is owned by the insured right from 10/09/2003. The insurance policy issued for the year 2004-05 i.e subsequent year in the name of the insured also covered the same vehicle. The forum observed that for a mistake committed by the agents of the insurer, who issued the cover notes and subsequently policy was issued by the Insurer on the basis of the cover notes, the insured should not be penalized. Hence direction was given to the insurer to settle the claim as per policy terms and conditions.

Chennai Ombudsman Centre
Case No. : 11.04.1173/2006-2007
Shri. Devaraj
Vs
The United India Insurance Co. Ltd.

Award Dated : 22.11.2006

The Complainant Shri M Devaraj purchased a vehicle which was insured with M/s United India Insurance Co.Ltd. for the period from 13.08.2004 to 12.08.2005.,and after the purchase, he effected the name transfer in the RC book on 26.10.2004 and transferred the insurance policy in his favour on 29.10.2004. The Vehicle met with an accident on 07.11.2004 night and the same was intimated to the insurer. Subsequently his claim was rejected by the insurer.

The Insurer contended that there was a misrepresentation regarding insurable interest and willful suppression of material facts regarding previous accident details, hence the policy becomes void since inception. The Insurer stated that the fact was that Shri T.Nagarajan had bought the vehicle on 28.01.2004 and the same was covered under National Insurance Company Policy and that the vehicle had already met with an accident on 29.01.2004 and that the Own Damage Claim was already settled by M/s National Ins. Co. Ltd., which was not revealed. Subsequently, the previous owner Shri T.Nagarajan sold the vehicle to Mr.Praveen Kothari. Moreover the signature of Shri T.Nagarajan in the proposal and the signature in the R.C. book did not match. Hence the insurer was suspecting some forgery and due to misstatement of the proposer that the vehicle was a new one will result into the contract being void ab-initio

The Ombudsman has pointed out to the Insurer that the insurer failed to establish by way of any documentary evidence that there was a forgery of documents and insurer shall desist in making such statement without substantiating evidence. The Insurer having accepted proposal through their agent, underwritten the risk with full knowledge about the previous insurance details, issued the policy and subsequently transferred the policy in favour of Mr M Devarajan establishes that the insurer accepted the risk with full knowledge. The Insurer failed to substantiate with documentary evidence that there was a misrepresentation and concealment of material facts by the complainant. Hence, direction was given to he insurer to process and settle the claim as per the policy terms and condition.

Chennai Ombudsman Centre
Case No. : 11.04.1143/2006-2007
Shri. A. Shankar
Vs
United India Insurance Co. Ltd.

Award Dated : 30.11.2006

The complainant Shri. A. Shankar had insured his vehicle with M/s United India Insurance Co. Ltd. under Motor Package Policy. His vehicle met with an accident and he submitted the claim papers to the Insurer for Rs.76,982/-. However his claim was settled for Rs.34,847/. His main contention was out of 83 parts only 20 parts were allowed, labour bills were also not allowed in full, towing charges and photo were not considered hence he had approached the Forum for full-settlement of his claim.

The Insurer contended that their surveyor had allowed as per the estimate given by the repairer. Insurer also stated that the major difference in the claim amount was due to the difference between the cost of Maruthi and Suzuki parts. They were ready to consider towing charges and spot photo charges.

This Form observed that there was no dispute regarding the quantum allowed towards the parts with 40% depreciation and the main contention was regarding the various parts which were disallowed by the surveyor. It was found by this Forum that the surveyor had disallowed certain parts without any justifiable reasons. Hence this Forum clearly stated the parts to be allowed after due consideration and directed the Insurer to process and settle the claim as per the policy terms and conditions. The complaint was allowed partly.

Chennai Ombudsman Centre
Case No. : 11.02.1221/2006-2007
Shri. Kalyan Singh Kansana

Vs

New India Assurance Co. Ltd.

Award Dated : 30.11.2006

The complainant insured his vehicle with M/s New India Assurance Co. Ltd. for the period from 03.01.05 to 02.01.06. His vehicle met with an accident on 18.03.05. The vehicle was surveyed by the surveyor. The complainant submitted the claim papers for settlement, however the same was delayed more than a year. The Complainant stated that 2 surveys were made for the same vehicle and unnecessary delay in settlement. Hence, he had approached this Forum for delay in settlement of his claim.

The Insurer contended that the complainant delayed in registration. The Insurer stated that the complaint did not deserve settlement on total loss basis and the vehicle could be repaired. Hence, they have contacted the complainant to shift the vehicle to the repair shop so as to enable them to proceed further.

The Forum perused the documents. It was observed that the report submitted by the surveyor was made without dismantling and did not quantify the financial liability of the insurer, hence the damage to the vehicle did not warrant total loss assessment. It could not treated as Constructive Total Loss. Insurer had failed to establish their stand that the vehicle could be repaired and the assessment of the final surveyor on total loss basis was incorrect. Hence, direction was given to the Insurer to settle the claim on total loss basis as assessed by their final surveyor.

Chennai Ombudsman Centre

Case No. : 11.03.1215/2006-2007

Dr. A.B. Abbas

Vs

National Insurance Co. Ltd.

Award Dated : 22.12.2006

The complainant had insured his vehicle with National Insurance Co. Ltd. His vehicle was damaged on 10.10.05 due to entry of water into the Vehicle. Later, his vehicle was towed to the Workshop. His claim was repudiated by the Insurer invoking Section 1 and under General Exception 4 of the policy. His representation was not considered, hence he had approached this Forum for redressal of his grievance.

The Insurer contended that the complainant delayed in intimating the claim due to which the spot survey and photos were not taken to substantiate the claim. Insurer stated that crankshaft rotation would have stopped due to the repeated efforts made to start the engine which would have bent the connecting rod. Since, the damage caused to the vehicle was not accidental, external and visible means, the insurer stated that the damage was consequential in nature. Hence, repudiated the claim.

On perusing the documents it was observed by this Forum that the primary cause for the damage was the entry of rain water into the engine. In the said case the water in the inundated area was an ‘external’ agency and had caused ‘visible damage to the engine assembly. The Insurer and the surveyor agreed the fact the damage occurred was mainly due to the entry of water into the engine, restarting the vehicle is a common practice without knowing the reason for the stalling. Hence, it was not justifiable on the part of the Insurer to object the act of the insured. Direction was given to the Insurer to process and settle the claim as per the survey report subject to the terms and conditions of the policy.

Chennai Ombudsman Centre

Case No. : 11.05.1230/2006-2007
Shri. S. Kumar
Vs
The Oriental Insurance Co. Ltd

Award Dated : 27.02.2007

The complainant Shri. S. Kumar stated that his vehicle was insured with M/s Oriental Insurance Co. Ltd. for the period from 03.01.05 to 02.01.06. His vehicle met with an accident on 28.02.05 and he had preferred a claim with the insurer. However, the same was repudiated on the ground that the driver of the vehicle did not possess a valid driving license. His representation to the insurer stating that his driver was holding a valid driving license to drive goods carrier, which falls within the definition of transport vehicle was not considered by the Insurer.

The Insurer stated that the driver was authorized to drive LMV and HPV classes of vehicles only. However, the vehicle involved in the accident was Medium Motor Vehicle Goods Carrier. They have also obtained the technical opinion from their RO who had also upheld the decision of the Divisional Office.. Hence, they have repudiated the claim.

The Forum perused the documents. The Report of the RTO stated that the driver is eligible to drive the MMV (Goods Carrier), vehicle even if he has having the license of HPV. It was evident from the report that the vehicle which was involved in the accident was Medium Goods Vehicle and the driver was authorized to drive Transport Vehicle. As per Act 54 of 1994 the medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle are grouped together under the head of Transport Vehicle and the insurer failed to establish by way of documentary evidence that the driver was not holding a valid driving license to drive a Medium Goods Vehicle and he was not holding a driving license to drive 'Transport vehicle as stipulated under MV Act. Hence, direction was given to the Insurer to process and settle the claim as per terms and conditions of the policy.

Chennai Ombudsman Centre
Case No. : 11.11.1231/2006-2007
Mr Thulasi Adikesavalu
Vs
M/s Bajaj Alliance Gen. Ins. Co. Ltd

Award Dated : 27.02.2007

The complainant Mr Thulasi Adikesavalu stated that his car TN 09 AP 8559 was insured with M/s Bajaj Allianz Gen. Ins Co. Ltd., for the period from 30.04.2006 to 29.04.2007. His vehicle met with an accident on 08.06.2006, claim was intimated to the police and also insurance company. Insurance survey was conducted and after submission of all claim papers, the insurer rejected his claim on the ground that the driver at the material time of accident was not holding effective Indian Driving Licence. He represented that the driver was holding a foreign license, and no where in the policy it was mentioned that the driver shall posses Indian licence and the law enforcing agency i.e. police authority also allowed him to pursue the insurance claim. The complainant produced a foreign licence issued to Mr Thulasi Adkesavalu valid upto 09.11.2008. The licence issued by RTO, Chennai revealed that the insured is authorized to drive LMV upto 30.07.2001.

As per Sec.9 of the Motor Vehicle Act 1988, if a person who is not disqualified for a fresh licence may be issued a licence provided if the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside

India subject to complying with some formalities as per sub sec.(3) of Sec.8 of Motor Vehicle Act. In this case the complainant failed to establish that the foreign licence viz MINNESOTA DRIVER'S LICENCE specifically authorized him to drive LMV in Indian Roads and/or he complied with relevant provisions of Sec.9 of the Motor Vehicle Act. The Insurer also failed to establish by way of documentary evidence that the insured absolutely failed to comply with relevant provisions of Sec.9 of the Motor Vehicle Act and the licence issued by RTO Chennai is a fresh license.

The complainant failed to comply with the procedural aspects as contemplated under Motor Vehicle Act and also not complied with condition number 1 of the policy to assist the insurer to arrive at a fair decision. Therefore, the claim was allowed on ex-gratia basis of 50% of the amount assessed by the surveyor subject to other terms and conditions of the policy. No relief towards interest claimed by the insured is allowed.

Chennai Ombudsman Centre
Case No. : 11.04.1300/2006-2007
Mr M Veerappan
Vs
M/s United India Insurance Co. Ltd

Award Dated : 27.02.2007

The complainant Mr M Veerappan stated that he had taken his vehicle TN 24 Z 1157 to the office of M/s United India Insurance Co. Ltd., on 20.04.2005 to avail insurance policy. The Insurer after inspection of the vehicle granted insurance cover from 20.04.2005 to 19.04.2006. Subsequently when he came down from the insurance office, found that his vehicle was missing. He reported the matter to the police and necessary claim formalities were complied with. The Insurer rejected his claim on the ground that the vehicle was insured with effect from 11.42 am on 20.04.2005, but as per FIR the theft had been recorded as 11.30 a.m., hence theft had taken place before the commencement of the policy.

The vehicle was inspected by the insurer by 11.20 hours and no record produced by the insurer at what time the proposal was accepted by them for underwriting purpose. The period of insurance has been mentioned as 00.00 'O clock 20.04.2005 to 19.04.2006 .in the policy. The insurer obtained investigation report which confirmed the genuineness of the claim. The FIR revealed that the insured taken the vehicle to insurer's premises for taking insurance at 11.30 a.m. and after completion of formalities when he returned around 12.00 hrs he found that his vehicle was stolen. It has been mentioned in the FIR the occurrence of theft on 20.04.05 from 11.30 hrs and did not specify the exact time of theft. The FIR is only a circumstantial evidence for an incident/accident. The Insurer failed to submit any documentary evidence to establish the exact time of theft. The vehicle was inspected at 11.20 hrs, the policy print out was taken at 11.42 a.m. and the insured came out from the insurance office at around 12.00 noon, hence there is every possibility the theft could have occurred between 11.20 a.m. to 12.00 noon. The Insurer failed to establish that the vehicle was stolen prior to 11.42 a.m. Therefore, claim is allowed and direction is given to the insurer to process and settle the claim for the IDV amount of Rs.15,000/- subject to other terms and conditions of the policy.

Chennai Ombudsman Centre
Case No. : 11.12.1402 /2006-2007
Smt. Vallinayagi

Vs

ICICI Lombard Gen. Ins. Co. Ltd.

Award Dated : 21.03.2007

The Complainant Smt S Vallinayagi stated that she insured her vehicle with M/s ICICI Lombard Gen. Insurance Co. Ltd., for the period from 17.01.2006 to 16.01.2007. The vehicle met with an accident on 10.07.2006 and police complaint was lodged. She submitted necessary claim papers to the insurer, and her claim was rejected by the insurer on the ground that at the time of accident, the validity of the Driving license of the driver who drove the vehicle at the time of the accident had been expired which is a violation of policy condition. Hence they are treating the claim as no claim. She represented to the insurer that the date of the accident was within 30 days from the date of expiry of D.L and the driving licence was renewed as per the relevant provisions of the Motor Vehicle Act and the driver was holding effective driving licence.at the time of accident. However, the insurer did not settle the claim.

The Insurer contended that at the time of accident, the driver was not holding a valid driving licence. The Insurer stated that renewal of licence, continuity of licence and grace of 30 days allowed were for the purpose of the individual. Since they found that at the time of submission of the claim on 12.07.2006 the driver was not holding a valid licence, they decided to repudiate the claim and hence surveyor was not appointed.

It was pointed out to the Insurer that the observation of the Supreme court in a similar case which stated that a person whose licence is ordinarily renewed in terms of the Motor Vechiles Act and the rules framed there under, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal term states that the licence remains valid for a period of thirty days from the day of its expiry. Hence direction was given to the insurer to settle the claim as per the invoices after taking into account for the appropriate depreciation and excess if any.

Chennai Ombudsman Centre

Case No. : 11.12.1368/2006-2007

Shri. Krishnamachari

Vs

ICICI Lombard Gen. Ins. Co. Ltd

Award Dated : 26.03.07

The Complainant Shri T.D. Krishnamachari had purchased a vehicle from M/s Metlife Insurance Co. Ltd., on 28.07.2006. The vehicle was insured with M/s ICICI Lombard General Insurance Co. Ltd., for the period from 19.04.2006 to 18.04.2007. The name transfer was effected in the RC book and the concerned authority endorsed the same on 31.07.2006. When he was in the process of effecting the insurance transfer with the Insurers, his vehicle met with an accident on 06.09.2006. After the completion of the police formalities,he approached the insurer for transfer of insurance and the claim was intimated to them. Subsequently when he enquired with the repairer about the status of the approval of his claim, he was told by the insurer that he had exceeded the time limit of 14 days for transfer of insurance and hence his claim could not be accepted.

The Insurer doubted the intention of the insured. The RC book was already transferred in his favour on 31.07.2006, but for the transfer of insurance, he approached the insurer only on 06.09.2006. The Insurer contended that as per the legal provision, the insured has not approached the insurer for transfer of insurance with the stipulated period. Further, as per the claim form and as per the police report, the damage was only to the front portion of the car.

The Forum perused the documents. It was observed that the transfer of insurance was done after the stipulated time of 14 days. The insurer was aware of the accident to the vehicle at the time of transfer of insurance and have chosen to grant cover to the transferee even for the period during which the accident occurred by issuing an endorsement on 7.9.2006 but effective from 6.9.2006. Further the Insurer has made part of the claim amount. The surveyor has not given any reasons for disallowing certain repairs mentioned in the estimate and hence the insurer has not been able to conclusively establish that the repairs disallowed do not pertain to the accident.

Hence direction was given to the insurer to settle the claim for the entire labour charges as mentioned in the bill for Rs.16275/- and the entire parts as mentioned in Parts invoice no.60704 dt.23.09.2006 subject to deduction of depreciation and policy excess less and if any payment already made. Hence, the complaint was allowed.

Chennai Ombudsman Centre
Case No. : 11.04.1394/2006-2007
Shri. Abdul Wahab
Vs
Oriental Ins. Co. Ltd.,

Award Dated : 29.03.2007

A complaint was filed by Mr C Abdul Wahab stating that his vehicle TN 01 W 8921 was insured with M/s Oriental Insurance Co. Ltd., Periamet Branch, Chennai, for the period from 07.01.2005 to 06.01.2006. His vehicle met with an accident on 07.08.2005 and an FIR was filed. The claim intimation was given to the insurer and the insurer also conducted survey. After completing the necessary formalities, his claim was rejected by the insurer on the grounds the vehicle was already sold by him to Mr R Dhanasekaran, Coimbatore on 20.07.2005, hence the complainant did not have insurable interest on the date of accident and name transfer was not effected in the policy within the stipulated time as per the Motor Tariff. His main contention was that the sale process was not completed and he was the actual owner at the material time of accident.

To constitute a valid sale of goods under the Sale of Goods Act 1930 there must be cogent and convincing evidence of (i) agreement between parties (ii) the price for the goods (iii) passing of the property in goods. Unless all these ingredients of sale are duly proved, mere inference of an investigator on the basis of some premises cannot be construed as valid evidence to establish the completion of sale and transfer of ownership. More particularly, the sale of the vehicle and the ownership or title does not pass on to any person when a sale is denied by the owner of the vehicle and the same was upheld in a case between New India Assurance Co. Ltd. Ltd. T.H Devakumar (AIR 1996). In this case the insurer failed to establish by way of documentary evidence that the sale was completed.

The main contention of the insurer was that the insured himself has given a statement to their investigator that the vehicle was already sold or parted away with the possession, the insured has no insurable interest under the policy to prefer a claim. However, the said statement was given for the purpose of asking the insurer to make

the payment of the claim to the repairers. In case the insured statement has to rely then his statement regarding incomplete sale shall also be accepted. Therefore, it was held that Sri Abdul Wahab had not lost possession and was have insurable interest over the vehicle. Since the loss was assessed on repair basis and the vehicle was not repaired, the claim was allowed on ex-gratia basis of Rs.2,15,000/-.

Chennai Ombudsman Centre
Case No. : 11.02.1316/2006-2007
Shri. Senthil Kumar
Vs
New India Assurance Co. Ltd.,

Award Dated : 29.03.2007

The complainant Mr Senthil Kumar stated that his Maruti Omni TN 33 L 9666 insured with M/s New India Assurance Co. Ltd., Divisional Office, Coimbatore for the period from 15.12.2004 to 14.12.2005. The vehicle met with an accident on 13.08.2005. He preferred a claim, but the same was rejected by the insurer on the ground that the Registration certificate was transferred in his favour on 11.11.2000, but the insurance policy was continued in his father's name viz., Late Mr S Shanmugasundaram, hence the claim was not payable as per condition number 9 of the policy. He represented to the insurer that he forgot to transfer the insurance policy in his name, however his claim was not considered.

It was established from the documents furnished by both the parties that Registration Certificate was transferred in favour of Mr Senthil Kumar on 11.11.2000. The policy was renewed in favour of Late Mr S Shanmugasundaram from 15.12.2004 to 14.12.2005. The accident took place on 13.08.2005. Both the policy wordings and Motor Vehicle Rules were explicit that legal heir shall approach the appropriate authority for transfer of ownership within a period of 3 months from the date of death of the insured. In this case the complainant failed to comply with the relevant provisions of the policy or Motor vehicle Act/Motor Vehicle Rule even after a lapse of 4 years after Mr S Shanmugasundaram's demise. The complainant's main contention was that he had forgotten to change the name in the insurance certificate. Forgetfulness over a period of four years is not justifiable when it comes to the question of law and mandates. Therefore, the complaint was dismissed.

Chennai Ombudsman Centre
Case No. : 11.02.1413/2006-2007
Shri. T. Senthilkumar
Vs
New India Assurance Co. Ltd.

Award Dated : 29.03.2007

Mr. T Senthilkumar stated that his Goods vehicle TN 60 Y 7331 was insured with M/s New India Assurance Co. Ltd., Theni for the period from 20.04.2005 to 19.04.2006. His vehicle met with an accident on 11.09.2005. The matter was reported to the police and the intimation was given to the insurer also. The insurer deputed their surveyor and he submitted necessary claim papers for the settlement of his claim. However, he received a claim rejection letter from the insurer on the ground that there were four persons travelling in the vehicle at the time of accident, which is a violation of the policy condition. He represented to the insurer that only three persons were travelling at the material time of accident viz Driver, cleaner and owner of the goods, hence there was

no violation of policy condition. However, his claim as not settled, hence this complaint.

There are no substantiating documents produced by the insurer to establish their stand. No mention in the FIR or 161 Statement obtained u/s 161(3) of CrPC that at the material time of accident there were four persons travelling in the vehicle. The insurer has relied on the investigation report and statements said to have been obtained from the driver and other persons without any authentication, setting aside the legal documents viz FIR, 161 statements and criminal court records. There is no dispute that neither insured nor insurer is able to defend their respective case strongly. Both the legal and circumstantial evidences doe not strongly support the logic of insurer in rejecting the claim. If at all we can give benefit of doubt, it can be given only to insured. In the light of the above discussion, I direct the insurer to allow the claim on ex-gratia of Rs.1,15,000/- out of the assessed loss by the final surveyor Er. E Swamidass for Rs.1,54,325.45 plus spot removal and photo charges subject to other terms and conditions of the policy.

Chennai Ombudsman Centre
Case No. : 11.04.1321/2006-2007
Shri. A T Venkatesan
Vs
United India Insurance Co. Ltd.,

Award Dated : 29.03.2007

The complainant Mr A T Venkatesan represented that vehicle no.TN 02 K 0351 was insured with M/s United India Insurance Co. Ltd., for the period from 14.01.2004 to 13.01.2005, he purchased the vehicle and approached for insurance transfer on 14.01.2004. However, the insurer intimated him that the insurance transfer can be effected only after the RC book was transferred in his favour. The formalities for transfer of RC book in his favour was completed and he received the RC book only on 03.05.2004. Meanwhile, his vehicle met with an accident on 09.05.2004. The complainant also approached the insurer and obtained transfer of insurance on 17.05.2004. He preferred a claim for the accident took place on 09.05.2004, but his claim was rejected by the insurer on the ground that the transfer was not effected within 14 days as stipulated by Motor Tariff, hence the claim was not tenable. He contended that the RC book was transferred in his favour on 26.04.2004, the policy was transferred within 14 days from the date of receipt of RC book. He sought relief for the damage to the vehicle and also other compensation.

The Insurance company represented that the transfer of ownership for own damage section of the policy is not automatic and as per the relevant provision of the Motor Tariff, the insurance transfer should have been effected within 14 days from the date of transfer in the R.C. book. In this case the transferee approached the insurer much after the lapse of 14 days i.e. on 17.05.2004 from the date of transfer of RC book, hence they are not liable under the policy.

It has been observed that the accident took place withthin 14 days as contemplated under the Motor Tariff viz the transfer was effected in the RC book on 26.04.2004 and the accident took place on 09.05.2004. Therefore, it was evident that (i) the complainant Shri A T Venkatesan was the registered owner of the vehicle at the time of accident and had insurable interest over the same (ii) the accident/loss has taken place well within the permitted 14 days time allowed to the insured for transfer of insurance and (iii) the transfer of insurance has taken place beyond the 14 days limit permitted for transfer of insurance under the Motor tariff. Therefore, the claim was allowed on ex-

gratia basis at 70% of the assessed amount by the surveyor subject to other terms and conditions of the policy. No other relief was allowed.

Chennai Ombudsman Centre
Case No. : 11.04.1394/2006-2007
Shri. T Jeyananth
Vs
ICICI Lombard Gen. Ins. Co. Ltd.,

Award Dated : 30.03.2007

A complaint was filed by Shri T Jeyananth stating that his car (Hyundai Elantra CRDI) TN 22 AF 6045 was insured with M/s ICICI Lombard Gen. Ins. Co. Ltd., Chennai, for the period from 25.11.2004 to 24.11.2005 for the value of Rs.10,16,262/-. His vehicle met with an accident on 29.10.2005 and the vehicle was taken to the repair shop of M/s Kun Hyundai, Chennai. However, there was no further development and after 3 or 4 months Mr Prabhakaran, claiming to be representative of the insurer contacted over phone and offered for settlement, however nothing was given in writing. Subsequently, he had written a letter on 13.05.06 and 25.05.2006 to the insurer but there was no response. He submitted a complaint to the Office of the Insurance Ombudsman on 21.06.2006 with a copy endorsed to the insurer. The Insurer in turn without referring to his previous letters sought his consent to repair the vehicle. His main contention was that the insurer has not given any concrete decision in writing and there was inordinate delay in settlement of his claim.

A Joint hearing was conducted on 19.12.2006 and the insurer expressed their willingness to settle the claim on repair basis. Therefore, direction was given to the insurer to arrange for further assessment of the damage and submit their report within 10 days. Direction was also given to the insured to give his consent for repair of the vehicle and also to depute his representative.

However, no further progress was made towards amicable settlement of the claim, hence second hearing was also conducted on 23.03.2006, both the parties came to a consensus that the damage will be on repair basis, hence direction was given to both the parties to cooperate with each other to resolve the issue amicably. Therefore, following directions have been given:

1. To be complied with Insured/Complainant:

(i) The Insured shall cooperate and co-ordinate with the insurer, find out the date of further survey and depute his representative.

(ii) Once the final assessment is over, collect the information, give his consent for repair and pay the his part of the liability as agreed before this forum and cooperate with insurer for finalization of the claim.

2. To be complied with the insurer:

(i) The Insurer shall intimate the insured about the date of commencement of detailed survey well in advance and make sure representative of the insured is available to avoid further dispute.

(ii) Once the final survey of damage is over, furnish the details and obtain consent from the insured/representative thereby arriving at a consensus.

(iii) The Insurer shall deposit the advance as demanded by the repairer and shall coordinate with the insured, arrange for repair and delivery of the vehicle as early possible.

(iv) The Insurer shall pursue the repairer for waiver of demurrage or being it minimal and share the same equally with the insured.

(v) Once the liability is arrived the insurer shall offer settlement along with a copy of the surveyor report.

(vi) The settlement details shall be furnished to this forum for the scrutiny.

In case the insurer fails to comply with the above directions, considering the delay, the claim has to be admitted on total loss basis and direction is given to the insurer to settle the claim for the entire IDV Rs.10,16,262/- and if the amount is not settled within 30 days from the date of receipt of this award, the insurer shall pay an interest at a rate 2 per cent above the bank rate prevalent at the beginning of the financial i.e. 01.04.2006 and the interest will be calculated one month after the date of accident till the date of payment of claim amount.

The complaint is disposed off accordingly.

Delhi Ombudsman Centre
Case No. : GI/237/NIA/05
Shri T.R.Bajaj
Vs
New India Assurance Company Limited

Award Dated : 30.10.2006

Shri T.R.Bajaj on behalf of his son Shri Deepak Bajaj, the owner of the vehicle No.DL-6C-7879, lodged a complaint with this Forum on 18.07.2005. He has mentioned in his complaint that his car collided first with the van and then Trolley of the Tractor on 11.06.2005 in the morning. All the documents along with the provisional estimate of Rs.15000/- were submitted in the office of the Insurance Company on next day. Shri R.K.Jain, surveyor, visited the site and took photographs of the vehicle. Shri T.R.Bajaj visited the office of the Insurance Company where he was told that an early decision will be taken. He personally met Dr.Walia on 11.07.2005 in his chamber and he has narrated to the General Manager in his letter dated 14.07.2005 that there were two other persons already sitting and from their discussion it showed some foul play is going on in the office where he said “Carry on the work when I am on seat and this office is open for 24 hours for you only.”. Then he indicated towards him and he narrated the whole story and he wanted to know why the report has not been received so far from Shri Jain when one month has passed. Shri Bajaj mentioned in his letter addressed to General Manager, the New India Assurance Company Limited, Mumbai that as per the set procedure, the surveyor has to submit his report within 48 hours after inspecting the vehicle which he had not done so even after expiry of one month. This showed that Dr.Walia and Shri Jain wanted some negotiations from him. Dr.Walia shouted upon Shri Jain as to how he entered in his cabin without his permission along with the case file. He informed Dr.Walia that the same was handed over by the Department. He shouted and told -call that person, he would take strict action against him. Shri Bajaj told him that he was not his peon and Shri Walia should call the concerned person. Shri Bajaj had requested the General Manager, to pay the amount of Rs.15000/- as per the provisional estimate and Rs.20,000/- as demurrage charges and harassment with consumer.

The Insurance Company, vide their letter dated 19.09.2005, informed that Shri Bajaj preferred a claim under the policy on 15.06.2005 for the loss which occurred on 11.06.2005. Shri R.K.Jain, surveyor was deputed for final survey on 15.06.2005 and collected documents from their branch office the next day. The surveyor advised the repairer to call him as and when the vehicle was dismantled for repairs to enable him to assess the loss. Since there was no response from the repairer and that the insured had not given his telephone numbers on the intimation/claim form, the insured sent a

letter to the repairer. Therefore, Shri Bajaj visited their office and sought an independent report from the surveyor, which he submitted on 18.07.2005. The Insurance Company also requested Shri Bajaj to ask his repairer to commence repairing work, which was held up because of lack of his instructions to his repairer. The Insurance Company sent letters dated 25.07.2005 and 02.08.2005 to Shri Bajaj to comply with the requirements for finalizing the claim. They also wrote to the repairer requesting Shri Bajaj through him to produce vehicle for reinspection after completion of repairing works. Shri T.R.Bajaj again visited their office on 17.08.2005 and submitted Driving License and bill of repairs. The Insurance Company deputed Shri Ajay Jog for reinspection of the vehicle and received his report next day. Shri T.R.Bajaj again visited their office on 22.08.2005 and after they explained him their claims settlement procedure, he gave them a letter thereby withdrawing his complaint. The Insurance Company placed all the documents with their final surveyor to assess the loss as per terms and conditions of the policy and his report was received by them on 25.08.2005. The claim was processed on the same day and approved for Rs.15195/-.

Shri T.R.Bajaj, at the time of hearing, stated that he had withdrawn the complaint against the Branch Manager. However, he has told him that he would like to pursue the complaint with the Ombudsman Office. Further, Shri Bajaj disclosed to this Forum that the repairs of the vehicle could not be taken up for 35 days for the fault of the Insurance Company since they have not given him the permission to proceed with the repairs. After he had written to the General Manager, New India Assurance Company Limited at Mumbai on 14.07.2005 that Shri R.K.Jain, Surveyor wrote to Excel Automobiles, Delhi vide his letter dated 05.07.2003 should be read as 05.07.2005. This letter has been back dated by him since the same was dispatched by Shri R.K.Jain to him on 18.07.2005 as per the Speed Post stamp bearing on the envelope which Shri Bajaj produced to this Forum. Shri Bajaj has further stated that the Insurance Company should have allowed him to replace by the second hand parts since the vehicle was old and he was not prepared to bear any depreciation amount. The Insurance Company did not allow him to replace the second hand parts and as such the claim was settled by them for Rs.35000/- with the repairs on gross basis and after deduction of depreciation the claim amount works out to Rs.15195/-

This Forum drew the attention of Shri Bajaj to the Insurance Company's letter dated 29.08.2005 wherein it has been mentioned that they have allowed the second hand parts in case of bonnet and also the parts have been replaced by his repairer with his consent and the Insurance Company has allowed the replacement of parts based on the cause of the accident. This Forum enquired from Shri Bajaj whether he had written to the Insurance Company demanding replacement with second hand parts, he has unable to produce any documents to show that he has requested the Insurance Company to allow the second hand part other than the bonnet to which the Insurance Company has agreed. The Insurance Company in their letter dated 29.08.2005 has also mentioned to Shri Bajaj the depreciation as per the tariff and the Forum drew his attention that the same has mentioned in the terms and conditions of the policy of which he should have been very well aware of. Shri Bajaj informed the Forum that he has already paid Rs.16000/- to the repairer and he is demanding the balance amount which should be paid by the Insurance Company.

This Forum advised Shri T.R.Bajaj that the Insurance Company is governed by the contract which has been entered as per the policy document and as such the Insurance Company cannot deviate. Shri T.R.Bajaj having not replied to the Insurance Company before the commencement of the repairs for replacement of the parts with second hand parts, therefore, the Insurance Company has very rightly approved the claim as per the

terms and conditions of the policy for Rs.15195/- which was conveyed to Shri T.R.Bajaj vide their letter dated 12.09.2005.

I, therefore, pass the Order that Shri T.R.Bajaj is only entitled to the payment of Rs.15195/- as assessed by the surveyor who is duly licensed by IRDA. This Forum has not empowered to pass any award for demurrage and harassment charges claimed by Shri Bajaj. I, therefore, uphold the decision taken by the New India Assurance Company Limited in the said case.

There is no further relief to be granted to the complainant.

Complaint is disposed of finally.

Delhi Ombudsman Centre
Case No. : GI/337/UII/05
Shri B.B.Sehgal
Vs
United India Insurance Company Limited

Award Dated : 10.11.06

Shri B.B.Sehgal had lodged a complaint with this Forum on 19.09.2005 that his Hyundai Accent GLS Car bearing Registeration No.DL 3CV-2289 was insured with United India Insurance Company Limited for the IDV of Rs.4,00,000/- The said vehicle met with an accident on 07.09.2004 and Shri K.R.Arora and Company was deputed by Insurance Company on 09.09.2004 to assess the loss. After discussion with workshop, Shri K.R.Arora declared the car to be total loss. As per All India Motor Tariff General Regulator No.8 his car was insured for Rs.4,00,000/-. Shri Arora insisted for settlement of Rs.3,30,000/- and kept on pressurizing and delaying the matter. After lot of deliberation and haggling, he was forced to agree for Rs.3,37,000/-(including salvage) which was much less as per guidelines of Tariff in case of Total Loss Case. As per All India Motor Tariff, in the event of total loss of vehicle, he was entitled for the claim of Rs.3,99,500/- (IDV – Excess Clause). He was not aware of the fact that as per tariff, he was entitled for IDV and Shri Surinder Mohan,ADM neither cooperated nor gave correct advice in the matter. He never even attached the terms and conditions of the policy along with the schedule. However, after eight months, he finally got the claim cheque of Rs.2,85,000/- from the Insurance Company on 19.04.2005. Rs.52,000/- was received from salvage vendor which was sent by Insurance Company making a total of Rs.3,37,000/. As now he was aware of the fact that the Insurance Company along with the surveyor Shri K.R.Arora has cheated him for Rs.62,000/- He has requested the Forum that the balance amount may be paid to him.

The Insurance Company, vide their letter dated 17.10.2005, wrote to this Forum that the loss was assessed by the surveyor and the liability of the company on account of repair basis was worked out to Rs.3,40,656/-. Shri Sehgal at the time of settlement was clearly told that because the liability on repair basis of the insurance company works out to Rs.3,40,656/- in that event it will not be possible for them to assess the claim on total loss basis and they will have to assess the claim on repair basis. Shri Sehgal finally agreed to settle the claim on the market value. The market value was ascertained by both the parties to be ranging between Rs.3,20,000/- to Rs.3,40,000/- finally the claim was finalized duly consented by the party for Rs.3,37,500/- and the consent was obtained from Shri Shegal in this regard.

Shri Sehgal was clearly told by the surveyor that in view of IRDA regulations the loss cannot be settled on total loss basis at the IDV of Rs.4,00,000/-. Had the loss been assessed on repair basis Shri Sehgal would be entitled to Rs.3,40,656/- It was on account of the above Shri Sehgal had willingly consented to this mode of settlement

otherwise the claim would have been settled on repair basis where the liability of the Company would have been Rs.3,40,656/- and Shri Sehgal would have had to bear a depreciation of Rs.88773/-. Accordingly, the claim was settled on the basis of survey report wherein the assessment on repair basis at Rs.3,40,656/- and Shri Sehgal's consent was taken.

At the time of hearing, Shri Sehgal contested that he was not given the policy on which the claim had taken place. He had written to the Insurance Company in this regard but there was no reply from them. He had also produced the earlier policy issued to him which was a mere schedule and the terms and conditions was not attached. He contested that had the terms and conditions been attached, he would have insisted on the Insurance Company to assess the loss on total loss basis. He also drew the attention of this Forum on the Ruling of the Consumer Court as per Times of India News Papers cutting dated 11.09.2006 where the Insurance Company had to pay on the basis of the IDV. As such, the Insurance Company had no right to reassess the value of the vehicle once having agreed to a particular IDV. He requested this Forum that the balance amount of Rs.62500/- may be paid to him by the Insurance Company.

The representative of the Insurance Company contested that the claim was settled on cash loss basis and Shri Sehgal was paid Rs.2,85,000/- and the balance of Rs.52000/- was paid by the salvage vendor, making a total of Rs.3,37,000/-.

The representative of the Insurance Company contested that had the loss been settled on repair basis, Shri Sehgal would have paid the depreciation amounting to Rs.88773/- and this was the best mode of settlement. He further contested that this is the discretion of the Insurance Company to agree to declare a total loss or not. This Forum drew the attention of GR 8 wherein it is clearly mentioned that a vehicle will be considered to be a CTL where the aggregate cost of retrieval and or repairs of the vehicle subject to terms and conditions of the policy exceed 75% of the IDV, why the vehicle could not be declared a total loss. The representative of the Insurance Company again repeated that it was at the discretion of the Insurance Company. The Forum drew the attention of the representative of the Insurance Company that Tariff Advisory Committee had put stipulation of 75% of the IDV as a condition for declaring the vehicle a total loss. As such the Insurance Company did not have any discretion wherein the repair cost exceeded this amount of IDV.

On examination of the papers submitted and after hearing both the parties, it is observed that the Insurance Company has not provided the policy with terms and conditions to Shri B.B.Sehgal and even in the case of earlier policy issued to him the terms and conditions were not attached. Shri Sehgal's contention that he was not aware of the terms and conditions is well found because they were not attached to the policy and the contract of insurance is only to the extent of schedule submitted to the insured. No fresh terms can be imposed by the Insurance Company subsequent to the insurance of the policy without the agreement of the insured. Since the terms and conditions were not provided to Shri Sehgal, there has been a deficiency in service as far as Insurance Company is concerned. The Insurance Company has not followed the Motor Vehicle's Tariff which stipulates that a vehicle can be considered a CTL/TL where the aggregate cost of the vehicle subject to the policy terms and conditions exceed 75% of the IDV. In this case, IDV was Rs.4,00,000/- and the repair cost being Rs.3,40,656/- was above the bench mark of 75% of the IDV. As such the demand of Shri B.B.Sehgal is reasonable.

I, therefore, pass the Award that Rs.62500/- be paid to Shri B.B.Sehgal by the United India Insurance Company Limited.

The Award shall be implemented within 30 days of receipt of the same. The compliance of the Award shall be intimated to my office for information and record.

Delhi Ombudsman Centre
Case No. : GI/690/NIC/04
Shri Shadi Lal
Vs
National Insurance Company Limited

Award Dated : 28.11.06

Shri Shadi Lal had lodged a complaint with this Forum on 31.12.2004 that he was an ex-army personnel. He had insured his vehicle No.RJ2C 4145 with the National Insurance Company Limited from 26.02.2004. On 27.05.2004, the vehicle met with an accident. There was nobody in the vehicle except him. He reported the loss to the Branch Office of the Insurance Company and has deposited all the documents with the Insurance Company. He had been constantly visiting the office of the Insurance Company but the claim has not been settled.

The Insurance Company, vide their letter dated 31.12.2004, informed him that the driving license submitted by him was not valid, as such, the claim was repudiated. Shri Shadi Lal contested that he has got his driving license from the Army Authorities at Secunderabad and the same was valid up to 03.08.2010, as such, the same being not valid was not acceptable to him. He has spent Rs.30,000/- towards the repair of the vehicle. He has requested the Forum that the claim may be paid to him.

National Insurance Company Limited, vide their letter dated 29.04.2005, advised the Forum that the vehicle No.RJ 2C-4145 was insured by them from 26.02.2004. The vehicle met with an accident on 27.05.2004. The loss was informed by the insured after 5 days and they had deputed Shri Rajendra Arya for assessing the loss.

The vehicle was also got reinspected after repairs on 02.07.2005. On 08.10.2004, to establish the genuineness of the license of Shri Shadi Lal, they had taken up the matter with Divisional Office, Secunderabad, since the license was for Light Motor Vehicle(Transport) and Heavy Motor Vehicle(Non-Transport) was issued. The expiry of the driving license for Motor Cycle (Non-transport) was from 16.08.1999 to 03.08.2010 and for LMV(T) and HTV(T) was from 16.10.1999 to 15.10.2002. They have received a verification report on 01.12.2004 wherein it was mentioned that the driving license for LMV(T) and HMV(T) was valid upto 15.10.2002 whereas for Motor Cycle, the validity of the driving license was upto 03.08.2018. Since Shri Shadi Lal did not have a valid driving license on 26.05.2004, the claim was repudiated

At the time of hearing on 23.08.2006, the Forum requested the Insurance Company to again get the driving license re-verified through their Secunderabad Office, since one single license cannot have different expiry dates.

The Insurance Company's Secunderabad Office, has got the driving license verified on 31.08.2006 which mentions that Shri Shadi Lal S/O Shri Nanagram, Driving License No.108270/SD/99 issued by Additional Licensing Authority, RTA, North Zone, Secunderabadis authorized by the said authorities to drive (i) Non-Transport vehicle, that is, Motor Cycle with Gear till 03.08.2010; and (ii) Transport Vehicle (includes LMV) till 15.10.2002. The said license was issued to the holder on 16.10.1999.

On examination of the papers submitted, it is observed that Shri Shadi Lal S/O Shri Nanagram did not have a valid driving license at the time of accident on 27.05.2004as the license issued to him expired on 15.10.2002.

I, therefore, uphold the decision taken by the National Insurance Company Limited repudiating the claim of Shri Shadi Lal.

There is no further relief to be granted to the complainant.

Complaint is disposed of finally.

Delhi Ombudsman Centre
Case No.GI/655/NIA/04
Ms.Anjana Pasricha
Vs
New India Assurance Company Limited

Award Dated : 18.01.2007

Smt.Anjana Pasricha lodged a complaint with this Forum on 09.03.2005 that her Indica Car No.DL 3CV 9062 insured with the New India Assurance Company Limited, New Delhi met with an accident on 26.08.2004 at around 4.30 p.m. After the accident the car was being driven slowly towards its regular garage M/S.Dhingra Motors Pvt. Ltd. in Gurgaon. Suddenly it broke down completely opposite Aurobindo Market, South Delhi. It had to be towed the next day to the garage that was given instruction to repair whatever was authorized and passed by the surveyor. The surveyor appointed by the New India Assurance Company Limited, surveyed the car at the garage subsequently and authorized the garage to carry out the necessary repairs. During his visit to the garage, the surveyor spoke to her husband and ordered him to come to the garage immediately. As her husband was approximately 40 K.M. away from the garage it was not possible for him to reach the garage immediately and he informed the surveyor that because of aforesaid reasons he could reach the garage only after 1.1/2 hours. On hearing this, the surveyor became rude and said that he did not have time to deal with claims of people like them who could not come to the garage when summoned. The claim was submitted on 30th August, 2004 and the bill was settled through Credit Card on 11.09.2004 and suitable papers were sent to the Insurance Company. After repeated follow up with the Insurance Company they finally send the settlement letter on 27.11.2004. She was surprised to know that the following items were disallowed:

1. Towing charges
2. Suspension arm (Lower Link Comp RHP)
3. Side Reapeter

They were surprised that the surveyor had disallowed the damaged suspension arm and they were prepared to show the damaged suspension arm on this Forum.

The Insurance Company, vide their letter dated 05.04.2005 informed the Forum that they had deputed Shri Ashit Kapoor, an independent surveyor to assess the loss. On 02.09.2004, the surveyor after inspecting the damaged vehicle assessed the loss for Rs.6,588/- with the mutual consent of the repairer. Accordingly, the vehicle was repaired by the repairer and was delivered to insured on 11.09.2004 as per bill raised by repairer. At the time of assessment the insured was asked to provide the detail about the cause of accident. The same was sent by the insured on 26.10.2004. After collecting the same, the surveyor submitted his report dated 19.11.2004. As regard to the parts alleged not allowed by the surveyor, they have re-examined the file and observed as under:

1. Towing Charges: Since the vehicle was in moving condition and does not require towing and at the same time was not claimed.
2. Suspension Arm : Normal wear and tear damage, does not fall under the preview of accident.

3. Side Reapeter : Not claimed.

At the time of hearing, Shri Pasricha disclosed that when he was moving the vehicle to the repairer, the car broke down and had to be towed to the repairer for which he has submitted necessary bills for the damages to the same. He was also not paid for the Side Reapeter which as per the estimates submitted by Dhingra Motors, the same was not claimed and Shri Pasricha agreed that he would not be pressing for the claim of this item. He further drew the attention of this Forum that the surveyor was very rude in his dealings.

The Insurance Company informed the Forum that the assessment was agreed by the repairer and as such it is binding on Smt. Anjana Pasricha. On enquiry by this Forum why the consent of the owner was not taken by the surveyor, the representative of the Insurance Company was unable to answer. Under these circumstances, the Insurance Company should have paid the claim to the repairer and should have recovered the depreciation charges from Smt. Anjana Pasricha.

The surveyor having not taken the consent of the insured, I pass the Award that the Insurance Company is liable to make the payment for the towing charges as well as the expenses incurred for replacement of Suspension arm after deducting the depreciation. No interest is being paid since the insured is not required to deposit the damaged suspension.

The Award shall be implemented within 30 days of receipt of the same. The compliance of the Award shall be intimated to my office for information and record.

Delhi Ombudsman Centre
Case No. : GI/94/NIA/06
Dr.Ramesh Kumar Rajak
Vs
New India Assurance Company Limited

Award Dated : 22.02.2007

Dr.Ramesh Kumar Rajak has lodged a complaint with this Forum on 07.09.2006 that he had a motor policy for his Car No.RJ30CA 0137 with the New India Assurance Company Limited from 05.08.2005. His car had met with an accident on 26.12.2005 near Bhilwara for which spot survey was conducted by Shri Ajit Singh and the final survey was conducted by Shri Suneel Kumar Bhargav. He had submitted relevant report and bills for Rs.90000/-but he has not received any payment from the Insurance Company. He had to borrow the money to pay the bills of Rs.90000/-. He has requested the Forum to intervene in the matter. He further informed that the Insurance Company subsequently paid Rs.45510/- on 21.08.2006 along with the satisfaction voucher which was signed under protest, as a result of which, no payment was made to him. Dr.Ramesh Kumar Rajak wrote to the Insurance Company vide his letter dated 03.09.2006 that he should be provided copies of the survey reports, deductions if any, and the reasons thereof along with the final sanctioned amount.

The Insurance Company, vide their letter dated 01.09.2006, informed the Forum that they had sanctioned Rs.45510/-on non-standard basis and they had issued a cheque No.023023 dated 21.08.2006 along with satisfaction voucher which were sent to the insured. The cheque was not released to him since the satisfaction voucher was signed under protest. There was no lapse on the part of the Insurance Company and the claim stands duly approved by them.

At the time of hearing, the Forum enquired from the representative of the Insurance Company as to why the details required by Dr.Rajak were not furnished, The representative of the Insurance Company was unable to give a reply. As per IRDA

Regulation, the Insurance Company is required to submit a copy of the survey report when it is demanded. There has been deficiency of service as far as Insurance Company is concerned. However, on further enquiry from the representative of the Insurance Company, why the claim was treated as sub-standard, he informed the Forum that the vehicle was fitted with LPG Gas kit and the same was not insured accordingly.

As such, the claim was treated as sub-standard. The representative of Dr.Rajak contested that the Insurance Company should have settled the claim for the assessed amount and they should have deducted the additional premium payable towards the premium for rectifying the policy. The Forum advised the representative of the complainant that the Insurance Company had been liberal in settling the claim since Dr.Rajak had not informed the Insurance Company about the changes carried out in the vehicle which was material change in the risk. Had there been no accident, the Insurance Company would not have come to know about the material change in the vehicle and the Insurance Company would have been deprived of the correct premium payable. The action of the Insurance Company was in Order. Further on perusal of the survey report, the summary of the assessment is as under :-

Summary of Assessment		ESTIMATE	ASSESSED
Labour	(B)	33600.00	28000.00
Add cost of parts	(A)	95238.00	58159.00
Less depreciation @ 40% Metallic Parts i.e. On Rs.36238.00	(-)		14495.00
Less depreciation @ 50% on Non metallic Parts i.e. on Rs.17736.00	(-)		8868.00
Less Excess (Imposed)	(-)		500.00
Add Towing Charges	(+)		1000.00
Total Assessed Loss			62295.80
			Or say 62296.00

The Insurance Company has agreed to pay 75% of Rs.62296/- as assessed by the surveyor Shri Suneel Kumar Bhargava which is in order.

In view of the above facts, I uphold the decision taken by the New India Assurance Company Limited treating the claim as sub-standard since there was material change in the risk as the insured has installed LPG Gas kit in his vehicle which was not informed to the Insurance Company since the Motor Tariff has different rate for vehicles fitted with LPG Gas Kit.

There is no further relief to be granted to the complainant.

Complaint is disposed of finally.

Delhi Ombudsman Centre
Case No. : GI/697/NIA/04
Shri Ghanshyam Joshi
Vs
New India Assurance Company Limited

Award Dated : 27.02.2007

Shri Ghanshyam Joshi had lodged a complaint with this Forum on 30.03.2005 that his vehicle No.RJ27/P-2391 was insured with the New India Assurance Company Limited. His vehicle had met with an accident on 07.10.2001 . The Insurance Company, vide their letter dated 26.09.2002 required certain documents which were submitted on 02.08.2002. He had a number of times requested the Insurance Company by personally visiting the office for settlement of his claim. He was informed that his file was not traceable and they are trying to trace it. As a result six months had elapsed. He has requested the Forum to look into the grievance and direct the Insurance Company to settle his claim.

The Insurance Company informed that they had written to Shri Joshi for passenger list and permit vide their letter dated 26.07.2002 following reminder dated 29.08.2002. He had not complied with the formalities and they had given a final notice on 25.09.2002 for completion of formalities along with lease agreement between him and Shri Nath Tourist Agency, Propritor Smt. Sharda Devi.

The Insurance Company, at the time of hearing, informed the Forum that they had deputed Shri B.L.Paliwal, investigator to verify the Registration Certificate and permit from the concerned authorities at Udaipur. He had submitted his report on 05.08.2002 as follow:-

REGISTERATION PARTICULARS

Registeration No.	:	RJ-27/P-2391
Registered on	:	24.04.1997
Registered owner	:	Shri Sachin Malhotra
Transferred to	:	Shri Ghanshyam Joshi
w.e.f. 23.10.2000		
On lease by	:	Shri Nath Tourist Agency
w.e.f. 24.01.2001	:	Propritor, Smt. Sharda Devi

The permit was also transferred in the name of Shri Nath Tourist Agency on 24.01.2001. The vehicle was insured in the name of Shri Ghanshyam Joshi, vide policy No.31-50176 from 27.03.2001 to 26.03.2002. Since the vehicle was leased on 24.01.2001 in favour of Shri Nath Tourist Agency, Shri Joshi had no insurable interest on the same. He was not the owner as per the Motors' Vehicle Act-1938 as well as as per Tariff Provisions – Vehicles subject to lease agreement – it is not permissible to issue the policy in the joint name of lessee and lessor. Policy must be issued in the name of lessee and the lessor interest should be protected by using an endorsement.

Shri Ghanshyam Joshi informed the Forum that he had entered into a contract with the ITDC as ITDC is not entering into contract with individuals. They required a travel agency with whom they could enter into a contract. As such, Registration Certificate as well as permit was transferred in the name of Shri Nath Tourist Agency. However, he continued to hold the interest in the vehicle. Since he did not understand the technicalities of insurance and was not guided by the agent, the policy continued to be in his name.

On examination of the papers submitted and after hearing both the parties, it is observed that the Vehicle No.RJ-27/P-2391, registration and permit of which was in the name of Shri Nath Travels whereas the policy was issued in the name of Shri Ghanshyam Joshi. Since Shri Joshi had no insurable interest as the vehicle was leased to Shri Nath Travel Agency, his claim is not entertainable.

I uphold the decision taken by the New India Assurance Company Limited repudiating the claim of Shri Ghanshyam Joshi.

There is no further relief to be granted to the complainant.

Complaint is disposed of finally.

Delhi Ombudsman Centre
Case No.GI/371/UII/05
Shri Ajay Mudgal
Vs
United India Insurance Co. Ltd.

Award dated 27.02.2007

Shri Ajay Mudgal lodged a complaint with this Forum on 02.01.2006, that, he had insured his Bajaj Pulsar Motor cycle, vehicle No. DL 7SAB 2673, with United India Insurance Co. Ltd. from 14.09.2004 to 13.09.2005 for IDB of Rs.41000/-. The Motorcycle was stolen on 11.01.2005, he had filed a claim with the Insurance Company. The surveyor, who had been deputed, had asked for the original keys, at that time he had only one original key because the second one was broken earlier. He gave the keys to the surveyor and almost after one month United India Insurance Co. Ltd. asked for the second key, whether it is duplicated or not, so he submitted his other computerized key, which was with him as well. Shri Girish Bhargava of United India Insurance said that, the key does not seem to be used much and "he knows that his bike has been stolen with the key" and on argument said that "you can do what so ever you want to, but I will give you only 75% of the approved value". He had represented the matter to the Regional Office, but nothing had been done. He has requested the Forum to settle his claim.

United India Insurance Co. Ltd. vide their letter dated 15.02.2006, informed the Forum that, the case was investigated and found that, the intimation of the theft of vehicle was delayed and keys of the vehicle submitted to them were practically unused. Shri Ajay Mudgal was given opportunity to explain the reason for submitting different and practically unused keys and delay in intimation. They had put up the investigation with specific reference to delay in reporting and possible misrepresentation of the facts. The case was investigated by the investigator who had gone deep into the service record and relevant papers. He concluded that, the statement of the insured was not maintainable and false. His statement with respect to the keys was also found to be false in light of facts on record investigation by the investigator. The claim was repudiated on the grounds of policy condition No. 1, 4 and deliberate misrepresentation of the material facts, and he was duly informed about repudiation of his claim vide our registered letter dated 19.12.2005.

At the time of hearing, Shri Ajay Mudgal informed the Forum that, his motorcycle had been stolen on 11.01.2005 at Durga Mandir, MS Park, Shahdra, Delhi, and he immediately contacted the police authorities to lodge his FIR, but he was informed that, he should try to look around for the vehicle for a few days, and in case the vehicle was not found they will register the complaint. Accordingly the FIR was lodged on 12.01.2005, hence there was no delay in lodging the FIR and the Insurance Company was also informed on 12.01.2005. As regards the keys, he informed the Forum that, his original key was broken and the second original key was being used for the past 6 months, before the theft of the Motorcycle, and he had got another key made locally. On the Insurance Company's contention that the keys were not used, he informed the Forum that, he has further 3 vehicles, which he has been using and his motorcycle was

used separingly. His genuine claim has wrongly been repudiated by the Insurance Company.

The representative of the Insurance Company contested that, the key submitted by Shri Ajay Mudgal that, did not have any scratches shows that, it has not been used at all. The investigator has examined the service record of the vehicle which proves that the vehicle was used regularly by Shri Ajay Mudgal and the key submitted by him was not used.

After hearing both the parties and on examination of the papers submitted, it is observed that the vehicle No. DL 7SAB- 2673 was stolen on 11.01.2005, and as per Shri Sunil Jain investigation report dated 10.05.2005, the FIR no.20 registered u/s 379 IPC dated 12.01.2005 Police Station M.S. Park, North/ East district, Delhi. I do not see any delay in lodging the FIR with the police by Shri Ajay Mudgal. The statement made by Shri Ajay Mudgal appears to be correct that, the police authorities asked him to try and trace the vehicle for sometime before the FIR could be registered. This issue was raised by the policy holder at the time of hearing and the Insurance Company representative was in agreement of this. It appears that, Shri Mudgal may have left the 2nd key in the vehicle which he parked at Durga Mandir, and to cover up the same he may have thought of the story that the one key had broken 6 months back. The Insurance Company had tried to prove by service record that the vehicle was not regularly used, further they do not have any evidence to prove that the vehicle was stolen with the key in it but have tried to demonstrate that, the key given to them was not in use for the past six months. Since, it as been found from FIR and FR proves that the vehicle was stolen. I, do not agree with their logic of repudiating the claim. Keeping in view that the vehicle had been stolen and there may be some negligence on the part of Shri Mudgal, which he has not admitted. The claim could be settled at 75% of the IDV of Rs.40000/- alongwith 8% interest from 1st April, 2005.

The Award shall be implemented within 30 days of receipt of the same. The compliance of the same shall be intimated to my office for information and record.

Delhi Ombudsman Centre
Case No.GI/175/IFFCO TOKIO/05
Shri Nepal Singh
Vs
IFFCO TOKIO General Insurance Company.

Award dated 20.03.2007

Shri Nepal Singh lodged a complaint with this Forum on 14.06.2005, that he had insured his J.C.B No. HR 38J- 7041 with IFFCO TOKIO General Insurance Co. Ltd. vide policy No. 31220806 from 24.11.2003 to 23.11.2004, which was insured for Rs.1686250/-. The vehicle was met with an accident on 26.05.2004 and the Insurance Company had paid him a sum of Rs.22600/-, and he had preferred a claim with the Insurance Company, for the estimated amount of Rs.70000/-. He was in constant touch with the Insurance Company and he was paid a sum of Rs.9350/- in April 2005. When he raised his objection that he would not accept the cheque, he was told that the voucher has been made. However, they will talk to the surveyor and call him for discussion with regard to the claim wherein he will be called and the same be settled. They neither called the surveyor nor called him. On his constant reminders, he was told that he has been paid according to the survey report. He has requested the Forum to intervene in the matter.

IFFCO TOKIO General Insurance Co. Ltd. vide their letter dated 07.07.2005 informed this Forum that, the insured initially submitted an estimate dated 26.05.2004 from M/s. Leo Earthmovers Pvt. Ltd. (authorized dealer for J.C.B) amounting to Rs.35200/-, subsequently, another revised estimate dated 26.05.2004 amounting to Rs.84608/- was also submitted by the insured to the surveyor. The insured purchased the parts from some local parts supplier and got the vehicle repaired; hence the following assessment was made by the Surveyor:-

1.	Front w.s. glass	Rs.	1500/-
2.	Add Sales Tax @ 12%	Rs.	180/-
3.	Dipper ram assy.	Rs.	13500/-
4.	Add sales tax @ 12%	Rs.	1620/-
5.	Labour Charges	Rs.	1000/-
	Total assessment	Rs.	17800/-
	Less compulsory excess	Rs.	8450/-
	(0.5% of the sum insured)		
	Amount paid to the insured	Rs.	9350/-

After verification of the Driving License, the claim was processed and the amount of Rs.9350/- recommended by the surveyor was paid and was released to him by cheque No. 181933 dated 18.12.2004. This amount has already stands debited to their account. The Insurance Company has further mentioned that while assessing the loss, the surveyor had taken into account the following:-

1. The Dipper Gear Assy (estimated for Rs.23500/-) was not allowed by the surveyor as the same had no relevance with the accident.
2. The Dipper ram assembly was recommended by the surveyor for Rs.13500/- (estimated for Rs.38000/-) as the same was not purchased from the authorized dealer but from the local market.
3. An amount of Rs.8450/- was deducted from the total assessed amount being the compulsory deductible.

Hence, they feel that the insured has been duly indemnified for the loss occurred to his vehicle and there is no merit in his complaint.

At the time of hearing, the insured submitted that his estimation was for Rs.70000/- approx. and he has only been paid an amount of Rs.9350/-. The Forum advised him that the deduction for Rs.17800/- and a compulsory excess of 0.5% of the sum insured was deducted which was Rs.8450/- and he was paid Rs.9350/- accordingly. The insured understood the deduction made accordingly. However, he still insisted that he should have been paid as per the estimation. Since the Dipper Gear Assembly which was damaged is the result of the accident was not allowed and as such the loss for the same should be paid. On enquiry from the Insurance Company that the vehicle in question was a specialized vehicle, whether any comments from M/s. Leo Earthmovers Pvt. Ltd. (authorized dealer for J.C.B) was taken that the same could be damaged as a result based on the cause of accident. The Insurance Company informed that the claim file was missing as such they were unable to comment.

After hearing both the parties and on examination of the papers submitted, the surveyor has not allowed the Dipper Gear Assembly which according to the Insurance Company's letter dated 07.07.2005 mentions that, the same was not allowed by the surveyor as the same had no relevance with the accident. Since, the vehicle was special type of vehicle and the Insurance Company is not able to substantiate whether

the dealer's comment were obtained that, the loss to Dipper Gear Assembly can be attributed to the cause of accident or not. Further, there was no consent taken by the Insurance Company from the insured for the assessment made by the surveyor. I am therefore not in agreement with the surveyor, not allowing the loss for Dipper Gear Assembly.

I, therefore pass an Award for Rs.23500/- subject to depreciation and the complainant producing the cash memo for the same. In case the complainant has submitted the cash memo earlier and is not available, since the file is not traced, then the confirmation for the same from the seller from whom the insured has purchased the part, along with the Affidavit of Rs.10/- Stamp Papers be obtained.

The Award shall be implemented within 30 days of receipt of the same. The compliance of the same shall be intimated to my office for information and record.

Delhi Ombudsman Centre
Case No.GI/05/OIC/06
Ms. Arun Bala Vaish
Vs
Oriental Insurance Company Ltd.

Award dated 29.03.2007

Ms. Arun Bala Vaish lodged a complaint with this Forum on 15.09.2005 that, she had insured her vehicle No.DAA-62 with Oriental Insurance Co. Ltd, which had met with an accident on 10.02.2001. She had filed a claim for Rs.9452/-, which was not paid by the Insurance Company.

The Oriental Insurance Co. Ltd. vide their letter dated 04.10.2005 informed the Forum that, they had covered the vehicle No.DAA-1988 under the policy No. 2001/473. The insured had injured three persons and had mentioned her vehicle No.DAA-62. However, as per the surveyor report issued by Vipal & Co. dated 28.03.2001, the vehicle No. is DAA-62. As per the FIR also the vehicle no. was DAA-62. Hence, you will observe that the vehicle No.DAA-62 was not insured with them. Hence, they have repudiated the claim.

The Oriental Insurance Co. Ltd. vide their letter dated 08.02.2007 informed the Forum that they have settled the claim vide cheque No. 619844 dated 19.05.2006 for Rs.5700/- favouring Smt. Arun Bala Vaish under full and final payment.

At the time of hearing Smt. Arun Bala Vaish informed the Forum that the vehicle No. was DAA-62 and not DAA-1988. Since, the model of the vehicle was 1988, which was wrongly mentioned as Registration No. On enquiry by this Forum with the Insurance Company to produce the copy of the proposal form, the Insurance Company showed its inability to produce the same. Further, on examination of the cover note as well as the policy document, it was observed that the engine no. and chassis no. have also not been mentioned in motor certificate, cover note and policy schedule. On examination of the policy it was observed the vehicle was 1988 model. The Insurance Company advised the Forum that they have settled the claim for Rs.5700/- as follows:

Labour charges	Rs.	2400/-
Replacements of parts	Rs.	**5180/-**
Total	Rs.	7580/-
Less compulsory excess	Rs.	**1000/-**
Total	Rs.	6580/-
Less Salvage	Rs.	**380/-**

	Total	Rs.	6200/-
Less Excess		Rs.	**500/**-
	Total	Rs.	**5700/-**

Smt. Arun Bala Vaish requested the Forum that the payment of the claim was made in the year 2006 after 5 years of delay and they had gone through lot of mental agony, as well as, they have incurred lots of expenses on correspondence etc. which must be paid along with interest.

After hearing both the parties and on examination of the papers submitted it is observed that the Oriental Insurance Co. Ltd. having made the payment of Rs.5700/- on 19.05.2006. The surveyor report is dated 28.03.2001, there is being a delay in settlement of the claim of more than 5 years. As per IRDA (Protection of Policy Holders') Regulation 2002, the claim should be settled within 30 days of receipt of the surveyor report. M/s. Vipal & Co. has issued their report on 28.03.2001, the claim should have been settled by 01.05.2001, and however, the payment has been made to Smt. Arun Bala Vaish on 19.05.2006.

I, therefore, pass an Order that 8% interest be paid from 01.05.2001 to 19.05.2006.

The Award shall be implemented within 30 days of receipt of the same. The compliance of the same shall be intimated to my office for information and record.

Delhi Ombudsman Centre
Case No. : GI/422/NIA/05
Shri Subhranta Kumar Das
Vs
New India Assurance Company Limited

Award Dated : 30.03.2007

The complaint was heard on 26.03.2007. The complainant, Shri Subhranta Kumar Das has lodged a complaint with this Forum on 23.02.2006 that he had insured his car No.HR-26T-8234 with the New India Assurance Company Limited, New Delhi. The vehicle met with an accident on 05.02.2004 in Bhubhneswar. He had informed the nearest office of the Insurance Company at Bhubhneswar. They had sent the surveyor, Shri Nihar Ranjan Mishra for survery and assessment of the accident. The surveyor assessed the loss of Rs.61639/- at Bhubhaneswar office. Bhubhneswar office had sent all the documents with regard to the claim to their policy issuing office at Azad Pur, New Delhi to settle the claim. He had been contacting the Azad pur Branch Office, the New India Assurance Company Limited from time to time for settlement of his claim but they have not settled the claim uptil now.

At the time of hearing, Shri Das informed the Forum that he had submitted all the documents as per the requirements of the Bhubhanewsar office. However, they had been insisting for submission of FIR as well as re-inspection report which he had already deposited with the surveyor. He drew the attention of this Forum towards the letter dated 19.10.2005 of Bhubhaneswar Divisional office and the survey report was received by them on 14.03.2005 from the surveyor after sending him a number of reminders. All the claim papers along with the surveyor report was sent to their office on 07.04.2005. The delay having occurred because of the closing of the financial year 2004-05. Further, they have already submitted the re-inspection report since the Bhubhaneswar office of the Insurance Company on receipt of the letter dated 21.04.2005 from the New India Assurance Company Limited, New Delhi regarding error in re-inspection report that the date of accident was different which was clarified to

them. A letter from the surveyor in this regard has been forwarded to the Divisional Office, Azadpur Branch, New Delhi of the New India Assurance Company Limited on 27.04.2005. The New India Assurance Company Limited having not settled the claim, he requested the Forum that his claim be paid and he also be paid interest @ 18%.

There was no representation from the Insurance Company at the time of hearing. The Insurance Company vide their letter dated 23.03.2006 have informed the Forum that the re-inspection report is mandatory hence they have requested the insured to get his vehicle re-inspected from their Bhubhneshwar Office (as the vehicle is still plying at Bhubhneswar) vide their letter No.320100 Motor 2006 dated 17.01.2006. But till date they had not received the re-inspection report. On going through the correspondence, it is observed that as per Bhubhnewswar office of Insurance Company by their letter dated 19.10.2005 have mentioned that the re-inspection report was received by their Delhi office of the Company vide their letter dated 21.04.2005 and they had sought certain clarifications which were submitted on 27.04.2005 by Bhubhneswar office. Hence as per the requirements of the Insurance Company's Delhi Office letter dated 17.01.2006 to this Forum stands complied with. There has been a delay in settlement of the claim by the Delhi Office of the Insurance Company.

I, therefore, pass an Ex-Party Award that the New India Assurance Company Limited, Delhi should settle the claim of Shri Subhranta Kumar Das as per the surveyor report of Shri Binit Pattanaik dated 21.04.2004 along with 8% interest from 01.06.2004 till the time the payment is made. Since the surveyor has not submitted his survey report even after being reminded by the Insurance Company, the empanelment of the surveyor should be cancelled. General Manager (Technical) of the Insurance Company is requested to give necessary directions in this regard to their Bhubhneswar Office.

The Award shall be implemented within 30 days of receipt of the same. The compliance of the Award shall be intimated to my office for information and record.

Guwahati Ombudsman Centre
Case No. : 11-005-0043/06.
Bimal Shahu
Vs
The Oriental Insurance Co. Ltd.

Award Dated : 25.10.2006

Facts (Statements and counter statements of the parties) :

Overlooking the mistakes and inconsistencies here and there, the grievance of the complainant Sri Bimal Shahu is that his claim for re-imbursement of the expenses of repairs of the insured vehicle No.AS-25/9969 under policy cover in question was wrongly repudiated by the present insurer on pretext that while in course of insuring the vehicle, he did not disclose the fact of preferring claim before erstwhile insurer (M/s. National Insurance Company) and enjoyed the benefit of NCB (No Claim Bonus) thereof violating norms of contract etc., while submitting the proposal form etc. That in spite of his offer to the insurer to settle his claim by deducting the amount of No claim bonus and paying the balance, nothing was done. The relief sought is Rs.51,000/- (fifty one thousand).

Responding to notice of the complaint, the insurer (by self-contained note) submitted ——

"a Motor Package policy was issued by CDO-III, Guwahati to Vehicle No.AS-25/9969 for the period from 06.12.2001 to 05.12.2002 allowing 35% NO Claim Bonus on receipt of insured's declaration vide serial No. 08 of the proposal form".

That confirmation was obtained from the National Insurance Company that a claim was reported to them and accordingly the complainant was not entitled to claim 'No Claim Bonus' and as per General Rule 27 of Motor Tariff, all benefits under Section 1 of the Policy is to be forfeited. That the claim was repudiated due to non-

disclosure of material fact and misrepresentation leading to violation of utmost good faith. That the complaint is not entertainable at the office of Insurance Ombudsman as the vehicle in question was public carrier used for commercial purpose which is beyond the purview of Insurance Ombudsman not being insurance in personal line.

Decisions & Reasons

From the facts given (which are not disputed) it will appear that the present insurer wrote to the previous insurer of the vehicle only on 25.11.05 for clarification on NCB status of the vehicle concerned and that too, after the accident in question took place on 16.04.05, i.e., after about expiry of four years from the inception of the insurance cover. The insured/complainant has submitted that he was ignorant about any such mandatory provision of disclosing information about previous claim and when approached the present insurer, he has not been asked for such compliance rather the officers of insurer simply calculated out the premium required for the insurance cover and accepted proposal. The insurer appears to have accepted the proposal at its own risk and volition and will not be permitted now to turn volte-face particularly when the claim has been submitted after four years of the insurance cover. The insured/complainant has already agreed for adjustment of any excess relief of N.C.B. already granted to him from the claim amount due to him and balance be paid. Thus, there cannot be any scope for repudiation of the entire claim. It appears to us that the repudiation is improper and liable to be set aside, which we hereby do. The discussion aforesaid will convincingly show that if there were any lapses on the part of the Insured the Insurer also equally contributed to the same. The Insurer had also miserably failed to comply with the guidelines of Tariff Regulation applied to it and now wants to put the entire burden on the Insured which cannot be regarded, on the principle of equity, as a valid ground. One of the maxim of equity says – "He that hath committed inequity shall not have equity."

Lastly, on the question of jurisdiction of Ombudsman the Insurer has failed to mention the exact provision in the rules to attract any such bar. Moreover, it is a case of Insurance of a vehicle by an individual irrespective of the question of its purpose of use/utilization. Therefore, the objection is misconceived.

It is directed that the claim will be settled by the insurer on the basis of facts in the survey report submitted by Sri Dhrubapada Biswas in this context on 25/08/05 and make payment of the claim-amount subject to deduction of any amount due to the insurer (for the alleged

violation of N.C.B. norms which appears to be joint-liability of the insurer and insured and the insured alone cannot be made liable for the default.

Guwahati Ombudsman Centre
Case No. : 11-004-0064/06-07
PrabinChandra Kalita
Vs
United India Insurance Co. Ltd.

Award Dated : 20.11.2006

Facts (Statements and counter statements of the parties)

The complainant (owner of the insured vehicle, bearing registration no. AS-14/5331) lodged this complaint stating that on 13/08/02, the insured vehicle met with an accident and got badly damaged as a result thereof. That he lodged the claim with the insurer of the vehicle but the same was rejected on the pretext that the driving licence of the driver, driving the vehicle at the relevant time, was fake. That he made representations against the rejection of the claim but nothing has happened till date.

The insurer (United India Insurance Co. Ltd.), without disputing the insurance cover and the fact of accident, submitted that driving licence of the driver Bhupen Deka who was driving the insured vehicle at the time of accident in question was found to be a fake on investigation and accordingly, the claim was closed as 'no claim' and the insurer was informed vide letter dated 24/01/03 received by hand.

Decisions & Reasons

Irrespective of the merit of the claim, this complaint appears to be barred by time. Although the claimant has stated that he filed his representation on 23/06/2006, there is no proof, by endorsements or otherwise that such representation was filed on such date. In fact the complainant has enclosed two photocopies of such representations with similar wordings and identical nature, one being dated 06/01/2004 and other being 23/06/2006. It is admitted by the complainant that he was in receipt of the decision of the insurer communicated vide letter dated 24/01/2003 repudiating the claim, but there is absolutely no independent evidence in support of his contention in order to establish prima facie that representation for review was actually presented before the insurer against the decision of repudiation. Sub-rule (3) (b) of Rule 13 the R.P.G. Rules, 1998 clearly provides that no complaint to the Ombudsman shall lie unless the complaint is made not later than one year after the insurer had rejected the representation or send his final reply on the representation of the complainant. On this legal ground alone, this complaint is not entertainable here.

It is, however, made clear that we are not going to record our findings on the disputed question of treating the claim as 'no claim' on the plea of fake driving licence. This question has been dealt with by the Hon'ble Apex Court of the country in National Insurance Co. vs. Swaran Singh etc. and the latest view is that owner of insured vehicle is not responsible for driver's licence and is not required to find out if the licence issued to the driver was from a competent authority once he has satisfied on test that the driver was competent in his job. The court held that in order to make the insured liable, the insurance company has to prove that the owner of the vehicle was guilty of negligence and failed to exercise reasonable care in matter of fulfilling the condition of the policy or making appointment of the driver etc.

Before parting with the case, we observe that the insurance company appointed surveyor getting notice of the claim and surveyor submitted his report assessing loss at Rs.56263.36 but it is not understood why the complainant failed to agitate the matter at the appropriate time and in normal course.

In view of discussions and findings as aforesaid the matter stands closed at this end.

Guwahati Ombudsman Centre
Case No. : 11-003-0062/06-07
Sri Mahananda Kr. Pathak
Vs
National Insurance Co. Ltd.

Award Dated : 15.11.2006

Grievance

The complainant states that his bus, bearing registration no. AS-15/ 1036, had insurance cover from National Insurance Co. Ltd (Opp. party) and it was damaged due to an accident taking place on 13/06/2002. He submitted claim for loss with necessary documents but the same was not settled although the connected M.A.C.T-claims and compensation claim under Workmens' Compensation Act were settled. He alleged that there was unusual delay in settlement of the claim on the plea that the driver of the affected vehicle had fake driving licence. That no such plea was raised before M.A.C.T. and W.C. Claim Court by the insurer.

Reply

The insurer submitted that it appointed spot surveyor and took other steps for investigation on receipt of the prayer for release of the claim but the complainant has failed to submit documents. That the surveyor appointed to investigate the claim had submitted his report mentioning that relevant/requisite documents including driving licence were not produced before him. That on the basis of the information given belatedly by the owner of the insured vehicle, necessary enquiries were made to verify genuineness of the driving licence and the verification reports obtained reveal that the driving licence in question was fake one. That on the basis of such verification report, the authority had to repudiate the claim having no other alternative because as per the provisions of the Motor Vehicle Act no person is competent to drive/ply a vehicle in public place unless he holds effective and valid driving licence for the purpose.

Decisions & Reasons

No doubt, it is stated that the accident was due to 'brake-fail'. But irrespective of the fact of the cause of accident it appears to be one of the policy condition to engage a driver (by the owner of the vehicle) who has in his possession an effective and valid driving licence at the time of occurring the loss. The surveyor in his survey report has mentioned that the owner of the insured vehicle failed to produce documents including driving licence of driver in spite of demands. Subsequent steps taken will show that the claimant has mentioned the name of the driver as Kamala Kanta Nath having driving licence no. 27608/CH with endorsement 2652/NB/99 (endorsement was issued by Nalbari D.T.O.).

Thus, genuineness of the driving licence in question could not be verified and therefore, there is no acceptable evidence from the complainant/owner of the insured vehicle that at the time of accident, the vehicle was driven by competent driver holding valid and effective driving licence. This finding will violate the policy condition disentitling the complainant from relief, for which we find no scope for interference in the action taken by the insurer at this point of time and on the basis of documents and papers submitted before us.

In view of the discussion aforesaid, matter stands closed from this end.

Guwahati Ombudsman Centre
Case No. : 11-005-0072/06-07
Shri Malcolm. P. Giri
Vs
The Oriental Insurance Co. Ltd.

Award Dated : 20.12.2006

Facts (Statements and counter statements of the parties)

The grievance of the complainant is that due to an accident on 29/01/05 his insured vehicle ML 05D/1399 was badly damaged. He lodged the claim with the insurer but the same was rejected, inter alia, on the ground that facts disclosed in the connected FIR

were not consistent with the actual damages of the vehicle as noted otherwise in course of investigation etc.

Without disputing the insurance cover and the accident in question, the insurer has come forward with a plea that there is no consistency between the statements of the owner of the insured vehicle made in the connected FIR lodged with police and actual damages noticed on looking into the photographs and other connected materials and accordingly the claim was repudiated. The insurer, however, appointed Surveyor to investigate surrounding facts and submit his report on the nature of accident and extent of damage, quantum of loss etc., which was done accordingly.

Decisions & Reasons

The surveyor has submitted a detailed report recommending damages to the extent of Rs.2,05,158.76 with further statement that if salvages are not returned to the insurer a sum of Rs.9,000/- may be deducted from the assessed/recommended amount of loss. That in case of availability of genuine and valid receipts a further sum of Rs.1500/- may be re-imbursed for lifting the vehicle from the site of accident to place of repairing etc. We have given our serious considerations on the views expressed by the insurer that actual damages to the vehicle are not consistent with the nature of accident and manner of damages as narrated by the complainant/owner of the insured vehicle. But then, the very purpose of appointing surveyor is to investigate on these things including nature of accident and extent of damage caused to the vehicle after immediate local inspection of the spot of the accident and examination of the affected vehicle before and after repairs etc. We don't understand how the officers sitting comfortably in their office and looking at the photographs and some documents could come to a decision on the extent of damages to the vehicle and nature of accident etc, that too, contrary to the findings of the surveyor and to say that the damages are not consistent to the nature and description of the accident as given in the connected FIR. If it was possible for persons other than experts to express such views with certainty then there would perhaps been no need of appointing surveyor incurring big expenses. We find it difficult to accept such views expressed by the learned Chief Regional Manager as forwarded to us through the self-contained note in support of repudiation of the claim. In our considered opinion the ground shown for repudiation is neither logical nor in depth of expertise assessment and accordingly, has no force. There is absolutely no basis to impute that the owner of the insured vehicle or the complainant has come with unclean hands in lodging the claim.

There is no proof to the contrary that vehicle was damaged by/in an accident. It is a different question that the nicety of descriptions of a particular event may vary from man to man, but that, by itself, will not suggest any presumption of one or other being 'uncleaned' in his attitude unless a clear case of wrongful intention is established. We are of the opinion that the repudiation aforesaid has no acceptable ground and accordingly, is totally invalid. The claim is to be processed in the guidelines of the survey report and subject to verification of relevant vouchers and documents and payments to be made accordingly.

In view of the discussions and guidelines as aforesaid, the insurer is hereby directed immediately to start process of settlement of the claim and to arrive at a reasonable decision immediately.

Guwahati Ombudsman Centre
Case No : 11-004-0085/06-07
Mrs. Mira Talukdar
Vs

United India Insurance Co. Ltd.

Award Dated : 31.01.2007

Facts (Statements and counter statements of the Parties)

Complainant Smt. Mira Talukdar (wife of Sri Rameswar Baishya) owned a vehicle (Maruti-800 URO-11), registered no.AS-01K 2053 and got it (car) insured with the opp. Party/insurer (United India Insurance Co. Ltd) for the period w.e.f. 27.03.2004 till 26.03.2005 with IDV Rs.1,60,000.00 but the vehicle was stolen from GMCH (Guwahati Medical College and Hospital) campus on 08.06.04 and could not be recovered in spite of lodging FIR (First Information Report) with Police. She lodged the insurance claim for the loss on 10.06.04 and submitted the copy of final police report on 08-11-05 but the insurer informed on 05/07/06 that it cannot pay the claim.

The contentions of the insurer/opp. Party, inter alia, are that the complainant had taken a private car package insurance policy for her vehicle in question which was financed by Union Bank of India, Rangia Branch. That the information about the theft of the vehicle was given and the insurer appointed B.N. Barthakur, to investigate the claim and he submitted his report on 27/11/2005. That the incident refers to Dispur P.S. Case No.492/04 U/S 379 IPC and it was clearly established that the insured Maruti Car was driven by one Girindra Kalita at the relevant time who allowed two passengers on hired basis to GMCH and one of them very tactfully taking him for a cup of tea managed to steal away the car. That it was clear from the facts given/quoted that the Maruti Car was used on hire basis at the material time of incident which is violative of terms and conditions of contract of insurance, refer the clause of 'Limitation as to Use' of the Contract in question. That a show cause notice was given to the insured to comment on the findings of the police that the vehicle was used on hire at the material time of theft but the insured didn't reply to the said notice etc.

Decisions & Reasons

The condition of the Limitation as to Use as printed in the policy issued to the complainant goes as follows :-

Limitation as to Use

The Policy covers use of the Vehicle for any purpose other than

Hire or Reward.

Carriage of Goods (other than samples or personal luggage).

Organized racing.

Pace making.

Speed Testing and Reliability Trials.

Use in connection with Motor Trade.

The investigator after due investigation and on recording statement of driver concerned came to a definite opinion that the vehicle was used on hire for monetary consideration at the time of loss which is a breach of the terms and conditions of the insurance policy in question. The connected police Final Report (FR) submitted by the Police in connected criminal case also states that on 08/06/04 at about 6.30 in the afternoon AS 01 K 2053 Maruti Car was driven by the driver Girindra Kalita from Rangia to GMCH with two unknown passengers. On reaching GMCH Campus, the car was parked and one of the passenger and the driver went to a tea stall for a cup of tea leaving the other passengers in the car. After taking tea, the driver was separated from the passenger and when he returned to the cite where the car was parked, he found the car was missing. The FR was closed by stating that in spite of taking all reasonable steps, the stolen vehicle could not be traced out. An attempt has been made from the

side of the complainant of this claim case to advance an explanation that the vehicle in question was not being used for hire purposes. But we find that the facts recorded in the FR is very specific when the Sub-Inspector states that on 08/06/04, at about 6.30 p.m. in the afternoon AS 01 K 2053 Maruti Car was driven by driver Girindra Kalita with two passengers on hire from Rongia to GMCH. The car was stolen away by those passengers playing a trick upon the driver.

However being simply an administrative authority, Ombudsman cannot sift the evidence like court in order to ascertain the truth of the conflicting statements given by the parties. But, then this Authority can take the help from the investigation report submitted by the surveyor appointed by the insurance company in this context. Therefore, in view of the fact that the Police Report and the investigation report have confirmed that the vehicle was used for hire at the relevant time of theft, the repudiation appears to be in order and no interference is called for.

In view of the discussions beforehand, the matter stands closed from this end.

Guwahati Ombudsman Centre
Case No. : 14-005-0088/06-07.
Mrs. Suma Lepcha
Vs
The Oriental Insurance Co. Ltd.

Award Dated : 27.02.2007

Facts (Statemetns and counter statements of the parties)

The complainant appears to be the wife of the insured, owner of the vehicle no.AR-11/0138, which met with an accident on 28.03.06. It is stated that the complainant submitted requisite papers, but till today, no settlement has been done and ultimately, the claim has been closed as 'no claim', after so many correspondences etc.

On the other hand, the stand taken by the insurer is that the policy was issued in the name of Manwai Lepcha, but the present complaint has been filed by Smt. Suma Lepcha ("a third person") who has no insurable interest and hence the claim is not maintainable by the Office of Ombudsman. That in addition to that the Insurance Company went for verification of driving licence issued in the name of Manwai Lepcha and during investigation it was revealed that no driving licence was issued as per the given particulars in the name of Manwai Lepcha and accordingly, the claim had to be repudiated by the Tinsukia Divisional Office of the insurer for violation of driving licence clause of the insurance contract and the matter has been intimated to the insured.

Decisions & Reasons

The complaint was lodged by Suma Lepcha and her letter, received on 23.01.2007, confirmed that the insured is her husband who is away in interest of service from residence due to his posting at Shillong.

On receipt of the claim-petition, it appears, that the Insurance Company appointed surveyor, Sri Pinaki Paul, who duly surveyed the vehicle and investigated the claim assessing the liability of the Insurance Company at Rs.24,500/-. The insurance cover that it was a Private Car Package Policy issued by Tinsukia Divisional Office of the insurer covering period from 09.11.2005 till 08.11.2006 in the name of Mr. Manwai Lepcha, C/o SBI Tezu Branch is admitted in the self-contained note submitted by the Chief Regional Manager of the insurer. There is nothing to challenge the authority of Smt.Sumi Lepcha claiming herself as the wife of the insured and the insurer could show nothing to confirm the stand that she is third person vis-à-vis the insurance

claim. In the self-contained note, the accident has not been denied. Moreover, the surveyor, Mr. Pinaki Paul, has clearly stated that the sum assured was Rs.1,29,000/- and the driving licence was standing in the name of Manwai Lepcha being DL No.7301/S/P issued on 04.10.1980 and is valid upto 29.04.2010 issued by DTO, Teju and the date of accident was 7.30 p.m. on 28.03.2006 at a place near Chowkham . The cause of accident has been recorded by the surveyor.

Thus, we find that the stand taken by the insurer is casual and unwarranted. Persons representing the insurer are trying to beat about the bush without coming to understand the real picture. It is a different question that the quantum of relief was sought by the complainant as Rs.46,935/- as per the bill issued by the repairer of the damaged vehicle, M/s. Shyam Auto Care, Makum Road, Tinsukia. The materials on which the Insurance Company wanted to rely is an endorsement made by D.T.O., Sonitpur on the application of Ardhendu Nath Chakravartty, the investigator, appointed by the insurer to investigate the source of driving licence.

We find that the stand taken by the insured is quite different as he claimed the DL was issued by DTO, Sonitpur on 04/10/1980 under Licence No.7301/S/P and it was subsequently endorsed on renewal by DTO, Teju on 23.09.03. Therefore, we find that rejection of the claim on the ground of doubtful validity of driving licence is not justified particularly when the surveyor appointed has clearly stated under heading 'Details of Cause of Accident' (reproduced beforehand) that one unknown truck was responsible for the accident and damage to the ill-fated Maruti Car.

Concluding, we are of the opinion that the claim is genuine and the Insurance Company is duty bound to settle the same in letter and spirit of the survey report submitted by the surveyor which report is not in dispute and supposed to have been accepted by the insurance company.

In view of the discussions aforesaid and in the guidelines given, it is hereby directed that the Insurance Company would settle the claim in terms of the survey report.

Guwahati Ombudsman Centre
Case No. : 11-005-0108/06-07.
Sri Bhagirathmal Choudhury
Vs
The Oriental Insurance Co. Ltd.

Award Dated : 13.03.2007

Grievance

The grievance of the insured is that his claim was not settled by the insurer on the plea of fake driving licence. That driving licence in question was renewed at Shillong and the renewal was in order, but the Insurance Company repudiated the claim on the plea that original driving licence was fake. That driver had another driving licence which was produced but insurance company was not willing to accept the 2nd driving licence.

Reply

The insurer admitted that the vehicle met with an accident on 25.01.05 and it was under insurance cover. That surveyor was appointed on getting the notice of the claim and survey report was procured. That on verification of driving licence No.F 6647/94 renewed by DTO, East Khasi Hills, Shillong, it disclosed a reference to original driving licence no.4386/90/TURA which was verified but it was stated on behalf of District Transport Officer, Tura, that said DL No.4380/TURA/90 was not issued from the Office of said DTO. That the original driving licence being fake, the claim was repudiated and the insured was informed accordingly. That the vehicle was registered as 'public

career' and was used for commercial purpose for which the complaint is not maintainable by the Office of the Insurance Ombudsman.

Decisions & Reasons

The law in connection with driving licence in this context has been well settled by now by different decisions of the Hon'ble Apex Court. The National Commission for consumer disputes in National Insurance Company Ltd. vs. Sant Kr Goel held that driving licence on the face of it if genuine, the owner is not expected to find whether it was issued by competent authority or not. The latest view of the Apex court in this regard is that it is not the responsibility of the owner of any insured vehicle to find out whether the licence issued to a driver was from a competent authority or not once he was satisfied on test that the driver was competent in his job and that in order to make the insured liable, the insurance company has to prove that the owner of the vehicle is guilty of negligence and had failed to exercise reasonable care in the matter of fulfilling the condition of the policy. Thus, the law of D/L at present is in supersession of the earlier view that by renewal of a forged driving licnece the fakeness of the document is not removed. Here we find that the insurance company did not take notice of the fact that the driver in question had also a second valid driving licence and that the renewed driving licence was in order at the time of accident. Therefore, we find that the repudiation of the claim has no legal foundation. Moreover, from the survey report submitted by the concerned surveyor, it will be seen that the accident was due to 'break-fail' and not due to incompetence of the driver in driving the vehicle. Therefore, we find there is no merit in repudiation of the claim which is liable to be struck down, which we do.

In view of the discussions aforesaid, the decision of repudiation of the claim taken by the insurer concerned is hereby set aside.

Guwahati Ombudsman Centre
Case No. : 11-003-109/06-07.
Prabhat Ojha
Vs
National Insurance Co. Ltd.

Award Dated : 14.03.2007

Facts leading to grievance of complainant

Briefly stated, complainant/insured states that he met with an accident on 06.10.05 due to falling of a bundle of goods accidentally upon him from a bazar bus (No.A.M.M. 378.) while he was moving by the side of that bus. He was shifted to Udalguri Khakhlari Rural Nursing Home and thereafter to Tezpur Skylark Hospital. He intimated the concerned Golden Multi Services Club Limited (GMSC Ltd) Office, Guwahati Branch, on 17.10.05 about the incident and subsequently submitted all requisite documents by 25.11.05. That the Insurance Company, however, on a plea that the intimation was given to their department after expiry of one month 7 days from the date of accident, informed him that the claim has been treated as 'No Claim'. That he intimated the GMSC Ltd about the incident within 11 days from the date of accident. Being aggrieved by the conduct and actions of the insurance company, he has approached here for appropriate relief.

Counter-statements from opp.party/insurer

In reply to the charges, the insurer (National Insurance Co. Ltd.) has submitted that the insured/claimant submitted a claim of Rs.1,00,000/- on the ground of disablement due to accident that insurance cover was granted to insured Prabhat Ojha as a beneficiary

of the GMSC Ltd as per the MOU between said GMSC Ltd and Insurer on 2nd April, 2004. That the insurer received the intimation of accident through GMSC Ltd on 14th November, '2005 which was after expiry of 38 days from the date of accident in question. That as per condition no.15 of the MOU aforesaid the claim intimation should be given within 30 days by claimant/GMSC Ltd to the insurer. That such condition has been reproduced on the back side of the policy certificate and in the instant case, neither the complainant nor the GMSC Ltd., intimated the insurer within 30 days from the date of accident. Therefore, the claim had to be repudiated due to violation of terms of the contract. That Hon'ble Ombudsman, Kolkata has passed a judgement in another complaint of the same nature holding that the repudiation on the ground of such type of belated intimation was justified.

Decisions & Reasons

Without going into details and reproduction of things which are not necessary for a decision in view of the facts stated beforehand, we find what has been in dispute is the condition no.1 appended to the policy issued in favour of the complainant by said GMSC Ltd.

Nothing has been mentioned as to what is the consequence of not giving such claim intimation whereas in the subsequent lines under this Notice of Claim it is clearly mentioned that the claim form along with necessary supporting documents should be submitted within 90 days from the date of happening of the accident and any claim after 90 days shall not be entertained. So the bar against entertaining a claim is clearly for non-submission of Claim Form and necessary documents within 90 days but nothing has been mentioned what will happen if 'claim intimation' is not given within 30 days. As against this position of facts what has been stated by the complainant is that he has sent the claim intimation within 11 days from the date of accident/incident and by 17.10.05 which is confirmed by letter issued to Mrs. Champa Ojha, wife of Prabhat Ojha, the complainant/insured, by GMSC Ltd and copy of it was received by insurer /National Insurance Co. Ltd. Division-III, Kolkata on 14th November, 2005. Therefore, we find that the ground for not entertaining the claim is not appropriate. It is a different question that the insured could have sent claim intimation aforesaid to the insurer directly in addition to GMSC Ltd without intimating the GMSC Ltd alone. We are of the opinion that the repudiation of the claim alone on this ground is not justified and as such there is no case of violation of policy terms and conditions. Such provision for claim intimation/information appears to be directory and not mandatory. Accordingly, the repudiation is liable to be set aside.

In the result thereof, it is hereby directed that the repudiation of the claim on the grounds of not sending timely intimation stand set aside and matter is sent back to the insurer to consider the claim on merit and to take appropriate decision as per other policy terms and conditions. It appears on the perusal of the policy in question that risk cover is accidental death/permanent total disablement only.

Guwahati Ombudsman Centre
Case No. : 11-005-111/06-07.
Sri Alok Deb
Vs
The Oriental Insurance Co. Ltd.

Award Dated : 15.03.2007

Facts (Statements and counter statements of the parties)

The complainant states that he filed a claim petition for damage of commercial vehicle No.AS-01/T-3376 (Tata Specio). The insurer concerned entertained the claim petition

and appointed surveyor. The estimate of loss was submitted. After survey of the vehicle
it was repaired and a bill for an amount of Rs.1,36,404/- and Rs. 2,000/- was submitted on 02.03.06 but there was no response from the insurer for quite a sometime and later on, it was informed that the claim has been repudiated due to violation of the clause regarding driving licence. The matter was clarified by the insured/complainant but, in spite of the fact that the Branch Manager concerned informed that the driving licence issued by the DTO, Kamrup is in order, the claim was repudiated on the plea that the licence issued prior to 1998 was standing in the name of another person and not in the name of the driver who drove the vehicle at the time of accident.

The insurer on the other hand submitted that a Motor Vehicle Policy was issued in favour of the complainant. The vehicle met with an accident on 10.11.05 and was duly surveyed. That at the material time of the accident, the vehicle was driven by Shri Jagadish Roy possessing driving licence No.F/1368/98/EZ/K. That on verification of the DL at the office of DTO, Kamrup it revealed that such licence was earlier issued by DTO, Nalbari by making licence no.F-2208/NB/98 but it was confirmed by the Office of DTO, Nalbari, that the said licence was issued in the name of one Ramgopal and not Jagadish Roy. That CDO-I repudiated the claim on finding the driving licence a fake. That the vehicle in question is a 'public career' used for commercial purpose and as such, the complaint is not maintainable in the Office of Insurance Ombudsman.

Decisions & Reasons

After going through the materials before us, we find that the insurer is not disputing the accident and the claim but repudiated the claim on the ground of original driving licence being fake. The law in connection with driving licence in this context has been well-settled by now by different decisions of National Consumer Commission and the Hon'ble Apex Court. The National Commission for consumer disputes in National Insurance Company Ltd. vs. Sant Kr Goel held that driving licence on the face of it if genuine, the owner is not expected to find whether it was issued by competent authority or not. The latest view of the Apex court in this regard is that it is not the responsibility of the owner of any insured vehicle to find out whether the licence issued to a driver was from a competent authority or not once he was satisfied on test that the driver was competent in his job and that in order to make the insured liable, the insurance company has to prove that the owner of the vehicle is guilty of negligence and had failed to exercise reasonable care in the matter of fulfilling the condition of the policy. Thus, the law of D/L at present is in supersession of the earlier view that by renewal of a forged driving licnece the fakeness of the document is not removed. Here we find that the insurance company did not take notice of the fact that the driver in question had the renewed driving licence which was in order at the time of accident. Therefore, we find that the repudiation of the claim has no legal foundation. Thus, we find there is no merit in repudiation of the claim which is liable to be struck down, which we do.

In view of the discussions aforesaid, the decision of repudiation of the claim taken by the insurer concerned is hereby set aside.

Hyderabad Ombudsman Centre
Case No. : G 11.005.099
Dr.M.N.Krishnamurthy
Vs
Oriental Insurance CO.Ltd.

Award Dated : 30.10.2006

Dr. Krishna Murthy's Tata Indica car bearing Regn.No. KA 05 MA 8364, which was insured with M/s. Oriental Insurance Co.Ltd.,Bangalore for the period 03.10.2005 to 02.10.2006 met with two minor accidents, the first on 25.12.2005 and the second on 27.12.2005. The insurers denied their liability for the damages caused by the accident of 25.12.2005 only. The insurers denied their liability for the damages caused by the accident of 27.12.2005 citing the condition and 4 of the insurance policy.

The insurers state that they had offered settlement of the first claim for Rs.15,000/- based on the surveyor's report and the repair's bills. The surveyor had assessed the loss arising out of the incident of 25.12.2005 only. As per condition of the policy, the insurers contend that they are not liable to pay for any damage occurring to the vehicle after the 1st accident and before the repairs for the same were completed.

Was the insurance company entitled to invoke condition 4 of the policy and deny payment for the 2nd claim arising out of the accident on 27.12.2005. A reading of the said condition indicates that it has been incorporated to protect the insurance company in the event of aggravation of the damages or fresh damage caused to the insured vehicle that has already suffered a breakdown/accident and is driven before completion of the necessary repairs.

The second accident occurred while the vehicle was parked in front of the insured 's residence. The insurers invoking the condition 4 of the policy in these circumstnaces shows lack of professionalism on their part.

The insurers are directed to have the second loss assessed and settle the claim.

Hyderabad Ombudsman Centre
Case No. : G 11.004.0139
K.Raghava Reddy
Vs
United India Insurance Co.Ltd.

Award Dated : 09.11.2006

The complainant insured his brand new Bajaj CT 100 motorcycle bearing Temporary Regn No. AP 10 AR T/R 8277 for the period 06.06.2005 to 05.06.2006. The said vehicle was stolen while it was parked in front of a Kirana store. The complainant lodged his claim with the insurer and also filed a complaint at the police station. The police authorities issued the FIR on 18.07.2005. The insurer rejected the claim vide their letter dated 28.03.2006 stating that "the loss occurred due to Contributory Negligence."

The complainant submitted that his son was sitting on the parked vehicle when some unknown persons threatened him with a knife, snatched the vehicle and sped away with it.

The insurer contended that the insured's son aged 20 years was seated on the bike when the insured was in the shop making purchases. Some unknown persons approached the boy and started a conversation. They offered to teach him how to drive a motorcycle. One of them sat in the driver's seat and made the insured's son sit in the pillion seat. As they approached a desolate place, the driver requested the pillion rider to get down. As soon as the insured's son got down, the miscreant sped away with the vehicle. It was observed that the insured's son handed over the vehicle to an unknown person in violation of the terms and conditions of the policy. Further, on enquiry it was established that the insured's son did not possess a driving licence.

Held

The complainant accepted that the vehicle was given to some unknown person who offered to teach his son driving. He also accepted that his son did not possess any driving licence. The insurer's contention that there was gross negligence on the part of the insured/his son is accepted. The policy stipulates that the insured shall take all reasonable steps to safeguard the vehicle from loss or damage. In this case I find that the insured / his son were negligent and rejection of the claim was just and in order. The complaint is dismissed.

Hyderabad Ombudsman Centre
Case No. : G 11.004.0148
M.J.Joseph
Vs
United India Insurance Co.Ltd.

Award Dated : 09.11.2006

The complainant insured his 2004 model Toyota Qualis bearing Regn. No. AP 11W 7320 for a sum insured of Rs. 3,80,000/-for the period 27.12.2005 to 26.12.2006. The vehicle met with an accident on 06.04.2006 while the driver of the Insured Vehicle was negotiating a curve.

The claim was assessed for Rs.46,300/- and accordingly claim cheque for the said amount was issued to the insured on 30.06.2006.

The complainant contended that the original estimate for repair and replacement was for approximately Rs.99000/-. He was given to understand that the surveyor had assessed the loss at Rs. 75,000/- and accordingly he submitted bills for Rs.74,250/- to the insurer on 26.04.2006.

The insurer contended that their panel surveyor assessed the claim for Rs.54,000/-. They submitted that the difference in the claim amount between the surveyor's assessment and their calculation was on 3 counts: i) Rs.5771/- was deducted from Rs.57,709/-, the claim assessed, as there was no spot survey. This deduction was in accordance with their internal rules and procedures for settlement of Commercial vehicle claims; ii) Rs. 4638/- and Rs. 1000/- were deducted towards salvage and compulsory excess as stipulated in the policy respectively; iii) there was a difference in the bill amounts- the insured produced bills for a value lesser than the surveyor's assessment. Therefore they considered the amount which was less as per their rules. As such an amount of Rs.1533/- was also reduced from the claim assessment under this head. The net claim payable was arrived at Rs. 46,300/- and accordingly claim was paid on 30.06.2006

HELD

Since the vehicle in question was a commercial vehicle and the loss was quite major, I find that the insurers were well within their rights in insisting on a spot survey. The spot surveyor visits the spot of accident, ascertains the cause of loss and mentions the damages corroborate to the cause of loss. As such I find that the deduction of 10% from the assessed claim is reasonable. The other deductions, I observe were made as per the terms and conditions of the policy. The complainant's representative brought to my notice during the hearing that the insurer did not consider the expenses incurred for towing the damaged vehicle. The insurer pointed out that bill towards the said expense was not submitted to them. A copy of the said bill was handed over to the insurer in my presence. The insurer agreed to allow the towing expenses as prescribed in the policy. The insurer is directed to pay the towing expenses as per their rules and with regards to the other deductions, I decline to interfere with the insurer's decision.

Hyderabad Ombudsman Centre
Case No. : G 11.005.0094
Sri Kantilal Gotawat
Vs
Orieintal Insurance Co.Ltd.

Award Dated : 14.11.2006

Sri Kantilal Gotawat's Toyota Qualis, 2000 year Model with Regn.No. KA 01 P 7956 was insured by M/s. Oriental Insurance Co.Ltd, Bangalore for the period 13.7.2002 to 12.07.2003. The vehicle met with an accident on 07.01.2003 while being driven by his son and was taken to M/s.Nandi Toyota, the repairers who gave a repair estimate for Rs.56,861/- The insurer deputed a surveyor for assessing the loss and subsequently offered to settle the claim for Rs.4,410/- vide their letters of 22.07.2003 and 10.09.2003.

The insurer contended that the matter of accident was reported to the Police wherein damages on the left of the vehicle due to a hit by a Matador van only were recorded and no other damages were mentioned

Held

They submit that the surveyor assessed only those damages, which are consistent with and corroborate to the cause and nature of the reported accident. They state that their offer of settlement of Rs.4,410/- was made taking into consideration the surveyor's report and the repair bills

They submitted that the insured ought to have informed each incident separately and got the damages assessed. In a policy year, they state, there is no limit to the number of accidents that can be reported or claimed for, but each incident howsoever small must be separately assessed

The insurers were directed to furnish the details of the assessment in writing to the complainant with a copy to this office. I find the insurers reasonable in their approach to the assessment of the damages and the offer of settlement which has been made.

Hyderabad Ombudsman Centre
Case No. : G 11.004.0141
Sri Masood Ahmed Fakhar
Vs
United India Insurance Co.Ltd.

Award Dated : 22.11.2006

The complainant insured his Auto Rickshaw bearing Regn No. AP 13 W 0663 under a comprehensive policy for the period 19.06.2003 to 18.06.2004 for a sum insured of Rs.50,000/- On 20.11.2003 the vehicle was stolen while it was parked in front of a wine shop. The matter was reported to the policy and FIR was lodged on 24.11.2003. The claim was intimated to the insurer on 25.11.2003. The insurers vide their letter dated 18.07.2005 rejected the claim on the grounds that: i) engine and chassis numbers were differently mentioned in the Fitness Certificate and ii) the statements of the owners and driver with regard to the cause of loss were also different.

He submitted the duplicate RC to the insurer on 27.05.2004 and the Fitness Certificate on 24.05.2004. He did not notice the difference in the numbers as pointed out by the insurers. He handed over the documents, which he received, from the RTA. If there was any error it was not made by him but by the RTA officials.

The insured did not submit the keys of the vehicle in duplicate. These only point to the fact that the driver had left the auto unlocked at the time of the theft. The insured thus

violated Condition No.5 of the policy according to which he is supposed to take all steps to safeguard the auto from loss or damage; and, condition No1 according to which the insured shall give immediate notice to the police.

The insurer vide their letter dated 21.11.2006, confirmed that there was indeed a misprint of the engine and chassis numbers in the original fitness certificate. In view of the investigator's observations, they are convinced that there is no lapse and that the claim would be settled for the sum insured as stated in the policy.

The investigation report was received on 05.05.2005, almost a year after receipt of the RC! Further they took another 2 months to reject the claim on 18.07.20051! The insurer was unable to offer my convincing reason for the delay. Therefore, I see no reason why the insured should not be compensated for the delay.

The insurer should reckon the date for calculation of interest as per the IRDA Rules from 01.08.2004 till the date of hearing i.e., 08.11.2006. The complainant's request for consideration of rent and other damages is not allowed.

Hyderabad Ombudsman Centre
Case No. : G 11.013.156
Dr. Vijay Kumar Agarwal
Vs
HDFC Chubb Genl. Ins.Co.

Award Dated : 05-01-2007

The complainant insured his Chevrolet Optra car bearing Regn. No. AP 09 AS 3028 under a motor package policy for the period 10.10.2005 to 09.10.2006. On 04.08.2006, while the complainant was driving to his clinic, there was a heavy downpour and his car was stuck on a water-logged road. He immediately contacted the emergency helpline telephone number and his vehicle was towed away to the workshop for repairs. The incident was informed to the insurers and they appointed their panel surveyor to assess the damages. The damages were assessed for Rs. 30,450/- and accordingly the claim was settled for the said amount as against the repair estimate of Rs. 1,50,000/- submitted to the insurers.

The complainant contended that he neither attempted to crank the car nor push it. He called the emergency helpline and the car was towed away to the garage. He was a victim of unfortunate circumstances and did not cause the damages deliberately. Since the damages were caused on account of natural calamity, he was entitled to receive the full amount claimed.

The insurers contended that they settled the claim as per the recommendations of their panel surveyor and the policy terms and conditions. In this case, damages to the connecting rod, engine block, crank shaft etc. were not considered as they were out of the scope of the policy and fell under the exclusion –consequential loss. Their surveyor was of the firm opinion that these parts could have been damaged only due to abrupt pushing/ cranking pressure.

Held

The insurer's panel surveyor explained in detail during the hearing proceeding that it is unlikely that both the engine block and the crank shaft can get damaged simultaneously. The insurers drew my attention to exclusion No.2 (a) of the policy, according to which Consequential loss, depreciation, wear and tear, mechanical or electrical breakdown, failures or breakages are not covered under the scope of the policy.

To get through the impasse and to have a clearer picture of the cause of loss, I referred the file to an independent motor surveyor and sought his opinion as to whether the damages could have been caused without re-starting/ attempting to re-start the car. His opinion only added to the confusion as the surveyor was not categorical in pointing the exact reason for the stoppage of engine. On the one hand he reiterates the finding of the insurer's panel surveyor that the damages were only on account of hydrostatic lock, while on the other he vaguely adds that "the parts thus not considered stating as loss due to consequent damage is not getting established." Apparently both the surveyors concur that the damages were on account of entry of water into the engine and consequently the engine stopped functioning. However the complainant strongly argued that he called the repairer who towed the car to the garage.

Hence very strict and technical interpretation of the exclusion clauses may not be fair and equitable on the facts and circumstances of the claim. In view of the conflicting statements, I am inclined to award an amount of Rs.50,000/- (Rupees Fifty Thousand Only) as ex-gratia to the complainant which in my opinion is fair to mitigate his hardship and financial loss.

Hyderabad Ombudsman Centre
Case No. : G 11.005.136
S. Jagadisha Rao
Vs
Oriental. Ins.Co., Ltd.

Award Dated : 05-01-2007

A Santro Car, no. KA 05 Z 5506, was insured by M/s. Oriental Insurance Co. Ltd., Bangalore in the name of Smt. Karuna Rao from August 2001. The registration of the vehicle was got changed from the name of Smt. Karuna Rao to that of her husband Sri Jagadisha Rao in October 2004. However the renewal of insurance, in August 2005, was effected in the name of the previous registered owner Smt. Karuna Rao

The said car met with an accident in September 2005 and a claim was lodged with the insurance company. In January 2006, the insurance company rejected the claim stating that there was no insurable interest. Sri Jagadisha Rao stated that the transfer of registration to his name was effected only for convenience and it was not a sale as no consideration was involved.

Held

I observe from the record that Sri Jagadisha Rao had mentioned in his initial complaint dated 17.8.2006 about informing the insurers regarding the change of ownership. However, he had not raised this issue either in his formal complaint of 25.09.2006 in the prescribed forms or in his written brief dated 18.12.2006. Insurers also submitted that the insurance premium receipt was given immediately and the policy was also prepared in the name of the previous owner. Insurers stated further that the complainant had not pointed out any error on this count when the premium receipt and policy were given. In view of the above I conclude that the insurers were not informed of the change of ownership prior to the date of accident.

As regards the other issue raised by the complaint that the claim was wrongly rejected on the ground of insurable interest, I am inclined to agree with the submission of the insurers that husband and wife are separate legal entities and when a change of ownership was recorded in the Registration Certificate, it ought to have been conveyed to the insurance company for a similar endorsement in the policy of insurance

While the insurers argue that they are not liable for any Own- damage claims occurring between 28.08.2005 and 18.01.2006, they have not shown any concern for equity which would demand that the insurers not receive or retain any premium for that period under that head. I hold that insurers ought to have returned, to their policy-holder, the proportionate own-damage premium for the period the own-damage cover was not available basing on the principle of insurable interest. I therefore direct them to do so now.

Hyderabad Ombudsman Centre
Case No. : G 11.012.0188
Shri Avanigadda Bhagyalakshmi
Vs
ICICI Lombard Gen Ins. Co.Ltd.

Award Dated : 19-01-2007

The complainant insured her Tipper Lorry bearing Regn.No. AP 05 TT 2338 under the above stated policy for the period 01.02.2006 to 31.01.2007. The vehicle met with an accident on 06.07.2006 when the driver operated the telehoist system of the lorry for unloading the material. At the same time the Rear Right Hand Side tyres sank into the soil and due to improper balance the vehicle toppled over and fell to its right. As against the initial repair estimate of Rs. 4,71,650/-, the insurers' surveyor assessed the claim for Rs.1,41,125/- and noted in his report that "the vehicle received impact due to unrestrained internal forces which lead to mechanical failure..."

The insurers vide their letter dated 18.09.2006 rejected the claim on the ground that the damage to the vehicle was not due to any external bodily impact to the vehicle and the failure might have occurred due to mechanical failure of telehoist system or improper operations of the same.

Held

The insurer's panel surveyor stated during the hearing that the accident was on account of improper handling of the telehoist system / mechanical failure. He further added that the vehicle toppled over due to improper balance. On being asked about the proximate cause of damage, he stated that it was because the tyres of the lorry sank into the loose soil. In the surveyor's opinion the sequence of events were like this - tyres of the lorry sank in the sand, the driver lost control of the vehicle due to improper balance, the lorry tilted to its side and toppled over and this lead to the failure of the telehoist system.

I observe from the surveyor's report that the failure of the telehoist system and the sinking of the tyres occurred simultaneously. Since there is an unbroken chain of events, I am inclined to give benefit of doubt to the complainant and accept the fact that the damages to the tipper were on account of the sinking of the tyres in the loose sandy soil. The insurer's objection regarding the premium payable to cover the risk of overturning is set aside. They ought to have calculated the premium by applying the correct rate at the time of issuing the policy based on the declarations made by the insured. The insurers are directed to honour and process the claim as per the assessment made by the surveyor

Hyderabad Ombudsman Centre
Case No. : G 11.012.0192
Shri Mohd. Hussain
Vs

Bajaj Allianz Genl. Ins. Co.Ltd.

Award Dated : 19-01-2007

Mohd. Hussain insured his Auto rickshaw and gave it to one driver Sri. Raju, on payment of weekly rent. On 10.06.2005, Sri. Raju went to the complainant's residence and paid the week's rent. After this date, he neither came to pay the rent nor did he hand over the vehicle. On enquiry it was revealed that the driver fled the place with the auto. The complainant, then, lodged a complaint with Miyapur Police Station on 22.06.2005 and also lodged the claim. The insurers sought clarifications by letter dated 29.07.2006 and the complainant furnished the same vide letter dated 17.08.2006. However, the insurers rejected the claim as not payable in terms of the policy.

The complainant stated before this office that the driver to whom he had entrusted the vehicle was known to him and had driven his previous autorickshaw also. The same insurer settled a similar claim pertaining to one Sri. B. Thukaram and he was unable to comprehend why his claim was rejected.

The insurers contended that the insured entrusted his auto to Sri. Raju, who paid rent on a weekly basis for use of the vehicle and although there was no written contract, it was an oral one. The motor policy issued to the complainant specifically excluded losses arising out of contractual obligations.

Held

The insurer's objections are on two counts : i) the policy issued does not cover losses arising out of breach of trust ii) losses arising out of contractual obligations are not payable. Although the insurers may have a technical point, I do not think the hapless complainant would have had any control over the noting made by the police. The insurers ought to appreciate the social and educational status of the complainant before taking such a harsh decision of rejecting the claim. It is too much to expect the complainant to be aware of the various sections of the IPC. As far as he was concerned his auto was stolen and as was expected of him, he approached the police to lodge his complaint. To penalize him, for something over which he had absolutely no control, was unjust and unfair.

The insurers also have to explain for their different stand in settling the claim of one Sri. B.Thukaram. In this case I note from the Police FIR that the circumstances of theft are similar and the police have registered the complaint under Section 406 IPC. The complainant cannot be faulted for quoting this case during the hearing.

Both the insured and the insurers confirmed that the practice in Hyderabad as regards plying of Auto-rickshaws by other than owner-drivers was that the owner entrusts the vehicle to a known person who plies it and gives the owner a part of the collection. The complainant had evidently followed the practice that was in vogue. He conveyed that all major and minor repairs to the vehicle including cost of maintenance and insurance are borne / attended to by the owner. Thus it is clear to me that the vehicle was operated for hire as per the trade practice.

The complainant also placed before me a summary of the decision of the Madhya Pradesh State Consumer Disputes Redressal Commission (Appeal No.552 of 2002 – Oriental Insurance Company Vs. Mubeen and another, decided on 11.03.2003) wherein the Forum had given their reasoned decision directing the insurers to pay the claim following a similar theft wherein the police had registered the case under Section 408 of IPC. It is reported therein that the National Commission in Oriental Insurance Vs. Rohit Kumar Gupta 1994 (1) CCC 328 (NS) had noted that the language used in illustration 'd' of Section 378 IPC is to be seen to decide whether the offence committed would constitute theft. The said illustration'd' of Section 378 IPC reads:

“A, being Z’s servant and entrusted by Z with the care of Z’s plate dishonestly runs away with the plate without Z’s consent. A has committed theft.”

Having perused the papers and heard both the parties, I have no hesitation in concluding that the offence committed by Sri Raju constitutes theft as illustrated above

In view of my conclusion that theft was indeed committed, as confirmed by the charge - sheet / case disposal report filed in the court, I direct the insurers to honour, process and pay the claim.

Hyderabad Ombudsman Centre
Case No. : G 12.12.0167
Sri M J Somashekar
Vs
ICICI Lombard Genl.Ins.Co.Ltd.

Award Dated : 29-01-2007

Sri Somashekar, owner of Maruti Zen Car No. KA 09 N 8800, gave a cheque on ICICI Bank to M/s. ICICI Lombard General Insurance Co Ltd on 18.10.2004 for the insurance of his car. The insurers issued their policy No. 3001/1031652/00/000 for the period 18.10.2004 to 17.10.2005. On 22.08.2005 the vehicle met with an accident and repairs were effected at a cost of Rs. 1,19,806/-. The insurers rejected the claim stating that the cheque given by Sri Somashekar towards the insurance premium had bounced.

Held

The insured showed his bank statements and claimed that no debit was ever made in his account as charges debited for issuing cheque without sufficient funds. He also submitted that he never received any intimation from the insurers on the matter of cheque bouncing or cancellation of policy. He submitted that the insurers ought to have taken steps if his cheque bounced. The very fact that they did not intimate him or take any action under the Negotiable Instruments Act indicated that his cheque never bounced, he contended.

The insurers’ representative could not explain sequentially the steps taken by his company when the cheque bounced. He could not produce the record of bank pay-in-slips, intimation from the bank, the record of endorsements made on policy, the record, if any, of the despatch of the notice of cancellation of insurance sent to the complainant and the Regional Transport Authorities. Though the insurers were given a further telephonic reminder they have failed to give the all the information even after 30 days from the date of the hearing. I conclude that they do not have anything to convey. It might be argued that the insured could have verified his bank statements and informed the insurers that the cheque was not debited to his account. Having regard to the position of the complainant as a small businessman, I hold that the insurers were the party to be largely blamed.

The insurers could not establish before me with documentary evidence that the cheque had indeed bounced and that they had intimated the fact to the insured as contended. On the contrary they had processed the intimated claim by issuing the claim form and deputing the surveyor. The accident repairs were estimated at Rs 2,93,645 / and the surveyor assessed the loss as Rs 88,773/. In view of the lapses on the insurers’ part, I direct them to pay an amount of Rs 75,000 as compensation.

Hyderabad Ombudsman Centre
Case No. : G 11.002.0191
Smt K Suseela
Vs

Bajaj Allianz Gen.Ins.Co..Ltd.

Award Dated : 09-02-2007

The complainant's son, Sri. K. Naresh insured his goods carrying auto rickshaw bearing Regn No. AP 28W 8119 under a comprehensive motor policy for the period 10.04.2006 to 09.04.2007. On 02.07.2006, when the said vehicle was coming towards Kattedan, it was hit by a bus which was coming from the opposite side in a rash and negligent manner. In the collision the vehicle was damaged badly and the driver of the vehicle, who was the insured, was grievously injured. He died while undergoing treatment. The insured driver did not possess a valid driving licence to drive a goods carrying autorickshaw. The insures rejected the claim on this ground.

The complainant conveyed that her son had a non-transport driving licence. However at the time of accident the said auto did not carry any goods. Therefore a transport licence need not be insisted upon. Further this accident was caused entirely due to the rash and negligent driving of the opposite RTC bus. This fact has been noted in the Police FIR also

Held

The complainant has sought my intervention on 2 issues: i) compensation under Personal Accident section of the policy to the extent of Rs.2,00,000/- for owner-driver and ii) compensation for the damages to the insured vehicle.

As regards the first issue, the insurers cited Section 3 of the Motor Vehicles Act, 1988 which deals with the necessity for driving licence. I observe that the Act has clearly mentioned in the said section "no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle unless his driving licence specifically entitles so to do."

Therefore as per statute, it is clear that the driver of a transport vehicle must possess a licence valid to drive that class of vehicle. I note that a certificate from the Additional Licencing Authority, Mahaboobnagar, dated 22.11.2006, was obtained which shows that Sri. K. Naresh is authorised to drive Auto rickshaw (non-transport) only. This reiterates the statutory provision.

Further, General regulation No.36 (a) of the India Motor Tariff, states that Compulsory Personal Accident for owner-driver is allowed only when 2 conditions are fulfilled- i) the insured should be the registered owner of the vehicle and ii) the owner should possess an effective driving licence at the time of accident. In this case it is evident that the owner-driver did not have an effective driving licence to drive the goods carrying auto at the time of accident. The policy issued contains the Driver's Clause which reiterates the need for an effective driving licence. In view of the fact that there was a violation of the statutory provision of possessing an effective driving licence, which is an essential pre-requisite for a valid claim under the P.A. for owner-driver, I decline to interfere with the insurer's decision under this head. No compensation is allowed under this head.

As regards the second issue pertaining to the claim on damages to the vehicle, it appears that the insurers rejected the claim on the ground that the driver did not have a valid licence. The insurers cannot be faulted for rejection of the own damage claim, as their decision was in accordance with the terms and conditions of the policy.

However, I observe that the complainant lost her grown up son, who had purchased the vehicle by raising a loan. The family, it appears, had pinned their hopes on the deceased in contributing to the maintenance of the family. Therefore, I am inclined to

take a sympathetic view and hereby direct the insurers to settle the Own Damage claim on non-standard basis at 75 % of the loss assessed by the surveyor on ex-gratia basis.

Hyderabad Ombudsman Centre
Case No. : G 11.003.0198
Order Date: 21.02.2007
Shri V Prabhakar Goud
Vs
National Insurance Co.Ltd.

Award Dated : 22-02-2007

The complainant insured his 2003 model Maruti Zen car bearing Regn. No. AP 10 AB 7240 under a motor insurance policy for the period 06.10.2005 to 05.10.2006.The car was damaged on the night of 05.08.2006, while it was parked in his residential complex as there were heavy rains and his car got submerged in the water. The insurers arranged for survey of the damaged vehicle and the loss was assessed for Rs.11,577/- as against a repair bill of Rs 51,992/- The complainant did not agree for the partial settlement

The complainant contended that his car which was parked on the main road near his residence was damaged because of entry of water into the vehicle. Water had risen beyond the bonnet level. He was informed by the authorised dealer not to start the car and have the same towed to their workshop. Accordingly he had the car towed. He incurred a total expenditure of Rs.53,092/- towards repair / replacement charges including towing charges

The insurers contended that damages to the Engine Assembly were purely non-accidental. The insured attempted to start the engine due to which it got damaged. This was a consequential loss and not covered under the policy issued to the complainant. They also added that, had the car been towed to the repairers in as is condition, no further damages would have occurred to the engine/engine block. As such, only those parts damaged while the vehicle was in stationary, parked condition were allowed by the surveyor.

HELD :

I observe that the insured had addressed a letter to the insurers on 14.08.2006, wherein he accepted that the water level was up to the bonnet level. During the hearing the surveyor categorically stated that, in this case the damages to the engine and engine block were only because there was an attempt to start the car when water had ingressed in the cylinder block which resulted in the bending of the connecting rods and cracking of piston. He added that in a stationary engine, with entry of water, there could not have been any other damage other than rusting and water mixing with the cooling fluids.

I also note in the file a letter from the complainant addressed to the insurers dated 26.09.2006 that he deserved a compensation of approximately Rs.40,000/. The insurers however settled the claim for Rs.11,900/- only. The insurers have based their decision on the terms and conditions of the policy. However since there were heavy rains in the first week of August, 2006 and many areas of the twin cities were inundated, damages to the vehicle cannot be brushed aside. I am inclined to take a sympathetic stand in view of the unusual down pour. In my opinion some nominal compensation to the complainant whose vehicle was damaged due to rains is justified.

The insurers had earlier offered to pay Rs.11,900/-. In addition to this amount, they are directed to pay an additional Rs.7,500/-, which is approximately 25% of the balance after considering the amount initially offered. They are directed to settle the claim for a total amount of Rs. 19,400/- (Rupees Nineteen thousand four hundred only) on ex-gratia basis.

Hyderabad Ombudsman Centre
Case No. : G 11.003.0254
Shri U Anil kumar
Vs
National Insurance Co.Ltd.

Award Dated : 26-02-2007

Shri Anil Kumar took insurance for his New Tata Indicab from M/s. National Insurance Co. Ltd., Secunderabad for the period 31.12.2005 to 30.12.2006. On 06.04.2006 the vehicle met with an accident wherein one person died and two others were injured. The police filed charge-sheet against the driver of the opposite truck No AP 31Y 1323, Sri P.Suribabu. The insured's vehicle was driven by one, Sri Toni, who held licence for LMV Non-transport only. The insurance surveyor declared the vehicle a Total loss as the assessed loss on repair basis was Rs.3,19,598. He advised the insurers against settling the claim on repair basis, as repair- basis assessment was more than 75% of the value of vehicle. The surveyor had not verified the Driving Licence of the insured vehicle's driver. The insurers on 3.10.2006 rejected the claim on the ground that the driver's Driving Licence did not carry the badge no, which they said was a pre-requisite for driving the above type of vehicle.

Sri Anil Kumar contended that the accident occurred due to negligence of the Third Party truck driver, who was charged by the police. He submitted that the criteria to be considered is whether driver was capable of driving the cab and holds a licence, and not the existence of badge number.

Held

The insurers, submitted that a breach of the policy had occurred and so they were not liable to pay the claim. When asked whether they repudiate all claims wherever there was any breach of the policy conditions, the insurers' representatives conceded that there was a system of settling claims on Non-standard basis in cases where the breaches were seen to be not material or only technical in nature.

Further they contended that the complainant was not eligible for a non-standard claim since he ought not to have given the vehicle to a person who was not duly licenced under the provisions of the law. I find this argument of the insurers as being devoid of merit. It is not anyone's case that Sri Tony did not know how to drive a four wheeler motor car; he holds a valid licence for that. It may be that he was at the time of accident driving a taxi. The insurers were, themselves, not sure as to under what clause they were rejecting the claim. Initially they said that absence of the badge number was the only issue. I fail to understand how the absence of badge number affected the driving skill or has contributed to the unfortunate accident. It is clear from the police record that the incident occurred due to the negligence of the driver of the opposite coming truck.

In the circumstances of this case I hold that the insurers were not justified in rejecting the claim in its totality. No doubt there has been a breach, but it does not appear so serious as to totally deny the insured, indemnity for the damages to the insured

vehicle. I direct the insurers to honour the claim on Non standard basis at 65% of the otherwise allowable claim.

Incidentally I note that the insurers in their repudiation letter referred to assessment of claim on repair basis and the submission of repair bills. The insurers' representatives admitted that this was an error and that the vehicle was a total loss as detailed in the survey report. I observe that Insurance surveyor in his report wrote that he convinced the insured about valuation of vehicle at Rs. 2,75,000/- while the Insured Declared Value under the policy was Rs. 3,23,181/- I understand that there are provisions in the India Motor Tariff issued by the Tariff Advisory Committee on the fixing of the value of the vehicle. The insurers ought to be guided by this.

Hyderabad Ombudsman Centre
Case No. : G 11.004.0196
Sri K Venkata Subbaiah
Vs
United India Ins. Co.Ltd.

Award Dated : 01-03-2007

The complainant's car met with an accident on 01.06.2006. As against the estimate of Rs.63,043/- submitted to them, the insurers approved the claim for Rs.19,780/- only .The insured stated that when the motor cyclist hit his vehicle, control was lost and the car steered to the right side of the road. While doing so, the car went over a big stone resulting in damages to the under-carriage of the car especially the drive shaft and the silencer assembly, in addition to quite a few other parts.

The insurers stated that the insured never brought to their notice the damages to the under carriage. As such those parts were disallowed from their calculation and the claim was approved for Rs.19,780/-

Held

The insurer's objections with regard to the bills not bearing Sales Tax numbers are justified. The clarification offered by the repairers is unconvincing. I agree with the insurers that the insured did not bring to their notice either in the claim form or by way of any clarification, the cause and extent of damages to the underside of the car. The insurers stated during the hearing that they re-calculated the claim and are offering Rs. 29,717/- to the insured, by disallowing the front silencer assembly (not mentioned either in the spot survey report or claim form) and a few other small parts which were not shown to the re-inspection surveyor. The offer included towing charges as per the policy and the survey fees of Rs.1784/- paid by the insured.

In my opinion the insurers have been reasonable in their calculations and are justified in offering Rs. 29,717/- as claim payable. I direct the insurers to settle the claim accordingly.

Hyderabad Ombudsman Centre
Case No. : G 11.005.0211
Sri D Bheem Singh
Vs
Oriental Ins. Co.Ltd.

Award Dated : 01-03-2007

The complainant insured his Bajaj Scooter bearing Regn. No. AP 25B 67 under a package policy for the period 17.12.2004 to 16.12.2005 . His son, Sri. D. Ravinder,

died due to electrocution on 11.10.2005 when a live electric wire fell on him while he was riding the scooter. The complainant lodged a claim under personal accident benefits for owner-driver with the insurers for compensation of Rs. 1,00,000/-. The insurers in their reply to the complainant's legal counsel conveyed that the claim was not tenable under the policy. As per the policy, Personal accident cover was available to the owner-driver who is the registered owner of the vehicle insured and possessed an effective, valid driving licence at the time of accident.

Held

General Regulation No.36 of the India Motor Tariff deals with Personal accident cover in the motor policy. I observe from the policy copy issued to the complainant that additional premium of Rs.50/- was charged and the policy clearly states "P.A. cover under Section III for owner-driver (CSI) Rs. 1,00,000/-." Further the Tariff mentions that owner-driver for the purpose of Personal Accident section is the owner of the insured vehicle holding an effective driving licence. In this case the registered owner of the insured vehicle is the complainant who was not the driver at the time of accident. The complainant's contention that he was not informed about the coverage is not accepted as I find the terms clearly printed in the policy. The complainant, a bank employee cannot claim ignorance of the policy terms and conditions. I find that the insurers have not been arbitrary in denying the claim. I decline to interfere with the insurer's decision.

Hyderabad Ombudsman Centre
Case No. : G 11.004.0205
Shri Boyapalli Sridhar Reddy
Vs
United India Ins.Co.Ltd.

Award Dated : 12.03.2007

A tempo trax No. AP 24V 3497 belonging to Sri Sridhar Reddy was insured by M/s United India Insurance Co. Ltd. On 20.7.2004 the vehicle met with an accident, which also involved three other vehicles. A claim made to the insurance company was rejected by them on 1.9.2005 on the grounds that (i) there had been a violation of the policy conditions (carrying 19 passengers instead of the permitted twelve) and (ii) the driving licence of the driver was converted to drive Transport vehicle only on the date of accident i.e, 20.07.2004.

The insurers stated that their investigator found the conversion to have been done on 20.07.2004 and did not press their repudiation on this count. The complainant had submitted that 19 persons were not in his vehicle and that some of the injured persons were travelling in the other 3 vehicles which were also involved in the said accident. The criminal case proceedings against his driver were in the concluding stage. Vide award dated 25.7.2006 this office had directed the insurer to keep the file open and to process the claim based on the findings of the criminal court.

The complainant submitted a copy of the judgement in CC No.748 of 2004 in the court of JMFC at Nalgonda and contended that his driver was released. He also contended that the rejection of his claim by the insurers even after his submitting the judgement copy to them was improper. He sought settlement of his claim for damages to his vehicle as there was no case against his driver.

The insurers had rejected the claim on 20.10.2006 after receiving the copy of the judgement in the criminal case, on the ground that the criminal court did not deal with the terms and conditions of the policy. The insurers contended that (i) there were several inconsistent and contradictory statements by the witnesses, (ii) it is a well

established principle that findings of the criminal court are not binding on the Claims Tribunal and the Civil Courts, (iii) a high degree of culpability is required in criminal cases, (iv) the insured committed a breach of the terms and conditions of the policy and of the permit by carrying more persons than permitted and (v) even for a Third Party's claim arising out of this accident, they were not liable, in view of the provisions of Sec 149 (2)(a) of the Motor Vehicle's Act 1988. They submitted that in view of all the above they were justified in rejecting the claim for damages to the vehicle.

Held

The complainant remained absent and also did not send any representative duly authorised. I find from the judgement in the case against Sri Gajavelly Ramesh, driver of the insured vehicle that the judge had made certain observations: "the material let in by the prosecution did not speak that the accused was the driver of the crime vehicle at the time of accident. It is not safe to conclude that the driver was negligent in driving the vehicle... The only material for connecting the accused is the evidence of the owner of the vehicle. But the prosecution did not examine him in order to substantiate its case". The judge pronounced the accused as not guilty of the offences under Sec 304 A, 337 and 338 of IPC.

I see some merit in the argument of the insurers that the findings of the criminal court are not binding for a civil case. For the purpose of disposing the present complaint against the insurer before this office, I deem it proper to conclude, based on the claim documents and evidence / depositions in the criminal case, that Sri G Ramesh s/o Sri G. Bixapathi holding driving licence No.180/20000 ALA, Bhongir, Nalgonda Dist was driving the insured vehicle at the time of accident.

The issue before me is whether the insurance company was justified in rejecting the claim for the alleged violation. Though the court has rejected the charges against the driver under sections 304 A, 337 and 338 of IPC, no findings have been given by the said court on the number of persons travelling in the vehicle. I note that the seating capacity of the insured vehicle was twelve. As per the notes in the Remand Case diary for 20-08-2004 there were 19 persons travelling in the insured vehicle. The other police documents speak on the issue similarly. Hence I have no hesitation in concluding that there were more than the number of the permitted number of passengers in the vehicle at the time of the accident. I see no reason to overrule the decision of the insurers.

Hyderabad Ombudsman Centre
Case No. : G 11.008.0223
Shri M Achyutasivaram
Vs
Royal Sundram Alliance .Co.Ltd.

Award Dated : 12.03.2007

The complainant insured his Tipper Lorry bearing Regn No. AP 16 TV 5811 for a sum insured of Rs.15,80,000/-. The vehicle was damaged in a fire accident on 18.03.2006. The insurers deputed their spot and final surveyors to survey and assess the damages to the vehicle. The final surveyor assessed the damages tentatively for Rs. 5,67,443/- on repair basis and also considered replacement of the chassis. The complainant demanded settlement of the claim on total loss basis and in support of his stand submitted a copy of the order dated 29.05.2006 of Registering Authority, Vijayawada, which stated that chassis replacement was not permitted

Since there was a dispute in the mode of settlement of the claim, the complainant approached this office and sought my intervention. The insurers contended that their licensed surveyor approved the estimate based on the terms and conditions of the

insurance contracts taking into account the extent of damages. In this case the vehicle could be repaired after replacement of the components as per the assessment report which was also endorsed by the repairer.

As there was no consent from the insured, repairs were not undertaken. They were agreeable to allow full replacement of chassis frame as supplied by the authorised manufacture and not with any other chassis that would change the character of the chassis frame. This fact was clearly explained to the insured vide their letter dated 12.04.2006.

They were not liable to pay for any consequential loss or any other loss attributable to delay in repairing the vehicle as they were excluded from the scope of the policy. They were ready to pay the claim on partial loss basis as assessed by their surveyor and communicated to the insured.

Held

I find that the insurers were fair and justified in their stand in offering replacement of a brand new chassis frame from the manufacturer. They contended, rightly so, that such a replacement would not in anyway alter or change the basic features like character, position, size or shape. The complainant was unable to explain convincingly as to why he was not ready for this offer and insisted on total loss settlement.

The RTA in their order did not assign any reasons for issuing such an order. In my opinion this needs to be examined in detail and clarifications will have to be sought from the RTA, for which I am not empowered. In the circumstances, I direct the insurers to process the claim as per their surveyor's assessment. The complainant's demand for considering the claim on total loss basis and his request for additional amount towards damages is disallowed. I decline to interfere with the insurer's decision.

Hyderabad Ombudsman Centre
Case No. : G 11.12.0206
Sri Sardar Gurbachan Singh
Vs
ICICI Lombard Genl. Insurance Co.Ltd.

Award Dated : 12.03.2007

The complainant insured his motor cycle which is said to have met with an accident on 24.10.2006. He stated that while he was driving the vehicle, a pig came in the way and hit the bike and later he dashed against a tree, resulting in damages to the vehicle. The insurers rejected the claim on the ground that the cause of accident mentioned in the claim form was not corroborating with the actual damages.

Their panel surveyor arrived at this conclusion based on the following facts: i) As per the declaration made by the insured, the accident had an impact on the front side but there was no damage either to the fork or chassis which ought to have been damaged due to impact in this accident. Moreover the estimate included parts which would not have been damaged without damages to either the fork or the chassis. ii) The complainant claimed for broken speedometer but the cowling encasing the same remained intact with just a minor scratch. iii) The fuel tank had a sharp dent which could not have happened in this accident. iv) The estimate also included the front wheel hub. Since the hub is made of heavy metal and is covered by the wheel parts and the tyre, the same could not have been damaged unless there was a heavy impact on the hub. In view of the many discrepancies, the claim was repudiated.

Held

The complainant's representative was not permitted to be present at the hearing a he did not produce any letter of authorisation. In fact this was the second opportunity extended to him, as he expressed his inability to attend the hearing scheduled on 20.02.2007. Therefore the matter was heard ex-parte.

I note that the insurers were not arbitrary or hasty in their rejection. They have scrutinized the file and also sought a second opinion from another surveyor in support of their stand. The complainant lost the opportunity of being examined during the hearing and I am reasonably convinced about the repudiation of the claim. As such I decline to interfere with the insurer's decision.

Hyderabad Ombudsman Centre
Case No. : G 11.12.0235
Complainant: Sri G.Sanjeeva
Vs
ICICI Lombard Genl. Insurance Co.Ltd.

Award Dated : 12.03.2007

The complainant insured his Toyota Qualis which met with an accident on 28.11.2006. While the claim was being processed, it was revealed that the vehicle was used for commercial purposes at the time of accident. Therefore, the claim was repudiated on the ground that "the car was used otherwise than in accordance with the Limitations as to Use. The complainant contended that the police registered the FIR against the driver of the opposite vehicle which was on the wrong side. This was indicative of the fact that his driver was not responsible for causing the accident. His vehicle was registered as a private car and was used for personal purpose at the time of accident..

The insurers contended that the insured's driver in his statement to the police mentioned that there were engineers of the irrigation department in the vehicle at the time of accident.

Held

The insurers submitted a copy of a letter from" The Director, Institute of Resource Development and Social Management" dated 05.03.2007 addressed to the insurers' investigator. From the letter it is abundantly clear that the said vehicle was hired through Ganesh Travels, Hyderabad for visit to project sites located towards Karimnagar, Kadem and other places. The letter also mentions that the said Qualis met with an accident and they had to call for a substitute vehicle to resume their onward journey. Since they had hired 3 vehicles and had settled the bills in one lot they were unable to give the bill break-up for this specific vehicle.

I am reasonably convinced that the vehicle was indeed used for hire at the time of accident. The driver's statement to the police and the contents of the letter addressed to the investigator reveal the same facts. I find the insurer's decision to reject the claim to be in order. I decline to interfere with their decision.

Hyderabad Ombudsman Centre
Case No. : G 11.005.259
Sri B Prasad
Vs
Oriental Insurance Co.Ltd.

Award Dated : 23.03.2007

The complainant insured his new Tata Indicab bearing Regn. No. AP 09 TV 2472 which met with an accident on 27.10.2006. The insurers vide their letter dated 27.11.2006 repudiated the claim on the ground that “the driver, Sri. M. Naresh Babu was not authorised to drive motor cab or LMV (T).”

The complainant contended that he purchased the taxi with a bank loan. He engaged Sri. M. Naresh Babu to drive the vehicle. Before employing him as a driver, he observed from the licence copy that the driver had Badge No. He was under the impression that since the licence had Badge No., it was valid and effective. He pleaded that had the insurers informed him about the rejection before commencement of repairs, he would have tried to reduce the repair cost. He was entirely dependent on the earnings from this taxi and he had to borrow money at high interest to pay the repair charges.

The insurers contended that they verified the licence from the Licencing authority, Piduguralla. The RTA vide their letter dated 24.11.2006 informed their office that Driving Licence No. DLFAP10784602004, issued to Sri. M.Naresh Babu was effective for Auto Rickshaw and Tractor-trailer only. Further, he was also issued Badge No.2968 w.e.f. 28.11.2005. Since the insured vehicle was a taxi.

Held

The complainant’s plea that he was ignorant about the need for a valid licence is absurd and unacceptable. It appears that he had hired the vehicle to Noori Travels at the time of accident. It is surprising to note that even the Travels Operator did not bother to verify the licence. The policy issued to the complainant contains the Driver’s Clause which stipulates the need for effective, valid driving licence at the time of accident. I hold that the insurers were justified in rejecting the claim.

Hyderabad Ombudsman Centre
Case No. : G 11.004.305
Sri S. Satyanarayana
Vs
United India Insurance Co.Ltd.

Award Dated : 23.03.2007

The complainant insured his Tata Indica bearing Regn. No. AP 16 AD 6789 for an IDV of Rs.1,71,500, for the period 8.3.2006 to 7.3.2007. He paid a premium of Rs.6830/- by way of cheque dated 6.3.2006, drawn on Andhra Bank, Sattupally. The vehicle met with an accident on 15.6.2006 and the insurers deputed their panel surveyors to assess the loss. The loss was assessed on salvage loss basis for Rs.83,000/- which was accepted by the insured. However, while the claim was being processed, it was observed that the premium cheque for Rs.6830/- was not realized by the insurers. As such the insurers rejected the claim.

Held:

The insurers stated in the hearing that the instrument was finally located in ING Vysya Bank. They admitted that it was sent to their collection account immediately but was misplaced by their bankers. They were unable to re-present the same as it became ‘stale’. In this case, I do not find any fault with the complainant. He issued the cheque on 6.3.2006 and the very next day deposited cash of Rs.7000/- in his account. I am surprised to note that the insurers did not reconcile their Bank statements and are now

quoting Section 64 VB of the Insurance Act to support their stand. As far as the insured was concerned, he had given them a cheque and ensured sufficient balance in his account. He did something which any normal person would do. The insurers are directed to settle the claim after deducting the premium.

Hyderabad Ombudsman Centre
Case No. : G 11.004.286
Complainant: Smt N Rajeshwari
Vs
United India Insurance Co.Ltd.

Award Dated : 30.03.2007

Smt. N. Rajeswari insured her Tempo Trax LMV Maxi Cab which met with an accident on 12.7.2005. The spot survey, final survey and re-inspection survey were all arranged by the insurer. The insurer rejected the claim on the ground that (i) the details of the accident conveyed by the insured were contradicting with the details noted in the Police Panchanama and (ii) the driver at the time of accident, Mr. Shiv Shanker did not have a valid driving licence.

The insurers stated that they had done the necessary verification before rejecting the claim. They state that the initial clam intimation given by the complainant's husband mentioned Sri Shiv Shanker as the driver. The spot surveyor who was deputed to the accident site, soon after the accident, had also reported that the vehicle was driven by Sri Shiv Shankar. The original driving licence of Sri Shiv Shankar was produced to and verified by the spot surveyor Sri Siva Kumar. It was revealed in their investigations that the said licence of Sri Shiv Shankar was not valid for driving Maxi cab.

The insured's husband later gave the name of Sri Malla Reddy as the driver and attempted to recover the claim which was not payable. Hence, they were justified in rejecting the claim.

Held

Having perused the record and heard both the parties, I conclude that the first information given to the insurers' office at Sangareddy and to the spot surveyor is to be relied upon. Therefore, it is concluded that Sri Shiv Shankar is the driver at the time of the accident. It is also established that he is not entitled to drive the class of vehicle such as the insured vehicle. Therefore, I decline to interfere with the decision of the insurers. The complaint is dismissed.

Hyderabad Ombudsman Centre
Case No. : G 11.004.262
Sri Syed Fatesh Ahmed
Vs
United India Insurance Co.Ltd.

Award Dated : 30.03.2007

Sri Syed Fateh Ahmed insured his goods carrying vehicle which met with an accident. The insurance surveyor assessed the loss at Rs.64,180/- but the insurers rejected the claim stating that 3 passengers were in the cabin of the vehicle and there was a violation of policy conditions and the Motor Vehicle Act.

The complainant stated that, after loading, the vehicle was handed over to the driver and so he had no knowledge if the driver has taken any passengers. The complainant also claims that he is not responsible for any irregularities. The insurers stated that the insured had failed to inform them the full details of the accident, the injuries sustained by the persons involved and the police records even when a second opportunity was given to him. The insurers had received summons from the Motor Accident Claims Tribunal, Baramati, but the insured was not rendering the necessary assistance in defending the Civil Suits in which compensation was claimed for injuries to occupants of the vehicle.

Held

The complainant had elected to remain absent for the hearing. He had not filled in the important columns of (i) subject matter of complaint, (ii) Nature and extent of monetary loss and (iii) Quantum of relief sought.

The opportunity of Personal hearing was given to him with a view to enable him to complete the procedural formalities and also to elicit his views on the contentions of the insurers. He has failed to substantiate his claim, nor did he submit any evidence to disprove the insurers' contentions. I also find that the important columns in the insurance claim form with respect to injuries sustained by occupants has not been filled. In the circumstances, I have no option except to dismiss the complaint.

Hyderabad Ombudsman Centre
Case No. : G 11.004.261
Sri Mohd Rabbani
Vs
New India Assurance Co.Ltd.

Award Dated : 30.03.2007

Sri Mohd Rabbani insured his goods carrying vehicle which met with an accident. The insurance surveyor assessed the loss at Rs 1,46,123.50/- but the insurers repudiated the claim stating that two un-authorised passengers were traveling in the vehicle at the time of the accident and there was a violation of policy conditions and the Motor Vehicle Act.

The complainant stated that after loading, the vehicle, was handed over to the driver and so he had no knowledge if the driver has taken any passengers. The complainant also claims that he is not responsible for any irregularities.

Held:

The complainant was informed of the hearing in writing and was also reminded a day in advance over the telephone. But he has elected to remain absent. He has not filled in the important columns of (i) subject matter of complaint, (ii) Nature and extent of monetary loss and (iii) Quantum of relief sought.

The insured had mentioned in the claim form submitted to the insurers that the driver and another lady died in the accident. The opportunity of Personal hearing was given to him with a view to enable him to complete the procedural formalities and also to elicit his views on the contentions of the insurers. He has failed to substantiate his claim, nor did he submit any evidence to disprove the insurers' contentions.

In the circumstances I have no option except to dismiss the complaint.

Hyderabad Ombudsman Centre
Case No. : G 11.004.304
Sri P Lachu Babu
Vs
United India Insurance Co.Ltd.

Award Dated : 30.03.2007

The complainant Insured his motor cycle. While on a visit to his fields on 23.12.2004, he had parked the bike near Gidijam on N.H.5 On his return he found the vehicle missing. He lodged a complaint with Annavaram Police Station on 24.12.2004. The theft was also intimated to the insurers on 25.12.2004. The insurers contended that they received the intimation of claim after a delay of 4 months. They also observed that there was a discrepancy in the name of driver at the time of accident. The insured stated to the police that he drove the vehicle and parked it near his field. However, in the claim form submitted to them the driver is mentioned as Sri E Ramu. Further they have to obtain clearance from the R.O. to process this claim as the theft occurred within 5 days of issue of policy.

Held

The insurers raised 3 points: 1) Delayed intimation to police and their office; 2) Discrepancy about the driver at the time of loss: 3) Reasons for leaving the vehicle unguarded on a high way. On each of these issues, I observe as under:: i) The claim file of the insurers (given to this office during the hearing) contained a photo copy of the insured's complaint to the police and a copy of the claim intimation dated 25.12.2004. Therefore, the insurers' contention that they were informed late is not justified; ii) The insurers stated that they had no doubts on the theft of vehicle. This is a theft claim of a parked vehicle and I see no meaning in insisting on driver's details iii) It is surprising that the insurers want to know the reason for parking the vehicle on NH 5. They ought to have asked their investigator to look into this aspect also at the time of initial investigation. Raising such flimsy objections at this stage is totally uncalled for.

The insurers are directed to process and pay the claim.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-004-135/2006-07
Shri.K.Wilson
Vs
United India Insurance Co.Ltd.

Award Dated : 17.10.2006

The complaint under Rule 12(1)(b) read with Rule 13 of the RPG Rules, 1998 relates to delay in settlement of a Motor claim by the respondent insurer. The complainant had insured his Mini lorry KL-01-F-1026 with the respondent for an IDV of Rs.2.6 lakhs. The vehicle was 9 years old and the same was stolen on 15.5.2004. At the time of renewal of the policy in 2004, the insurer had inspected the vehicle, but fixed the IDV at Rs.2.6 lakhs without obtaining a market value assessment by the surveyors. Although the insurer offered Rs.2 lakhs to the complainant as compensation, the complainant insisted on Rs.2.6 lakhs which was the IDV. However, after the loss, two independent surveyors had valued the loss at Rs.2 lakhs only based on market value assessment. Moreover, the tune of loss reported tot eh police by the complainant was also Rs.2

lakhs only although he insisted on Rs. 2.6 lakhs from the insurer. In the absence of any other credible information as to the market value of the vehicle at the time of loss, the same was taken as opined by the surveyors and the insurer was asked to settle the claim at Rs.2 lakhs with 5% interest from 31.5.2004 (date of loss 15.5.2004) till the date of payment. The complaint was thus disposed of on merits.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-005-168/2006-07
Sri.K.Rajasekharan Nair
Vs
The Oriental Insurance Co.Ltd.

Award Dated : 28.11.2006

The complaint under Rule 12(1)(b) read with Rule 13 of the RPG Rules, 1998 relates to alleged over charging of premium by the insurer for effecting insurance on the complainant's vehicle KL-4A 3294 – Hindustan Trecker. The complainant argued that the insurer had charged his vehicle at the commercial rate. On verification of the RC book and other relevant documents, the facts were clear that the vehicle in question was a commercial vehicle with periodicity of payment of road tax once in every 3 months. The complainant had drawn dissimilar comparisons and made out a complaint. Moreover, in view of a claim history in relation to the vehicle earlier, there was 50% loading, which was continued, even in subsequent years. On the whole, it was found that there was no substance in the complaint and therefore the same was dismissed.

Kochi Ombudsman Centre
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Award Dated : 28.11.2006

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Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-003-133/2006-07
Sri.KR.Sureshkumar
Vs
National Insurance Co.Ltd.

Award Dated : 29.11.2006

The complaint under Rule 12(1)(b) read with Rule 13 of the RPG Rules, 1998 relates to partial repudiation of a motor claim by the insurer covering volvo bus No. KA 01 AD 101 owned by the complainant during the relevant period. The Bus met with a serious

accident while on its way from Calicut to Bangalore on 29.12.2003 and the insurer had settled the claim partially excluding the cost of the Thermoking AC Unit which was imported. The reason for disallowing the cost of AC unit was that the concerned bill was not produced. However, the insurer had no dispute over the accident and they also agreed that the AC unit re-installed was a brand new imported set. This fact was also certified by the Surveyor. Taking the totality of circumstances, it was evident from the records that the AC unit was a brand new one as could be seen from the repairer's bill further certified by the surveyor and hence the insurer was asked to settle the price of the AC unit also in addition to the amount already settled. The complaint was thus disposed of on merits of the case.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-003-108/2006-07
Sri.E.Jeevanandan
Vs
National Insurance Co.Ltd.

Award Dated : 30.11.2006

The complaint under Rule 12(1)(b) read with Rule 13 of the RPG Rules, 1998 relates to partial repudiation of a medi claim by the insurer under a group medi claim policy covering employees of M/s.Binani Zinc, Mumbai. The claim was paid by the insurer in two parts disallowing certain amounts for want of bills/supporting documents. Similarly, a portion of the claim was towards post-hospitalisation treatment which, again, was not payable beyond a specified duration. On a close scrutiny of the records, an amount of Rs.372/- initially paid by the complainant at the hospital was found payable but disallowed by the insurer. This Forum, therefore, directed the insurer to pay a sum of Rs.372/- additionally to the complainant in final settlement of the claim. The complaint was, thus, disposed of on merits.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-002-193/2006-07
Dr.Feminath G.
Vs
New India Assurance Co.Ltd.

Award Dated : 30.11.2006

The complaint under Rule No.12(1)(b) read with Rule No.13 of the RPG Rules, 1998 relates to partial repudiation of a motor claim by the insurer under Pol.no.761400/31/04/16219 covering vehicle No.KL-01-Z 6141 – Maruti Esteem owned by the complainant. The vehicle caught fire on 2.8.2005 suo motto and as against an estimate of Rs.2,63,351.31 submitted, the surveyor had assessed the loss at Rs.62,954/-. After re-inspection, the claim was finally settled at Rs.63800/- which the complainant received in full and final settlement of the loss. However, the complainant further submitted another claim for additional repairs, compensation for delayed settlement, reimbursement of loan instalments etc. All these claims were found out of context and not in terms of the policy. However, there was a single point of contention to be considered. During the initial repairs, the Canshaft of the vehicle was damaged and the cost of this item was not reimbursed by the insurer. The complainant says that he had spent Rs.3500/- for repairs to the canshaft, which was done subsequently. The insurer was therefore directed to pay an additional amount of Rs.3500/- to the

complainant towards repairs to the canshaft of the vehicle. The complaint was thus disposed of on merits of the case.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-002-193/2006-07
Dr.Feminath G.
Vs
New India Assurance Co.Ltd.

Award Dated : 30.11.2006

The complaint under Rule No.12(1)(b) read with Rule No.13 of the RPG Rules, 1998 relates to partial repudiation of a motor claim by the insurer under Pol.no.761400/31/04/16219 covering vehicle No.KL-01-Z 6141 – Maruti Esteem owned by the complainant. The vehicle caught fire on 2.8.2005 suo motto and as against an estimate of Rs.2,63,351.31 submitted, the surveyor had assessed the loss at Rs.62,954/-. After re-inspection, the claim was finally settled at Rs.63800/- which the complainant received in full and final settlement of the loss. However, the complainant further submitted another claim for additional repairs, compensation for delayed settlement, reimbursement of loan instalments etc. All these claims were found out of context and not in terms of the policy. However, there was a single point of contention to be considered. During the initial repairs, the Canshaft of the vehicle was damaged and the cost of this item was not reimbursed by the insurer. The complainant says that he had spent Rs.3500/- for repairs to the canshaft, which was done subsequently. The insurer was therefore directed to pay an additional amount of Rs.3500/- to the complainant towards repairs to the canshaft of the vehicle. The complaint was thus disposed of on merits of the case.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-005-236/2006-07
Sri.Joy T Mathew
Vs.
The Oriental Insurance Co.Ltd.

Award Dated : 08.03.2007

The complaint under Rule No.12(1)(b) read with Rule 13 of the RPG Rules, 1998 relates to repudiation of a motor claim by the insurer under Pol.No.441900/ 2006/4979 covering Mahindra Scorpio vehicle No.KL-4N-5310 owned by the complainant. The vehicle met with an accident on 28/1/2006 while the complainant was reportedly trying to avoid a Rubber Tapper who was crossing the road. The vehicle had hit against the side wall of the road and was damaged. The insurer rejected the claim saying that the vehicle was insured as a Private car and at the time of accident, the vehicle was being used for rental purpose. They also said that the complainant was not driving the vehicle at the time of accident. The insurer had based their findings only on the statement filed by the investigator with no other evidences to support their contentions. The other person who was said to be driving the vehicles also possessed a valid driving licence. Since there was no third party claim, the complainant had not reported the matter to the police. Even at a later stage, if necessary, the insurer could have obtained a G.D.entry from the policy through the complainant. The insurer was found to be very causal in their approach and they had not proved their contentions. Hence the claim was allowed in favour of the complainant.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-003-254/2006-07
Smt.Girija Janardhanan
Vs.
National Insurance Co.Ltd.

Award Dated : 20.03.2007

The complaint under Rule 12(1)(b) read with Rule 13 of the RPG Rules, 1998 relates to repudiation of a motor claim by the insurer under a Goods carrying commercial vehicle Policy No.571100/31/05/6300003150 (3 wheeler- goods carrying autorickshaw) owned by the complainant. The vehicle met with an accident on 4.3.2006 which was informed to the insurer only on 20.3.2006 depriving them of an opportunity to conduct a spot survey and enquiry. Although two persons were injured in the accident, there was no police case registered. The surveyor and investigator had given reports that a person having no valid licence was driving the vehicle at the time of the accident and there was an attempt to substitute the name of the driver with a person who had a licence. The complainant herself had given a letter to the Insurance Company confirming that there were 3 people in the vehicle at the time of accident. In a 3 wheeler Autorickshaw, the seating capacity is only one in the cabin. There were violations of Motor Vehicles Act and the policy conditions. Since two people were injured, third party liability could not be ruled out. There was also no police case registered about the accident. The insurer's decision in the case was found to be based on sound footing and hence the repudiation was upheld duly dismissing the complaint.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-004-246/2006-07
Sri.K.C.Faizal
Vs.
United India Insurance Co.Ltd.

Award Dated : 21.03.2007

The complaint under Rule No.12(1)(b) read with Rule 13 of the RPG Rules 1998 arose out of partial repudiation of a motor claim by the respondent insurer under Pol.no.101003/31/04/08171 covering the Toyoto Qualis of the complainant for the period 3.2.2005 to 2.2.2006. The vehicle was found stolen on 11.3.2005. The police, after due investigations, had filed a "non-traceable report". The insurance company settled the claim only for Rs.3.27 lakhs. The theft had taken place just after a month from the commencement of the policy. The insurer had violated the rules in as much as that the valuation report in the case on hand should have been obtained from a Category "A" surveyor only. Initially, they had taken reports from category "B" surveyor only and after negotiations with the party settled the claim at Rs.3.27 lakhs although the subsequent "A" category surveyor had given a valuation only for Rs.3.2 lakhs. In any case, once the IDV is fixed, during the policy year, it cannot be further changed for total loss cases. In the circumstances of the case, the insurer was advised to settle the claim for the full IDV as per the policy, i.e., after deducting the amount of Rs.3.27 lakhs already paid. The complaint was thus allowed in favour of the complainant.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-004-174/2006-07
Sri.Vinodkumar V K
Vs.

United India Insurance Co.Ltd.

Award Dated : 31.01.2007

The complaint under Rule 12(1)(b) read with Rule 13 of the RPG Rules, 1998 arose out of non-settlement of a motor claim by the insurer under Pol.No.101104/31/04/03343 whereunder the Scorpio Four wheeler (KL-4-R-7009) of the complainant was insured for a period of one year from 18.1.2005. The vehicle was found stolen from the premises of the complainant on 23.6.2005. The complainant had immediately informed the police and the insurer. The police had by now closed the case as "untraceable". The claim settlement was getting dragged on as the insurer found out from the RC Book that the vehicle was registered as a Tourist taxi whereas it was insured as a private vehicle. Under a Private Package policy, the insured had certain additional benefits and, therefore, the insurer contended that there was intentional concealment of material facts. However, considering the totality of circumstances and the financial commitment of the complainant with the Financier Bank, the insurer had by now agreed to settle the claim as "non-standard" to the extent of 50% of the IDV less deductibles. The Forum found the stand taken by the insurer as justifiable although one of the items in the deductibles, viz. the Govt. subsidy was beyond the purview of the insurance company. Therefore, after disallowing this deduction, the proposed settlement was approved and the complaint was disposed of as partially dismissed.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-005-160/2006-07
Sri.G.Gopinathan
Vs.
The Oriental Insurance Co.Ltd.

Award Dated : 01.02.2007

The complaint under Rule 12(1) (b) read with Rule No.13 of the RPG Rules arose out of repudiation of a motor claim by the insurer under Pol.No.2006/2319 covering Tata India Taxi Cab of the complainant. (Vehicle No.KL-2V/8057). The vehicle was registered as a commercial vehicle – Taxi cab. On 19.9.2005, when, reportedly the owner-complainant took the vehicle out for a personal purpose, there was an accident at a place called Mynagappally. The relative claim was rejected by the insurer for the reason that the vehicle was insured as a commercial Taxi-cab and the owner-complainant did not possess a Badge for driving a commercial vehicle although he held an LMV licence. The insurer argued that the complainant had violated the Drivers clause in the policy as well as Rule No.3 of the Central Motor Vehicles Act. On verification of the records it was found that the complainant had committed a breach of the policy conditions as well the Central Motor Vehicles Act in as much as that he did not posses a badge required for taking out a passenger carrying commercial vehicle. In the circumstances, the rejection of the claim by the insurer was upheld and the complaint was dismissed.

Kolkata Ombudsman Centre
Case No. : 558/11/003/NL/10/2005-06
Shri Chandradeep Mukherjee
Vs
National Insurance Company Ltd.

Award Dated : 20.11.2006

FACTS & SUBMISSIONS:

The complainant Shri Chandradeep Mukherjee had taken a policy under Motor Insurance Package Policy for his two-wheeler motorcycle for the period 07.02.03 to 06.02.04. The complainant filed a claim for repair due to accident of his motorcycle on 29.07.03 for Rs. 5397.50. The insurance company assessed the loss at Rs. 1918/- against the above claim, which was refused by the complainant. He demanded clarification from the insurance company for the deduction. Not being satisfied with the reply of the insurance company with regard to the settlement of claim, the complainant approached this forum for relief.

The insurance company deputed an officer as an in-house surveyor, who made an assessment of loss due to accident. In fact, the surveyor made an agreement with the repairer and as per the agreement the total amount of loss was calculated at Rs. 1918/-. The report indicated 18-19 items, which were to be repaired or replaced as on the date of loss.

The complainant did not agree with the assessment made by the surveyor on the following grounds:

The agreement was made without the knowledge of the concerned owner of the vehicle.

The repairer billed the complainant Rs. 5397.50 including 38 items, while the report indicated only 18-19 items.

According to him, the policy does not contain any term under which the payment for repair work for damages should be restricted and bring down the amount payable with an agreement, which has not been discussed with repairer. In short, the claimant was not given any opportunity to give his opinion about the agreement.

The insurance company were of the view that as per procedure they had sent a surveyor on receipt of estimate of repair from the repairer. The survey report indicated an amount of Rs. 1918/- as per calculation sheet, which was duly settled. The insurance company claimed that various queries raised had been answered and they felt that decision taken by them was reasonable and justified.

Decision :

There was no question with regard to the validity of the period of cover under the insurance policy. It was also clear that the insurance company had followed the procedure as per their rules by sending an in-house surveyor and answered all the queries that were raised by the complainant. However, there was one lacuna. The agreement of assessment arrived at has to be binding on the parties to the agreement. In this case, the agreement made by the surveyor with the garage owner was disputed by the complainant and it should have been resolved by negotiations between the three parties viz., the insurance company, insured and the repairer. The records did not indicate such action being taken by the insurance company for resolving the issue. In short, the owner of the vehicle was not taken into confidence when the surveyor concluded his report of assessment. Under these circumstances, we were unable to agree with the insurance company and they were directed to pay the balance amount of Rs. 3479.50.

Kolkata Ombudsman Centre
Case No. : 654/14/002/NL/11/2005-06
Shri Pankaj Maloo
Vs
The New India Assurance Company Ltd.

Award Dated : 28.11.2006

FACTS & SUBMISSIONS :

The complaint was regarding delay in settlement of theft claim due to the mismatch/difference in the Chassis Number given in the FIR and the Policy cover issued by the New India Assurance Co. Ltd., (NIA) under Motor Insurance Policy.

The complainant obtained a Motor Insurance Policy from the New India Assurance Company Ltd., in respect of his motorcycle with Registration No. WB 01T 2069 bearing Engine No.34668 and Chassis No.69212 for the period 7.10.2002 to 6.10.2003. The above motorcycle was stolen in the night of 8.8.2003 from the garage of the complainant and he immediately lodged a F. I. R. with the Lake Police Station on 9.8.2003. He filed a claim with the Insurance Company for the loss of his motorcycle (Bajaj Caliber Croma Byke). The Insurance Company did not settle the claim, instead they had written a letter to the complainant on 12.7.2004 stating that the Chassis Number mentioned in the F.I.R. and the Chassis Number mentioned in the R. C. Book were different with regard to the motorcycle that had been stolen. Therefore, they stated that they were unable to proceed with the claim.

The complainant replied to the queries made by the Insurance Company vide his letter dt.16.8.2004. According to that letter the vehicle was purchased on an instalment Scheme from Bajaj Auto Finance Ltd., (BAFL). When the subject vehicle was stolen, the Blue Book (i .e. R. C. Book) was lying with the Financier. The only evidence he had, was the policy document, on the basis of which he had filed the F.I.R. According to the policy, the Chassis No. of the vehicle is DDFBJF-59212 and as per the Registration Book, the Chassis Number could be DDFBJF – 69212. Therefore, according to him, the policy was wrongly issued and there was typographical error with regard to mismatch between the F.I.R. and the R. C. Book.

According to him, the final report of the police sent to him from Lal Bazar Police Station was in the same condition, which was already sent to the Insurance Company.

As there was no reply from the Insurance Company for compensation of Rs.38,000/-, the complainant approached this forum for relief.

According to the self-contained note, the F. I. R. of Lake Police Station of Kolkata mentioned that the motorcycle had the Chassis No. as DDF BJF - 59212 and the Engine No. as DDM BJF-346681 (Probably last digit ‘1’ was an extra stroke of pen while writing by the police authorities). The Engine No. was same as in the policy record and the Chassis No. was different. The complainant mentioned En. No.as DDFBJF 34668 and Ch. No. DDF BJF 59212. However, in the Certificate of Registration Ch. No. mentioned was as DDF BJF – 69212 and En. No. as DDM BJF – 34668. From the above confusion with regard to mismatch in number, the Insurance Company could not process the claim.

From the above discussion, it was clear that the certificate of registration and the claim by the complainant indicate Ch. No. mentioned as DDF BJF – 69212 while the policy document mentioned Chassis No. as DDF BJF-59212. Due to difference in chassis number mentioned in the F.I.R. and in the policy, the Insurance Company were unable to process and settle the claim.

We were of the opinion that there could be some error while drafting the policy as there was only difference of one number i.e. Chassis No. which should have been written as 69212 instead of 59212. The Engine Number and the Registration Number were tallied with the insurance documents and F.I.R. of the police. Since there was only typographical error, the Insurance Company were directed to treat the mismatch, as properly being explained and settle the claim.

Kolkata Ombudsman Centre
Case No. : 655/11/004/NL/12/05-06
Shri Upendra Kumar Roy
Vs
United India Insurance Company Ltd.

Award Dated : 04.12.2006

FACTS & SUBMISSIONS :

Shri Upendra Kumar Roy, the complainant purchased a taxi against bank loan and insured the same under a package policy with United India Insurance Company Ltd. He stated that the vehicle was stolen on 26.12.2003 and the police authorities confirmed the same. It was duly intimated to the insurance company and M/s A.K.Sinha & Associates were appointed for investigation of the case. However, based on the report of the investigation team appointed by the above concern, the insurance company repudiated the claim as the complainant failed to take reasonable steps to safeguard the insured vehicle from loss or damage as per condition no. 5 of the policy. The complainant represented to the higher authorities without avail. As the claim was not settled, the complainant approached this forum for redressal of the grievance.

The complainant further stated that his entire family depended on the earnings of the taxi and the bankers' are pressurizing for repayment of loan and interest. He also stated that he left the vehicle with the key inside the vehicle for attending the nature's call under extreme pressure. Therefore, the complainant's contention is that the claim should be settled, as this should not be treated as not taking reasonable steps to safeguard the insured vehicle.

According to the insurance company, the complainant in his statement dated 25.03.04, being the insured-cum-owner, drove the vehicle to Sealdah station with passengers on 26.12.2003. From there he picked up 3 passengers, who were going to Shampa Mirzapur under Maheshtala P.S. The passengers disembarked at their destination at 05.45 A.M. and immediately after their departure, the complainant went to answer nature's call leaving the key inside the vehicle. When the complainant was so engaged, the 3 passengers returned and drove away the taxi, which was parked with the key inside the vehicle. This had been held as not taking proper safeguards for protecting the vehicle under condition no. 5 of the Motor Policy, which is reproduced as under:

"The insured shall take all reasonable steps to safeguard the vehicle insured from loss or damage and to maintain it in efficient condition and the company shall have at all times free and full access to examine the vehicle insured or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown, the vehicle insured shall not be left unattended without proper precautions being taken to prevent further damage or loss and if the vehicle insured be driven before the necessary repairs are effected, any extension of the damage or any further damager to the vehicle shall be entirely at the insured's risk."

Decision :

There was no doubt that the circumstances under which the driver-cum-complainant left the taxi with the key inside the vehicle had increased the risk and this negligent act had contributed to loss. The degree of negligence must be weighed against the circumstances and whether the complainant had the control over such situation.

The due diligence proviso in condition no. 5 of Motor Policy demanded reasonable care from the Insured-cum-Complainant for safety of his vehicle. The insurance company repudiated the claim alleging 'gross negligence' on the part of the complainant as he left the key inside the vehicle. Without denying the vulnerability of the breach of a

condition that materially enhanced risk exposure, the test of 'gross negligence' should be done in the light of the prevailing circumstances. Considering the pressure to attend nature's call and the unexpected return of the passengers to commit the crime, the negligence of the complainant would appear much less than the level at which it had been held by the insurance company. Under these circumstances, it would not be justifiable to repudiate the entire claim. As the complainant contributed to the increase of loss, he should bear a part of the same.

"Proper precautions" mentioned in condition no. 5 should be perceived in its proper perspective depending upon the circumstances which contributed towards the theft of vehicle.

Since the complainant left the key in the car and the same persons who traveled in the taxi minutes ago coming back and drove away the vehicle indicate that the event had happened very unexpectedly. Therefore, the degree of negligence could not be made as a sole reason for repudiating the claim. Under these circumstances, it was felt that an award of Rs. 1,60,000/- would meet the ends of justice. Accordingly, the insurance company were directed to pay Rs. 1,60,000/- (Rupees one lac sixty thousand) only.

Kolkata Ombudsman Centre
Case No. : 725/11/005/NL/12/2005-06
Shri Shiv Kumar Meharia
Vs
The Oriental Insurance Company Ltd.

Award Dated : 07.12.2006

FACTS & SUBMISSIONS :

The complaint was regarding repudiation of death claim under Personal Accident Section of Motor Insurance Policy.

The complainant, Shri Shiv Kumar Meharia in his petition stated that his son, late Amit Meharia was killed in a road accident while travelling in the Tata Indica car on 28.2.2004. The policy was issued by the Insurance Company in favour of M/s. S. K. Agency wherein it is mentioned that Shri S. K. Meharia, as the 'User'. The Registration Certificate (RC) Book issued in the name of the owner i. e. M/s. S. K. Agency, however, did not mention the complainant's name as 'User'. The policy was issued covering P. A. cover for Owner-Driver. The claim for accidental death of Shri Amit Meharia was filed with the Insurance Company under P. A. Clause, as he was using the vehicle at the time of accident. The Insurance Company repudiated the claim on the ground that P. A. Section covered only the Owner-Driver of the insured's car. Despite representation along with police report submitted to the Hon'ble Court to the effect that Amit Meharia was the user of the vehicle. The Insurance Company held that Shri S. K. Meharia is the 'User' named in the policy and they did not pay the claim. Being aggrieved, the complainant approached this forum for redressal of his grievance.

Apart from the facts mentioned in the above paragraph, the complainant further stated that the deceased was a Chartered Accountant and a 'Key-man' of the firm. The RC Book was silent about the name of the 'User'. The police report submitted to the Hon'ble Court confirmed that Amit Meharia was the user of the car and that he was using the vehicle at the material time of the accident. Therefore, the user/in-charge late Amit Meharia died in the accident and hence the P. A. claim should be paid.

The Insurance Company stated that the Insured motor car Registration No.JH-09C-0100 was issued in the name of M/s. S. K. Agency and the complainant's name Shri S. K. Meharia was recorded as 'User'. This was done as per the proposal form signed by

the complainant. The car met with an accident on 28.2.2004 killing 4 persons including the complainant's son, Amit Meharia. The claim for total loss in respect of the said motor car's own damage portion was settled by the Insurance Company. The complainant intimated to the Insurance Company about the P. A. claim of his son after settlement of the own damage portion of the claim. The Insurance Company informed the complainant that PA claim in respect of his son could not be considered because nowhere – either in the proposal from or in the RC Book – the name of Late Amit Meharia was mentioned. According to the Insurance Company, a letter was issued on receipt of complainant's representation dt.21.5.2005 asking him to comply with the following conditions :-

that the owner-driver is the registered owner of the vehicle insured and involved in the accident ;

that the owner-driver is the insured named under the policy ;

that the owner-driver holds an effective driving licence.

As it was proved that the policy was issued in the name of M/s. S. K. Agency and the complainant's name as the 'User', the payment against P.A. death claim of the complaint's son, as per Owner-Driver clause could not be possible by the Insurance Company.

On going through the evidence that has been put forth by the complainant and the Insurance Company, the following conclusions could be drawn :-

It was certain that late Amit Meharia was driving the car when the accident took place and his name was not mentioned as 'owner driver' in the insurance policy covering such accident. Only police report mentioning the name Amit Meharia as 'User' did not justify the claim as 'Owner Driver Clause', which was governed by the policy conditions. From the proposal form of the policy, it was clear that the cover was for 'Owner Driver', Sri S. K. Meharia, the father of the deceased person as he was named 'User' of the policy. The policy was issued accordingly and the same was accepted without any objection. The policy meant P.A. cover for a specific person, neither any 'key-man' of the firm nor any third person.

Two persons could not be covered under the same policy having the 'Owner Driver Clause'. The Insurance Company is liable to Sri S. K. Meharia only, the complainant himself under such clause. Therefore, it was held that the Insurance Company was not liable to pay the P. A. Claim for late Amit Meharia's accidental death. Accordingly, the complaint was dismissed.

Kolkata Ombudsman Centre
Case No. : 812/14/004/NL/02/2005-06
Shri Birendra Kumar
Vs
United India Insurance Co. Ltd.

Award Dated : 26.12.2006

FACTS & SUBMISSIONS :

The complainant's Truck bearing Registration No. BR1G 7216 was comprehensively insured with the insurance company for an IDV of Rs.3 lakhs. The said truck met with an accident on 11.12.2004 at Billary Chowk Police Station, Purnia, Bihar. The complainant informed the incident to the insurance company and submitted photographs of the damaged truck. Subsequently, a claim was filed with the insurance company towards damage-repair expenditure. Thereafter, the complainant made

several visits to the offices of the insurance company but there was no response. The surveyor issued his report with a unilateral settlement, which was not acceptable to the complainant. Nevertheless, the insurance company did not settle the claim even as assessed by such survey report, despite repeated representations and follow up. Being aggrieved by the delay in settlement of the claim, the complainant approached this forum for redressal of his grievance.

The Investigator deputed by the insurance company, Shri Rakesh Kumar confirmed by his report dated 17.06.2006 that the incident was true and genuine. The claim was processed and approved by the Regional office for settlement at Rs.65,950/- and a loss voucher for the like amount was sent to the complainant for discharge. The voucher was received by the complainant on 04.08.2006. A further amount of Rs.650/- was subsequently approved towards spot survey fee and the same was added to the loss reimbursement amount. Accordingly, an amount of Rs.66,600/- (Rs.65,950 + Rs.650/-) was paid to the complainant vide cheque No. 00902 dated 11.08.2006 towards full and final settlement of the claim.

It was observed that the original complaint was for delay. However, during pendency of the complaint with this forum, insurance company had settled the claim for Rs.66,600/- vide cheque no. 00902 dated 11.08.2006 against full and final discharge of the complainant (for Rs.65,950/-). It stands decided by the apex Court that a full and final settlement could be challenged despite execution of the Discharge Voucher, when such discharge voucher or receipt had been obtained from the Insured under the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like.

In the instant case, there was no allegation and/or evidence of such fraud, undue influence or misrepresentation. In any case, this office does not have the mechanism for deciding whether there was any fraud, undue influence, mis-representation, etc. on the part of the Insurer. The claim was received after unconditionally discharging the pre-receipted voucher towards full and final settlement, no residual claim for non-payment of interest was allowed. Under these circumstances, the complaint was dismissed.

Kolkata Ombudsman Centre
Case No. : 786/14/003/NL/01/2005-06
Smt. Jhuma Bose
Vs
National Insurance Company Ltd.

Award Dated : 26.12.2006

FACTS & SUBMISSIONS :

The complaint was regarding delay in settlement of a claim in respect of accidental damage to the insured vehicle under a Passenger Carrying Commercial Vehicle Policy.

The complainant stated that she insured her taxi, which was covered under a Hire Purchase Agreement with M/s Todi Investors, Kolkata as registered owner. The said taxi was damaged in an accident on 11.04.2005. A surveyor was duly appointed by the insurance company and necessary repairing works were completed. Subsequently on 22.07.2005 necessary documents were submitted to the Insurer through the financier. In spite of a lot of correspondence the insurance company neither settled the claim nor gave any response. Therefore, the complainant filed this complaint for delay in settlement of the claim. Later after long delay the insurance company paid about Rs.91,045/-, but no interest for delayed payment was paid by the Insurer. Thus, according to the complainant, the insurance company failed to indemnify the loss

suffered by the complainant and failed to fulfill their obligation in compliance of Regulation 9 (5)/(6) of the IRDA (Protection of Policyholders' Interest) Regulation, 2002. Further, according to her the interest was payable as per terms of Regulation 2002. Being aggrieved, the complainant approached this forum for redressal of her grievance.

In their self-contained note, the insurance company stated that the claim has been settled on 29.05.2006 for Rs.91.045/- vide Cheque No. 979715 after receiving full and final discharge of the complainant.

DECISION :

The original complaint against delay in claim payment stands redressed as the complainant accepted the amount of claim offered for settlement by the insurance company. The grievance that still continues was for non-payment of interest. It was observed that the Discharge Voucher was unconditionally executed by M/s Todi Investors on behalf of the complainant for Rs.91,045/-. The Discharge Voucher has not been contested. After the claim was received unconditionally and after the discharge of pre-receipted voucher towards full and final settlement there cannot be a separate claim for non-payment of interest. Rule 9 (6) indicates that interest was eligible from the date of acceptance of the offer plus seven days, in case of any delay. However, the complainant had to seek redressal from the insurance company on those lines and the Office of Ombudsman could not decide a grievance with regard to only 'interest', as per the Rederssal of Public Grievances Rules, 1998, since grievance against non-payment of interest does not fall under Rule 12 of the same. Under these circumstances, payment of interest was not allowed and the complaint was dismissed, without any relief.

Kolkata Ombudsman Centre
Case No. : 785/14/003/NL/01/2005-06
Shri Biswanath Saha
Vs
National Insurance Company Ltd.

Award Dated : 26.12.2006

FACTS & SUBMISSIONS :

The complaint was regarding delay in settlement of a claim in respect of accidental damage to the insured vehicle under a Passenger Carrying Commercial Vehicle Policy.

FACTS/SUBMISSIONS

The complainant stated that he insured his Bus No.WBS-5094, which was covered under a Hire Purchase Agreement with M/s Todi Investors, Kolkata, as registered owner. The said Bus was damaged in an accident on 01.05.2005. A surveyor was duly appointed by the insurance company and necessary repairing works were completed. Subsequently on 30.09.2005 necessary documents were submitted to the Insurer. In spite of a lot of correspondence the insurance company neither settled the claim nor gave any response. Therefore, the complainant filed this complaint for delay in settlement of the claim. Later after long delay the insurance company paid about Rs.30,424/-, but no interest for delayed payment was paid by the Insurer. Thus, according to the complainant, the insurance company failed to indemnify the loss suffered by the complainant and failed to fulfill their obligation in compliance of Regulation 9 (5)/(6) of the IRDA (Protection of Policyholders' Interest) Regulation, 2002. Further, according to him the interest was payable as per terms of Regulation

2002. Being aggrieved, the complainant approached this forum for redressal of his grievance.

In their self-contained note, the insurance company stated that the claim were settled on 16.03.2006 for Rs.30,424/- vide Cheque No. 587585 after receiving full and final discharge of the complainant.

DECISION :

The original complaint against delay in claim payment stood redressed as the complainant accepted the amount of claim offered for settlement by the insurance company. The grievance that still continued was for non-payment of interest. It was observed that the Discharge Voucher was unconditionally executed by M/s Todi Investors on behalf of the complainant for Rs.30,424/-. The Discharge Voucher had not been contested. After the claim was received unconditionally and after the discharge of pre-receipted voucher towards full and final settlement there cannot be a separate claim for non-payment of interest. Rule 9 (6) indicates that interest is eligible from the date of acceptance of the offer plus seven days, in case of any delay. However, the complainant had to seek redressal from the insurance company on those lines and the Office of Ombudsman could not decide a grievance with regard to only 'interest', as per the Rederssal of Public Grievances Rules, 1998, since grievance against non-payment of interest does not fall under Rule 12 of the same. Under these circumstances, payment of interest was not allowed and the complaint was dismissed, without any relief.

Kolkata Ombudsman Centre
Case No. : 833/11/002/NL/02/2005-06
Shri Durga Prasad Sharma
Vs
The New India Assurance Co. Ltd.

Award Dated : 27.12.2006

FACTS & SUBMISSIONS:

The complaint was regarding partial repudiation of claim under Private Car Comprehensive Policy.

FACTS/SUBMISSIONS:

The complainant Shri Durga Prasad Sharma stated that his Maruti Esteem Car which was insured under a Private Car Comprehensive policy for an Insured Estimated Value (IEV) of Rs.2 lakhs met with an accident on 06.03.2003. A claim was filed with the insurance company with required papers. After protracted correspondence the insurance company forwarded a loss voucher for Rs.2,870/- as against relief of Rs.28,810/- and requested the claimant to execute the same with remarks that otherwise they would close the file as 'no-claim'. According to the petition the insurance company appointed a surveyor Shri Biman Banerjee and the report sent by the surveyor was not acceptable to the complainant and therefore, requested for a re-assessment of the damage by another surveyor. This representation was also turned down and, being aggrieved by the partial repudiation, the complainant approached this forum for relief.

The insurance company in their self-contained note stated that they had appointed Shri Biman Banerjee a Licensed Surveyor. They also enclosed a report submitted by the surveyor which assessed the loss at Rs.2,870.17. This assessment was made against the original estimated loss of Rs.30,715/-. In his report the surveyor opined that the bonnet was in repairable condition and suggested repairing of the same. He left the

discretion of replacing the bonnet with the Insurer. Further, the surveyor commented that there were minor dents in the front portion, which were nearly 10% area of complete bonnet. According to him the dent portion was not cut anywhere and could have been easily repaired. An Agreement sheet was sent to the complainant and, according to this self-contained note, there was no response from the complainant. After giving the above explanation in the self-contained note, the insurance company stated that there was no misbehavior or threat to the Insured at any point of time and guideline of the insurance company was followed.

DECISION :

On going through the evidence produced by both complainant and the insurance company, it was clear that the insurance company followed the report of the surveyor who was deputed by them as he was part of a panel graded by the IRDA. He was an independent authority and was qualified and duly licensed to assess the subject loss. There was one cardinal point in partial repudiation by the insurance company was that the Agreement sheet had not been seen/signed by the Insured. A unilateral decision was taken to close the file as 'no-claim' file.

Since there seemed to be a large gap between the assessed loss and relief sought, it would be in the fitness of things, if the loss is once again investigated by a surveyor. Therefore, the insurance company were directed to appoint another surveyor as per their panel of surveyor and settle the claim as per procedure thereafter and as per policy guidelines.

Kolkata Ombudsman Centre
Case No. : 780/11/002/NL/01/2005-06
Shri Amitava Chakraborty
Vs
The New India Assurance Co. Ltd.

Award Dated : 27.12.2006

FACTS & SUBMISSIONS :

The complainant, Shri Amitava Chakraborty, purchased a Tata Sumo with financial assistance from Apeejay Finance Group Ltd. The vehicle was insured comprehensively. According to the complainant, the vehicle was stolen on 30.06.2003 and immediately the incident was reported to Lake Town Police Station and, simultaneously, a claim was submitted to the insurance company. The police could not trace the vehicle and submitted a report accordingly before the SDJM. After all the requirements of the insurance company were duly complied with, the claim was eventually settled for Rs.1,30,000/- on non-standard basis, against the Insured Declared Value (IDV) of Rs.2,19,000/-. The complainant did not sign the Discharge Voucher and represented to the insurance company, which was of no avail. Being aggrieved by this partial repudiation, he approached this forum for redressal of his grievance.

The insurance company in their self-contained note forwarded a copy of investigation report dated 17.11.2003. The investigator confirmed the theft and confirmed that police authority could not recover the vehicle. The report further stated that the vehicle was purchased by the complainant as a second hand vehicle and a hand written money receipt was found in the R.T.O's office, where it was surrendered for change of ownership. A letter was sent to the complainant regarding the above points and the complainant by reply dated 22.01.2005 confirmed that he had purchased the vehicle second-hand for a consideration of Rs.1,80,000/- A notorized document produced by the complainant showed that one Shri Gulab Chandra Shaw sold the vehicle and gave only one piece of ignition key. After this, the insurance company offered to settle the

claim on non-standard basis at 60% of IDV i.e., Rs.1,30,400/-. The reasons given by the insurance company were that

The fact of purchase of second-hand vehicle was suppressed.

The Insured did not inform that there was no second ignition key in the proposal form for acceptance of risk.

The Insured did not present the driver before the investigator for proper investigation.

On going through the evidence available as mentioned above, it was clear that the insurance company had admitted their liability for the loss as they agreed to settle the claim partially. With regard to the second hand purchase made by the complainant, it could be easily seen at the time of going through the proposal form dated 13.03.2003 that the registration of the vehicle was done on 05.03.1998. It showed that the vehicle was more than 5 years old. Even after that the Insurer accepted the IDV at Rs.2,19,000/-, while the proposal form indicated the same at Rs.2,30,000/-. It only indicated that the insurance company arrived at the IDV after application of mind. The question of raising the issue that the material fact was not disclosed with regard to the second-hand purchase of the car at the time of claim was not at all relevant.

Non-availability of duplicate key may be a material information which ought to have been declared by the complainant. However, no evidence has been filed that the previous owner had handed over more than one piece of ignition key at the time of transfer of the vehicle. The police and the investigator in their respective reports did not suspect the involvement of the driver in the theft. The reason that the complainant did not produce the driver before the investigator does not seem to hold any relevance.

Keeping in view the above discussions, the insurance company were directed to pay the full IDV, i.e., Rs.2,19,000/-

Kolkata Ombudsman Centre
Case No. : 749/14/003/NL/01/2005-06
Shri Om Prakash Agarwala
Vs
National Insurance Company Ltd.

Award Dated : 28.12.2006

FACTS & SUBMISSIONS :

The complainant Shri Om Prakash Agarwal, filed a petition in which he stated that his Maruti Alto Car No. WB-02-S-1687 was insured under a Private Car Package policy. The policy had enjoyed 65% NCB. The said car met with an accident on 18.02.2005. After completion of inspection by the surveyor appointed by the Insurer, necessary repairing works were undertaken. A claim for Rs. 20,488/- was filed on 28.04.2005 with the insurance company, along with necessary documents. Thereafter, continuous follow up with the Insurer for settlement of the claim could not yield any response from them, which act of the insurance company was in violation of Regulation no. 9 (5) of IRDA (Protection of Policyholders' Interests) Regulations, 2002. Being aggrieved by the delay of about 8 months in settlement of the claim, the complainant approached this forum.

The complainant further stated that sequel to filing of the complaint with this forum, on 26.06.2006 the insurance company offered to settle the claim for Rs.14,330/-. But the said amount did not include any interest which was payable in terms of Regulation No. 9(6) of IRDA (Protection of Policyholders' Interests) Regulation, 2002. So, the complainant signed the voucher sent by the insurance company as partial acceptance of his claim and sought for payment of interest. However, the insurance company

refused to pay any interest. The complainant approached this forum for payment of interest.

The insurance company in their self-contained note stated that the claim for Rs.14,330/- was offered on 11.07.2006 towards full and final settlement as per the Surveyor's report dated 21.03.2005. However, the complainant accepted the voucher for partial settlement and, as the discharge was qualified, the insurance company could not release the claim cheque. However, they furnished to the complainant the calculation of arriving at the offered amount. On 30.08.2006, the insurance company once again forwarded a loss voucher for the same amount.

The original complaint was for delay in claim settlement. The nature has now altered to partial repudiation of claim. The complainant has accepted the amount of claim offered for settlement as per Survey Report. His present grievance is for non-payment of interest.

There was no provision in Regulation 9 (5) for payment of interest for delay in claim disposal. The provision of interest, as stipulated in Regulation 9 (6) applies when payment has been delayed in excess of 7 days after the Insured has accepted an offer of settlement by the insurance company. In this case, the complainant signed the loss voucher as partial payment, which could not be considered by the insurance company for release of payment.

Therefore, strictly as per the provisions of the IRDA (Protection of Policyholders' Interest) Regulation, 2002 No. 9 (6) - which constitute the basis of the Insured's complaint – no interest was payable. Hence, the petition of the complainant for payment of interest was not acceded to and the complaint was dismissed.

Kolkata Ombudsman Centre
Case No. : 045/12/003/NL/04/2006-07
Dr. Haradhan Roy
Vs
National Insurance Co. Ltd.

Award Dated : 19.01.07

Facts & Submissions :

This petition was filed by the complainant for refund of premium against the Insurance Company under Motor Insurance Policy.

The complainant, Dr. Haradhan Roy, stated that a Motor Insurance Policy issued by National Insurance Co. Ltd., for the period 22.1.2006 to 21.1.2007, covered his vehicle. The said car was sold in July, 2005 along with Blue Book, Insurance Policy Certificate and Tax Token to the new purchaser. He further stated that the purchaser for his home state in Bihar took his car. By mistake he paid the renewal premium for the above car for the period 22.1.2006 to 21.1.2007. He wrote number of letters to the Insurance Company requesting them to refund the premium paid for the car that had already been sold. As the Insurance Company did not settle the claim, he approached this forum for relief of Rs.1,098/-.

The Insurance Company stated that they issued the Policy and Certificate to the Insured on receipt of premium of Rs.1,098/-. They received a letter from the Insured on 27.1.2006 for refund of premium as the said car had already been sold about a year back. He enclosed the photocopy of the Sale-Receipt along with the original Policy and Certificate for cancellation of the policy as well as refund of premium. The 'Sale-Receipt indicated that Shri Rajeev Kumar was the new owner of the car who resided at Vaishali in Bihar. It was found that the new owner did never inform the Insurance

Company for such transfer or ask for cancellation of the policy that existed in the previous owner. Therefore, they requested the complainant to confirm whether the buyer took the policy for the period 22.1.2006 to 21.1.2007 for the said car along with the copy of 'Certificate of Registration'. However, the complainant stated that the 'Letter of Sale' was the sufficient document for cancellation of policy vis-à-vis refund of premium. The Insurance Company stated that they would not be able to refund the premium unless the documents, as sought for, were complied with.

Decision :

It was clear that the India Motor Tariff Rules governed the rules and regulations of Motor Insurance Underwriting. As per Rules, a policy could be cancelled only after ensuring that the vehicle was insured elsewhere, at-least for third party liability cover after surrender of the Original Certificate of Insurance for cancellation. Non-compliance of the above stipulation would entail breach of statutory provision. Therefore, the insistence of the Insurance Company for documents with regard to the new policy taken by the purchaser along with Certificate of Registration was correct. Therefore, this office confirmed the methodology adopted by the Insurance Company for non-refunding the premium paid by the complainant. It was clear that the Insurance Company would refund the premium; the moment the complainant submitted the above stated documents for the period 22.1.2006 to 21.1.2007. Since the action taken by the Insurance Company was justified, the complaint was disposed of without giving any relief to the complainant.

Kolkata Ombudsman Centre
Case No. : 046/11/002/NL/04/2006-07
Shri Ikbal Singh Sidhu
Vs
The New India Assurance Co. Ltd.

Award Dated : 19.01.07

Facts & Submissions :

This petition was filed by the complainant for not settlement of the claim regarding theft of his vehicle by the New India Assurance Company Ltd.

The complainant, Shri Ikbal Singh Sidhu, stated that his vehicle was missing since 16.11.2003. His driver, Shri Sashi Bhusan Thakur took away the vehicle for plying. The driver and the taxi were missing at the same time and the complainant lodged his theft claim with the Insurance Company. The Insurance Company repudiated the claim primarily on the ground that the required papers, as sought for to settle the claim, were not complied with by the complainant. The driving licence of the accused driver was found to be unauthorised. His representation against the Insurance Company's order of repudiation was also of no avail, as he could not provide such policy and other relevant papers, which were kept in the stolen vehicle. Being aggrieved by the action of the Insurance Company, he filed the petition before this forum for monetary relief of Rs.1,50,000/- .

The complainant further stated that Garihat Police Station issued a Charge Sheet against the offending driver and as he could not be caught he was declared absconder under Section 407 of I.P.C. The Charge Sheet framed by the police authority was submitted to the Insurance Company, as sought for. He also stated that he was not aware of the unauthorised driving licence. According to him, the said driving licence was procured through an authorised agent and therefore, repudiation of the claim by the Insurance Company on the reason that the driver was having unauthorised licence could not be valid.

The Insurance Company stated that the repudiation of the claim was made on the basis of driver having an unauthorized licence. Shri Sashi Bhusan Thakur took the subject vehicle, according to them, away for plying on 16.11.2003. As he did not return, a F.I.R. was lodged on 19.11.2003. The police issued a F.R.T., which concluded that the driver of the vehicle could not be traced and chance of recovery was very remote. The Insurance Company appointed an investigator to investigate whether the driving licence held by the driver at the material time was valid or not and they came to know that the lincence in question belonged to one Shri Surendra Singh, S/O. Shri S. Singh and was entitled to drive vehicle of M.G.V. only. The Policy clearly mentioned that "Person or Classes of Persons entitled to drive" should hold an effective and valid driving licence and therefore, the Insurance Company due to the reasons stated above had to repudiate the claim.

Decision :

From the above discussions, it was found that the vehicle was lost by theft and the driver was declared as absconder by the police authority. It was felt that validity of the driving lincence required by the policy condition is applicable only, if there was a claim on damages due to an accident. In this case, the taxi was lost by theft. In this case whether the driving licence was valid or not was not material. Here, the theft was confirmed by the police authority and therefore, it was felt that there was no alternative but to pay the monetary relief sought by the complainant. Under the circumstances, the Insurance Company was directed to settle the claim.

Kolkata Ombudsman Centre
Case No. : 054/14/002/NL/04/2006-07
Shri Mahadev Paramanik
Vs
The New India Assurance Co. Ltd.

Award Dated : 19.01.07

Facts & Submissions :

This petition was filed by the complainant for non-settlement of claim with regard to repairs of motor vehicle by the New India Assurance Co. Ltd., under Motor Insurance Policy.

The complainant's Tata truck was insured for an IDV of Rs. 5,63,630/- under Cover Note No.KOL/2002/038145 issued by Duly Constituted Attorney of the Insurance Company. The said vehicle met with an accident on 15.8.2005 and the complainant intimated the loss to the Insurance Company and filed their claim as per norms. The Insurance Company made survey of the damaged vehicle and re-inspection was done after repairs, but did not settle the claim. Therefore, the complainant approached this forum for relief of Rs.32,818/-.

The Insurance Company sent a reply on 18.7.2006 with reference to a letter issued by this office and they attached a copy of their note sheet addressed to Motor Technical Department of their office, the details of which read as under: -

1. Shri S. K. Roy, Development Officer accepted premium for Rs.12,500/-only and issued cover note, as mentioned above, covering the vehicle for the period 29.9.2004 to 28.9.2005. The premium so received, was not deposited with the Insurance Company. In the mean time, the vehicle met with an accident and after receiving claim intimation, the insurance company appointed final surveyor on 19.8.2005;

2. Further, they appointed Shri R. N. Das, Surveyor for final assessment and Shri R. S. Bhadra for re-inspection of the vehicle after repair. The surveyor gave an assessment of loss at Rs.18,094/- only.

The Insurance Company submitted their self-contained note on 29.8.2006 in which they stated that the subject claim could not be settled as there was violation of Section 64VB of the Insurance Act 1938 and therefore, the claim was not settled.

Decision :

The Insurance Company did not dispute in respect of the coverage of the vehicle under the policy for the said motor vehicle. They stated that the claim could not be settled due to non-deposit of premium which dealt with Section 64VB of the Insurance Act 1938. But in the instant case, it was felt that there was no violation of Section 64VB on the part of the complainant, as the Development Officer who received the premium for Rs.12,500/- on behalf of the Insurer did not deposit the same to the Insurance Company and as a result the Insurance Company was unable to issue the policy documents. Due to misconduct of the Development Officer, a genuine complainant should not be penalized for his legitimate claim. Under the circumstances, this office directed the Insurance Company to pay the claim for Rs.18,094/-, as assessed by the surveyor.

Kolkata Ombudsman Centre
Case No. : 024/11/003/NL/04/2006-07
Dr. N. P. Narain
Vs
National Insurance Co. Ltd.

Award Dated : 19.01.07

Facts & Submissions :

This petition was filed by the complainant against partial repudiation of claim due to an accident under Motor Insurance Policy.

The complainant, Dr. N. P. Narain, stated that he took a Motor Insurance Policy from National Insurance Co. Ltd. for his Tata Indica car, which met with an accident on 21.12.2004, and it was sent to the authorized dealer-cum-service center for repairs. The initial estimate of repairs was for Rs.19,720/-, while the final bill was for Rs.22,000/-. The Insurance Company deputed a surveyor who assessed the loss only at Rs.5,781/- without any reference to the complainant. The insurance company offered to settle the claim as per the surveyor's assessment. Further, representation to the various authorities of the insurance company did not yield any result. Therefore, the complainant returned the loss voucher to the insurance company. According to the complainant, the intensity of the impact was such that some interior parts of the car had to be repaired. According to him, the insurance company should have reviewed the assessment done by the surveyor and made the full payment of Rs.22,000/-, which the complainant paid to the authorized dealer. Being aggrieved by the partial repudiation, the complainant approached this forum for redressal of his grievance.

The insurance company stated that the accident took place on 21.12.2004 and they offered to settle the claim at Rs.5,781/- on 16.03.2005 based on the surveyor's assessment. The complainant returned the Discharge Voucher, as not acceptable. The survey report submitted by the Surveryor revealed that he allowed labour and painting charges only. He did not allow any amount for parts. The complainant stated that the surveyor restricted/limited his physical inspection to L/H Fender, Front Bumper, both L/H doors, etc. In response to the complainant's representation, the surveyor stated

that he based on the cause did the assessment and nature of the accident declared by the Insured in the claim form and was supported by the photographs taken from different angles at the time of inspection. According to the surveyor, the vehicle suffered only partial damage on the left side.

Decision :

On going through the bill submitted of M/s. Guinea Motor Pvt. Ltd., it was observed that the labour charges were mainly for denting and painting of L/H Fender, Front Bumper, both L/H doors, etc. The amount charged was definitely more than Rs.5,000/-. Similarly, in the cash memo, there were certain parts, which could be strictly relatable to the accident side of the car. Therefore, on going through both the bills, we find that reasonable and admissible claim would come to around Rs.15,000/- irrespective of surveyor's assessment. Not disturbing the surveyor's assessment, this office proposed to grant an ex-gratia of Rs.15,000/-, including the amount already approved by the Insurance Company. Hence, the Insurance Company was directed to pay the aforesaid amount to the complainant.

Kolkata Ombudsman Centre
Case No. : 800/14/002/NL/02/05-06
Shri Sibu Saha
Vs
The New India Assurance Company Ltd.

Award Dated : 19.02.07

Facts & Submissions:

This was a petition against delay in settlement of claim for loss of vehicle under Motor Policy issued by New India Assurance Company.

The complainant, Shri Sibu Saha, in his petition and subsequent 'P' forms submitted to this office, stated that his driver took his Tata Sumo vehicle to a place at Phulbagan More and a known person called Rakesh requested him to give a lift along with two other persons to visit Dakshineshwar. After reaching that place, the three persons got down to fetch some food. After taking the food, the driver went towards Bally Bridge. While driving, he became unconscious and later found himself by the roadside at Galsi and the vehicle was not found. He immediately lodged a complaint with Manicktala P.S. Later, the owner of the vehicle lodged an insurance claim. As the insurance company did not settle the claim, he approached this forum for relief.

Further, as per the report of the surveyor, it was found that the complainant received a phone call on 24.06.02, wherein it was mentioned that the driver was found on the roadside in Burdwan District. He went to the spot and learnt from the driver that he was forced to go to Dakshineshwar and after taking a drink, he became unconscious and was later found on the roadside. The Tata Sumo car had no trace and the driver was handed over to Mancktala P.S. The police, after completing the investigations, sent a Final Police Report. The surveyor came to a conclusion based on the discrepancy in the statements of the driver in the FIR and Shri Shibu Saha with regard to the persons travelling in the car along with the driver that the persons travelling in the car hired the car at Phulbagan and after that they did the mischief. He felt that it was difficult to believe that the driver moved from Phulbagan to Dakshineshwar on the request of the friends.

The insurance authorities obtained an opinion from the advocate, who stated that the insurance company has no liability to pay, as it appeared that the private car was used for the purpose of hire at the material time of incident.

However, the complainant stated that he was not in the knowledge, ow his driver went towards Dakshineshwar and got involved in the above incident and, therefore, his claim should be settled as early as possible.

The insurance company after getting the required documents like Final Police Investigation Report, report by independent investigator and the legal opinion of the legal advisor came to the conclusion that the vehicle was used by the driver for hire/reward and, therefore, by invoking the “limitation as to use” clause no. 3(i), they repudiated the claim of the complainant.

HEARING :

A hearing was fixed where both the complainant and the representatives of the insurance company appeared. According to the representatives of the insurance company, they repudiated the claim for the reasons mentioned above. They further stated that the method adopted by the driver clearly indicated that he went to Dakshineshwar for reward, on being hired by the passengers before the incident took place. However, they did not have any concrete proof that the hiring did actually take place.

On the other hand, the insured stated that he was in the business of poultry and the vehicle Tata Sumo was used around his place of stay and he was not sure why the driver went to Dakshineshwar on that day.

DECISION :

The Final Report given by the Police Authorities completely exonerated the driver from being a part of the action that took place. The police authorities could not trace the vehicle nor trace the person known as Rakesh because of whom the driver gave the lift to other persons also. The insurance company relied exclusively on the investigation report and the legal opinion was obtained on the basis of such investigation report. The report contains only the views of those persons and no concrete evidence was furnished in support of such views. However, it was not clear, why the driver picked up the passengers. There was no evidence to show that the driver picked them up with the insured’s knowledge or for a consideration. Therefore, coming to a conclusion that the vehicle was being used for hire was only a surmise. Finally, the police also confirmed that the theft was without any indication of usage of car for hire. Under these circumstances, we were unable to agree with the reasons cited for repudiation of the claim and it was held that the arguments of the insurance company for repudiation are not tenable. Therefore, the insurance company were directed to settle the claim at Rs. 4,65,000/- (Rupees four lakhs sixty-five thousand) only being the IDV, as per the norms of the policy.

Kolkata Ombudsman Centre
Case No. : 121/11/012/NL/05/2006-07
Dr. Rabin Banerjee
Vs
ICICI Lombard General Insurance Company Ltd.

Award Dated : 05.03.07

Facts & Submissions:

This petition was in respect of partial repudiation of claim arising out of accidental damage to the complainant’s Maruti Zen Car insured under Private Car Package Policy. The petition has been admitted under Rule 12 (1) (b) of the Redressal of Public Grievances Rules, 1998.

Dr. Rabin Banerjee stated that he is a Scientist affiliated to the Satyendra Nath Bose Natinal Centre for Basic Sciences. His Maruti Zen Car was insured under the Private Car Package Policy and the same met with an accident on 15.01.2006. After repairs at the workshop of Maruti's authorized dealer, the complainant filed a claim for reimbursement of Rs.5,356/-. However, the insurance company reimbursed him only Rs.1,026/- by cheque dated 25.01.2006, the complainant did not encash. In his representation to the insurance company, the complainant demanded reimbursement of Rs.4,026/-, including both parts and labour charges. However, despite such representation, the Insurer did not pay any further amount. Being aggrieved by partial repudiation, the complainant approached this forum for redressal of his grievance seeking relief of Rs.4,026/-.

The insurance company stated that based on the agreement between the two parties, the loss was finally assessed at Rs. 4,026/- Rs.3,592/- towards labour charges, plus Rs.433.13 towards material charges. The complainant opted for a discount of Rs. 750/- under the Private Car Package Policy towards 'Voluntary Deductible' of Rs.2,500/-. Such 'Voluntary Deductible' was in terms of the provision of India Motor Tariff and it was applicable in addition to the 'compulsory deductible' of Rs.500/-. Therefore, the policy was subject to 'total deductible' of Rs.3,000/-. Accordingly, the net amount payable to the complainant was Rs.1,026/- (Rs.4,026.00 – Rs.3,000.00). Thus according to him the claims made by the complainant were incorrect.

HEARING :

A hearing was fixed and both the parties attended.

DECISION :

In this case, the representatives of the insurance company stated that the Insured had opted for voluntary deduction of Rs.2500/- by paying the lesser premium of Rs.750/- for his Private Car Package Policy. They have shown the proposal form wherein the Insured has agreed for voluntary deduction of Rs.2,500/-. There is also a compulsory deduction of Rs.500/- for all motor vehicles i.e., if a claim is less than Rs.500/-, no claim is payable. The Insured Dr. Rabin Banerjee was informed of the position.. He was also shown the proposal form wherein he has signed voluntary deduction of Rs.2,500/- for lesser premium of Rs.750/-. He was explained that he has agreed for not claiming any repairs upto Rs.3,000/- i.e., Rs. 2,500/- voluntary deduction and Rs,500/- compulsory deduction and therefore, he was issued a cheque of Rs.1,026/-. He was satisfied with the explanation given by the representatives of the insurance authorities. However, he requested for revalidating the stale cheque that was issued. The cheque was handed over to the representatives of the insurance company. Representative of the insurance company in turn promised to revalidate the cheque and despatch the same to the Insured.

Since the petition has been amicably settled, the grievance was accordingly redressed.

Kolkata Ombudsman Centre
Case No. : 100/11/003/NL/05/2006-07
Shri Animes Das
Vs
National Insurance Co. Ltd.

Award Dated : 13.03.07

Facts/Submissions :

This petition was filed by the complainant, Shri Animes Das against repudiation of a claim under Private Car Motor Insurance Policy.

The complainant stated that he purchased an Insurance Policy against his private car bearing No.WB-30B/9236 from the Insurer on 23.08.2005 and it was valid upto 22.08.2006. The said vehicle was moving to Cuttack on 01.12.2005 carrying some of his friends and relatives and when the said vehicle reached high-level canal bridge under Bhandari Pokhari P.S. suddenly the driver lost the control and vehicle was capsized and fell into the water of side canal due to diversion and met a serious accident. As a result the driver of the said vehicle died on the spot and all others were grievously hurt and vehicle was fully damaged. The Bhandari Pokhari Police Station instituted a Case No.171/05 under section 279/337/338 and 304 (A) I.P.C.

The information regarding the accident was duly intimated to the Insurance Company on 02.12.2005 and the Insurance Company deputed Surveyor both for spot and final inspection of the vehicle and final Surveyor made an agreement on 01.01.2006 with the complainant towards settlement of the claim at Rs.95,000/-. But the Insurance Company ultimately repudiated the said motor accident claim vide their repudiation letter dt.17.01.2006 on the ground as to " violation of limitation as to use" – the private car was carrying 14 number passenger (more than carrying capacity 9 + 1) at the material time of accident, and on the ground for use for hire purpose (commercial purpose) which is outside the scope of Private Car Insurance Policy issued to Mr. Animesh Das covering his vehicle No.WB-20B/9236.

On receipt of such repudiation letter the complainant filed his representation to the Insurance Company on 24.01.2006 stating that his vehicle No.WB-20B/9236 (TATA SUMO) was not used for hire purpose on the date of accident, i.e. on 01.12.2005. The vehicle was used to carry his friends and their family members and the relatives on that date. Therefore, the Insurance Company should arrange for payment of the claim as early as possible. Since the complainant did not receive any reply or his claim from the insurance company, he sent an Advocate's notice to the Insurance Company on 17.02.2006 in settlement of the claim. But there was no result and accordingly, he filed this complaint to us for financial relief of Rs.2,50,000/-.

The Insurance Company while submitting their self-contained note with regard to the repudiation of the claim gave their views in detail towards the cause of repudiation of the claim in a separate note-sheet mentioning the following points: -

i) The Insurance Company issued a Motor Insurance Policy No.150303/31/05/6100956 for the period 23.06.2005 to 22.06.2006 (Not 23.08.2005 to 22.08.2006 as stated by the complainant in his representation) covering the Tata Sumo vehicle number WB-20B/9236 against IDV of Rs.2,00,000/- on receipt of premium for Rs.9,136/-;

ii) As applied by the Insured on 30.06.2005 towards inclusion the name of the financier Apey Jay Finance Group Ltd., Kolkata the Insurance Company made necessary inclusion in the policy;

iii) After the accident of the insured vehicle the complainant reported it to the Insurer's Balasore Branch on 02.02.2005 and a police case was registered at Bhandari Pokhari P.S. being F.I.R. No.171 (1) dt.01.12.2005 under Section 279/337/338/304-A. The Balasore Branch accordingly deputed Surveyor, Mr. Manas Kumar Mishra for spot survey. In the Survey Report submitted by Mr. Manas Kumar Mishra interalia stated that at the material time of accident the vehicle was used for carrying 13 passengers who after receiving injury were admitted to Bhadrak District Medical Hospital on 01.12.2005 at 5.40 A.M. against Ticket No.12849 to 12861. As per the local newspaper in Oriya the driver died on the spot and 13 others were

seriously injured and were admitted to the hospital. In the Challan for Post Mortem Examination No.123356, issued by the Bhandari Pokhari P. S. to A.D.M.O., Bhadrak also enlightened carrying of passengers;

iv) The Insurance Company, however, deputed Surveyor Mr.Amal Kr. Das for final survey of the damaged vehicle who made his assessment of the loss at Rs.95,000/- less policy excess.

v) Mr. Goutam Giri, the Investigator was deputed to investigate the matter as the injured person were in and around Contai and submitted his report stating that there were 14 persons inside the vehicle at the material time of accident and the driver was spot dead. Since the vehicle was used for hire and reward and carrying passenger beyond the registered capacity of the vehicle, it violates limitation as to the use under the policy. The claimant was therefore not eligible to get his claim for the said accident.

Decision :

It was clear that a decision was taken whether the subject vehicle was used to commit any violation or not with regard to limitation as to the use of the vehicle under the Motor Vehicle Act. The documents, which confirmed admission of the injured passengers in the hospital, consisted of 13 people. However, the documents in the form of a certificate given by the police authorities indicated only 9 passengers along with one driver while driving the vehicle.

From the above, it was clear that there was a contradiction in the certificates issued by the hospital authorities and the police authorities. The Assistant District Medical Officer in his report dt.17.1.2006 to the Investigator, appointed by the Insurance Company, stated that there were 13 injured persons connected with the aforesaid accident. But, the police authorities in their certificate issued by the A.S.I. being the I.O. of the case of Bhandari Pokhari P.S., mentioned that there were only 9 persons travelling in the vehicle that met with an accident. From the above, it was clear that there was also a case pending before the Motor Accident Claim Tribunal (M.A.C.T.).

Under these circumstances, it was paramount that the number of passengers who travelled in the vehicle that met with an accident should be correctly verified. This was so because repudiation made by the insurance authorities solely depended on " violation of limitation as to use". Therefore, it was felt that a decision by the M. A. C. T. would help to come to a conclusion with regard to number of passengers travelling in the vehicle that met with an accident. Therefore, this office directed the Insurance Company to review the decision of repudiation after a verdict by the MACT, which was likely to determine the number of passengers travelled at the time of accident in the alleged vehicle. The petition was disposed of accordingly.

Kolkata Ombudsman Centre
Case No. : 246/11/002/NL/07/2006-07
Shri Krishna Chandra Routh
Vs
The New India Assurance Co. Ltd.

Award Dated : 13.03.07

Facts/Submissions :

This is a petition filed by the complainant, Shri Krishna Chandra Routh against partial repudiation of a claim under Motor Insurance Policy.

The complainant stated that he took Motor Insurance Policy against Truck No.WB-33-6260 from the New India Assurance Co. Ltd., Kharagpur Branch for the period

28.12.2004 to 27.12.2005 for IDV of Rs.3,95,350/-. He further stated that the insured truck met with a severe accident on Raniganj Road at Godapiasal under Salbani Police Station in which the vehicle was badly damaged and his son Shri Timir Baran Routh sustained fatal injury and was admitted at Midnapore Medical College Hospital and subsequently to N.R.S. Medical College Hospital, Kolkata, as his life was in danger.

In the meantime, the surveyor and the Loss Assessor, Shri Somen Maity of the New India India Assurance Co. Ltd., Kharagpur came to his place and asked him to sign on some papers stating that if did not sign these papers he would not get the claim for the damage to the truck. Since the complainant at that time was mentally disturbed for his son, he had no alternative, but to sign on the papers given by the surveyor. After a few days the complainant came to know that the Insurance Company have settled Rs. 3,600/- only against the expenses of Rs.48,500/- towards repairing of the damaged portion of the truck. Although, the complainant represented to the Insurance Company against such settlement stating the above state of affairs but this did not yield any result. Therefore, the complainant filed this petition for relief.

The Insurance Company stated the following points in support of their decision in settlement of the claim :-

i) The claim against Vehicle No.WB-33-6260 was lodged on 10.05.2005;

ii) As stated in the Claim Form, the cause of damage was pushing of the vehicle by a Tanker, as a result of which, the subject vehicle dashed against a wall and got damaged;

iii) Mr. Sagnik Sarkar was instructed to do preliminary survey while Mr. Soumen Maity & Mr. Sudip Pradhan was deputed for final survey & re-inspection;

iv) The final surveyor, Mr. Soumen Maity arrived at a net payable loss figure to the tune of Rs.6,100/-;

v) The surveyor's estimate has also been agreed by the insured client and accordingly, the acceptance note is attached herewith;

vi) The Branch authority has not allowed the towing bill of Rs.2,500/- & settled the claim for Rs.3,600/-, as the vehicle is towed by Truck which is not permissible;

vii) However, inspite of signing the acceptance note, in insured has refused to sign the loss voucher and sent it back with a forwarding letter.

Further facts from the documents available were as under: -

As per the self-contained note, the Insurance Company further stated that they did not allow the towing bill as a truck, which was not permissible, as per the policy conditions, towed the vehicle. They further stated that although the Insured agreed to accept the claim, as per the surveyor's assessment, but refused to sign the Loss Voucher and sent it back to the Insurance Company. They further stated that there was a huge time gap between the date of loss and the date of inspection and due to this, the loss was aggravated as the vehicle was kept open and accordingly the claim was assessed.

Decision :

It was observed that the Insurance Company had taken all sorts of precautions before coming to a conclusion with regard to the amount of admissibility of the claim after being surveyed and properly assessed by their number of panel surveyors. They finally assessed the loss to the tune of Rs.3,600/- only. The Insurance Company did not allow the towing charges of Rs.2,500/- as because the ill fated truck was towed by a truck which was not permissible, as per policy conditions.

The complainant did not accept such a small amount of reimbursement finally being granted by the Insurance Company.

From the photographs, it could be seen that the damage caused by the accident was not very serious in nature. Therefore, it was clear that the complainant got everything repaired that existed before the accident. He was unable to bifurcate portion of his expenditure already incurred through repairs, which could be connected to the accident. Under these circumstances, this office did not have any alternative, but to agree with the claim settled by the Insurance authorities. Keeping in view, the Insured's son suffered by the said accident and the rejection of towing charges due to policy conditions, it was felt that an ex-gratia payment of Rs.5,000/- would meet the ends of justice. Therefore, this office directed the Insurance authorities to pay Rs.5,000/-.

Mumbai Ombudsman Centre
Case No. :GI-317 of 2005-2006
Shri Manish Vijayvargiya
V/S.
Bajaj Allianz Company Ltd.

Award Dated : 13.11.2006

Shri Haresh D. Janani, had taken a Motor Insurance Policy from Bajaj Allianz Company Ltd, to cover his Maruti vehicle No.MH-02 KA681, Model 2000 for Insured's Declared Value of Rs.53,650/- under Policy No.0G-06-1901-1801-00003236 for the period 25.5.2005 to 24.5.2006. He sold the car to Shri Manish Vijayvargiya, who approached the company for transfer of the car in his name. The company collected a fresh proposal form and the policy was transferred on 5.10.2005 by an endorsement on the same terms and conditions.

Shri Vijayvargiya, lodged a claim with the company stating that his vehicle met with a major accident on 7.10.2005. The Company settled the claim as per the policy sum insured after obtaining consent letter on stamp paper of Rs.100/- wherein he gave written consent on 29.11.2005 for net of salvage settlement for Rs. 13,150/- and an undertaking that the company was not liable for any other expenses and the damaged car was sold for Rs. 40,000/- to the salvage buyer. However, after discharging the claim voucher on 16.2.2006, the Insured vide his letter dated 3.3.2006 to the Company and the Ombudsman's Office complained that there was a negligence of Bajaj Allianz officials in fixing the IDV of his car and as per the formula a car exceeding 4 years but not exceeding 5 years should have 50% of market value and as on 24.5.2006 the cost of a new car is around Rs.2,60,000, so IDV of his car should be 1,30,000/-,whereas the company fixed the IDV of the car at Rs.53,650/-. The company settled his claim on net of salvage basis of Rs.40,000/- and Rs.13,150/- by cheque and he was not paid towing charges of Rs.1500/-. He demanded that the IDV of his car should be fixed at Rs.1,30,000/- and he should be paid(1,30,000–53,650=77,350) plus towing charges which is 77,350+1500 = 78,850/-.

On receipt of a notice from the Ombudsman's Office, the Company informed this Forum that they have settled the full claim as per the policy sum insured and a written consent was obtained from Shri Vijayvargiya. Further they informed that the car is a 2000 model and had completed 5 years in May 2005 and was not part of the IDV concept of the TAC regulation.

It is noted that as per the policy, the car is a 2000 model and had completed 5 years in May 2005 even before transfer of the vehicle in the name of Shri Vijayvargiya. Although the IDV of vehicles beyond 5 years of age and of obsolete models of the

vehicles (i.e. models which the manufacturers have discontinued to manufacture) is to be determined on the basis of an understanding between the Insurer and the Insured, in the proposal form submitted by Shri Vijayvargiya, to the company, he has not mentioned the IDV to be fixed and the policy was transferred in his name on the same terms and conditions. The car was in the 6th year and, hence, was not part of the IDV concept of the TAC regulation. The Sum Insured was fixed at the commencement of the policy by the earlier owner Shri Haresh D. Janani for IDV of Rs.53,650/- and as per the tariff, for the purpose of Total Loss claim settlement, this IDV will not change during the currency of the policy period in question.

In view of the fact that the IDV cannot be changed during the currency of the policy and an undertaking given by Shri Vijayvargiya, on the stamp paper that he had accepted the amount as full and final settlement of his claim subject to cancellation of his policy and that he was not going to raise any dispute, his contention that the IDV of his car should be fixed at 1,30,000/- is not tenable and there is no case for interference by this Forum.

Mumbai Ombudsman Centre
Case No. : GI-466 of 2006-2007
Ms. Sunita Nayak
V/S.
Iffco-Tokio General Insurance Company Ltd.

Award Dated : 9.01.2007

Ms. Sunita Nayak, had taken a Motor Insurance Policy from Iffco-Tokio General Insurance Company Ltd, to cover her Vehicle Skoda Octavia Rider TDI, for Insured's Declared Value of Rs.8,97,895/-. She lodged a claim with the company stating that on 16.9.2006, when she was passing through Thane-Belapur at entrance subway, she was stuck in the traffic. It was raining very heavily and the water started increasing and from left side a BEST bus splashed huge water and her car started floating and hit a Lorry passing through the right side. She left her vehicle as it is and stood outside and when she opened the door lot of water came inside the car. She submitted Proforma Invoice from Nummer Eins Motors India Pvt.Ltd., for Rs.6,22,708/-.

The Company, appointed M/s A.A. Desai, Surveyor to survey and assess the loss and the Surveyor submitted his Survey Report to the Company. The company vide letter informed Ms. Sunita Nayak that the Surveyor has noted that the loss sustained is consequential in nature and not admissible under the policy. Hence, they regretted their inability to consider the claim in light of terms and conditions of the policy. Further the Company asked Ms. Sunita Nayak to submit the estimate for the repair of physical damages i.e. denting/painting or cleaning to the Surveyor to make assessment of the same and these physical damages can be considered under the subject claim. As regards mechanical damage to the engine parts, it was noted by the Surveyor that the loss sustained to engine parts is consequential in nature and not admissible under the policy.

Aggrieved by the decision of the Company, Ms. Sunita Nayak, approached the Ombudsman requesting intervention in the matter of settlement of his claim with the Company.

The Company has taken the technical opinion from 3 authorized Surveyors, duly licensed by Designated Authority who inspected the engine and have given their

observations and they have all reached to a conclusion that water, on its own, had not caused damage to the engine but the damages were aggravated by starting the engine forcibly which led to extensive damages to the engine i.e. connecting rods and pistons (though denied by the insured) or by repeatedly cranking the engine/running the vehicle after flood water had entered the engine resulting in the major damage to the engine which is consequential.

In the facts and circumstances, the decision of the company that the loss to engine parts is consequential in nature and hence not admissible under the policy cannot be faulted. However, the Company has stated that they were willing to pay for the physical damages on receipt of estimate of repairs from the Garage, which may be paid on submission of repair bills by Ms. Nayak.

Mumbai Ombudsman Centre
Case No. : GI-17 of 2006-2007
Shri Jitendra J. Dave
V/s.
The Oriental Insurance Company Ltd.

Award Dated : 6.02.2007

Shri Jitendra J. Dave, Complainant had taken a Policy from The Oriental Insurance Company Ltd., Mumbai, to cover his Vehicle Maruti 800 under Private Car Package Policy. The Car was submerged in flood waters on 26th July, 2005 when it was parked at his residence for which he lodged a claim with the company. The Company deputed their Surveyor, Shri Sachin M. Dhuri to survey and assess the loss.

Based on the re-assessment made by the Surveyor, the company approved the claim for Rs.58,600/- on 3.3.2006 and a discharge voucher was sent to the Insured. Thereafter the company vide letter dated 21.3.2006 sent a duplicate discharge voucher and requested the Insured to discharge and return the same within 15 days or it would be presumed that he was not interested in pursuing the claim and hence it would be treated as No Claim.

Shri Dave discharged the voucher for Rs.58,600/- 'under protest' on 31.3.2006 and not being satisfied with the decision of the company, he represented to the Insurance Ombudsman on 21.4.2006. In his letter he stated that he had submitted the bills for towing charges for Rs.1200/- and Rs.90,364/- of Jagmohan Motors. From the Surveyor's Report which he received from the Company on 10.1.2006, he came to know that only Rs.56,000/- was allowed by the Surveyor and that he had not received the discharge voucher of Rs.58,600/- as the company was refusing to pay the amount stating that 'under protest' payment will not be released.

As instructed by this Forum, the company has informed that they have gone through all flood claim dockets and found that none of the vehicles damaged due to flood was repaired at M/s Jagmohan Motors and the above vehicle insured in their office was the only vehicle damaged and repaired at M/s Jagmohan Motors. Regarding bifurcation of category of parts (metallic or plastic), the surveyor had already conveyed the same and accordingly the claim was settled. Further they informed that other Maruti Repairers did not change the Muffler and Catalytic Converter in such similar cases.

It is noted that the main dispute is regarding the Muffler and Catalytic Converter and the Company has confirmed after the Hearing that the Muffler and Catalytic Converter was not replaced in such similar cases and it was damaged due to overheating and not due to flood water. Both these parts are made of metal housing and have a life long guarantee and it can be cleaned and reused. The Insured did not allow the Surveyor to

inspect both the Muffler and Catalytic Converter and give his opinion before replacing the two parts and there was no mutual agreement. The Surveyor is deputed to survey and assess the loss and only after his approval the repairs are carried out as per the estimate of repairs agreed upon. The replaced parts were depreciated by 10% and in some cases by 50% as per the policy condition and during the re-assessment, although the A/c blower motor and wind shield washer motor are made up of more than 50% plastic, it was taken as metal parts and the salvage value of Rs.1811/- was also allowed. The Insured has mentioned in his letter that the labour charges were acceptable to him and it is noted the towing charges have also been paid by the Company after the Insured submitted the bill.

The facts stated above reveal the fact that Oriental Insurance followed the procedure for settlement of the claim, as per standard norms laid down. However, a suitable opportunity was not given to the Surveyor to assess the damage of Muffler and Catalytic Converter in this case and the cause of damage was attributed to overheating by the garage. But looking to the enormous water deluge due to which the car was submerged in flood waters, this Forum allows an additional amount of 50% of the cost of Muffler and Catalytic Converter to the complainant to resolve the dispute.

Mumbai Ombudsman Centre
Case No. :GI-07 of 2006-2007
Dr. Kishore S. Jain
V/s.
The New India Assurance Co. Ltd.

Award Dated : 28.02.2007

Dr. Kishore Jain, had taken a Motor Policy for the period 11.8.2004 to 10.8.2005 from The New India Assurance Company Limited, Kalyan D.O. to cover his Matiz Car, Model 2000, for IDV of Rs.1,50,000/-. The car met with an accident on 1.5.2005 at Thane-Nasik by-pass road and an FIR was lodged at Kapurwadi Police Station, Thane and the Insured intimated the same to the company on 2.5.2005 and the claim form alongwith policy copy and estimate of repairer, Amarjeet Auto Garage (local garage), Bhiwandi was submitted to the company on 15.6.2005. As it was noticed that the Insured vehicle Matiz was an obsolete model, Dr. Jain was asked to submit the estimate from authorized repairers as parts were not available outside and the same was conveyed to him orally on telephone and letter by the Company.

The Insured vide letter dated 25.10.2005 intimated to the company that since the manufacturing of Matiz cars was discontinued, there was no workshop of Matiz cars. The car was kept in the Amarjeet Auto garage, Kalyan and it was badly damaged (total loss). He was repeatedly following up on telephone for survey of the vehicle as soon as possible but he had not received any reply so far. During the floods in Mumbai on 26.7.2005, the car was further submerged in flood waters and due to excessive rains during the year the car was eroded. Further vide letter dated 16.11.2005, he mentioned that the Company had not deputed any Surveyor but he received a telephone call 10 days back from New India to shift the vehicle to authorized workshop and submit the estimate. But as the manufacturing of Matiz car was stopped he requested the company to inform him the name of the Matiz workshop and depute a Surveyor.

Aggrieved with the company, Dr. Kishore Kishore approached the Ombudsman.

Thereafter, on the basis of the Surveyor's Supplementary Report Dated 7.12.2006, Dr. Jain was informed that the market value of his vehicle as on the date of loss was about Rs.65,000/-
and accordingly Net of Salvage basis liability worked out to Rs. 49,500/-. However, the

Insured vide letter dated 18.12.2006 informed the company that the net liability of Rs.49,500/- was not acceptable to him. While issuing the policy the IDV of his car was taken as Rs.1,50,000/-, hence he requested the company to settle his claim on IDV basis of Rs.1,50,000/- only.

The company has informed this Forum that as Matiz is an obsolete model, they had asked the Insured to get the estimate of Authorised repairer as parts are not available outside i.e. in local garage and the same was conveyed to him telephonically at various times which he has confirmed in his letter dated 16.11.2005. But inspite of repeated reminders insured had not shifted the vehicle and it was lying in open for 1 ½ years and as such, the loss was tremendously aggravated due to the non-cooperation of the insured. The market value of the vehicle was Rs.65,000/- on the date of loss and insured's demand for settlement of Rs.1,50,000/- is not tenable.

As per the Private Car Package Policy, the IDV of vehicles beyond 5 years of age and of obsolete models of the vehicle (i.e models which the manufacturers have discontinued to manufacture) is to be determined on the basis of an understanding between the insurer and the insured. However, it is seen there was no mutual understanding at the time of insurance as the vehicle was insured for more than the market value prevalent at that time. The Company did not send the Surveyor to assess the loss when the claim was reported as the estimate was not from the authorized garage.

As per the FIR of the police, it is found that the number of persons(family members) travelling in the car at the time of accident was 8 (including the driver) although the seating capacity of Matiz car was 5 (including the driver) which is a breach of provision under the M.V. Act. The car banged into a tree and did not collide with another vehicle. It is also noted from the Panchanama that the accident occurred due to overspeeding and carelessness. The eye witnesses who were labourers who witnessed the accident have mentioned that the car was speeding and dashed against the tree and toppled injuring the family members. After careful consideration the company has offered to settle the claim for an amount of Rs.65,000/- and have stated that it is reasonable and justified. The vehicle was insured for a higher IDV knowing the fact that the car was obsolete, out of market and the market value was very low. The company has stated that the IDV was accepted in good faith which was higher than the market value prevalent at that time. No advantage can be taken under the circumstances as the resale value of Matiz car on the date of loss was quite low in the market as it was an obsolete vehicle. The vehicle was inspected by the Surveyor only after the flood loss and there was further deterioration in the condition.

The principle of indemnity is the underlying message of motor insurance policy and therefore, by putting a higher value above the market price, the principle would be sacrificed if the settlement is done in toto. The Insured's Declared Value cannot be given in this situation as the spirit of IDV is violated. It is a known practice with insurance companies that they would always go by authorized repairers who have listed price.

In order to achieve equity, it would be reasonable to grant some more amount as compensation over and above the proposed amount of Rs.65,000/-. It is therefore, directed that the company may settle the claim for an amount of Rs.75,000/-, (less salvage value on as is where is basis of Rs.15,000/- and excess as per policy of Rs.500) and the net liability is worked out to Rs.59,500/- which seems to be reasonable under the circumstances.

Mumbai Ombudsman Centre

Case No. : GI-14 of 2006-2007
Shri Abhijeet Shah
V/s.
Tata AIG General Insurance Co.Ltd.

Award Dated : 30.03.2007

Shri Abhijeet Shah, had purchased a Car Tata Indigo GLX, from his previous employer M/s AIG Systems Solutions Pvt.Ltd. on 30th November, 2005. The vehicle was insured with Tata AIG General Insurance Company under Policy No.100313799. The said vehicle met with an accident on 23.1.2006, at Tilak Road Pune, for which he lodged a claim with the Company for Rs.14,300/- for the damages.

The Company vide their letter dated 1st February, 2006 informed Shri Shah that the claim lodged by him was inadmissible as the above policy was issued to AIG Systems Solutions Pvt. Ltd., for the period 18.5.2005 to 17.5.2006. Though the ownership of the vehicle had been transferred in his name in the RC book w.e.f. 15.11.2005 the Insurance Policy was not changed in his name till the date of accident and hence there was no contract existing between them. Aggrieved by the decision of the company, Shri Abhijeet Shah approached the Ombudsman for intervention in the settlement of his claim with the company.

The company in their written statement has stated that perusal of the documents viz. RC revealed that the ownership had been transferred in favour of complainant on 15.11.2005 but the policy was not transferred. It was noticed from the RC of the insured vehicle that the transfer had been effected from 15.11.2005 and the same had been signed by Asst. Registering Authority at Chennai (Central) RTO on 23.11.2005. Subsequent to the transfer, endorsement of NOC to Pune RTO and re-registration had been given effect on 8.12.2005. It was apparent from the facts that the complainant had enough time before the date of accident, to apply for transfer of policy in his name even after completion of all RTO formalities. Since there was no contract of Insurance with the claimant on the date of accident, hence in purview of General Regulation 17 of All India Motor Tariff, the claim was repudiated.

The Insured had not intimated in writing to the Insurance company regarding the purchase of the vehicle on 30th November, 2005 and also that he was in the process of completing the RTO formalities for transfer of the vehicle in his name. Even after the RTO formalities were completed on 8.12.2005 he did not submit the necessary documents to the Insurance Company to get the policy transferred in his name which is the provision as per General Rule 17 of the Indian Motor Tariff. In terms of the above provision, as on the date of accident, there was no Insurable Interest of Shri Abhijeet Shah in the said vehicle as the Insurance was still in the name of AIG Systems Solutions Pvt. Ltd. and there was no contract/agreement between the insurer and transferee to cover risk or damage to vehicle. Hence the Insurer is not liable to make good the damage to the vehicle.

In this case, the change of transfer of ownership was not communicated to the insurance company, hence the Company's decision to repudiate the claim is held sustainable.

Mumbai Ombudsman Centre
Case No. : GI-319 of 2006-2007
Smt. Jyoti C.Mehta
V/s.
The Oriental Insurance Company Ltd.

Award Dated : 30.03.2007

Smt. Jyoti C. Mehta, Complainant had taken a Policy from The Oriental Insurance Company Ltd., Mumbai, to cover her Vehicle Mercedes Benz under Private Car Package Policy for the period 7.4.2005 to 6.3.2006 for Insured Declared Value of Rs.5,20,000/-. The Car was submerged in flood waters on 26th July, 2005 when her car was parked at J.M. Estate, Andheri (East) for which she lodged a claim with the company on 29.7.2005 and asked the company to depute a Surveyor. Smt. Jyoti Mehta, complained to the Ombudsman vide letter dated 21.8.2006 stating that no decision was conveyed by the Surveyor/Insurance Company to start the repairs of her car although she had submitted four quotations to the company and the condition of the car was deteriorating day by day.

The Insured submitted estimates as follows:

1) Rs. 41,517/- dated 16.8.2005 for labour charges
2) Rs. 1,28,200/- dated 27.8.2005 for labour charges
3) Rs. 40,000/- dated 14.11.2005 for Engine Overhaul

On going through the records, it is observed that the company had gone by the Surveyor's estimate, but the complainant is insisting for settling the claim on total loss basis. The Insured wanted it to be considered as total loss, whereas the Company stated that as it was repairable, it could not be considered as total loss and no decision could be taken as the Insured was not cooperating. The Surveyor had mentioned that the Insured selected the repairer and the car was lying in flood affected condition for more than 2 months and flood water could have penetrated deep into the components day by day which resulted into consequential damages and increase in the repair cost i.e if the flood damages were attended immediately after the receding of the water, it would have been possible to curtail the repair cost considerably. The Insurance company will not be able to accept liability for consequential damages.

The fact remains that in the absence of mutual understanding and complainant not agreeing to the assessed loss by the Surveyor the matter got prolonged. The Surveyor had estimated in normal circumstances a liability for the flood affected damages around Rs.66,000/- after 50% depreciation and excess clause with a provision for some escalation which may take place when the actual repairs are done.

No prudent person will allow the car to remain unattended knowing fully well that the car submerged in flood waters if left unattended will get deteriorated and will escalate the cost of repairs. Surveyors are technically qualified persons to assess the loss licensed by the regulator and their advice cannot be set aside. It is also clear from the policy condition that the Insurer is not responsible for the consequential damages due to the vehicle remaining unattended for a long time. The insistence by the Insured repeatedly for total loss on IDV basis is not justified as the vehicle was in repairable condition at the first stage. The repair cost has gone up and the complainant has to bear 50% due to depreciation and being a 20 year old car, may not fetch a good value even after the repairs.

It is an admitted fact that the 26th July, 2005 unprecedented floods in Mumbai, has kept the Surveyors, Insurance Companies and the Repairers constantly engaged in attending to various claims and the companies took time in deputing the Surveyors for assessing the loss and making the vehicle in road worthy condition by the garages. Under the circumstances, there is no point in blaming each other at this juncture, but a solution has to be found out, which is in the best interest of both the parties considering the present condition of the vehicle. There is no point at this stage in asking to go for repairs but simultaneously there is no justification for allowing total

loss on IDV basis. The Surveyor has suggested the market value of the car to be around Rs.2.25 to 2.50 lacs, but it would be in the fitness of things to take higher limit suggested by the Surveyor I e. Rs.2.50 lacs and after deducting the Salvage value as estimated by the Surveyor to the tune of Rs.50,000/- and policy excess of Rs.6,000/-, the claim may be settled for a net amount of Rs.1,94,000/-.

Mumbai Ombudsman Centre
Case No. :GI-589 of 2006-2007
Shri Shivdas Mhatre
V/s.
National Insurance Company Limited

Award Dated : 30.03.2007

Shri Shivdas Mhatre, had taken a policy from the National Insurance Company Limited, Kalyan, under Private Car Policy for the period 5.4.2004 to 4.4.2005, to cover his vehicle Tata Sumo, Model 2001, for an IDV of Rs.2,00,000/-. The vehicle was hypothecated in favour of Vijaya Bank, Dombivali Branch which had sanctioned loan for purchase of the vehicle. The vehicle was stolen on 17.5.2004 from the parking place on public road near his friend's residence for which he lodged a claim with the Company for theft of his vehicle. The matter was reported to the Kalyan Bazar Peth Police Station under FIR No.CR Diary 72/04 dated 17.5.005 and registered under Section 379 of IPC.

The Company appointed an Investigator, M/s Om Nityanand Enterprises and based on the Investigator's Report the Company vide letter dated 10th October, 2006 to the Branch Manager, Vijaya Bank, (through whom Shri Mhatre took the loan for his vehicle) regretted to admit the liability for the claim as it was observed from the Police record dated 8.6.2004 that the borrower used to rent out the vehicle on hire. The vehicle was registered as a Private vehicle and was not allowed to be used for hire and reward. Using the vehicle for hire and reward, is a breach of policy terms and conditions and, therefore, such breach violates the policy terms for usage.

Aggrieved with the decision of the Company, the Insured represented to the Company on 18.11.2006. However, not receiving any reply to his representation, the Insured approached the Ombudsman vide letter dated 4.12.2006 requesting intervention in the matter of settlement of his claim with the Company.

On going through the records it is observed that M/s Om Nityanand Enterprises were appointed to investigate the case and submit the report. The Investigator reported that "This is not a genuine theft claim and suggested to close the file as no claim".

The critical analysis makes the issue quite clear. The instant response of the Insured to put down facts before the Police is to make a correct statement which was spontaneously made immediately after the loss. Shri Mhatre mentioned in the Hearing that when he showed the Panchanama to his friend, he came to know that it was not as per the facts stated by him to the police as it was mentioned that the vehicle was given on hire by him. However, realizing that in the given circumstances the claim would not be recoverable, the Insured gave the police an amended narration. The supplementary jawab is, therefore, taken as an after-thought and unacceptable. The company also did not change their stand inspite of submitting the supplementary jawab. Thus, it was clearly established that the vehicle was being used for hire in violation of the terms and conditions of the Insurance Policy. Moreover the vehicle has run 7000 kms in 14 months as narrated during the deposition which further substantiates the fact that it

was not for personal use alone. It is also to be noted that the vehicle was stolen when he went to attend a call to drop some one from Thane to the airport. From the above observations, it can be reasonably concluded that the vehicle was used in violation of the policy conditions.

Motor Insurance Policy is governed by the Motor Vehicles Act, which is a Statutory Act and any violation constitutes violation of the laws of land, which becomes a punishable offence. Hence, regardless of the cause of loss, the policy terms were violated and thus the Insurance Contract became voidable. In the facts and circumstances, the repudiation of the theft claim by the Company on the ground of “Limitation as to use clause” of the policy cannot be faulted and there is no case for interference by this Forum.