

OFFICE OF THE INSURANCE OMBUDSMAN (GUJARAT)

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SYNOPSIS OF AWARDS 2008-09

Half Year: OCT 2008 TO MAR 2009

11. GENERAL=VEHICLE INSURANCE

Award dated 07-10-2008

Case No.11-005-093-09

Mr.Ankitkumar K.Patel Vs. Oriental Insurance Co.Ltd.

Motor O.D. Claim.

The Claim for Motor Own Damage was repudiated by the Respondent on the ground that the owner while driving had learner's license.

During the hearing and documents submitted, it was proved that the owner driver had learner's license and had not followed the RTO/Motor Vehicle Rules 1988 which makes the driver mandatory to have accompanied driver with valid driving license of the vehicle being driven who in such a position can control vehicle or to stop the same.

Thus, the complaint failed to succeed and Respondent's decision was upheld.

Award dated 07-10-2008

Case No. 14-003-01-0-09

Mr.Badri Narayan Panda Vs. National Insurance Co.Ltd.

Private Car Package Policy.

The Insured car met with an accident and the claim payment was delayed by the Respondent.

During hearing, the Respondent informed that the claim was duly settled however the cheque issued remained with them. On reminder from the complainant, same was sent after lodgment delayed by 8 months.

The Respondent was directed to pay interest @ 8% from the date of settlement till realization and complaint disposed.

Award dated 15-10-2008

Case No.14-003-096-09

Mr. Kanjibhai H. Patel Vs. National Insurance Co.Ltd.

Motor O.D Policy

The case is of accidental damage of own vehicle.

The claim is not settled for longer time however as the case came up for hearing the Respondent informed that they have settled the claim before hearing and complainant agreed.

Since the claim was paid no formal order were issued.

Award dated 18-11-2008

Case No.14-014-0136-09

Mrs. Hetalben M Patel Vs. Chalamandalam MS Gen.Ins. Co.Ltd.

Motor Insurance Policy

Complainant lodged claim for Rs.11,01,420/- as her car was stolen from the compound of the society where the insured resides during day time at 11.15 am on 27-10-2005.

The Respondent has not settled the claim on the following grounds:

1. The vehicle is high value car and has highly technical features viz. chip in Engine which can be started by original keys only.
2. The Registration No.GJ-1 J 9565 given by agent of Infenium Toyota is allotted to a Centro car but Engine No. and Chesses No. mentioned in register of theft are for stolen Toyota Corola.
3. The car was stolen within 3 days from the date of purchase on 24-10-2005.
4. Final report given by court with condition to continue search of the accused and summary 'A' granted.

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5. FSL report stated that out of the set of 3 keys submitted to FSL, it is found that one of the key is not original.
 6. Polygraph test carried on husband of the complainant found that he is not telling truth.

Respondent made submission that the case has to be decided by Civil Court in view of half hearted investigation and reinvestigation and circumstances of theft of vehicle with the original key.

In the subject case, this Forum neither have necessary powers nor infrastructure to undertake the above exercise, it would be necessary to have application of legal process to resolve the grievance to any other forum as may be considered appropriate.

Award dated 06-01-2009

Case No.11-005-0224-09

Mr.Ramesh M. Mewada Vs. Oriental Insurance Co.Ltd.

Motor O.D Claim

The Complainant's insured car met with an accident and claim was repudiated the cause of accident was not acceptable to Respondent.

The reason for accident initially was informed as dash with the tree. As the Surveyor investigated the case, it was informed by the complainant that the reason given was on the basis of misleading guidance for claim lodgment. The actual reason as per him subsequently was as dash with other car coming from opposite side. The car was repaired without consent of Respondent. Since the investigation and lack of police Panchnama injured persons in the both cars was absent, the complaint was dismissed.

Award dated 18-03-2009

Case No. 11-010-0289-09

**Mr. Dhansinh B. Vala Vs. IFFCO TOKIO Gen. Insurance
Co.Ltd.**

Two Wheeler Insurance Policy

A claim relating to two wheeler Insurance Policy for theft of the vehicle was partially settled for 50% as per provision of Motor Tariff for depreciation after 5 years of age of vehicle.

The Respondent pleaded that even if the theft is considered on total loss the liability shall not exceed maximum upper limit than the liability may even be less than IDV fixed (Insurance Declared Value).

The value of vehicle on 31-01-2002 (DOP) was Rs. 42,040/-. The theft took place on 12-05-2008 and insured used vehicle for 6 years (more) and depreciation value will be 50% of selling price.

The Respondent agreed their mistake and showed ----- to refund extra premium charged.

Since it was not fair on the part of Respondent to pay an amount of Rs.18,500/- but consider claim preserving principle of Indemnity by fixing fair and reasonable IDV.

The Respondent was directed to settle the claim for Rs.21,020/- with interest from one month after the date of submission of claim keeping aside his earlier offer Rs.18,500/-.

Award dated 30-03-2009

Case No. 11-012-0291-09

**Mr. Sarfaraz A. Kazi Vs. ICICI Lombard General Insurance
Co. Ltd.**

Private Car Package Policy (Motor O.D Claim)

Own Damage claim of the Insured Car was not settled in the manner agreeable to complainant.

The documents and pleading revealed that claim was offered for settlement partially in view of 50% depreciation which was as per the Surveyor's report and recommendations.

Since the vehicle was 2-3 years old and in view of the disallowable repairs and Surveyor's report after interpolation, claim payable comes to Rs.5,206/- (as against the claim of Rs.12,990/- and after of 50% depreciation).

The Respondent was directed to settle claim for Rs.5,206/-.

Award dated 31-03-2009

Case No.11-009-0230-09

Mr. Darshan V. Mehta Vs. Reliance General Insurance Co. Ltd.

Motor O. D. Policy

The claim for damage of car due to oil leakage/starvation under Motor O.D policy was offered to lesser amount than that of claimed amount on the grounds of Surveyor's Report and assessment of loss. In view of documents and pleading it was established that damage was due to negligence of the driver and consequential losses are not covered the case was dismissed.

VEHICLE INSURANCE POLICY

BHUBANESWAR OMBUDSMAN CENTER

Complaint No.11-003-0341

Smt Draupadi Behera

Vrs

National Insurance Co. Ltd., Bhubaneswar DO-I

Award dated 22 December, 2008

Complainant had insured his vehicle with National Insurance Co. Ltd. The vehicle met with an accident within the policy period. Complainant's claim was repudiated by insurance company on the ground that the driver did not possess valid Driving

Hon'ble Ombudsman heard the case on 20.08.2008 where both parties were present. After hearing both parties and perusing the documents including the report of the police, Hon'ble Ombudsman held that the complainant has not come with a clean hand to this forum and bringing in the name of another driver once the driving license of the first driver was verified and found fake.

.Therefore up held the decision of repudiation of insurance company and dismissed the complaint accordingly.

BHUBANESWAR OMBUDSMAN CENTER

Complaint No.11-004-0340

Sri Pradipta Kumar Das

Vrs

United India Insurance Co. Ltd., Bhubaneswar DO-II

Award dated 30 December, 2008

Complainant had insured his vehicle with United India Insurance Co. Ltd. The vehicle met with an accident within the policy period. Complainant's claim was repudiated by insurance company on the ground that the policy condition was violated.

Hon'ble Ombudsman heard the case on 19.08.2008 where both parties were present. After hearing both parties and perusing the documents including the police papers, Hon'ble Ombudsman held that the vehicle was not used for hire and reward as pleaded by the insurer. The stand taken by the complainant that his relatives were travelling at the material time was neither proved false through either police papers or any document of insurance company. There fore the driver at the material time of accident was holding a valid Driving License

The decision of repudiation is set aside and insurance company is directed to pay Rs36500/- to the claimant within one month of receipt of consent letter.

BHUBANESWAR OMBUDSMAN CENTER

Complaint No.11-002-0337
Sri Hemanta Kumar Senapati
Vrs
New India Assurance Co. Ltd., Bhubaneswar DO-II

Award dated 14 November, 2008

Complainant had insured his vehicle with New India Assurance Co. Ltd. The vehicle met with an accident within the policy period. Complainant's claim was repudiated by insurance company on the ground that the name of actual driver was suppressed, as he did not possess valid Driving License.

Hon'ble Ombudsman heard the case on 18.08.2008 where both parties were present. After hearing both parties and perusing the documents including the police papers, Hon'ble Ombudsman held that the name of the driver was wrongly given by some one other than the complainant. Insurance company has not carried out investigation to ascertain the name of actual driver. The complainant has disclosed the name of actual driver who was holding a valid Driving License

The decision of repudiation is set aside and insurance company is directed to pay Rs53600/- to the claimant within one month of receipt of consent letter.

BHUBANESWAR OMBUDSMAN CENTER

Complaint No.11-002-0367
Sri Manguli Charan Jena
Vrs
New India Assurance Co. Ltd., Bhubaneswar DO-II

Award dated 18 December, 2008

Complainant had insured his vehicle with New India Assurance Co. Ltd. The vehicle met with an accident within the policy period. Complainant's claim was repudiated by insurance company on the ground that the names of owners on RC Book and permit are different.

Hon'ble Ombudsman heard the case on 30.09.2008 where both parties were present. After hearing both parties and perusing the documents, Hon'ble Ombudsman held that the name of the owners on RC Book and Policy are the same. The claim is to be settled on the joint name. There fore directed the insurance company to pay Rs93,000/- as assessed by the surveyor to complainants within one month of receipt of consent letter.

CHANDIGARH

Chandigarh Ombudsman Centre

CASE NO. GIC/260/TATA/11/09

Raj Agarwal Vs. Tata AIG

Order dated 07.10.08

MOTOR

FACTS: Smt. Raj Agarwal's Tata Indica car No. HR 12 G – 4320 that was insured by the Tata AIG General Insurance Co. Ltd. for the period 30.03.2007 to 29.02.2008 met with an accident on 02.12.2007. FIR was duly lodged. Initially she was given to understand that the claim had been approved and that she was supposed to keep the salvage but now her file has been closed as No Claim because of no insurable interest. It was further stated by her that she had not sold the vehicle to anyone. Since both i.e. the R.C. and insurance were in her name, the company's contention was wrong. Parties for called for hearing on 18.09.2008 at New Delhi.

FINDINGS: The insurer clarified the position by stating that there was a statement signed by Mrs. Raj Agarwal that the vehicle had been sold to Sh. Tarun Kumar and she had nothing to do with the vehicle and claim should be paid to Tarun Kumar. Hence claim was repudiated on the grounds of no insurable interest.

DECISION: Held that since Registration Certificate and Insurance Policy are in the name of the complainant, the claim is payable. However, since there is a doubt created due to statement of the complainant about the sale of the vehicle, she should be penalized for that. Taking the above facts into consideration, I am of the opinion that settlement of the claim on non-standard basis to the extent of 75% of the admissible amount would meet the ends of justice. It is hereby ordered that the insurer should make payment to the complainant to the extent of 75% of the admissible amount on net of salvage basis by 25.10.08 under intimation to this office.

Chandigarh Ombudsman Centre

CASE NO. GIC/336/ICICI/11/09

Wing commander R.C. Bedi Vs. ICICI Lombard

Order dated 16.10.08

MOTOR

FACTS: Wing commander R.C. Bedi had purchased a new Tata Indigo Regd. No. CH 04 B – 5691. It was insured by ICICI Lombard General Insurance Co. Ltd. for the period of one year w.e.f. 31.01.08 and for this a cover note No. 18003453499 was issued. However, the policy was never issued. The vehicle met with an accident and the surveyor was deputed. They wanted to see the original RC. It was told to them that the RC had been confiscated by the police due to a traffic challan. Despite this, the company told the workshop that they would not clear the bill without the original RC. The workshop refused to deliver the car to the complainant inspite of the fact that the complainant was a senior citizen. Parties were called for hearing on 16.10.08 at Chandigarh.

FINDINGS: During the course of hearing the insurer clarified that the original RC was not available. Hence the claim could not be settled. The surveyor had assessed the loss at Rs. 8834/- as the company's share after deducting Rs. 500/- as excess clause.

DECISION: Held that production of R.C. in an accident case is not a must and settlement of claim should not be held up on that account. The claim should be settled with the Garage M/s Hind Motors, Industrial Area, Panchkula under intimation to the complainant. The payment should be made to Ms. Hind Motors by 05.11.08 and this would be in full and final settlement of the claim of the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/308/NIA/11/09

Ranjeet Singh Vs. New India Assurance Co. Ltd.

Order dated 20.10.08

MOTOR

FACTS: Shri Ranjeet Singh purchased Maruti Zen Car bearing Engine no. 359296 and Chassis no. 855696 from Tara Automobiles, Abohar and got insured through Maruti Insurance Tie-up under Policy no. 20075632 for the period 18.11.05 to 17.11.06. The said vehicle was stolen on dt. 20.01.06 and the complainant lodged the F.I.R. No. 21 dt. 21.01.06 with Police Station, Sri Ganganagar. The final police report was issued on 25.03.06. After about one and a half year, the complainant received a letter from the insurance company for submission of documents. He submitted all the documents except R.C. The insurance company repudiated the claim. Parties were called for hearing on 20.10.08.

FINDINGS: During the course of hearing the insurer clarified that the vehicle was stolen on 20.01.06 and intimation was given after a lapse of 5 months on 30.06.06. The investigator was appointed. However original RC could not be produced by complainant. Hence the claim was repudiated since without RC the vehicle cannot be transferred in the name of the insurer. On a query, whether production of original RC is a must for settling the insurance claim, the insurer replied that without RC the ownership cannot be established. On a query, whether the temporary RC based on which insurance policy was issued was not proof of ownership, the insurer could not give a satisfactory reply.

DECISION: Held that mere non-availability of RC should not stand in the way of payment of the claim, since the vehicle was stolen when the

insurance cover was valid on the date of theft. It is nowhere written in the policy document that claim will be paid on the production of regular/original RC. Moreover, the affidavit and letter of subrogation are sufficient to get the vehicle registered in the name of insurer whenever the vehicle is recovered. Taking the above factors into account, the repudiation of the claim on the basis of non-availability of RC is not in order. The claim is payable. It is hereby ordered that the admissible amount of claim based on the IDV should be paid by the insurer to the complainant by 10.11.2008 after completing necessary documents like letter of subrogation, affidavit etc.

Chandigarh Ombudsman Centre

CASE NO. GIC/282/UII/14/09

Swaran Kaur Vs. United India Insurance Co. Ltd.

Order dated 20.10.08

MOTOR

FACTS: Ms. Swaran Kaur's husband Late Sh. Kulwant Singh passed away in an accident on 02.10.05. It was further stated that as his vehicle was insured by United India Insurance Co. Ltd., Amritsar, he too was insured. A claim was duly lodged and the company also conducted an inquiry. Although they visited the office of the company many times, they received no compensation. Parties were called for hearing on 20.10.08 at Chandigarh. The insurer was represented by Sh. Rakesh Sachdeva.

FINDINGS: During the course of hearing the insurer clarified that the driving licence of the driver at the time of accident was valid till 15.10.04. The accidental death took place on 02.10.05. Since this was a personal accident insurance policy, valid and effective driving licence was a must for processing the claim. Since the driving licence was not valid at the time of accident, the personal accident claim was not payable.

DECISION: Held that the contention of the insurer that the DLA did not have a valid and effective driving licence at the time of accidental death is justified. The repudiation of the claim is therefore in order. No further action is called for. The case is closed.

Chandigarh Ombudsman Centre

CASE NO. GIC/312/UII/11/09

Jatinder Kaur Vs. United India Insurance Co. Ltd.

Order dated 20.10.08

MOTOR

FACTS: Smt. Jatinder Kaur's husband Sh. Kuldip Singh got his scooter bearing no. CH-03-U-8640 insured from B.O. Samrala. On 27.11.06, her husband died in the road accident while he was going to his duty. All the relevant claim documents were submitted with the insurance company but till date claim of Owner's Driver P.A. Claim and scooter claim were not paid. Parties were called for hearing on 20.10.08 at Chandigarh.

FINDINGS: During the course of hearing the insurer stated that the vehicle was insured with National Insurance Co. Ltd. from 10.08.05 to 09.08.06. The vehicle was insured with them from 08.11.06 to 07.11.07. The complainant had claimed no claim bonus while getting the vehicle insured with them. However, when the claim was lodged, it was learnt that the complainant had taken a claim when the vehicle was insured with National Insurance Co. Ltd. Hence the claim was repudiated for giving wrong information at the time of insurance. The insurer also stated that there were two insurance claims, one for own damage to the vehicle and one for personal accident accidental death. On a query, whether a statutory declaration for forfeiting all claim in case of wrongly claiming 'no claim bonus' was obtained from the complainant, the insurer replied in the negative.

DECISION: Held that while it was a fact that the complainant had wrongly claimed 'No Claim Bonus', it is also a fact that the insurer had not obtained declaration for forfeiture of the claim from the complainant. Hence both the parties are responsible for lapses on their part. Therefore, settlement of own damage claim to the extent of 50% of the admissible amount of the claim on non-standard basis less the amount of NCB claimed will meet the ends of justice. As far as personal accidental insurance claim is

concerned, the full amount of premium of Rs. 50 had been paid by the insured. Hence full payment of accidental death insurance coverage amounting to Rs. 1,00,000/- is payable. It is hereby ordered that an amount of Rs. 1,00,000/- as personal accidental claim and 50% of admissible amount for own damage less the amount of NCB claimed should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/345/OIC/14/09

Harvinder Singh Vs. Oriental Insurance Co. Ltd.

Order dated 07.11.08

MOTOR

FACTS: Shri Harvinder Singh had insured his truck No. PB 12 G – 5753 vide cover Note No. 166100 for the period 13.09.07 to 12.09.08. His truck was stolen from Sirhind, Distt. Fatehgarh Sahib on 13.09.2007. He registered the FIR with Sirhind Police Station on 18.9.2007. He filed his claim with the insurer. He submitted all the claim papers including untraceable report. However, till now his claim has not been paid. Parties were called for hearing on 07.11.2008 at Chandigarh.

FINDINGS: During the course of hearing the insurer clarified that some documents were required from the complainant like statement of the driver, goods receipt, RC of the vehicle showing fitness and a court certificate about untraceable report.

DECISION: Held that some of the documents which are required may not be possible for the complainant to furnish. The driver is not traceable and his statement can not be recorded. So this should not be insisted upon. As far as the GR is concerned, there is a gate pass near Rajpura which should be treated as substitute for GR. As far as fitness certificate is concerned, the complainant is advised to procure of duplicate copy of RC along with fitness certificate and hand over the same to the insurer. As far as untraceable report is concerned, the untraceable report given by police is authentic, and no insistence should be made for the similar report from the magistrate. This is because section 173 CRPC is in respect of action to be taken by the police against criminals and reports in that regard being furnished to the magistrate. It has no bearing upon the settlement of the insurance claim. Therefore, there was a theft of the vehicle and there was a valid

insurance cover at the date of theft, the insurance claim should be paid without insisting on untraceable report from the magistrate and the driver's statement. The insured is advised to furnish a duplicate copy of RC and toll barrier pass of Rajpura alongwith other document required for settling the claim. The IDV amount of Rs. 7.50 lacs should be paid by the insurer to the complainant subject to the excess clause within 30 days of the receipt of required documents as mentioned above.

Chandigarh Ombudsman Centre

CASE NO. GIC/380/NIC/11/09

Ramesh Singh Rawat Vs National Insurance Co. Ltd.

Order dated 18.11.08

MOTOR

FACTS: Sh. Ramesh Singh had taken a Motor policy covering his Hero Honda Motorcycle No. HR 51 Z – 7547 vide policy No. 00395202 for the period 19.09.2007 to 18.09.2008. The above motorcycle was stolen on 07.08.2008 from Cycle Stand at Neelam Bath Road, Faridabad. The police was informed immediately of the theft. However, the FIR was written by Police on 12.08.2008. The complainant has mentioned in his complaint that he went to office of insurer on 08.08.2008 but came to know that office will remain closed on 09.08.2008 and 10.08.2008 on account of weekly holidays. He again visited on 11.08.2008 but was informed that claim intimation for theft will not be accepted without FIR. The insured received the copy of FIR on 24.08.08 and visited the insurer's branch on 26.08.08 alongwith copy of FIR. He was informed that since there is a delay in claim intimation, hence his claim has been repudiated. This is violation of Condition No. 1 which is described as, "In the event of accident/ theft of the vehicle either authorized dealer or our company should be informed immediately". Parties were called for hearing on 18.11.08 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified that the FIR was lodged after 5 days and insurer was intimated after 19 days. Hence the claim was repudiated on

the ground of violation of clause 1 of terms and conditions of the policy regarding delayed intimation.

DECISION: Held that repudiation of the claim on the ground of delayed intimation is not in order. Since police was informed in time. However, since the insurer was informed late, the complainant will be penalized to the extent of 25% of the claim amount / IDV. It is hereby ordered that 75% of the admissible amount of claim should be paid on non-standard basis by the insurer to the complainant by 20.12.2008 after submission of required documents.

Chandigarh Ombudsman Centre

CASE NO. GIC/406/NIA/14/09

Anima Kalra Vs. New India Assurance Co. Ltd.

Order dated 15.12.08

MOTOR

FACTS: Ms. Anima Kalra got her Indica Car bearing no. PB-08-BA-2603 insured for the period 05.03.07 to 04.03.08 for sum insured of Rs. 2,86,984/-. The same was stolen on the night intervening 30-31.10.07 from the residence of her sister at Jalandhar. The matter was reported to the police and they have registered the case vide FIR no. 389 dt. 03.11.07. All the claim documents including non-traceable report were submitted to the insurance company but till date claim was not paid. Parties were called for hearing on 15.12.08 at Ludhiana.

FINDINGS: During the course of hearing the insurer clarified that the documents were complete. However, NCRB did not show the status of the vehicle as stolen. Hence they requested for Non-Traceable Report (NTR) through the Magistrate. On a query, whether the vehicle was stolen or not, the insurer replied that the vehicle was stolen and there was no doubt about the theft.

DECISION: Held that since the vehicle was stolen when there was a valid insurance cover, non-availability of NCRB report should not stand in the way of settling the claim. The claim should be settled on the basis

of available documents and not based on NTR through court. It is hereby ordered that the admissible amount of claim should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/362/UII/14/08

Sanjeev Gupta Vs. United India Insurance Co.

Order dated 15.12.08

MOTOR

FACTS: Shri Sanjeev Gupta stated that his Maruti van No. HR 01 F – 3978 was insured with the United India Insurance Co. Ltd. Vide Policy No. 200601/31/0601/00001215. The vehicle was met with an accident near Malaerkotla on 11.03.2007. The insurance company was duly informed. However, the company has neither paid the claim nor informed the complainant the reason for not paying the claim. Parties were called for hearing on 15.12.2008 at Ludhiana.

FINDINGS: During the course of hearing the insurer clarified that the licence was for motor car. As per the definition motor car means any motor vehicle other than omni bus etc with seating capacity of less than 6 + 1. Hence as per rules, the driver of motor car cannot drive LMV. Hence the claim was repudiated.

DECISION: Held that as per Rule 10 (2) of the Motor Vehicle Act 1968, Motor car is not a category of vehicles for which the licence can be issued. All the vehicles having laden weight less than 7500 kg, should be treated alike. There is no separate endorsement for LMV in motor car

driving licence. Hence the driver of the motor car should be in a position to drive Maruti van omni bus. Accordingly, the repudiation of the claim, in my view, is not in order. The claim is payable. It is hereby ordered that the admissible amount of claim should be paid by the insurer to the complainant by 10.01.2009.

Chandigarh Ombudsman Centre
CASE NO. GIC/359/NIC/14/09

D.S. Juneja Vs. National Insurance Co. Ltd.

Order dated 24.12.08

MOTOR

FACTS: Sh. D.S. Juneja has a motor insurance policy vide policy No. 420102/31107/6100006378 from 25.03.08 to 24.03.09 covering his Maruti 800 DLX car No. CH 01 V - 2569. His car was stolen on 31.03.2008. He filed FIR and also informed the company. He submitted all the necessary documents as asked by the surveyor / investigator including untraceable report from the SSP Chandigarh. However, the company vide its letter dt. 25.09.08 informed the insured to submit the untraceable report from the competent court instead of report issued by S.P. Parties were called for hearing on 24.10.2008.

FINDINGS: During the course of hearing the insurer clarified that as per company guidelines they had requested the complainant to submit untraceable report from the magistrate. The same was awaited. In the absence of this report they were not in a possible to settle the claim.

DECISION: Held that the case should not be held up for want of untraceable report from magistrate, since section 173 of Cr.PC specifically deals with the criminals and not with the victims. The police untraceable report signed by SSP's office was sufficient to settle the claim. It is hereby ordered that the admissible amount of claim should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/403/IFFCO TOKIO/11/08

Kuldeep Kaur Vs IFFCO Tokio General Ins Co.

Order dated 24.12.08

MOTOR

FACTS: Smt. Kuldeep Kaur had got the car No. PB 57 B – 0889 insured by Iffco Tokio General Ins. Co. for the period 14.02.08 to 13.02.09 through M/s BAP Insurance Brokers (P) Ltd. to whom she had paid cash premium. They, however, deposited the cover note with the insurance company with their own premium cheque. The insurance company informed the complainant that the cheque given by the broker bounced. The vehicle, however, met with an accident and the insurance company was not making the payment of Rs. 42671/- despite the fact that the loss has been assessed by a surveyor. Copy of letter dt. 11.10.08 written by the M/s BAP Insurance Brokers (P) Ltd. to the insurer was also enclosed in which it was written that while it was true that the cheque had bounced but thereafter a demand draft of Rs. 15309 dt. 13.05.08 was submitted which inter alia covered the vehicle of the complainant. Parties were called for hearing on 24.12.2008.

FINDINGS: During the course of hearing the insurer clarified that this was a case in which the complainant had paid money to the broker M/s BAP Insurance Brokers Pvt. Ltd. He issued a cheque in favour of the company which was dishonoured due to lack of funds. Later a Bank draft of Rs. 15309/- dt. 13.05.08 was received from the broker, which was adjusted against some policies which did not include the cover note No. 36050876 relating to the complainant. The matter was taken up with IRDA for recovery of the amount from the broker and the case can be settled only after the recovered amount is received and adjusted against the cover note No. 36050876. On a query, whether any details of amount of Rs. 15309/- were available, the insurer replied in the negative. However, on checking up the records it was found that a letter was written by the broker addressed to Branch Manager IFFCO Tokio General

Ins. Co., Ludhiana, in which he had stated that Rs. 15309/- was to be adjusted against seven cover notes including cover Note No. 3605087.

DECISION: Held that on the basis of the letter issued by M/S BAP Insurance Brokers Pvt. Ltd, that the premium due to the complainant has been received by the insurer and the insurer is liable to settle the claim of the complainant amounting to Rs. 42671/-. It is hereby ordered that the admissible amount of claim should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/397/Reliance/11/09

Akashdeep Vs Reliance Gen. Insurance Co. Ltd.

Order dated 06.01.09

MOTOR

FACTS: Sh. Akashdeep has stated that his Tata Indigo car Regd. No. 99 BJ (T) – 4940 was insured for the period 28.02.2008 to 27.02.2009 with the insurer. The temporary RC of the vehicle was valid upto 27.03.2008. Before that i.e. on 18.03.08, the vehicle got passed by the Registering Authority, Hissar. On 19.03.2008, the vehicle met with an accident. The insurance company has, however, repudiated the claim on the grounds that the driving licence is not valid. It was further stated by the complainant that the driver of his vehicle had two licenses. Parties were called for hearing on 06.01.2009 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified that the vehicle was insured as a commercial vehicle. The driving licence did not have endorsement for commercial vehicle. Moreover, the driving licence was valid for 5 years which for commercial vehicles, is for 3 year. On a query, whether the driver was authorized to drive transport vehicle, the complainant showed another licence issued by U.P. Transport

Authority showing that the driver was licenced to drive transport vehicle upto 18.04.2009.

DECISION: Held that the driver was having two licences valid concurrently which is against MV Act. Hence the contention of insurer that the driver was not having a valid driving licence is justified. The repudiation of the claim is, therefore, in order. No further action is called for. The complainant is dismissed.

Chandigarh Ombudsman Centre

CASE NO. GIC/457/NIC/11/09

S.K. Singh Vs. National Insurance Co. Ltd.

Order dated 06.01.09

MOTOR

FACTS: Dr. S.K. Singh had taken a motor insurance policy bearing No. 4463312 covering his Maruti 800 Car No. HR 10 F - 1789 for the period 07.08.08 to 06.08.09 for sum insured of Rs. 95333/-. The vehicle met with an accident due to puncture on 27.08.2008. This matter was immediately informed to insurer as vehicle was bearing cashless insurance. After final survey, the repair cost was estimated as Rs. 59000/-. During survey, the surveyor has pointed out categorically that all documents pertaining to claim are in order for cash less basis and then the repair work was started by the repairer. The repairer recovered the full amount of claim from the insured and sent the bills to insurer. Later on, the insurer wrote to the insured that “as per policy condition the driver should hold the valid and effective driving licence at the time of accident. Since your driving licence expired on 31.07.08 and accident took place on 27.08.08, looking into these facts, we have closed your claim as ‘No claim’. The insured has also stated that under section 15 of MV Act, his driving licence is renewed from the date of its expiry i.e. from 30.07.08 to 30.07.2013 (for five years) without showing any break. So, the observation that the driver does not hold valid driving licence as on date of accident is against the rule.. Parties were called for hearing on 06.01.2009 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified that the driving licence had expired on 31.07.2008. The accident took place on 27.08.08. Hence the claim was repudiated.

DECISION: Held that the complainant had applied for renewal of driving licence and he got a slip issued by licencing authority Sonipat that they had received application for

renewal of driving licence and the slip was valid till 28.09.2008. Moreover, the driving licence has been renewed from 30.07.08 to 31.07.2013 without break. Taking the above into consideration, the driving licence was valid on the date of accident. The repudiation of the claim is not in order. The claim is payable. It is hereby ordered that the admissible amount of claim should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/441/NIC/14/09

Swaran Singh Vs National Insurance Co. Ltd.

Order dated 12.01.09

MOTOR

FACTS: Sh. Swaran Singh got his truck bearing no. HR-37-A-3913 insured for the period 14.10.06 to 13.10.07. The said truck met with an accident. All the claim documents were submitted to the insurance company but till date his claim was not paid. Parties were called for hearing on 12.01.09.

FINDINGS: During the course of hearing the insurer clarified that they were awaiting the vehicle fitness certificate from the complainant. As soon as the same will be received, the case would be settled. On a query, whether vehicle fitness certificate was available, the complainant stated that the same was given to surveyor. He showed documents showing the road tax paid for operation of the vehicle in nearby States.

DECISION: Held that the contention of the insurer that the vehicle roadworthiness is a must for settling the accident claim in respect of commercial vehicles though justified should not stand in the way of settling the claim. Moreover the complainant has road permit continuously for plying the vehicle in nearby States. In view of the above, the claim should be settled without waiting for the fitness certificate of the vehicle. Since the fitness certificate is not available settlement of the claim at 75% of the admissible amount would meet the ends of justice. It is hereby ordered that 75% of the admissible amount of claim should be paid by the insurer to the complainant by 10.02.2009 under intimation to this office. In case the complainant is able to furnish a copy of the fitness certificate within this period, the balance amount of 25% should also be paid to the complainant by the insurer.

Chandigarh Ombudsman Centre

CASE NO. GIC/439/NIA/14/09

Deepshikha Vs. New India Assurance Co. Ltd.

Order dated 12.01.09

MOTOR

FACTS: Smt Deepshikha got her Maruti bearing no. CH-01-V-6967 insured under policy no. 350200/31/07/01/00002615 for the period 22.07.07 to 21.07.08 for sum insured of Rs. 1,00,000/-. The said vehicle met with an accident on dt. 20.06.08. The estimated cost of repair was Rs. 2,00,000/- . The company agreed to settle the claim on Total Loss Basis but the amount they proposed Rs. 54,500/- which was very less compared to the sum insured of Rs. 1,00,000/-. Parties were called for hearing on 12.01.09.

FINDINGS: During the course of hearing the insurer clarified that the accident took place during the policy period of 2007-2008. However, in the previous year viz. 2006-2007 the vehicle was insured for Rs. 60000/- . The fixing of IDV for Rs. 1.00 lakh for 2007-2008 was a clerical mistake. It should have been less than Rs. 60000/-. Taking Rs. 5000/- as depreciation, the IDV was fixed at Rs. 55000/- while settling the claim. After deduction of Rs. 500/- as excess clause an amount of Rs. 54500/- was offered to the complainant which she has declined.

DECISION: Held that the fixing of the IDV at Rs. 1.00 lakh was not in order as the IDV during the previous year was Rs. 60000/-. On the presumption that the market value in 2008 remained at the same level,

the IDV should have been fixed at Rs. 60000/-. It is hereby ordered that an amount of Rs. 59500/- on total loss basis should be paid by the insurer to the complainant on the basis of Rs. 60000/- as IDV after deduction of Rs. 500/- as excess clause. The excess premium on Rs. 40000/- charged by the company on the IDV of Rs. 1.00 lakh should also be refunded. The payment should be made by 31.01.09 after completion of usual formalities under intimation to this office. The salvage should be handed over by the complainant to the insurer at the time of surrender of RC duly transferred in the name of the insurer.

Chandigarh Ombudsman Centre

CASE NO. GIC/436/NIC/11/09

Harcharan Singh Vs. National Insurance Co. Ltd.

Order dated 12.01.09

MOTOR

FACTS: Sh. Harcharan Singh had taken a motor insurance policy bearing No. 61/680/07 covering his vehicle Toyota Innova bearing No. PB 08 – AV – 6251. On 29.11.07, the insured along with his family was going from Nakodar to Jalandhar. The vehicle was being driven by driver Jatinder Kumar. It was a very foggy and cold day and due to bad weather, his vehicle collided with vehicle in his front and also one vehicle, which was coming after his vehicle. The incident was informed to the insurer. On approaching the insurer, he was informed that his claim is not passed as yet and it is under investigation. After a long period, he received a letter from the insurer which stated that version put by the insured and his driver were contradictory and were false. It is further stated by the insurer that the investigator has considered usage of the vehicle per day from the date of purchase viz a viz other factors like income of insured, average

running of vehicle, loan installments, cost of fuel etc. and concluded that the vehicle was being used as a taxi whereas it is insured as a private vehicle. Accordingly the insurer has stated that claim is not admissible. Parties were called for hearing on 12.01.2009 at Chandigarh.

FINDINGS: During the course of hearing the insurer clarified the position by stating that during investigation it was found that the vehicle had run for 1,95,000 km in a span of about 2 years. This was a very high running for a vehicle being used for private purpose. Moreover the income tax return was seen. It was found that the annual income tax return showed an income of Rs. 1.40 lakhs, whereas the total expenditure computed worked out to above Rs. 4.00 lakhs including installment of loan, driver's salary, diesel etc. Also the cause of accident given by the driver is different that given by the complainant. There appeared to be discrepancy in their statements.

DECISION: Held that the contention of the insurer that the vehicle was being used for hire and reward appeared more plausible in view of the heavy running of the vehicle in a small place like Nakodar. Since the vehicle was being used in contravention of the terms and conditions of the policy, the repudiation of the claim by the insurer is in order. No further action is called for. The complainant is dismissed.

Chandigarh Ombudsman Centre

CASE NO. GIC/444/OIC/11/09

Jagir Singh Vs Oriental Insurance Co. Ltd.

Order dated 15.01.09

MOTOR

FACTS: Sh. Jagir Singh had a Motor Policy No. 31/07/900046 covering his Alto car No. PB-02 AA – 2457. The car met with an accident on 20.04.2007 and suffered heavy damage resulting into the vehicle total loss beyond repair. The insurer repudiated his claim on flimsy ground without going into the details of cause of accident. He made a detailed representation vide his registered letter dt. 15.09.2008 but he received no reply to his representation. Parties were called for hearing on 15.01.2009 at Amritsar.

FINDINGS: During the course of hearing the insurer clarified the position by stating that the vehicle was fitted with an LPG kit without any endorsement on the RC or the

insurance policy. This was against the provisions of the motor vehicle act and hence the claim was repudiated.

DECISION: Held that on going through the records and photographs presented before me, I find that there was no gas cylinder in the vehicle at the time of accident. Moreover, the accident has not taken place on account of the presence of gas cylinder in the vehicle. Therefore repudiation of claim on the basis of getting LPG kit fitted is not in order. The accident was genuinely caused by colliding with another vehicle. Hence, the claim in my view is payable as the proximate cause of accident is not the fitting of LPG kit in the car. It is hereby ordered that admissible amount of claims should be paid by insurer to the complainant by 05.2.2009 after completion of usual formalities including submission of cash memos.

Chandigarh Ombudsman Centre

CASE NO. GIC/398/ICICI/11/09

Suresh Kumar Vs. ICICI Lombard

Order dated 19.01.09

MOTOR

FACTS: Shri Suresh Kumar stated that his Tata Sumo Spacio Regd. No. HR 4B – 5581 was insured by ICICI Lombard General Insurance Co. Ltd. for the period 17.04.2008 to 16.04.2009 vide policy No. 3001/54858653/00/000. The vehicle met with an accident on 31.08.2008. The claim was lodged with the company but it was repudiated as No Claim on the grounds that the vehicle was being used as a taxi. Parties were called for hearing on 19.01.09 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified that the claim was repudiated on two grounds. The vehicle was sold to Sh. Ravinder Kumar who then sold the same to Sh. Anil Kumar. There were affidavits to this effect. Hence there was no insurable interest of the complainant. Also, the vehicle was being used for hire and reward as was evident from a quotation given by Sh. Anil Kumar. On a query, whether RC and insurance policy were in the name of the complainant, the insurer replied in the affirmative.

DECISION: Held that the contention of the insurer about absence of insurable interest is not justified as both the RC and insurance are in the name of the complainant.

Regarding the quotation of Sh. Anil Kumar for Taxi, the documents produced do not justify the same. The affidavits which were signed in 2006 do not have much relevance in the present case as the RC and the insurance cover are in the name of the complainant Sh. Suresh Kumar. If we go by the affidavits, it would appear as if the vehicle is without any insurance cover from 2006 onwards. This does not seem plausible. I do not consider it necessary to have any further investigation done about the ownership since the RC is clearly in the name of the complainant. Taking the above into consideration, the claim is payable. However, since there are two affidavits regarding purchase of the vehicle, the same can not be discounted. Therefore, settling the claim on non-standard basis to the extent of 75% of the admissible amount would meet the ends of justice. It is hereby ordered that 75% of the admissible amount of claim should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/364/ICICI/14/09

Dharam Chand Vs. ICICI Lombard

Order dated 19.01.09

MOTOR

FACTS: Shri Dharam Chand stated that the vehicle No. HR 61 – 3560 was insured by ICICI Lombard General Insurance Co. Ltd. for the period 24.08.07 to 23.08.07. It met with an accident on 07.04.2008. It was surveyed by Sh. Amit Mishra and an estimate of Rs. 122501/- was submitted. It was further stated that although more than six months had elapsed, he had not heard anything from the insurance company. Parties were called for hearing on 18.11.2008 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified that the vehicle was used for hire and reward as per the statement of the complainant and taxi quotation. Moreover, there was high running of vehicle averaging 150 km per day. Also, the expenditure on the vehicle was about Rs. 20000/- per month which is not justified by the income of insured.

DECISION: Held that the contention of the insurer that the vehicle was being used for hire and reward is not justified by the documents except for high running and

expenditure. As far as heavy running mileage is concerned, 150 km per day on an average does not seem to be very heavy. However, since the intimation was given late, the complainant should be penalized. Therefore in my opinion, settling the claim on non-standard basis of 75% of the admissible amount would meet the ends of justice. It is hereby ordered that 75% of the admissible amount of claim should be paid by the insurer to the complainant within 15 days of receipt of claim form and other documents.

Chandigarh Ombudsman Centre

CASE NO. GIC/462/Bajaj/11/09

Dalbara Singh & Darshan Singh Vs. Bajaj Allianz Gen. Ins. Co. Ltd.

Order dated 21.01.09

MOTOR

FACTS: Shri Dalbara Singh & Darshan Singh got their TATA Truck bearing no. PB-13-L-8782 insured under policy no. OG-08-1203-1803-00000390 for the period 16.07.07 to 15.07.08 for sum insured of Rs. 6,50,000/-. The said truck was stolen in the intervening night of 18/19.10.07. The case was reported to police station vide FIR no. 108 dated 19.10.07 and intimation was given to insurance company immediately. All the claim documents were submitted to insurance company but they repudiated the claim without any valid reason. Parties were called for hearing on 21.01.09.

FINDINGS: During the course of hearing the insurer clarified that as per investigation, report the vehicle was sold to one Sh Jaswant Singh on 07.10.07 before the date of accident. Hence at the time of theft the complainant did not have insurable interest. On a query whether the RC was transferred in the name of Sh. Jaswant Singh, the insurer replied that it was in the name of the complainant. On a query whether the vehicle was sold the complainant stated that they had initiated sale proceedings but since the vehicle was hypothecated because of loan from Sundram Finance company the deal could not be finalized. In the mean time the vehicle was stolen.

DECISION: Held that since the RC and insurance policy were in the name of the complainant he had insurable interest. Hence the claim in my view is payable. However in order to penalize the complainant for initiating sale proceeds illegally he should be penalized to the extent of 10% of the claim amount. Accordingly, in my view settlement

of the claim on the basis of 90% of the IDV would meet the ends of justice. It is hereby ordered that 90% of the IDV amount less excess clause should be paid by the insurer to the complainant through financier by 20.02.09 after completion of usual formalities.

Chandigarh Ombudsman Centre

CASE NO. GIC/491/Reliance/11/09

Ashish Gulati Vs Reliance Gen. Insurance Co. Ltd.

Order dated 21.01.09

MOTOR

FACTS: Shri Ashish Gulati got his Maruti Alto car bearing no. HR-02-P-1393 insured under covernote no. 200701103498 with Reliance General Insurance Co. Ltd.. The car was stolen on dated 02.04.08 and he had completed all the claim documents but the insurance company repudiated the claim on the ground that there was delay of 55 days in intimation. Parties were called for hearing on 21.01.09.

FINDINGS: During the course of hearing the insurer clarified the position by stating that the vehicle was insured with New India Assurance Company upto 01.04.08 . The insurance was transferred to them on 02.04 08 at 12.04 PM as per cover note. The vehicle was stolen on 02.04.08 and FIR was lodged with the police at 7.00 P.M on 02.04.08. Intimation was received by the company after 55 days. Since it was a close proximity case and there was delay in intimation, the claim was repudiated. On a query whether the vehicle was inspected physically before issuing the cover note the insurer could not give a satisfactory reply.

DECISION: Held that two facts which are clearly brought out are that there was a theft of the vehicle and there was valid insurance on the vehicle on the day of theft. The non inspection of the vehicle by the insurer at that time of issuing the covernote is an underwriting lapse and the complainant should not suffer for that. As far as late intimation is concerned, the police was informed on 04.04.08 based on which they lodged

the FIR. There does not appear to be substantial delay in informing the police . However since the insurer was informed late, the complainant should be penalised for late intimation. Therefore, settling the claim at 90% of IDV would meet the ends of Justice. It is hereby ordered that 90% of IDV amount should be paid by the insurer to the complainant after deducting the excess clause amount by 10.02.09 after completion of usual formalities.

Chandigarh Ombudsman Centre

CASE NO. GIC/422/NIC/14/09

Raghubir Singh Vs. National Insurance Co. Ltd.

Order dated 23.01.09

MOTOR

FACTS: Sh. Raghubir Singh had taken a motor insurance policy bearing No. 361100/31/06/620003763 covering his Yamaha Motorcycle No. HR 51 J – 4505 for the period 17.11.06 to 16.11.07 for sum insured of Rs. 15000/-. His motorcycle was stolen in the night of 04.11.07 to 05.11.2007 from outside the house of his friend Sh. Anil Kumar. He informed the Police Station Saran about the theft and they lodged the FIR No. 256 dt. 08.11.07 u/s 379 of IPC. The insurer was also informed about the theft. The police authorities have issued the untraceable report on 17.02.2008 which was duly accepted by the court. This report has been submitted to the insurer. However, the insurer vide its letter dt. 02.05.2008 made the claim as ‘No Claim’ on the ground “As per the insured’s statement and Mr. Anil Kumar statement, the vehicle was parked outside the residence of Anil Kumar at night with keys in the vehicle”. Parties were called for hearing on 23.01.2009 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified the position by stating that the key was left in the vehicle which was an invitation to the thief to steal the vehicle. Hence the claim was made as no claim.

DECISION: Held that keeping the key in the motor cycle was giving open invitation to the thief. The complainant had not taken due care of the vehicle. Hence the making of the claim as no claim by the insurer, is in order. No further action is called for. The complainant is dismissed.

CASE NO. GIC/514/OIC/14/09

Manish Kumar Vs. Oriental Insurance Co. Ltd.

Order dated 03.02.09

MOTOR

FACTS: Shri Manish Kumar had taken a Motor Insurance Policy No. 231202/31/20085525 for the period 25.09.07 to 24.09.07 covering his motorcycle No. CH 04 b – 2781 for IDV Rs. 55860/-. His vehicle met with an accident on 25.08.08. He got it repaired from Pratap Auto, Panchkula and spent a sum of Rs. 12080/- for its repair. He lodged his claim with the insurer. However, his claim was rejected by the insurer vide letter dt. 07.11.2008 on the ground that the driver of vehicle at the time of accident Mr. Gurcharan Singh was not holding a valid driving licence. The DL held by the insured authorizes the holder to drive LMV transport and LMV non-transport vehicle. He is not authorized to drive motorcycle on this particular driving licence. As per policy conditions and driver's clause of the policy, the DL was not valid to drive the vehicle covered by the policy. Hence the claim has been rejected. The insured in his complainant had stated that first of all licences only for motorcycle and LMV is given and then only it is converted in LTV and HTV and when it is converted in LMV and HTV, then only the word LMV & HTV is written on driving licence. Parties were called for hearing on 03.02.09 at Chandigarh.

FINDINGS: During the course of hearing the insurer clarified that the Driving Licence of the vehicle was not valid for driving motor cycle or any other two wheeler. Hence the claim was repudiated.

DECISION: Held that that the contention of the insurer that the driver did not have a valid driving licence to drive a motor cycle is justified. Therefore the repudiation of the claim in my view is in order. No further action is called for. The complaint is dismissed.

Chandigarh Ombudsman Centre

CASE NO. GIC/493/Reliance/11/09

Gopal Gora Vs Reliance Gen. Insurance Co. Ltd.

Order dated 05.02.09

MOTOR

FACTS: Shri Gopal Gora stated that his car met with an accident on 06.10.08 around 07.00 pm on Faridabad-Gurgaon road. The car was lifted to Super Parts Private Ltd, Faridabad for repair. The company was duly informed and a surveyor was deputed. The company had denied the claim because CNG kit was installed in the car. He had got the same endorsed in RC but did not do so in the insurance policy. Parties were called for hearing on 05.02.09 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified that the CNG cylinder was fitted in the car which was not endorsed on the insurance policy. Hence the claim was repudiated as full premium for alteration was not received.

DECISION: Held that the cause of accident is not related to fixing of CNG cylinder. Hence, the claim should not be repudiated. The claim is payable. It is hereby ordered that the admissible amount of claim should be paid by the insurer to the complainant by 28.02.2009 after deducting the extra premium if not already paid.

Chandigarh Ombudsman Centre

CASE NO. GIC/497/Reliance/14/09

Anjali Vs Reliance Gen. Insurance Co. Ltd.

Order dated 05.02.09

MOTOR

FACTS: Smt. Anjali stated that the Verna CRDI car Regd. No. HR-12-J-4752 was insured with the Reliance General Insurance Com Ltd. vide Cover note No. 200702365757 for the period 24.01.08 to 23.01.09. The vehicle met with an accident on 12.06.2008. The car was shifted to Authorised Dealer for repair. They had incurred an expenditure of Rs. 3,36,545/- on its repair. All the claim documents were submitted to the insurance company for payment of claim. The insurance company vide letter dated

18.08.08 repudiated the claim on the ground that at the time of insurance the complainant claimed No Claim Bonus whereas they had taken a claim from previous insurer i.e. M/S Bajaj Allianz General Insurance Co. Ltd. The complainant clarified that the premium was calculated after giving discount on own damage portion of the premium as per directives of the company and no discount was allowed on account of not preferring any claim with the previous insurer. This was also certified by the Agent who issued the cover note. Parties were called for hearing on 05.02.09 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified that the complainant had got a claim passed in 2007-08 when insured with M/S Bajaj Allianz General Insurance Co. Ltd. However, she claimed NCB when the insurance was done with the insurer. Since this was a false declaration, the complainant forfeited his right as per GR27 of India Motor Tariff. On a query, whether the undertaking for forfeiting the claim was taken, the insurer showed an undertaking allegedly given by the complainant. On a query, whether the undertaking was signed by her, the complainant replied in the negative.

DECISION: Held that the undertaking is not proper as the same had been signed by a person whose signatures do not tally with that of the proposer/ insured. Therefore, the repudiation of the claim is not in order. The claim is payable. It is hereby ordered that the admissible amount of claim should be paid by the insurer to the complainant by 28.02.2009 after deducting the NCB claimed.

Chandigarh Ombudsman Centre

CASE NO. GIC/548/UII/11/08

Rakesh Kumar Vs. United India Insurance Co. Ltd.

Order dated 10.02.09

MOTOR

FACTS: Sh. Rakesh Kumar had taken a motor policy No. 200601/31/08/01/00000038 for the period 04.04.08 to 03.04.09 covering his Tata 407 No. PB 32 F – 5603. His vehicle met with an accident. He spent a sum of Rs. 110000/- on its repair. However, the insurer vide its letter dt. 05.12.2008 rejected the claim on the ground that “Permit is not valid”. Parties were called for hearing on 10.02.2009 at Ludhiana.

FINDINGS: During the course of hearing the insurer clarified that the RC and road permit were in the different names. The RC is in the name of Sh. Rakesh Sharma S/o Sh. Ajay Kumar while the road permit is in the name of Sh. Rakesh Kumar and Sh. Ajay Kumar. Moreover, NCB was claimed while renewing for Rs. 2008-09 whereas there was a claim in 2007-08. On a query, whether confirmation of the NCB was obtained from the previous insurer, the insurer replied that it was done by themselves. On a query, whether undertaking about NCB was taken to forfeit the claim, the insurer replied in the negative. Moreover, the complainant was asked to change name in RC which they changed without the permission of RTA. On a query, whether insurance and RC were in the same name, the insurer replied in the affirmative.

DECISION: Held that the repudiation of the claim on the basis of wrong entry in Route Permit is not in order. Moreover, NCB should have been got confirmed especially when the previous policy was with the same insurer. Therefore, claim is payable. However, the complainant will be penalized to the extent of 25% for tampering with the RC. It is hereby ordered that 75% of the admissible amount of claim after recovering NCB should be paid by the insurer to the complainant by 05.03.2009 under intimation to this office.

Chandigarh Ombudsman Centre

CASE NO. GIC/554/Reliance/11/09

Rajinder Kohli Vs Reliance Gen. Insurance Co. Ltd.

Order dated 17.02.09

MOTOR

FACTS: Sh. Rajinder Kohli stated that the Mahindra & Mahindra Utility Regd. No. PB 29-B-9450 was insured vide policy No. 2001372314102165. The vehicle met with an accident. The vehicle was driven by Sh. Amandeep Singh who holds the valid driving licence to drive MCWG & LMV type of vehicles. After a month he received a letter from the insurance company that his claim was repudiated on the ground that the driver was driving Transport/Commercial Vehicle whereas he is licensed by Driving Licence No. OLA PB03 No. 0320080001894 to drive only MCWG and LMV. Hence there is a breach of Drivers Clause. Parties were called for hearing on 17.02.09 at Chandigarh.

FINDINGS: During the course of hearing the insurer clarified that there was no endorsement for transport vehicle on driving licence and it was valid for 20 years whereas for a transport vehicle, the validity is 3 years only, to be renewed there after. He also quoted the judgement of Hon'able Supreme Court of India No. 2007/AIOL/1834 in the case of special leave petition of Ashok Gangadhar Nagarau etc. Vs. Oriental Insurance Co. Ltd. etc. In the operative part of the judgement the Supreme Court has mention that the driver Sh. Nasir Ahmed was having licence for LMV only and hence could not have driven the vehicle in question which was a public service vehicle. In that case also the licence was renewed for a period of 20 years. There was no endorsement for transport vehicle as required by Section 3 of the MV act.

DECISION: Held that the driving licence and Supreme Court judgement quoted above and section 10 of the MV Act, I find that in section 10(2) (e) transport vehicles are mentioned separately as against section 10(2) (d) which mentions LMV. Hence the LMV and transport vehicle are two different categories of vehicles and cannot be clubbed together although the laden weight may be less than 7500 kg for both. The repudiation of the claim by the insurer on the grounds of the driver not having a valid and effective driving licence is in order. No further action is called for. The complainant is dismissed.

Chandigarh Ombudsman Centre

CASE NO. GIC/565/OIC/14/09

Sindhu Rani Vs. Oriental Insurance Co. Ltd.

Order dated 17.02.09

MOTOR

FACTS: Ms. Sindhu Rani had taken a motor insurance policy vide cover note No. CHD-C263284 covering her Santro car No. PB 25 C – 6474. The car was stolen from Phagwara on 19.07.2008. The insured lodged the FIR and informed the insurer. On 05.11.2008, the insured received a letter from the insurer asking the insured to submit RC for verification and non-traceable report duly signed by the police station, Phagwara. The insured completed all the formalities. However, when she asked for settlement of the claim, she was issued another letter on 17.12.2008 asking to give non-traceable report u/s 173 of MV Act after obtaining it from court of law. The insured is feeling harassed as the insurer is asking for documents on piece meal basis. She had further stated that while

going through the site on internet she came to know that untraceable report issued by SHO / ACP and detailed investigation report by company deputed investigator may be considered for finalization of theft cases of private vehicle. Parties were called for hearing on 17.02.2009 at Chandigarh.

FINDINGS: The insurer clarified the position by stating that they had taken a decision to honour the claim.

DECISION: Held that the decision of the insurer in settling the claim in favour of the complainant is appreciable. The insurer is advised to make payment within 15 days of receipt of duly transferred RC, letter of subrogation and discharge voucher and any other requisite documents from the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/589/Reliance/11/09

Sourabh Gandhi Vs Reliance Gen. Insurance Co. Ltd.

Order dated 24.02.09

MOTOR

FACTS: Sh. Sourabh Gandhi stated that the Hyundai Verna Regd. No. PB 15 A – 0093 was insured with the Reliance General Insurance Com Ltd. vide policy No. 1000437767 for the period 15.02.07 to 14.02.08. At the time of insurance, the premium was paid by cash against the cover Note. On 21.10.07, the said car met with an accident and he lodged the claim of Rs. 35,050/-. On 12.12.07 he received a letter from the insurance company that his claim was repudiated on the ground that premium cheque given by him has got bounced. He pleaded that he had paid cash to the company's authorised agent. Parties were called for hearing on 24.02.09 at Chandigarh.

FINDINGS: During the course of hearing the insurer clarified that the cheque was dishonoured and accordingly the policy which was issued before the cheque was dishonoured was subsequently cancelled by them. On a query, whether the intimation regarding cancellation of policy was received, the complainant replied in the negative.

DECISION: Held that since the complainant was not aware of the fact that the policy was cancelled on the date of accident, he gets the benefit of doubt regarding the policy being enforced. Accordingly, the policy as is to be treated as being in force on the date of

accident since the complainant had paid the premium in cash and he was not at fault. Taking the above into consideration the claim is payable. It is hereby ordered that the admissible amount of claim should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/584/Bajaj/11/09

Sh. Sundeep Kumar Vs. Bajaj Allianz Gen. Ins. Co. Ltd.

Order dated 19.03.09

MOTOR

FACTS: Shri Sundeep Kumar stated that the Santro Car No. UA-07-M-9608 was insured under policy no. OG-09-1001-1801-00001473 for the period 15.04.08 to 14.04.09 for sum insured of Rs. 2,94,000/- in the name of Sh. Surender Sharma. He had purchased this car from Sh. Surender Sharma. After purchase, the documents were submitted to RTO for transferring the R.C in his name and a CNG kit was also installed in the vehicle and the CNG documents were also submitted to the RTO. The RTO office transferred the ownership in the last week of November, 2008 but the R.C was retained with RTO office to update the CNG Kit. At last he received the R.C on 26.12.08. After this he contacted the previous owner of the car for transfer the insurance policy. In between, the car met with an accident on 02.01.09 on Jhajjar to Bahadurgarh Road, near DPS School, Haryana. The insurance company was intimated and the vehicle was surveyed. But later on the insurance company repudiated the claim because of the reason of different name of car owner and insured person and non- transfer of insurance policy well in time. Parties were called for hearing on 19.03.09 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified that there was no intimation given to him regarding purchase of vehicle nor was there any application from the complainant for transfer of RC.

DECISION: Held that the vehicle was insured on the date of accident. Application for transfer of insurance cover could have been given only after RC was duly transferred. The RC was transferred with CNG Kit endorsement on 26.12.2008. Hence he would get

15 days to apply for transfer of insurance. The accident took place within this period. Hence, the complainant cannot be faulted for not applying for the transfer of the insurance in his name. Taking the above into consideration, the claim is payable. However, since the intimation of purchase was not given to the insurer, the complainant is penalized to the extent of 25% of the claim amount. It is hereby ordered that 75% of admissible amount of claim should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre

CASE NO. GIC/564/OIC/14/09

Parkash Singh Vs. Oriental Insurance Co. Ltd.

Order dated 19.03.09

MOTOR

FACTS: Sh. Parkash Singh had taken a vehicle policy bearing cover note No. 687484 for the period 12.01.2008 to 11.01.2009 covering his Maruti Baleno. The vehicle met with an accident on 15.07.2008, near Dehradun. The insured met with different requirements of insurer at different point of time. However, his claim has not been settled till date. Parties were called for hearing on 19.03.09 at New Delhi.

FINDINGS: During the course of hearing the insurer clarified the position by stating that the vehicle was hypothecated to GE Capital with a/c of Sh. Prakash Singh. However, the vehicle has been transferred in the name of Sh. Bhupender Singh. The complainant has no insurable interest on the date of accident. Hence, the claim was repudiated.

DECISION: Held that the contention of the insurer that there is no insurable interest of Sh. Parkash Singh is justified. The repudiation of the claim is in order. No further action is called for. The complaint is dismissed.

CHENNAI

Chennai Ombudsman Centre
Case No.IO(CHN) 11.02.1168/2008 – 09
Mr.S. Jagadesan

Vs

ICICI Lombard General Insurance Co. Ltd
Award No.059 dated 10/11/2008

The complainant had purchased a TVS Scooty Pep + from a two wheeler dealer. The dealer had given the policy cum certificate of insurance of the insurer. The insured had paid the insurance premium along with the cost of the vehicle. The insured vehicle met with a minor accident on and reported a claim for Rs.6000/-. The insurer rejected the claim on the grounds that the policy issued to him by the dealer is not in order.

In the instant case, it is to be noted that despite being aware of the discrepancies in the certificate of insurance submitted by a customer in Oct 2007, the insurer has not taken up the matter with their official who has been generating insurance documents in the premises of their agent. A scrutiny of the said insurance certificate clearly shows that the documents bears the official logo, the details of their registered office and also bears the facsimile of their Duly Constituted attorney. On the other hand, after arranging for survey and informing the insured that the claim cheque has been dispatched, the insurer has chosen to remain silent without even sending the repudiation letter, for reasons best known to them.

The role and responsibilities of the agent in general insurance in general and agents who are authorised to issue documents from their premises whether as Corporate agents or direct Agents in particular has expanded. As such the documents issued by the agents are to be considered as the one issued by the insurer and based on the same, the complaint is allowed.

Chennai Ombudsman Centre
Case No.IO(CHN) 11.13.1195/2008 – 09
Mr. V.C. Kantharaj

Vs

HDFC ERGO General Insurance Co. Ltd

Award No.063 dated 25/11/2008

The Complainant, had purchased a pre-owned Car and insured with the insurer for the period 28/02/2007 to 27/02/2008. The transfer of ownership was made in the RC book on 19/04/07. Before he could effect the change of name in the policy, the vehicle met with an accident on 30/04/2007. The insurance company orally rejected the claim.

The point to be reckoned is whether the rejection of the claim by the insurer on the grounds that on the date of accident, the insurance policy had not been transferred in the name of the buyer i.e. within 14 days from the date of transfer in the RC book, is in order

From the facts of the case, both the surveyor and insurer have not disputed that accident had occurred and an estimate of repairs was prepared and that as on date of accident ownership had changed but only insurance formalities were pending. Since, the accident had occurred within 12 days of transfer of the vehicle ,i.e is within the 14 days of the stipulated period of transfer and after the expiry of the stipulated period also, the insurer had effected the transfer of insurance, it is not fair to reject the claim totally. Hence, it is felt that the decision of the insurer to reject the claim in full is unjustified and an amount of Rs.20,000/- is awarded as Ex-Gratia and the complaint is partly allowed.

Chennai Ombudsman Centre
Case No.IO(CHN) 11.02.117895/2008 – 09
Mr. K. Rengasamy
Vs
The New India Assurance Co. Ltd
Award No.064 dated 25/11/2008

The complainant had insured his car with the insurer. The vehicle was damaged whilst the insured's driver was driving the vehicle in the road flooded with water. The insurer has stated that they have allowed only damages directly caused by flood and disallowed the balance claiming it to be consequential loss.

The point to be reckoned is whether the insurer was justified in restricting the claim to the amount directly attributed to flood and disallowing a part of the repair expenses stating that the loss was consequential to the flood loss since it was caused by the repeated attempts to restart the engine which had stopped because of hydrostatic locking of the engine due to the entry of the flood waters.

The contention of the insurer in disallowing the entire cost of the repairs of Engine Block assembly due to hydrostatic lock caused as a consequential loss of the entry of water is not fully justified, the insurer is directed to deal with claims only as per the policy conditions, the Indian Motor tariff and the schedule of depreciation and to settle the claim as a special case on ex-gratia basis without excluding the damage to the block assembly as a consequential loss. The complaint is partly allowed on Ex Gratia basis.

**Chennai Ombudsman Centre
Case No.IO(CHN) 11.14.1233/2008 – 09
Mr.G. Kalyanaraman**

Vs

**Cholamandalam MS General Insurance Co. Ltd
Award No.066 dated 28/11/2008**

The Complainant had covered his car under a package policy with IDV of Rs 2.00 lacs with the insurer. He had transported his car from Chennai to Lonavala through a carrier. The car was

received in a damaged condition. The insured lodged a claim and the same was settled by the insurer, much below its IDV, for Rs 93,500/-. The point to be reckoned is whether the settlement of the claim for Rs.93,500/- salvage loss basis by the insurer is in order as per the terms and conditions of the policy.

The car claim has been settled at the market value, a figure lower than the IDV that is not envisaged under the policy in case of a total loss. The concept of IDV takes into account the depreciation based on the manufacturing year and it is the value, which is supposedly mutually agreed at the commencement of the policy. The revision if any, can be carried out during the renewal only. The settlement of the claim has been made under the salvage loss mode, which is a method of settlement of a total loss or constructive total loss claim. Hence, in the case of total loss, there is no need to adjust the IDV for depreciation. However, it is seen that the insured did not exercise proper care in ensuring that the damaged vehicle was kept in good condition, which led to the value of the salvage being lesser than what was initially assessed by the surveyor. The complainant has still not been able to give any credible explanation and did not know even how the vehicle had met with an accident on the road or has not revealed the same to the Forum. Merely giving the subrogation rights to the insurer and filing a police complaint against the transporter in Chennai does not absolve the complainant of his duties and responsibilities under the contract of insurance.

In the circumstances, an amount of Rs 30,000/- is awarded as Ex-gratia and the Complaint is partly allowed as Ex Gratia.

Chennai Ombudsman Centre

Complaint No.IO(CHN) 11.02.1228/ 2008-09

Mr. K. Rajesh

Vs
The New India Assurance Co. Ltd
AWARD No 068 dated 11th Dec 2008

The complainant had insured his Opel Corsa car with the New India Assurance Co. Ltd, for IDV of Rs.2 lacs for the period 27.07.2006 to 26.07.2007. The car met with an accident on 22.02.2007 resulting in damages estimated at Rs 3,84,500/-After surveyor's inspection, the insurer offered to settle the claim on repair basis whereas the insured insisted on total loss settlement.

The insurer contended that after deputing the surveyor, they had advised the complainant to repair the vehicle and submit the original bills for processing the claim, since the assessment did not exceed 75%. The complainant had not repaired the vehicle and insisted on total loss settlement. As per the policy condition, the basis of settlement of own damage claim lies with the option of the insurance company and accordingly they had offered for settlement on repair basis.

The case came up for hearing on 15/10/2008.

On perusal of the documents, it is observed that as per the survey report the claim had been assessed for less than 75 % of the IDV, which meant that the claim was to be settled on repair basis. Correspondence submitted revealed that there was no deficiency on the part of the insurer and if the complainant had cooperated the claim could have been settled much earlier. Since the assessment in this case was only 64 %, the insurer is justified in not settling the claim on total loss basis.

It was however seen that the assessment had been done only on the basis of visual inspection and the wreck, which had been badly impacted on the front end, had not been dismantled when the assessment was made. Considering that the vehicle in question is a high value vehicle with new technology, it was absolutely necessary to insist on dismantling the vehicle and arriving at the actual cost of repair since the percentage of cost of repair to the IDV is the material factor that influences the decision as to whether the claim is to be settled on repair basis or total loss basis. Since the damaged vehicle was not dismantled, the actual loss had not been assessed. If the dismantling had been done, there was every possibility that the cost of repairs would exceed 75% of the IDV.

To meet the ends of justice to both the parties, a sum of Rs 1,50,000/- is to be paid to the complainant in full and final settlement of the claim subject to the other terms and conditions of the policy. The complainant was allowed to retain the wreck. No amount was allowed towards interest, garage rent etc. The complaint was Partly Allowed on **Exgratia** basis under Rule 18 of the Redressal of Public Grievances Rules, 1998.

Chennai Ombudsman Centre

Complaint No.IO(CHN) 11.04.1311/ 2008-09

Mr. R. Duraikannu Vs United India Insurance Co.
Ltd

AWARD No. 080 dated 23/01/2009

Mr.R. Duraikannu had obtained a motor car package policy from the insurer for his vehicle Toyota Qualis for an IDV of Rs.4,00,000/-. The vehicle met with an accident on 27/02/07 and the complainant had lodged a claim for repairs to the vehicle for Rs 1,30,000/-which was rejected.

Insurer contended that the vehicle had been 'on hire at the time of the accident' which was against the policy conditions of private car. They further submitted that the insured had altered the charge sheet through influencing the police authorities as if the vehicle was used only for private purpose. Due to the contradicting statements of eye witness, insured and the vehicle hirer the insurer had rejected the claim based on the opinion of their panel advocate.

The case was heard on 16/12/2008.

After hearing the parties, documents such as Repudiation letter of the insurer, RC book / Tax card, FIR ,Certificate cum policy schedule, Self contained note of the insurer, Estimate from Tinker Tone , Motor Claim form, Legal opinion of panel advocate and Investigation Report were perused.

It was established that the car met with an accident in which the Driver and Mr. Ashok Kumar died and the remaining two persons escaped with injuries. A relative of the deceased person had lodged a complaint with the Police in which it was erroneously stated that the vehicle was said to have been used as a "Taxi" when the accident took place. But the complainant, who is the owner, had got the error subsequently rectified in the Final Police report. The

insurer based on their panel advocate's opinion rejected the claim on the grounds that the vehicle was used for a purpose not intended for at the time of accident. It appears that the statement was given by a person who may not have been not aware of the nature of usage of the vehicle as to whether it was a private car used for personal purpose only or a taxi which was run for 'hire or reward'. Since he was the person who has filed the FIR, it was his version and police also took into account whatever had been said and for Police authorities the same was not material to them. Subsequently, when the insured came to know that the compliant was given stating that his vehicle was mentioned as taxi instead of private car, he made a request to the police authorities to amend the same to private car so that his claim for insurance was not vitiated. The police amended the same accordingly and certified the same.

There is no other evidence like statements from the locality people or documentary proof from persons who have used his vehicle for hire or reward. Such additional documentary evidence would have established that the vehicle was being run as a taxi and not only as a private car. The insured all the while maintains that his car was a private car only, registered as such and used for 'private car purpose' only. The investigator has also confirmed that the subject car was not hire at the time of accident. The police have also filed the revised deposition of the person who filed the original FIR. The revised statement has been filed before the Chengalpet judicial authorities under Sec 161 of CrPC 1973 that the car was 'not on hire'. The police authorities have concluded their investigation as "charge abetes".

It was held that no clinching evidence had been produced to prove that the vehicle was used for hire or reward and merely depended upon the FIR which was itself subsequently amended by the Police. But it is also a fact that the complainant has also not produced any evidence to substantiate his stand that vehicle was

not being used for 'hire or reward' at the time of the accident. The complainant has said that the passengers in the car and the person who lodged the FIR that is Mr Ravi, are his relatives. If this was indeed so, why Mr Ravi said that the vehicle was a taxi is still not clear. Also no convincing clarification was given by the complainant as to why Mr Ravi, who is neither an occupant nor the owner of the vehicle, filed the FIR. Since both parties could not produce any clinching evidence to establish their stand, an Exgratia amount of Rs.30,000/- was awarded under Rule 18 of the PRG Rules 1998. No other charges/expenses/interest was allowed.

The complaint was partly allowed on Exgratia basis.

**Chennai Ombudsman Centre
Complaint No.IO(CHN) 11.08. 1319/ 2008-09
Mr. P. Duraisamy
Vs
Royal Sundaram Alliance Insurance
AWARD No. 093 dated 25/02/2009**

The vehicle of Shri P Duraisamy, the Complainant was covered under the Motor Car Package Policy of M/s Royal Sundaram Alliance Insurance Co. Ltd. The vehicle met with an accident on 22/04/08 resulting in a total loss. The claim for loss of the vehicle was settled by the insurer for Rs.2,29,500/- and wreck value of Rs.1,00,000/- was also received by the insured. The insured claimed the balance amount of Rs.28,507/-from the insurer stating his consent to accept lower IDV was obtained by coercion.

The insurer stated that the insured did not prefer the settlement on repair basis. Instead he had agreed to an IDV of Rs 3,30,000/-, a wreck value of Rs 1.00 lac and payment of Rs 2,29,500/- by the insurer. This was confirmed by way of a consent letter. There was no coercion as alleged by the complainant and the complainant had voluntarily signed the discharge voucher. The insured had made the complaint after more than two months of receiving the payment.

The case thus came up for hearing on 16/12/2008.

After hearing the parties, documents such as Certificate cum Policy Schedule, Copy of Survey Report, FIR and correspondence between insurer and complainant were perused. It was seen that although the insurer has got the option to choose the mode of settlement in this case on repair basis, they agreed for the mode of settlement

preferred by the insured. The documents submitted establish that the accident took place on 22/04/2008, survey conducted on 8/05/2008, consent given on 21/05/2008, claim cheque for Rs 2,29,500/- in favour of financier issued by the insurer dated 11/05/2008, received by the complainant on 22/05/2008. Thereafter only on 30/07/2008 the complainant has informed that insurer that he was dissatisfied with the settlement. No facts have come to light during the hearing, which shows any indication that the consent letter had been obtained from the complainant under coercion. Held contention of complainant that he was forced by the insurer to accept a lower revised IDV of Rs 3,30,000/- as against the original IDV of Rs3,57,007/- and the consent letter was obtained by coercion was not borne by facts.

The Complaint was dismissed.

Chennai Ombudsman Centre

Case No.IO(CHN) 11.04.1415 / 2008-09

Mr. P.K. Agarwal

Vs

United India Insurance Co. Ltd

AWARD No.103/2008-09 dated 25/03/2009

The Complainant had taken a motor cycle/scooter package policy covering his vehicle for an IDV of Rs.46,750/-. The insured lodged a claim for theft of the vehicle and the insurer offered to settle the claim at 50% of the IDV since the insured could not surrender the original RC book in respect of the vehicle as per claims guidelines of the Company.

The vehicle was parked in the open area in front of the house was found to be stolen in broad daylight. The vehicle was seen at 09.30 AM on the day of theft inside the compound of the house and subsequently only found to be stolen which points out to laxity on the part of the insured. The principle of insurance is that the

insured should act as a person as though he is uninsured in which case minimum precaution are expected to be observed. The circumstances points out to the casual approach in securing the vehicle. A part of the blame for the loss of the vehicle cannot but be attributed to the complainant. The complainant ought to have taken reasonable care of his vehicle. An amount of Rs.10,000/- is awarded as Ex-gratia in addition to the insurer's offer of Rs.23,325/- and the complaint is partly allowed as Ex-Gratia.

Chennai Ombudsman Centre

Case No.IO(CHN) 11.10.1378 / 2008-09

Mr. P. Radhakrishnan

vs

IFFCO-TOKIO GENERAL INSURANCE CO. LTD.

AWARD No.107/2008-09 dated 25/03/09

The Complainant, covered his motor vehicle under the Private Motor Car Package Policy of the insurer. The vehicle met with an accident resulting in damages and insured claimed Rs.1,12,278/- towards repair of the vehicle. The insurer offered to settle Rs.11,408/- only and rejected the remaining amount as due to consequential loss which are excluded under the policy.

The point to be considered is whether the damage to the engine of the motorcar had happened at the time of accident or at a time after the accident due to the car having been driven without any oil, resulting in damages to the engine.

It is found that neither the insured nor the insurer could conclusively establish their version of damages to the engine whether it happened at the time of accident or when it is driven after the accident. There is no clinching evidence on the part of either the insurer or the complainant to confirm whether the vehicle had been driven after the accident and that the repairs made for Rs 1,01,374/- is entirely due to this act. Considering all of the above, I hold that the decision of the insurer to restrict the claim to Rs 11,408/- and disallow Rs 1,01,374/- as relating due

to consequential loss is not entirely justified and awarded an amount of Rs 25,000/- as Ex Gratia and the complaint is partly allowed.

Chennai Ombudsman Centre

Case No.IO(CHN) 11.02.1573 / 2008-09

Mr.V. Munusamy

Vs

The New India Assurance Co. Ltd

AWARD No.114/2008-09

The Complainant had taken a motor car package policy from the insurer. The insured lodged a claim for Rs.71,686/- with the insurer for damages to the vehicle due to accident while the insured and his friends were returning from a pilgrimage. The insurer rejected the claim on the grounds that at the time of accident, the vehicle was used for 'hire' purpose, which is a violation of policy conditions.

The investigator, stated that the complainant has used his vehicle for hire based on the statement of one of the occupants and also obtained a statement from the complainant that his friend had paid for petrol. Mere sharing of petrol expenses by the occupants of the car cannot be the basis for determining whether a car was run for hire or reward in the absence of evidences like trip sheet or receipts issued to other persons with the registration number of the car or at least written statements from the general public residing in the locality where the insured normally use his car.

Such evidences only would substantiate the insurer's stand that the car was used for hire purpose and not mere suspicion that the vehicle might have been used for hire purpose. In the absence of

clinching evidence submitted by the insurer for establishing that the car was used for hire, the stand of the insurer rejecting the claim is not acceptable ,an amount of Rs.25,000/- is awarded as Ex-gratia and the complaint is partly allowed.

Chennai Ombudsman Centre

Case No.IO(CHN) 11.03.1531 / 2008-09

Mr.M. Madanagopal

Vs

National Insurance Co. Ltd

AWARD No.115/2008-09

The Complainant, had insured his car for an IDV of Rs.56,300/- for the period 03/12/2007 to 02/12/2008 under a package policy. The insured lodged a claim for damages to his vehicle as a result of toppling. The insurer rejected the claim on the grounds that damages to the vehicle were not tallying with the nature of accident reported.

The insurer with the help of surveyor/investigator was able to establish that there were several inconsistencies in the statements made by the complainant as under:-

- a. although the vehicle was said to have fallen on its left side, most damages have occurred on the right side of the vehicle.**
- b. the physical damages to the vehicle points out to opening of the door forcibly from inside by steel rods whereas as per the cause of accident reported by the insured, the impact of the external hit should have caused damages on the outer right side.**
- c. The reason for the removal of the rear right side door when the vehicle had fallen on its left side has not been convincingly explained.**

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- d. When all the occupants had been outside the vehicle when the accident took place, why the right side rear door had been forced open from inside has not been clarified.**
- e. No valid reason has been given for the delay in reporting the accident. The inconsistencies were not properly replied and insured had not produced clinching evidence to substantiate his claim. In view of the same, the complaint is dismissed.**

DELHI

Vehicle Insurance Policy

Case No. GI/77/NIA/08

In the matter of Shri Om Prakash Chaudhary

Vs

New India Assurance Company Limited

ORDER dated 11.11.2008

Shri O.P. Chaudhary has lodged a complaint with this Forum on 04.03.2008 that he had taken a Motor Policy No.310600/31/05/00007788 from the New India Assurance Company Limited for his vehicle No.UP 16 K 9965. He has preferred a claim for the accident of the vehicle on 05.12.2006 and was allotted claim No.310600190000502. The Insurance Company has not settled the claim on the ground that the driver holding driving license issued by Transport Department of NCT, Delhi to drive TSR and holding the Badge No.is mandatory in the Delhi Jurisdiction and therefore, the driver cannot drive TSR without the Badge number although having valid driving license. Shri Chaudhary further submitted that the accident taken place in Ghaziabad (UP), therefore, the jurisdiction is also Ghaziabad (UP). The Driving License to Drive TSR meets the requirement of holding valid license. Holding of Badge No. is not mandatory in the jurisdiction of Ghaziabad (UP). Thus to quote the Insurance Company, that is, “Cannot Drive TSR without the Badge No.” does not apply to the driver. The rule relating to holding the Badge number of Delhi jurisdiction is a State affair of Delhi and for the sake of repudiation of claim the insurance company has no authority to pursue the rule “holding the Badge No. is mandatory of Delhi Jurisdiction” in Ghaziabad (UP)

jurisdiction “Where holding the Badge No. is not mandatory”. Is the Insurance Company is empowered to frame the rule, that is, “holding the Badge No. is mandatory where holding the Badge No. is not mandatory? Is it the business of the Insurance Company? Can the Insurance Company interfere in the affairs of the States? The Insurance Company will be advised to concentrate on their business and honour their own citizen’s charter. The driving license and the Badge No. are different by virtue of their governing rules. The Driving License rules govern by Government of India and Badge No. rules framed by the State Government. Further he referred a quote of an expert “Requirement of Badge” appeared in “The Insurance Times” Vol.XXVI No.3 March, 2006 ISSN-0971-4480 under the Head “Driving through Driving License”:

“Requirement of Badge” : Normally it is presumed that all the drivers driving Public Service Vehicles further require Badge in addition to their entitled license but position is not so. Motor Vehicle Act 1988 does not make it mandatory for a driver to get any Badge endorsement on any license. Central Motor Vehicle Rules 1989 also does not provide the requirement of Badge, though it contains space for such endorsement in Form No.6 and Form No.7 meant for issuing a Driving License. Section 28(2) (d) empowers the state government to make rules regarding issuance of Badges. The stipulation states: “The badges and uniform to be worn by drivers of Transport Vehicles and the fees to be paid in respect of badges.” In view of the different State Rules it maybe concluded that the issue of License to Driver Transport Vehicle and the issue of Badge are two different acts wherein : Former involved the qualification and taste of competence and Later involved just a formality, may be just for identification purpose to indicate who is driver of the vehicle. Possession of Badge is thus in no way connected to the skill or competence of driving and therefore non-possession of the badge is not to be taken as lack of skill or competence to drive. Therefore, license without badge is perfectly a valid license” He requested that the company is directed to expedite the claim.

At the time of hearing, the complainant informed the Forum that he had preferred a claim for his vehicle No.UP 16K 9965 which was rejected by the company on account of that he does not have any badge number. He informed the Forum that the vehicle was being driven in Ghaziabad and not in Delhi. In Ghaziabad (UP), it is not mandatory to have the badge number. Further, as per article appeared in the Insurance Times: it is not

mandatory for any person holding a driving license of PSV, it is not mandatory to have a badge number. In view of the foregoing, he requested the Forum that his claim be paid.

The representative of the Insurance Company informed the Forum that the driving license of Shri Khurshid was issued by Licensing Authority of Delhi. Although he may be driving the vehicle in UP but he is to be governed by the provisions of the Delhi Transport Authority and as per the Rule 6 of Delhi Motors Vehicle Act 1993, it is very clear that a driver of PSV should display a badge number. Since the driver Shri Khurshid did not have badge, they have rightly repudiated the claim.

After hearing both the parties and on examination of the documents submitted, it is observed that the vehicle No. No.UP 16K 9965 had met with an accident for which Shri O.P.Chaudhary has lodged a claim with the Insurance Company which was rejected by them on the ground that the driver Shri Khurshid did not have badge number. The contention of the complainant was that the vehicle was being driven in Ghaziabad (UP) where no badge number is allotted. As such the claim was payable. He has also referred a quote of an expert in the Insurance Times to which I do not agree since it is an opinion of the person who has expressed his views and no legal authority/court who can be cited to support one's claim. I am of the opinion that the driver Shri Khurshid was holding a driving license issued by Licensing Authority, Delhi and according to them it is mandatory for the driver of TSR/PSV to bear the badge while driving the vehicle. The complainant has not been able to produce the relevant badge number. As such, in my opinion, the driver was not entitled to driver TSR and as such the claim is not payable.

I uphold the decision taken by the New India Assurance Company Limited repudiating the claim of Shri O.P. Chaudhary.

Vehicle Insurance Policy

Case No. GI/133/ICICI Lombard/08
In the matter of Smt. Jawahara Faruq
Vs

ICICI Lombard General Insurance Company Limited

ORDER dated 27.11.2008

Smt. Jawahara Faruq has lodged a complaint with this Forum on 28.04.2008 that the vehicle No.HR 26 AL 4753 was insured with the ICICI Lombard General Insurance Company Limited. The vehicle had met with an accident 14.06.2007 at Jammu. The vehicle was inspected. After repeated requests, the Insurance Company vide their letter dated 30.01.2008 informed that they have repudiated the claim on the ground that the driver was holding invalid driving license. She has written a letter to the Insurance Company on 06.02.2008 that at the time of accident the vehicle was being driven by Mr.Sajad Ahmad Wali (brother-in-law) vide driving license NO.7708 valid up to 14.08.2017 issued by Motor Vehicle Department Srinagar. The fact that the vehicle was driven by Mr. Sajad Ahmed Wali has been mentioned in the police report. The Insurance Company has repudiated the claim on frivolous ground without any basis. He requested that his claim may be paid.

At the time of hearing, Smt. Jawahara Faruq informed the Forum that the vehicle No. HR 26 AL 4753 was insured with the ICICI Lombard General Insurance Company Limited had met with an accident 14.06.2007 at Jammu. It was being driven by Shri Sajad Ahmad Wali and the contention of the Insurance Company that the same was being driven by her husband Shri Faruq Ahmad Wali is not correct. He produced the original information given to the police with regard to the accident since both the parties had compromised and no FIR was lodged at police station. Further, she had submitted an Affidavit to the Insurance Company wherein it is mentioned that the vehicle was being driven by her brother-in-law Shri Sajad Ahmad Wali and no FIR was lodged. In case, there is any third party claim, she will be responsible for the same. She contested that how the Insurance Company have come to the conclusion that the vehicle was driven by her husband Shri Faruq Ahmad Wali as she has already given an Affidavit saying that the vehicle was being driven by Shri Sajad Ahmad Wali. She requested the Forum that since Shri Sajad Ahmad Wali had a valid driving license, her claim may be paid.

The representative of the Insurance Company informed the Forum that they had deputed Shri Gursharan Singh Modi, surveyor to assess the loss who in his report dated 18.12.2007 has mentioned that while intimating the claim, the insured's husband intimated that he himself was driving the vehicle. Later on, they changed their statement and mentioned the name of the driver as Mr.Sajjad Ahmed in the claim form. And the same needs to be investigated for the confirmation of the driver as the insured's husband only possess learner's driving license. The Insurance Company had deputed Lt.Col.Charanjeet's Expert Investigation Services, who has submitted his report dated 14.12.2007 vide which he has mentioned that ASI, Shri Pritam Singh took both the injured to Batra Hospital and got them admitted as case MLC 1037 and 1035. Mr.Farooq Ahmed was injured but got out after first aid. As per the tanker driver, Mr.Ab Rehman Mir on his return from hospital Shri Farooq Ahmad was accompanied by two more of his colleagues wherein they threatened him to lodge case against them. However a compromise was arrived at. There was neither police report nor Daily Diary. As per the tanker driver there were only three persons in the car and according to him Shri Farooq Ahmed was driving and there were two ladies in the car. Based on these facts, the driver was Shri Farooq Ahmad. Shri Farooq Ahmad had got a copy of the information to the police authority which they further got investigated and as per the investigator Shri Naresh K.Tagotra report dated 10.10.2008 that no FIR has been lodged for the loss against vehicle No. HR 26 AL 4753 nor any Daily Diary has been made in the police station. In view of that there is no proper FIR as well as the information could not be registered in Daily Diary. However, the letter to police seems to have been prepared by one Shri Pritam singh (working at the said police station) and the same bears the signature of Shri Pritam Singh. The vehicle was being driven by Shri Faruq Ahmad Wali who has a Learning Driving License and was not occupied by a driver holding a permanent driving license, they have, therefore, rightly repudiated the claim.

After hearing both the parties and on examination of the documents submitted, it is observed that the vehicle No. HR 26 AL 4753 was insured with the ICICI Lombard General Insurance Company Limited had met with an accident 14.06.2007 at Jammu. The Insurance Company had repudiated the claim on the ground that the vehicle was being driven by Shri Faruq Ahmad who did not have a valid driving license. Shri Faruq

Ahmad Wali in his intimation to the police on 14.06.2007 has mentioned that the vehicle was driven by Shri Sajad Ahmad Wali who was holding a valid driving license and the Insurance Company has wrongly repudiated the claim. As per the information given to the police which was produced by Shri Faruq Ahmad Wali to this Forum, mentioned that both the parties have compromised and no FIR was lodged in the police station, one cannot rely on this intimation wherein the driver is named as Shri Sajad Ahmad Wali. IN view of the investigation being done by the Insurance Company and the investigator having contacted the driver of the truck who has mentioned that there were only three occupants namely Shri Faruq Ahmad Wali and his family member, that is, his wife and his daughter and no proper FIR being lodged nor the intimation though signed by one Shri Pritam Singh who worked at the police station but not registered by the police authority in the Daily Diary, one cannot rely on this document and going by the statement of the driver of the opposite vehicle(Tanker), one can rely on the investigation report. As such, the vehicle was being driven by Shri Faruq Ahmad Wali and he having not a valid driving license, in my opinion, the claim is not payable.

I uphold the decision taken by ICICI Lombard General Insurance Company Limited repudiating the claim of Smt.Jawahra Faruq.

Case No. GI/273/UII/08
In the matter of Smt. Rani Sharma
Vs

United India Insurance Company Limited

ORDER dated 11.12.2008

Smt. Rani Sharma has lodged a complaint with this forum on 29.09.2008 that her vehicle No.HR 63 -6457 was insured with the United India Insurance Company Limited from 14.11.2007. Her vehicle was parked outside her house on 31.01.2008 but in the morning of 01.02.2008, the same was stolen. The Insurance Company has not settled the claim. She has requested the Forum that she be paid the claim of the stolen vehicle along with 24% interest and the following compensation:

- (i) Mental agony Rs.2,00,000/-
- (ii) Harassment and humiliation Rs.1,00,000/-

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- (iii) Loss of comforts Rs.1,00,000/-
 - (iv) Litigation expenses Rs.22,000/-

At the time of hearing, the Forum informed the representative of Smt. Rani Sharma, Shri D.K.Sharma that this Forum is not competent to consider compensation towards the following : (i) Mental agony Rs.2,00,000/-, (ii) Harassment and humiliation Rs.1,00,000/-,(iii) Loss of comforts Rs.1,00,000/-and Litigation expenses Rs.22,000/-. The representative of the complainant Shri D.K.Sharma insisted that he was not willing to withdraw his demand for the compensation on the above mentioned issues, this Forum expressed its inability to hear her complaint since it is not competent to pass Order towards the above mentioned issues.

As such, I pass the Order that the complaint may be examined along with compensation towards (i) Mental agony Rs.2,00,000/-, (ii) Harassment and humiliation Rs.1,00,000/-,(iii) Loss of comforts Rs.1,00,000/-and Litigation expenses Rs.22,000/- by an appropriate Forum.

Vehicle Insurance Policy

Case No. GI/277/OIC/08
In the matter of Ms. Bharti
Vs

Oriental Insurance Company Limited

AWARD dated 31.03.2009

Miss Bharti had purchased a car Maruti 800 (DL 2CL-9129) in the year 2000 when she was not married. She also had taken a policy in respect of the same car. The car was stolen from the parking lot on 09.10.2007. In the meantime, she had got married on 03.12.2000. On marriage she assumed yet another name, that is, Mrs.Bhavneet Kaur.

On the date of theft the R.C. book bore the name Smt.Bhavneet Kaur. The Insurance Company has repudiated the claim on the ground that the policy holder is Miss

Bharti whereas R.C.Book bears the name as Smt. Bhavneet Kaur. Apparently, the issue before us is that of identify i.e. whether Bharti is the same person as Smt. Bhavneet Kaur.

At the time of hearing, Smt.Bhavneet Kaur was accompanied by her father-in-law Shri Bhupinder Singh Gandhi. She pleaded that it was customary that a new name was given on marriage. She produced copies of the Marriage Invitation cards distributed by her father as well as her father-in-law on the occasion of marriage which bear both the names, that is, Bhavneet Kaur and (Bharti). She also produced copies of her photographs taken before marriage and after marriage to show that there is a mole mark under her nose which was visible in both the photographs. A copy of the mark sheet for the 10th standard final examination was submitted before me which shows date of birth as 25.11.1976. By that time obviously she was not married. Her passport No.G-6508349 taken after marriage shows the same date of birth, that is, 25.11.1976. Her PAN Card AETPG 5531R shows her as the daughter of Shri Ram Singh. In the School Certificate also her father's name is Shri Ram Singh. She submitted that there is no confusion about her identity. It is merely a case of assuming yet another name after marriage which was customary in their society. Her father-in-law who participated in the hearing also pointed out that the payment of premium was made by Smt.Bhavneet Kaur after the marriage for the same policy which was accepted by the Insurance Company. He gives me copies of certain pages of her Bank Account No.40975 at Punjab National Bank which indeed shows that cheques were issued from this account of Bhavneet Kaur for payment towards premium. As regards Smt. Bhavneet Kaur's name appearing in the RC Book, her father-in-law explains during the hearing that originally the RC book bore the name of Bharti when the car was purchased before marriage but the RC book was sent for changing the name of the financier after marriage and at that point of time by mistake the new name, that is, Bhavneet Kaur was incorporated in the RC Book and that has created all the confusion. To a query, he replied that the legal formalities for change of name like Affidavit before the Magistrate or issue a public notice through newspapers were not undertaken since the change of name was customary and family members have not directed their thoughts in the direction of complying with legal formalities.

At the time of hearing, the representative of the Insurance Company was asked whether the Insurance Company suspects any impersonation and whether someone else

other than policy holder was making the claim before them. To this the representative of the Insurance Company replied in the negative. He only reiterated the point that there is no commonality of the name between the RC book and the insurance policy. Apparently, on this technicality, the claim has been refused.

At the time of hearing, the representative of the Insurance Company made an alternative submission that, if at all, the claim should be restricted to Rs.65000/- that is, market value on the date when car was stolen. He showed me a publication of Auto Risk Management who published the valuation of various brands of Automobiles with reference to manufacturing year. These valuations are in general terms without reference to any specific vehicle.

Let us look into some invariables in life like date of birth and natural father's name etc., to determine the issue. These invariables cannot be altered by any event, marriage or no marriage.

Before me, the documents are produced which are both pre-marriage and post marriage. Pre-marriage documents show the father name as Shri Ram Singh and date of birth as 25.11.1976. Post marriage documents including passport, pan card also show the same father's name and date of birth.

At the time of hearing, it was ascertained that no twins were ever born in her father's family. As such, when the date of birth as well as the father's name match both in pre-marriage and post marriage documents, it can be concluded that both the names refer to one person only. The change of name has occurred only because local customs required the same.

Considering the documents produced before me pre-marriage and post marriage, there could be no doubt regarding the fact that Ms.Bharti and Smt. Bhavneet Kaur is the same person. In fact, on my record, I have a copy of the investigation report by the Investigator, Kotilya Detective and Investigation Agency employed by the Insurance Company who after verifying various documents and making various enquiries with

authorities including the police authorities as well as SDM have come to the conclusion as under:

“Thus there are enough evidences, which prove that Ms.Bharti was name of insured before her marriage and Mrs. Bhavneet Kaur Gandhi is her, another name after her marriage.”

Name is merely a tag to a natural person for identification. If there are two tags on one natural person, it is merely a case of one natural person and not two persons.

Considering all these facts, I am of the opinion that Smt.Bhavneet Kaur is the same person as Bharti and therefore is entitled to the claim from the Insurance Company in respect of insurance policy No.215402/31/2008/1195 taken in the name of Bharti for the vehicle No.DL-2CL-9129 which was stolen.

With regards to the alternative submission that her claim should be limited to only Rs.65000/-, that is, the valuation as per the “Auto Risk Management”, I am not inclined to agree. Contractually, the sum assured is the binding liability on the Insurance Company since that is the prime condition of contract between the insurer and the insured. Valuation of the vehicle on the date of theft is irrelevant to the point at issue. Even otherwise, the valuation that the officer representing the Insurance Company referred to is merely a standard publication and reflects standardized approach to various brands of cars with reference to the year of manufacture. These are not specific valuations with reference to particular cars. As such, these do not constitute valid evidence for valuation of any specific vehicle.

In any case, as pointed that the contracted sum is the sum assured which is a definite mathematical figure and cannot be legally interfered with.

It is directed that the Insurance Company should pay the Sum Assured to Smt. Bhavneet Kaur. The compliance of the Award shall be intimated to my office for information and record.

**What's in a name? That which we call
A rose by any name would smell as sweet – Shakespeare**

Vehicle Insurance Policy

**Case No.GI/162/UII/08
In the matter of Shri Shish Ram Gujar Vs
United India Insurance Company Limited.**

AWARD dated 14.11.2008

Shri Shish Ram Gujar had lodged a complaint with this Forum on 27.05.2008 that his vehicle no. RJ 32 GA 2328 was insured with United India Insurance Co. Ltd. under policy no. 141702/31/00/01/00002504. The vehicle had met with an accident on 12.04.2007, the claim of which has not been paid to him till the date of his complaint. He has been contacting the Insurance Company but he has not received any reply. He has requested the Forum that his claim may be paid.

At the time of hearing Shri Shish Ram Gujar informed the Forum that his vehicle no. RJ 32 GA 2328 met with an accident on 12.04.2007 and his claim has not been paid by United India Insurance Co. Ltd. He has requested the Forum that his claim may be paid.

The representative of the Insurance Company informed the Forum that the claim of Shri Shish Ram Gujar could not be paid as they have referred the matter to the Regional Office on account of there being short collection of premium and were awaiting their decision.

After hearing both the parties and on examination of the documents submitted, the vehicle no. RJ 32 GA 2328 belonging to Shri Shish Ram Gujar was insured with United India Insurance Co. Ltd. from 14.02.2007 and had met with an accident on 12.04.2007 and the claim has not been settled by the Insurance Company. I find from the documents

submitted that Shri Surender Kumar was appointed as a Surveyor who has recommended the loss of Rs.150085/- and as such the claim may be paid in accordance with the Surveyor Report after checking the driving license of the Driver Shri Ramesh Kumar Meena along with RC Book, Permit and Fitness Report and the same being found in order.

Vehicle Insurance Claim

Case No.GI/113/UII/08
In the matter of Shri Surinder Singla Vs
United India Insurance Company Limited.

ORDER dated 21.11.2008

Shri Surinder Singla has made a complaint to this Forum on 10.01.2008, against United India Insurance Co. Ltd. in respect of non settlement of Motor Claim under policy no. 041700/31/04/00199.

The complaint was fixed for hearing on 23.07.2008, 30.07.2008, 05.09.2008, 24.09.2008 and 21.11.2008. The complainant Shri Surinder Singla was absent on the last date and there was no representative present on behalf of the Insurance Company on 21.11.2008.

The Insurance Company vide their letter dated 18.11.2008 received by the Forum on 21.11.2008, informed that they have made the payment of claim vide cheque no. 625035 dated 30.09.2008 for Rs.15195/- (Rupees Fifteen Thousand One Hundred Ninety Five only) to Shri Surinder Singla. The same was also confirmed by the complainant vide his letter dated 07.11.2008 sent through Insurance Company's letter of 18.11.2008.

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

The complaint is disposed of finally.

Vehicle Insurance Claim

Case No.GI/150/Reliance/08
In the matter of Shri Harvinder Minhas Vs
Reliance General Insurance Company Limited.

AWARD dated 28.11.2008

Shri Harvinder Minhas had lodged a complaint with this Forum on 29.05.2008 that he purchased an Alto Lx on 27.10.2006. At that time he got a free Insurance Scheme and accordingly his car was covered under policy no. 1305062311008602 w.e.f. 28.10.2006 to 27.10.2007. On 07.09.2007 his car met with an accident and he went to Maruti Authorized Service Station for repairing his vehicle and the Insurance Company also confirmed the service station to carry out the repair work, but when his vehicle was got repaired, he was informed by the Insurance Company that his policy is invalid because the premium cheque had been dishonoured. Insurance Company repudiated his claim for Rs.12406/-.

At the time of hearing complainant informed the Forum that almost after one year Insurance Company informed him about the dishonour of cheque that too after his vehicle met with an accident. Had he been informed earlier he would have taken another policy to cover his vehicle.

The representative of the Insurance Company informed the Forum that they will reconsider the matter and settle the claim of Shri Harvinder Minhas. The hearing was adjourned and the next date was fixed for 26.11.2008.

On 26.11.2008 the Insurance Company was asked as to what action they have taken as of now. The representative of the Insurance Company informed the Forum that due to some computer problem they could not take the decision till date but they are ready to settle the claim of Shri Minhas for Rs.10000/-.

After hearing both the parties and on examination of the documents submitted, I am in agreement with the settlement offered by the Insurance Company for Rs.10000/-. However, there has been a delay on the part of Insurance Company in taking decision in

this regard. I, therefore, pass an award that interest @8% be paid to Shri Harvinder Minhas w.e.f. 07.10.2007 till the time of payment.

GUWAHATI

GUWAHATI OMBUDSMAN CENTRE

Complaint No. 14 -013-0085/08-09

Sri Dinesh Medhi

- Vs -

The HDFC Chubb General Insurance Co. Ltd.

Award dated : 13.01.2009

Sri Dinesh Medhi had taken a Motor policy for his vehicle bearing No. AS – 01 Y / 5273 for the period 04.02.2006 to 03.02.2007. The insured vehicle met with an accident on the night of 17.07.2006 at about 3-00 A.M. sustaining heavy damages. Several inmates of the vehicle were also injured which causes death to some of them. The Complainant lodged a claim seeking compensation for the damages sustained by the vehicle but the Insurer has not settled the claim on different pleas. Being aggrieved, the Complainant approached this forum for redressal.

The letter dated 02.01.2009 submitted by the Insurer discloses that the claim was repudiated by them on the following grounds :-

- 1) The insured vehicle which is registered as a private vehicle was being used for the purpose of hire and reward when the same met with an accident. The same was confirmed by a claimant of a T.P. claim in writing.
- 2) As the policy has a condition which prevents a private vehicle for use on hire the claim was repudiated on 24th January, 2007.”

The ground of repudiation mentioned in the letter dated 02.01.2009 as well as from the statement of the representative of the Insurer made at the time of hearing goes to show that, according to the Insurer, the vehicle was registered as a private vehicle whereas the same was used for commercial purposes in violation of the policy condition at the time of the accident and hence the claim is not payable. According to the representative, the Complainant was informed about their decision of repudiation vide letter dated 09.06.2008 but even thereafter he was further asked to submit a prayer to settle the claim on non standard basis which he has not yet submitted. The Complainant has produced the copy of the registration certificate in respect of the insured vehicle which also shows that it was registered as a private vehicle which was having seating capacity of 10 persons in all including driver. The copy of letter dated 17.04.2008 issued by the Insurance Company shows that the claim was settled and the Insurer issued the cheque which was of course lost in transit by Courier. The Insurer assured the Complainant vide the above letter to re-issue another cheque on receipt of confirmation of loss from the Courier. Thus considering the letter mentioned above we can take it easily that the claim was settled earlier and hence in view

of the said fact, subsequent repudiation of the claim, as stated, vide letter dated 02.01.2009 by the Insurer, appears to be a contradictory statement. The copy of letter dated 09.06.2008 issued by the Insurer addressing the Complainant has further clouded the circumstances when the Insurer has insisted the Complainant to pray for consideration of the settlement of the claim on a non standard basis on humanitarian ground. A claim is to be settled in terms of the policy conditions and asking for a prayer for settlement of the claim on humanitarian ground is nothing but a step without basis. The Representative also stated that one Usha Dutta, mother of a deceased namely Bichitra Dutta whose son died in the accident has stated that her son died while travelling in the hired vehicle No. AS – 01 Y / 5273 on 17.07.2006. Of course, the said Usha Dutta has not appeared before this Authority nor stated anything on behalf of the Insurer. That was the statement they have received from their Investigator. The statement of the representative of the Insurer shows that the statement so made by Usha Dutta was neither made and written before him nor it was written by him nor there is any other document to prove that the vehicle was hired by others at the time of accident. Police report has also not stated about involvement of the insured vehicle in the accident while it was carrying persons on hire. The Complainant pleaded that the vehicle was never used for commercial purposes and it was being used purely as a private vehicle when the accident occurred. When the Insurer has disputed use of the vehicle in violation of the policy condition, it is their burden to discharge and prove the fact that the vehicle was used in violation of the policy condition but the Insurer has totally failed to established it. Held that the repudiation of the claim by the Insurer was not in order. Hence Ordered that the Insurer should make payment of the admissible amount.

GUWAHATI OMBUDSMAN CENTRE

Complaint No. 11-005-0104/08-09

Sri Sudip Debnath

- Vs -

The Oriental Insurance Co. Ltd.

Award dated: 09.02.2009

The Complainant insured his Vehicle bearing Registration No. TR-01/B-3378 with M/s Oriental Insurance Co. Ltd. for the period 12.07.2007 to 11.07.2008. On 21.01.2008 the insured vehicle met with an accident near Ambassa, B.S.F. Camp, on Assam - Agartala Road under Ambassa Police Station, Dhalai, Tripura sustaining damages. The Complainant submitted a claim before the Insurer alongwith all supporting documents but the Insurer repudiated the claim on the ground of violation of the policy condition. Being aggrieved the Complainant approached this forum for redressal.

The Insurer has contended that “while scrutinizing the documents, it is noticed that the Permit No.2007/9542 was granted by Secretary, State Transport Authority, Tripura mentioning the route / area as AGARTALA MOTORSTAND TO TELIAMURA (147). Since the vehicle has gone to a place under Ambassa Police Station, which does not fall within the purview of permit and, as such, there is a violation of route permit. Claim was accordingly repudiated.”

From the “Self Contained Note”, it appears that the Complainant had submitted all the required documents in support of his claim and the Insurer reopened the file which was closed earlier. According to the Insurer, after verification of the documents, it was seen that the Insured vehicle travelled beyond the permissible area / route without any authority and the accident occurred therein. During the course of hearing, the Complainant has also admitted that the accident occurred at Ambassa, Jaharnagar on 21.01.2008 while it was undertaking a reserve trip of Railway Contractor. The site of the accident falls within Assam Agartala Road. He has admitted that the vehicle travelled about 45 Kms. beyond Teliamura when it was involved in the accident. The representative of the Insurer, has also stated that the accident took place outside the area covered under the Route Permit. In the policy document, the Insurer has specifically mentioned the limitation of use of the vehicle wherein it was specifically mentioned that “the policy covers the use only for carriage of passengers in accordance with the permits issued within the meaning of M.V. Act.”

Since the accident took place beyond the area covered under the Route Permit, there appears to be a violation of the policy condition on the part of the Insured. The Insurer has accordingly repudiated the claim due to violation of the policy condition which appears to be justified in terms of the policy. Such being the position, the complaint is treated as closed.

KOCHI

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/11-004-366/2008-09

**Devadas
Vs
United India Insurance Co.Ltd.**

AWARD DATED 16.02.2009

The vehicle bearing No.KL-2R-3797 was purchased by Shri Devadas from Smt.Indira Bai Pillai in January 2008. RC was transferred to his name on

15.01.2008 and insurance on 25.01.2008. The vehicle met with an accident on 24.01.2008. The claim was repudiated on the ground there is no valid insurance in the name of the registered owner of the vehicle at the time of accident. Insurance being a personal Contract, on transfer of vehicle, the transferor will cease to have insurable interest. Also the transferee has no policy in his name as the same was not transferred in his name. It is to be noted that there is no automatic transfer of own damage policy. As per Sec.157 of Motor Vehicles' Act, there is automatic transfer of insurance only in the case of third party insurance. Sec.157 also envisages the procedures to be followed for transferring the insurance. The insurance was transferred only on 25.01.2008, after the date of accident. At the time of accident, there is no valid insurance contract and hence the complaint stands **DISMISSED**.

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/11-002-143/2008-09

**Shri E.K.K.Muhammed
Vs
The New India Assurance Co.Ltd.**

AWARD DATED 07.10.2008

The complainant's Toyota Qualis car bearing No.KL-17-3333 of Make 2004 was having private car package policy from 11.05.2006 to 10.05.2007. The car was stolen in the intervening night of 7th and 8th June 2006. A crime was registered and investigated. The insurance claims was repudiated on the ground that the insured had not exercised proper care in keeping the vehicle and his negligence had led to theft of vehicle. In the complaint, he has stated that the vehicle was kept locked and the gate was also locked.

The claim was repudiated on the ground that the insured had not taken appropriate steps to safeguard the vehicle. According to Sec.8 of policy condition, insured is expected to take all reasonable steps to safeguard vehicle. As the vehicle was left without locking the gate and door of vehicle, he has given the offenders every opportunity to take away the vehicle. He has admitted this fact in his letter dated 06.01.2007. Had the gate and doors of car been properly locked, the theft would not have taken place. As the insurer was able to prove that proper safeguard was not taken by the insured to keep the vehicle under safe custody, the repudiation is justifiable and complaint is, therefore, **DISMISSED**.

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/11-005-416/2008-09

**Shri G.Biju
Vs
The Oriental Insurance Co.Ltd.**

AWARD DATED 11.03.2009

The complainant had taken a two-wheeler package policy for his Hero Honda Motor Cycle for the period 05.08.2006 to 04.08.2007. The vehicle was parked at Municipal Shopping Complex, Punalur, on 07.08.2006 and when he came to take the vehicle on 11.08.2006, it was found stolen. The matter was reported to the police the very next day and a case was registered. As the lost vehicle could not be retrieved, he reported the same to the insurer on 06.10.2006. But the claim was repudiated on the ground that the vehicle was left unattended for 4 days at an open space, which is a violation of condition 4 of the policy. Also the matter was reported to the insurer only after 2 months, which is a violation of Condition No.1 of the policy.

It was submitted by the insurer that as per Condition 1 of the policy, the insured must report the event immediately on its occurrence. It is not a mere formality and there is specific reason for imposing such a condition. There are instances of taking policy after loss of vehicle. In this case, the loss occurred within days of taking policy. It being a close proximity case, the insurer has to conduct enquiry as to the genuineness of the case and that is why, such a condition is imposed. Also the insured has not taken proper safe guard to keep the vehicle in safe condition. Instead he kept the vehicle unattended in an open space for days which is against Condition 4 of the policy.

It is evident that the insured violated Condition Nos.1 and 4 of the policy. The vehicle was left unattended in an open space for days. He himself admitted that in the Municipal Shopping Complex where the vehicle was kept, there was no watchman. He simply kept the vehicle there and there was no one to even collect fee for parking the vehicle. The so called parking area was not in the active supervision of anybody. It is as good as keeping the vehicle in an open space. Hence his action is clearly a violation of policy condition No.4. Another reason for repudiation is that the loss was not reported to the insurer immediately. It was reported only after 2 months thereby depriving the insurer the opportunity to conduct an enquiry. The insured, being a practicing lawyer, is well aware of these conditions. As the insured violated the policy condition Nos.1 and 4, he is not eligible for the claim amount and the complaint is, therefore, **DISMISSED**.

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/11-011-356/2008-09

**Jyothi S.Raj
Vs
Bajaj Allianz General Insurance Co.Ltd.**

AWARD DATED 11.02.2009

The tourist bus bearing Reg.No.KL-7AM-1499, which belonged to Smt.Anita Surendran, was purchased by the complainant, Shri Jyothi S.Raj on 10.12.2007. The vehicle was having comprehensive insurance in the name of Smt.Anita Surendran from 31.08.2007 to 30.08.2008. The policy covered own damage risk, basic third party risk and PA cover for owner and driver. On 12.02.2008, the vehicle met with an accident, but the insurer repudiated the claim on the ground that the vehicle ceased to have coverage on the date of transfer and also accident was not reported immediately to the insurer. The claim was made after repair of the vehicle after a period of 3 months from the date of accident.

The question to be considered is whether the vendee of the vehicle is entitled to the benefit of insurance taken by the vendor without transferring the policy in his favour. Insurance contract is a personal contract. It only guarantees indemnification of the loss sustained to the insured person. The privity of contract is only between insurer and the insured. Hence in order to get the benefit of the policy, the transferee also must become the policyholder. For that, the policy has to get transferred in the name of transferee. Sec.157 of Motor Vehicles Act is very specific about this. Once the vehicle is sold, the original owner loses the insurable interest in the vehicle and also the transferee has no policy in his name. Hence the insurer is not liable to honour the claim. Another reason for repudiation is that the accident was not intimated immediately to the insurer, the claim was made after repair. This is against the provision of policy contract. Hence there is no scope for interfering in the decision of the insurer in repudiating the claim. The complaint is, therefore, **DISMISSED**.

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/11-005-408/2008-09

**K.A.Salim
Vs
The Oriental Insurance Co.Ltd.**

AWARD DATED 05.02.2009

The complainant's poclain bearing No.KL-7-BD-6179 was covered under a package policy w.e.f. 31.08.2007to 30.08.2008. On 14.01.2008, while working in

Vallarpadam Container Terminal Site, it fell into mud and sustained damages. The complainant incurred an expense of over Rs.1,40,000/-. The insurer allowed only Rs.51,000/- and the balance amount was denied. Aggrieved by this, he approached this forum for justice.

It was submitted by the insurer that they have settled the claim as per assessment of licensed surveyor. They have allowed Rs.2,500/- only towards towing charges as against the claimed amount of Rs.25,000/- as there is a specific limitation as per policy condition that the maximum charges payable is Rs.2,500/- only. The other items disallowed were consumable and semi-consumable items such as oil filter, air filter, lubricant, etc. Also an amount of Rs.4,185/- was disallowed as it was not included in the estimate. They also reduced allowable depreciation. They are willing to pay the maximum amount of Rs.51,000/- payable as per policy condition and recommended by licensed surveyor.

At the time of hearing, the complainant has submitted that his dispute is only with regard to claim in respect of consumables and semi-consumables, as nowhere in the policy, there is such a condition that consumables and semi-consumables are not covered. But on a mere reading of policy condition, the first sentence itself states that the insurance company will indemnify the insured against loss or damage to the vehicle and its accessories only. Hence what is covered under the policy is vehicle and accessories. Even if these consumables and semi-consumables are not there, the vehicle will be there intact. These are the items which are required to be changed periodically. As there is no coverage for these items, as per policy conditions, the insurer is not liable to indemnify. The other item disallowed is the one which is not included in the estimate. It is likely that at the time of repair, such other items may also be replaced. But it has become necessary only due to wear and tear and not due to accident. The surveyor will include only those items damaged in the accident. Hence insurer is not liable for replacement of items not included in the estimate. Hence the repudiation is to be upheld and the complaint is, therefore, **DISMISSED**.

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/14-003-410/2008-09

Shri M.P.Sreekumar

Vs

National Insurance Co.Ltd.

AWARD DATED 19.02.2009

The complainant's Maruti Wagon R LXI vehicle bearing Reg.No.KL-4L-9578 was insured with National Insurance Co.Ltd. for the period 22.11.2007 to 21.11.2008. On 03.04.2008, the complainant reported an accident of fire on combination switch unit. The claim was repudiated on the ground that the insured converted the system into a bi-fuel system, where

both gas and petrol can be used a fuel. Necessary permission for the same was not obtained from the registration authority. As this is a permit violation which is against the policy condition, they are not bound to honour the claim.

It was submitted by the insured that he had completed all the wiring works for installing LPG kit. AS the tank of sufficient size was not obtained, he left the work half way and after completing the same, he got permission from the concerned authorities. At the time of accident, the car was locked and switch key was removed. Hence power supply will be there only between the battery and combination switches and no power supply will be there in any other part of the vehicle. Hence the repudiation cannot be justified and he is eligible for the claimed amount.

Sect.52 of Motor Vehicles' Act is very specific that before conversion to bi-fuel system, necessary permission from Registration Authority must be obtained. Here permission was sought and obtained only after accident. All the work relating to installation of conversion kit was done except filling gas tank. As alleged by insurance company, it is likely that the insured might be using domestic LPG gas cylinder. There are instances of unauthorized usage of domestic gas which itself is an offence. If bi-fuel system is used, insurance premium will be higher. Hence it is not covered under the policy. The complaint is, therefore, **DISMISSED**.

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/11-012-317/2008-09

Shri Shaji John

Vs

ICICI Lombard General Insurance Co.Ltd.

AWARD DATED 24.02.2009

On 16.5.2008, the complainant issued a cheque for Rs.6,544/- as premium for the insurance of his Honda City Car bearing Reg.No.KL-5R-123 for the period 26.05.2008 to 25.05.2009. A cover note was issued on 26.05.2008. On 17.07.2008, the vehicle was damaged in an accident and the claim was repudiated on the ground that they are not liable to honour the claim as policy document was not issued. It was submitted by the insurer that though the cover note was issued on 26.05.2008, they could not realize the amount paid by cheque and hence, the policy was not issued. As the policy is not in existence, they are not bound to settle the claim. But it was submitted by the complainant that sufficient amount was available in his bank account throughout and the cheque was never dishonoured. Insurance company has also not intimated him about non-realisation of cheque. Hence repudiation of claim is illegal.

Though notice was issue to the insurer, they have not filed self contained note. Instead, the representative of the insurance company appeared for hearing and sought postponement, on the pretext that they are prepared to settle the claim. The genuineness of cover note is never disputed by the insurer. They simply say that the amount was not realized. However, they have not sent any cheque dishonoured intimation to the insured. There is absolutely nothing to show that they had attempted to encash the cheque. If their contention is accepted, they can retain the cheque indefinitely with them in order to disown liability in case of a claim. Unless and until the cheque is not honoured due to fault of the insured, the policy will be valid. As per IRDA rules, claim has to be settled within 30 days of claim. Though notice was issued to insurer on 31.10.2008 with copy of complaint, they have not submitted self contained note and also claim was not settled till date of final hearing. It looks that the insurance company is playing a trick by not presenting the cheque in order to disown the liability. An award is, therefore, passed directing the insurer to pay Rs.83,848/- with 8% interest p.a. and a cost of Rs.5,000/-.

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/12-012-255/2008-09

Shri T.P.Sundaresan

Vs

ICICI Lombard General Insurance Co.Ltd.

AWARD DATED 17.12.2008

The complainant had remitted Rs.15,000/- by cash and Rs.5,964/- by cheque. As the cheque was dishonoured, the policy was cancelled by the insurer on 27.06.2007, but they have not refunded the amount received by cash. In spite of various letters, personal visits and complaint to grievance cell, insurance company has not taken any steps to refund the amount received in cash. During the process of hearing, the representative of insurer has admitted that the company has received Rs.15,000/- in cash and they are prepared to refund the amount. It is to be noted that though the policy is cancelled by the insurer, nothing has been said about the amount paid in cash. The request of insured was turned down. Insurance company retained the money for a pretty long period. Hence an award is passed directing the insurance company to refund the amount of Rs.15,000/- with interest @ 9% since 27.06.2007 till date of payment along with a cost of Rs.500/-.

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/11-004-197/2008-09

**Shri U.K.Sudheeshkumar
Vs
United India Insurance Co.Ltd.**

AWARD DATED 15.10.2008

Shri U.K.Sudheesh Kumar, the complainant purchased the vehicle from Shri Chacko T.Varghese and the RC was changed to his name w.e.f.10.10.2007. On approaching the insurer to change the insurance coverage in his favour, he was told to approach them only after getting the RC transferred in his favour. Before getting the RC transferred in his favour by RTO Authorities, the vehicle met with an accident on 22.10.2007. The claim was repudiated on the ground that there is no insurance in the name of the registered owner of the vehicle at the time of accident. According to the complainant, as per Motor Vehicles Act, a period of 15 days is allowed for transferring the insurance. As the accident occurred within 15 days, he is eligible for reimbursement. It was submitted by the insurance company that at the time of accident, Shri Sudheesh Kumar, who is the registered owner of the vehicle has no insurance on his name. Shri Chacko T.Varghese, on whose name the policy was issued, had no insurable interest in the vehicle. Hence neither Shri Sudheesh Kumar nor Shri Chacko T.Varghese can claim benefit under the policy. There is no provision in the Motor Vehicle Act allowing 15 days for transferring insurance coverage in respect of own damage policy. Automatic transfer of coverage is available only in respect of act liability. On going through the records and submission of both insured and insurer, it looks that though the RC was transferred in favour of Shri Sudheesh Kumar, the insurance was not transferred in his favour till date of accident. The previous owner of vehicle, Shri Chacko T.Varghese lost his insurable interest as he sold the vehicle. The new owner has to transfer the insurance coverage in his favour with the consent of insurance company. As he has not applied for transferring insurance benefit in his favour before accident, he cannot claim any benefit under the policy. Upon transfer of ownership of vehicle, the own damage portion of insurance ceases. So the repudiation made is correct and complaint is **DISMISSED**.

OFFICE OF THE INSURANCE OMBUDSMAN, KOCHI

Complaint No.IO/KCH/GI/11-003-190/2008-09

**Shri V.M.Rockey
Vs
National Insurance Co.Ltd.**

AWARD DATED 07.11.2008

The Maruti 800 Deluxe car bearing No.KL-7AG-1110 insured for a DV of Rs.1,40,030/- was stolen on 10.07.2005. The vehicle was seized by Excise Department while transporting illicit liquor using a different registration number. By the time the insured approached the Excise Department for getting back his vehicle, the vehicle was confiscated to Government and was sold by auction for Rs.1,10,000/- by observing all official formalities. By the time, the time to give appeal against confiscation order was also over. The insurance company paid only Rs.29,530/- directing the insured to realize the balance amount of Rs.1,10,000/- from Government, as Government has already sold the vehicle for an amount of Rs.1,10,000/-. The main contention of the insurer is that the insured had not taken any steps to get back the vehicle from the Excise Department or realize the amount from Government.

As per Sec.1 of policy, insurance company promises to indemnify the insured against loss or damage including theft. There is no dispute to the fact that the vehicle was lost by theft. So insurer has to indemnify the insured to the extent of insured value. The insurer cannot avoid liability on the ground that the insured can claim it from a third party. By the principles of subrogation, insurer can avoid all the relief available to the insured, after indemnification. Hence from the principles of subrogation and indemnification, the insurer has to indemnify the insured once the peril has occurred. The insurer is not entitled to say that insured has a cause of action against another who had dealt with the stolen article. Also it is relevant to note that as per Abkari Act, time to prefer an appeal has already expired and also there is no provision to take legal action. Hence the repudiation is to be reversed and an award is passed directing the insurer to pay the declared value less policy excess amounting to Rs.1,39,530/- with 8% interest p.a. and a cost of Rs.1,000/-.

KOLKATA

VEHICLE INSURANCE POLICY

**Kolkata Ombudsman Centre
Case No. 648/14/003/NL/02/2007-2008
Smt Kiran Poddar
Vs.
National Insurance Company Ltd.**

Order Dated : 22.10.2008

Facts & Submissions :

This complaint was filed against delay in settlement of a claim after assessment being completed on net of salvage loss basis under Motor Insurance Policy.

The petitioner, Smt. Kiran Poddar stated that she took a Motor Insurance Policy with an IDV of Rs.3,50,000/- from National Insurance Co. Ltd., D. O. XX, Kolkata for her vehicle commencing from 28.09.2006 to 27.9.2007. The subject vehicle met with an accident on 07.03.2007. Subsequently, Shri J. K. Mukherje, surveyor was appointed who in turn assessed the loss and submitted his report on 30.4.2007 to the insurance company. An Acceptance Note to this effect on net of salvage loss basis of assessment for an amount of Rs.2,71,500/- was signed between the complainant and the Insurer's surveyor. Even after a communication dt.11.9.2007 from the concerned Regional Office of the insurance company, still there was no disbursement on the part of the insurance company.

The Insurance Company in their self-contained note dt.11.7.2008 and subsequent letter dt.30.7.2008 stated that the subject vehicle met with an accident on 7.3.2007. Consequently, Shri J. K. Mukherjee, Surveyor was deputed to survey and assess the loss who in turn surveyed and assessed the loss on net of salvage loss basis of assessment for an amount of Rs.2,71,500/- and submitted his report on 30.4.2007. The report itself did not satisfy the competent authority of the insurance company as some discrepancies were there. Therefore, the insurance company again appointed Shri R. K. Jalan, another Surveyor to have a fresh review into the matter on technical ground. On the basis of review report of the said surveyor, it was observed that at the material time the driver who possessed the driving licence was not authorized to drive the said vehicle as the said vehicle was HGV (RLW 16200 KG, ULW 6000 KG). It was also found that the person who held the driving licence at the material time could drive LMV only, as per the issued licence. In view of this finding, the insurance company repudiated the claim contending that he was not permitted to drive the vehicle, as per MV Act.

Decision :

It had been observed that number of decisions had been cited by the insurance authorities to establish that the repudiation decision taken on their part was correct.

Therefore, it was clear that at the material time the driver was holding a LMV licence with a fake endorsement to drive HGV vehicle. From the decisions quoted above, one could come to a conclusion that the insurance company was not liable to pay Own Damage claim with regard to the accident when it was established that the driver was having a fake endorsement to drive HGV at the time of accident. Therefore, Hon'ble Ombudsman was of the firm opinion that the insurance company was correct in repudiating the claim. Therefore, he upheld the decision of the insurance company in repudiating the same.

Kolkata Ombudsman Centre
Case No. 112/11/011/NL/05/2008-09
Shri Neil Banerjee
Vs.
Bajaj Allianz General Insurance Co. Ltd.

Order Dated : 21.10.2008

Facts & Submissions :

This petition was against repudiation of a claim under Motor Insurance Policy Issued by Bajaj Allianz General Insurance Company Ltd. as “Driver Clause” of the policy had been violated under exclusion clause no. 3 (b) of the policy.

The petitioner, Shri Neil Banerjee stated that his Maruti Zen was covered under a motor insurance policy for the period from 20.03.2007 to 19.03.2008. On 16.05.2007 when he was on official tour to Delhi his part time driver took the key of the car from his wife with a plea to wash the car and then drove away the car from the garage without the knowledge of his wife. Subsequently the car met with an accident in which one person died and one was injured. He lodged a claim for Rs.1,71,104/- with the insurance company which was repudiated by the insurance company on the ground of ‘Driver Clause’ and the vehicle was being used for the purpose of imparting driving training. They stated that Shri Subhankar Roy was driving the vehicle at the material time and complainant could not produce his driving license to the insurance company. The complainant requested them to review the matter stating that “it has been clearly identified in the police investigation report that the accused Shri Kamal Biswas had been the driver of my car according to the investigation report of the police authority”. His request was not considered favourably by the insurance company and therefore, he approached this forum for redressal of his grievance seeking monetary compensation of Rs.1,71,104/- .

The insurance company did not send any self-contained note, after repeated reminders. However, in their repudiation letter they mentioned that as per their investigation report Shri Subhankar

Roy was driving the car at the material time whose driving license was not produced by the insured. More over at the material time the vehicle was being used for the purpose of imparting driving tuition which was not permitted under the captioned insurance policy. Therefore, under terms and conditions as well as exclusion no. 3 (b) of the insurance policy the claim was repudiated.

Decision :

The investigation reports submitted before the Court of Law clearly indicated that the car was driven by a person not having the license and therefore, the insurance company was not liable to pay own damages claim if accident took place while a person driving the same was without a license. However, the documents relied on were only investigation reports submitted before the Court of Law. Therefore, Hon'ble Ombudsman of the firm opinion that this forum did not have wherewithal to come to a conclusion whether the vehicle was driven by a person having a license or not? Therefore, the complaint could not be maintained unless there was a decision given by the MACT or Criminal Court with regard to the fact whether the person driving was having a license or not. Therefore, Hon'ble Ombudsman dismissed the complaint without any relief to the complainant.

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Kolkata Ombudsman Centre
Case No. 093/14/012/NL/05/2008-09
Shri Ashok Kumar Pandey
Vs.
ICICI Lombard General Insurance Co. Ltd.

Order Dated : 20.10.2008

Facts & Submissions :

This petition was against delay in settlement of claim under Goods Carrying Package Policy issued by ICICI Lombard General Insurance Company Ltd.

The petitioner Shri Ashok Kumar Pandey stated that his Truck No. WB 11A – 9135 was covered under a Goods Carrying Package Policy from 25.01.2007 to 24.01.2008. His vehicle met with an accident on 05.09.2007 within the jurisdiction of Bhandara P.S. while coming to Kolkata from Nagpur, causing damages to cabin cowl, assembly cargo body, battery radiator, cooling fan, engine head etc. He submitted a claim to the insurance company. The claim was assessed for Rs.56,536/- against his bill for Rs.1,79,748/-. He wrote to the insurance company several letters to clarify the reason for review settlement of the claim but no reply was received by him. Hence he approached this forum for redressal of his grievance seeking monetary relief of Rs.1,79,748/-.

The insurance company did not provide any self-contained note to this office after repeated reminders.

Decision:

Based on the report of the surveyor report an amount of Rs.98,000/- had been offered to grant in place of Rs.56,535/- by the Hon'ble Ombudsman which was readily agreed with the amount by both the parties during the course of hearing.

Therefore, Hon'ble Ombudsman directed the insurance company to pay an amount of Rs.98,000/- in full and final settlement of the claim after deducting any cheque amount already paid and encashed.

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Vehicle Insurance Policy

Kolkata Ombudsman Centre
Case No. 301/11/005/NL/07/2008-09
Shri Ranajit Chakraborty
Vs.
The Oriental Insurance Co. Ltd.

Order Dated : 09.01.2009

Facts & Submissions :

The complaint was filed against repudiation of claim on the ground that reasonable steps towards safeguard of the vehicle not being taken under Motor Insurance Policy.

The petitioner, Shri Ranajit Chakraborty stated that he took a Motor Insurance Policy with an IDV of Rs.2,10,000/- from the above insurance company for his commercial vehicle (Ambassador Taxi) commencing from 05.05.2007 to 04.05.2008. The said car was stolen at Kona Expressway on 27.08.2007. The matter was informed to the insurance company on 3.9.2007 along with all relevant documents which was duly received by them. The complainant also stated that the driver of the ill fated vehicle had taken reasonable steps in safeguarding the vehicle at the material time and got injured in the process. There were no lapses or negligence on the part of the driver. However, the insurance company repudiated his claim on 15.1.2008 on the ground that reasonable care had not been taken which might be treated as breach of policy condition. On receipt of the same, he represented against the decision of the insurance company on 4.2.2008, 2.4.2008 and 17.5.2008 for a review of the same.

The Insurance Company stated that they had received all the relevant documents on 28.8.2008 after the alleged theft took place at Kona Expressway on 27.08.2007 of the said vehicle. Accordingly, they appointed Investigator. During the course of investigation, the investigator came to know from the Police Station that the driver was going towards Dhulagarh with four passengers and when they reached Kona Expressway near Nibra bridge he got a nature's call and parked his vehicle beside the road in such a location where there was no locality and left the Ignition Key in the vehicle. While he was attending to a nature call at that moment suddenly the four passengers fled away with the vehicle towards Dhulagarh alongwith the original vehicular document. However, the insured told the Investigator that while the driver Ganit Mandal was going towards Dhulagarh with four passengers and when he reached Kona Express Way, the passengers told the driver to stop the vehicle and the passengers got down and hit the driver and fled away. To confirm the decision of repudiation, the insurance company again appointed Smt. Sumita Mookerjee, legal adviser for her legal opinion towards admissibility of the claim under the policy. The legal adviser opined that the driver should take reasonable steps to safeguard the vehicle at the material time which attracted exclusion condition no.5 of the policy condition. Based on her opinion, the insurance company repudiated the claim.

Decision :

The insurance authorities have repudiated the claim on the mere fact that the driver of the vehicle left the key in ignition for attending to nature call as being negligence by invoking policy condition no.5 seemed to be rather hushing. The degree of negligence was to be the criterion for fully repudiating the claim. The mere going out of the vehicle leaving the ignition key in the car for attending nature call was not such a great negligence on the part of the driver to completely repudiate the claim.

Keeping in view of the above Hon'ble Ombudsman felt that certain ex-gratia payment would meet the ends of justice. Therefore, he directed the insurance company to pay an ex-gratia of Rs.1 lac which would meet the ends of justice. This decision should not be quoted as a precedent in future.

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**Kolkata Ombudsman Centre
Case No. 343/14/002/NL/08/2008-09
Shri Milan Kumar Bhattacharya
Vs.
The New India Assurance Co. Ltd.**

Order Dated : 06.02.2009

Facts & Submissions :

The complaint was filed against delay in settlement of claim under Motor Insurance Policy.

The petitioner, Shri Milan Kumar Bhattacharya stated that he took a Motor Insurance Policy from The New India Assurance Co. Ltd., Howrah Division with an IDV of Rs.1,62,450/- for his B.D. Van bearing No.WB-11-X-0285 commencing from 12.05.2005 to 11.05.2006. An accident took place on 30.05.2005 and consequence of which the said vehicle got severely damaged. This had duly been informed to the insurance company on 31.05.2005. A claim form was issued by the insurance company on the very day and surveyor was appointed immediately to conduct survey. After that he lodged a claim for Rs.1,98,500/- for reimbursement to the insurance company on 14.07.2005. He did not get any response from the insurance company after submission of the said documents. Subsequently, he represented number of times to the insurance company to settle the claim but of no avail. Being aggrieved, he has approached this forum for monetary relief including loss of mandays since lodging of the claim to the insurance company.

The Insurance Company stated that the said vehicle met with an accident on 30.05.2005 and survey was done and accordingly insured was informed to submit the original documents with Cash Memos of repairs vide their letter dt.2.9.2005 to process and settle the claim. According to the insurance company, the complainant was reluctant to produce any original documents in question without which they were unable to process the claim. Incidentally, it was established through First Information Report that at the material time i.e. when the accident took place, the subject vehicle was carrying passengers which was definitely a breach under insurance contract. A case was registered to this effect under 279/338 I.P.C. As per Seizure list 304A I.P.C. and investigation of the police authority it was found that the vehicle was authorized to carry only goods. It was also found that at the material time of accident one of the passengers got injured which too was reflected in F.I.R.

Decision :

It was clear that the insurance company was unable to take any decision with regard to the claim made by the complainant due to non availability of final police report and to arrive at a decision with regard to negligence on the part of the driver or with regard to usage of commercial vehicle for non-commercial purposes at the time of accident. This forum did not have any jurisdiction unless a decision was taken by the insurance company with regard to admissibility of the claim. As stated earlier the insurance company would be able to take a decision only, as and when the Court authorities give a finding with regard to the accident whether it was due to negligence on the part of the driver or whether there was use of vehicle for non-commercial purposes.

In the light of the above, Hon'ble Ombudsman was unable to take any decision with regard to the above at this juncture. Therefore, the petition was dismissed as non-maintainable.

LUCKNOW

Lucknow Ombudsman Centre
Case No.G-37/11/05/08-09
Shri. Anil Kumar Yadav
Vs
The Oriental Insurance Co. Ltd..

Award Dated : 27.01.2009

Complaint filed against Oriental Insurance Co. Ltd. by Shri. Anil Kumar Yadav in respect of repudiation of his claim arising out of a theft of his vehicle.

Facts : Shri. Anil Kumar Yadav, had got his vehicle, Bolero Jeep insured with Oriental Insurance Co. Ltd. under a package policy for the period 9.1.07 to 8.1.08. The vehicle was allegedly stolen on the intervening night of 28/29.3.07 from outside a residence No.24, Dev Nagar, Agra. The respondent repudiated the claim on the ground as to the limitation of use. The contention of the respondent is that the said vehicle was actually being used as a commercial vehicle while the policy was for private use. Aggrieved with the decision of the insurer the claimant approached this forum giving rise to the complaint.

Findings : On careful perusal of the records it was observed that as per the investigation report of the respondent the vehicle was on hire with M/s Reliance Energy, Agra. They have relied on the statement of bill wherein the number of the said vehicle is clearly shown. Apart from the above the place from where the vehicle was stolen is the guest house of the Reliance Energy Ltd. They have also relied on the statements made by the complainant, Engineer of Reliance Energy and the driver before the police that the vehicle was on hire with the Reliance Company. However the complainant has contented that some of his vehicles are under hire to the Reliance Energy and when he got a complaint from the company regarding poor services, the said vehicle was used for supervising the other activities of the travel company and not for commercial purpose. The complainant has also submitted the reply he had given in response to the above complaint. The surprising thing is that the letter is dated 21.10.05 in which he has promised to supply the vehicle while the vehicle was purchased on 27.12.05 and registration took place in Jan'06. The letter produced by the complainant is a concocted document obviously created to support his case.

Decision : Held that the insurer has placed reliable and cogent evidence to prove that the vehicle was being used for commercial purpose. The policy covering the said vehicle is a 'private car policy'. Therefore the policy expressly excludes the use of a private car for hire or reward and as per clause 3(a), the company shall not be liable for being used otherwise than in accordance with the limitation as to use. Therefore the repudiation of the claim under the policy was held to be in order.

Lucknow Ombudsman Centre
Case No.G-60/11/05/08-09
Shri. Pawan Kumar Jain
Vs
The Oriental Insurance Co. Ltd..

Award Dated : 4.02.2009

Complaint filed against Oriental Insurance Co. Ltd. by Shri. Pawan Kumar Jain in respect of deducting certain amount from the claim arising out of a theft of his vehicle.

Facts : Shri.Pawan Kumar Jain, had got his vehicle, Honda motorcycle insured with Oriental Insurance Co. Ltd. for the period 10.2.06 to 9.2.07. The vehicle was allegedly stolen on 9.9.06. The respondent settled the claim for a sum of Rs.7450/- treating the claim as non-standard. The contention of the respondent is that the engine no. and chassis no. is not mentioned in the FIR and the insured has submitted only one key of the vehicle. Aggrieved with the decision of the insurer the claimant approached this forum giving rise to the complaint.

Findings : On careful examination of all the documents the forum found that in the All India Motor Tariff it is provided in Sec.GR-40(compulsory deductibles) that in OD claims a compulsory deduction of Rs.50/- is provided in two wheeler motorized vehicles and there is also a provision of voluntary deductible upto Rs.3000/- subject to getting a discount on the premium upto 25% or Rs.250/- whichever is less on the OD premium. On going through the policy it is found that there is no mention of excess amount by way of any endorsement nor has it been provided in the voluntary excess clause as provided in the standard motor OD policy format. However there is a mention of “excess clause Rs.3000/- on the theft” in the column where the space is provided purely for the purpose of address of the assured, but there is no mention of any discount in premium. While at the appropriate column in the policy the SI stands at Rs.13000/- subject to compulsory deductibles of Rs.50/-. On going through the FIR it is found that the registration no. is mentioned and engine no. & chassis no. is not mentioned. However, a prudent man is expected to identify his vehicle by the registration no. and not by engine no. & chassis no. Moreover the circular which the insurer is relying is dated 13.9.07 which postulates that the above requirement is applicable for all cases after this date and the instant case has taken place on 9.9.06. The other contention was that the complainant has given only one key of the vehicle. On going through the investigation report it is found that there is an acknowledgement by the investigator himself having received keys of the motor cycle.

Decision : Held that the insured has been enjoying a No Claim Bonus upto 50% which confirms the good track record of the insured in this policy. The contention of the company that due to heavy theft claims in that particular area they have imposed excess, is a deviation from the prescribed All India Motor Tariff which is not tenable. Secondly merely imposing an excess of such heavy amount without giving any concession in the premium is not valid. The circular regarding mention of engine no. & chassis no in the FIR, which the insurer is relying is dated 13.9.07 which postulates that the above requirement is applicable for all cases after this date and the instant case has taken place

on 9.9.06. The repudiation of the claim was, therefore, set aside and the complainant nominee awarded full IDV of RS.13000/- less excess of Rs.50/- only as per terms and conditions of the policy.

Lucknow Ombudsman Centre
Case No.G-60/11/05/08-09
Shri. Pawan Kumar Jain
Vs
The Oriental Insurance Co. Ltd..

Award Dated : 4.02.2009

Complaint filed against Oriental Insurance Co. Ltd. by Shri. Pawan Kumar Jain in respect of deducting certain amount from the claim arising out of a theft of his vehicle.

Facts : Shri.Pawan Kumar Jain, had got his vehicle, Honda motorcycle insured with Oriental Insurance Co. Ltd. for the period 10.2.06 to 9.2.07. The vehicle was allegedly stolen on 9.9.06. The respondent settled the claim for a sum of Rs.7450/- treating the claim as non-standard. The contention of the respondent is that the engine no. and chassis no. is not mentioned in the FIR and the insured has submitted only one key of the vehicle. Aggrieved with the decision of the insurer the claimant approached this forum giving rise to the complaint.

Findings : On careful examination of all the documents the forum found that in the All India Motor Tariff it is provided in Sec.GR-40(compulsory deductibles) that in OD claims a compulsory deduction of Rs.50/- is provided in two wheeler motorized vehicles and there is also a provision of voluntary deductible upto Rs.3000/- subject to getting a discount on the premium upto 25% or Rs.250/- whichever is less on the OD premium. On going through the policy it is found that there is no mention of excess amount by way of any endorsement nor has it been provided in the voluntary excess clause as provided in the standard motor OD policy format. However there is a mention of “excess clause Rs.3000/- on the theft” in the column where the space is provided purely for the purpose of address of the assured, but there is no mention of any discount in premium. While at the appropriate column in the policy the SI stands at Rs.13000/- subject to compulsory deductibles of Rs.50/-. On going through the FIR it is found that the registration no. is mentioned and engine no. & chassis no. is not mentioned. However, a prudent man is expected to identify his vehicle by the registration no. and not by engine no. & chassis no. Moreover the circular which the insurer is relying is dated 13.9.07 which postulates that the above requirement is applicable for all cases after this date and the instant case has taken place on 9.9.06. The other contention was that the complainant has given only one key of the vehicle. On going through the investigation report it is found that there is an acknowledgement by the investigator himself having received keys of the motor cycle.

Decision : Held that the insured has been enjoying a No Claim Bonus upto 50% which confirms the good track record of the insured in this policy. The contention of the company that due to heavy theft claims in that particular area they have imposed excess,

is a deviation from the prescribed All India Motor Tariff which is not tenable. Secondly merely imposing an excess of such heavy amount without giving any concession in the premium is not valid. The circular regarding mention of engine no. & chassis no in the FIR, which the insurer is relying is dated 13.9.07 which postulates that the above requirement is applicable for all cases after this date and the instant case has taken place on 9.9.06. The repudiation of the claim was, therefore, set aside and the complainant nominee awarded full IDV of RS.13000/- less excess of Rs.50/- only as per terms and conditions of the policy.