

Miscellaneous Policy

(General)

Ahmedabad Ombudsman Centre

Case No. 11-011-0146

Mr. V Desai

Vs

Bajaj Allianz General Insurance Co. Ltd.

Award Dated : 18.10.2007

Repudiation of Claim under Travel Elite Policy. The Insured while travelling overseas in a Tourist Coach lost his luggage containing passports, traveller's cheque, cash, gold, jewellery, credit card, bag in a fire. The Respondent admitted the liability only for the lost passport. The Policy Conditions of the above policy specifically excludes coverage for loss of jewellery, valuables, cash etc. Besides the baggage lost is not 'checked baggage' and hence its loss is not covered as per the terms of the Contract. As such, the decision of the Respondent to settle the Claim for the lost passport only was upheld.

Ahmedabad Ombudsman Centre

Case No. 11-002-0152

Mr. K J Bodar

Vs

New India Assurance Company Ltd.

Award Dated: 24.10.2007

Repudiation of Claim under House Holder's Insurance Policy: The Complainant submitted that Heavy Rain/Flood 'destroyed' household property. Claim was repudiated on the ground that the policy covered household property belonging to the insured lying at the house at the address printed on the Schedule of the policy. Since, the destroyed household goods were lying at a different address as that in the Policy, there is a breach of policy conditions. As such, the decision of the Respondent to repudiate the Claim was upheld.

Ahmedabad Ombudsman Centre

Case No. 11-004-0115

Mr. V J Shah

Vs

United India Insurance Company Ltd.

Award Dated: 24.10.2007

Repudiation of Claim under P.A. Policy: The Insured suffered an Accidental Glass Injury, which caused deep wounds in the Right Arm. He was hospitalised for Treatment. The Treating Orthopaedist recommended rest for 9 weeks. The Respondent referred the Case papers to their Medical Referee for opinion. TTD was proposed to be settled for 6 weeks, as per opinion of the Referee, for which the Insured was aggrieved. As per report of the treating doctor, the Insured was confined to his bed/house. The Complainant stressed that the treating doctor is the best judge to decide the period upto which the patient will be confined to bed. Besides, the Medical Opinion was taken in the initial period of the injury. With all professional skill, it cannot be a final and decisive than the treating doctor's report. As such, the claim was settled for TTD of 9 weeks as demanded by the Complainant.

Ahmedabad Ombudsman Centre
Case No. 11-005-0034
Dr. G T Patel
Vs
Oriental Insurance Company Ltd.

Award Dated : 25.10.2007

Partial repudiation of TTD Claim under PA Policy: The Insured, a practicing doctor had an injury in the right thumb for which he could not attend his practice for 6 weeks for which he claimed TTD under his PA Policy. On the advice of the Respondents Medical Examiner, the Respondent offered TTD for 2 weeks. In the absence of any other suitable index available, the rule of Golden Mean was applied and the Respondent was directed to pay TTD for 4 weeks in full and final settlement of the Claim.

Ahmedabad Ombudsman Centre
Case No. 11-012-0063
Case No. 11-012-0025
Ms. H R Parmar & Mr. H R Parmar

vs

ICICI Lombard General Insurance Co. Ltd.

Award Dated: 29.10.2007

Repudiation of claim under Overseas Individual travel insurance Policy. The Insured's bag was stolen while on a tour to Bangkok. He lodged an FIR in the local police station and intimated over telephone the claim for financial emergency assistance. The executive on the telephone agreed to send \$600 next day. However since the entourage was moving over to Malaysia next day, the Complainant requested to be allowed to claim after he returned back to India, which was seemingly consented to. The Policy Terms and Conditions define 'financial emergency' to be a situation wherein the Insured loses all or a substantial amount of his travel funds due to theft, such that there is a detrimental effect on his travel plans. From the documents adduced, it was clear that co-tourists helped the Insured and he continued the tour for the next 8 days. Thus it got confirmed that the theft had not led him to a financial urgency of the nature as defined in the Policy terms. Besides, there was no cogent proof for the Insured to have been misled by the Executives on telephone. As such, the decision of the Respondent to repudiate the Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. 11-002-0097
Mr. S K Narayanan

Vs

New India Assurance Co. Ltd.

Award Dated : 29.10.2007

Repudiation of Claim under HHI Policy. The Complainant's house was damaged while he was abroad. On his return, he lodged the Claim. As per his contentions, the cause of the damage might have been due to heavy downpour and/or due to the horde of monkeys frequently visiting the area and jumping from one tenement to the other. The Surveyor report mentioned that the damage was due to lack of maintenance and aging effect. The Claim was repudiated on the basis of the Surveyor's Report. The Complainant could not clarify as to how the damages have occurred, since he was not

in the country. Since the peril of lack of maintenance and aging effect is not covered under HHI Policy, the decision of the Respondent to repudiate the subject Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. 11-002-0138
Mr. M M Sanghavi
Vs
New India Assurance Company Ltd.

Award Dated : 13.11.2007

Repudiation of Claim under HHI Policy: As per the Complainant, his TV Set suddenly went dead. He approached the Company Service Centre who suggested that the TV Set be taken to their workshop. Claim was lodged. In reply to a structured question in the Claim Form, the Service Centre authorities mentioned that the Cathode Ray Tube had been damaged due to heavy electricity. It further stated that the TV Set was dead and the picture tube spark due to heavy electricity. They advised not to repair the set since the cost of the Cathode Ray Tube is more than the cost of a new set. The Claim was surveyed and it was found that the picture tube was found broken at the neck. There were no damages either to the circuitry or to the components. There was also no sign of any outer damage. The Surveyor ruled out the possibility of thunder or lightening to have damaged the picture tube. Usually the picture tube contains protective features so that the same is not destroyed in case of heavy voltage surge due to lightening etc. The HHI policy does not cover such damages. As such the decision of the Respondent to repudiate the Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. 11-002-0156
Ms. J N Bhatt
Vs
New India Assurance Company Ltd.

Award Dated : 20.11.2007

Repudiation of Claim under Health Plus Policy: The Insured was admitted to a Hospital for Hysterectomy (Surgical removal of uterus). Claim was excluded since as per policy conditions, claim for hysterectomy is not payable if the same occurs within the first policy year. The argument of the Respondent was vehemently refuted by the Complainant by pointing out that she was covered under Mediclaim for the past 9 years without break. She desired to take the benefit of the new Health Plus Policy and had hence submitted the proposal form, medical report, cheque etc. to the Respondent well in time. Records showed that the delay of 23 days was caused on the part of the panel doctor, office procedures etc., which caused a temporary break in cover. The Respondent fully admitted that the delay was due to their own fault and expressed their preparedness to settle the claim in full.

Ahmedabad Ombudsman Centre
Case No. 11-002-0161
Mr. J P Toshniwal
Vs
New India Assurance Co. Ltd.

Award Dated: 11.12.2007

Repudiation of Claim under House Holder Insurance Policy. The Complainant's Air-conditioner was not giving the necessary cooling effect. He sent the same to the workshop who declared that the Compressor winding had burnt and it needed replacement. The loss was assessed by the Surveyor who noted that the nameplate details of the Compressor was not tallying with the details given in the Insurance policy. During the course of Hearing, the Complainant reported that during the warranty period itself, the original Compressor was replaced by a new one. He produced copies of the original invoice. Since the one-off incident of replacement within the warranty period had occurred 6 years back, a momentary lapse might have occurred on the part of the Complainant while filling in the proposal form. Besides, any lay person would hardly venture to check into the date of the nameplate of the Airconditioner compressor. As a result of mediation, the Respondent agreed to settle the dispute by making a payment of Rs. 5000/- in full and final settlement.

Ahmedabad Ombudsman Centre

Case No. 11-002-0084

Mr. V M Prajapati

Vs

New India Assurance Company Ltd.

Award Dated : 12.02.2008

Repudiation of Flood Claim: Due to the flash flood in Surat, the Complainant's house was submerged in about 7-9 foot flood water continuously for 3 days. The Complainant's TV Set, VCR, Mattresses, TV Showcase, Wooden Ply table were damaged. The Respondent repudiated the Claim since intimation of the claim was not given within 14 days. However as per records, the intimation had been given prior to the deadline set by the Insurers through a joint advertisement in local newspapers in Surat Flood Case. The policy covered Sum Insured of Rs. 50,000/- only, thus considerable scope for underinsurance. The loss was assessed by the Surveyor on a lower side. In order to reach to a resolution, the Respondent was directed to settle the claim for Rs.5000/- on an ex-gratia basis.

Ahmedabad Ombudsman Centre

Case No. 11-002-0030

Mr. D A Sukhadia

Vs

New India Assurance Company Ltd.

Award Dated : 12.02.2008

Repudiation of Flood Claim: Due to the flash flood in Surat, the Complainant's house was submerged in about 7-9 foot flood water continuously for 3 days. The Complainant's TV Set, Refrigerator, 2 Wooden Beds, Mixer, Wooden Table, Wooden Doors were damaged. The Respondent repudiated the Claim since no one was present at the address given in the certificate. The Complainant had already informed them of the modified address long back and the Respondent too had updated their records. So the Claim was re-opened. However, the Surveyor assessed Claim for Rs. 2708/- only. The Complainant did not accept the amount. On re-assessment, the same Surveyor re-assessed the loss to Rs.5050/-. The policy covered Sum Insured of Rs. 50,000/- only, thus considerable scope for underinsurance. However, a few items were not added while computing the net assessed loss, which when added leads to net claim of Rs. 6000/-, which the Respondent was directed to pay on an exgratia basis.

Ahmedabad Ombudsman Centre

Case No. 11-002-0175

Mr. D P Gopani

Vs

New India Assurance Company Ltd.

Award Dated : 12.02.2008

Repudiation of Flood Claim: Due to the flash flood in Surat, the Complainant's house was submerged in about 7-9 foot flood water continuously for 3 days. The Complainant's TV Set, Refrigerator, Flour Mill, Mattresses, Bed sheets, Furniture were damaged. The policy covered Sum Insured of Rs. 50,000/- only, thus considerable scope for underinsurance. As against the total value of house holder's items on the date of the incident of Rs. 242000/-, the Insurance was only for Rs. 50000/- Due to this, the Respondent offered payment of Rs. 724/- which the Complainant did not accept. In order to reach to a resolution, the Respondent was directed to settle the claim for Rs.1000/- on an ex-gratia basis.

Ahmedabad Ombudsman Centre

Case No. 11-002-0149

Mr. M N Vasani

Vs

New India Assurance Company Ltd.

Award Dated : 12.02.2008

Repudiation of Flood Claim: Due to the flash flood in Surat, the Complainant's house was submerged in about 7-9 foot flood water continuously for 3 days. The Complainant's TV Set, VCD, Refrigerator, Blender/Toaster, Divan, Table Chair, Mattresses, Clothes and other kitchen utensils were damaged. While conducting the survey, a very high rate of 50% depreciation was applied to each and every item. The Respondent offered payment of Rs. 3547/- which the Complainant did not accept. The policy covered Sum Insured of Rs. 50,000/- only, thus considerable scope for underinsurance. In order to reach to a resolution, the Respondent was directed to settle the claim for Rs.6000/- on an ex-gratia basis.

Ahmedabad Ombudsman Centre

Case No. 11-002-0059

Mr. B K Navadiya

Vs

New India Assurance Company Ltd.

Award Dated : 12.02.2008

Repudiation of Flood Claim: Due to the flash flood in Surat, the Complainant's house was submerged in about 7-9 foot flood water continuously for 3 days. The Complainant's Radio, TV Set, Divan, Mattresses, Clothes, Sewing Machine were damaged. The Respondent repudiated the Claim since intimation of the claim was not given within 14 days. However as per records, the intimation had been given prior to the deadline set by the Insurers through a joint advertisement in local newspapers in Surat Flood Case. The policy covered Sum Insured of Rs. 50,000/- only, thus considerable scope for underinsurance. The loss was assessed by the Surveyor on a

lower side. In order to reach to a resolution, the Respondent was directed to settle the claim for Rs.4500/- on an ex-gratia basis.

Ahmedabad Ombudsman Centre
Case No. 11-002-0111
Mr. B G Nada
Vs
New India Assurance Company Ltd.

Award Dated : 12.02.2008

Repudiation of Flood Claim: Due to the flash flood in Surat, the Complainant's house was submerged in about 7-9 foot flood water continuously for 3 days. The Complainant's Sofa-Set, Teapoy, Cupboard, Beds, TV Set, Refrigerator, Washing Machine, Atta maker, Mixer, Iron, Blender, Mattress, Clothing and other kitchen utensils were damaged. The policy covered Sum Insured of Rs. 50,000/- only, thus considerable scope for underinsurance. The loss was assessed by the Surveyor on a lower side. In order to reach to a resolution, the Respondent was directed to settle the claim for Rs.10000/- on an ex-gratia basis.

Ahmedabad Ombudsman Centre
Case No. 11-012-0275
Mr U Shah
Vs
ICICI Lombard General Insurance Co. Ltd.

Award Dated : 05.03.2008

Short refund of premium on cancellation of Long Term Household Policy: The Complainant had gone in for a policy for 10 years by paying a single premium. He sold off the House after 4 yrs 4 months and demanded that he be paid pro-rata difference of the risk premium on cancellation of the Policy. However, the Tariff allowed refund at short period scales by a specific formulae. It was observed that the Respondent had correctly refunded the premium on cancellation of the Policy. As such, no further relief could be granted to the Complainant.

Ahmedabad Ombudsman Centre
Case No. 11-005-0218
Mr. K K Bhavsar
Vs
Oriental Insurance Co. Ltd.

Award Dated : 21.03.2008

Repudiation of Claim under HHI Policy. The Surveyor confirmed that the bathroom of the Insured house had collapsed due to seepage. Now, since damage due to seepage of rain water is not covered under HHI Policy, the decision of the Respondent to repudiate the Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. 11-010-0325
Ms. A P Gandhi
Vs

IFFCO Tokio General Insurance Co. Ltd.

Award Dated : 22.03.2008

Repudiation of Claim under HHI Policy. The Insured's property was damaged in a flash flood at Surat. Claim was repudiated by the Respondent stating that the Surveyor found that the subject premises was not a dwelling but a godown being used for commercial purposes and the HHI Policy covered only the dwellings. As per dictionary, dwelling is a house used as a residence and not for business purpose. From the photograph of the premises, it is observed that the property had iron rolling shutters usually used in a motor garage or a godown. In view of this, no further relief was granted to the Complainant.

Bhubneshwar Ombudsman Centre

Case No.11- 002-0183

Sri. Kishore Chandra Rath

Vs

New India Assurance Co. Ltd.

Award Dated : 1.11.2007

Insured Complainant insured his Air Conditioning machine under Householders Policy of New India Assurance Co. Ltd. On 25.06.2005 at midnight the air-conditioner stopped functioning. Insured complainant went to M/S Sai Trading Works for repairing the machine and submitted an estimate of Rs. 9579.00 towards replacement of compressor, relay, capacitor and gas charging, etc. Insurer appointed surveyor Sri. A. K. Behuria who assessed the loss as Nil since the defect in the compressor is a mechanical defect and not an accidental one. The said surveyor also obtained a written confirmation from service engineer of M/S Sai Trading Works that less pumping rising to 250psi instead of 500psi which is not desired for AC compressor. Insurer repudiated the claim as the defect in the compressor is a natural mechanical defect and not an accidental loss. Being aggrieved the complainant approached this forum.

In self-contained note Insurer stated that the cause of loss is due to normal wear and tear but not due to any accidental reasons. The compressor was used for a longer period for clearance of bore and piston and that is why the pressure was varying.

During hearing Insurer reiterated their stand taken in self-contained note. The complainant stated that AC was functioning well till midnight of 25.06.2005 but suddenly it stopped functioning. This would suggest that non functioning of AC was due to accidental failure.

Honourable Ombudsman upheld the decision of the Insurer on the ground that the insured machine was more than 10 years old and the reason tendered by surveyor is convincing.

Bhubneshwar Ombudsman Centre

Case No.11- 002-0165

Mrs. Madhusmita Swain

Vs

New India Assurance Co. Ltd.

Award Dated : 14.12.2007

Insured Complainant being the proprietor of M/s Essem Enterprises insured her stocks like Tea , Razor under Fire policy of New India Assurance Co. Ltd for a period of one year commencing from 04-03-2004 for sum insured of Rs 400,000/ . On 23-09-2004 the

stocks were damaged due to inundation in the godown. Insured intimated the insurer on 28-09-2004 regarding the incident and insurer appointed surveyor for survey and assessment of loss. Insured was trying to dispose off the damaged stocks through her agents . The surveyor in his report stated that stocks shown to them after five and six months of incident do not have any sign of being affected by water or soiled.

Surveyor was not in a position to assess the loss. Insurer repudiated the claim on the basis of survey report.

Complainant being aggrieved approached this forum.

Insurer filed Self Contained Note stating that as per survey report they have repudiated the claim.

During hearing Insurer re iterated their stand taken in self contained note.

Insured complainant stated that she has still preserved the damaged items and will be shown at any time.

During hearing both the parties agreed to appointment of an independent surveyor. Hon'ble ombudsman appointed Dr. M.K. Nanda as surveyor. Dr. Nanda has inspected the damaged items available in that godown and assessed the loss for Rs 73561/.

Honourable Ombudsman directed the insurer to pay Rs 63561/ after deduction of policy excess.

Bhubneshwar Ombudsman Centre

Case No.14- 003-0213

Sri S.R. Rao

Vs

National Insurance Co. Ltd.

Award Dated : 14.01.2008

Insured Complainant obtained a Marine Inland transit policy from National Insurance Co. Ltd for transportation of his House hold goods from Durgapur to Rourkela by truck.

The journey started on 29-04-2005 . Insured complainant lodged a claim for goods damaged during the transit. Insurer appointed surveyor assessed the loss for an amount of Rs 5025/ against an estimate of Rs 31,000/. Insured complainant received an amount of Rs 5025/ from insurer and lodged this complaint due to less settlement.

Insurer filed Self Contained Note stating that surveyor has assessed the loss which have been damaged due to transit and did not consider the loss which was not covered under the policy.

During hearing Insurer re iterated their stand taken in SCN.

Insured complainant stated that insurer has settled the claim for a very paltry amount.

Insured complainant was directed during Hearing to submit the repairing bills and cash memos of articles damaged within one month to this forum . But insured complainant did not comply.

Honourable Ombudsman uphold the repudiation as the loss assessed by surveyor is in order.

Chandigarh Ombudsman Centre

Case No. : GIC/233/UII/11/08

Geeta Devi

Vs
United India Insurance Co. Ltd.

Award Dated : 9.10.07

FACTS : Smt Geeta Devi had two buffaloes which were insured with the insurer for three years by paying a premium of Rs. 1480/-. One of the buffaloes died on 20.4.2007. The claim lodged with the insurer was repudiated on the plea that the insurance was for one year which had expired in Feb'07. The complainant stated that on the advice of the insurer, she had obtained a letter from Punjab National Bank who had given the loan stating that loan/insurance was for 3 years.

FINDINGS : The insurer informed that the cover note was for one year and premium paid was Rs. 1536/-. On a query what was the percentage of premium for 3 years, the insurer replied that it was 4.8% for 3 years, if it was an IRDP case. On a query as to whether the buffaloes were under IRDP scheme, the insurer replied in the affirmative.

DECISION : Held that the premium of Rs. 1536/- had been charged @ 4.8% on Rs. 32,000/- being the consideration amount for 3 years term under IRDP scheme. Thus the insurance was valid for three years and the contention of the insurer that the insurance cover had expired in Feb'07 was not in order. The claim was payable. Hence ordered that the admissible amount of claim be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre
Case No. : GIC/241/UII/11/08
Balbir K Bagga
Vs

United India Insurance Co. Ltd.

Award Dated : 17.10.07

FACTS : Shri Balbir K Bagga had taken a Householder's Policy from the insurer for the period 31.12.05 to 30.12.06. He lost his digital camera while driving a scooter. The claim lodged with the insurer was repudiated on the plea that no safety measures had been taken and FIR was not lodged. He stated that he had lodged a DDR and submitted non traceable report but his claim had not been paid.

FINDINGS : The insurer informed that the camera was being taken in a plastic bag while driving a scooter. It became a case of negligent act and hence the claim was repudiated.

DECISION : Held that the complainant was using due care while driving his scooter during which the camera fell from the scooter. It cannot be a case of pure negligence but only part negligence. Hence, ordered that the claim should be settled non-standard basis to the extent of 60% of the assessed amount of Rs. 8723/-.

Chandigarh Ombudsman Centre
Case No. : GIC/283/NIC/14/08
Chandrama Anand
Vs

National Insurance Co. Ltd.

Award Dated : 19.10.07

FACTS : Dr. Chandrama Anand got her flat at Dharamsala insured from BO Dharamsala. It was damaged due to flooding in Manooni river on 8.7.07. The insurer was informed and the survey was conducted on 9.7.07. She was advised to submit

estimate of damages which was duly submitted on 16.7.07. The insurer deputed another surveyor who inspected damages in August'07. However, the claim lodged by her had not been settled so far.

FINDINGS : The insurer informed that due to a communication gap the BM Dharamsala could not be present. Shri Parkash Chand, Sr. BM, Dharamsala was contacted on telephone and he stated that as per survey report it was a 'no claim' as the building was intact. On a query whether any photographs were available to support the contention that there was damage to the building, the complainant produced copies of newspaper cuttings in which her damaged house had been photographed. On a query whether he had visited the site, Sr. Branch Manager replied in the negative.

DECISION : Held that the courtyard/verandah had been severely damaged, though there was no loss to the building according to the photographs shown by the complainant. Since the courtyard/verandah is rear entry to the building, this could be treated as a part of the building. Hence the decision of the insurer to make the claim as 'no claim' without ascertaining its bonafides was not in order. The Sr. Branch Manager was advised to visit the site along with the surveyor to make a personal assessment of the admissibility of the claim and settle the claim on merits.

Chandigarh Ombudsman Centre
Case No. : GIC/292/NIC/14/08
Narinder Singh Chahal
Vs
National Insurance Co. Ltd.

Award Dated : 22.10.07

FACTS : Shri Narinder Singh Chahal got his house insured under Householder's Policy for the period 21.7.06 to 20.7.07. A theft occurred in his house in August'06 when he was out of station. On return to his house he found that his house was burgled. He reported the matter to the police and the insurer. The insurer deputed a surveyor who assessed the loss on the basis of agreed sum at the time of insurance. A claim was lodged with the insurer accordingly which has not been paid even after a lapse of 6 months of the submission of non traceable report by the police.

FINDINGS : The insurer informed that they had requested the complainant to submit the non traceable report from the SHO as also to give bills for silver and other household items which were stolen. On a query whether such a letter had been received, the complainant replied in the negative and stated that the bills were not available as items were purchased at different places and different time during the course of his service tenure. On a query as to whether the SHO report was possible, the complainant clarified that it would not be difficult to get the untrace report submitted by the police authorities, countersigned by SHO. On a query as to whether all lost items had been included in the survey report, the complainant replied that two silver thals weighing 1 Kg each and costing Rs. 21,040/- had not been taken into account while making the assessment. However, the insurer clarified that the claim for one thal weighing 2 Kg as reported in the FIR was not insured as per the list of items given at the time of insurance by the complainant.

DECISION : Held that the contention of the insurer that the bills/cash memos for purchase of silver and other items should be submitted. should not be insisted upon as these were not insisted upon at the time of insurance also and the agreed amount was only entered into the list of articles. The amount assessed by the surveyor should be

sufficient proof for the loss. As far as untraceable report is concerned the complainant was advised to get the same countersigned by SHO in the presence of the representative of the insurer and based on this counter signed untraced report, the claim should be settled.

Chandigarh Ombudsman Centre
Case No. : GIC/308/NIC/11/08
Nachattar Singh
Vs
National Insurance Co. Ltd.

Award Dated : 2.11.07

FACTS : Shri Nachattar Singh had purchased four buffaloes after taking a loan from Punjab National Bank, Samrala in 2006. One of the buffaloes died and all claim papers were submitted to the insurer. However the claim was repudiated on the ground that the tag was not intact in the animal's ear at the time of death. He stated that tag had unfortunately fallen from the ear and the same was recovered later on from his residence after the death of the buffalo. The insurance company, however, refused to make the payment of the claim on the ground that the tag was not intact in the animal's ear at the time of death.

FINDINGS : The insurer informed that as per rules the tag should be intact in the animal ear at the time of death. In case it falls during the lifetime of the animal, the matter should be reported to the insurer for re-tagging which was not done in this case. Hence the claim was made as 'no claim'. On a query whether the physical description of the dead buffalo matched with the description at the time of insurance, the insurer replied in the affirmative which was also confirmed by the photographs of the dead animal taken by the investigator. On a query whether the tag no. matched the no. of the animal, the insurer replied in the affirmative.

DECISION : Held that the tag produced by the complainant should be treated as authentic as it had been issued by the insurer. However since the complainant erred in not reporting the missing of the tag during the lifetime of the animal, the claim should be settled on non-standard basis by settling the claim to the extent of 75% of the insured amount of the buffalo. Hence ordered that an amount of Rs. 15,000/- being 75% of the insured amount should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre
Case No. : GIC/291/UII/14/08
Sanjay Chopra
Vs
United India Insurance Co. Ltd.

Award Dated : 15.11.07

FACTS : Shri Sanjay Chopra had taken a Householder's Policy from the insurer for the period 13.10.04 to 12.10.05. He lodged a claim in respect of Home Theatre Breakdown which was covered under 'breakdown' section of the policy. All the formalities were completed but the claim had not been paid.

FINDINGS : The insurer informed that the Householder's Policy was taken for the period 13.10.03 to 12.10.04. The Home Theatre was added on 8.1.04. However, when the policy was renewed for the period 13.10.04 to 12.10.05, the same was not included in the renewal. The same was then added in the insurance cover on 21.9.05. Within

one month a claim was lodged. Moreover, pre-inspection for fitness was arranged on their own by the complainant on 19.9.05 without any requirements from the insurer which is usually not done. No purchase voucher was available about the date of purchase. They had checked up from the workshop where the Home Theatre was to be repaired and were informed informally that the item was lying with them for a long time. All these actions created doubts in their mind about the genuineness of the claim. Hence the claim could not be settled.

DECISION : Held that the doubts expressed by the insurer about the genuineness of the claim appear valid. The bonafides of the claim have not been established. Hence the claim was not payable. The complaint was dismissed.

Chandigarh Ombudsman Centre

Case No. : GIC/444/NIA/11/08

Raj Kumar

Vs

New India Assurance Co. Ltd.

Award Dated : 18.01.08

FACTS : Shri Raj Kumar had taken a Marine Cargo Open Policy for duly packed apples for the journey starting from anywhere in India. On 25.8.07 he dispatched 652 cardboard boxes packed with apples through a truck bearing no HR-38M-6162 from Chandigarh to Guntur (A.P). During its onward journey the truck met with an accident with Tata Sumo on 27.8.07 at 10.00 P.M. Due to accident the tarpoline tied on the boxes was torn and the boxes got spread on the road. A mob of villagers was gathered on the spot and same become violent and were in the mood of setting the truck on fire. The police force immediately rushed on the spot and stopped the violent mob. In the night the villagers went near the truck and took out the boxes of apples from the truck as well as from those spread on the road. The police authorities appointed one constable for the security of the truck and apples but the villagers had taken 30% to 40% apples. The boxes of apples were directly exposed to sun and rain and therefore got further damaged. After the accident the intimation was sent to the insurer. The surveyor due to perishability of the apples sold the goods in the nearby market with the help of commission agent M/s G.T. Fruit Co, Nagpur. The surveyor submitted his report of Rs. 3,73,959/-. But the insurer sent the cheque of Rs. 1,91,884/- instead of actual assessed amount of Rs. 3,73,959/-. Parties were called for hearing on 18.1.08.

FINDINGS : During the course of the hearing the insurer clarified that this was an ITC 'B' policy and theft and non delivery of entire loss was covered under the policy. Since the loss was 30-40%, the amount was accordingly paid to the complainant on pro rata basis.

DECISION : On going through the terms and conditions of the policy carefully. ITC 'B' policy covers Fire,Lightning,Breakage of Bridge,Collision with or by the vehicle,Overturning of carrying vehicle,Derailment or accidents of like to the carrying railway wagon/vehicle,Strike, riots and Civil Commotions (SRCC),Theft and Non-Delivery of Entire Consignment. As per this there is no mention that only theft will be covered since over turning of the vehicle, riots etc are covered. So, claim is payable and it should be restricted to the worth of the goods being transported.

Chandigarh Ombudsman Centre

Case No. : GIC/475/NIA/11/08

Baldev Raj

Vs

New India Assurance Co. Ltd.

Award Dated : 29.01.08

FACTS : Shri Baldev Raj constructed house in 2003-04 by taking loan of Rs. 3 lakhs from the bank. He got it insured under Standard Fire and Special Perils Policy for the period 22.12.03 to 21.12.2013 for sum insured of Rs. 4 lakhs. On 13.8.07 there was heavy rain, which resulted in land sliding and his house collapsed. All the documents were submitted by the complainant but the claim was repudiated on the ground that the building was insured as residential property but as per survey report of Shri Surinder Kumar Soni, the building was used for running shop of steel fabrication and as per terms and conditions of the policy the claim was not payable. Parties were called for hearing on 29.01.08.

FINDINGS : The insurer clarified that as per survey report it was revealed that part of the ground floor of the building was being used for commercial purposes including welding works. No intimation about change of use of building was intimated which was required under general condition 3 (a) of the terms and conditions of the policy which reads as under:-

If the trade or manufacture carried on be altered, or if the nature of the occupation of or other circumstances affecting the building insured or containing the insured property be changed in such a way as to increase the risk of loss or damage by insured perils.

Hence the claim was repudiated for non conformity of use of building for commercial purposes.

DECISION : Held that a part of the building was used for commercial purposes. Moreover on reading general condition 3 (a), I find that information should be given to the company if the change of occupation increases the risk of loss or damage by insured perils. In this case the loss has occurred because of land slide which had no nexus with commercial activity being done on the part of the ground floor. Hence the claim is payable. However, since part of the building had been put to use for commercial purpose without the knowledge of the insurer, the enhanced premium from the date of inception of the policy at 3 times the rate of premium should be deducted from the claim amount.

Chennai Ombudsman Centre
Case No. : IO(CHN) 11.04.1267/2007-08
Mr. Ravikumar
Vs

The United India Insurance Co. Ltd

Award Dated :

The Complainant, Mr.Ravikumar stated that he has taken a House Holders Policy along with other type of the policies with United India Insurance Company, Coonoor Branch. He has made 7 complaints for non-settlement and short settlement of claims out of which the Ombudsman has already passed award to settle for 2 claims during March 2007. The remaining claims remained unsettled. The complainant argued that as per condition of the special contingency policy, he is entitled to receive the market value of the laptop. But the Insurer has deducted depreciation after arriving market value, which is not correct.

The insurer contended that losses would be considered on market value basis after taking into account depreciation and excess, if any under the policy. Most of the items were electronic equipments which were obsolete items.

On perusal of the papers and hearing the parties it was seen that the complainant has been taking two HHI Policies each year as well as a Special Contingency Policy or an Electronics equipment Policy. In the first year, claim was for loss of Laptop, camera and lens and baggage. The camera and accessories and baggage and were covered under HHI policy and Laptop under SC policy. The subsequent year, the claim CPU of Desktop PC and damage to two Modems were under EEI Policy and claim for breakdown of VCR and breakdown of pump of motor is under the HHI Policy. It was seen that there was breakdown of good faith between the insured and insurer. The complainant had earlier invoked the RTI Act also. The insurer had not implemented the decision given by the forum earlier. The complainant had been taking two HHI policies with overlapping expiry dates for contents of the same premises. After underwriting the policies in a careless manner, the insurer seemed to be trying to adopt loss control measures in an arbitrary manner. Having underwritten the policies and the loss having taken place, it was necessary for the concept of indemnity and reasonableness of the compensation to be adhered to. In the circumstances, insurer was directed to settle the claims as under:-

- H Loss of Laptop : Rs 35,000/- on Exgratia basis.
 - H Loss of 'Nikon' camera and accessories : Rs 9,000/- towards camera, Rs 25,000/- for both lens and Rs 1000/- towards the flash. ie an amount of Rs 35,000/- in all on Exgratia basis.
 - H Claim for CPU of Desk Top Computer: Rs 5,000/- on Ex-gratia basis.
 - H Claim for 2 nos Dial Up Modem: Rs 3,500/- in all for both modems, on Exgratia basis
 - H Claim for National V.C.R: Rs 4,000/- on Ex-gratia basis.
 - H Claim for Motor of 2 HP Water Pump: Rs 2,000/- on Ex-gratia basis.
 - H Collection of Increased Premium for Motor Vehicle policy for his vehicle Mahindra Bolero: Does not merit any interference from the Ombudsman.
 - H No amount was allowed towards mental agony and harassment.
- Complaint was partly allowed on Exgratia basis.

Chennai Ombudsman Centre
Case No. : IO(CHN) 11.10.1246/2007-08
Smt. D.Kalaiyarasi
Vs

IFFCO-TOKIO General Insurance Co. Ltd.

Award Dated : 29.01.2008

Smt.D.Kalayarasi, had taken a critical illness insurance cover through the Road Safety Club Pvt. Ltd. for the period 01.09.2005 to 31.08.2008 with sum insured of Rs.1,00,000/-. issued by IFFCO-TOKIO General Insurance Co. Ltd.. She was initially hospitalized for evaluation. Then she had undergone bypass surgery. The Insurer has repudiated the claim stating that the claimant was hypertensive for 4 years, diabetic for 6 years and presented with angina on exertion for 1 year

The Insurer said that the policy issued to Mrs.Kalairasi through M/s.Road Safety Club covers 5 critical illnesses only for a sum insured of Rs One lac. The claim for bypass surgery was rejected because the ailment was pre-existing and the policy does not cover pre-existing ailment as per Exclusion 1 of the policy. As per discharge summary, the disease was existing for 4 years which was before 01.09.2005 (inception of policy). The Coronary Artery Disease was because of hypertension. In other words, any ailments leading to complications are pre-existing and hence CAD was pre-existing.

The insurer was asked to submit a copy of the proposal form of Mrs Kalaiarasi and she was asked to submit the report/letter of Dr.Parthasarthy under whose advice she had got herself admitted in Hospital. The Forum pointed out that only sugar and Hypertension and not CAD were pre-existing,

On scrutiny of the documents submitted, it was observed that the policy condition specifically excludes only "such diseases", which are in pre-existing condition at the inception of the cover. Coronary Artery Disease is one of the critical illnesses covered under the policy and In this case the insured had suffered from Coronary Artery Disease (CAD) and undergone bypass surgery. The insurer did not prove with clinching evidence that the insured was suffering from Coronary Artery Disease before inception of the policy viz.01.09.2005.

The second exclusion that any Critical Illness, which incepts or manifests during the first 180 days of the Period of insurance cover for the Insured Person would also not apply in this case as she has been admitted to Hospital only on 21.04.2006 which falls after 180 days from the inception of the policy.

But the repudiation seemed to have been made as per the conditions of the "Medishield" policy where preexisting diseases are not covered, whereas in this case the claim was made under the Critical Illness Insurance cover,wherein the terms and conditions are different from that of Medishield Policy.However, in the repudiation letter reasons for repudiation includes diabetes for 6 years and hypertensive for 4 years. Besides, the complainant also did not submit the required documents to substantiate her stand that she was not suffering from CAD before inception of the policy.Based on the above facts, insurer was directed to pay 75% of the sum insured on ex-gratia basis.

The Complaint was partly allowed.

Guwahati Ombudsman Centre

Case No. 11-012-0020/07-08

Akhil Das

Vs

ICICI Lombard General Insurance Co. Ltd.

Award Dated : 15.11.2007

Facts leading to grievance of Complainant

This is a complaint lodged by Shri Akhil Das against the insurer/OP for repudiating the claim lodged by him before the insurer for the death of his father due to cancer disease.

The facts, in brief, leading to this complaint is that Shri Mahendra Das, father of the complainant was a cancer patient who died due to that disease in the year 2006. The complainant preferred his claim before the OP/insurer under provisions of 'Mukhyamantrir Jibon Jyoti Bima Achari Policy' which was a policy entered into between the Government of Assam and the insurer to provide health cover and personal accident cover for the residents of Assam. According to the complainant, cancer is a disease in which the residents of Assam are entitled to get benefit of the above insurance scheme.

The father of the complainant died and accordingly, as per eligibility, the complainant preferred his claim before the insurer which was of course repudiated.

Counter-statements from Opp.party/Insurer

The insurer/OP has sent a letter under reference Mum/Legal/22204 dated 28.07.2007 wherein it was contended that the father of the complainant died due to "Prostate

Gland Cancer” and the disease was covered by the exclusion clause 7.6 (a) of the Memorandum of Understanding (MOU) entered into between the parties. The insurer applying the aforesaid provisions repudiated the claim.

Decisions & Reasons

From the copy of the letter received from the insurer and referred to above, it appears that this was a complaint under policy no.4012/00000943/00/000 which was issued on the basis of a MOU entered into by the insurer with Government of Assam for providing health and personal accident coverage for the residents of Assam. It was a welfare scheme introduced by the Government of Assam. The scheme was introduced by the Government of Assam in association with the above insurer to provide relief to the victims of dreaded diseases/accidents. The insurer has also filed copy of the MOU entering into by it with the Government of Assam. Copy of the policy document has also been furnished which states that due to the MOU, the policy has been issued and the insurer agrees to settle claims as set out in the schedule with all its parts and further subject to the terms and conditions contained in the policy. The policy incorporates that although disease like cancer is a disease in which the policy had coverage but as stated in item no.7.6 (a) “Prostate Gland Cancer” is a disease excluded from the list of diseases and the policy is not applicable to cases suffering from “Prostate Gland Cancer”.

Shri Mahendra Das, the father of the complainant was suffering from “Prostate Gland Cancer” and he died due to that disease and the complainant preferred his claim before the insurer for the death of his father on account of that disease. Since “Prostate Gland Cancer” is not a disease covered under the policy, the claim of the complainant appears to be not maintainable and the insurer accordingly rejected his claim vide letter no.MJJBA05-06/HEALTH/ASM/1005843 dated 09.12.2006 on the ground that the disease has not been covered under the scheme (Mukhyamantrir Jibon Jyoti Bima Achari Policy). The action of the insurer is found to be within the purview of the policy conditions. Thus, I find no ground to interfere with the findings arrived at by the insurer in respect of the claim.

The complaint is accordingly dismissed, finding no merit.

Guwahati Ombudsman Centre

Case No. 11-002-0168/06-07

Mrs. Salma R. Sangma

Vs

The New India Assurance Co. Ltd.

Award Dated :28.11.2007

Facts (Statements and counter statements of the parties)

This complaint was registered on the basis of a petition filed by Mrs. Salma R. Sangma representing M/s. AMA SERVICE STATION for partially repudiating the claim in respect of CLL policy no.530209/46/04/00247.

The case, in brief, is that M/s. AMA SERVICE STATION obtained the above policy under insurer/OP above named in respect of their vehicle no. AS-01/U-5281 covering the period from 22.02.05 to 21.02.06. The above vehicle carried 12000 KL ULS Diesel on 16.08.05 from Indian Oil Depot to Haldiganz Service Station Haldiganz, Meghalaya and on the way the vehicle met with an accident and the goods carried were lost. The Indian Oil Corporation Authority recovered an amount of Rs.3,55,080/- from the firm of the complainant for the loss of goods carried by their vehicle. The complainant lodged her claim before the insurer/OP above named claiming an amount of Rs.3,55,080/- but

the insurer has only offered to settle the claim for an amount of Rs.2,92,503/- to which the complainant did not agree. Hence this complaint.

The insurer has contended vide letter dtd. 19.04.07 stating that the policy bearing no. 530209/46/04/00247 introduced by the firm of the complainant M/s. AMA SERVICE STATION provides only the indemnity against insured's legal liability for actual physical loss or damage of goods carried caused directly by fire explosion and/or accident to the carrying vehicle on account of negligence of the insured and/or negligence / criminal act of insured's servant, subject to vehicle being damaged at the same time due to the above causes and claim thereof is admitted under Motor Policy. The insurer further contended that the invoice value of the diesel carried by the vehicle was Rs.2,96,989/- only and after deducting the usual dues, the amount of Rs.2,92,503/- was offered to the complainant which is admissible in terms of the policy and the amount of Rs.3,55,080/- as claimed is not payable due to the CLL policy's Exclusion Conditions No. (e) which speaks consequential loss arising from loss or damage to goods not covered.

Decisions & Reasons

The record shows that the above policy was issued under the scheme "Carrier's Legal Liability Insurance" and copy of the rules applicable to that policy shows that the basic rule of coverage reads as under :

"The Basic Cover :-

The Policy provides indemnity against insured's legal liability for actual physical loss or damages of goods carried caused directly by fire, Explosion and /or accident to the carrying vehicle on account of negligence of the insured and/or negligence/criminal act of Insured's servant, subject to vehicle being damaged at the same time due to the above causes and claim thereof is admitted under Motor Policy."

There is an Exclusion Clause applicable to the policy and Clause (e) of Exclusions reads that Consequential loss arising from loss or damage of goods is not covered. The value of the goods carried as shown in the copy of challan of the goods i.e., 12000 KL ULS Diesel is Rs.2,96,989.00 and that is the commodity lost by the vehicle concerned due to the accident. As per basic coverage under the policy, goods worth Rs.2,96,989/- is the liability under the policy which has been lost due to the accident of the vehicle. Although, the actual price of the goods carried by the vehicle is such but the Indian Oil Corporation allegedly recovered an amount of Rs.3,55,080/- for the loss of 12,000 KL of HSD inclusive of all taxes and other charges and the Indian Oil Corporation Authority has issued a certificate in this respect. This shows that besides the invoice price of Rs.12,000/- KL of HSD amounting to Rs. 2,96,989/- the Indian Oil Corporation also realized the taxes and other charges from the firm of the complainant. Over and above, the price of 12,000 KL ULS Diesel, the Corporation recovered the amounts of consequential loss of goods. As per exclusion clause, such taxes and other charges which are required to be paid by the firm to the Corporation, is not the liability under the policy, and cannot be realized in terms of the policy. The insurer has offered Rs.2,92,503/- being the actual cost of lost goods after deducting the usual amounts as required under the policy. Thus the decision taken by the insurer in settling the amount for the aforesaid claim appears to be within the purview of the policy conditions. As such, I do not see any scope to interfere with the decisions arrived at by the insurer/OP.

In view of the above findings, the complaint is dismissed.

Shri Kumud Ranjan Kemprai.
Vs
The New India Assurance Co. Ltd.

Award Dated : 06.12.2007

Facts leading to grievance of Complainant

The facts, in brief, leading to registration of this complaint is that the complainant obtained the above policy from the insurer/OP in respect of his vehicle AS-25/9998. The above vehicle carried 12 KL SKO from ex. Lumding transshipment terminal Lumding to M/s. G.C. Hojai, Maibong under challan no.001684 dated 19.01.05. The above truck, met with an accident on that day on way to Maibong and in the said accident, the goods carried by the truck has been lost. The Indian Oil Corporation who despatched the oil, recovered an amount of Rs.2,88,711/-, being the full value of the product lost in transit while transporting the same to Maibong and the complainant had to pay the same. The complainant lodged his claim before the insurer/OP above named, claiming the amount recovered by the Indian Oil Corporation, from him but the insurer has only offered to settle the claim for an amount of Rs.97,341.00 to which the complainant did not agree.

Counter-Statements from Opp. Party/Insurer

The insurer/OP vide letter dtd. 10.05.07 submitted that "(a). The policy provides indemnity against insured's legal liability for actual physical loss or damage of goods carried caused directly by fire explosion and/or accident to the carrying vehicle on account of negligence of the Insured and/or negligence/ criminal act of Insured's servant, subject to vehicle being damaged at the time due to the above causes and claim thereof is admitted under Motor Policy". Applying the above provisions, the insurer has settled the claim holding its net liability at Rs.97,341.00 and accordingly, offered the said amount to the complainant. Vide letter dtd. 1.8.07, the insurer/OP has again submitted that on physical inspection of the accident vehicle, their surveyor Mr. Rabinda Dey found that 10% of consignment was not lost and accordingly, they have calculated their liability at Rs.97,341/- only considering the invoice value less policy excess and less premium for reinstatement.

Decisions & Reasons

The record shows that the above policy was issued under the scheme "Carrier's Legal Liability Insurance" and the relevant rules applicable to that type of policy are as follows :

"The Basic Cover :-

The Policy provides indemnity against insured's legal liability for actual physical loss or damages of goods carried caused directly by fire, Explosion and /or accident to the carrying vehicle on account of negligence of the insured and/or negligence/criminal act of Insured's servant, subject to vehicle being damaged at the same time due to the above causes and claim thereof is admitted under Motor Policy."

Of course, there is an Exclusion Clause applicable to the policy conditions and Clause (e) of Exclusions reads that "Consequential loss arising from loss or damage of goods is not covered".

b) The value of the goods carried, as shown in the copy of invoice challan, despatching 12,000 KL SKO (Blue) was shown as 1,02,731.00 and that is the price of the commodity lost by insured vehicle no. AS-25/9998 due to the accident. As per basic coverage under the policy, goods worth Rs.1,02,731.00 is the liability under the policy which has been lost due to the accident of the vehicle. Although, the actual price of the

goods carried by the vehicle is such, but the Indian Oil Corporation, recovered an amount of Rs.2,88,711.00 from the complainant for the loss on 12,000 KL of SKO. From the aforesaid figure, it appears that besides the invoice price of the goods lost, some other charges have also been recovered from the complainant by the Indian Oil Corporation.

It is thus clear that that the Indian Oil Corporation has recovered Rs.2,88,711.00 for the above quantity totally lost in transit on the basis of non-PDS/industrial rate since the product did not reach the ultimate consumer. This appears to be the penalty imposed upon the insured for not being able to deliver the oil to the consignee. Whatever it may be, the liability of the insurer, as per terms of the policy, is to pay the actual price of the goods lost and not any amount required to be paid by the complainant to the IOC for non-delivery of the goods to the consignee. From the invoice price of Rs.1,02,731/-, the insurer has deducted the usual charges as per policy conditions as shown in the letter referred to above and accordingly, offered to settle the claim at Rs. 97,341/-.

The insurer has deducted policy excess and premium for reinstatement from the invoice price of the goods lost. It is seen that while calculating the above amount the insurer has rounded off the invoice price at Rs.1,02,700/- and therefrom the aforesaid deductions were made. The actual invoice price is Rs. 1,02,731/- and that is the liability of the insurer. Of course, the policy excess and premium for reinstatement amounting (totalling) to Rs.5,359/- is to be deducted from the aforesaid amount and accordingly, an amount of Rs.97,372/- is the actual liability of the insurer/OP and not Rs.97,341/-. This should be paid to the insured/complainant instead of Rs.97,341/- as has been offered.

It would not be out of place to state that 10% of the goods were not lost in the accident. The Insurer, however, did not deduct the price of such 10% of goods which remained with the Insured. The Insurer appears to have shown the good gesture towards the complainant considering his total liability towards the IOC.

The insurer is directed to proceed to settle the claim.

Hyderabad Ombudsman Centre

Case No.G-11-012-0116

Sri P. Suresh

Vs

ICICI Lombard Gen. Insurance Co. Ltd.

Award Dated : 25.10.2007

Brief facts : Sri P.Suresh and his wife Smt. Kusuma availed a home loan from ICICI Bank Ltd.. The bank gave a cheque for Rs.33005/- to ICICI Lombard General Insurance Co. Ltd. towards premium for insuring the customer/property financed. Sri Suresh received two policies from ICICI Lombard Gen. Ins. Co. Ltd. (Home Safe plus Secure Mind policy) with the name of the insured as P. Kumar in both policies. Subsequently he had also received a cheque for Rs.660/- being the excess premium and this was also favoring Sri P. Kumar.

Since the policies were issued in a wrong name, Sri P. Suresh complained to the ICICI on 23.1.2007 and he also lodged a complaint with IRDA for correction of the policies but to no avail.

Complainant's contentions: Though an amount of Rs.33005/- was taken from their account on 10.10.2006, there was no insurance in their names causing him mental

tension and financial burden. Policies issued in wrong name and property insured with wrong address have not been rectified by the insurer despite several complaints and hence he demands a compensation of Rs.5 lakhs from the insurer for the lapses committed by them while issuing the policies.

Insurer's contentions: The customer requested for cancellation of the policy and they did so. The premium received by them was credited back to the complainant's account and they are not liable for any compensation. They expressed regrets for the inconvenience caused to the complainant and stated that incident be treated as a human error.

Decision : The complainant confirmed that his account was credited with Rs.32345/- on 13.7.2007, though he did not receive any communication regarding this credit / refund.

It was noticed that the insurer did not handle the complaint properly and cancellation of the policies was done on the basis of a letter written by the complainant to IRDA. In view of the deficiencies noticed on the part of the insurer, it was decided to award a compensation of Rs.5000/- as costs for pursuing the complaint and the insurer was also asked to pay interest @ 2% above the bank rate in line with IRDA guidelines on the amount of Rs. 33005/- from 10.10.2006 to 13.7.2007. The insurer was also directed to refund Rs.660/-, which was sent earlier by a cheque in a wrong name.

Hyderabad Ombudsman Centre

Case No.G-11-004-0230

Ms. A. Nirmala

Vs

United India Insurance Company Ltd.

Award Dated : 11.12.2007

Brief facts : The complaint is about non settlement of PA claim. Sri A. Narsing Rao was holding a SBI Credit Card which also provides personal accident benefits for Rs.200,000/- under a group policy given by UII Co. Ltd. He died on 14.3.2006 in a road accident. A claim was lodged by Smt. Nirmala, the insured's wife. The claim was rejected by the insurer stating that the card was blocked before the date of accident. The complainant represented to the RO of the insurer, but there was no proper response.

Contentions of the complainant: She contended that her claim should be honored by the insurance company.

Insurer's contentions: As per the certificate of insurance "Certificate is valid only post payment of the card fee" and the claimant failed to produce the payment particulars of the card fee. They also stated that SBI had confirmed the blocked status of the card before the death of the insured and hence they rejected the claim as per master policy conditions.

Decision : The insurer referred to clause No.2 of the certificate of insurance which reads as follows:

"The insurance cover is valid if, while the master policy is in force, credit facilities continue to be available on the SBI card (i.e. SBI card is valid for use and has not expired or been terminated or suspended) and that there are no outstandings greater than 90 days. (Validity only if fee is paid or card used within 45 days of issuance or renewal. Cover commences from 1st month after use/ payment)".

The insurer produced a copy of letter from SBI conveying that the card was blocked before death of the insured. The complainant's side has not been able to submit any proof contrary to the contentions of the insurer nor have they submitted any card statements. Hence the complaint was dismissed.

Hyderabad Ombudsman Centre

Case No.G-12-012-0302

Smt. Kanneganti Anasuya

Vs

ICICI Lombard Gen. Insurance Co. Ltd.

Award Dated : 8.2.2008

Brief facts : Smt. Anasuya obtained two insurance policies from ICICI Lombard: Home Safe- Secure Mind Policy for Rs.8,00,000 for major illnesses with a premium of Rs.50,885/- and Home Safe plus-Home Insurance policy with a sum insured of Rs.10,00,000 for building and contents with premium of Rs. 5995/-.The period of insurance for both policies was from 31.10.2006 to 30.10.2011. She sought cancellation of the policies and accordingly the insurer cancelled the policies on 28.2.2007. The dispute is about the amount of refund of the premium upon cancellation.

Decision : The insured contended that policies received by her are different from what she had requested for and hence she had sought cancellation. She stated in her complaint that she got a refund of Rs.43,616/- as against the premium of Rs.56,880/- paid by her. The insurer contended that cancellation request was received on 27.2.2007 and hence they deducted some amount as per policy conditions. They stated that the customer is not entitled for full refund in such a situation.

Both sides were heard on 23.1.2008. The insurer's representative mentioned that refund allowable for cancellations made on any day during the first year of a five year policy will be 78% of the premium paid. He added that irrespective of the date of request for cancellation in this case, i.e. whether it was in 12/2006 or 02/2007, the amount refundable was only Rs.43,616/-. But in e-mails dated 16.3.2007 and 28.3.2007, the insurers insisted that refund amount was Rs.43,616/- as the cancellation request was made on 28.2.2007. Also the insurer's representative could not explain as to how they wrote a letter dated 9.12.2006, when they claim to have received cancellation request only on 28.2.2007. Considering the lapses in communications sent by the insurer, it was decided to order payment of a compensation of Rs.1,000/- to the complainant on ex-gratia basis.

Hyderabad Ombudsman Centre

Case No.G-11-004-0347

Sri P.V.A.Rama Rao

Vs

United India Insurance Co. Ltd.

Award Dated : 25.2.2008

Brief facts : Sri Rama Rao had taken a householders policy for the period from 12.4.2006 to 11.4.2007 covering contents of his house. The insured lodged claims on different dates for breakdown of domestic appliances. The claims had either been rejected or pending for want of requirements. The complainant approached this office for a redressal of his grievance.

Decision : The complainant stated that he lodged claims for breakdown of waterpump; washing machine; music system

and microwave oven. The estimated cost of repairs was (i) Rs. 2650/- for water pump, (ii) Rs.3300 for washing machine (iii) Rs.3164/- for music system and (iv)Rs.1,114/- for the oven. The insurer submitted that their surveyor estimated the losses at Rs.950/-; 1400/- and Rs.1675/- respectively for the first three items. The insurer also submitted that the complainant got the oven repaired without providing an opportunity to inspect and assess the loss.

A hearing was held on 15.2.2008, but the complainant did not attend. After hearing the insurer's version, it was held that technically the insured is not eligible for any claims in the absence of repair bills, as also for repairs undertaken without the insurance company being informed. Considering all the facts, it was decided to allow an ex-gratia payment of Rs.3000/-.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-004-201/07-08
Sri.T.K.Ouseph
Vs.
United India Insurance Co. Ltd.

Award Dated : 12.11.2007

The complaint falls under Rule 12(1)(b) read with Rule 13 of the RPG Rules 1998. The complainant had insured his cow and the policy was issued on 6.11.06 w.e.f. 12.02 hrs. The cow died on 21.11.06 at 9 a.m. The claim was repudiated on the ground that the cow was died due to a disease contracted with in 15 days of policy. It was submitted by the complainant that as the cow died on 21.11.06 the date of death was on 16th day of taking policy on 6.11.06. As also the cow died due to septicemia from the septic wound sustained due to a fall, he is eligible to get the claim amount as actual cause of death is accident. Only death due to illness within 15 days is excluded as per exclusion clause of policy.

The copy of policy was produced for verification which shows that the policy commence from 12.02 hrs on 6.11.06. As per postmortem report cow died on 21.11.06 at 9 a.m. There is no dispute regarding time of death and time of taking policy. Hence it is clear that the death occurred within 15 days of policy and as per exclusion clause death due to disease contracted within 15 days of taking policy is not covered under the policy. But it was contended by the insured that the cause of death was an accident, which do not come under exclusion clause. From the postmortem report it is clear that the death is due to Septicemia and Septicemia developed on account of an accident. On account of an accident a person may become ill. Compensation is given only for the consequence of accident, whether it is death or illness is depends upon risk covered under the policy. It looks that as per policy condition the illness which culminated death had occurred or contracted within 15 days of commencement of policy the exclusion clause will be attracted. Here in this case the illness was contracted on 13.11.06-within 15 days of taking policy even if it is on account of an accidental fall. It is relevant to note that if an accident occurs and it does not result into death no claim is payable. Hence accident can be a cause of something and accident itself will not give rise to any claim. Accident may give rise to illness and that illness may cause death. Hence it cannot be said death is due to accident. The repudiation is therefore liable to be upheld and complaint is disposed of accordingly.

Kochi Ombudsman Centre
Case No. : IO/KCH/GI/11-003-257/2007-08
Sri.Samuel

Vs
National Insurance Co. Ltd.

Award Dated : 06.12.2007

The complaint falls under Rule 12(1)(b) read with Rule 13 of the RPG Rules 1998. The complainant had insured his cow for a sum of Rs.10,000/- for the period from 20.10.06 to 19.10.07. The cow died on 6.11.06. The claim submitted on 21.11.06 was repudiated on the ground that the cow died of a pre-existing illness. It was submitted by the insurer that the cow died of mimosine poison on 18th day of taking insurance. The insured himself had given a written statement that the cow was under treatment for the last one month. This was confirmed by the investigation report submitted by the enquiry officer. The veterinary doctor through whom the policy was issued has stated that the cow was under treatment from 1.11.06 to 6.11.06. Hence they have rightly repudiated the claim as there is sufficient reason to believe that the disease is a pre-existing one.

The insurance Co. mainly depended on a statement said to have been given by the claimant to the investigating officer to the effect that the cow was under treatment for one month. But the complainant had denied that no such investigation was conducted and he has not given any written statement. In the repudiation letter nothing was mentioned about this letter. Had this letter been obtained at the time of investigation, it would have been mentioned in the repudiating letter. It is to be noted that this letter was filed by the investigator on 8.12.06, one month is taken from 8.12.06, the treatment should have started on 8.11.06. But cow died on 6.11.06. If one month is calculated from the date of submission of the alleged letter dated 28.11.06, the treatment would have commenced from 28.10.06. But policy has commenced on 20.10.06. If the one month period is taken from the date of submission of claim papers i.e., 21.11.06, the treatment would have started only after 21.10.06. Hence the insurer has failed to prove that the disease is a pre-existing one. The doctor through whom the policy was issued has stated that the cow was under his treatment from 1.11.06 to 6.11.06. But the investigating officer has not taken any evidence from the doctor. Hence this enquiry report also has no value at all. It was submitted by the representative of insurance co. that, on consultation with panel surgeon, the cow will die within 1 week of eating poisonous mimosine. If so it would have been in the last week of October. Hence the insurer has failed to prove that the cow died of a pre-existing disease and the repudiation is on faulty ground which is to be reversed. An award is passed directing the insurer to pay Rs.10,000/- together with interest at 8% since date of claim and a cost of Rs.500/-.

Lucknow Omdudsman Centre
Case No.G-22/11/10/07-08
Shri.Raj Gopal

Vs

Iffco Tokio General Insurance Co.

Award Dated : 09.01.2008

Shri.Raj Gopal, the complainant Insured, filed a complaint with this office against the decision of the respondent Co. in rejecting his claim for damage to household goods under the Marine Inland transit Policy.

Facts : A covernote dated 27.03.07 was issued to Shri.Raj Gopal for transit of his house hold goods from Noida to Bangalore by the respondent Co. The coverage mentioned is as per rail road clause(B). Goods were damaged during transit and claim preferred by the insured. Survey was arranged and loss assessed for 19675/- only

subject to terms and conditions of the policy. Damage was attributed to jerks and jolts during transit by surveyor. Claim was repudiated as Rail/Road clause 'B' does not cover such damages. The complainant stated he had asked for all risk cover. The respondent Co. maintained coverage was explained to him and even policy issued and handed over to him prior to commencement of transit.

Findings : What is important is the policy of contract. The contentions of complainant are all oral without any documentary proof. In absence of any proposal form (not insisted for in marine) or any written request by him, his contentions cannot be relied upon. The policy clearly mentions Rail/Road coverage 'B' and also the coverage available under this clause. A cursory glance at the policy would have made him understand the coverage.

Decision : No forum can go beyond the scope of the cover of the policy already given to the insured, which is the basis of this contract. The decision of the respondent Co. is upheld. Complaint was disposed off accordingly.

Mumbai Ombudsman Centre
Case No. : LI - 294 of 2007-2008
Shri Ashok A. Jain
Vs

Aviva Life Insurance Company Pvt. Limited.

Award Dated : 13.11.2007

Shri Ashok A Jain had approached the Office of the Insurance Ombudsman with a complaint dated 14th August, 2007, against the Aviva Life Insurance Company Private Limited, for rejection of claim under the Critical Illness Rider of his Life Long Unit Linked Policy No. LLG 1134552 issued by the said Company, stating that his medical condition did not fulfil the criteria mentioned in the Critical Illness Rider Article 9.1 of the Policy. Aggrieved, Shri Ashok Jain, approached this Forum for justice.

The parties to the dispute were called for hearing on 6th November , 2007. Shri Ashok A Jain, submitted that he had a heart problem for which he was admitted to Adventist Hospital. When he submitted the claim it was rejected.

The Company 's representative submitted that to be eligible for the benefit under heart attack all the three criteria mentioned under 9.1 of Article 9 should be fulfilled. In this case, though the first two conditions were satisfied, the third condition was not satisfied as per the medical records submitted by the complainant. In view of this, the benefit under critical illness rider claim is not payable under the policy. He defended the decision of the Company.

It is pertinent here to note the contents of Article 9 of the Critical Illness Rider titled "Covered Events – Critical Illness Definitions" . As per Article 9.1 of the Critical Illness Rider, "the diagnosis of Heart Attack must be evidenced by all of the following criteria:

- a) A history of typical chest pain.
- b) New electrocardiographic changes in keeping with recent sympatomathology and laboratory verification of acute myocardial infarction.
- c) An elevation in cardiac enzyme levels (CK level two times higher than the upper range of normal limit, accompanied by either the elevation of CK – MB, AST and LDH, or the elevation of troponin).
- d) The Covered Event occurs at the moment when all of the above stated criteria have been evidenced.

The above criteria formed part of the Standard terms and conditions envisaged in the policy document issued to Shri Jain by the Insurer and the Critical Illness Benefit is

payable on fulfilling the terms and conditions as written in the Policy Document As per the discharge summary of the Pune Adventist Hospital, the Troponin Test conducted on Shri Jain was negative, which indicates that there was no elevation of troponin(point No.3 above). In view of this, the rejection of claim of Shri Ashok Jain by the Aviva Life Insurance Company was upheld.

Mumbai Ombudsman Centre
Case No. : GI-409 of 2007-2008
Dr. Nautej Singh
Vs

The New India Assurance Company Limited

Award Dated : 15.01.2008

Dr. Nautej Singh, had covered his household items under the Householders Policy for the period 31.12.2004 to 30.12.2005 at the address: R/O Sananna Village Kanpona, Baramulla, Kashmir and the details with sum insured were as under:

- A) Fire & Allied Perils Section Bldg. Rs.20,00,000/-
- B) Fire/Allied perils and Burglary contents Rs. 2,00,000/-
- C) Jewellery – All Risk Section Rs. 5,000/-

His house had sustained extensive structural damage during the earthquake on 8th October, 2005 in Jammu & Kashmir State for which he lodged a claim with the Company.

The Surveyor, Mr. M. Nayeem Khan, in his Survey Assessment Report dated 28.2.2006 had reported that the maximum liability of insurers on account of subject claim shall be restricted to Rs.29,000/- subject to policy terms and conditions and subject to acceptance of liability by the insurers. The insured building has suffered damages due to earthquake on 8.10.2005. The loss causing peril falls within the purview of insurance policy contract and has operated during its currency. The claim is, therefore, admissible and is recommended for the indemnification as per the assessment of loss.

The Surveyor in his supplementary report dated 24.1.2007 as per instruction of the company again visited the insured location and inspected the building. Keeping in view the non-cooperation from the engineer who had prepared the estimate of loss and the damage noted at the second time of inspection of the insured property, the damages which have not been shown at the time of first survey are to the flooring of main building and the estimate of loss submitted by the insured had been considered. The amount of Rs.5000/- may be added to the amount of Rs.29,000/- already assessed vide report dated 28.2.2006. Hence the liability of the insurer on account of subject claim shall be restricted to Rs. 34,000/-.

Vide letter dated 6th June, 2006 the Insured submitted the estimate covering the cost of repairs and restoration of damages caused to the main house, out house and compound wall and gate, to the company which amounted to Rs.5,40,000/- from his Chartered Engineer, Shri S. Harbhajan Singh, who had visited and inspected the property and asked the company to settle his claim. However, inspite of repeated follow up the claim was not settled. Hence he approached the Insurance Ombudsman on 1st September, 2007 for intervention in the matter of settlement of his claim with the company. He prayed to the Ombudsman to direct the insurance company to indemnify him for the loss to his house and property by payment of:

- 1) Rs.5,40,000/- plus Rs.1,08,000/- (20% escalation as on date).
- 2) Compensation of Rs.2,00,000/- towards mental agony suffered by him and his family.

- 3) Rs.3,00,000/- for the expenses incurred in establishing and maintaining his family in Pune due to inordinate delay and non-settlement of his claim.
- 4) Such other relief and direction which the Hon'ble Ombudsman deems it just in the interest of justice.

However, the company in their self-contained note has point-wise clarified the points put forth by the Insured to this Forum and have denied the charges made by the Insured. They had stated that the cost given by Mr. Harbhajan Singh, Chartered Accountant, were without any break-up of cost for repairs to justify claimed amount in relation to damages shown to Surveyors and no reply was received to their letter dated 10.3.2006. The estimate does not give actual repair cost. The statement that repairs to compound wall was to be done and insured asked for advance are not proper as at the time of survey by Mr. Nayeem Khan, the wall was repaired. The insured submitted the cost break-up after 8 months of loss and only after repeated requests. Thus the insured has been non-cooperative and Surveyors have specifically informed that there was no co-operation from the Insured. They have received no legal notice from the Insured. However, all earlier letters were received by the Insured at his address in Pune but the insured's claim of not receiving letter dated 12.3.2007 is not proper and have enclosed courier register page for the same. It is totally incorrect that the claim paid is only for compound wall. The loss assessment was as per IRDA Approved Surveyors. As per insurance policy issued, the claim payable is only to insured property and to the extent of damages, certified by independent surveyors and hence other costs claimed are not at all admissible under the policy. Insured has never contacted them except writing letter of visiting Kashmir. In fact after May 2006, insured has not directly contacted and only Mr. Frenchman, his Insurance Consultant used to enquire on his behalf. The delay in settlement was due to the Insured not cooperating in justifying the claimed damage.

Since in this case, the house is located at Baramulla, unoccupied and the Surveyor and the Engineer are at Srinagar and the Complainant and Insurance Company are in Pune, therefore, a greater degree of co-ordination between both the parties are required to resolve the issue. The Complainant and the Insurance Company are advised to co-ordinate and co-operate with each other and give suitable direction to their counterpart at Srinagar to assess the loss based on the estimate submitted by Chartered Engineer. Parties are asked to sort out the matter after arranging a meeting of the Company's Surveyor and Chartered Engineer of the claimant and getting a final report.

Pursuant to the Hearing, this Forum has received a letter dated 27.12.2007 from The New India Assurance Company Ltd., stating that as per the decision during the Hearing held at Pune on 5th November, 2007 they had written letters to Dr. Nautej Singh by registered A.D. on 12th November, 2007 and a reminder on 27th November, 2007 for arranging a meeting with his Consultant and Surveyors to discuss the assessment and clarifications. The Company has sent the reply received by them from Dr. Nautej Singh received by them on 3rd December, 2007 which is quoted below:

"I have spoken to both Mr. Nayeem Khan, your Surveyor and Mr. Harbhajan Singh, my Chartered Engineer at Srinagar and asked them to coordinate a joint and final inspection of my property at Baramulla. I have also volunteered to be present during such inspection if need be. However, I have been informed about the inclement weather and uncertain weather which may intervene. I hope that we are through with damage quantification once for all. You can also give suitable direction to the Surveyor".

In view of the above, the Complaint of Dr. Nautej Singh is reverted back to the Insurance Company with a direction to arrange a tripartite meeting between the

Complainant, Chartered Engineer, Insurance Surveyor. The Complainant is advised to co-ordinate and co-operate with the Company to arrive at an amicable solution, based on re-assessment by the Surveyor. The claim cannot remain pending indefinitely as two months have already passed and if the Complainant fails to arrange a meeting within three months from the date of Hearing the claim can be settled as per the loss assessed by the Surveyor. In the absence of such a meeting the claim can be settled based on the assessment of the damages as per the Surveyor's Report for Gross loss assessed Rs.68,557/- and additional Rs.5000/- for damage to flooring after deducting depreciation and salvage value for a net payment of Rs.34,000/- without referring the issue back to the Ombudsman.

The Complainant is, therefore, closed at this Forum.

Mumbai Ombudsman Centre
Case No. : GI – 569 of 2007-2008
Mr. Nikhil M. Banker
Vs
Tata AIG General Insurance Co. Ltd

Award Dated : 05.03.2008

Mr. Nikhil Banker availed a Travel Guard Policy with Platinum Plan. When he travelled from Mumbai to Singapore at Singapore Airport as his baggage was not traceable, the same was not delivered to him. He received the same after 12 hours. On account of delayed baggage, he incurred some expenses towards making phonecalls from his mobile to Insurance Co., food, taxi fare, medicines etc. The complainant reported a baggage delay claim on the said Policy, for reimbursement of these expenses. Insurance Co. settled the claim, disallowing the expenses incurred towards taxi fare, food, phonecalls etc. Aggrieved by the decision of the Insurance Company, Mr. Banker approached this Forum for intervention in the matter. After perusal of the relevant records, the parties to the dispute were called for personal hearing. After taking into consideration, the oral depositions of the parties to the complaint and all the documents submitted to this Forum, the analysis of the case revealed that the Insurance Company admitted their liability under the Policy and settled the claim. As such, the only issue before this Forum was to examine the dispute which has arisen on quantum of claim sanctioned. The claim arose under Section "Baggage Delay". Insurance Co. settled the claim towards expenses incurred on medicines and disallowed other expenses. They took a stand that disallowed expenses do not fall under the scope of the Policy as this Policy reimburses only the expenses of necessary personal effect. It was noted that the scope of the Policy towards "Baggage Delay" section states – "We will reimburse you for the expenses of necessary personal effects, up to the maximum stated in the Policy on your ticket". The definition of Personal effects as per Oxford Dictionary is – "Personal belongings". Thus, it was held that this Policy will pay upto the limit of cover shown on the Policy, for the necessary emergency purchase of replacment items only on account of delayed baggage. These items may be in the form of tooth paste, tooth brush, emergency medicines, shaving set etc., which were lying in the baggage and because of delay, the person had no alternative but to purchase those items for his urgent use. It was held that the rejected expenses were not personal effects and thus not falling under the purview of the Policy, the decision of the Insurance Co. was upheld.