

Before the Arbiter for Financial Services

Case ASF 199/2023

NS

(‘Complainant’)

vs

Riverside Insurance Agency Malta
Limited (C 94792)

(‘Service Provider’)

Sitting of 4 April 2024

The Arbiter,

Having seen the complaint, whereby the Complainant disputes the fact that his claim under the *Platinum Excess Waiver* motor policy has been declined.

The Complainant stated that on 13 April 2023, he rented a vehicle from a rental company’s website (Car Jet) and purchased the above-quoted motor policy from the same website.

He claimed that a few days later, he drove along an official road in Italy which, however, due to the proximity of the road to the sea, and the storm in the previous days, such road was covered with sand. As a result, the vehicle stuck in the sand and needed to be rescued for which he paid €122.

He submitted a claim on 20 April 2023, but mistakenly opened the claim for towing. The claim was declined, with the Service Provider noting that, as per the policy’s definition, towing is an act of dragging a broken-down vehicle to a

garage or rental company. He stated that no damages to the car were sustained and the vehicle '*... was rescued by pulling by a rope with an off-road vehicle ...*'.¹

He insisted that despite explaining to the Service Provider that the original reason provided when submitting the claim might have been incorrect and that it should be classified as '*Accident not involving another vehicle*', the claim was still refused.

The Complainant argued that he then requested assistance from CarJet, these being the insurance re-seller. The latter replied that the reason given to them by the Service Provider was that at the time of the incident, the vehicle was being driven on a non-official road. However, the Complainant insisted that he submitted all the evidence contesting such reasoning, including a WhatsApp message showing the location sent to the rental company from whom he originally requested help when stuck in the sand.

He stated that CarJet claimed to have not received any further reply from the Service Provider, so he decided to lodge a new claim, '*... but this time with the correct accident type "Accident not involving another vehicle"*',². However, the second claim was also declined.

The Complainant argued that consumers are not expected to be experts in contract law, as it is clear that once a *Full Protection Insurance* is purchased on top of the basic insurance one gets in the basic rental price, consumers understand that as long they drive with a valid licence on an official road without any malicious intent to cause an accident, any event will be covered up to a certain limit. He insisted that this is the main reason for purchasing an insurance policy in addition to the basic insurance included in the rental price.

In this regard, the Complainant requests the Service Provider to reimburse him the sum of €197.³ This includes €122 for the rescue service, €50 as compensation for the emotional distress and €25 for the complaint fee.

¹ P. 3

² *Ibid.*

³ P. 4

Having seen the reply⁴ by the Service Provider, this being the same letter addressed to the Complainant dated 5 October 2023, who submits that:

'We are writing further to the communication received from the Arbiter for Financial Services in Malta. We have been made aware that you are dissatisfied with the way your claim was handled. We are naturally sorry to hear that you remain unhappy with the service provided by our claim handlers and have investigated your complaint.

We understand that you had purchased an excess reimbursement policy to ensure the excess you may be liable to pay, against any damage or theft to a hire vehicle in your possession. This policy also provided additional benefits such as Towing, Key Cover and Loss of Use. Full details of the policy benefit can be found either on your policy schedule, Insurance Product Information Document or within your policy wording.

On 5 July 2023, you submitted a claim with Orchard Administration and described the damage as the following:

"We drove along the official road, Lungomare Cottone (Calatabiano CT, Italy) <https://goo.gl/maps/i9zax2V295xD2qit8>). Due to the proximity of the road to the sea and the storm that preceded several days before the event, the road was covered with sand. As a result, we sank into the sand and had to be rescued."

Upon submitting a claim with Orchard Administration, the claimant is required to provide various documents and information in support of the claim. You can find the list of documentation required to submit a claim in our terms and conditions or on our website. It is the claimant's responsibility to provide our claim handlers with the required information. Orchard Administration may also request further information to ensure they are able to fully assess your claim.

Your claim was assessed by our claim handlers who advised you that as you have not been towed in relation to an insured claim, such as damage or theft to your hire vehicle, your claim will be declined.

⁴ P. 51 – P. 57

Kindly refer to the policy terms and conditions below:

“Towing Charges

We will pay up to the amount stated on your certificate of insurance towards any towing charges which are applied by your rental company and cannot be recovered following a claim which is covered by this insurance.” ...

“Section 10 – Definitions

“Towing” – Recover of the rented vehicle following an accident, theft, malicious damage, fire or mechanical breakdown to the nearest premises owned by the rental company or the original pick-up location whichever is the closest.”

You were unhappy with the decline of the claim, as you outlined:

“Our claim isn’t for TOWING but for RESCUE.” ... “The rescue service people attached our vehicle to an off-road vehicle with a rope and pulled us from the sand to firm ground.”

The policy you have purchased is not a breakdown policy and does not cover ‘Rescue’. It is designed to insure you against damage or theft to your hire vehicle and certain covered benefits, none of which are roadside assistance. Kindly refer to the policy exclusions below:

“Section 4 – What is not Covered

We will not pay any claim”: ...

“20. For call out charges not related to the main claim.”

As you do not have a main claim due to your vehicle being recovered from the sand with no damage or theft, we are comfortable that your claim has been declined in line with the terms and conditions of the policy and we cannot accept your complaint on this occasion.

...’⁵

⁵ P. 56 – P. 57

Hearing

During the hearing of the 26 February 2024, the Complainant submitted that:

‘To summarise this story, we rented two cars. This case is one of them, but the story is the same for both of them.

We drove along the official road with a valid licence and eventually because of some weather event that happened previously and because of its proximity to the seaside, there was unexpectedly sand on the road and we got stuck.

Eventually, we called somebody who pulled us out and it cost us about €120 more or less.

We also tried to call our car rental company. They told us that if we had insurance with their company, they would have helped us but since we had our insurance with another company, we had to take care of this ourselves.

Eventually, we did what we did. We asked the insurance company to cover it and the insurance company said that since there was no damage, they would not pay – bottom line. My point is that I, as a customer, bought this insurance with One Click on the net and I expect, as any person would expect, that once you pay for insurance, and once you drive on an official road with a valid licence, any accident that happens and cost you, will be covered. I say that from my perspective, it was an accident. This is my point, more or less, for this case.⁶

The Service Provider’s representatives declared that they have no questions by way of cross-examination to the Complainant.

During the same hearing, George Said, on behalf of the Service Provider, stated that:

‘I say that it is fundamental to depart on two points.

- 1) What we are talking about is an insurance contract. It's not based on what one would expect or on what common sense would dictate; or what one would feel should be there and is not. This is a contract between two parties; it is an insurance contract and it is valid. And we have to go by what the insurance contract does cover or excludes.***

⁶ P. 58 – P. 59

2) This is a case where it is important to highlight the distinction that the policy is not an accidental damage policy to a car. This is not a comprehensive car insurance. This is a very specialised policy where, in fact, it is called a Motor Excess Insurance Policy. You go to a rental company and you rent your car.

Needless to say, they will tell you, "Look, we've taken evidence that the car is in good shape and in proper order. Look, no dents, no bruises, no nothing. And if you go and bring it back after your rental in a condition which is different from this, then we have details of your debit card and we will debit you for up to 3,000", whatever it is. They tell you that they will debit you depending on the damage.

Where do we go in as the insurers? We, in return for a premium, grant cover to the client that should there be an accident, if he comes back to the rental company and consigns the car in a damaged state, then we will cover that. So, basically, if he is parked anywhere and someone just bruises all the side of his car, or finds a dent there, (which, of course, was not there when taking receipt of the of the car in the first place), then we will cover that because the rental company will say, "Look, this will cost us so much." And, with full supporting documentation completely on the web, we will affect settlements. Now, that is a Motor Excess Insurance Policy. That is what we stand for.

I say that what happened here does not fall within the scope of the policy. The policy itself has various additions to it: if you lose your key, or if you mis-fuel, and it's very specific in what is covered. The policy itself is not a breakdown policy, meaning it's not a road assistance policy where you stop and ask someone to come and tow you. If there is an accident which is covered under this main scope of the policy and towing is necessary, then, yes, because towing is following the main cover operative under the policy.

In this case, the fact is that (Complainant) was on the road and found himself on sand and, by his own admission in the correspondence, said "Our claim isn't for towing, but for rescue. The rescue service people attached our vehicle to an off-road vehicle with a rope and pulled us from the sand to firm ground." So, by his own admission, this is not even for towing. He says that they were rescued, and they are claiming for the expenses of being rescued.

Section 4 of our policy is very specific on what is not covered. And it says we will not pay any claim for call out charges not related to the main claim. I have said before that there is no main claim, there has not been any accident to the car. There has not been any damage to the car. So, if there is no damage to the car, the suffix or the appendix or the extension for towing does not operate because there is a void, there is a vacuum in what should be the main claim.

We are contending that there is no damage to the car, so there is no claim under the policy. There is no main claim. The fact that there is no main claim means that the added extension, the added benefit of towing cannot operate. This is the main reason why it is not what is expected in his mind, in (Complainant's) mind, or in a client's mind, but what is written down.

Unfortunately, the way things happened meant that the car was not damaged at all in the first place. He had to be rescued. Rescue operation is not covered under the policy, hence, our declination.⁷

The Complainant has then presented his final submissions to the case, where he stated that:

'I say that this is an opinion which goes against my opinion. I think I have made myself clear and I believe that what I say will be a repetition of my point.

My point, as I said, is that, conceptually, what George says is something which is maybe relevant for unique contract between two sides with a lot of specific details.

My point is that we never sell product by One Click, and we can't ignore common sense or what the people think about this, let's say, or what they understand when they click check box on the screen saying, 'Add full coverage'. And I think this is the point.

I don't say nobody reads this because you buy, so you should read this theoretically. But we, as customers, have a lot of steps to do when we buy something and there is some very long document behind this, but it works on common sense because it stands out. This we do. We can't read the agreement each time. When we install code, some software, and we have a very long list of things that says what it does, we just install it. So, this is the case as I see it.

⁷ P. 59 – P. 60

We can't ignore the intention of the people when they connect to the act of buying a full coverage policy, a full coverage insurance. This is my point.⁸

For the final submissions to the case, the Service Provider submitted that:

'I say that our stand in writing is included in the paperwork which were submitted and, in particular, to Miss Sweeney's letter to (Complainant) as a final response of the 5th October 2023.

However, I would like to say something about (Complainant's) last statement. With all due respect to (Complainant), our website is very customer friendly. Our trust rating is 4.6 on Trust Pilot. We get constant reviews on how customer friendly our website is. And this includes the information document which we are obliged to make available to the client prior to purchase setting out, in a manner which is governed by regulation, and which necessarily has to be simple, very customer oriented and non-technical.

Now, this IPID, this document is there for anyone to look at and assess in a very simplified manner what is the scope of the policy and what is covered.

So, I beg to differ that we have a large document which puts anyone off to read. Even the policy itself, though we are not governed by to have it simple and customer friendly, but yet it is in absolute plain English. It is designed even with colour coding to assist. It sets out in very simple, non-technical manner what the policy covers.

So, with all due respect, long gone are the days when a policy of insurance was technical, with 1,000,001 preambles and whatever! We set things out very clearly what is covered on one side and what is not covered on the other side with colour coding and non-technical wording.

It cannot be said that the client has been duped. But, on the other hand, what we have is a contract. It's not what is to be expected. I would like to say that because it's simply a one-click purchase, it does not make it a bad product. It is not. Our Trust Pilot's rating certifies that we are top of the line in our sector.

Of course, the incident in question, is nothing of (Complainant's) doing but if it doesn't fall within the scope of the policy, then, it doesn't fall within the scope of the policy.

⁸ P. 60 – P. 61

If he had bumped his car, if he had found a scratch, if he had found a dent, if he had lost his keys, these are all very specifically covered, and we would have covered the excess which he would have paid under the terms of his rental agreement. This is what we cover: the excess applicable under the rental agreement. This is not a comprehensive policy.⁹

The Complainant further stated that:

'With regard to the last statement, I say maybe your site is amazing. The purchase is done by a third party. I had never visited this site not before, not after. I just click on the third-party company which sells your product. So, it is not relevant to this case how good your site is. Also, the agreement was sent to me after the purchase by mail, not before or during, but after.

It is being said that this is there, this is freely available. I say that it is there, but it is not part of the flow when you buy. I am not saying that your site is misleading or not, just that it is not part of this case. It could be a very good site but not for this case.¹⁰

The Service Provider replied that:

'Part of my job is to ensure that things go smoothly for everyone. As close as three months ago, which is way after this happened, I did on my own accord a test going through one of our service providers. I went to his site and not to my site directly, purchasing a fictitious purchase and paying for it.

And all the time I was looking to ensure the customer area is not prejudiced, that is, that the information document is available before the purchase, where I can see it and I can download it.¹¹

The Complainant in turn replied that:

'Usually, what each site presents are a lot of green Vs – covered, covered, covered, covered - because they want to sell it. It does not tell you beware of this because this is not, and this is not covered. It does not work like this.

They always tell you, if you don't buy it a lot of bad things can happen to you, and if you buy it there are a lot of green Vs you will get. This is the working of

⁹ P. 61 – P. 62

¹⁰ P. 62

¹¹ *Ibid.*

these sites; it works like this. Just buy it and you are fully protected. This is the message.¹²

The Arbitrator,

Having seen the statements made and evidence given by the Complainant,

Having seen the statements made and evidence given by the Service Provider

Considers

The complaint mainly revolves around whether the Service Provider's decision to decline the claim for rescue service which the Complainant paid for in cash when the vehicle he was driving on an official road was stuck in the sand, was indeed valid and correct.

The Complainant stated that whilst driving his rented vehicle on an official road, he got stuck and required assistance. Despite requesting such assistance from the rental company, it was not granted, and he had to pay for it himself.

He lodged a claim for towing services, but it was rejected. Another claim was lodged with the accident type being noted as 'Accident not involving another vehicle', which was also declined.

Both in its reply to the complaint, and even through its representative's declaration, the Service Provider clearly explained the type of policy in question, the cover it offers, and the reasons why the claims submitted by the Complainant were refused.

Mr George Said, on behalf of the Service Provider, stated that:

*'The policy itself is not a breakdown policy, meaning it's not a road assistance policy where you stop and ask someone to come and tow you. If there is an accident which is covered under this main scope of the policy and towing is necessary, then, yes, because towing is following the main cover operative under the policy.'*¹³

As even referred to by the Service Provider, the Arbitrator notes that the Complainant himself admitted that '*... the claim isn't for towing ...*',¹⁴ and as a

¹² P. 63

¹³ P. 60

¹⁴ P. 10

result of this, a new claim has been submitted with the reason then being that *‘The incident is a pure “Accident not involving another vehicle” and please refer to the case like this.’*¹⁵

The Service Provider clearly explained that, despite the change in reasoning, the claim still could not be honoured, and this was due to an exclusion under the policy. The same Service Provider argued that:

*‘Section 4 of our policy is very specific on what is not covered. And it says we will not pay any claim for call out charges not related to the main claim.’*¹⁶

The Service Provider declared that:

*‘This is what we cover: the excess applicable under the rental agreement. This is not a comprehensive policy.’*¹⁷

The Arbiter notes that the reasoning for the claim’s repudiation is clearly in line with the content of the policy which is the main basis of the insurance contract.

One of the documents submitted by the Complainant is the *Certificate*¹⁸ also serving as the *Confirmation of Cover*, which provides details of the policy, including those of the policyholder, period of insurance and the premium paid. Above all, it provides information on what is included in the cover together with the applicable limits and excess to be paid which, in the case of the latter, is €0.

The content of the policy wording¹⁹ which was submitted to the Arbiter by the Complainant corroborates and further explains the list of *‘What’s Included’*.

The Complainant argued that:

*‘My point is that I, as a customer, bought this insurance with One Click on the net and I expect, as any person would expect, that once you pay for insurance, and once you drive on an official road with a valid licence, any accident that happens and cost you, will be covered.’*²⁰

It is crucial to note that the policy wording in question is not an All Risks policy, where everything is covered unless specifically listed as an exclusion. The certificate provided clearly indicates which sections of the policy wording do

¹⁵ *Ibid.*

¹⁶ P. 60

¹⁷ P. 62

¹⁸ P. 15

¹⁹ P. 18 – P. 36

²⁰ P. 58 – P. 59

apply, and the latter provides further explanation of the cover in question and specifies the exclusions. One of the exclusions which is particularly relevant to this complaint, is *'Call out charges not related to the main claim'*.

A basic excess waiver policy typically covers the excess the client will be required to pay under the motor insurance policy of the rented vehicle. The policy in question, apart from the excess waiver cover as implied in its name, included additional options.

The Arbiter notes that this is a matter whereby the occurrence leading to the expense in question is clearly uninsured. In simple words, it is not an event that the insurance policy in question caters for. Having an insurance policy in force does not necessarily mean that any event or occurrence is covered.

Decision

It is evident that the Service Provider's reasoning for rejecting the claim in question aligns with the policy wording. Furthermore, the Arbiter does not find any case of misrepresentation by the Service Provider which could have given due expectation to the Complainant that all events will be covered under the policy.

Therefore, the Arbiter is unable to uphold this complaint and does not impose on the Service Provider any obligation to reimburse the Complainant for the expenses incurred to 'rescue' his rented vehicle.

Each party is to bear its own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.