

Before the Arbiter for Financial Services

Case No. 036/2020

ZF

(the Complainant)

vs

Fortegra Europe Insurance Co. Ltd.

(C 84703)

(the Service Provider/the Insurance)

Sitting of the 16 November 2021

The Arbiter,

Having seen the complaint,¹ whereby the Complainant submits that his claim for the payment of £180 as compensation for damaged car tyres was rejected by the insurance.

He further stated that he took the insurance cover to have peace of mind because he does a lot of travelling on the motorway.

When he realised that something was wrong with his car tyres, he took the car to the garage. He feels disappointed that his claim was refuted when he insured himself to be covered in case of need.

He also stated that his claim was rejected by the insurance because they said that they do not pay if the tyre is damaged by wear and tear. He submitted a form completed by the garage that changed his tyres stating that the tyres had

¹ A Fol. 1-6

been *'illegally repaired'* and put on his car. This was not a case of wear and tear but because *'illegally repaired'* tyres were placed on his car.

The claim was not because the tyres were torn out but because the tyres *'were illegal'*.

The Complainant feels disappointed that the form completed by the garage was not taken into consideration by the insurance when they decided the claim.

He is expecting to get paid the sum of £180 for the new tyres.

Having seen the reply,² whereby the Service Provider explains that the tyres were damaged because they were *'inflated too low, driven whilst punctured, damaged, and with a tread depth below the legal minimum'*.

Moreover the *'nearside front tyre showed the wire, rendering below the legal tread depth. Illegal repairing was carried out on the offside front tyre, which showed patching. Thirdly, the nearside rear tyre was punctured, inflated, and subsequently driven whilst damaged. Photos available also showed scratches and slashes on both rear and front nearside tyres.'*

In this regard, the insurance made reference to the Policy Terms and Conditions which include the following wording:

'6. WHAT IS NOT COVERED

What you are not covered for

(iv) Any claim where the Tyre tread depth does not comply with UK road traffic regulations at the Date of Loss.'

On this basis, there is no grounds for which the Complainant could ask for compensation.

Furthermore, the tyre report was prepared by EX Tyres Chepstow Ltd, a repairer chosen specifically by the Claimant, and that just 3K miles were reported to have been made by the Complainant since buying the car from a car dealer. This sheds further doubt on the validity of this claim.

² A Fol. 31-32

For the above-stated reasons, the insurance company could not accept the claim.

Having heard the parties and seen all the documents,

Considers

The Arbiter will decide the case by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.³

The Complainant's version

The Complainant stated in his evidence before the Arbiter⁴ that he purchased a vehicle and felt a vibration. It was found that *'one of the tyres was perished'*.

Two other tyres had issues as well and that is why he made the *'complaint to the company'*.

He made the complaint because the tyres were *'illegal'* and were *'illegal'* to drive.

The Service Provider's Version

Anthony Cooke, for the Service Provider, stated⁵ that the claim was rejected because there was no accident which caused the damage to the tyres. The policy provides cover for unforeseen incidents that occur, for example, if the damage was either done accidentally or maliciously.

The witness further stated that their intermediary Premia Solutions (who administer the policies on their behalf), obtained information, also photographic information from the tyre fitters that the Complainant took his vehicle to, and from the information given to them, it resulted that the tyres were not actually damaged by an incident; they needed to be replaced because they were not road-worthy and needed to be replaced.

Moreover, the Service Provider states:

³ CAP. 555 of the Laws of Malta, Art. 19(3)(b)

⁴ A Fol. 37

⁵ A Fol. 37 et seq.

*'If you look at the Claim Form, Part B (pages 8 and 9 of the file) underneath the section where it highlights "1.6mm" ... and then it says on one of them "showing wire" and underneath that it says "illegal repair"; and if you go down three boxes, under the section that says "Tyre Repair Centre Address/company stamp", they have written "all incorrect fitment of tyres on vehicle".'*⁶

The witness also notes that:

*'If you read that part of the Claim Form in conjunction with the photographs you can see very clearly that one of the tyres (described by the Complainant as perished) has the rubber on one side so worn far down, that the wire is showing through.'*⁷

The witness adds that that type of wear in a vehicle or tyre is not caused by an accident but is caused by wear and tear. That could be caused in certain instances by inappropriate alignment of the steering wheel; but that does not mean that this applies to this case.

The wear and tear was not caused by an incident or malicious damage. Perishing is caused by a period of time and not as a result of an incident.

Further Considers

The insurance company is obliged to honour a claim if the subject of the claim is covered by the Policy.

In this case, the Complainant pretends to be compensated because, in his opinion, the tyres fitted on his car were *'illegally'* fitted. In his claim form,⁸ the Complainant declares that the tyres were *'all incorrect fitted'* on the vehicle.

When he described *'the incident'* he stated that:

*'When I started driving, I noticed an unusual vibration on the steering wheel.'*⁹

⁶ A Fol. 38

⁷ *Ibid.*

⁸ A Fol. 8

⁹ A Fol. 9

The Complainant did not indicate that he was involved in an incident or his car was maliciously damaged. In fact, he insists that he is claiming on the insurance because his tyres were illegally fitted (by someone else) on his car.

The Policy Document

In order for the Arbiter to decide whether the claim made by the Complainant is justified or not, he has to examine **how** the tyres were insured and what cover did he buy from the insurance company. He has therefore to examine and analyse the insurance policy document.

Under '*WHAT IS COVERED*' on page 4 of the policy document, it is clearly stated that the cover applies in the event of an **accident or malicious damage**.

Accidental damage is defined as '*the sudden unforeseen deflation of the tyre itself or other damage to the valve, caused accidentally, which would result in a MOT failure and which requires repair or replacement before normal use can be resumed*'.

Malicious damage is the unforeseen deflation of the tyre ... caused intentionally by a third party.

It is therefore evident from the policy document that if the claim is not the subject of an incident or malicious damage, the tyres are not covered.

Moreover, from the examination of the photos submitted on pages 23, 25 and 26, the Arbiter can notice that the damage on the tyres is not the result of an accident but is obviously the cause of wear and tear.

Under the section '*WHAT IS NOT COVERED*',¹⁰ it is clearly stated that the insured is not covered '*where the damage has been accumulated over an extended period, which We or the Administrator deem to be wear and tear*'.

The Complainant himself admits that the tyres were '*illegally*' fitted on his car. The insurance company should not be responsible for the irresponsible or illicit acts of others, and the Complainant would be justified to take action against the person or company that '*illegally*' fitted the tyres on his car.

¹⁰ A Fol. 16

Moreover, the Complainant also contributed to the damage of the tyres himself when he drove the car whilst the tyre was damaged as admitted by himself in the claim form.

The Arbiter concludes that on the basis of the policy document, it transpires that the Complainant was not insured for what he states to be '*illegally*' fitted tyres.

For the above-stated reasons, the Arbiter cannot uphold the complaint.

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

Dr Reno Borg
Arbiter for Financial Services