**Before the Arbiter for Financial Services**

**Case No. 114/2020**

**AR (the complainant/the insured)**

**vs**

**Elmo Insurance Ltd (C 3500)**

**(the service provider/the insurer)**

**Sitting of the 13 September 2021**

**The Arbiter,**

**Having seen the complaint whereby the complainant submitted that:**

On the 7 June 2020 around 2.00 a.m., the complainant's car, a Fiat 500 Registration number XXXXXX, suffered damages when hit by an unknown driver. This was a hit and run case. The culprit was never identified.

The complainant states that the insurance has failed him because:

1. It failed to ensure that the surveyor carried out a full and thorough initial inspection of his car;
2. This was admitted by the insurance in an email sent to him by Lino Ferris on the 6 August;
3. This failure resulted in delays to repairs as further parts were required;
4. Despite a fully comprehensive cover, the insurance covered just two weeks of car hire and would not show flexibility despite the acknowledged failure and the time delays incurred as a result;

5. ‘Euro Star Garage’ was not the automatic complainant’s choice but one chosen from a list of approved garages given to him by the insurance and it was not his ‘free choice’ of the garage;

6. The insurance should accept responsibility for the untimely repair of his car;

7. They should have reviewed their policy for car hire expenses despite the 3 months it took to repair the car due to mistakes;

8. The complainant is requesting a: a) reimbursement of costs related to the extensive car hire; b) reimbursement of €170 for ‘mechanical repairs’.

**The service provider *inter alia* replied that:**

1. The culprit that hit and run the complainant’s car was not identified;

2. While the accident took place on the 7 June 2020, a survey was booked for the 10 June 2020.

3. The insurance suggested GS Car Hire to provide a substitute car for the complainant. The complainant was informed that GS Car Hire were prepared to help him and the full policy limit for car hire was capped at €250.

4. The complainant chose Swift Car Hire and, although the insurance had no contract with Swift, they were still prepared to pay the complainant the full amount of €250. However, they advised him that GS Car Hire had a daily rate of €14, whereas Swift charged €25 daily. The complainant still chose Swift and the insurance paid him the amount of €250 as stipulated in the policy.

5. When the car was first inspected on the 10 June, the car could not be jacked and so the surveyor could only visualise the damage and then await further comments from the panel beater when it was possible to have the car lifted for a better inspection.

6. On the 15 June a purchase order of €1,501.66 was placed with MotorsInc with instructions ‘*to treat as urgent*’.

7. Spare parts were not available, and the insured was informed on the 18 June.

8. The complainant asked for an extension of the period for loss of use but the insurer did not accept such request because they stuck to the policy terms.

9. On the 2 July the complainant protested that the time limit of 15 days for loss of use was too restrictive.

10. On the 4 August 2020, the complainant was informed that when the panel beater had dismantled his car, they encountered some damage in the steering rack which was not possible to notice at inspection stage since the vehicle was not dismantled at the time. Although they placed the order for these parts, the local Agent informed the insurer that suppliers in Italy were closed down due to '*ferroagosto*' holidays and this delayed the process further.

11. Although the normal practice was not to import the parts by airfreight, in this case, they made an exception and brought some parts by airfreight in spite of the fact that the insurance knew that it would be more expensive.

12. The service provider further submitted that the insurance abided by the terms of the policy by paying the insured the full amount of loss of use amounting to €250.

13. Certain mechanical parts which eventuality transpired to be defective were not caused by the accident as they were due to normal wear and tear, especially, considering the mileage of the vehicle.

**Having heard the parties and seen all the documents.**

**Considers**

**The Arbiter has to decide the case with reference to what, in his opinion is fair, equitable and reasonable in the particular circumstances and substantial merits of the case.**[1]

The complainant has two basic grievances:

a) the loss of use for 15 days is too limited, and the insurer should have extended this period because it was responsible for the extended period taken for the repair of his car;

b) it should pay him the sum of €170 for mechanical repairs which resulted from the accident.

The service provider submitted that:

a) the payment for loss of use was capped at €250 as per policy; and

b) the mechanical repairs were due to wear and tear and were not related to the incident.

**Loss of use**

There is no controversy that according to the policy the amount covered for loss of use was that of €250.

However, the complainant states that since the panel beater took a long time to repair his car and the garage was basically chosen by the insurance, it should have been flexible and should have covered all the period the panel beater took to repair his car. He also stated that the surveyor appointed by the insurance to inspect the damages sustained by his car did not make a thorough inspection and this caused the delay.

From the facts of the case, it results that the incident took place on the 7 June 2020, and the survey was booked for the 10 June, namely, three days later. In the Arbiter's opinion this is a reasonable time.

The other issue is whether the survey was conducted in a proper manner.

There is agreement between the parties that the panel beater did not jack the car, but the service provider submitted that it is normal practice that the panel

[1] Chapter 555 of the Laws of Malta, Art. 19(3)(b)

beater does not dismantle the car and leave it on a jack until the parts arrive. The panel beater had a lot of experience and, together with the surveyor, they identified the required parts and ordered them immediately. The parts arrived late because the supplier of the local agent was closed due to *'ferroagosto'* in Italy. The insurer argued that it placed the order for parts in time and had no control over the foreign supplier and local agent. When the car was further examined, it resulted that additional parts were required, and they were brought by airfreight to expedite the repair.

In the Arbiter's opinion, the insurer did all it could to help expediting the repairs and is not responsible for the time taken to repair the car.

The policy is clear that it covers loss of use up to the amount of €250 which was **paid by the insurance and accepted by the insured**. Therefore, the Arbiter cannot award another amount for loss of use.

**The Mechanical Repairs**

The service provider stated that it did not pay for the mechanical repairs because they were not related to the incident.

The service provider's representative explained to the Arbiter that:

'*It resulted that there was a part in the engine which is called the catalytic converter which is normally damaged due to wear and tear. It had nothing to do with the impact because the impact did not affect the engine itself. The engine was not damaged at all.*'[2]

However, later on in his testimony during cross-examination, the provider's representative stated that:

*'Another problem that I forgot to mention, which Mr Parish is aware of, was that another spare part was discovered at a very late stage. That was the cover of the engine which apparently had a hairline crack which could not be seen by the naked eye, and it started leaking due to the viscosity of the oil. When the engine works, the viscosity of the oil gets thinner and it started to leak. Who could be*

[2] *A fol.* 132

*able to identify literally a hairline crack? Again, that part was ordered immediately by air freight irrespective of the policy.'*[3]

This latter statement seems to contradict what the witness had stated earlier that the engine was not affected by the incident. So much so that the insurance paid for the damage in the engine's cover.

The service provider's insistence that the mechanical part which was not paid for by the insurance was the catalytic converter and its malfunction was due to wear and tear, is not substantiated by any solid evidence, for instance, a mechanic's report. The service provider just provided a witness's opinion which for the Arbiter is not enough proof.

On the other hand, the complainant stated that:

'*I collected the car and it was not working properly. I then had to take it back for repair and pay €170 for repair that was not necessary before the accident. So, I do not understand how I had to pay for it. I've never had a proper explanation for that. It was 100% not a problem before the accident. It was 100% related to the accident because the car was running fine before the accident. When I collected the car after all the repairs were done, it wasn't running. In fact, it was dangerous, it wasn't running at all in a safe manner.*

*I paid €170 to collect the car and, obviously, I think the €170 should be refunded.'*[4]

On a balance of probability, the Arbiter considers that the complainant's explanation is more probable. Since the engine was damaged, (the engine's cover was damaged as admitted by the service provider), one cannot exclude that the mechanical part costing €170 was not the result of the incident. The car had been working properly and it was only after the incident that this part had to be replaced.

The service provider's evidence is contradictory because, firstly, it stated that the engine was not damaged and, therefore, the catalytic converter was not hit

[3] *A fol*. 133
[4] *A fol.* 128

and, later, the service provider stated that it paid for damage in the engine caused by the incident.

Moreover, the service provider's representative did not prove that it was the catalytic converter which was changed and, moreover, it did not sufficiently prove that the catalytic converter was not damaged during the incident.

Since the service provider stated that it did not pay the amount of €170 because the part was not related to the incident, it had to prove, at least on a balance of probability, that the part was damaged through wear and tear. As already explained in this decision, the service provider did not bring such proof.

**Conclusion**

**For the above-mentioned reasons, the Arbiter decides that it is rejecting the part of the complaint regarding the loss of use which was paid by the service provider and accepted by the complainant and was in accordance with the policy terms.**

**However, the Arbiter is upholding that part of the complaint regarding the payment of €170 for the unpaid part as amply explained above.**

**Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Elmo Insurance Ltd to pay the complainant the sum of one hundred and seventy Euros (€170.00).**

**With legal interest from the date of this decision until the date of effective payment.**

**Each party is to bear the costs of these proceedings.**

**Dr Reno Borg**
**Arbiter for Financial Services**