IN THE OFFICE OF THE STATUTORY OMBUD FOR FINANCIAL SERVICES PROVIDERS PRETORIA

Case Number: FSOS 05985/09-10/GP 3

In the matter between

A.S. MOOSA **Complainant**

and

ORANGE INSURANCE LIMITED **Respondent**

DETERMINATION IN TERMS OF SECTION 14(3) OF THE FINANCIAL SERVICES OMBUD SCHEMES ACT NO. 37 OF 2004 ("the FSOS Act") READ WITH SECTION 28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002 ("the FAIS Act").

A. THE PARTIES

[1] Complainant is Mr A.S. Moosa an adult male, residing at Unit 72 , River Drive Mews, Circus Road Three Rivers , Gauteng.

[2] The Respondent is Orange Insurance Limited, a registered insurer and financial institution duly incorporated according to the company laws of the Republic of South Africa (registration number 2003/031 307/06) with its registered offices at 22 Koelenhof Road, Northcliff Ext, 19, 1709

B. INTRODUCTION

[3] This is a determination pursuant to a complaint against the Respondent insurance company. The determination is made in terms of Section 14 (3) of the FSOS Act read with Section 28(1) of the FAIS Act. The Respondent insurance company entered into an agreement with a licensed financial service provider known as Fleetsure (Pty) Ltd. The Respondent had entered into a binder agreement with Fleetsure in terms of which Fleetsure was authorised to conduct the business of short term insurance for and on behalf of the Respondent. Pursuant to this agreement and for the period 1st of June 2008 to 31st December 2008 Respondent provided short term cover for a number of Fleetsure`s clients.

[4] A dispute arose between respondent and Fleetsure and as a result Respondent refused to pay claims emanating from the short term policies placed by Fleetsure. The Complainant in this case is one of

many policyholders who were not paid after claims were made in terms of their policies with the Respondent.

[5] Many policyholders filed a complaint with this Office after the Respondent refused to pay. The Respondent was requested to provide a written response to these complaints. For each of these complaints the Respondent relied on exactly the same response in the form of a letter dated 17th February 2010.

[6] On the 15th of September 2010, this Office made a determination in respect of another of these policyholders namely: Mr Innocent Sithembele Mthethwa. This determination was made under **Case Number: FSOS 06362/08-09/GP 3** and comprehensively dealt with the merits of the dispute between the respondent and Fleetsure (the Mthethwa determination)

C. JURISDICTION

[7] The Respondent is not a member of a recognised scheme as contemplated in Section 10 & 11 of the Financial Service Ombud Schemes Act 37 of 2004 ("the FSOS Act").

[8] Accordingly and in terms of Section 13 of the FSOS Act, the FAIS Ombud, in its capacity as Statutory Ombud assumes jurisdiction over the Respondent in respect of this complaint.

[9] The FAIS Ombud therefore deals with this complaint in terms of Section 14 of the FSOS Act.

D. THE COMPLAINT

[10] According to the Complainant, the following are the material aspects of his complaint:

10.1 The Complainant alleges that the Respondent failed to honour a claim arising out of an accident involving the complainant`s motor vehicle, a 2003 Toyota Tazz 130, bearing registration number and letters RFR 175 GP.

10.2 On the 1st of June 2008, the Complainant entered into a Comprehensive short term insurance policy contract with the Respondent through Inbrocon Insurance Brokers/ All About Insurance Brokers, the principal Intermediary and a licensed Financial Service Provider under license number 9842.

10.3 The Complainant was furnished with a policy number ALL4004: which was issued by the Respondent together with a schedule to

the contract of insurance. The effective date for the complainant's cover was the 1st of June 2008. As will appear in this determination, Inbrocon Insurance Brokers/All about Insurance Brokers clients were part of the Fleetsure cell.

10.4 On the 4th of November 2008 The Complainant`s vehicle was involved in an accident and he duly submitted his claim through All About Insurance Brokers.

10.5 An assessment of the vehicle was conducted by a duly authorised assessor and the Complainant was authorised to have the vehicle repaired..

10.6 On the 1st of December 2008, the Respondent accepted the claim and duly issued an Agreement of Loss to settle the Complainant's repair cost in an amount of R8,126.71 . This was duly signed by the Complainant and submitted through his broker. A copy of the agreement of loss is annexed marked **"A"**

10.7 To date, the Respondent failed to honour the complainant`s claim.

10.8 The Complainant wants the Respondent to honour the claim by paying the cost of repair according to the policy agreement. Since the accident occurred complainant was left stranded without means of transport while the vehicle is held by the panel beaters.

10.9 On the 25th of February 2010 Complainant referred his complaint to the FAIS Ombud for further investigation and necessary action.

10.10 It is not in dispute that the complainant entered into a contract of insurance in terms of which he comprehensively insured his motor vehicle. The schedule to the policy that was issued to the complainant records the respondent as the insurer. Nor is it in dispute that after the complainant purchased the policy the insured vehicle was damaged in an accident. The respondent does not dispute that it then received a claim from the complainant policyholder.

E. THE RESPONSE FROM RESPONDENT

[11] As the complaint could not be resolved between the parties, it proceeded to investigation at which point the Respondent was

requested to submit a reply to the allegations, taking into account the requirements of the FAIS Act.

[12] The respondent chose not to deal with this claim specifically but decided to treat this claim together with other similar claims, all of which represent policies issued through Fleetsure, with reference to a letter dated 17 February 2010.

The respondent's response can be summarised as follows:

12.1 The Complainant was at all times factually insured by Zurich Risk Financing SA Limited, previously known as SA Eagle Insurance Company ("Zurich").

12.2 The Respondent further contends that Ms Ilse Becker trading as Fleetsure Insurance had attempted to transfer her Fleetsure portfolio from Zurich to the Respondent.

12.3 The Respondent disputes the validity of the above mentioned transfer by Ms Ilse Becker.

12.4 The Respondent further contends that Ms Becker and Zurich failed to comply with statutory requirements prescribed for intended transfer of the Fleetsure Book of Business from Zurich to the Respondent, and as such concludes that the intended transfer was void and of no force and effect.

12.5 The Respondent further avers that the liability as insurer remained with Zurich and not with them.

12.6 According to the Respondent Fleetsure was not authorised to use it`s logo on documentation and correspondence.

12.7 This Office, according to the Respondent, cannot deal with the complaints as the question of its liability is subject to an inspection by the Financial Services Board (FSB). The Respondent claimed that the whole matter was *sub-judice* and that any action on the part of this Office will be premature. The Respondent requested that this Office stay proceedings pending the outcome of the FSB inspection.

12.8 The reason for non-payment is attributed to a dispute between respondent, Fleetsure and Zurich. This dispute was the subject of

an investigation by the Financial Services Board. The respondent insisted on not dealing with this complaint as an individual complaint and stated that the matter was *sub judice* in the hands of the FSB.

12.9 The respondent states that there was no valid contract of insurance as between itself and the complainant. According to the respondent the complainant was a client of Fleetsure and/or one of the latter's brokers. The Respondent submits that it was not at risk as Fleetsure was not authorised to issue policies on its behalf and that it was in any event not aware of the fact that Fleetsure was conducting business on its behalf.

The defences raised by the Respondent will be dealt with in this determination.

F. FINDINGS

For reasons stated in Mthethwa`s case, we find that the Respondent was at risk and is liable to pay the Complainant in terms of the contract of insurance

G. CONCLUSION

On the undisputed facts before this Office the following conclusions are made:

13.1 The respondent as an insurer was at risk in terms of the policy purchased by the complainant.

13.2 Complainant's policy was effected during the period 1st June 2008 and 31st December 2008.

13.3 The respondent has provided no legitimate basis in law to avoid paying the complainant's claim.

13.4 The complaint is upheld and the respondent is ordered to pay the Complainant's claim.

H. QUANTUM

14.1 In terms of the agreement of loss, the complainant agreed to accept the amount of R7,264.45 in settlement of his claim.

14.2 Accordingly an order will be made that Respondent pay to complainant an amount of R7,264.45

14.3 The loss agreement was signed on the 1st of December 2008. The Complainant expected the amount to be paid by the end of December 2008, accordingly I intend to make an order that interest be paid on this amount from the 1st January 2009 to date of payment.

I. ORDER

I make the following order:

1. The complaint is upheld.

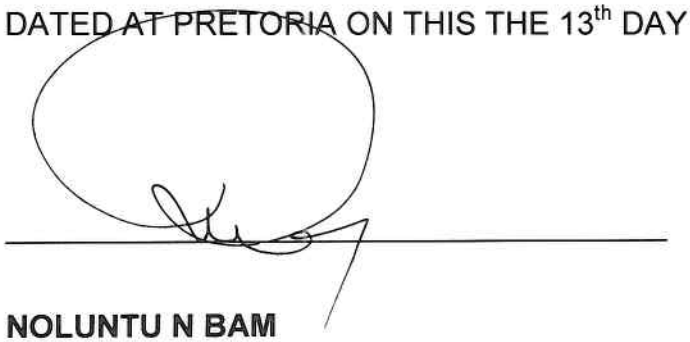
2. The respondent is ordered to pay to the complainant :

   2.1 The amount of R 7,264.45

   2.2 Interest on the amount of R7, 264.45 at the rate of 15, 5% per annum from the 1st of January 2009 to date of payment.

3. Respondent is ordered to pay the case fee of R1000, 00 to this office within thirty (30) days of date of this determination.

DATED AT PRETORIA ON THIS THE 13th DAY OF OCTOBER 2010.



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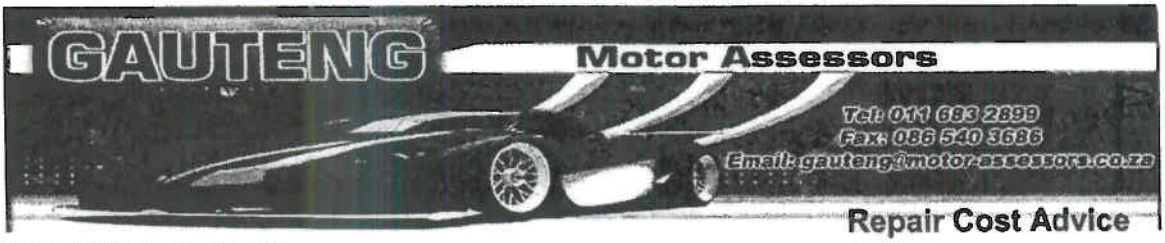

Repair Cost Advice

Report Date : 01/12/2008

To : AUTO BONN

Principal	INBROCON C/O ORANGE
Principal Address	P.O.BOX 5816
	MEYERSDAL
	1446
Clerk	SONJA GOUWS (P)
Principals VAT #	4840246864
Broker	ALL BOUT INSURANCE BROKERS

Vehicle Details	Toyota Tazz 130
Registration	RFR175GP
Odometer	150942
Colour	Silver
Year	2003
Date Instructed	1/12/08
Our Ref No	600
Insured	MOOSA
3rd Party	
Policy No	ALL14004
Claim No	INB1216/86

Authorised Repairs

Cost Details :				
Quote No	695	V.A.T	1,137.74	
Original Quote	8,964.27	Agreed Total	9,264.45	
Agreed Amount	8,126.71	Excess	0.00 % Min	0.00
Less Contribution	0.00		0.00 % Min	0.00
Repair Nett Costs	8,126.71	Excess Nil	0	
		Nett Cost of Repair	9,264.45	

It is understood and agreed between the above principal and the above repairer that the cost of repair to the above vehicle has been duly assessed by the principals representative at the figure shown opposite the Repair Nett Costs and the repairs will be carried out as set out in the above assessed quote.

It is further agreed between the principal and the repairer that the figure shown opposite Nett Cost of Repair will constitute the total amount for which the principal shall be liable. Should the repairs involve any further costs by the repairer, the principal shall not under any circumstances be liable unless written authority has first been obtained. In the event of the repairs being executed in an unsatisfactory manner, the above principal reserves to itself the right to employ another Repairer for the purpose of having the repairs properly completed. The first Repairer shall be liable for the additional costs.

Accident Towed Vehicle fee's are as per prior agreement with abovementioned Principal and any additional fee's are to be recovered by yourselves from the relevant party as this forms part of the Principal's policy.
The Principal reserves the right to appoint a representative to Audit your accounts as well as work in progress checking with regards to above repair.

The Principal requests that all parts be made available for assessment for the duration of five (5) working days after the repairs have been concluded. All salvaged parts are the property of the abovementioned Principal.

Once the vehicle has been repaired to the client's satisfaction, the final costing and all invoices related to the repair must be sent to Gauteng Motor Assessors (Fax: 08654036876) for authorisation and to inform the Principal that the repair has been concluded. Please advise abovementioned Principal of your banking details in order for the Principal to effect an E.F.T. payment to yourselves. All original documentation relating to this repair must be posted to the above Principal's address.

Please note that should the Principal settle your account within 30 days of receipt of your original invoice, the Principal will deduct a 5% discount as per your agreement and acceptance of repairing this vehicle.

Please sign and send back to GMA Assessors (086 540 3686)

– Excess 2000.

Principals representative sign

Repairer Sign = 7264.45

GAUTENG MOTOR ASS
TEL: 011 683 2899
084 250 1120
FAX: 086 540 3686

FAXED

COMMENTS FOR REPORT 600

We confirm having received your instructions and having proceeded to AUTO BONN in VEREENIGING where we examined the Toyota Tazz 130 registration RFR175GP.
We assessed the damaged vehicle together with the attached quote.
A cost of R 8,126.71 VAT exclusive has been agreed with the repairer and we have authorised repairs as per your instructions.
We now await the repairers invoice together with the signed clearance.
We thank you for our appointment in this matter, if we can be of any further assistance please do not hesitate to contact us.

LEE GEFFEN