

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3363 OF 2017

(Against the Order dated 05/06/2017 in Appeal No. 217/2015 of the State Commission
Telangana)

1. BIRLA SUN LIFE INSURANCE CO. LTD. & ANR.
CLAIMS DEPARTMENT, 5TH & 6TH FLOOR, G-CORP
TECH PARK, KASARVADAVLI, GHODBUNDER ROAD,
THANE-400601

MAHARAHSTRA

2. BIRLA SUN LIFE INSURANCE CO. LTD.

FIRST FLOOR, REDDY'S RESIDENCE, OPP: HDFC BANK,
NEAR DIST COURT COMPLEX,
KARIMNAGAR

.....Petitioner(s)

Versus

1. ETTEDI GANGAMMA

H.NO.3-61/1, METLACHITTAPUR, V/O. METPELLY
MANDAL OF KARIMNAGAR

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. PRATEEK KASLIWAL, ADVOCATE
MR. SHUBHAM BHATI, ADVOCATE

FOR THE RESPONDENT : EX PARTE (VIDE ORDER DATED 12.09.2023)

Dated : 26 September 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 05.06.2017 of the State Consumer Disputes Redressal Commission, Hyderabad (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 217 of 2015 in which order dated 07.07.2011 of Karimnagar District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum) in Consumer Complaint (CC) no. 121 of 2011 was challenged, inter alia praying for setting aside the Order dated 05.06.2017.

2. While the Revision Petitioners (hereinafter also referred to as OPs) were Respondents and the Respondent (hereinafter also referred to as Complainant) was Appellant in the said FA No. 217 of 2015 before the State Commission, the Revision Petitioner were OPs and Respondent was Complainant before the District Forum in the CC no. 121 of 2011.

3. Notice was issued to the Respondent on 16.11.2017 but despite service of notice, respondent did not participate in the proceedings. Hence, the matter was heard on merits based on available records. Parties filed Written Arguments/Synopsis on 20.04.2023 and 11.09.2019 respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that husband of complainant, namely Raja Reddy took Saral Wealth Insurance Plan Policy bearing no.004324681 for the assured sum of Rs.2,50,000/- by paying annual premium of Rs.44,600/- on 12.08.2010 from the OPs. The husband of the complainant died on 08.09.2010 due to fever. Being nominee of her husband, the claim was submitted by her wife but the same was repudiated by the OPs on the ground that deceased policy holder suppressed the material facts. She also sent the legal notice but the claim was not settled. Being aggrieved, the Complainant filed a CC before the District Forum, which dismissed the Complaint vide order dated 13.11.2013. Dis-satisfied with the order of the District Forum, the Complainant appealed in the State Commission and the State Commission vide order dated 15.06.2017, allowed the Appeal. Hence the OPs are before this Commission now in the present Revision Petition.

5. Petitioners have challenged the said Order dated 05.06.2017 of the State Commission mainly/inter alia on following grounds:

- i. State Commission decided the appeal on the basis that no nexus exist between cause of death and alleged disease. The National Commission in the matter of **LIC of India Vs. Kusum Patro**, RP No. 1585 of 2011 decided on 19.03.2012 decided the issue of nexus between cause of death and previous state of health.
- ii. The subject policy was outcome of deliberate suppression of material facts and District Forum had rightly dismissed the consumer case. DLA had concealed the vital facts of his hospitalization and history of carcinoma of lungs for which DLA took Chemotherapy treatment in Yashoda Cancer Institute whereas the policy was obtained immediately after said hospitalization on 14.08.2010. Section 45 of Insurance Act, 1938 empower the Insurer to repudiate the claim if it is found that policy was obtained on the basis of suppression of material facts and State Commission disregard the judgment of Hon'ble Supreme Court in **P.C.Chacko and Anr. Vs. Chairman, LIC of India and Ors.** (2008) 1 SCC 321.

- iii. The State Commission did not consider the report of the Investigator and Investigation Findings which were never refuted by the Respondent before the District Forum.
 - iv. Section 11 of the Insurance Regulatory and Development Authority (Protection of Policyholder Interest Regulations, 2002) imposes a duty upon the policy holder to disclose all the material facts to the insurer to enable them to assess the risk to be undertaken.
 - v. The Respondent nowhere had rebutted the produced medical documents and relied upon the findings of this Commission in **LIC of India Vs. Surekha Shankar Jadav**, RP No. 2130 of 2017 decided on 31.07.2012.
 - vi. The contract of insurance is based on principle of utmost good faith.
 - vii. This claim being an early claim, the National Commission in **LIC of India Vs. Balbir Kaur** 1 (2009) 212 (NC) have held that very fact of early claim is a good corroborative evidence to prove misrepresentation, material non disclosure or contemplation of death.
 - viii. The words in an insurance contract must be given paramount importance and interpreted as expressed without any addition, deletion or substitution and relied upon the judgment of Apex Court in **Suraj Mal Ram Niwas Oil Mills (P) Ltd. Vs. United India Ins. Co. Ltd.** [2010] 10 SCC 567 and this Commission in **Reliance Life Insurance Co. Ltd. Vs. Madhavacharya** RP No. 211 of 2009.
 - ix. The Hon'ble Supreme Court in **General Assurance Society Limited Vs. Chandumull Jain & Anr.** (1996) 3 SCR 500 held that duty of court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however, reasonable, if the parties have not made it themselves.
6. Heard counsel for the Petitioner. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments of the Petitioner and Respondent, and Oral Arguments advanced by the Petitioners during the hearing, are summed up below.

6.1. Counsel for the Petitioner repeated the points which are stated in para 7, grounds for challenging the order of the State Commission, hence the same are not being repeated here.

6.2. Counsel for the Respondent in its written arguments has contended that deceased had not suppressed the facts and there was no other disease and cause of death is due to only Cardiac arrest. The Petitioner after conducting a pre police medical check up issued policy in favour of the Complainant and Petitioner filed, created and fictitious documents before the District Forum in order to escape their liability. Even the Petitioner did not examine any witness before the District forum to prove that documents are genuine and not filed any affidavit of doctor and there is no evidence that case sheet filed by the Petitioner belongs to the husband of the complainant and documents are not valid. Reliance has been placed on the findings of this Commission in **Life Insurance Corporation of India Vs. Ashok Manocha** 2011 CJ (NCDRC) 205 and **Life Insurance Corporation of India, Divisional Office Karnal Vs. Anand Kumar** 2012 CJ (NCDRC) 613 **Aviva Life Insurance Co. India Pvt. Ltd. Vs. S.T. Umavathi** 2007 CJ (Trib) 212 and **LIC of India Vs. Joginder kaur and Ors.** II (2005) CPJ 78 (NC)

6.3. It is further contended that Petitioner could not prove that lung cancer led to cardiac arrest and there was no nexus between the cause of death and alleged disease of cancer.

7. The main reason for repudiation of claim is that deceased has suppressed the material facts of his previous ailment when the policy was taken. Counsel for the Petitioner contended that there is nexus between the cause of death and the disease. However, The State Commission was of the view that main question is whether there is any nexus between ailment and cause of death. State Commission observed that Medical Attendant's Certificate dated 08.09.2010 issued by the doctor stated that cause of death of life assured policy holder was due to cardiac arrest. Further, the State Commission observed that death was not due to lung cancer, for which deceased was taking treatment. There is nothing on record which may show that ailment of cancer may lead to heart failure. There is no nexus between the ailment and the cause of death i.e. heart failure.

8. Hon'ble Supreme Court in the case of **Sulbha Prakash Motogaonkar and Others Vs. Life Insurance Corporation of India and Others** 2021 13 SCC 561 decided on 05.10.2015 observed as under:

“6. The death of the insured due to ischaemic heart disease and myocardial infarction had nothing to do with his lumbar spondylitis with PID with sciatica. In our considered opinion, since the alleged concealment was not of such a nature as would disentitle the deceased from getting his life insured, the repudiation of the claim was incorrect and not justified”.

9. Subsequent to the above judgment of Hon’ble Supreme Court, this Commission in various cases, relying on the judgment of **Sulbha Prakash Matogaonkar and Others** (supra) have observed that if there is no nexus between the material fact / disease, which was not disclosed, and the cause of death, the insurance company’s action of repudiating the claim on the ground of suppression of material facts / non disclosure of pre-existing ailment is not correct. Some of these cases are listed below:

10. In **Life Insurance Corporation of India Vs. Jyotsna Rawal**, Revision Petition No. 864 of 2018 decided on 08.05.2018, this Commission held as under :

*8. In this context, I would like to rely upon the decision of Hon'ble Supreme Court in Civil Appeal No.8254 of 2015 in the case of **Sulbha Prakash Motegaonkar & Ors. Vs. Life Insurance Corporation of India**, decided on 05-10-2015. This was the case where the deceased died due to Ischemic Heart disease and myocardial infarction. There was a concealment of lumbar spondylitis with PID with sciatica and, therefore, the insurance company repudiated the claim. Hon'ble Supreme Court held that it was not the case of insurance company that the deceased was suffering from life threatening disease which could or did cause death of the insured. The Court observed as below:*

"We are of the opinion that the National Commission was in error in denying to the appellants the insurance claim and accepting the repudiation of the claim by the respondent. The death of the insured due to ischemic heart disease and myocardial infarction had nothing to do with his lumbar spondylitis with PID with sciatica. In our considered opinion, since the alleged concealment was not of such a nature as would disentitle the deceased from getting his life insured, the repudiation of the claim was incorrect and not justified.

11. In **Neelam Chopra Vs. Life Insurance Corporation of India and Ors**, Revision Petition No. 4461 of 2012 decided on 08.10.2018, this Commission held as under :

“13. From the above observations of the Hon'ble Supreme Court, it is clear that suppression of any information relating to pre-existing disease if it has not resulted in

death or has no direct relationship to cause of death, would not completely disentitle the claimant for the claim.”

12. In **Lachman Sarup Vs. LIC of India**, Revision Petition No. 42 of 2012 decided on 04.02.2019, this Commission held as under :

7.....Even if it is presumed for the sake of arguments that she had not succumbed to the injuries which she sustained when she fell from the stairs, the fact remains that the claim could not have been denied unless it was shown that she had died on account of suffering from Kochi's Chest. No material has been placed before this Commission to show that Kochi's Chest by itself was a life threatening disease even at the time when the deceased insured is alleged to have died. The onus was upon the insurer to prove either that the deceased insured had died on account of she suffering from Kochi's Chest or that Kochi's Chest was by itself a life threatening disease. Therefore, relying upon the decision of the Hon'ble Supreme Court in Sulbha Prakash (supra), I hold that the repudiation of the claim was not justified.

13. In **Bajaj Allianz General Insurance Co. Ltd. Vs. Usha P Joshi and Ors.**, First Appeal No. 48 of 2012 decided on 01.12.2019, this Commission observed as under:

“13. The Appellant has failed to show that diabetes, hypertension and angina had any nexus with ‘SYNCOPE’ for which the respondent was treated and the claim put up.”

18. The appellant, however, has failed to bring to my notice any proved fact in support of the contention that there was suppression of any material information or concealment of a pre-existing disease which had the nexus with the disease for which the respondent/complainant was treated in USA and for which she had put up her claim. It is noteworthy that the present claim is under ‘travel secure policy’ to redeem the insured for the expenses for the treatment of an ailments abroad. The appellant has failed to prove that the ailment with which the respondent/complainant had taken treatment while in USA had any nexus with her earlier condition of diabetes or two/three fainting episodes or hypertension etc. and that she had deliberately concealed her condition of “SYNCOPE” for which she was treated in USA.

14. In **Pratibha Bevinval Vs. Metlife India Insurance Co. Ltd.**, Consumer Complaint No. 88 of 2011 decided on 07.10.2022, this Commission held as under :

7.....This Commission in Revision Petitions (supra) has also been guided by this judgement of the Hon'ble Supreme Court and these orders have attained finality. In the instant case, the opposite party's ground for repudiation of the policy is the concealment of a heart condition and diabetes mellitus. However, the cause of death of the DLA is a road accident due to rash and negligent driving by a motor cyclist. I am, therefore, of the view that the matter is squarely covered by Sulbha Prakash Motegaonkar (supra) and therefore the complaint is liable to succeed.

15. We have carefully gone through the facts and circumstances of the case, orders of the State Commission, other relevant records, case laws relied upon by the parties / State Commission and written arguments of the petitioner and respondent and are of the view that State Commission has rightly held that as there is no nexus between the disease, information about which was not disclosed and the cause of death, hence the repudiation of the claim by OP Insurance Company is not correct.

16. In view of the foregoing, we find no illegality or material irregularity or jurisdictional error in the orders(s) of the State Commission, hence the same is upheld. Accordingly, the Revision Petition is dismissed.

17. The pending IAs in the case(s), if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER