NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 1857 OF 2019
(Against the Order dated 17/07/2019 in Complaint No. 1172/2016 of the State Commission Maharashtra)

1. ICICI LOMBARD GENERAL INSURANCE CO. LTD.
THROUGH LEGAL MANAGER, ICICI LOMBARD GENERAL INSURANCE CO.LTD. GOLE MARKET.
NEW DELHI. .....Appellant(s)

Versus

1. RUPALI INAMDAR
201, PARIMAL HEIGHTS, EXT TO PARIMAL APTS, CTS NO. 519 B (PART-II), ANDHERI (W), OFF. JUHU LANE.
MUMBAI-400058 .....Respondent(s)

BEFORE:
HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 29 August 2024

ORDER

For the Appellant **Mr Vishnu Mehra, Advocate**

For the Respondent Mr Uday B Wavikar and Mr Vikas Nautiyal,

Advocates

ORDER

1. This First Appeal under Section 19 of the Consumer Protection Act 1986 assails order dated 09.02.2023 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, "State Commission") in Consumer Complaint No. CC/16/1172 allowing the complaint partly and directing the appellant herein to pay Rs 33,16,171.70 to the complainant/ respondent herein being the cost of medical treatment under the International Travel Insurance Policy obtained from the appellant with simple interest at 9% p.a. from 23.05.2015 (date of operation) till realization along with Rs 1,00,000/- as costs for mental agony and harassment and litigation cost of Rs 50,000/- within 90 days failing which with interest @ 12% p.a. till realization.

2. We have heard learned Counsel for the parties and perused the record carefully.

3. Briefly put, the relevant facts of the case are that the appellant had issued travel insurance cover to the respondent under its Policy Platinum S known as International Travel Insurance Policy for travel to Schengen countries in Europe with her family including children aged 11 and 14 years respectively for tourism during the period 20.05.2015 to 29.05.2015. On 23.05.2015 the respondent while visiting Jungfraujoch in Switzerland while playing with her children in the snow, fell and fractured her left thigh bone or femur. She was airlifted to hospital by helicopter and was diagnosed for "external fixation of the fracture including the knee joint". After being operated on 23.05.2015 and treatment she was discharged from hospital. Expenses for medical treatment incurred by her amounted to Rs 33,16,171.70. A claim under the above travel Policy was preferred along with the bills from the hospital. Appellant/ insurer had been informed on 24.05.2015 and by email dated 25.05.2015 in order to register the insurance claim. Appellant reverted back the same day for confirmation of the details in order to make direct payment to the hospital towards settlement of claim. However, vide letter dated 28.05.2015 the appellant insurance company repudiated the claim on the ground that under the terms and conditions of the insurance Policy the claim could not be entertained since the cause of the accident was riding on sleigh/bob which was excluded as a "Hazardous Activity". Despite various clarifications that the activity was not hazardous and was being engaged in with children, the claim, including claim for additional expenses of Rs 2,37,667.50 was repudiated. Respondent approached the State Commission through Consumer Complaint No. CC/16/1172 which came to be partly allowed on contest by order dated 17.07.2019 and is impugned before us praying that the order be set aside/modified with any other order(s) deemed fit and proper.

4. The appellant's case is that the impugned order is erroneous on facts and seeks to overlook the exclusion clause in the Policy. It is contended that the State Commission proceeded on an erroneous premise by framing an issue that was not raised as under:

> 4. Question is whether these micro letters which is the part of printed proforma of the International Travel Insurance Policy were read over and explained to the insured in the language which she understands and whether in token of which she had accepted the terms and conditions as binding upon her. We do not find evidence to enlighten us on this point. Terms and conditions though detailed in micro letters would bind the insured only when the onus on the part of insurer is discharged that all those terms and conditions were read over interpreted and explained to the insured and then she had signed in token of acceptance of the same.

According to the appellant, this was not even the case of the respondent complainant at any time. It is argued that the State Commission, while posing the question for consideration, overlooked the fact that the terms and conditions of the Policy were duly issued by the appellant and received by the respondent and the correctness or applicability of the terms and conditions were not disputed at any time and therefore the question framed was erroneous. It was also contended that no evidence was invited on this question as framed before adjudicating the matter. It was submitted that there were only two issues which fell for consideration which had not been considered by the State Commission and therefore the order was unsustainable in law. According to the appellant the State Commission failed to appreciate that the respondent had given different versions of the incident and therefore the narration of facts is totally uncertain as it was not clear whether she hurt herself while

playing with children on 'kiddy cycles' as per email dated 27 05 2015 sent by her husband or while walking on ice or while riding a snow scooter. According to the appellant this difference in narration of facts creates reasonable doubts with respect to the occurrence of the incident. According to the appellant, the respondent was not an expert in the riding of a snow scooter or sledge bob and since she had voluntarily undertaken the activity in which she was not trained, she had willingly placed herself in a position where harm might result which was a voluntary assumption of risk. According to the appellant as per clause 3.3.11 "Hazardous Activities" were defined as under:

> Hazardous Activities shall mean any sport or activity, which is "hazardous". Activities shall mean any sport or activity, which is potentially dangerous to the Insured Person whether he/she is trained, or not. Such sport/activity includes adventure racing, base jumping, blathlon, big game hunting, black water rafting, bmx stunt/obstacle riding, **bobsleighing**, using skeletons, bouldering, boxing, canyoning, caving/pot holing, cave tubing, climbing/trekking/walking over 4,000 meters, cycle racing, cycle cross drag racing, endurance testing, hang gliding, harness racing, hell skiing, high diving (above 5 meters), hunting, ice hockey, ice speedway, jousting, judo, karate, kendo luging, manual labour, marathon running, martial arts, micro-lighting, modern pentathlon, motor cycle racing, motor rallying, mountaineering/rock climbing, parachuting, paragliding/parapenting, piloting aircraft, polo, powerlifting, power boat racing, quad biking, river boarding, river boardings, river bugging, rodeo, roller hockey, rugby, sky diving, small bore target shooting, speed trials/time trials, triathlon, water ski jumping, weight lifting, wrestling and activities of similar nature.
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> [Emphasis added]

It was also submitted that the claim was inadmissible under clause 3.3.9 General Exclusions of Policy which reads as under:

> In so far as it relates to the benefits numbers 1 (medical cover), 2 (dental cover), 6 (personal liability), 7 (personal accident), 12 (trip cancellation and interruption), 14 (trip delay), 16 (compassionate visit), 17 (emergency hotel extension), any claim arising out of sporting activities in so far as they involve the training or participation in competitions of professional or semi-professional sports persons unless declared beforehand and agreed by the company subject to additional premium being paid and incorporated accordingly in the Policy.

The case of the appellant is that in the present case the respondent had neither declared beforehand nor paid any additional premium to obtain cover under the Policy for sporting activities.

5. *Per contra*, it was contended by the respondent that the injury was incurred during the course of an activity that was not hazardous as defined in the Policy and therefore did not fall under the exclusion clauses as argued by the appellant. According to the appellant the snow scooter was an activity that had been stated by the authorities in Switzerland to not be a hazardous sport or activity. According to the respondent, the activity was open for children and had been undertaken by her along with them. It was also averred that the appellant's

contention that the narration of the events had differed did not distract from the fact that the accident occurred while the insured respondent had engaged in a non-hazardous activity and was therefore eligible for the claim preferred under the Policy. It was contended that the claim under the Policy had been wrongly rejected since the cause of the accident had not been established by the appellant to be "bobsleighing", which was different to the activity engaged in with children by the respondent. Reliance was placed on the emails of the Doctor and the e-mail from Skischule Info dated 05.06.2015, in support of the argument that the accident was not the result of a hazardous sport indulged in by the respondent.

6. The State Commission has held as under:

> Thus, in the facts and circumstances of the case, in our view opposite party cannot disown its liability in respect of the insurance Policy when during the validity period thereof the accident had occurred and insured had to undergo long hospitalisation with lot of expenses to recover from the result of accident and consequences….. In our view, considering the fact that high premium International Travel Insurance Policy was undertaken by the complainant covering the liability to the extent of USD 100,000 applicable to Schengen countries and personal accident covering of USD 15,000, complainant is entitled to claim the insurance Policy amount in the sum of Rs 33,16,171.70 which are actual expenses incurred by the complainant in respect of her hospitalisation along with interest @ 9% p.a. on the amount from the date of operation i.e. 23.05.2015 till realisation of the same. Though complainant has claimed additional expenses in the sum of Rs.2,37,667.50 incurred by her, we are not inclined to award the same as we are awarding compensation on account of mental agony and inconvenience/harassment caused to the complainant. We grant amount of Rs 1,00,000/- on account of compensation for mental agony and harassment suffered by a complainant and sum of Rs 50,000 towards litigation costs.

8. Appellant has relied upon judgement of the Hon'ble Supreme Court in ***Oriental Insurance Co Ltd. Vs. Sony Cheriyan*** AIR 1999 in Civil Appeal No. 4913 of 1997 decided on 19.08.1999 and judgement in ***United India Insurance Co. Ltd. vs M/s Harchand Rai Chandan Lal*** in Civil Appeal no. 6277 of 2014 dated 24.09.2004 wherein it has been held as under:

> The insurance Policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance Policy the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance Policy. That being so, the insured has also to act strictly in accordance with the statutory limitations or terms of the Policy expressly set out therein.

9. The issue which falls for consideration is whether the order of the State Commission under appeal erred in adjudicating the complaint against rejection of her claim by the appellant under the Policy.

10. The impugned order of the State Commission has, while considering the claim of the complainant/respondent, considered the issue in the perspective of whether the terms of the policy had been rightly disclosed to the respondent. The appellant has taken the plea that the issue of whether there was a full disclosure of the Policy details to the respondent was not in issue. In view of the impugned order framing the issue of disclosure of the Policy's fine print and then proceeding to hold the appellant liable for deficiency being evident from the order, this averment of the appellant cannot be disputed. The issue of whether the details in fine print were or were not disclosed by the insurer are not material at this stage in view of the well settled law in ***Sony Cheriyan*** (supra) and ***Harchand Rai Chandan Lal*** (supra). However, what is moot is whether the cause of the accident was established since the appellant's own admission is that there were different narrations with regard to the cause of the incident. It is therefore essential that the cause of accident be established to be either a hazardous activity that is excluded under the Policy or to be a non-hazardous activity that can be considered as eligible for a claim under the Policy. The State Commission has not done so despite the fact that there are admittedly three different possible causes for the accident on record. Without adjudicating on the fundamental issue of whether the appellant was justified in repudiating the claim on the ground that the incident leading to the hospitalisation and treatment of the respondent was *ab initio* excluded under the purview of the policy as a hazardous activity, the impugned order has proceeded to conclude deficiency in service and award costs with compensation.

11. In view of the fact that the fundamental issue not having been addressed, the finding of deficiency in service cannot be sustained. At this stage we refrain from expressing any opinion in the matter. The impugned order is set aside and the matter remanded to the State Commission with directions to hear both parties on the issue of whether the activity leading to the accident/incident necessitating medical care was a hazardous activity or not and to adjudicate the matter expeditiously, preferably within a period of 4 months. Both parties are directed to appear before the State Commission on **07/10/2024**.

12. Pending IAs are disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER