

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1658 OF 2019

(Against the Order dated 30/04/2019 in Appeal No. 351/2018 of the State Commission
Gujarat)

1. ORIENTAL INSURANCE CO. LTD.

2ND FLOOR, PRITHVI TRADE CENTRE, STATION ROAD,

BHARUCH

GUJARAT

.....Petitioner(s)

Versus

1. KAMLESHBHAI UDANI

4, DIPALI SOCIETY, NEAR PRITAM SOCIETY 2,

BHARUCH

GUJARAT

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR PETITIONER : MR.MITHILESH SINHA, ADVOCATE

FOR THE RESPONDENT :

FOR RESPONDENT : MS.SWATI SINHA, ADVOCATE
(THROUGH VC)

MR. YASH JAIN, ADVOCATE

Dated : 27 September 2024

ORDER

1. The present Revision Petition No.1658 of 2019 has been filed under Section 21(b) of the Consumer Protection Act, 1986 ('the Act') by the Petitioner against impugned order dated 30.04.2019 passed by the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (the 'State Commission') in FA No.351 of 2018 wherein the State Commission allowed the Appeal and set aside the order of the District Consumer Disputes Redressal Forum, Bharuch (the 'District Forum') dated 23.04.2018 in C.C. No.2/2014 wherein the District Forum dismissed the complaint.

2. For convenience, the parties involved in this matter are referred to as mentioned in the Complaint before the District Forum. "Kamleshbhai Udani" is referred to as the Complainant and "Oriental Insurance Company Ltd." is denoted as Opposite Party No.1 (OP-1).

3. Brief facts of the case, as per the Complainant, are that his wife Ms Sadhnaben Udani was admitted to Hinduja Hospital, Mumbai from 12.11.2012 to 11.11.2013 for the treatment of diabetes, hypertension, obesity, lymphedema and hypothyroidism. During which, she also underwent a surgery. The complainant incurred medical expenses to the extent of Rs.4,75,184. To get reimbursement for these expenses, he preferred a claim with the insurer on 07.10.2012. However, the insurer rejected the claim, stating that the treatment was related to weight reduction due to obesity, which is not covered under the policy. On receiving the

repudiation letter, he approached Dr. Raman Goel of Hinduja Hospital, who provided a letter dated 19.12.2012 clarifying that the treatment was primarily related to hypertension and diabetes, and not solely for weight reduction. He further explained that the treatment was bariatric and metabolic, which can be used for both weight reduction and metabolic treatment. Despite submitting this letter, the insurer again rejected the claim on 12.06.2013. He obtained a second letter from Dr. Goel, dated 02.07.2013, which also clarified that the treatment was not exclusively for weight reduction. Despite his repeated requests, including a formal request dated 20.09.2013, the insurance company did not reconsider the claim. The complainant contended that the OP committed deficiency in service and employed improper business tactics. Being aggrieved, he filed a consumer complaint before the District Forum seeking payment of the claimed amount along with interest and Rs.10,000 as compensation.

4. In reply dated 02.05.2014 OP-1 insurer rejected his allegations and contended that the complainant's wife's treatment was for a chronic condition, which is not covered under the policy. Specifically, they cited Policy Condition No. 4.19, which excludes treatments for obesity or related complications. The treatment included sleeve gastrectomy, a procedure not covered by the policy, and therefore their decision to reject the claim was appropriate and in compliance with policy terms. OP-2 in reply submitted in line with OP-1.

5. The learned District Forum vide order dated 23.04.2018 dismissed the complaint as under:

“(15) By considering the situation and as discussed above, the Literature submitted related to this disease, they are not sufficient evidences which provide guidance for arriving at the decision. Therefore, this is not helpful. The treatment given to wife of complainant is under dispute in accordance with Condition No.4/19 of the Policy. Therefore, under these circumstances the steps taken by Insurance Company for repudiation of his claim is just and fair. As such an order is being delivered as under:

:ORDER:

(01) The Complaint No.02/2014, of Complainant Kamleshbhai Udani, is denied and not accepted.

(02) In view of the circumstances, no order is being passed for the Expenses of the Parties.”

(Extracted from translated copy)

6. Being aggrieved, the complainant filed FA No.351 of 2018 and the State Commission vide order dated 30.04.2019 directed:

“(5) Considering the circumstances and evidences on record, it appears that the order passed by Hon. Forum for dismissal of his complainant is improper and faulty. Medical Reports are submitted as per list attached in this appeal along with this appeal. The Medical Report (MMR) mentions the facts of the disease contracted by wife of the complainant. And this MMR form has been completed and signed by the doctor who was treating her. Dr. Ramen Goyal, treating wife of complainant, has issued a certificate. In which it is explicitly mentioned that wife of complainant was suffering from Diabetes, Hypertension, obesity and lymphedema, hypothyroidism. The type of treatment given to wife of the complainant, results in removal &/or reduction of Diabetes to the extent of 80%. Hypertension can also be reduced by 70%. And notable reduction in the difficulties due to Lymphedema. The certificate issued by Dr. Ramen Goyal is reproduced below.

"TO WHOMSOEVER IT MAY CONCERN"

This is to certify that Mrs. Sadhana K. Udani has undergone Lap Sleeve Gastrectomy at Hinduja Healthcare on October, 1st 2012. She was suffering from Type 2 Diabetes with hypertension with bilateral pedal lymphedema with obesity.

This intervention is expected to achieve diabetic remission in over 80/o patients, hypertensive remission in over 70% excess weight loss besides significant reduction in Lymphedema. This surgery is neither a cosmetic surgery nor performed by plastic/cosmetic surgeons.

There is definite medical necessity of this surgery in her case.

December,19,2012

Sd/- Dr. Ramen Goel

Consulting Surgeon.

(6) With this Appeal Memo, Judgement of Hon. insurance Ombudsman, Gujarat in the matter of Ms. Janki Janatkumar Sheth V/s United India Insurance Company Limited. In this case also the complainant was having Obacity. In this case also it was mentioned by referring medical certificate issued by Mahendra Narvariya, that Obacity is considered as a disease. Due to this, patient had Joint Pain and there was possibility of complication for Ischemic Heart Disease in future. Bariatric Surgery is a Life-saving Surgery and not a cosmetic surgery. Thus by this Judgement Insurance Ombudsman had ordered to pay the complainant, total amount of expenses incurred by him. Thus considering the documents on record and medical history, it explicitly reveals that the wife of the complainant has not underwent surgery and treatment for mere obesity. But she was given treatment for the Diabetes, Hypertension, lymphedema, Hypothyroidism etc., other diseases. And these diseases were due to complications of Obesity. And there were many chances of gaining benefits after this

surgery. As per opinion of the treating Doctor, the patient can be relieved from the pains and suffering to the extent of 80% in Hypertension and Diabetes. And can also reduce the difficulties due to Lymphedema. Thus in view of all the above circumstances, the steps and action taken by the insurance company in repudiating his claim under pretext of condition No.4.19 is not reasonable, just and legal.

(7) Mrs. P.A.Vakil, Advocate for complainant, has quoted the judgement of National Commission in the matter of New India Assurance Company Limited Versus Sunita Chaudharl - IV (2010) CPJ 378 (NC) in support of her arguments made by her. While referring it, also reveals that surgery for obesity is a life-saving surgery and is not a cosmetic surgery. In this quoted judgement, in para 10, National Commission has observed that:

"On reading of the above, it is clear morbid obesity is a serious disease that may be associated with severe complications which may be life threatening, it is also clear from the certificate that Laparoscopic sleeve gastrostomy surgery is a life –saving surgery and not a cosmetic surgery. In view of this certificate, it is clear that deceased had undergone a life-saving surgery and not a cosmetic surgery."

(8) Thus, it is explicitly clear and establish that Hon. Forum has made a serious lapse in dismissal of complaint of the complainant. And therefore Appeal must be admitted.

9) Whereas, on the other hand, Mr. Naresh Sinroja, Advocate for original respondent reveals while submitting his arguments, states that as per policy condition 4.19, the patient was given treatment for obesity and therefore, his claim has been repudiated by the insurance company. In view of the circumstances and discussion made above as also quoted judgement in the case of New India Assurance Company Limited Versus Sunita Chaudhari IV (2010) CPJ 378 (NC), the arguments made by learned Advocate Mr.Naresh Sinroja are not acceptable.

(10) Mr. Naresh Sinroja, Advocate for Insurance Company, has quoted the judgments in the following cases.

- 1. 2016 CPJ 649 (NC)***
- 2. Appeal No.1324/2014***
- 3. II 2017 CPJ 575 (NC)***
- 4. II 2017 CPJ 60 (NC)***

11. In the judgments quoted above, in one of them the expenses incurred for surgery of Gallbladder was not payable in first two years. And in one other case the expenses incurred for treatment during first year of the policy, was not paid. And in one other case the expenses for knee replacement was not removal of stone during first two years of policy was not payable. Thus in all these cases claim of the complainants was rejected. These judgements are not relevant and applicable in the present case.

12. Thus in view of the discussion made above, it is clearly proved that a need has been emerged to intervene in the matter of dismissal of complaint of complainant by the Hon. Forum. Therefore, we announce our order as under.

-:ORDER:-.

(1) The present Appeal No: 351/2018 is hereby admitted.

(2) The Insurance Company, Respondent is hereby ordered to pay Rs.4,75,184/- together with an interest @ 9% from the date of Application till the date of payment.

(3) The Respondent the Oriental Insurance Company is hereby also order to pay Rs.10000/- towards litigation expenses to the complainant.” (Extracted from translated copy)

7. Hence, the present Revision Petition by the Insurer.

8. In his arguments, the learned Counsel for Petitioner/OP-1 reiterated the grounds in reply and asserted that the exclusion clause of 4.19 of the Policy is clear and needs to be adhered. His claim for reimbursement of the treatment of morbid obesity is not covered in the policy. They failed to usher reasonable evidence that claim of the complainant is covered under the perils listed. The case law relied upon are inapplicable. He further contended that the Dr. Goel is trying to help the complainant to get his claim payable and admissible. The claim is not covered in the insurance policy and thus no claim is payable and the insurance company was justified in repudiating the claim as per exclusion clause 4.19 of the Policy in question.

9. On the other hand, the learned Counsel for the Complainant/ Respondent reiterated the issues in the complaint and argued in favour of the State Commission order. The Hon'ble Supreme Court clarified the principles of interpreting exclusion clauses in insurance contracts and the burden of proof lies on the Insurer to demonstrate that the claim falls under an exclusion clause. He relied upon the following judgments in support of his arguments:

A. United India Insurance Company Ltd. vs. Sunil gupta & Anr. 2015 SCC Online NCDRC 413;

B. Mrs. Parama Roy vs. The National Insurance Co. Ltd. F.A. No. A/844/2015 dated 13.09.2018 by State Commission, WB;

C. Oriental Insurance Company Ltd. vs. Sunita Arora & Ors, FA No.778/2017 dated 25.10.2018 State Commission, Punjab;

10. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels of both the parties.

11. The main issue in this case is whether the complainant is entitled to claim reimbursement for the medical expenses incurred during the treatment of his wife, who underwent a Laparoscopic Sleeve Gastrectomy (Lap Sleeve Gastrectomy) at Hinduja Healthcare, under the insurance policy in question.

12. A Laparoscopic Sleeve Gastrectomy is a surgical procedure designed to promote weight loss by restricting the amount of food that can be consumed. It permanently removes a significant portion of the stomach, including the part that produces the hormone ghrelin, which signals hunger to the brain. The insurer denied the claim as this was the procedure for treatment of **obesity**, which is excluded under **General Exclusion Clause 4.19** of the policy reproduced below:

General Exclusion Clause 4.19: This clause excludes coverage for "treatment of obesity or conditions arising from it, including morbid obesity, and any other weight control programs or similar services or supplies."

13. In catena of judgements, the nature of insurance contracts, scope and restraint to be exercised in interpreting the terms of contract are well discussed and crystallized by this Commission and Hon'ble Supreme Court.

14. The Hon'ble Supreme Court in the case of United India Insurance Co. Ltd. versus M/s Hyundai Engineering & Construction Co. Ltd. & Ors., **2024 LiveLaw 409** wherein it has been held that :

"16. Insurance is a contract of indemnification, being a contract for a specific purpose, Oriental Insurance Co. Ltd. v. Sony Cheriyan, (1999) 6 SCC 451, which is to cover defined losses, United India Insurance Co. Ltd. v. Levis Strauss (India) (P) Ltd., (2022) 6 SCC 1. The courts have to read the insurance contract strictly. Essentially, the insurer cannot be asked to cover a loss that is not mentioned. Exclusion clauses in insurance contracts are interpreted strictly and against the insurer as they have the effect of completely exempting the insurer of its liabilities, New India Assurance

Co. Ltd. v. Rajeshwar Sharma, (2019) 2 SCC 671; Canara Bank v. United India Insurance Co. Ltd., (2020) 3 SCC 455; Oriental Insurance Co. Ltd. v. Samayanallur Primary Agricultural Coop. Bank, (1999) 8 SCC 543.

17. In Texco Marketing P. Ltd. v. TATA AIG General Insurance Company Ltd., Oriental Insurance Co. Ltd. v. Samayanallur Primary Agricultural Coop. Bank, (2023) 1 SCC 428, while dealing with an exclusion clause, this Court has held that the burden of proving the applicability of an exclusionary clause lies on the insurer. At the same time, it was stated that such a clause cannot be interpreted so that it conflicts with the main intention of the insurance. It is, therefore, the duty of the insurer to plead and lead cogent evidence to establish the application of such a clause, National Insurance Company Ltd. v. Vedic Resorts and Hotels Pvt. Ltd., 2023 SCC OnLine SC 648. The evidence must unequivocally establish that the event sought to be excluded is specifically covered by the exclusionary clause, National Insurance Co. Ltd. v. Ishaar Das Madan Lal, 2007 (4) SCC 105. The judicial positions on the nature of an insurance contract, and how an exclusion clause is to be proved, shall anchor our reasoning in the following paragraphs.”

15. In Civil Appeal No.10671 Of 2016 between Narsingh Ispat Ltd Vs Oriental Insurance Company Ltd. & Anr 2022 LiveLaw (SC) 443, the Hon'ble Supreme Court while reiterating *National Insurance Co Ltd vs Ishaar Das Madan Lal (2007) 4 SCC 105 (Para 12)* held that the burden is on the insurer to show that the case falls within the purview of exclusion clause. In case of ambiguity, benefit goes to the insured.

16. It is an admitted position that the complainant's wife underwent a Lap Sleeve Gastrectomy surgery at Hinduja Healthcare on 01.10.2012. It is the assertion of OP-1 that the surgery underwent by the wife of the complainant constitutes treatment of morbid obesity, which falls within the exclusion clause of 4.19 of the policy. The claim reimbursement is, therefore, inadmissible. General Exclusion Clause 4.19 of the policy excludes coverage for *"treatment of obesity or conditions arising from it, including morbid obesity, and any other weight control programs or similar services or supplies."* It is the contention of the complainant that the Lap Sleeve Gastrectomy surgery was performed on his wife at Hinduja Healthcare on 01.10.2012 to address her medical conditions such as Type 2 Diabetes, hypertension, bilateral pedal lymphedema with obesity. This intervention is for achieve diabetic remission, hypertensive remission, excess weight loss besides significant reduction in Lymphedema. This surgery is not a cosmetic surgery.

17. It is uncontested position that the wife of the complainant was suffering medical conditions such as Type 2 Diabetes, hypertension, bilateral pedal lymphedema with obesity. The surgical procedure is for achieving diabetic remission, hypertensive remission, excess

weight loss besides significant reduction in Lymphedema. It is undisputed that she is covered under the policy of the OP-1 and the surgery and treatment were during the course of the valid policy. To repudiate the claim on the grounds of exclusion clause, the burden of establishing those conditions is on OP-1. While the complainant has led substantial evidence to establish the circumstances, medical conditions and purposes for which the surgery was performed, the OP-1 has not established that the said surgery was a treatment of obesity or conditions arising from it, including morbid obesity, and any other weight control programs or similar services or supplies. Thus, in the absence of discharging the responsibility, the insurance company could not have rejected the claim.

18. In view of the foregoing discussions, I find no reason to interfere with a detailed and well reasoned passed by the learned State Commission order dated 30.04.2019. Consequently Revision Petition No.1658 of 2019 is dismissed.

19. There shall be no order as to costs.

20. All pending Applications, if any, stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER