

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 291 OF 2022

(Against the Order dated 24/12/2021 in Complaint No. 71/2018 of the State Commission
Uttar Pradesh)

1. BHARTI AXA LIFE INSURANCE CO. LTD. & ANR.
UNIT NO. 601 & 602, 6TH FLOOR, RAHEJA TITANIUM OF
WESTERN EXPRESSWAY HIGHWAY, GOREGAON,
MUMBAI - 400063

2. BHARTI AXA LIFE INSURANCE CO. LTD.
A-30/2, SMART PALACE, GARH ROAD, RAMGARHI,
MEERUT CITY,
MEERUT - 250004,
U.P.

.....Appellant(s)

Versus

1. MADHU MISHRA & 3 ORS.
W/O LT SH. HEMANT MISHRA, R/O HOUSE NO. 290,
AURANG SHAHPUR DIGGI GARH ROAD, MEERUT CITY,
MEERUT - 250001,
U.P.

2. MS. SURBHI MISHRA
D/O LT SH. HEMANT MISHRA, R/O HOUSE NO. 290,
AURANG SHAHPUR DIGGI GARH ROAD, MEERUT CITY,
MEERUT - 250001,
U.P.

3. UTKARSH MISHRA
S/O LT SH. HEMANT MISHRA, R/O HOUSE NO. 290,
AURANG SHAHPUR DIGGI GARH ROAD, MEERUT CITY,
MEERUT - 250001,
U.P.

4. PNB HOUSING FINANCE LTD.
FIRST FLOOR, PINACLE TOWER VAISHALI CORNER,
GARH ROAD,
MEERUT - 250004,
U.P.

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT :

Dated : 02 September 2024

ORDER

For the Appellant

Mr Praveen Mahajan and Ms Vrinda,

Advocates

For Respondent nos.1 to 3 Mr R C Sharma, Mr Alok Sharma and

Mr Mukesh Kumar, Advocates

For Respondent no.4 Mr Rajat Manchand, Mr Rajesh Manchanda

Mr Mayank Nautiyal, Ms Somya Narula, Mr

Deepanshu Bharti and Ms Megha Gaur,

Advocates

ORDER

PER SUBHASH CHANDRA

1. This First Appeal under Section 19 of the Consumer Protection Act,1986 is directed against the order dated 24.12.2021 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow in Complaint no. 71 of 2018 allowing the complaint and directing the opposite parties 1 and 2 (including appellant herein) to repay the loan under the terms of the insurance policy within 2 months along with interest and directing opposite party 3 to provide a No Dues Certificate with regard to the loan and EMIs thereon.

2. We have heard the learned counsel for the parties and perused the records. The delay of 96 days in the filing of the appeal was considered in light of the application seeking condonation of the delay. For the reasons stated therein, the delay was condoned in the interest of justice.

3. The relevant facts of the case, in brief, are that the deceased husband of the respondent had obtained a mortgage home loan for Rs 35,58,263/- from respondent no. 4, Punjab National Bank (PNB) Housing Finance. In order to secure the same, a Bharti AXA Life Loan Secure and a Bharti Axa Life Group Accidental Death Benefit Rider, a Group Insurance Policy, was issued by the appellant in the name of Hemant Kumar Mishra, the late husband of respondent no.1. At the time of obtaining the Life Group Accidental Death Benefit insurance, a questionnaire requiring declaration of previous medical treatment or surgical operations and treatment for complaints of blood pressure, blood sugar, heart disease, kidney/urinary tract disease, cancer or any tumour, respiratory or neurological or liver disease etc., was filled up by the respondent's husband on 29.06.2016 and a declaration given

in the negative. Premium of Rs 1,29,288.75 was paid and the Policy was issued on 31.08.2016 for a term of 84 months. The Life Assured expired on 15.12.2016. The claim under the Policy was repudiated on 10.03.2017 on the basis of an enquiry conducted by the appellant through an investigative agency, 'Probe India' which revealed that the deceased life assured (DLA) had been admitted in May 2015 in Metro Hospital and Heart Institute (hospital) for hypertension, coronary heart disease, acute coronary syndrome, inferior wall myocardial infarction and cerebra-vascular accident and that in view of the incorrect disclosure of these diseases in the proposal form, the claim of insurance could not be considered. Respondents approached the State Commission through CC 71 of 2018 which was upheld, on contest.

4. This order is impugned before us *inter alia* on the grounds that (i) the pre-issuance medical documents put on record by the appellant does not prove that the treatment at Metro Hospital from 16.05.2015 to 18.05.2015 was related to the ailments mentioned in the repudiation letter although prescriptions dated 15.05.2015, 16.05.2015, 17.05.2015 and 18.05.2015 and ECG report, clinical and other reports indicated that the DLA was diagnosed with coronary artery disease, ACS and IWMI; (ii) the State Commission failed to appreciate merely on the ground of absence of medical certificate certifying the medical ailments ignoring those documents which indicate the medical treatment history of the DLA;

(iii) the State Commission erred in relying upon the judgment of this Commission in **Bajaj Allianz Life Insurance Co. Ltd. & 2 Ors. Vs. Kandarua Gangadhara Rao**, 1V (2021) CPJ 244 (NC) as it had been held in **Life Insurance Corporation of India Vs. Krishan Chander Sharma**, II (2007) CPJ 51 (NC) that it was not mandatory to produce original documents or affidavit of treating doctors; (iv) the treatment of the DLA in Metro Heart Institute was evidenced by prescriptions and other reports indicating a pre-existing disease that was deliberately suppressed at the time of obtaining the Policy; (v) the cause of death had mentioned 'Cardio Respiratory Arrest' as the immediate cause of death and 'CA Oesophagus' as the secondary cause and the former had a direct nexus with the diseases for which the DLA was hospitalized in May 2015; (vi) the DLA had violated the principle of *uberrimae fidei* or utmost good faith and not disclosed full details at the time of obtaining the Policy and that this suppression of material facts made the Policy liable to be rejected as held by the Hon'ble Supreme Court in **Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.**, (2009) 8 SCC 316 and **Reliance Life Insurance Co. Ltd. & Ors. Vs. Rekhaven Nareshbhai Rathod**, Civil Appeal No. 4261 of 2019 in SLP (C) 14312 of 2015 for which reason the State Commission's order was perverse; (vii) the State Commission had failed to appreciate that the guidelines of the insurance company govern the decision to accept proposals as held by this Commission in **ICICI Prudential Life Insurance Co. Ltd. Vs. Lalitha Jain** apart from being a violation of Section 45 of the Insurance Act, 1938 being fraudulent; (viii) the State Commission ignored the settled law in **PC Chacko & Anr. Vs. Chairman, LIC of India & Ors.**, AIR 2008 SC 424 that a person making a wrong statement was estopped from pleading that it made no material change; and (ix) the appellant had acted strictly in terms of the terms and conditions of the policy and as held by the Hon'ble Supreme Court in **Ravneet Singh Bagga Vs. KLM Royal Dutch Airlines**, (2000) 1 SCC 66, the appellant was not liable for deficiency in service. The case of the appellant, in sum, is that the DLA deliberately suppressed material evidence of his pre-existing illness while submitting the proposal for the Bharti Axa Life Group Accidental Death Benefit Rider and was therefore not eligible for any

claim under it since investigation into the cause of death, as was essential in view of the DLA's demise within 4 months of the Policy, proved that he had been treated for various heart related illnesses in May 2015 which the State Commission erred in not appreciating despite evidence being placed before it.

5. *Per contra*, it was contended on part of the respondents that the appellants had failed to prove that the DLA was treated in 2015 at the Metro Hospital and Heart Institute for the same disease that was alleged in the letter of repudiation of the claim dated 10.03.2017. It was also contended that the impugned order had clearly and rightly observed that the appellants failed to bring on record any document of the concerned doctor at Metro Hospital regarding the DLA's treatment for the alleged disease. It was argued that that the xeroxed copies of documents produced did not relate to the illness stated in the repudiation letter and that the State Commission had rightly relied upon ***Kandul Gangadhar Rao*** (supra) in support of its decision and held that the ratio in ***Sunita Vs. HDFC Standard Life Co. Ltd.***, (2021) CPJ 287 NC did not apply to the present case. It was denied that the DLA had committed a fraud or misrepresented to the appellants and respondent no. 4 since the Policy was issued on 31.08.2016 after due verification of documents and satisfaction regarding his health. The learned counsel for the respondent argued that the appeal was liable to fail on the ground that the certificate of the treating doctor brought on record by the appellants clearly indicated that the DLA was not suffering from diabetes, hypertension, angina, IHD/CAD, lung disease or any other disease except cancer. It was also argued that the investigation report by "Probe India" indicated that the DLA expired due to cancer on 15.12.2016, some neighbours mentioned that he was suffering from cancer for which he was under treatment at Anand Hospital, Meerut and the Discharge Summary dated 02.12.2016 from BLK Super Speciality Hospital mentioned "*CA oesophagus with bilateral malignant pleural and the effusion*" and the cause of death was mentioned as "*CA oesophagus, chest infection and cardio respiratory arrest*". It was therefore the case of the respondent that the cause of death was cancer and not the diseases for which the claim was repudiated and hence the appeal was not maintainable and liable to be dismissed.

6. Reliance was placed by the respondents on the following judgments:

(i) ***Om Prakash Ahuja Vs. Reliance General Insurance Co. Ltd. etc.***, Civil Appeal No.2769-2770/2023 decided on 04.07.2023 wherein the Hon'ble Supreme Court held that once the insurance company has accepted that concealment of disease at the time of purchasing the policy was not material as it was not related to the disease that caused death it cannot not alter/refuse further claims or renewal of insurance policy on the same ground.

(ii) ***Sulbha Prakash Motegaonkar Vs. Life Insurance Corporation***, Civil Appeal No. 8245/2015 decided on 05.10.2015 wherein the Hon'ble Supreme Court laid down that since the alleged concealment was not of such a nature as would disentitle the deceased for getting his life insurance the repudiation of the claim was incorrect and not justified.

(iii) ***Manmohan Nanda Vs. United India Assurance Co. Ltd. & Anr.***, Civil Appeal No. 8386/2015 decided on 06.12.2021 wherein the Hon'ble Supreme Court held that the object of seeking a mediclaim policy was to seek indemnification for sudden illness or sickness which is not expected or imminent or may occur overseas. If the insured suffers a sudden sickness or ailment which is not expressly excluded under the policy, a duty is cast on the insurer to indemnify the appellant for the expenses incurred there under and repudiation of the policy was illegal.

(iv) ***Life Insurance Corporation of India Vs. Mamta Sipani***, Revision Petition No. 1033/2008 decided on 02.03.2022 wherein the National Commission held that breach of contract could not be concluded if there was no evidence on record to show that the insured had knowledge that he was suffering from a fatal disease prior to taking the policy and there was inadequate evidence to support that information regarding his medical condition had been deliberately suppressed by the insured.

(v) ***Life Insurance Corporation of India Vs. Sunita & Ors.***, in RP no. 54 of 2018 decided on 12.03.2020 wherein the National Commission held that suppression of information regarding any pre-existing disease, if it has not resulted in death or has no connection to cause of death, was not material.

7. From the record it is apparent that the DLA Hemant Kumar Mishra had obtained home loan from respondent no. 4, to secure which he obtained two Policies, viz., (a) Bharti AXA Life Loan Secure and (b) Bharti Axa Life Group Accidental Death Benefit Rider, a Group Insurance Policy. He expired within 4 months of the policies on 15.12.2016. The cause of death as per the hospital was cancer of the oesophagus and chest infection and cardiorespiratory arrest. It is also evident that the claim under the Policy was repudiated by the appellant on 10.03.2017 stating as under:

This is with reference to your "Death Claim Intimation" dated 07.02.2017 received by Bharti Axa life Insurance Company Limited ("Company") on 07.02.2017 in regard to the above member.

We have carefully considered the claim with respect to the coverage of Mr Hemant Kumar Mishra (the "Member") who was enrolled under the policy on 31.08.2016 on the basis of a "Self Filled Questionnaire" furnished by him on 29.08.2016 as part of his enrolment form for joining the Bharti Axa Life Loan Secure.

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However, as per the documents received by the Company at the claims stage, it has been observed that the member was hospitalised in May 2015, diagnosed to be suffering from Hypertension, Coronary Artery Disease, Acute Coronary Syndrome, IWMI (Inferior Wall Myocardial Infarction), Cerebro-Vascular Accident and had taken treatment for the same. This history is prior to his enrolment under the policy and that the Self Filled Questionnaire submitted by him has been found to be false.

In view of the above, it is obvious that the member has given false and misleading information to the Company. Had the member replied truthfully and correctly while signing the proposal (SFQ) for insurance and had he informed the Company about his health status, the Company would not have enrolled the member under the said policy at all. The Company has been misled to enrol the member by suppressing material facts and hence we are hereby repudiating our liability under the scheme as regards the coverage of Mrs Manju Mishra.

[Emphasis added]

8. It is the case of the appellant that the fact of the DLA's pre-existing diseases was deliberate and that this fact came to light during its investigation into the claim, based upon settled law the Policy was obtained in violation of the principle of *uberrima fidei* and through suppression of material facts and was therefore liable to be considered to have been obtained through misrepresentation and was accordingly liable to be repudiated as per the Policy's terms and conditions. The State Commission's order to the contrary was therefore challenged and prayed to be set aside. The respondent, on the other hand, would have us believe that the DLA did not suffer from any pre-existing disease and that there had been no suppression of material evidence at the time of filling in the proposal form. It is contended by the respondent that the material relied upon by the appellant to conclude that the DLA suffered from heart related illnesses at the stage of obtaining the Policy were unproven documents and could not be relied upon as they were neither originals nor supported by any affidavit of the Doctor. It was also contended that the cause of death of the DLA was cancer of the oesophagus and cardio respiratory arrest which was not a pre-existing disease even as per the documents relied upon by the appellant and therefore it was argued that the repudiation was perverse and illegal. Reliance has been placed on various case laws in support of its contentions.

9. The State Commission in the impugned order has relied on *Sunita* (supra) and arrived at the following finding:

14. In view of the above decision of the Hon'ble National Commission, it is clear that the benefit of the above decision cannot be availed by the Opposite party no. 1 and 2 in this case, because the photocopies which were taken by the treatment of the insured deceased from Metro Hospital and Heart Institute dated 16.05.2015 to

18.05.2015 are not in themselves sufficient to establish that the diseases given in the repudiation letter are proved. Therefore, from observation there is no clear mention of these diseases. Therefore, in the absence of any medical certificate or clearly mentioned facts, it cannot be assumed that the deceased was suffering from the above diseases before getting the insurance. Therefore, the concealment of diseases in the insurance or violation of the conditions of insurance by him cannot be considered proved in the absence of sufficient evidence. In such a situation, it is not proper to deny the claim of insurance in respect of the death of the deceased.

15. It is clear from the above discussion that in the present case, the rejection of the claim of insurance by the opposite parties No. 1 and 2 cannot be considered proper. Therefore, it is appropriate to reject the repudiation letter, and it is also appropriate to give the amount of insurance taken from the opposite parties 1 and 2 to the complainants, this insurance was in relation to the repayment of the loan. Therefore, it is appropriate to direct the Opposite party No. 1 and 2 that while accepting the claim of insurance, they should pay the amount of insurance, the amount of loan and interest remaining after the death of the insured and after the payment is made, the opposite party no.3 to issue No Dues Certificate in favour of the complainants. Accordingly, the case is acceptable.

10. Based on the record and the submissions made, it is evident that the policies of insurance were obtained by the DLA to secure the home loan from respondent no. 4, PNG Housing Finance. The policy for life cover including accidental death was under a Group Insurance scheme for which a single premium was paid. It is a fact that the disclosure by the DLA in the questionnaire did not disclose any pre-existing disease. As the demise of the DLA occurred within 2 years of the Policy the matter was investigated by the appellant. It has relied upon xeroxed copies of admission and treatment papers of the DLA in Metro Heart Institute which indicates certain heart related diseases for which the DLA was allegedly admitted there from 15-18.05.2015 and it is argued that the fact of these pre-existing diseases though in the knowledge of the DLA, was deliberately not disclosed at the time of the policy proposal. Respondent's case is that this evidence is not admissible as the documents are only xeroxed copies and are not supported by affidavits. The State Commission has come to the same finding and held that the DLA cannot be held to have misrepresented or suppressed material information at the time of the policy proposal. Therefore it has held that the repudiation on the grounds of suppression of information regarding pre-existing diseases, which renders the Policy void, cannot be accepted. It has also, therefore, held that the cause of death as per the Death Certificate should have been considered by the appellant and the claim allowed since the DLA expired due to cancer of the oesophagus leading to cardiorespiratory failure.

11. While in *Satwant Kaur Sandhu* (supra) it has been held by the Hon'ble Supreme Court that suppression of material information renders a policy of insurance liable to be rejected, in the instant case the appellant has not been able to establish that the DLA wilfully withheld material information. In the absence of admissible documentary evidence being brought on record by the appellant, the grounds of repudiation citing evidence of pre-existing diseases which are also not related to the cause of death cannot be sustained. The contention of the

appellant that there was suppression of material information has also been rightly held by the State Commission to be unsustainable. We therefore do not find any reason that warrants interference to disturb the finding of the State Commission.

12. In view of the discussion above, the appeal is found to lack merits and is accordingly disallowed. The order of the State Commission is upheld and affirmed. Pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**