

**IN THE CONSUMER DISPUTES REDRESSAL FORUM
KANNUR**

**Complaint Case No. CC/51/2023
(Date of Filing : 09 Feb 2023)**

1. Ajesh Kumar.V.V

Vrindavanam,Kadannappally,Near Mangalassery
Temple,P.O.Kadannappally,Kannur-670501.

.....Complainant(s)

Versus

1. Adithya Birla Health Insurance Company Ltd.,
9th Floor,One Indiabulls Centre,Tower 1 ,Jupiters Mills
Compound,SB Marg,Elphinstone Road,Mumbai,Maharashtra-
400013.

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. RAVI SUSHA PRESIDENT
HON'BLE MRS. Moly Kutty Mathew MEMBER
HON'BLE MR. Sajeesh. K.P MEMBER**

PRESENT:

Dated : 14 Jun 2024

Final Order / Judgement

SMT.MOLYKUTTY MATHEW : MEMBER

This is a complaint filed by the complainant U/S 35 of the Consumer Protection Act 2019 for an order directing the OP to pay the surgery amount of Rs.1,65,000/- to the complainant along with Rs.1,50,000/- as compensation for mental agony caused to the complainant and cost of the proceedings for the deficiency of service and unfair trade practice on the part of OP.

The brief of the complaint :

The complainant is a retired Subedar who worked with the Indian Army Force for over 20 years. He retired from the service in February 2020. The complainant had taken the medical insurance from the OP, Active Health platinum on 5/8/2021 and he has paid the premium of Rs.17,112/-. The policy covers the medical needs of the whole family. In the month of May 2022 the complainant had a bleeding and he consulted Dr.Sabu at MIMS hospital at Kannur. Complainant was prescribed some medicines by Dr.Sabu and was advised to take the medication for one month. Then the complainant was back to normal and there was no bleeding. Later in September 2022 he had a severe stomach ache and he was treated at Payyanur Anamaya hospital by Dr.Sooraj. As per his advice the complainant was sent to MIMS Hospital and he did undergo colonoscopy. As per the result in the colonoscopy the complainant was referred to MVR Cancer Institute,Kozhikode for surgery. The complainant was admitted to MVR Cancer centre on 18/10/2022 and surgery was done on 19/10/2022 and discharged on 25/10/2022. The total medical expenses incurred for the complainant for the surgery was Rs.1,65,000/-. Since the complainant was insured with the OP, he had informed the OP regarding the bill to be paid and the amount to be settled cash less. The representative of OP came to the hospital and informed that the bill will be cleared by the OP company within a day, since the following day of

proposed discharge day was Sunday. So the complainant waited for one more day at the hospital hoping that his bill will be cleared on Monday. But the claim was not honoured by the OP on that day. So the complainant had to pay the bill himself so as to get discharged from the hospital. On 25/10/2022 the complainant received a mail from the OP stating that the claim by the complainant is denied stating the reason as “on scrutiny of the documents it has been observed that as per the details patient having similar type of complaints since 10 years back which is pre-existing to policy hence cashless denied under pre-existing clause and hence we are unable to approve the pre authorisation report. So the act of OP the complainant caused mental agony and financial loss. So there is deficiency in service and unfair trade practice on the part of OP. Hence the complaint.

After receiving notice OP appeared before the commission and filed his written version. He contended that at the time of purchasing the Active health Family floater health insurance policy from OP he informed the complainant that failure to disclose any material fact such as persisting medical issues related to the complainant would make the entire policy void and the OP will not be liable to make good the loss caused to the complainant. In the policy Sec.F ”Duty of disclosure and fraudulent claims in the event of untrue or incorrect or in complete statements, misrepresentation or non-disclosure of any material particulars in the proposal form, personal statement, declaration, claim form, medical history on the claim form and connected documents” The OP may at his sole discretion cancel the policy and the premium paid shall be forfeited. On October 2022 the complainant filed a claim alleging that he was admitted in MVR Cancer Institute, Kozhikode and claimed the expenses for surgery. The complainant alleged that he was 1st diagnosed with the disease only on 6/10/2022. No proper document with respect to diagnosis was provided to understand the nature of disease and treatment of complainant. The complainant has been having similar type of complaints since 10 years before filing the claim in October 2022. The suppression of material facts and failure to disclose the relevant documents by the complainant will render the policy void. The OP submits that the rejection of claim is according to the terms and condition of policy. So there is no deficiency in service and unfair trade practice on the part of OP and the complaint may be dismissed.

On the basis of the rival contentions by the pleadings the following issues were framed for consideration.

1. Whether there is any deficiency of service on the part of the opposite party?
2. Whether the complainant is entitled for any relief?
3. Relief and cost.

The evidence consists of the oral testimony of PW1 and Exts. A1 to A13 were marked. On OP's side Exts.B1 to B6 were marked. Both sides filed argument notes and produced some Hon'ble Supreme Court's decisions also.

Issue No.1:

The Complainant adduced evidence before the commission by submitting his chief affidavit in lieu of his chief examination to the tune of the pleadings in the complaint and denying the contentions in the version. The complainant was cross examined as PW1 by the OP. He relied upon Exts.A1 to A13 documents. According to the complainant as per Ext.A1 policy he availed a family floater health insurance policy covering the period from 5/8/2022 to

4/8/2023. Ext. A2 is the copy of repudiation letter. Ext A3 is the letter issued by OP to the complainant, Ext.A4 is the prescription issued by Dr.Sabu.K.G, Ext.A5 is the Report of department of radiology of Anamaya Medical institute,Payyanur.Ext.A6 is the - Prescription of Dr.Sabu.K.G, Ext.A7 is Sigmordoscopy report, Ext A8 is Histopathology report. Ext. A9 is the CT Throx and Abdoman, Ext.A10 is Summary bill, Ext.A11 is Discharge summary, Ext.A12 is Histopathology report from MVR Cancer Centre and Ext.A13 is Medical report. On 27/5/2022 the complainant had a bleeding and he consulted Dr.Sabu MIMS hospital Kannur. The said Doctor prescribed some medicines and the complainant was advised to take medication for one month. In September 2022 the complainant had a severe stomach ache and he treated at Payyanur Anamaya Hospital by Dr.Sooraj who is a gastroelgologist and as per his advice he was sent to MIMS hospital and he had to undergo colonoscopy. As per the result the complainant was referred to MVR Cancer Institute, Kozhikode for surgery for carcinoma sigmoid. Then the complainant was admitted as IP to MVR Cancer centre on 18/10/2022 and surgery was done on 19/10/2022 and he was discharged on 25/10/2022. The total medical expenses incurred for the surgery was Rs.1,65,000/-. Since the OP denied the cashless benefit. In the evidence of PW1 who stated that Ext.B3 യിൽ history of similar complaint 10 years ago എന്ന് രേഖപ്പെടുത്തിയിട്ടുണ്ട്? ശരിയാണ്. In re-examination he clarified that "10

ഷംമുൻപുള്ളിവbleeding ന് പിന്നീട് മരുന്ന് കഴിക്കുകയോ ചികിത്സ എടുക്കുകയോ ചെയ്തിരുന്നോ? ഇല്ല . Moreover he produced Ext.A13 document to shows that at the time of retirement he retired in medical category shape 1, the category showing that he is in absolutely body fitness. The disease was diagnosed only on 6/10/2022 and the surgery was conducted on 19/10/2022 and he incurred Rs.1,39,421/- as the medical expenses shown in Ext.A10.

On OP's side Exts.B1 to B6 documents produced to substantiate his defense. The OP raised a contention that the complainant has suppressed the material facts pertaining to existence of pre-existing disease and its related symptoms for a period of 10 years. But no medical records shows that the complainant has pre-existing disease and not proved through a medical expert on OP's side . The proposal form is not produced before the commission also.

It is noted in (2009) 8 Hon'ble Supreme Court cases 316(before D.K Jain & R.M Lodha J J) Satwant Kumar Sandhu vs New India Assurance Co.Ltd Civil Appeal No,2776 of 2002. " Insurance-Health insurance- Mediclaim policy- nature of object of- obligation of insured to disclose true and full information sought in proposal form- extend of said disclosure necessary- " when information on a specific aspect is asked for in the proposal form, held the assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge- obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known-."

As per records the complainant's disease was diagnosed only on 6/10/2022 as per Ext.A8(histopathology report). The complainant undergone treatment from 18/10/2022 to 25/10/2022 to MVR Cancer centre, Kozhikode during the policy coverage period. So we are of the considered view that the OP is liable to pay the medical bills to the complainant. But the OP is failed to do so. So we hold that there is deficiency of service and unfair trade practice on the part of OP. Hence the issue No.1 is found in favour of the complainant and answered accordingly.

Issue No.2&3:

As discussed above the complainant is the policy holder of OP. The complainant is treated from 18/10/2022 to 25/10/2022 within the coverage period. So we hold that the OP is directly bound to redressal the grievance caused to the complainant. So the complainant is entitled to get the medical expenses from the OP. Therefore we hold that the OP is liable to pay the medical bill for Rs.1,39,421/- to the complainant along with Rs.25,000/- as compensation for mental agony caused to the complainant and Rs.10000/- as litigation cost. Thus the issue No.2&3 are also accordingly answered.

In the result the complaint is allowed in part directing the Opposite party to pay the medical expenses of Rs.1,39,421/- to the complainant along with Rs.25,000/- as compensation for mental agony caused to the complainant and Rs.10000/- as litigation cost within 30 days of receipt of this order. In default the amount of Rs.139,421/- carries 9% interest per annum from the date of order till realization. Failing which the complainant is at liberty to execute the order as per the provisions of Consumer Protection Act 2019.

Exts:

A1- copy of insurance policy

A2-Copy of repudiation letter

A3-letter issued by OP complainant

A4- prescription issued by Dr.Sabu.K.G,

A5- Report of department of radiology of Anamaya Medical institute,Payyanur.

A6- Prescription of Dr.Sabu.K.G

A7-Sigmordoscopy report

A8-Histopathology report

A9-CT Throx and Abdoman

A10- Summary bill

A11-Discharge summary

A12-Histopathology report from MVR Cancer Centre.

A13- Medical report

B1-prescription

B2-Ultra sound scan report

B3-prescription

B4-prescription

B5-Biospsy result

B6- A7

PW1-Ajesh Kumar.V.V- complainant

Sd/

PRESIDENT

Ravi Susha

eva

Sd/

MEMBER

Molykutty Mathew

Sd/

MEMBER

Sajeesh K.P

/Forwarded by Order/

ASSISTANT REGISTRAR

**[HON'BLE MRS. RAVI SUSHA]
PRESIDENT**

**[HON'BLE MRS. Moly Kutty Mathew]
MEMBER**

**[HON'BLE MR. Sajeesh. K.P]
MEMBER**