

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
MAHARASHTRA, MUMBAI**

FIRST APPEAL NO.A/19/12

**(Arisen out of Order dated 05/10/2018 passed by the Central
Mumbai District Commission in CC/15/282)**

ICICI Lombard General
Insurance Co. Ltd.
ICICI House, 414,
Veer Savarkar Marg,
Near Siddhi Vinayak Temple,
Prabhadevi,
Mumbai 400 025.
Through its
Authorised representative
Also office at-
2nd Floor, Office No.203,
Meher House,
No.15, Cawasji Patel Street,
Opp Akbarallys Furniture,
Fort,
Mumbai 400 001.

Appellant

Versus

Advocate Ameet V. Mehta
R/at B 704, 7th floor,
Royal Samrat,
S.V.Road,
Goregaon (W),
Mumbai 400 062.

Respondent

BEFORE:

**Mr. Justice S.P.Tavade, President
Smt. Poonam V. Maharshi, Member**

PRESENT:**For the****Appellant:** Advocate Dipika Prabhala**For the****Respondent:** Advocate Pratima Soundalkar**:- ORDER -:****Dated: 10th May, 2024****Per:- Hon'ble Mr. Justice S.P.Tavade, President**

1] Being aggrieved and dissatisfied with the Order dated 05/10/2018 passed by the District Consumer Disputes Redressal Commission, Central Mumbai District, in Complaint No. CC/15/282, the original Opponent has preferred this appeal. Parties to the appeal shall be called and referred to as per their status in the original complaint. The brief facts of the complaint can be summarized as under-

2] The Complainant is practicing Advocate residing in Mumbai. The Opponent is an Insurance Company incorporated under the provisions of the Companies Act, 1956, carrying on business of insurance with the IRDA. The Complainant had approached the Opponent for 'Health Protect Insurance Policy' covering interalia hospitalisation for himself, his wife and two daughters. The Opponent gave the proposal of the Terms and Conditions of the Policy to the Complainant. In pursuance thereof, the Opponent drew up Insurance Cover for the Complainant and his family for the period from 02/08/2014 to 01/08/2016. Accordingly, the Opponent issued 'Health Protect' Insurance Policy for the period of 2 years from 02/08/2014 to 01/08/2016 for the total sum

assured of Rs.3,60,000/- covering liabilities of the Complainant and his family members arising out of the health matters.

3] It was contended that the Complainant was diagnosed with Bilateral Inguinal Hernia on 16/02/2015 requiring urgent hospitalisation and surgery to cure the same. The Complainant was admitted in Kapadia Multi Speciality Hospital on 21/02/2015 after investigation. The Complainant had given prior intimation of Hospitalization to the Opponent on 19/02/2015. The Complainant underwent surgery of Bilateral Inguinal Hernia on 21/02/2015. The Complainant was discharged from the hospital on 22/02/2015. Accordingly, the Discharge Card was issued to the Complainant. The Complainant spent in all Rs.2,07,774/- towards the surgery and the hospitalization. It was contended that the complainant informed the Opponent regarding his operation and hospitalisation.

4] It was contended that, on 27/03/2015 the Complainant submitted Claim Form along with mandatory documents. But there was no response from the Opponent. Hence, the Complainant sent email dated 05/05/2015 which was replied by the Opponent. The Complainant was informed that his claim was partly allowed. It was informed to the Complainant that the Opponent had settled the claim for an amount of Rs.1,20,000/- and also issued cheque accordingly. It was contended that the Opponent has wrongly rejected the claim of the Complainant. It was contended that as per the Terms and Conditions of the Health Protect Insurance Policy it is clearly understood that such

Insurance Policy covers hospitalization which is expressly covered within the Insurance Policy. Complainant has further contended that at the time of providing the Insurance Policy, the Opponent had represented to the Complainant that the hospitalisation is covered under the ambit of policy, but neglected to mention the exceptions, if any. The Complainant further contended that the Opponent has denied the liability under the policy. It was contended that the Opponent has committed deficiency in service by rejecting the entire claim of the Complainant. Complainant had claimed balance amount of medical bill of Rs.87,774/- alongwith interest, compensation and costs.

5] Notice of the complaint was issued to the Opponent. Opponent appeared and filed written version denying the allegations mentioned in the complaint. The Opponent has admitted that it had issued Health Protect Insurance Policy covering himself, his wife and two daughters. It was contended that the Complainant had lodged claim for an amount of Rs.2,07,774/- alongwith mandatory documents. It was contended that the Opponent had allowed the claim of Complainant to the extent of Rs.1,20,000/- only as per Mandatory Extensions/ Endorsements under the Plan HC4 - Sub limits on medical expenses /illness /surgeries/ procedure contemplates that the maximum liability of the Opponent for all the Hernia related surgeries/ procedure was Rs.60,000/- only. It was contended that the Complainant's case was of Bilateral Hernia (occurring on both sides) Inguinal Hernia, the maximum liability of the opponent as per the policy was Rs.60,000/- + Rs.60,000/- = Rs.1,20,000/-

only. Accordingly, the said amount was paid to the Complainant but the Complainant has prayed excess amount which was rejected. It was contended that the claim of the Complainant was not maintainable because the Opponent had acted strictly in accordance with the Terms and Conditions of the Policy. It was contended that the demand raised by the Complainant was against the agreed Terms and Conditions of the contract under the policy. It was contended that the claim lodged by the Complainant, if paid, would amount to rewriting of Insurance Contract, which is not permissible. It was contended that the Insurance policy is a legal contract between the policy holder and the Insurance Company and the parties to the said contract are bound by the Terms and Conditions of the policy. 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. It was contended that words in insurance contract must be given paramount importance and interpreted as expressed without any addition, deletion or substitution. It was contended that, in the Health Proposal Form, it was filled by the Complainant in his own handwriting mention about clauses of exclusions. It was contended that, the Form also bears the signature of the Complainant and the Complainant cannot be believed that the Complainant was not aware of the exclusions. It was contended that the Opponent has rightly rejected the claim of the Complainant. Hence, it has prayed for dismissal of the complaint with costs.

6] The Complainant and the Opponent led their evidence. On going through the evidence on record, the District Commission allowed the complaint and directed the Opponent to pay sum of Rs.87,774/- along with interest @ 9% p.a. from the date of repudiation , until realisation to the Complainant. The District Commission also directed the Opponent pay sum of Rs.5000/- towards compensation and costs.

7] The said order is under challenge. Heard the learned Advocate for the Complainant and the Opponent. It is an admitted fact that the Complainant had taken 'Health Protect Insurance policy' from the Opponent by paying requisite premium. The opponent had given insurance coverage of Rs.3,60,000/-. The policy is produced on record. It is an admitted fact that on 16/02/2015, the Complainant was diagnosed with Bilateral Inguinal Hernia, requiring urgent hospitalisation and surgery. Information of the same was provided to the opponent on 19/02/2015. The Complainant was admitted on 21/02/2015 in Kapadia Multi Speciality Hospital. He was operated for Bilateral Inguinal Hernia and was discharge on 22/02/2015. The Hospital issued medical bill of Rs.2,07,774/-. Similarly, the Hospital also issued Discharge Card. It is admitted fact that the Complainant had submitted the Claim Form and mandatory documents on 27/03/2015 to the opponent. The Opponent had considered Claim Form and documents and allowed the claim of the Complainant to the extent of Rs.1,20,000/- and has rejected the claim of Rs.87,774/- on the ground that the mandatory extension under the policy Hernia related surgery was covered up to

Rs.60,000/- only. It is an admitted fact that the Complainant was paid Rs.1,20,000/- for Bilateral Inguinal Hernia. The Insurance company has repudiated the claim to the extent of Rs.87,774/- as there was CAP for reimbursement of hernia operation to the extent of Rs.60,000/- only. As the Complainant had Bilateral Inguinal Hernia, he was paid sum of Rs.1,20,000/-. It is important to see the Policy document, which is produced on record by the Complainant. Admittedly, the Policy was issued on 28/07/2014 for a period of two years from 02/08/2014 to 01/08/2016. The Complainant has produced on record letter dated 28th July, 2014 wherein there is a specific instruction to the Complainant that he should go through the details as furnished in the format and in the policy document and confirm that the same are in order and in case there are any discrepancies, the Complainant was requested to write back to the Opponent immediately on consumer support system or to contact helpline within 24 hours. The Opponent had also given caution to the Complainant that in absence of any communication within 15 days from the Complainant, on receipt of letter, the Opponent would take it that the Policy issued was in Order and as per the proposal. Admittedly, the Complainant did not raise any objection regarding the policy document within 15 days from 28th July, 2014 rather the Claim Form was submitted to the Opponent. The Opponent has produced on record the Terms and Conditions of the Policy Mandatory Extensions/ Endorsements under the Plan HC4 - Sub limits on medical expenses /illness /surgeries/ procedure contemplates that the maximum liability of the Opponent for all the Hernia related surgeries/ procedure was Rs.60,000/- only. It

was contended that the Complainant's case was of Bilateral Hernia (occurring on both sides) Inguinal Hernia, the maximum liability of the opponent as per the policy is Rs.60,000/- + Rs.60,000/- = Rs.1,20,000/- only. The Complainant has contended that the Opponent had not explained him that exception and clause extension HC4. But we are not inclined to accept the said contention because the 'Health Protect Policy' was given to the Complainant alongwith letter dated 28th July, 2014 wherein the Complainant's attention was invited to the policy document and the Complainant was asked to raise any objection doubt or discrepancy in the policy document within 15 days. But no objection was raised by the Complainant. Therefore, it can be said that the Complainant had accepted the Terms and Conditions of the Policy. Therefore, we are of the opinion that, the Complainant had agreed to the Terms and Conditions of the policy. Therefore, he cannot deny the same contending that the Terms and Conditions were not explained to him by the Opponent.

8] The learned Advocate for the Complainant has relied on the case laws.

Jacob Punnen & Anr. Vs. United India Insurance Co. Ltd. (2022) 3 Supreme Court Cases 655, wherein the **Hon'ble Supreme Court** has held that the '*administrative guidelines of the Insurer for renewal of the existing policy and expressed that there was no consensus ad idem on the introduction of the cap on the coverage by the Insurer because the new term was*

introduced unilaterally about which the Appellants were uninformed.'

The above ratio is not applicable to the facts of the present case as there was no new Term introduced unilaterally by the Opponent in the policy document.

The Complainant has also relied upon the ratio in the case of '**United India Insurance Co. Ltd. v. MKJ**' the Hon'ble Supreme Court held that *reliance on the importance of principle of uberrima fide (duty of utmost good faith) and its application to the Insurer was highlighted in the following terms: 'It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from nondisclosure of the facts which the parties know.*

The above ratio is not applicable to the facts of the present case because the Complainant had filled up the Form for the policy. Thereafter, policy was issued to him and he was asked to confirm the policy document. The Complainant did not raise any objection for the policy document or the contents therein. Therefore, it cannot be said that there was non disclosure of facts of policy to the complainant.

The Complainant has also relied upon the ratio in the case of '**Religare Health Ins. Co. Ltd. vs. Harwant Singh and Anr.**' decided by the State Consumer Disputes Redressal Forum, Punjab, Chandigarh, wherein it is observed that, '*normally, the insurance policy is a contract of adhesion in which other party is left with hardly any bargaining power as compared to the insurer. Insurance contracts are standard form contracts and are drafted by the insurance company and as such, insurance company is at higher footing than the insured. The benefit of such clause, as exclusion clause, would go to the insured unless the same is explained in clear terms by the insurer. In such circumstances, the tribunal would be more oriented towards the interpretation which goes against the party who has inserted/drafted the disputed clause in the agreement/contract. The adjudicating authority is required to look into whether the intention of the party is to exclude or limit liability has been appropriately explained to the other party or not.*

9] In the present case, the Complainant was provided the Insurance Policy alongwith the Terms and Conditions. It was incumbent upon the Complainant to verify the terms and conditions of the policy. The Insurance Company had issued letter to the Complainant and asked to explain any discrepancy in the policy document. The Complainant did not respond to the said letter dated 28/07/2014. Therefore, it cannot be said that the Extension clause HC4, were not explained to the complainant.

Therefore, the ratio relied upon by the complainant is not applicable to the facts of the present case.

10] On the otherhand, the learned Advocate for the Opponent has relied upon the ratio laid down by the Hon'ble Apex Court in the case of ***The Oriental Insurance Co. Ltd. vs. Sony Cheriyan'*** ***reported in (1999) 6 SCC 451***, wherein it was held that,

“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.”

The Opponent has also relied upon the ratio in the case of ***General Assurance Society Ltd. vs. Chandumull Jain and anr., reported in (1966) 3 SCR 500***, wherein it has been observed that-

“In interpreting documents relating to a contract of insurance, the duty of the 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. The application as such, merits dismissal of this score alone.”

11] In the present case the Complainant was provided insurance policy along with terms and conditions. It was incumbent upon the Complainant to verify the terms and conditions of the policy. The Insurance company had issued letter to the complainant and asked to explain any discrepancy in the policy document. But the Complainant did not respond to the said letter. Therefore, it cannot be said that Extension clause HC4 in the policy were not explained to the Complainant.

12] In view of the above case laws cited supra, it can be said that the insurance policy is a contract between the insurer and insured. Therefore, the Court has no right to rewrite the terms and conditions of the policy. Similarly, the Court has no right to make new contract. In the present case, the Complainant had taken 'Health Protect Policy'. He was given the terms and conditions of the policy, which he had read. The extension clause is mentioned, which has cap of Rs.60,000/- for reimbursement of medical expenses for surgery or treatment of hernia. Accordingly, the Opponent has paid the amount to the complainant and therefore the Complainant is not entitled for any amount beyond the amount mentioned as per the terms and conditions of the policy.

13] The District Commission has simply mentioned that the value of the Policy was Rs.3,60,000/- and premium was paid by the Complainant. Therefore, the Opponent was liable to pay the entire amount of medical expenses to the Complainant and directed to reimburse Rs.87,774/- to the Complainant. It was also observed by the District Commission that the insurance cover was

quite sufficient to cover the Hospital bill. But the said findings are not proper and correct. The District Commission has not considered the terms and conditions of the policy namely extension HC4, which has given the details of amount entitled for reimbursement for each disease. We have already observed that as per Extension HC4 Sub limits on medical expenses /illness /surgeries/ procedure contemplates that the maximum liability of the Opponent for all the Hernia related surgeries/ procedure was Rs.60,000/- only. Complainant's case was of Bilateral Hernia (occurring on both sides) Inguinal Hernia, the maximum liability of the opponent as per the policy is Rs.60,000/- + Rs.60,000/- = Rs.1,20,000/- only. Therefore, the Opponent had allowed the claim of Rs.1,20,000/- to the Complainant, which was proper and correct. Therefore, the findings of the District Commission are required to be set aside. With this, we proceed to pass the following order-

:- ORDER :-

- 1] The Appeal is allowed.
- 2] The impugned Order dated 05/10/2018 passed by the District Commission, Central Mumbai District in Complaint No. CC/15/282 is hereby set aside.
- 3] The complaint filed by the Complainant/ Respondent bearing No.CC/15/282 before the District Commission, Central Mumbai District is hereby dismissed.

- 4] The Appellant/ Opponent is titled for the refund of amount, if any, deposited by it with the District Commission at the time of filing of Appeal, alongwith interest accrued thereon.
- 5] No order as to costs of appeal.
- 6] Copy of this order be supplied to both the parties free of costs.

[Justice S.P.Tavade]
President

[Poonam V. Maharshi]
Member

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