

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 614 OF 2020

(Against the Order dated 05/08/2020 in Complaint No. 114/2015 of the State Commission
Gujarat)

1. BAJAJ ALLIANZ LIFE INSURANCE CO. LTD. & 2 ORS.
GE PLAZA AIRPORT ROAD YERWADA
PUNE 411 006

.....Appellant(s)

Versus

1. BHARTI MAHAVEER JAIN
W/O. MAHAVEER PRASAD JAIN, 32, BALAJI TOWN SHIP,
OPP. TIRUPATI BALAJI TEMPLE, SILVASA ,
VALSAD
GUJARAT 396230

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. AMOL CHITALE AND MS. SHWETA SINGH
PARIHAR, ADVOCATE

FOR THE RESPONDENT : MR. RISHABH KAPUR, ADVOCATE

Dated : 02 April 2024

ORDER

PER SUBHASH CHANDRA

1. The challenge in this appeal under the Consumer Protection Act, 1986 (in short, the 'Act') is to order dated 05.08.2020 of the State Disputes Redressal Commission, Gujarat, Ahmedabad (in short, the 'State Commission') in Complaint No. 114 of 2020 allowing the complaint.
2. Briefly put, the relevant facts of the case are that the respondent/complainant availed two home loans for ₹28,95,000/- and ₹48,60,000/- respectively as co-borrower with her husband from the Appellant Finance Company. As an additional feature, he availed an insurance policy on 08.10.2013 under a scheme in which the Appellant Finance Company was the Master Policy Holder of a Group Master Policy of the Appellant 1/insurance company valid till 20.06.2016. A unique Certificate of Insurance (COI) was allotted and the respondent was enrolled under the Group Insurance Scheme with date of risk being 21.12.2013 for a sum assured of ₹71,49,174/-. On 20.03.2014 respondent/complainant informed the appellant/insurance company of the respondent's critical illness of carcinoma of the right breast for which she was hospitalized on 15.03.2014. The claim was, however, rejected by the appellant under the policy terms which specifically excluded, under Clause 15(iii)(a) of the Master Policy "*any critical illness which existed at or occurred within 6 months of the entry date or the date of revival*". The Claim Review Committee also rejected

the critical illness claim. Respondent then approached the State Commission in CC 114 of 2020 praying that the appellants be directed to pay the sum assured of ₹71,49,174/- with 12% p.a. interest from 15.03.2014 till realization with ₹10 lakhs as compensation for mental agony and harassment and cost of ₹2 lakhs and interim relief of stopping monthly instalments of loans being debited through ECS and any other further relief deemed just and proper in the facts and circumstances of the case. The complaint was allowed on contest with directions to appellant no. 2 (Bajaj Finance Ltd.) to refund ₹65,03,832/- deposited as loan instalments from date of deposit with interest @ 9% within 30 days and appellants 1 and 3 (Bajaj Allianz Life Insurance Co. Ltd.) to reimburse ₹65,03,832/- with 9% interest to appellant no. 2 (Bajaj Finance Ltd.); appellants 1 and 3 to pay ₹3,07,604/- towards medical expenses to the respondent/complainant with ₹25,000/- for mental agony and ₹15,000/- towards costs. This order is impugned before us.

3. We have heard the learned counsel for the parties and perused the record.

4. Appellant contended that the State Commission erred in not appreciating that a contract has to be interpreted as per the terms and conditions of the contract. Reliance was placed on the judgments of the Hon'ble Supreme Court in **General Assurance Society Limited Vs. Chandumull Jain & Anr.**, AIR 1966 SC 1644 which held 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...* " and **The Oriental Insurance Co. Ltd. Vs. Sony Cherian**, (1999) 6 SCC 451 wherein it was laid down 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.* " It was contended that the policy had a 15-day Free Look Period and as no request for cancellation of the COI was received, it stood confirmed. It was also contended that the State Commission erred in appreciating the terms and conditions of the COI read with the Master Policy in question, under which the claim was rightly rejected for the reason that under Clause 15(iii)(a) of the Master Policy, critical illnesses were excluded within 180 days from the date of risk. It is therefore argued that the claim was not admissible under the terms of the policy and had been rightly rejected.

5. *Per contra*, the respondent argued that the Master Policy that contained the terms and conditions of the risk covered was not provided to the respondent and the exclusion clause relied upon by the appellant insurance company was therefore not in the knowledge of the respondent. As a result, the Guidelines, Rules and Regulations of the IRDA were violated and the appellant as the insurer, was therefore not entitled to take benefit of the exclusion clause that a critical illness claim was subject to a waiting period of 180 days from the date of the risk. It was contended that the condition regarding the exclusion of the benefit of critical illness was produced before the State Commission for the first time as part of the Written Statement filed. Since carcinoma of the right breast constituted a critical illness, the sum assured of ₹71,49,714/- was payable by the appellant and after adjustment of the loan account, the balance was payable to the respondent. It was contended that the insurance company had erred in not releasing the insurance amount as a result of which the respondent had to pay 72 loan instalments amounting to ₹65,03,832/-. It was argued that the repudiation

of the respondent's claim constituted deficiency in service and unfair trade practice for which the respondent was entitled to the relief awarded by the State Commission.

6. Reliance was placed on the judgement of the Hon'ble Supreme Court in *Bharat Watch Company Vs. National Insurance Company*, (2019) 6 SCC 212 in Civil Appeal No. 3912 of 2019 decided on 12.04.2019 and *Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd.*, (2000) 2 SCC 734 in Civil Appeal No. 6895 of 1997 decided on 22.02.2000. It was contended that the Hon'ble Supreme Court had laid down that it was the duty of the parties to disclose the facts known to them and in the absence of communication of the exclusion clause to the insured the insurer could not claim the benefit of that clause.

7. It is the contention of the respondent that appellant was not authorized to issue a certificate of insurance under the Master Insurance Policy as the said Master Policy already stood withdrawn on 08.10.2013 as per the list of products of appellant no. 1/insurance company with IRDA. According to the respondent, the so-called Master Policy dated 21.10.2015 issued to Bajaj Finance Ltd. had no legal validity as it was withdrawn before the Certificate of Insurance was issued and that it was the Certificate of Insurance that constituted the real contract between the parties. It was submitted that as there was no condition of a waiting period as an exclusion clause, the claim had been rejected unjustly. Appellant no. 1 was stated to have been penalized ₹3.10 crores for violation of IRDA Regulations on 21.08.2013. Respondent submitted that appellant no. 1 had acted in violation of guidelines/circulars of IRDA under Section 34 of the Insurance Act, 1938 dated 14.07.2005 and 16.10.2002. It was further submitted that appellants had issued notices under Section 138 of the Negotiable Instruments Act and Section 25 of the Payment and Settlement Act, 2007 to exercise coercion on the respondent. It was prayed that the impugned order be upheld.

8. From the record it is manifest that the issues of the validity of the insurance scheme and of authority to issue the same raised by the respondent were not part of the pleadings before the State Commission. The moot issue in this case is whether the treatment of critical illness of carcinoma was covered under the Certificate of Insurance issued as an add-on to the loan availed under the Master Policy obtained by appellant no. 3 (Bajaj Finance Ltd.) from appellant no. 1 (Bajaj Allianz Insurance Co. Ltd.) and whether the rejection of the claim constituted deficiency in service.

9. The rejection of the claim by the appellant no. 1 insurance company is on the ground that the illness occurred within 6 months of the policy which as per the COI was excluded from the ambit of the policy. The contention of the appellant is that the policy exclusion precluded the admission of claims for critical illnesses during the first six months of the COI and therefore the impugned order erred in allowing the claim. The State Commission held that although, the terms and conditions of the Accelerated Critical Illness Claim was subject to certain period of 180 days from the date of risk under the Exclusion Clause, in view of the fact that the said terms and conditions were neither furnished to the Respondent nor made aware thereof which was against the guidelines, Rules and Regulations of IRDA.

Consequently, the terms and conditions of Exclusion Clause of the policy were not binding on the Respondent. It was, therefore, held that the Appellants No.1 and 3 Bajaj Allianz Life Insurance Co. Ltd. were duty bound to pay an amount equal to sum insured before maturity date. As per the schedule of insurance for which the members are assured and the

membership of member shall be terminated from the date of 15.03.2014, on diagnosis of critical illness and liable for the payment of the loan accounts under the certificate of insurance but unfortunately, the opponent No. 01 and 03 failed to do so as a result, the complainant had paid total 72 loan installments in both the loan accounts, amounting to ₹65,03,832/-. It is contended that as per terms of the Certificate of Insurance Policy on record, the complainant is entitled to get refund of the said paid amount of loan installments from the opponent No. 02- Bajaj Finance Ltd. with 9% interest. Whereas opponent No. 01 and 03 - Bajaj Allianz Life Insurance Co. Ltd. is held liable to reimburse the said amount to the opponent No. 02, Bajaj Finance Ltd. under the schedule of insurance policy and also held liable for the remaining outstanding dues amount of installment under the terms of the insurance scheme. The sum insured under the certificate of insurance is ₹71,49,714/-. In such facts of the case after adjustment of refundable amount, any balance amount found remains, shall be payable to the Complainant. It was held that the Insurance Company had not settled the claim of the Respondent and hence, loan instalment amount with interest had continued to be paid to the Appellant No.2 Bajaj Finance Limited. The repudiation of the claim was, therefore, held to be a deficiency in service and unfair trade practice on the part of the Appellants No.1 & 3 and therefore, the Complaint allowed with interest and costs against them.

10. The contention of the Appellant that the contract of insurance needs to be read “as is” without interpreting the language of the same since courts are precluded from doing so in terms of *Chandumull Jain (supra)* and *Sony Cherian (supra)* has been considered. The contention of the Respondent is that in terms of *Bharat Watch Company (supra)* and *Modern Insulators Ltd. (supra)*, the non-disclosure of the terms and conditions of the policy constitute a deficiency in service. In that the Respondent who had availed the insurance policy through ACOI under the master policy obtained by the Appellant No.3 has also been considered. The contention of the Appellant that the claim of the Respondent could not be considered since it was covered under an Exclusion Clause of the insurance policy is required to be considered under the facts and circumstances of this case. It has not been denied by the Appellant that the terms and conditions of the policy had been conveyed to the Respondent. In such a situation the Respondent was justified in seeking a claim under the Critical Illness Clause since it was not made aware that such a claim could not be preferred within six months of the date of risk. It is not the Appellant’s case that the illness itself was a pre-existing illness. The interpretation of a contract in the language in which it is drafted between the parties as held by the Hon’ble Supreme Court, is, no doubt, not subject to a rewriting. However, if the same has not been communicated to the other party, in this case the insured Respondent. The contention that the Exclusion Clause shall prevail needs to be considered. In our opinion, the fact that the terms and conditions of the policy were not conveyed to the Respondent, the contention of the Appellant that 15 day free look period that had been provided and availed by the Respondent following which the policy stood confirmed cannot be sustained. In such a situation, we are inclined to uphold the interpretation of the State Commission to allow the Appeal insofar as the insurance cover for critical illness is concerned. However, the State Commission has also considered repayment of ₹65,03,832/- paid as loan installment to the Appellant No.2 with interest @ 9% and the Appellants No.1 & 3 to reimburse this amount to Bajaj Finance Limited under the schedule of insurance policy with directions to clear any remaining amount of outstanding dues on the loan after adjusting repayment of the amount as per the insurance scheme.

11. The Certificate of Insurance provided to the Respondent mentions clearly that she has been enrolled as a member under the Group Insurance Scheme, namely, Group Credit Protection Plus administered by Bajaj Finance Limited under Group Credit Protection Plus (U.I.N.11G6NOD4V01) issued by Bajaj Allianz Life Insurance Company Limited to Bajaj Finance Limited bearing master policy No.0303833272. This is single premium policy for a sum of ₹7,49,999.63ps. which provides for

“1) Bajaj France Ltd. The Master Policy Holder has proposed for a group policy under Group Protection Plus (OCPP) on the life of its members on the basis of Scheme Rules for administration of the group insurance scheme and the same has been agreed and accepted by the insurer Bajaj Allianz Life Insurance Co. Ltd.

2) The Sum Assured under the assurance is payable only on first occurrence of death or Accidental Permanent Total Disability, if opted or diagnosis of Critical Illness or any of the Joint Life Member, if opted and thereafter membership for both the Joint Life Members (if opted) shall terminate, Payment of Sum Assured amount is subject to the terms and conditions of the group insurance scheme.”

The Exclusion Cover is:

“A) Death cover is subject to the following exclusion:

No death claim will be payable in case death occurs due to suicide committed within one year from the date of commencement of membership under the group insurance scheme.”

It also provides for claim amount as under:

“Payment of Claim amount as benefits under the policy shall be payable by Bajaj Allianz Life insurance Company Limited to the Member/Nominee (as applicable) through the Master Policyholder Bajaj Finance Ltd. subject to the terms and conditions of the Policy and group insurance scheme and the right of the Company to receive all information/document.”

The scheme provides for free look cancellation within 15 days of receipt of the Certificate of Insurance. It also requires, as part of the claim process, production of additional documents in case of Accelerated Illness Benefit. There is no reference to any liability with regard to the loan provided by Bajaj Finance Limited which the State Commission has considered in its order. The privity of contract of the Respondent No.1 with the Respondent No.3 is with regard to the items covered in the Group Insurance Scheme and does not extend to repayment of EMIs paid towards the loan sanctioned by Bajaj Finance Limited.

12. In a claim of insurance related to critical illness, the Appellant can be held liable only with regard to the treatment of critical illness as claimed. The issue of housing loan availed by the Respondent as a co-borrower is an entirely separate matter which is not related to the claim of insurance for treatment of critical illness. We, therefore, do not find merit in the order of the State Commission with regard to the repayment of the loan amount as it is not a part of the insurance policy in question and was required to be pleaded in terms of the loan obtained. In the absence of any pleading establishing deficiency in service with regard to loan account, the order of refund of ₹65,03,832/- merely because the insurance cover was for an amount of ₹71,49,174/- cannot be upheld.

13. In view of the foregoing discussion and in the facts and circumstances of the case, the Appeal is partly allowed. The Appellant is directed to pay an amount of ₹3,07,604/- to the Respondent as medical expenses under the insurance policy obtained under the master policy held by Bajaj Finance Limited with Bajaj Allianz Life Insurance Co. Limited along with compensation in the form of interest @ 9% p.a. from the date of admission, within eight weeks, failing which the amount shall be paid with interest at 12%. The award of ₹25,000/- for mental agony and ₹15,000/- as litigation costs are left undisturbed. The direction of the State Commission with regard to the refund of ₹65,03,832/- is set aside.

14. Pending applications, if any, also stand disposed.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**