

Date of filing: 15.02.2022
Date of Disposal: 23.05.2024

**BEFORE THE III ADDITIONAL BANGALORE URBAN
DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, BENGALURU - 560 027.**

DATED THIS THE 23rd DAY OF MAY 2024

CONSUMER COMPLAINT NO.41/2022

PRESENT:

SRI. SHIVARAMA K : PRESIDENT
SRI. CHANDRASHEKAR S NOOLA : MEMBER
SMT. REKHA SAYANNVAR : MEMBER

1. Sri. B.S. Sathya Kumar,
Aged about 53 years,
S/o. Late B.R. Sreeram.
2. Sri. Suprit S Kumar,
Aged about 22 years,
S/o. B.S. Sathya Kuamar.
3. Sri. Shashank S Kumar,
Aged about 18 years,
S/o. B.S. Sathya Kumar,
All are R/at No. 1110,
(Old No. 14), 2nd Floor,
47th Cross, 25th Main,
J.P. Nagar, 1st Phase,
Bengaluru-560078.
(Sri. K.S. Raghuram, Advocate)

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COMPLAINANTS

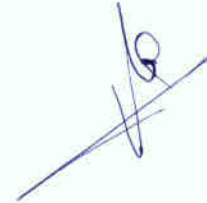


V/s

1. M/s. HDFC Ergo Health Insurance Ltd.,
No. 25/1, Building No. 2, 2nd Floor,
Shankarnaryana Building MG Road,
Bengaluru-560001.
Rep. by its Manager.
(Sri. Prashant T Pandit, Advocate)
2. Axis Bank Ltd.,
Jayanagar Branch, Jayanagar,
Bengaluru-560011.
Rep. by its Manager.
(Sri. Dhirendra N Katti, Advocate)
3. M/s. Apollo Hospitals,
No. 154/11, Opp. IIM
Bannerughatta Road,
Bengaluru-560076.
4. Dr. D Manjunath,
International Cardio Logist,
No. 154/11, Opp. IIM
Bannerughatta Road,
Bengaluru-560076.
(Sri. Arun Kumar, Advocate)

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OPPOSITE PARTIES




// JUDGEMENT //

BY SRI. SHIVARAMA K, PRESIDENT

The complainants have filed this complaint u/sec. 35 of the Consumer Protection Act-2019 seeking for a direction to the opposite party to reimburse the claim amount of Rs.6,43,858/- and such other relief as this commission deems fit in the circumstances of the case.

2. It is not in dispute that complainant No. 2 & 3 are the sons of complainant No. 1. Further, it is not in dispute that the complainant No. 1 was an account customer holder at opposite party No. 2 bank. Further, at the instance of opposite party No. 2 the complainant got the health policy from opposite party No. 1. Further, it is not in dispute that the complainants were policy holders in New India Assurance Company Ltd., since 2004 and were holding health insurance till October 2019 with it and the complainants did not renew the health insurance policy at New India Assurance Company Ltd., in month of October 2019. Subsequently the complainant got renewed the Health Wallet Family Floater policy for the period from 18.12.2019 to 17.12.2020 vide Ex.P7 and had paid premium amount of Rs.44,044.68 to opposite party No. 1. Further, it is not in dispute that the complainant No. 1 was admitted to Apollo hospital Bannerughatta Road, Bengaluru on 05.01.2020 and discharged on 08.01.2020 vide discharge summary Ex.P8 and hospital bill was for a sum of Rs.3,30,217/-.



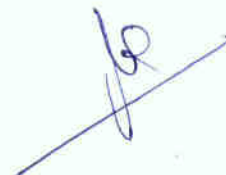
3. Further, it is not in dispute that again on 05.02.2020 the complainant No. 1 got admitted to the hospital on the complaint of chest pain and difficulty in breathing and discharged on 09.02.2020 vide Ex.P9 discharge summary and the hospital bill was of Rs.2,60,000/-. Further, it is not in dispute that the complainant had filed claim form on 11.02.2020 vide Ex.P3 & P5 with opposite party No. 1 for reimbursement of hospitalization expenses, post hospitalization expenses and other expenses. Further, it is not in dispute that opposite party No. 1 had rejected the claim on the ground of non-disclosure of pre-existing disease vide Ex.P11 of the complainant No. 1. Further, it is not in dispute that the health insurance policy was family floater policy covering all the complainants and each of them are covered for an amount of Rs.15,00,000/- and the policy for a total sum of Rs.45,00,000/-. Further, it is not in dispute that the complainants being aggrieved by the rejection by opposite party No. 1 had filed Appeal before the office of the Insurance Ombudsman and on 11.06.2020 the said authority had rejected the claim vide Ex.P13. Further, it is not in dispute that opposite party No. 1 had terminated the insurance policy for non-disclosure of pre-existing disease vide Ex.P10.

4. It is the further case of the complainant that the complainants did not suppress any material fact. Hence, the rejection by opposite party No. 1 is an unfair trade practice. Further, when the complainant enquired about pre medical check-up prior to issuing the policy, it was informed by



opposite party that no pre medical check-up required for policy holders before taking health insurance policy. Hence, the complainants completely trusted the words of opposite party and taken cashless insurance policy. Further, it is the duty of opposite party while issuing the policy to get the insured medically tested and the complainant No 1 was not aware of the diabetes mellitus disease. Further, the policy proposal form was field by opposite party No. 2 representative bank before opposite party No. 1 without making any enquiry with complainant No. 1 about L4-5 disc prolapse in the year 2007. Hence, the rejection of the claim and termination of the policy without noticing the complainants is not sustainable and there is deficiency of service on the part of opposite party.

5. It is the further case of opposite party No. 1 that the complainants were given opportunity to reveal any aliment and medical history they had. The complainant No. 1 gave his good health declaration to opposite party No. 1 and thereby opposite party No. 1 did not verify the health status of the complainant. Based on his submission the policy was issued. Further, after the claim was registered it has come to the notice of opposite party that the complainant had history of diabetes mellitus since 2016 and L4-5 disc prolapse since 2007 and the same has not been revealed by the complainant in the proposal form. Hence, opposite party No. 1 is right in rejecting the claim on the ground of non-disclosure of the health condition/material fact.



6. It is the further case of opposite party No. 2 that opposite party No. 2 is a schedule bank and it has facilitated the investment to the complainant, accordingly the complainant had purchased the policy. Further, as per Section 230 of Indian Contract Act, opposite party No. 2 being agent can neither be sued nor sue except under special circumstances. Hence, there is no cause of action against opposite party No. 2 and opposite party No. 2 is not a necessary party.

7. To prove the case, the complainant No. 1 (PW-1) has filed affidavit by way of his evidence in chief and got marked Ex.P1 to P23 documents. The Vice President at opposite party No. 2 (RW-1) has filed affidavit by way of his evidence in chief. Further, the Senior Legal Manager (RW-2) has filed affidavit by way of her evidence in chief and got marked Ex.R1 to R5 documents. Counsel for opposite party No. 1 has filed synopsis of arguments and citations.

8. The points that would arise for consideration are as under:

- i) Whether there is deficiency of service on the part of the opposite party?
- ii) Whether the complainant is entitled for the relief sought ?
- iii) What order?



9. Our findings on the aforesaid points are as follows:

Point No.1:In affirmative

Point No.2:partly in affirmative

Point No.3:As per the final order for the following;

REASONS

10. POINT NO.1 & 2:- In order to avoid the repetition of facts, we have discussed both the points together. PW-1, RW-1 & RW-2 have reiterated the fact stated in their respective pleadings, in the affidavits filed by way of their evidence in chief. Ex.R4 is the letter dated: 28.02.2020 of the rejection of the claim issued by opposite party No. 1. Ex.R4 & Ex.P11 are one and the same. The reason for the said rejection was with regard to the medical expenses claim for the treatment taken at opposite party No. 3 hospital as an inpatient from 05.01.2020 to 08.01.2020. The claim amount was Rs.3,35,631/-. The reason for rejection shown is that it was found that the complainant had the medical history of diabetes mellitus since 2016 and L4-5 disc prolapse since 2007 and the same has not been revealed while taking the policy in the proposal form. In the discharge summary issued by opposite party No. 3 hospital in Ex.P8 & P9 with regard to the history of illness it is stated that the complainant appeared in the hospital with the complaint of



chest pain and nothing is stated about any disease previous to chest pain. Further, it appears in Ex.P9 discharge summary that the complainant admitted to the hospital with the complaint of breathing difficulty and chest pain since one hour and the past history was Ischemic heart disease S/P PTCA to RCA (2019). Further, in Ex.P16 discharge summary it is stated that the complainant No. 1 had Ischemic heart disease.

11. On perusal of medical records it appears that the complainant admitted to the hospital on the complaint of breathlessness associated with right side chest pain since from the day of admission to the hospital. Opposite party did not produce any documents to substantiate that the complainant No. 1 was admitted to the hospital as an inpatient and obtained treatment for heart disease previously as contended. Therefore, the discharge sumamry produced by the complainants itself is not sufficient to hold that the complainant No. 1 had history of diabetes mellitus and L4-5 discprolapse since 2007. Further, it is held by the Hon'ble Apex Court in many circumstances that diabetes mellitus is not a disease and it is common in many people.

12. In support of the contention counsel for opposite party No. 1 relies the judgment reported in IV (2020) CPJ 60 (SC) Bajaj Allianz Life Insurance Co. Ltd., and others v/s DalbirKaur. In the said judgment the insured had failed to disclose vomiting of blood which had taken place barely a month prior to issuance of policy of insurance and of



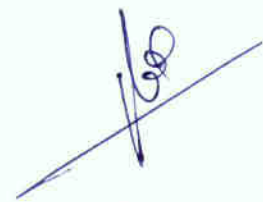
hospitalization which had been occasioned as a consequence. Hence, Hon'ble Apex Court has set aside the award based by Hon'ble NCDRC with regard to the allowing of claim of the insured. The fact in the said case is entirely different from facts of the case in hand. Hence, the same is not applicable. For the above said reasons we feel opposite party No. 1 has failed to prove that complainant No. 1 has suppressed the pre-existing disease as alleged.

13. The complainant claimed the reimbursement of Rs.6,43,858/-. On perusal of the medical bills vide Ex.P17 cashless authorization letter dated: 13.05.2023 issued by opposite party No. 1 it appears that complainant No.1's expected date of admission to the hospital was on 11.05.2023 and expected date of discharge was on 13.05.2023 and the medical expenses payable was at Rs.2,10,361/- the same as not been paid by the complainant thereby it cannot be taken into consideration or calculation. According to PW-1 on 05.01.2020 he had developed chest pain and admitted to Apollo hospital, Bannerughatta Road, Bengaluru and discharged on 08.01.2020 and the hospital expenses stood for Rs.3,20,217/-. Ex.P8 is the discharge summary and the medical bills thereon. It appears in it that a sum of Rs.3,30,216.61 was incurred towards medical expenses. Further, on 05.02.2020 again he had developed chest pain and admitted to the hospital on the same day and got discharged on 09.02.2020. Ex.P9 is the discharge summary and hospital bill issued by opposite party No. 3



Apollo hospital. It appears that a sum of Rs.2,60,000/- was incurred towards hospital charges. Further, according to the complainant the claim was rejected. In the claim form submitted on 23.01.2020 the total amount claimed was of Rs.3,35,631/- including pre hospitalization expenses and post hospitalization expenses in respect of the admission to the hospital on 05.01.2020 and discharged on 08.01.2020.

14. Further, in the claim form submitted on 11.02.2020 in respect of the admission to the hospital on 05.02.2020 and discharged on 09.02.2020 a claim was made for a sum of Rs.2,63,641/- including post hospitalization expenses and others. The complainant did not produce any document with regard to the post hospitalization and pre hospitalization expenses incurred. Hence, the total of two bills stated above comes to Rs.5,99,272/-. Hence, the complainant is entitled for the said amount towards medical expenses. Opposite party No. 1 had repudiated the claim on 28.02.2020 by its letter vide Ex.P11. Hence, from that date the repudiation the complainant is entitle for interest at the rate of 9% per annum till realization. Further, towards the mental agony caused the complainant is entitle for a sum of Rs.20,000/-. Further, the act of opposite party made the complainant to get issued legal notice vide Ex.P14 and to approach this commission and had several letter correspondence with opposite party No. 1. Hence, the complainants are entitle for a sum of Rs.10,000/- towards litigation cost. Accordingly,



we answer point No. 1 in affirmative and point No. 2 partly in affirmative.

15. POINT No. 3:- In view of the discussions made above, we proceed to pass the following;

ORDER

Complaint is allowed in part. The Opposite Party No. 1 is directed to pay a sum of Rs.5,99,272/- with interest at the rate of 9% per annum from 28.02.2020 till realization and a sum of Rs.20,000/- towards mental agony and a sum of Rs.10,000/- towards litigation cost.

The opposite party No. 1 shall comply the order within 45 days. In case the opponent fails to comply the same within the above said period, the above said amount of Rs.30,000/- carries interest at the rate of 9% per annum from the date of order till realization.

Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

Supply free copy of this order to both the parties and return extra copies of the pleading and evidence to the parties.

(Dictated to the Stenographer, typed by him, the transcript corrected, revised and then pronounced in the open Commission on **23rd day of May 2024**)





(Rekha Sayannvar) (Chandrashekhar S Noola) (SHIVARAMA K)
MEMBER MEMBER PRESIDENT

//ANNEXURE//**Witness examined from the side of complainant:**

Sri. B.S. Sathya Kumar, the complainant (PW-1).

Documents marked from the side complainant:

1. Copy of the letter dated: 17.03.2020 is marked as Ex.P1.
2. Copy of the letter dated: 23.01.2020 with check list is marked as Ex.P2.
3. Xerox copy of the claim form is marked as Ex.P3.
4. Copy of letter dated: 11.02.2020 is marked as Ex.P4.
5. Xerox copy of claim form is marked as Ex.P5.
6. Letter dated: 04.03.2020 is marked as Ex.P6.
7. Xerox copy of insurance policy is marked as Ex.P7.
8. Xerox copy of discharge summary for a period 05.01.2020 to 08.01.2020 is marked as Ex.P8.
9. Xerox copy of discharge summary for a period 05.02.2020 to 09.02.2020 is marked as Ex.P9.
10. Copy of notice for termination is marked as Ex.P10.
11. Xerox copy of rejection letter dated: 28.02.2020 is marked as Ex.P11.
12. Letter dated: 11.06.2020 is marked as Ex.P12.
13. Copy of proceedings before insurance ombudsman is marked as Ex.P13.

14. Office copy of legal notice dated: 29.12.2020 along with postal receipt is marked as Ex.P14.
15. Xerox copy of aadhar card is marked as Ex.P15.
16. Copy of the discharge summary dated: 13.05.2023 is marked as Ex.P16.
17. Copy of cashless authorization letter dated: 17.05.2023 is marked as Ex.P17.
18. Copy of policy is marked as Ex.P18.
19. Copy of the letter dated: 06.10.2022 is marked as Ex.P19.
20. Copy of tax certificate is marked as Ex.P20.
21. Copy of collection receipt is marked as Ex.P21.
22. Copy of medical prescription dated: 20.06.2023 is marked as Ex.P22.
23. Copy of lab report dated: 22.08.2023 is marked as Ex.P23.

Witness examined from the side of opposite party:

Sri. Roshan. V.P, the opposite party No. 2 (RW-1).

Documents marked from the side of Opposite Party:

-Nil-



Witness examined from the side of opposite party:

Smt. Shilpa B.R, the opposite party No. 1 (RW-2).

Documents marked from the side of Opposite Party:

1. Letter of authorization is marked as Ex.R1.
2. Copy of certificate of insurance of the policy is marked as Ex.R2.
3. Copy of the terms and conditions of the policy is marked as Ex.R3.
4. Repudiation letter and proposal form is marked as Ex.R4.
5. Termination letter is marked as Ex.R5.


23/05/2024
(Rekha Sayannvar) (Chandrashekhar S Noola)
MEMBER


23/5
(SHIVARAMA K)
MEMBER


23/05/24
(SHIVARAMA K)
PRESIDENT