

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 888 OF 2021

(Against the Order dated 01/10/2021 in Complaint No. 30/2010 of the State Commission
Uttar Pradesh)

1. LIFE INSURANCE CORPORATION OF INDIA
REP THROUGH ITS DEPUTY SECRETARY (LEGAL CELL
DELHI) H 39, 1 FLOOR, NEW ASIATIC BILDING, 124
CONNAUGHT PLACE
NEW DLEHI 11001

.....Appellant(s)

Versus

1. BRIJENDRA KUMAR TYAGI
S/O. PARMANAND TYAGI, R/O. 3/196, VIKAS BLOCK,
GOMTI NAGAR,
LUCKNOW 226010

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH,PRESIDING MEMBER

FOR THE APPELLANT : MR. LAKSHAY SAWHNEY, ADVOCATE
MOHD. HUSAIFA, ADVOCATE

FOR THE RESPONDENT : MR. DHIRENDRA KUMAR, ADVOCATE WITH
MR. BRIJENDRA KUMAR TYAGI, RESPONDENT IN PERSON.

Dated : 03 April 2024

ORDER

1. The present First Appeal (FA) has been filed by the Appellant against Respondent as detailed above, under section 51 of Consumer Protection Act, 2019, against the order dated 01.10.2021 of the State Consumer Disputes Redressal Commission, U.P. (hereinafter referred to as the 'State Commission'), in Consumer Complaint No. 30 of 2010 inter alia praying for setting aside the impugned order passed by the State Commission.

2. While the Appellant herein was Opposite Party and the Respondent was Complainant in the said CC/30/2010 before the State Commission.

3. Notice was issued to the Respondent on 20.12.2021. Parties filed Written Arguments/Synopsis on 20.09.2023 (Appellant) and 12.12.2023 (Respondent) respectively.

4. Brief facts of the case, as emerged from the FA, Order of the State Commission and other case records are that: -

Sh. Dishant Tyagi, approached the Appellant/OP to purchase pension/annuity policy from Life Insurance Corporation of India. Since the Proposal Form (Table No.122) was being used for availing insurance under Table No.147 due to non-availability of Proposal Form (Table 147) and the Proposer filled in and submitted Proposal Form dated 05.01.2003 with a request to commence the policy w.e.f 06.01.2003. The proposal was accepted and a Policy No. 213679292 was issued under Table No.147/34 with yearly premium (for annuity plan) of Rs.10,000/- for a term of 34 years. As per Clause 1 of the Special Provisions, in case the Policy Holder died before the date of vesting of annuity (i.e. 6.1.2037) and while the policy is in force, all premiums paid upto the date of death accumulated at the rate to be decided by the LIC from time to time along with the term assurance sum assured (if any) will be paid. Relevant Form No.300 nor any application/letter was submitted by the Proposer for availing Term Rider Benefit under the said policy. Vide letter 02.09.2003 'Dr. Brijendra Kumar Tyagi', the father of the Policy Holder intimated the Appellant/OP about the unfortunate demise of the Policy Holder 'Dishant Tyagi' due to a road accident. Appellant/OP on 29.11.2003 paid/returned to the Respondent/Complainant/ nominee the Insurance premium paid by the Policy Holder amounting to Rs.10,000/- through cheque along with accrued interest 125/- on 17.12.2005. As per the terms and conditions of the New Jeevan Suraksha- 1, Table No.147, only an amount of Rs. 10,125/- was paid by the Life Insurance Corporation of India and which was duly accepted by the nominee of the Deceased Policy Holder without any protest. The nominee of the insured filed complaint before the Insurance Ombudsman. Insurance Ombudsman vide its order dated 28.05.2008 rejected the claim stating no grounds for the inference with the decision of the Sr. Divisional Manager. The Complainant filed complaint before the State Commission.

5, Vide Order dated 01.10.2021, the State Commission has accepted the complaint and passed the following order:

“The complaint is accepted and the insurance corporation is directed that it has to pay a sum of Rs.21,75,351/- to the nominee of the deceased Dishant Tyagi along with interest @ 6% P.A. from the date filing of the complaint till its realization. The earlier amount paid to the complainant will be adjusted in the same. The amount of Rs.10,000/- would be paid to the complainant as the cost of litigation, the above said amount will be paid within 03 months.”

6. Appellant has challenged the Order dated 01.10.2021 of the State Commission mainly/inter alia on following grounds:

(i) The impugned order is erroneous, bad in law and ought to be set aside. The State Commission in para 12 of the impugned order erred in arriving that the complaint was filed within the period of limitation. The complaint filed before the State Commission was barred by limitation as it came to be filed by the Respondent/Complainant on 30.03.2010 whereas the cause of action arose on 01.06.2003 i.e the date of death of the Policy Holder and the claim under the policy stood settled / paid by the Appellant/OP on 29.11.2003 and 17.12.2005. The statutory period of limitation of 2 years provided under Section 24A of the Act expired on 31.5.2005 (2 years from date of death i.e. 1.6.2003). It is submitted that the time spent by the Respondent/Complainant in pursuing the complaint before the Insurance Ombudsman could not have been a ground for extending limitation period for filing consumer complaint under Consumer Protection Act, 1986. There arises no cause to file the consumer complaint after 07 years from the date of death nor any such sufficient cause has been shown by the Respondent. Hence, the complaint is liable to be dismissed for this reason alone without going into the merits of the matter.

(ii) The State Commission has erred in not considering the actual facts and evidence on record that the policy holder had never opted for the Term Rider Assurance Benefit available under the policy. The State Commission has not considered the Proposal Form wherein the proposer/policy holder filed Proposal for obtaining the Pension Policy for term of 34 years and accordingly the policy was issued only for Annuity and there is no Term Rider Assurance benefit included under the subject policy. The State Commission ignored the fact that the column provided for Term Rider Benefit Sum Assured on the policy document is 'Blank' and no amount is written therein. As such there is no Term Rider benefit is available under the policy. The State Commission ignored the fact that the premium charged under the policy was yearly Rs.10,000/- is towards the Cash accumulation for purpose of providing annuity after maturity and no premium is charged for Term Rider Assurance. In addition thereto, it is an admitted position that the proposer who wishes to avail term rider benefits has to pay additional premium and needs to undergo required medical test and also the aspect of nature and the risk factor involved in the job done by the proposer are also considered which are relevant to calculate the required premium of the term rider benefit which is further subject to underwriters option either to accept or refuse the same. The State Commission has not considered the fact that the subject policy is primarily an Annuity Plan and the Term Rider benefit is available as an add-on benefit subject to charging of extra premium. In the absence of any specific request / proposal by the policy holder and also of the payment of appropriate premium, there was no contract between the Appellant/OP and the policy holder regarding granting of insurance coverage for death benefit.

(iii) The State Commission erred in holding the deficiency on the part of Appellant, whereas, the Appellant perfectly followed the Terms and conditions of the policy and refunded the amount of premium alongwith 5% compounding interest thereon. As such by following the terms of contract, the Appellant has not caused any deficiency in service or caused any loss to the complainant. The State Commission grossly erred by awarding alleged Sum Assured of Rs..21,75,351/- as prayed in the Complaint along with 6% Interest p.a. from date of complaint 01.04.2010. The State Commission erred in not appreciating that the Appellant/OP paid/refunded an amount of Rs.10,125/- to the Respondent/Complainant in terms of the Special Provisions Point 1 as stated in the policy. The claim of the respondent/complainant had been paid/settled/refunded by the Appellant/OP as per the terms of the policy, the State Commission vide the Impugned Order erroneously awarded an imaginary amount of Rs.21,75,351/- as claimed by the Respondent/Complainant, along with interest @ 6%p.a from date of filing of complaint and litigation cost of Rs. 10,000/-.

(iv) The State Commission in para 16 of the Impugned Order erroneously relied upon a purported Pamphlet/Circular i.e New Life Insurance List 147, which Pamphlet / Circular was vehemently refuted by the Appellant/OP stating clearly in the Written Statement at Para 11 that it was neither a "Pamphlet" nor a "Prospectus" for the prospective buyer of insurance and hence beyond the scope of provisions referred in Para 2(e) and 3(i) of IRDA Regulations and that the policy was issued in January, 2003 whereas the said circular/pamphlet purports to have been issued in June, 2003 after six months of issuance of policy and after the death of the Policy Holder. The State Commission erred in not appreciating that there was no contractual obligation or liability of the Appellant/ OP to pay the purported Term Rider Benefit/ Term Assurance by claimed as Assured Sum the Respondent/Complainant, as the same was neither opted for nor any additional premium was paid towards the same. A bare perusal of the policy makes it crystal clear that Term Rider Benefit/ Term Assurance Sum Assured was not availed by the Proposer/policy holder. The claim of Respondent related to Term Rider benefits were never proved by the respondent before the State Commission. The policy submitted and relied upon by the respondent/complainant himself, admittedly does not find mention of any amount towards Term Assurance Sum Assured nor any premium paid in pursuant to the same. No document has been produced by the respondent/complainant of the fact of either opting for term rider benefit/ term assurance sum assured or paying any premium towards the same. The onus to prove the same fell on respondent, however he failed to prove the same.

(v) The Respondent is not even a consumer as per the definition provided under Consumer Protection Act, 1986. The order of the State Commission has been passed on the basis of presumption, surmises and conjecture instead of adhering to the terms and conditions of the policy documents which was the only contract between the Policy Holder and the appellant. The State Commission failed to appreciate that Proposal Form -Table No. 122 was at that relevant time being used by the Corporation as the new Form for Table No. 147 was under printing and Form under Table No. 122

was only available at that moment. It could have been a merely irregularity and not illegality by the Corporation and the same does not attribute to any malafide intention on the part of the Life Insurance Corporation of India. In any event, admittedly the Policy was issued under Table 147 only. It is also an admitted position that no Form 300 nor any application nor letter was submitted by the Proposer / policy holder for availing term rider benefit. Merely taking policy under Table 147 does not entitle the Proposer and/or his legal heirs to automatically claim the term rider benefits in view of the admittedly fact that the Proposer / policy holder never asked for availing the term rider benefits nor submitted relevant form 300 nor wrote any letter for availing the same.

(vi) The impugned order and well as the complaint of the nominee is solely based on the erroneous assumptions of the Deceased as to what he might have thought at the time of purchasing the policy and which is untenable in the eyes of law.

7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the FA, based on their FA/Reply, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

7.1. In addition to the averments made under the grounds (para 7), the Appellant/Insurance Company contends that the State Commission has not considered the fact that the subject policy is primarily an Annuity Plan and the Term Rider benefit is available as an add-on benefit subject to charging of extra premium. The State Commission ignored the fact that there is no evidence placed by the Complainant/Respondent on record which establishes the fact that the Policy holder had, along with annuity plan, also opted for Term rider benefit and that he paid the premium thereto. In the absence of any specific request / proposal by the policy holder and also of the payment of appropriate premium, there was no contract between the Appellant/OP and the policy holder regarding granting of insurance coverage for death benefit. It is submitted that the subject policy is proposed by policy holder only for Annuity Benefit, and accordingly the policy was issued only for Annuity benefit. The State Commission erred in holding the deficiency on the part of Appellant, whereas, the Appellant perfectly followed the Terms and conditions of the policy and refunded the amount of premium alongwith 5% compounding interest thereon. The State Commission grossly erred by awarding alleged Sum Assured of Rs..21,75,351/- as prayed in the Complaint along with 6% Interest p.a. from date of complaint 01.04.2010. It is contended that there is no insurance benefit at all which existed under the policy, and there is no base put forth by the Complainant of the claim amount of Rs.21,75,351/-, and as such grant of prayer by the State Commission is not only erroneous but gross ignorance of facts & evidence placed on record. The State

Commission in para 16 of the Impugned Order (@Pg 50 of Appeal erroneously relied upon a purported Pamphlet / Circular i.e New Life Insurance List 147 (P-15(@Pg123-124), which Pamphlet/Circular was vehemently refuted by the Appellant/OP stating clearly in the Written Statement at Para 11 that it was neither a "Pamphlet" nor a "Prospectus" for the prospective buyer of insurance and hence beyond the scope of provisions referred in Para 2(e) and 3(i) of IRDA Regulations and that the policy was issued in January, 2003 whereas the said circular/pamphlet purports to have been issued in June, 2003 after six months of issuance of policy and after the death of the Policy Holder. The grievance of the Respondent/Complainant that he never received the policy documents until the death of the Policy Holder is highly misconceived and concocted since such a grievance could only have been made by the Proposer himself and not by the Respondent/Complainant. A perusal of terms and conditions of the First Premium Receipt issued on 06.01.2003 clearly states that in case the Proposer/policy holder does not receive the policy within 2 months then he should intimate the concerned branch office of the Appellant/OP, which he failed to do. Such a defence raised by the Respondent/complainant is untenable and seems to have been made belatedly. The State Commission failed to appreciate the findings arrived at by Insurance Ombudsman in its Award dated 28.5.2008, whereby the claims/complaint made by the Respondent were rejected and it was observed that the nominee/respondent/complainant relied on his own logical imagination as in what would have been in the mind of his son at the time of purchasing the policy and there are no documents to confirm those assumptions. The State Commission failed to appreciate that Proposal Form -Table No. 122 was at that relevant time being used by the Corporation as the new Form for Table No. 147 was under printing and Form under Table No. 122 was only available at that moment. Admittedly, the Policy was issued under Table 147 only. It is also an admitted position that no Form 300 nor any application nor letter was submitted by the Proposer / policy holder for availing term rider benefit. Merely taking policy under Table 147 does not entitle the Proposer and/or his legal heirs to automatically claim the term rider benefits in view of the admittedly fact that the Proposer / policy holder never asked for availing the term rider benefits nor submitted relevant form 300 nor wrote any letter for availing the same. The State Commission ought to have appreciated that for opting/availing/applying for the Term Rider Benefits in respect of policy, not only a separate form 300 needed to be filled in by the Proposer but a required medical test were to be done. Also the aspect of nature and risk factor in the job done by the proposer were also to be considered to calculate the required premium of term rider option which is further subject to underwriters option and requirements and the Corporation may plans to either accept or refuse the same. Further for term rider, previous polices of the proposer were also to be considered while underwriting.

7.2 On the other hand Respondent contended that OP has taken a plea that Respondent is not a Consumer, is not correct. Respondent is a consumer and has relied upon the judgment of this Commission Ajanta Offset and Packaging Ltd. Vs. National Insurance Co. Ltd. 2007 (1) CPJ 208 (NC), wherein the Commission has clarified that 'Consumer' as the word means, "any person who hires any services for

consideration and includes beneficiary of such services other than the person who hires the service for consideration paid or promised.” As defined in section 2(1) (b) (v) the complainant means “in case of death of a Consumer, his legal heir or representative, who or which makes a complaint.” From the above provisions, the Respondent/complainant is within its right to make a complaint and objection of OP is baseless. The pleas raised by the Appellant that the complainant is time barred. The OP stated that cause of action arose on date of death on 01.06.2003 of PH and claim under the policy stands settled/paid on 29.11.2003 and 17.12.2005. The complaint becomes time barred on 31.05.2005. It is contended by the Respondent that the date of death cannot be the date of cause of action. The date of cause will be decided by the relevant documents and their compliance, because relevant documents will indicate what was opted, what was to be paid and what has been paid. As per Insurance Act and IRDA Regulations, the cause of action is the date of providing the documents, so that one knows the terms and conditions of policy whether they are in line with what he has opted. Thus the date of providing the copy of proposal form, the decision what has been taken by LIC on the proposal, Policy Bond and the Free Look Period facility will be the date of cause of action, which is 21.07.2008. Respondent has relied upon the judgment of Hon’ble Karnataka High Court in its decision dated 15.03.2012 in W.P. No. 31846 of 2011. OP has raised the issue that PH had never opted for the Term Rider benefits. It is contended by the Respondent that the proposal form, which was filled up, did not have any space for indicating the option. When this was pointed out, the Agent gave a sheet of LIC paper to write the option as “Table 147 with Term Rider benefits’ and signed. This option along with filled proposal form and cheque was handed over to the Agent. The Agent neither asked for extra premium nor filling of extra form. The First Premium Receipt was issued on 25.01.2003, in which the ‘Date of Risk’ is written as 06.01.2003 in Column 1 and row 1. This indicates that the life risk is covered. The Appellant has never mentioned that PH has not opted for Term Rider benefits in any of his letters dated 24.09.2004, 17.12.2005 and 30.07.2007. This was pointed out only at the time of hearing before the Insurance Ombudsman, where the OP only verbally stated that PH has opted policy of only Table 147 and not of Table 147 with Term Rider Benefit, but the original copy of option was not presented. The Respondent contended that the LIC does not have option only for Table 147 and it cannot separate the option for Table 147 from the option given by PH for Table 147 with Term Rider benefits, so he is unable to produce the option for Table 147 only. The averment made by the Appellant that they did not have the proposal form of Table 147 and used Table 122 form is illegal. It is as good as proposal form is not being used. If proposal form is not used then according to Regulation 4(4) the insurer should record the information obtained orally or in writing and confirm it within a period of 15 days with proposer. The onus of proof lies upon the insurer. The OP has not submitted such proof. Hence, the issue of policy being identical so Table 147 is granted is not legal and bad in law. The LIC prepared Policy Bond on 07.07.2003 but did not dispatch it for 58 days when death intimation was sent by letter dated 02.09.2003. The OP has filed Annexure P-4 (Colly) of Appeal submitted by Complainant as Annexure-2 with complaint. The certified copy of Annexure -2 and also original copy is presented for perusal, where OP has forged the entry of “date of commencement’. In place of ‘Date of Risk’ in Column 1 Row 1. As this document is conclusive proof that Life Risk was covered in the policy because the proposer has

opted Table 147 with Term Rider Benefits. The OP has not enclosed all the three letters which were submitted with the complaint as evidence. It is further contended that the Respondent/complainant/nominee has continuously protested for not making payment of claim according to the option of PH and as explained it is wrong to say that nominee has accepted the payments without any protest. The Respondent has also relied upon the judgment of the Hon'ble Supreme Court in Kandimalla Raghavaiah & Co. Vs. National Insurance Co. & Anr. Civil Appeal No. 4962 of 2002.

8. One of the points raised by the Respondent herein (Complainant) is that Appellant/Insurance Company has not filed the correct copy of the first premium receipt and has done material distortions in the copy of the said document. We have carefully examined the copy of First Premium Receipt No. 0075733 dated 25.01.2003 as filed by the Appellant/Insurance Company, which contains certain columns containing hand written text, as well as the copy of same document produced by the Respondent, which is a fully typed/computer generated copy, and bears no handwritten text/corrections. Following deviations are noted in the copy placed on record by the Insurance Company.

	Copy of original Receipt as produced by Respondent (Fully typed/ Computer generated copy)	Copy of Receipt as produced by Insurance Company (containing handwritten text)
1.	Policy Number Date of Risk 213679292 06/01/2003	Policy No. 213679292 Date of Commencement 06/01/2003
2	Short Name Sum Assured Plan D. TYAGI 147-34	Name of Life Assured D. TYAGI TABLE AND TERM 147-34

The above distortions, even if done unintentionally or without any malafide intentions, in our considered opinion, are of serious nature, which can make any reader believe that no risk was covered as 'Date of Risk' has been changed to 'Date of Commencement', especially when it is one of the important contention of the Insurance Company that death risk was not covered

under the policy and date of risk mentioned in this document implies date of commencement only and they took such a stand before the Insurance Ombudsman, which is evident from the observation in its order dated 28.05.2008.

“.....Before I conclude I would like to also clarify to the contention of the complainant that the word “commencement of risk as mentioned in the first premium receipt does not imply the death cover as construed by the complainant. It is a general practice in insurance parlance that the word “commencement of risk” qualifies the commencement of the contract and does not signifies any type of particular coverage.”

9. Secondly, the Insurance Company has contended that State Commission has erroneously relied upon a purported pamphlet/circular of New Life Insurance List 147, denying the said circular being an official one, and stating that said circular/pamphlet purports to have been issued in June 2003, six months after the policy and after the death of policy holder. This is evident from observations of the Insurance Ombudsmen in order dated 28.05.2005.

“Taking up the first point raised by him as per exhibit (EX-R4) circular is not officially issued by LIC but appears to be a kind of marketing pamphlet with a ready reckoner made by the Dev.Officer/Agent of the Life Insurance Corporation of India.....”

We have carefully gone through the copy of this circular/pamphlet. It is important to note that this circular is issued by ‘Life Insurance Corporation of India’, ‘Lucknow Mandal’ and it states at the last page that *“For resolution of any doubt or special information, Mr. S.G.P. Tripathi (Production Development Manager), Service Development Department, Mandal Office, Phone No. 2294122, can be contacted.”* No doubt this circular at bottom show “Tanveer 10,000 folder 6/03, but this possibly could be the printing month June, 2003, and does not mean that it was issued for the first time in June 2003. Moreover, copy of this Circular has been officially given by Life Insurance Corporation, Lucknow Mandal to the Respondent herein vide Registered Letter dated 30.07.2007. Hence, the contention of Insurance Company that it is not their official circular/pamphlet, cannot be accepted. Hence, the Respondent/State Commission is justified in placing reliance on this document.

10. It is not in dispute that the policy issued was under Table 147, but the requisite proposal form applicable to Table 147 was not filled. The proposal form used was the one

applicable to Table 122. The contention of Insurance Company that proposal form Table 122 was at that relevant time being used by the corporation as the new form for Table No. 147 was under printing and Form under Table No.122 was only available at that moment, cannot be accepted. The said form (Table No. 122 for issuing policy under Table 147) was signed on 05.01.2003. It was on 23.01.2002 that the Insurance Company informed all its field offices about the introduction of New Jeevan Suraksha-1 (Plan No. 147)/ New Jeevan Dhara-1 (Plan NO. 148) w.e.f. 01.02.2002. It is unthinkable that such a large public sector undertaking like Appellant Insurance Company could not get the forms printed for newly introduced scheme for almost one year from the date it conveyed its introduction to its field officers. Obviously, the new schemes were finalized and approved prior to this date and proposal forms under these schemes were supposed to be part of new scheme. Hence, the Appellant Insurance Company itself has to be blamed for not using the appropriate applicable proposal form in the present case. Had the appropriate proposal form been used, possibly the situation of ambiguity whether the deceased insured opted for Annuity Plan without Term Rider Benefit could not have arisen. The Appellant Insurance Company admits that using proposal form for Table 122 for issuing a policy under Table 147 was not a correct thing, which is evident from its contention "*It could have been a merely irregularity and not illegality by the Corporation and the same which does not attribute to any malafide intentions*". If the Insurance Company has done such a mistake why the deceased insured/his legal heirs/nominees suffer consequences of that. It was held by Hon'ble Supreme Court in. **Canara Bank Vs. United India Insurance C o. Ltd. & Ors. (2020) 3 SCC 455** that "*- Insurance Policy must be read holistically so as to give effect to reasonable expectations of all the parties including the insured and the beneficiaries- it must be interpreted in a commercially sensible manner- coverage clauses to be read broadly, and ambiguity, if any, to be resolved in favour of insured-exclusions to be read narrowly.*" Hence, we are of the considered view that at this stage Appellant Insurance Company cannot be allowed to treat the policy in question as only an Annuity Plan without Term Rider Benefit.

11. We have carefully gone through the order of the State Commission and are in agreement with its findings, including on issues of limitation and Respondent not being a consumer. It is admitted fact that deceased insured/his legal heirs/nominees did not get the policy documents in time. This is evident even from the orders of Ombudsman in its order dated 28/05.2008.

"Of course there is a point in what the complainant has to say about not having provided with the policy copy and thereby depriving the insured an opportunity to rectify the policy during the free look period which is basic facility available to insured especially after the promulgation of "Protection of Policy Holder Interest 2002". There is no doubt on inordinate delay is there in issuing the policy by the respondent company.

12. For the reasons stated hereinabove and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for the parties, we are of the considered view that State Commission has given a well-reasoned order and we do not find any reason to interfere with its findings, hence the order of the State Commission is upheld. Accordingly, the First Appeal is dismissed.

13. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER