

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
SISUVIHAR LANE
VAZHUTHACAUD
THIRUVANANTHAPURAM
695010**

**Complaint Case No. CC/285/2020
(Date of Filing : 14 Dec 2020)**

1. Jancy Biju Varghese

kanjirakattu house, karapuzha PO, Trivandrum

.....Complainant(s)

Versus

1. Reliance General Insurance

Carmel tower , near cotton Hill

School, vazhuthacadu, Trivandrum

.....Opp.Party(s)

BEFORE:

HON'BLE MR. Sri.P.V.JAYARAJAN PRESIDENT

HON'BLE MRS. Preetha .G .Nair MEMBER

HON'BLE MR. Viju V.R MEMBER

PRESENT:

Dated : 10 May 2024

Final Order / Judgement

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

VAZHUTHACAUD, THIRUVANANTHAPURAM.

PRESENT

SRI. P.V. JAYARAJAN : PRESIDENT

SMT. PREETHA G. NAIR : MEMBER

SRI. VIJU V.R. : MEMBER

C.C. No.285/2020 Filed on 14/12/2020

ORDER DATED:10/05/2024

Complainant : Jancy Biju Varghese, W/o.Biju.K, Varghese, Kanjirakattu House,
Karapuzha.P.O., Kottayam – 686 003.

Opposite parties : (By Adv.R.Narayan)
1. Reliance General Insurance Company Ltd., Carmel Towers, 1st Floor,
Cotton Hill Road, Vazhuthacaud, Thiruvananthapuram – 695 014,

Rep. by its Branch Manager.

2. Reliance General Insurance Company Ltd., Registered Office, H-Block, 1st Floor, Bhirubhai Ambani Knowledge City, Navi Mumbai – 400 710.

(By Adv.Sreevaram G.Satheesh – OP 1&2)

3. Bank of India, Palayam Branch, MG Road, Spencer Junction, Palayam, Thiruvananthpuram – 695 001. Rep. by its Branch Manager.

(By Adv.Manoj Balaji)

ORDER

SRI. VIJU V.R : MEMBER

The complainant has presented this complaint before this Commission under Section 35 of the Consumer Protection Act 2019. The brief facts of the case is that the complainant being a current account holder of the 3rd opposite party took a health insurance scheme under the name and style BOI SwasthyaBima Scheme. Since 2007 the complainant and her family were enrolled in the said scheme and premium too was being debited by the 3rd opposite party towards health coverage. The 3rd opposite party used to offer coverage with various insurance companies over the year. At first they had tie-up with the United India Insurance Company, later with National Insurance Company. The complainant and her family were having uninterrupted coverage of BOI SwasthyaBima Scheme for the past 12 + years through the 3rd opposite party. During 2017-18 and 2018-19, coverage was offered to National Insurance Company. While so in the year 2019-20, the 3rd opposite party on its own decision decided the renewing the group insurance through the 1st & 2nd opposite parties. During January 2019 the complainant's daughter was treated as out-patient as well as inpatient in as SH Medical Centre for the treatment of seizure. At both times the complainant had preferred the claim under SwasthyaBima Scheme policy with National Insurance Company and the claim was settled. Again in June 2019 the complainant's daughter developed fever with seizure and was admitted in as SH Medical Centre. The doctors at SH Medical Centre treated as an inpatient from 07/06/2019 till 11/06/2019. The complainant had spent Rs.10,043/- for the treatment at SH Medical Centre. The doctors of SH Medical Centre referred the complainant's daughter to Sree Chitra Thirunal Institute of Medical Science and Technology. On 18/06/2019 the complainant's daughter was admitted at Sree Chitra Thirunal Institute of Medical Science and Technology and the doctors diagnosed her to have Autoimmune Encephalities and she was discharged on 26/06/2019. The complainant spent Rs. 1,48,290/- for her daughter's treatment. The complainant submitted claim for reimbursement of expense wide claim letter dated 05/07/2019. The complainant submitted all the records to the 1st & 2nd opposite parties. The claim was repudiated by the 1st & 2nd opposite parties. The complainant requested for reconsideration of the claim mainly emphasizing that the disease was identified as Autoimmune Encephalities only in the current policy year and further that there was continuous coverage of policies since 2007. Several email where send to the 1st & 2nd opposite parties. But on 12/08/2020 the 1st & 2nd opposite parties sent mail stating that the claim was repudiated on the reason that the complainant's daughter was having pre-existing disease. The complainant approached the insurance ombudsman regarding the reputation of the claim. But the insurance ombudsman dismissed the complaint. The repudiation of claim amounts to deficiency in service, hence this complaint.

2. The 1st to 3rd opposite parties entered appearance and filed version. The 1st & 2nd opposite parties has averred that there is no deficiency in service or unfair trade practice on the part of the 1st & 2nd opposite parties. It is admitted that an insurance policy known as RGI-BOI Swasthya Bima Yojna was issued to the complainant for the period from 04/04/2019 to 03/04/2020. The claim was submitted by the complainant claiming reimbursement of expense for treatment undergone by her daughter for Epilepsy seizures at SH Medical Centre, Kottayam from 07/06/2019 to 11/06/2019 and at Sree Chitra Thirunal Institute of Medical Science and Technology, Trivandrum from 17/06/2019 to 18/06/2019 and was diagnosed and treated for Autoimmune Encephalitis. The admission record of Sree Chitra Thirunal Institute of Medical Science and Technology shows that the patient was suffering from seizure disorder since January 2019. The proposal form submitted by the complainant while taking the policy shows that the pre-existing disease was not disclosed. The proposal form is the basis of contract. In the proposal form filled by the complainant while taking the policy from 04/04/2019, there is a questionnaire to the effect “please tick the pre-existing diseases as per the insured”. It is seen that all columns are kept blank and nothing regarding the seizure disorder was mentioned. On the ground of incorrect declaration of health condition while taking the policy, the letter dated 03/12/2019. The 1st & 2nd opposite parties have acted only in terms of policy conditions. The 1st & 2nd opposite parties would process the claim as per the terms and conditions of the policy and in any case if the 1st & 2nd opposite parties detects any violation of the policy terms which is against the essence of the insurance contract based on the doctrine of “Uberrimae fidei” then the 1st & 2nd opposite parties would be entitled to repudiate the claim. There is no deficiency in service on the part of the 1st & 2nd opposite parties, hence complaint may be dismissed with compensatory cost.

3. The 3rd opposite party has averred that the application for issuance of policy, disclosing / non-disclosure of material facts and filing of same was done by the complainant directly to the 1st & 2nd opposite parties. The 3rd opposite parties stood only as a facilitator to the same. The duty of the 3rd opposite party is to deduct the premium and remit the same to the 1st & 2nd opposite parties. It is seen from the proposal form that the complainant has not disclosed about the pre-existing disease. The complainant was having current account with the 3rd opposite party and they have offered all their customers and health insurance scheme under the name BOI Swasthya Bhima Scheme. The 3rd opposite party has opened a beneficial scheme and never compelled any of its customers to join the same. The complainant has voluntarily agreed to pay the premium and the 3rd opposite party has facilitated the same. The application and its processing was directly done by the complainant with the 1st & 2nd opposite parties. The 3rd opposite party has no role to play with the reputation of the complainant’s claim. There is no deficiency in service from the side of the 3rd opposite party, hence the complaint may be dismissed with the compensatory cost.

4. Issues to be ascertained:

- i. Whether there is any deficiency in service from the side of opposite parties 1 to 3?
- ii. Whether the complainant is entitled to get the reliefs?

5. Issues (i) & (ii):- Both these issues are considered together for the sake of convenience. The complainant has filed proof affidavit in lieu of chief examination and has produced 12 documents which were marked as Exts. A1 to A12 series. The 1st & 2nd opposite parties has filed proof affidavit in lieu of chief examination and has produced 3 documents which were marked as Exts.B1 to B3. The 3rd opposite party has filed proof affidavit in lieu of chief examination and has not produced any documents. All the parties filed argument notes. The policy issued to the complainant was admitted by the 1st & 2nd opposite parties. The 1st & 2nd opposite parties has rejected the claim raising the contention that the complainant has not disclosed the pre-existing disease in the proposal form. As per Sec.19 of the General Insurance Business (Nationalization) Act, 1972 states that it shall be the duty of every Insurance Company to carry on general insurance business so as to develop it to the best advantage of the community. The denial of medical expenses reimbursement is utterly arbitrary on the ground that disease in question was pre-existing disease. It is mere an excuse to escape liability and is not bonafide intention of the insurance company. Fairness and non-arbitrariness are considered as two immutable pillars supporting the equity principle, an unshakable threshold of State and public behavior. Any policy in the realm of insurance company should be informed, fair and non-arbitrary. When the insurance policy has exclusions/conditions to repudiate the claim or limit the liability, the same must be specifically brought to the notice of the insured and are required to be got signed to show that such exclusions and conditions have been brought to his/her notice.

The Appex Court in United India Insurance Co. Ltd Vs.M.K.J.Corporation (1996) 6 SCC 428, has held that:

“(6) It is a fundamental principle of Insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, “similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured.”

A similar view is taken in Modern Insulators Ltd., Vs. Oriental Insurance Co. Ltd. (2000) 2 SCC 734,

“(8) 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 non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the insurance company and its agents to disclose all material facts in their knowledge since the obligation of good faith applies to both equally”.

The Hon’ble Supreme Court of India in M/s.Texco Marketing Pvt. Ltd., Vs. TATA AIG General Insurance Company Ltd. & others 2022 LiveLaw (SC) 937, has held that:

“15. An act of good faith on the part of the insurer starts from the time of its intention to execute the contract. A disclosure should be a norm and what constitutes a material fact requires a liberal interpretation. It is only when an insurer is not intending to act on an exclusion clause, the aforesaid principles may not require a strict compliance. The three elements which we have discussed are interconnected and overlapping. It is the foremost duty of the insurer to give effect

to a due disclosure and notice in its true letter and spirit. When an exclusion clause is introduced making the contract unenforceable on the date on which it is executed, much to the knowledge of the insurer, non-disclosure and a failure to furnish a copy of the said contract by following the procedure required by statute, would make the said clause redundant and non-existent.

21. On a discussion of the aforesaid principle, we would conclude that there is an onerous responsibility on the part of the insurer while dealing with an exclusion clause. We may only add that the insurer is statutorily mandated as per Clause 3(ii) of the Insurance Regulatory and Development Authority (Protection of Policy Holder's Interests, Regulation 2002) Act dated 16.10.2002 (hereinafter referred to as IRDA Regulation, 2002) to the effect that the insurer and his agent are duty bound to provide all material information in respect of a policy to the insured to enable him to decide on the best cover that would be in his interest. Further, sub-clause (iv) of Clause 3 mandates that if proposal form is not filled by the insured, a certificate has to be incorporated at the end of the said form that all the contents of the form and documents have been fully explained to the insured and made him to understand. Similarly, Clause 4 enjoins a duty upon the insurer to furnish a copy of the proposal form within thirty days of the acceptance, free of charge. Any non-compliance, obviously would lead to the irresistible conclusion that the offending clause, be it an exclusion clause, cannot be pressed into service by the insurer against the insured as he may not be in knowhow of the same.

42. Before we part with this case, we would like to extend a word of caution to all the insurance companies on the mandatory compliance of Clause (3) and (4) of the IRDA Regulation, 2002. Any non-compliance on the part of the insurance companies would take away their right to plead repudiation of contract by placing reliance upon any of the terms and conditions included thereunder."

6. It is not proved by the 1st & 2nd opposite parties that the exclusion clause has being properly explained to the Complainant. So any attempt on the part of the insurer to repudiate the claim by invoking exclusion clause is not permissible. The 3rd opposite party has only stood as an intermediary between the complainant and 1st & 2nd opposite parties. The 3rd opposite party has no role in repudiating the insurance claim, hence the 3rd opposite party is exonerated.

7. On going through Ext.A1 and A6 it can be seen that the complainant has spent an amount of Rs.1,58,333/- for treating her child. This claim was wrongly and illegally repudiated by the 1st & 2nd opposite parties and hence there is deficiency in service from the side of the 1st & 2nd opposite parties.

In the result the complaint is partly allowed. The opposite parties 1 & 2 are jointly and severally liable to pay Rs.1,58,333/- (Rupees One Lakh Fifty Eight Thousand Three Hundred and Thirty Three Only) with 6% interest from 14/12/2020 to the complainant and pay Rs.75,000/- (Rupees Seventy Five Thousand Only) as compensation for the mental agony suffered by the complainant and Rs. 2,500/- (Rupees Two Thousand Five Hundred Only) towards the cost of the proceedings within one month from the date of receipt of this order failing which the amount except cost carries an interest @ 9% per annum from the date of order till realization.

A copy of this order as per the statutory requirements be forwarded to the parties free of charge and thereafter the file be consigned to the record room.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the Open Commission, this the 10th day of May, 2024.

Sd/-

P.V.JAYARAJAN : PRESIDENT

Sd/-

PREETHA G. NAIR : MEMBER

Sd/-

VIJU V.R : MEMBER

C.C. No. 285/2020

APPENDIX

I COMPLAINANT'S WITNESS:

PW1 : Jancy Biju Varghese

II COMPLAINANT'S DOCUMENTS:

- A1 : Copy of the policy issued by National Insurance Company.
- A2 : Copy of Insurance Policy.
- A3 : Copy of the bill summary dated 11/06/2019.
- A4 : Copy of the referral Letter from SH Medical Center.
- A5 : Copy of the discharge summary.

- A6 : Copy of the bill dated 24/06/2019.
- A7 : Copy of the claim form dated 05/07/2019.
- A8 : Copy of the screenshot of the SMS dated 13/07/2019.
- A9 : Copy of the letter dated 26/08/2019.
- A10 : Copy of the screenshot of the SMS dated 03/12/2019.
- A11 : Copy of the email dated 12/08/2020.
- A12 series : Copy of the order of the Insurance ombudsman dated 10/11/2020.

III OPPOSITE PARTY'S WITNESS:

- DW1 : Sujith Krishna.S.K
- DW2 : Anoop.J.S

IV OPPOSITE PARTY'S DOCUMENTS:

- B1 : Copy of the application form dated 03/04/2019.
- B2 : Copy of the policy.
- B3 : Copy of the award if ombudsman.

Sd/-

PRESIDENT

**[HON'BLE MR. Sri.P.V.JAYARAJAN]
PRESIDENT**

**[HON'BLE MRS. Preetha .G .Nair]
MEMBER**

**[HON'BLE MR. Viju V.R]
MEMBER**