

**IN THE CONSUMER DISPUTES REDRESSAL FORUM
KANNUR**

**Complaint Case No. CC/233/2023
(Date of Filing : 06 Jul 2023)**

1. Dr.Naseera Abdul Hameed

W/o Rebee Hashim.P,Surabhy,Kannokkara,Thana.P.O,Kannur-
670012.

.....Complainant(s)

Versus

1. Star Health and Allied Insurance Company Ltd.,

Rep.by its Manager,Grand Plaza,1st Floor,Fort Road,Kannur-
670001.

.....Opp.Party(s)

BEFORE:

HON'BLE MRS. RAVI SUSHA PRESIDENT

HON'BLE MRS. Moly Kutty Mathew MEMBER

HON'BLE MR. Sajeesh. K.P MEMBER

PRESENT:

Dated : 31 May 2024

Final Order / Judgement

SMT. RAVI SUSHA: PRESIDENT

Complainant filed this complaint U/s 35 of Consumer Protection Act 2019 for getting an order directing opposite party to reimburse the claim amount of Rs.7,02,420/- towards the hospital discharge bill and Rs.25,636/- towards the treatment expenses and to reinstate the policy and the insurance coverage of the complainant with retrospective effect. And also pay an amount of Rs.5,00,000/- as compensation and the cost of this proceedings to the complainant.

The facts in brief complainant's case is that the complainant and her husband took star comprehensive Insurance policy from OP insurance company on 27/07/2020 by paying Rs.16,922/- towards premium. The basic insurance coverage was Rs.5,00,000/- on the 1st year. At the time of taking the policy the complainant was having Poly Cystic Ovarian Disease and it was disclosed to the OP. As per the terms of the comprehensive policy if no claim is made for two years, the insurance coverage will be Rs.10,00,000/- including the bonus. As per the advice of the endocrinologist she underwent a test and the doctor clinically diagnosed the disease of the complainant as 'pituitary macroadenoma Acromegaly'. The complainant was admitted on 03/04/2023 at Aster Medicity, Kochi and conducted surgery for 'pituitary macroadenoma Acromegaly' and discharged on 11/04/2023. After admitting in the hospital the complainant has informed the details to the OP through their agent and she was under the impression that they will take care of the hospital bill. The necessary documents were also forwarded to the OP for getting the cashless treatment. But at the time of the discharge, to shock of the complainant, she was served with the hospital bill for Rs.7,02,420/-. The hospital authorities informed her that the OP has denied the cashless facility. The complainant's husband has arranged the money by taking extreme effort and paid the hospital bill. He submitted all documents before the OP. After discharge the complainant applied for getting reimbursement. But OP sent a letter repudiating the claim stating that the complainant has not disclosed the details and the disease is

a pre-existing one. This disease was clinically diagnosed only on 12/01/2023. So it is utter false to say that there was a pre-existing condition. The complainant later got a letter from the OP stating that “they may cancel the policy on the ground of misrepresentation, fraud, moral hazard, non disclosure of the material fact as declared in the proposal form and the letter shall be taken as the notice of cancellation”. The acts of the OP amounts to denial of the right of the complainant and unfair trade practice and deficiency of service. It is against the policy contract. Hence the compliant.

After receiving notice, OP entered appearance and filed version stating that the husband of the complainant had taken a comprehensive Insurance policy form the OP on 27/07/2020 covering himself, the complainant and their son and the same has been renewed up to 26/07/2023 for a sum insured of Rs.5,00,000/- vide policy No.P/181313/01/2023/004645. The policy covers hospitalization expenses incurred in India as an inpatient subject to the definitions, conditions ad exclusions, set here in. At the time of issuing the policy the proposer was supplied with the terms and conditions of the policy. The terms and conditions of the policy were explained to the proposer and the complainant at the time of proposing policy and the same was served to the proposer along with the policy schedule.

The OP had issued the policy to the complainant on the basis of the contents of the proposal form submitted by the insured. The proposer had submitted a proposal form for the said policy and in the proposal form, the husband of the complainant had declared that the complainant had no pre-existing disease except history of Fibroid Uterus. Based on the declaration, the OP had issued the aforesaid policy after endorsing “Diseases related to Female Genital System and their complications” as pre-existing disease to the complaint. Based on the available medical record, it is clearly evident that the complainant had undergone treatment for pituitary Macroadenoma Acromegaly since 3 years which is before the inception of policy and was not revealed in the proposal form at that time. As the complainant and the proposer had willfully suppressed the pre-existing disease in the proposal form, which is the basis of contract at the time of taking the policy, it amounts to suppression of material facts. As per condition No IV (1) of the policy, the policy shall be void and all premium paid thereon shall be forfeited to the company, in the event of misrepresentation, misdescription or non-disclosure of any material fact by the policy holder and the OP had repudiate the claim and communicated the same to the proposer vide letter dated 01/06/2023. Hence, prayed for the dismissal of the complaint.

Both parties led evidence. Complainant filed her chief-affidavit and documents. Examined as Pw1. Marked Ext.A1 to A10. One more witness, Dr. Arjun R MD in Endocrinologist at Aster Mims Hospital, Chala Kannur who issued Ext.A8 series prescriptions to the complainant after examination, was examined as Pw2. Pws 1 and 2 were subject to cross-examination by OP. On the side of OP, Deputy manager Legal has filed his chief affidavit and documents. Examined as Dw1, marked Ext.B1 to B12. Dw1 also was cross-examined for the complainant. After that the learned counsel of complainant made argument and the learned counsel of OP filed argument note.

We have considered the pleadings in the case, documents available before us, evidence of Pw2 doctor and the arguments raised by counsel on either side.

Complainant’s case is that surgery for ‘pituitary macroadenoma Acromegaly’ on 03/04/2023 at Aster Medicity, Kochi. As per Ext.B9 Discharge summary this disease was finally

diagnosed on 02/04/2023. The star comprehensive Insurance policy was taken by complainant from OP insurance company on 27/07/2020 by paying Rs.16,922/- towards premium. So according to complainant there was no pre-existing condition and thus no suppression of material facts in the proposal form. Further, submitted that the repudiation of the claim application of the complainant for the reimbursement of her treatment expense by OP is deficiency in service on their part.

The learned counsel of the Insurance Company submits that the husband of the complainant had declared that the complainant had no pre-existing disease except history of Fibroid Uterus. But from the available medical records, it is clearly evident that the complainant had undergone treatment for pituitary Macroadenoma – Acromegaly since 3 years which is before the inception of policy and was not revealed in the proposal form. According to OP, the complainant had willfully suppressed the pre-existing disease in the proposal form which amounts suppression of material fact. So the repudiation of the claim is justifiable. As per condition No IV (1) of the policy, the policy shall be void and all premium paid thereon shall be forfeited to the company, in the event of misrepresentation, misdescription or non-disclosure of any material fact by the policy holder. Hence the OP had repudiated the claim and communicated the same to the proposer vide letter dated 01/06/2023.

The learned counsel for the complainant submits that the complainant's husband had duly paid the premium of the policy and disclosed in the proposal form about the fact that the complainant was having PCOD issue. According to the counsel of complainant, the disease pituitary macroadenoma – Acromagaly was diagnosed in the complainant only on 02/04/2023. For that there is ample evidence and material on records. Pw2 Dr. Arjun, Endocrinologist at Aster Mims who treated the complainant was also examined. Pw2 Doctor deposed that Ext.A8 series the prescriptions dated 27/09/2022, 27/10/2022 and 21/12/2022 was issued by hm. In prescription dated 27/09/2022, Type 2 diabetic and PCOD was noted and prescribed Medicines. Pw2 further deposed that diabetic was uncontrolled and it was detected newly. Further the face of the complainant was coarse. He suggested to take MRI of the head. Then detected tumor.

So refer to Aster Mims Cochi with reference letter (Ext.A9). Pw2 categorically deposed that 'Accromegaly' can be detected only through MRI and emergent surgery is the only way of treatment. Further, stated that the symptoms of Acromegaly and PCOD are more or less, same. From the evidence of Pw2, it is revealed that the complainant had complaint of PCOD from earlier date and detected diabetic recently. Ext.A7, the certificate issued by Dr. Prashant Narayanan, consultant Neuro surgeon, Aster Medicity, Kochi, dated 09/05/2023 certified that "the complainant was evaluated for complaints of change in her voice and features of acromegaly. MRI taken in January 2023 was suggestive of pituitary macroadenoma acromegaly. She was admitted in Aster Medicity and she underwent navigation guided transnasal transsphenoidal approach and excision on 03/04/2023. She was discharged in a stable condition on 11/04/2023. From the evidence of Pw2 and also from the medical record, mere presence of symptoms such as facial features, change in shoe size, change in ring size cannot be attributed to the knowledge on the part of the complainant that she had contracted Acromegaly. Pw2 deposed that symptoms shown in PCOD and Acronmaly are same. Prescriptions Ext.B4 to B8 only reveals symptoms. In Ext.B9 Discharge summary reveals Acromegaly was diagnosed on 02/04/2023. In 2019 ICO2681 2020 (1) KLJ71, the Hon'ble High Court of Kerala in WP© No.5208/2013 Star Health and Allied insurance Company Ltd. V V P Satheesh Menon held that a disease may have many systems and mere the systems as stated in Ext.B2 to B7 in this case cannot invariably mean that the patient is suffering from Acromegaly. A disease can be said to

be contracted for the purpose of Insurance claim, only when after diagnosis it is clinically found that the patient is suffering from the disease. The Hon'ble High Court further held that the symptoms related to the disease may be in existence for long periods prior to the diagnosis and the symptoms may be within the knowledge of the patient. The patient still may not be aware of the disease. For the purpose of an Insurance claim, a disease can be said to be contracted only when it is diagnosed by a competent physicians and confirmed. The diagnosis of the disease of the complainant happened only on 02/04/2023 and surgery was done on 03/04/2023 (Ext.B9) which is beyond the period, after 2 years from the date of filling proposal form. Moreover the compliant of diabetic also detected only recently from the date of examination of the complainant by Pw2 doctor. OP also failed to prove their contention of suppression of Pre-existing disease.

In the circumstance, we are of the considered opinion that the complainant is entitled to get the medical benefit and hence there is deficiency in service on the part of OP.

It is an undisputed fact that as per the terms of the comprehensive policy if no claim is made for two years from the date of joining of policy, the insurance coverage will be enhanced from Rs.5,00,000/- to Rs.10,00,000/-. Ext.A2 Discharge bill issued from hospital shows that total bill amount is Rs.7,02,420/-. So the complainant is entitled to get the impatient bill with compensation. Since the policy was cancelled with effect from 11/07/2023, we are not inclined to give direction to OP to reinstate the policy. It is the discretionary power of OP Insurance Company. So the said prayer of the complainant is not entertained.

In the result, complaint is allowed in part. Opposite party is directed to pay Rs.7,02,420/- to the complainant with interest at the rate of 4% per annum from the date of complaint till realization. Opposite party is also directed to pay Rs.25,000/- towards compensation and Rs.5,000/- towards cost of the proceedings of the case. Opposite party shall comply the order within one month from the date of receipt of the certified copy of this order. Failing which Rs.7,02,420+25,000 carries interest @ 9% per annum from the date of complaint till realization. Complainant can execute the order as per provision of Consumer Protection Act 2019.

Exts.

A1-Policy document issued by OPs dated 24/07/2020

A2-Discharge bill dated 19/03/2022

A3-Letter issued by OP dated 27/03/2023

A4- Letter issued by OP dated 29/03/2023

A5- Rejection Letter issued by OP dated 01/06/2023

A6-Cancellation letter issued by OP dated 01/06/2023

A7-Certificate issued by Dr.Prashant Narayanan dated 09/05/2023

B1-Copy of proposal form

B2-Copy of prescription dated 21/08/2018

B3- Copy of prescription dated 20/04/2019

B4- Copy of prescription dated 25/08/2019

B5- Copy of prescription dated 26/09/2019

B6-Copy of prescription dated 28/02/2020

B7-Copy of prescription dated 06/12/2021

B8-Copy of prescription and Laboratory investigation report dated 25/06/2020

B9-Copy of discharge summary from Aster Medicity Ernakulam from 02/04/2023 to 11/04/2023

B10-Copy of query on authorization for cashless treatment dated 27/03/2023 issued by OP

B11-Copy of requirement of additional documents/information dated 05/05/2023 issued by OP

B12-Copy of policy schedule and condition

Pw1-Complainant

Pw2-Dr. Arjun R-Witness of complainant

Dw1-OP

Sd/

Sd/

PRESIDENT

MEMBER

Ravi Susha

Sajeesh K.P

(mnp)

Sd/

MEMBER

Molykutty Mathew

/Forwarded by order/

Assistant Registrar

[HON'BLE MRS. RAVI SUSHA]

PRESIDENT

[HON'BLE MRS. Moly Kutty Mathew]

MEMBER

[HON'BLE MR. Sajeesh. K.P]
MEMBER