

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION: NORTH-EAST**GOVT. OF NCT OF DELHI****D.C. OFFICE COMPLEX, BUNKAR VIHAR, NAND NAGRI, DELHI-93****Complaint Case No. 148/21****In the matter of:**

Smt. Rashmi Gupta,

W/o Late Sh. Manish Gupta,

R/o Flat No. 77, Meena Apartment,

I.P Extension, Delhi 92

Complainant

Versus

The Manager,

Universal Sompo General Insurance Co. Ltd.,

At: Delhi Branch,

Unit No. 903 & 904,

9th Floor, GDITL Tower,

Netaji, Subhash Place,

Pitampura, New Delhi

Opposite Party

DATE OF INSTITUTION: 18.10.2021

JUDGMENT RESERVED ON: 29.02.2024

DATE OF ORDER: 11.06.2024

CORAM:

Surinder Kumar Sharma, President

Anil Kumar Bamba, Member

ORDER

Surinder Kumar Sharma, President

The Complainant filed the present complaint under Section 35 of the Consumer Protection Act, 2019.

Case of the Complainant

1. The case of the Complainant as revealed from the record is that her husband had borrowed a home loan of Rs. 17,00,000/- from Indian Overseas Bank against the property for 120 months and the monthly EMI was fixed by the Bank of Rs. 20,806/-. Complainant stated that Indian Overseas Bank put a condition before her husband that the said loan should be insured with the Opposite Party and her husband agreed for the same and the said loan was insured with the Opposite Party. Complainant stated that the insurance policy covered with major illness/death and all the formalities were fulfilled between her husband and Opposite Party. Complainant stated that her husband had paid 7 installments amounting to Rs. 99,214/- to the Bank. On 01.07.2020, her husband had a brain stroke at Maharashtra where her husband was working and he got admitted in the hospital and he remained admit there for about 23 days and had undergone for a brain surgery. On 02.07.2020 during the hospitalization period her husband also had a paralysis attack and thereafter the condition of her husband was become worst. Thereafter, she requested the doctor to refer S.G.P.G.I Lucknow and they accepted the request of the Complainant and refer her husband to Lucknow and accordingly her husband was shifted from the said hospital to Lucknow through Ambulance. Complainant stated that during the transit approx. 150 k.m before S.G.P.G.I her husband collapsed with brain stroke then Ambulance brought to District Hospital of Akbarpur U.P where her husband was declared dead. Complainant stated that after the death of her husband she stopped paying EMI because the loan was covered under the policy with all risk. Complainant stated that one relative of the Complainant informed about the death of her husband to the Opposite Party by email as well as by personal visit. Complainant stated that during Pandemic Covid 19, Opposite Party pressurized the Complainant to pay the EMI. On 26.08.2020, Complainant filed a claim form before the Opposite Party but on 11.05.2021 it rejected the claim of the Complainant on the ground of clause "AC3". Thereafter on 17.05.2021, Complainant contacted with Indian Regulatory and Development Authority of India about the misconduct of Opposite Party and said authority directed Opposite Party to review the said claim of the Complainant but with the collusion, the said authority also rejected the claim of the Complainant on 25.05.2021. On 28.06.2021, she also contacted the Ombudsman, Delhi and said Authority directed to Opposite Party for a Mediation Centre and settled the dispute but Opposite Party did not comply same. Complainant stated that after the death of her husband, bank forcefully recover the EMI from the account of her husband even after the death account becomes inoperative. Hence, this shows the deficiency of service on the part of Opposite Party. Complainant has prayed to direct the Opposite Party to pay the total loan amount with interest and penalty to the Bank. Complainant also prayed for an amount of Rs. 5,00,000/- on account of mental harassment and Rs. 1,00,000/- on account of litigation expenses.
2. At the time of filing the complaint Indian Overseas Bank was also arrayed as Opposite Party. During the proceedings the name of Indian Overseas Bank was deleted from the array of parties. None has appeared on behalf of the Opposite Party i.e. Universal Sampo General Insurance Co. Ltd. to contest the case despite service of notice. Therefore, Opposite Party was proceeded against ex-parte vide order dated 13.04.2022.

Ex- Parte Evidence of the Complainant

3. The Complainant in support of her complaint filed her evidence by way of affidavit wherein she has supported the averments made in the complaint. **Arguments & Conclusion**
4. We have heard the Ld. Counsel for the Complainant. We have also perused the file and the written arguments filed by the Complainant. The case of the Complainant is that her husband has obtained a house loan of Rs. 17,00,000/- from the Indian Overseas Bank and the said loan was insured by the Opposite Party. Husband of the Complainant was working in Aurangabad (Maharashtra). After the payment of some installments of the loan, the husband of the Complainant suffered a brain stroke at Aurangabad. He was admitted in Super Speciality Asian Hospital Aurangabad, Maharashtra and thereafter he was refereed to S.G.P.G.I Lucknow for further treatment. While her husband was being taken to Lucknow from Aurangabad in an ambulance under the observation of a doctor, the husband of the Complainant expired on the way and he was taken to District Hospital Akbarpur, Kanpur, U.P where he was declared dead. The claim of the Complainant was rejected by the Opposite Party on the

ground that under the terms of the policy the husband of the Complainant was required to survive for a period of at least 90 days after the date of occurrence of the insurance event and in the present case, the husband of the Complainant survived for 23 days after the occurrence of the said event and for this reason the claim was rejected under additional clause AC3.. Survival Period. The perusal of the insurance policy shows that it covered major medical illness and person accident as well.

5. Now the question is that whether the clause AC3 applies in the present case. In the policy filed by the Complainant, it is nowhere specify that the minimum survival period of 90 days. The husband of the Complainant died as he has suffered a brain stroke at Aurangabad. He remained admit in Aurangabad in a Super Speciality Asian Hospital for 23 days there he had undergone for a brain surgery. He also suffered a paralysis attack. The husband of the Complainant was referred to S.G.P.G.I Lucknow for better treatment and on the way to Lucknow he had died. Therefore, from the circumstances it is clear that the husband of the Complainant died due to major illness. On the other hand, the Opposite Party did not contest the case as it was proceeded against ex-parte. The Opposite Party does not have any defense to rebut the case of the Complainant. The Ld. Counsel for the Complainant has relied upon a judgment dated 26.12.2022 passed by National Consumer Dispute Redressal Commission, New Delhi, in First Appeal No. 746 of 2021 in the case of ICICI Lombard General Insurance Company Ltd. Vs. Neema Saini. In the said judgment it was observed as under:

“13.....Death is a natural phenomenon that can happen on account of any medical problem, including septic shock with MODS, as in the present case. It cannot be said that a patient dies only because of the aforesaid major medical illnesses covered under the policy. In my considered opinion, the list of the said major medical illnesses as given in the Insurance Policy in question is not exhaustive and there is possibility of inclusion of other life threatening diseases and therefore,.....”

6. In view of the above discussion, we are of the opinion that there was deficiency of service on the part of the Opposite Party, therefore, the complaint is allowed. The amount insured was Rs. 17,00,000/ out of this amount, the husband of the Complainant has paid an amount of Rs. 99,214/-. The Complainant has settled the matter with the Financer/Bank. However, nothing could come on record the amount for which the matter was settled by the Complainant with the Indian Overseas Bank. After payment of Rs. 99,214/- out of Rs. 17,00,000/-, the remaining amount is Rs. 16,00,786/-. Therefore, the Opposite Party is directed to pay an amount of Rs. 16,00,786/- to the Complainant along with interest @ 9 % p.a. from the date of filing the complaint till recovery. Opposite Party is also directed to pay an amount of Rs. 50,000/- on account of mental harassment and Rs. 25,000/- on account of litigation expenses to the Complainant along with interest @ 9 % p.a. from the date of this order till recovery.
7. Order announced on 11.06.2024.

Copy of this order be given to the parties free of cost.

File be consigned to Record Room.

(Anil Kumar Bamba)

Member

(Surinder Kumar Sharma)

President