

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 746 OF 2021

(Against the Order dated 17/09/2021 in Complaint No. 512/2016 of the State Commission Delhi)

1. ICICI LOMBARD GENERAL INSURANCE COMPANY
LTD.

4TH FLOOR, RED FORT CAPITAL PARSVNATH TOWER,
BHAI VEER SINGH MARG, GOLE MARKET, NEW DELHI-
110001

.....Appellant(s)

Versus

1. NEEMA SAINI

W/O LATE SH.DARAMBIR SAINI, 77, SAINI ENCLAVE,
I.P.EXTENSION,PART -II, VIKAS MARG, NEW DELHI-
110092

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

For the Appellant : Mr. Navneet Kumar, Advocate

For the Respondent : Mr. Ramesh Kumar, Advocate with
Respondent in person

Dated : 26 Dec 2022

ORDER

1. The present Appeal has been filed against the Order dated 17.09.2021, passed by the State Consumer Disputes Redressal Commission Delhi at New Delhi (hereinafter to be referred to as the State Commission) in Complaint Case No.512 of 2016, whereby the Complaint, filed by Ms. Neema Saini (hereinafter referred to as the Complainant/Respondent) was partly allowed and Opposite Party No.1, i.e. ICICI Lombard General Insurance Company Ltd. (hereinafter referred to as the Appellant) was directed to pay ₹75,00,000/- along with interest @ 6% per annum from the date of repudiation of the claim, i.e. from 07.03.2016 till 17.09.2021 (the date of the said Order), subject to the condition that the entire payment shall be made on or before 16.11.2021; ₹3,00,000/- towards the harassment and mental agony; and ₹50,000/- towards the cost of litigation. Further, it was also directed by the State Commission that in case the amount is not paid by the Appellant herein on or before 16.11.2021, then interest @ 9% per annum from the date on which the claim was repudiated by the Appellant till actual realization of the amount shall be calculated.

2. Brief facts of the Case are that the Complainant/Respondent is wife and Legal Heir of the deceased Late Sh. Dharambir Saini. The Appellant herein is a General Insurance Company. The deceased husband of the Complainant/ Respondent had taken a Home Loan against property from ICICI Bank, Opposite Party No.2 in the Complaint (hereinafter to be referred to as the Bank) amounting to Rs. 75,00,000/-. In order to secure the said Loan, Complainant/Respondent's husband was insisted by the Bank to take an Insurance Policy. He was informed by the Bank that they had a tie up with the Appellant, a subsidiary company, and they shall purchase the insurance policy for him.

3. Thereafter, the Bank took the Insurance Policy in the name of the Insured from the Appellant Insurance Company for the period commencing from 15.10.2013 to 14.10.2018, assuring that in case of any mishap the Appellant would be liable to pay the Loan amount. No document with respect to the Insurance Policy in question was given to the Insured (Late Sh. Dharamvir Saini) either by the Appellant or the Bank and, therefore, he was allegedly unaware about the terms and conditions of the said policy.

4. On 20.10.2015, the Insured was admitted to the Hospital and expired on 25.10.2015 due to septic shock with MODS. The said fact was intimated by the Complainant/Respondent to the Appellant and all the

necessary documents were delivered for disbursement of the claim amount. However, the claim was repudiated by the Appellant vide letter dated 07.03.2016 on the ground that the claim did not fall within the terms and conditions of the said policy. The Complainant/Respondent informed about the repudiation of the claim to the Bank but it was of no avail.

5. In the said factual matrix, the Complainant/Respondent filed the afore-noted Complaint before the State Commission, alleging deficiency in service and unfair trade practice on the part of the Appellant Insurance Company and the Bank and seeking directions to them to pay ₹75,00,000/- along with interest @ 18% p.a. from the date of death of the Insured Dharambir Saini, i.e. 25.10.2015, till realization; ₹20,00,000/- as compensation for mental agony and pain suffered by the Complainant/Respondent; and ₹1,00,000/- as litigation costs.

6. The Appellant Insurance Company by filing its Reply contested the Complaint and raised objections to the maintainability of the Complaint. It was stated on its behalf that the Complaint was filed without any cause of action and that crucial past medical history of Diabetes and Tuberculosis was not disclosed by the Insured in the Proposal Form. The Insurance Policy along with booklet containing terms and conditions was duly served upon the Complainant/Respondent's husband vide letter dated 16.10.2013. There was no deficiency on the part of the Appellant, as the claim was not covered under the Policy in question.

7. Insofar as the Bank is concerned, it had also filed its Reply to the Complaint. However, vide Order dated 12.08.2021 passed by the State Commission the Bank was deleted from the Array of Parties as the Complainant/Respondent had paid the entire Loan amount to the Bank and there was no cause of action against the Bank.

8. On appreciation of the rival submissions made and evidence adduced by the Parties, the State Commission partly allowed the Complaint, by observing for the first and second issue as under:

“The question for consideration before us is whether the Complainant has any Cause of Action to file the present complaint against the Opposite party No. 1. It is not in dispute that the said insurance policy was purchased from the Opposite Party No. 1 by the Complainant's husband in the year 2013. It is further not disputed that the claim of the Complainant was rejected vide letter dated 07.03.2016 by the Opposite Party No. 1. It is clear from the copy of the Insurance Policy filed by the Opposite Party No. 1 that the present Complainant is the nominee of the insured i.e. Mr. Dharamvir Saini. Therefore, the Cause of Action arose in favor of the Complainant when the claim was repudiated by the Opposite Party no. 1 vide letter dated 07.03.2016. Consequently, the contention of the Opposite Party No. 1 that the Complainant has no Cause of Action against them is answered in the negative.

The next issue before us is whether the Opposite Party No. 1 supplied the copy of the said policy to the insured in order to make him aware of the terms and conditions of the said policy. It was submitted by the Opposite Party No. 1 that the said policy along with the terms and conditions was supplied to the insured on 16.10.2013. In support of his contention, the Counsel for the Opposite Party No.1 has relied on the dicta of the Hon'ble National Commission in Kamlesh Gupta (supra).

On perusal of the record before us, we find that the Opposite Party No. 1 has only filed the copy of the letter dated 16.10.2013 and has failed to find any document which shows the delivery of the copy of said policy along with terms and conditions to the insured. Hence, we cannot rely solely on the photo copy of the letter and the statement of the Opposite Party No.1, in the absence of proof of delivery.”

9. As regards the issue that the Insured had deliberately concealed the material fact of pre-existing medical diseases, i.e. diabetes and tuberculosis, the State Commission, relying on the Judgments and Orders

passed by this Commission in **Life Insurance Corporation of India v. Sunita & Ors., 2020 SCC OnLine NCDRC 710**, and in **Revision Petition No. 4461 of 2012 (Neelam Chopra v. Life Insurance Corporation of India & Ors.)**, was of the opinion that only the existence of a pre-existing diseases was not sufficient to repudiate the claim. The Insurance Company (Appellant) could not have repudiated the claim if the death of the deceased was not caused due to the pre-existing diseases. No document, showing that the Insured was suffering from diabetes at the time of obtaining the said policy was produced before the State Commission. The State Commission had further observed that the cause of death of the Insured was septic shock with MODS and not diabetes or tuberculosis and even if it was to be presumed that there existed a pre-existing disease like diabetes, which is a common life style disease, the repudiation cannot be made on that basis also. Consequently, the State Commission Partly allowed the Complaint and issued the afore-noted directions to the Appellant herein. Hence, the present Appeal.

10. Mr. Navneet Kumar learned Counsel for the Appellant submitted that the State Commission failed to appreciate that the Insured had died due to septic shock with MODS and the Policy only covered the Major Medical Illnesses as defined under the Policy i.e. Cancer, End Stage Renal Failure, Multiple Sclerosis, Major Organ Transplant, Heart Valve Replacement or Coronary Artery Bypass Graft, Stroke, Paralysis and Myocardial Infarction. As none of the diseases, which were covered under the "Major Medical Illnesses & Procedures", was a cause of the death of the insured, the claim was not covered under the ambit of the Policy. The State Commission further erred in relying upon the judgment and order passed by this Commission in the Case of Neelam Chopra (Supra) as the same is not applicable in the present facts and circumstances of the case. The State Commission also erred in observing in that the insurance claim cannot be denied on the ground of common life style diseases. Learned Counsel for the Appellant Insurance Company also submitted that the State Commission failed to appreciate that the Policy had been issued subject to Additional Clause AC1 (i.e. Reducing Sum Insured Clause) and, therefore, the maximum liability (Sum Insured of the Policy) of the Appellant shall be the principal amount outstanding in the books of the Bank as on the date of occurrence of the Insured event subject to other conditions of the Policy. Therefore, awarding Rs.75,00,000/- and ignoring the said condition is absolutely contrary to the terms and conditions of the Policy.

11. Per contra, Mr. Romesh Kumar, learned Counsel appearing for the Respondent/complainant, justified the Order passed by the State Commission, as, according to him, the State Commission has passed as a well-reasoned Order, which is based on a correct and rightful appreciation of evidence and material available on record and does not call for any interference.

12. I have heard learned Counsel for the Parties and gone through the material available on record and given a thoughtful consideration to the various pleas raised by them.

13. As regards the plea taken by the Appellant that the Insured had died due to septic shock with MODS (Multiple Organ Dysfunction Syndrome), which was not one among the aforesaid Major Medical Illnesses covered under the Policy, it may be stated that as per medical literature Septic Shock is a life-threatening condition that happens when blood pressure of a patient drops to a dangerously low level after an infection. If the infection is not treated in a timely manner, it can result into septic shock with MODS and its fatality rate can be as high as 28-56%. MODS is a systemic, dysfunctional inflammatory response that requires long Intensive Care Unit (ICU) stay. It may be because of many reasons, including major trauma, burns, pancreatitis, aspiration syndromes, extracorporeal circulation, multiple blood transfusion, ischaemia – reperfusion injury, autoimmune disease, heat-induced illness, eclampsia, poisoning/toxicity etc. In this view of matter, even if septic shock with MODS is not one among those major medical illnesses covered under the policy, it cannot be said that it is not fatal or life-threatening. 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, if septic shock with MODS is not one among the said major medical illnesses, it can easily be said that it is life threatening and may be a reason for death of a patient. The Appellant cannot take the plea that the said disease was not a critical illness covered under the policy.

14. A perusal of the record shows that there was no proximity or nexus between the alleged pre-existing diseases and cause of death of the Insured. The death of the Insured was due to septic shock with MODS

and not because of common life style diseases, like diabetes, as has been observed by the State Commission, relying on the judgment and order passed by this Commission in the Case of Neelam Chopra (Supra) and, therefore, it is not necessary to dwell upon the submission of the learned Counsel for the Appellant that the State Commission has erred in relying upon the said Case and observing that the insurance claim cannot be denied on the ground of common life style diseases.

15. Further, it may be true that the Insurance Policy in question was issued subject to Additional Clause, referred to above, which restricts the liability of the Appellant to the principal amount outstanding in the books of the Bank. However, the State Commission, for the reasons recorded in the Impugned Order, has recorded a categorical finding that the terms and conditions of the Insurance Policy were not supplied to the Insured and, therefore, the submission of the Appellant that its maximum liability in the present case is the principal amount outstanding in the books of the Bank cannot be accepted.

16. In view of the foregoing discussion, I am of the considered opinion that the State Commission was perfectly justified in directing the Appellant to pay to the Complainant/Respondent the insured sum of Rs.75,00,000/- with interest. However, while doing so, the direction to pay Rs.3,00,000/- as compensation was not warranted as the compensation in the form of interest has already been granted by the State Commission. The compensation under multiple heads cannot be awarded and the same view has been taken by the Hon'ble Supreme Court in the Case of DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, Etc. Etc. and DLF Homes Panchkula Pvt. Ltd. & Anr. Vs. Sudesh Goyal, Etc., II (2019) CPJ 117 (SC). The said direction is accordingly deleted.

17. The Appeal is partly allowed in the above terms.

.....J
R.K. AGRAWAL
PRESIDENT