

Maity v. State Bank of India & Ors., I (2022) CPJ 104 (SC)=I (2022) SLT 541=AIR (2022) SC 577, held that “the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity.” We find no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, Revision Petition is dismissed

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

Revision petition dismissed.

IV (2023) CPJ 532 (NC)

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

Mr. Justice Ram Surat Ram Maurya, Presiding Member & Bharatkumar Pandya, Member

DIPTI YOGESH PAREKH —Complainant

versus

BIRLA SUN LIFE INSURANCE CO. LTD.

—Opposite Party

Consumer Case No. 1289 of 2015—Decided on 11.10.2023

(i) Consumer Protection Act, 1986 Sections 2(1)(g), 14(1)(d), 21(a)(i) — Insurance (Life) — Death of insured — Non-disclosure of pre-existing disease alleged — Repudiation of claim — Deficiency in service — In order to prove that DLA was suffering from diabetes, mellitus and hypertension much prior to obtaining present policy and he was declined issue of policy due to adverse medical history, opposite party has placed on record one application form dated 03.01.2004 and other dated 31.03.2004 — No rejection letter was placed on record — After

considering medical examination reports, impugned policy was issued — It cannot be said that DLA had knowledge of elevated sugar level and knowingly concealed this fact as medical reports were never provided to him — Opposite party had failed to prove that DLA was suffering from diabetes and heart related diseases prior to obtaining policy in question and had knowingly withheld information in this respect in proposal form — As far age it could not be considered as deliberate concealment of any material fact — By giving longer age, he was subjected to higher premium and no prejudice has been caused to Insurer — On its basis claim could not be repudiated — Repudiation letter is illegal and liable to be set aside. [Paras 8, 9, 12]

(ii) Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d), 21(a)(i) — Insurance Regulatory and Development Authority (Protection of Policyholders’ Interest) Regulations, 2017 — Regulation 9 — Insurance (Life) — Death of insured — Repudiation of claim — Deficiency in service — Regulation 9 provides for completion of survey within three months and thereafter insurer is required to take decision within one month — At most from date of communication of loss, settlement has to be done within six months — If it is not done within six months, then claimant is entitled for interest after six months — Opposite party is directed to pay Rs. 5,00,00,000 with interest @ 9% per annum. [Para 13]

Result: Complaint allowed.

Cases referred:

1. **United India Insurance Compay Limited v. M.K.J. Corporation**, 1996 (SLT SOFT) 2275=III (1996) CPJ 8 (SC). (Relied) [Para 11]
2. **Modern Insulator Limited v. Oriental Insurance Compay Limited**, I (2000) CPJ 1 (SC)=II (2000) SLT 323. (Relied) [Para 11]
3. **Santwant Kaur Sandhu v. New India Assurance Company Limited**, IV (2009) CPJ 8 (SC)=VI (2009) SLT 338. (Relied) [Para 11]

4. **Reliance Life Insurance Compay Limited v. Rekhaben Nareshbhai Rathod**, II (2019) CPJ 53 (SC)=IV (2019) SLT 235. (Relied) [Para 11]
5. **Bajaj Allianz Life Insurance Compay Limited v. Dalbir Kaur**, IV (2020) CPJ 60 (SC). (Relied) [Para 11]
6. **Secretary, Irrigation Department, Government of Orissa v. G.C. Roy**, 1991 (SLT SOFT) 231. (Relied) [Para 13]

Counsel for the parties:

For the Complainant : *Mr. Rajan Khosla, Advocate.*

For the Opposite Party : *Ms. Meenakshi Midha, Mr. Garv Singh, Advocates, Ms. Aakriti Manocha, AR.*

ORDER

1. Heard Mr. Rajan Khosla, Advocate, for the complainant and Ms. Meenakshi Midha, Advocate, for the opposite party.

2. Mrs. Dipti Yogesh Parekh (the nominee of the Deceased Life Assured) has filed above complaint, for directing Birla Sun Life Insurance Compay Limited (the Insurer) to pay (i) Rs.5 crores with interest @10% per annum from 20.2.2015 till the date of payment, towards insurance claim; (ii) Rs. 50 lakhs, as compensation for mental agony and physical harassment; (iii) litigation costs; and (iv) any other relief which is deemed fit and proper in the facts and circumstance of the case.

3. The complainant stated that Late Yogesh Balwantraji Parekh (her husband) (the DLA) applied for 'Birla Sun Life Insurance Protector Plus Plan' policy for a sum assured of Rs. 5 crores and term of 20 years and deposited basic premium of Rs. 376181.28 on 25.9.2012. The opposite party, through its approved doctor of namely Dr. Milan Mehta, conducted medical examination at Healthcare Medical Centre Diagnostics and obtained pathological test reports of the DLA in respect of blood sugar fasting, serum cholesterol, biochemical report, liver function test, biochemistry report (serum), Australia Antigen test (HBsAg), Elisa for HIV I & II, complete blood count, routine urine examination, stress test, nicotine (urine) test etc. After examination of the medical examination reports and other papers, the competent authority issued Policy No. 005889092, for a sum of Rs. 5,00,00,000 and term of 20 years i.e. from 31.12.2012

to 31.12.2032. Annual premium of the policy was payable till 31st December of every year. The DLA went to Rajkot on 25.4.2014 on a business trip along with his son. In intervening night of 25/26.4.2014, the DLA developed sudden chest pain. He was taken to Patel Clinic, where Dr. Hiren K. Patel, advised for X-ray of the chest. The pain was increased in the morning then the DLA was admitted at Ratnam Hospital, Rajkot on 26.4.2014 at 10:30 hours, where he expired at 11:00 hours on 26.4.2014. The hospital informed the local police, who conducted inquest of the dead body and sent it for post mortem. After post mortem, the dead body was released and brought to Mumbai and cremated on 27.4.2014. The complainant lodged insurance claim on 13.6.2014 before the opposite party. The opposite party demanded some papers, through letter dated 18.6.2018, which were provided. Instead of settlement of the claim, the opposite party referred the matter to reinsurer as the insurance amount was of high valuation. As asked by reinsurer, the opposite party investigated the matter and rejected the claim letter dated 20.2.2015, on the ground that in proposal form, the DLA had replied in respect of the queries relating to his health and previous insurance policies, in negative, which were incorrect. In investigation, it was found that the DLA had applied for insurance policy from Birla Sun Life Insurance Compay Limited on 03.01.2004, which was rejected for adverse medical history of the DLA. Date of birth of the DLA as mentioned in the proposal form was not tallying with his Birth Certificate as issued by 'Sangli Miraj and Kupwad City Corporation' and his PAN card. Due to concealment of material facts, the policy was void. This complaint has been filed on the ground that this policy was issued after in-depth medical examination of the DLA, in which, nothing adverse was diagnosed and date birth as mentioned by the DLA in Proposal Form was as mentioned in his PAN Card. Date of birth was relevant to charge the premium. In this case on basis of date of birth as 14.10.1960, higher premium was charged and no prejudice was caused to the Insurer.

4. The opposite party filed its written reply on 12.1.2017 and contested the complaint. The

facts relating to obtaining insurance policy, death of the DLA on 26.4.2014 and repudiation letter dated 20.2.2015, have not been disputed. The opposite party stated that the DLA had applied to Birla Sun Life Insurance Company Limited on 3.1.2004, for insurance policy for a sum of Rs. 10 lacs. In this proposal form, the DLA mentioned in date of birth as 14.10.1960, which was mentioned in his PAN card. The DLA mentioned name of his employer as "Sukesh Marketing", his designation as "Manager" and annual income as "Rs.1,50,000". The Insurer got conducted medical examination and pathological test of the DLA during 4.1.2004 to 28.1.2004, in which, he was found over weight with ECG changes, which showed blood pressure on higher side. In view of medical test reports, the DLA was asked for extra-premium for issuance of the policy, which was not agreed by the DLA and his proposal form was rejected. In the month of March, 2004, the DLA applied for issue of policy with the opposite party and Policy No. 000235092 was issued to him. In this proposal form, he had mentioned his annual income as Rs. 3,00,000. The claim in this policy was paid on 12.8.2014. The DLA obtained Policy Nos.000337331, 000338431, 000338436, 000506261 and 000506279 in his name and in the names of his family members, in which, he had mentioned himself as the proprietor of "Sukesh Marketing". Date of birth was mentioned as 14.10.1960. The DLA surrendered Policy No. 000337331 on 23.4.2010, for the reason of fund requirement. Policy No. 000338431 was surrendered on 15.7.2016. Policy No. 000338436 was surrendered on 15.7.2016. Policy No. 000506261 was surrendered on 16.2.2016. Policy No. 000506279 was surrendered on 16.2.2016. For impugned policy, the DLA submitted proposal form on 25.9.2012. In the proposal form, date of birth was mentioned as "14.10.1960". Name of Employer/business "Sumangal Polymers", showing himself as "Proprietor" and annual income was shown as "Rs. 50,00,000". Various queries relating to his health were answered in negative by the DLA. The DLA enclosed copies of his PAN card, ITR of FY-2009-2010, FY 2010-2011, FY 2011-12, FY 2012-13, MTNL bill and KYC

address proof. The hospital "Health Care Medical Centre and Diagnostics" Kandivali, Mumbai was a panel hospital of the opposite party, where medical tests of the DLA were conducted. The policy No. 005889092 was issued on the basis of the declaration of the DLA and medical examination reports. The DLA allegedly died on 26.4.2014 at Ratnam Hospital, Rajkot. The complainant intimated the death to the opposite party on 13.06.2014 and supplied various papers time to time. The opposite party investigated the matter and received information on 26.9.2014 that the DLA had applied for issue health cover insurance policy from First Life Insurance Company Limited in December, 2011, which was declined due to elevated blood sugar level on 23.2.2012. The opposite party took expert opinion of Dr. C.H. Asrani, on the medical examination reports of the DLA in February, 2012, who also opined that the DLA was suffering from diabetes. The opposite party consulted with reinsurer on 22.10.2014. The opposite party appointed Sanjay Bhatt Claims Consultancy Private Limited to investigate into the death of the DLA. During investigation, Dr. Paras P. Shah, Ratnam Hospital categorically stated that the DLA was a case of high blood pressure, however, the relative of the DLA did not provide any document relating to treatment of the DLA. From which, it was revealed that the DLA was a case of hypertension and diabetes and suffered from heart related complications in past. The Investigator, after investigation, submitted report dated 12.2.2015, stating that entire police procedure relating to inquest and sending dead body for post mortem were fake and post mortem report was not reliable. There was concealment of material facts relating to ailments of the DLA in the proposal form therefore the claim was rejected on 11.2.2012. There is no deficiency in service on the part of the opposite party. The complaint is liable to be dismissed.

5. The complainant filed Affidavit of Evidence of Mrs. Dipti Yogesh Parekh and documentary evidence. The opposite party filed Affidavits of Evidence of Ms. Aakriti Manocha, Deputy Manager Legal, Dr. C.H. Asrani (medical expert), Sanjay Bhatt (the investigator) and

documentary evidence. Both the parties have filed their written synopsis.

6. We have considered the arguments of the Counsel for the parties and examined the record. Repudiation letter dated 20.2.2015 noticed Questions-11-Insurability Declaration, 12-Insurance History and 14-Medical History and found that (i) the DLA was suffering from Diabetes, Mellitus and Hypertension much prior to obtaining present policy; (ii) the DLA applied to Birla Sun Life Insurance Company Limited and various other Insurance Companies, which were not disclosed; (iii) the DLA was declined issue of policy due to adverse medical reports; and (iv) the date of birth of the DLA in his PAN card was mentioned as 14.10.1960, while in his Birth Certificate issued by Sangali Miraj and Kupwad City Corporation, it was 14.10.1961. On the basis these findings, it was held that as the DLA had concealed material information as such the policy was void and the claim was repudiated.

7. The DLA died in Ratnam Hospital, Rajkot on 26.4.2014 at 11:00 hours. Ratnam Hospital did not mention cause of death in Death Certificate (filed on page 45 of the complaint) nor any diagnosis or test report at Ratnam Hospital shows that the DLA was suffering from diabetes or heart diseases. In Post Mortem report dated 26.04.2014 (page-115 of the complaint), cause of death of the DLA could not be ascertained and viscera was preserved. In Government Regional Forensic Science Laboratory Report dated 16.8.2014 (page-91 of the complaint), no chemical poison was found. The opposite party filed 'Death Certificate' of the DLA dated 11.2.2015 (page-318 of reply) issued by Dr. Paras Shah showing cause of death 'probably a case of cardiomegaly with dysfunction and H/O some breathlessness'. It was mentioned in this certificate that the relative had no provided any documents of previous treatment. If the DLA had not taken any medicine of diabetes and heart diseases, then from where the relative will provide documents in this respect. The opposite party adduced evidence of Dr. C.H. Asrani (medical expert) and Sanjay Bhatt (the investigator) to prove that the DLA was suffering from diabetes and heart related diseases

before obtaining the policy in question. Sanjay Bhatt (the investigator) made hectic efforts to prove that the police records and post mortem report of the DLA are fabricated documents but the fact that the DLA died on 26.4.2014 at Ratnam Hospital could not be falsified. If Ratnam Hospital informed the local police about suspicious death of the DLA, then the police was duty bound to make Inquest, send the dead body for post mortem. In the absence of any other document, relating to post mortem of the body of the DLA, we see no reason to disbelieve the Post Mortem Report and Viscera Examination Report as produced by the complainant. In repudiation letter, Investigator's report dated 12.2.2015 was not relied upon. Even for the sake of argument, it is taken that the DLA died due to heart attack on 26.4.2014, then also it could not be presumed that the DLA was suffering from diabetes and heart diseases in December, 2012 at the time of obtaining present policy.

8. In order to prove that the DLA was suffering from diabetes, mellitus and hypertension much prior to obtaining present policy and he was declined issue of policy due to adverse medical history, the opposite party has placed on record one application form dated 3.1.2004 (page-52 of the reply) and other dated 31.3.2004 (page 85 of the reply). According to the opposite party, application form dated 03.01.2004 was rejected due to adverse medical reports but no such rejection letter was placed on record. On the application form dated 31.3.2004, Policy No. 000235092 was issued and also honoured after death of the DLA by the opposite party. The medical test reports of January, 2004 were alone produced by the opposite party. There is no medical test reports after 31.3.2004 as such it is proved that Policy No. 000235092 was issued on the basis of the medical test reports of January, 2004. Other application form submitted on 27.12.2004, has been filed along with IA/9192/2016 (page-91). On which fresh medical examinations of the DLA were conducted in December, 2004 and January, 2005. Admittedly the opposite party issued Policy Nos. 000337331, 000338431, 000338436, 000506261 and 000506279 to the DLA and his family members. Other

application form dated 15.12.2012 (page-163 of the reply) was filed. On which again fresh medical examinations of the DLA were conducted in December, 2012 and January, 2013. After considering medical examination reports, the impugned policy was issued.

9. The opposite party stated that the DLA had applied for issue of "Money Back Health Plan" insurance policy to IndiaFirst Life Insurance Company Limited on 30.12.2011, on which, medical tests of the DLA were conducted in February, 2012 and due to adverse medical reports, his form was rejected. The opposite party has filed Decline of Application letter dated 20.2.2012 (page-269 of the reply), in which, it has been mentioned that "our rejection is not necessarily a reflection on your health but your insurability according to our internal underwriting guidelines". From this letter it is not proved that form was rejected due to adverse medical reports. In any case, on its basis, it cannot be said that the DLA had knowledge of the elevated sugar level and knowingly concealed this fact as the medical reports were never provided to him. The opposite party filed Affidavit of Evidence of Dr. C.H. Asrani and his expert report dated 30.1.2015. He gave report on medical test report dated 11.02.2012, in which Glucose (Sugar) Fasting was found 149.7 mg/dl. In the test report dated 25.9.2012, which was conducted by the opposite party, Glucose (Sugar) Fasting was found 104 mg/dl. If for a time being, glucose level was elevated, then only on its basis, it cannot be said the DLA was suffering from diabetes or a known patient of diabetes. Along with Affidavit of Evidence of Ms. Aakriti Manocha, the opposite party filed a letter dated 11.1.2017, issued by India First Life Insurance Company Limited, showing that the DLA had applied for issue of "Money Back Health Plan" policy on 30.12.2011, which was declined as in medical examination report elevated blood sugar level (BMI 38, FBS 149, GHb 8.3, elevated TRIGS and LDL Glycosuria 4+) was found. No Affidavit of a responsible officer of IndiaFirst Life Insurance Company Limited was filed as such no reliance can be placed on this letter as this letter dated 11.1.2017 was subsequent to the letter of repudiation dated

20.2.2015. In view of the above discussions we found that the opposite party had failed to prove that the DLA was suffering from diabetes and heart related diseases prior to obtaining policy in question and had knowingly withheld information in this respect in the proposal form.

10. Issuance of Policy Nos. 000235092 and 000337331 to the DLA and Policy Nos. 000338431, 000338436, 000506261 and 000506279 to his family members as well as the date of birth of the DLA in his PAN card was mentioned as 14.10.1960, while in his Birth Certificate issued by Sangali Miraj and Kupwad City Corporation, it was 14.10.1961 are not disputed by the complainant. The Counsel for the complainant submitted that Policy No. 000235092 was honoured after death of the DLA by the opposite party and the DLA had surrendered Policy No. 000337331 on 23.04.2010, for the reason of fund requirement, i.e. before filling up present proposal form. Other policies were in the name of other members of his family and not material. Non disclosure of Policy Nos. 000235092 and 000337331 were not material facts, going to the root of contract and had any bearing on the risk involved, while issuing present policy. In the proposal form, he had mentioned his date of birth as 14.10.1960 as mentioned in his PAN card. It could not be considered as deliberate concealment of any material fact. By giving a longer age, he was subjected to higher premium and no prejudice has been caused to the Insurer. On its basis claim could not be repudiated.

11. Earlier the phrase 'material fact' was not defined in the statute. Supreme Court in **United India Insurance Company Limited v. M.K.J. Corporation**, 1996 (SLT Soft) 2275=III (1996) CPJ 8 (SC)=(1996) 6 SCC 428, held that any fact, which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved, would be "material". This proposition has been followed in **Modern Insulator Limited v. Oriental Insurance Company Limited**, 1 (2000) CPJ 1 (SC)=II (2000) SLT 323=(2000) 2 SCC 734. Later on, Regulation-2(d) of

Insurance Regulatory and Development Authority (Protection of Policy holder's Interest) Regulation, 2002, has defined "material" as shall mean and include all important essential and relevant information in the context of underwriting the risk to be covered by the Insurer. Supreme Court in **Santwant Kaur Sandhu v. New India Assurance Company Limited**, IV (2009) CPJ 8 (SC)=VI (2009) SLT 338=(2009) 8 SCC 316, held that if the proposer had knowledge of such fact, he is obliged to disclose it, particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in proposal form is material for the purpose of entering into a contract of insurance. In **Reliance Life Insurance Company Limited v. Rekhaben Nareshbhai Rathod**, II (2019) CPJ 53 (SC)=IV (2019) SLT 235=(2019) 6S CC 175, it has been held that materiality of the fact also depends upon the surrounding circumstances and the nature of information sought by the Insurer. It covers a failure to disclose vital information which the Insurer requires in order to determine firstly whether or not to assume the risk of insurance and secondly, if it does accept the risk, upon what term it should do. Which has been followed in **Branch Manager, Bajaj Allianz Life Insurance Company Limited v. Dalbir Kaur**, IV (2020) CPJ 60 (SC)=(2021) 13 SCC 553.

12. The opposite party has filed proposal form (on page-163 of the reply), on which, present policy was issued. Question No. 11 of proposal form for the impugned policy is headed as "Insurability Declaration for the life to be assured". All the questions in this heading related to health. As such, material facts for underwriting the risk to be covered by the Insurer were related to health queries, which were not answered incorrectly by the DLA. Information relating to insurance history was question No. 12, which cannot be said to be material for underwriting the risk to be covered by the Insurer. Similarly, date of birth was relevant for charging premium and on the basis of the date of birth as 14.10.2960, higher

premium has been charged as such no prejudiced has been caused to the opposite party. In view of aforesaid discussion, we find that repudiation letter dated 20.2.2015 is illegal and liable to be set aside.

13. Another question arises that from which date the interest is payable on the insurance claim. The Supreme Court in **Secretary, Irrigation Department, Government of Orissa v. G.C. Roy**, 1991 (SLT SOFT) 231=(1992) 1 SCC 508, held that the interest is a compensation for deprivation of use of the money to its legitimate owner. Regulation 9 of Insurance Regulatory and Development Authority (Protection of Policyholders' Interest) Regulations, 2017 provides for completion of survey within three months and thereafter the insurer is required to take decision within one month. Therefore, at the most from the date of communication of loss, the settlement has to be done within six months. If it is not done within six months, then the claimant is entitled for interest after six months.

ORDER

In view of the aforesaid discussion, the complaint is allowed. Repudiation letter dated 20.2.2015 is set aside. The opposite party is directed to pay Rs. 5,00,00,000 with interest @ 9% per annum from 13.12.2014 till the date of payment, within a period of two months from the date of this judgment.

Complaint allowed.