

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 642 OF 2017

(Against the Order dated 19/08/2016 in Appeal No. 1229/2015 of the State Commission
Punjab)

1. SARBJIT SINGH @ SARABJEET SINGH
S/O. JOGINDER SINGH QUARTER NO. T 19, RAILWAY
COLONY,
GURDASPUR
PUNJAB

.....Petitioner(s)

Versus

1. STATE BANK OF INDIA & ANR.
THROUGH ITS BRANCH MANAGER, TIBRI V.P.O. TIBRI
DISTRICT-GURDASPUR
PUNJAB

2. SBI LIFE INSURANCE CO. LTD.,
THROUGH ITS AUTHORIZED SIGNATORY, GROUP
CLAIMS DEPTT. 2ND FLOOR, KAPAS BHAVAN, PLOT
NO. 3A, SECTOR 10, CBD BELAPUR,
NAVI MUMABI-400614
MAHARASHTRA

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

FOR THE PETITIONER : MR DINESH MAHAJAN, ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENT NO.1 MR ADITYA, PROXY COUNSEL
FOR RESPONDENT NO.2 MR BHARAT MALHOTRA,
ADVOCATE

Dated : 04 December 2023

ORDER

1. This revision petition under section 21(b) of the Consumer Protection Act, 1986 (in short, the 'Act') assails the order dated 19.08.2016 in First Appeal No. 1229 of 2015 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh (in short, the 'State Commission') allowing the appeal against order dated of the District Consumer Disputes Redressal Forum, Gurdaspur (in short, the 'District Forum') dated 05.10.2015 in Consumer Complaint no. 463 of 2014.

2. The facts as per the record are that Smt Harjit Kaur, wife of the petitioner was sanctioned a house building loan for Rs 9,63,445/- by the respondent no. 1 and was also made a member of the SBI Life Dhanraksha Plus LPPT Policy after paying a premium of Rs 63,445/-. She expired on 10.06.2011 in Escort Hospital, Amritsar after a short illness. The claim of the petitioner/complainant was repudiated by the respondent/opposite party on the ground that the policy had been obtained by suppressing material evidence pertaining to pre-existing illnesses of the Deceased Life Assured (DLA). The complaint of the

petitioner/complainant was allowed by the District Forum on the grounds that the policy was a requirement under the loan and had not been sought by the DLA of her own volition and that the policy was issued after due examination. The State Commission, however, upheld the appeal of the respondent/complainant on the ground that a policy of insurance obtained on the basis of false declaration of good health was a violation of 'utmost good faith' and therefore the order of the District Forum was set aside. The present revision petition impugns this order of the State Commission on the grounds that the order does not set out any valid and legal reasons; does not consider the fact that the DLA had not opted for the policy but had to necessarily take it on account of her having taken a house building loan from the respondent under a Proposer Master Policy; does not consider that the State Commission erred in concluding that the DLA had been suffering from diabetes and kidney disease for 4 years without any affidavit or affidavit/evidence from the doctor concerned and was therefore based on presumption. The judgment of this Commission in *National Insurance Co. Ltd. Vs. Smt. Swaraj Jain*, (2008) 2 CPJ 59 wherein it was held that past history recorded in a hospital is not to be treated as primary evidence unless the doctor who recorded it was produced is relied upon. It was also averred that in a catena of judgments the Hon'ble Supreme Court and this Commission had held that the burden of concealment lay on the insurance company and that in the absence of evidence/affidavit of the doctor or surveyor, the relevance of medical history would not lie as it would amount to hearsay evidence since the doctor was the only person to prove such a document on record.

3. I have heard the learned counsel for the petitioner as well as the counsel for the respondent and given thoughtful consideration to the material on the record.

4. On behalf of the petitioner/complainant it was argued that the late Smt Harjit Kaur became a member of the SBI Life Dhanraksha Plus LPPT Policy not on her free will but only as a consequence of the house building loan sanctioned by the State Bank of India, Gurdaspur (respondent no. 1) since she was in a subservient position on account of having taken a loan. The fact that the policy was a SBI Master Policy with the SBI as the proposer proves the contention. No affidavit of a doctor or evidence to prove that she was suffering from diabetes and kidney disease had been brought on record and hence the order of the State Commission was based on presumption as held in *Swaraj Jain* (supra). Reliance is placed on this Commission's orders in *Life Insurance Corporation of India Vs. Charanjit Kaur*, RP No. 3653 of 2006 dated 19.07.2006, 2011 (4) CPR 459 and *SBI Life Insurance Co. Ltd. Vs. Harivinder Kaur & Anr.*, RP No. 380 of 2013, 2014 (3) CPJ 552 that failure on part of insurance company to prove allegation of fraudulent concealment of health by not examining the doctor who examined and recorded prior medical history did not warrant interference. Reliance was also placed on the Hon'ble Supreme Court's judgment in *Chandan Singh Vs. National Insurance Co. Ltd. & Anr.* in CA No. 318 of 2015 dated 12.01.2015, 2015 (1) Law Herald (SC) 632 on the issue of condonation of delay.

5. *Per contra*, the respondent/opposite party no. 1 contended that Smt Harjit Kaur approached respondent no.1 Bank for the sanction and grant of housing loan of Rs.9.00 lakh and the deduction of Rs.63,445/- for paying the premium of the Life Insurance Policy from respondent no.2 under the Dhanraksha Pluss LPPT Group Insurance Scheme. The total loan for Rs.9,63,445/- was sanctioned. The deceased borrower submitted all the required papers to respondent no.2 which also included a declaration of good health. Learned counsel for the respondent no.1 states that the deceased was not maintaining good health, and in fact, the

deceased was suffering from chronic ailments like diabetes mellitus, chronic kidney disease prior to the date of subscribing the policy.

6. The learned counsel for the respondent no.1 submits that the loan was granted on 21.04.2010 and the deceased expired on 10.06.2011. The petitioner lodged their claim with respondent no.2 and claimed the insurance amount. Learned counsel for respondent no.1 states that respondent no.2 while processing the claim found that the deceased had submitted wrong declaration regarding her health; hence, the respondent no.2 rejected the claim. Learned counsel for respondent no.1 further submitted that the intimation regarding the repudiation of the claim was given by respondent no.2/ OP No.2 to the master policy holder, i.e., respondent no.1/ OP No.1 vide letter dated 26.11.2011 as well the petitioner/ complainant vide letter dated 21.03.2012. Learned counsel further stated that the claim of the deceased was investigated by the investigator who submitted his report on 04.11.2011 which revealed that the deceased was having kidney disease since four years and was under treatment in Fortis Escort Hospital, Amritsar on 01.06.2009. Hence, the revision petition has no merits.

7. On behalf of respondent no. 2 it was stated that the deceased Harjit Kaur had availed housing loan from respondent no.1 and had applied for Dharaksha Policy Plus LPPT Group Insurance Scheme under the Master Policy which was issued to respondent no.1 through membership form dated 21.04.2010. Learned counsel for respondent no.2 stated that the insurance scheme was of diminishing in nature. In the instant case the outstanding loan amount as on the date of death was Rs. 9,61,635/- since the deceased life assured died on 10.06.2011. Learned counsel for respondent no.2 has stated that for getting an insurance cover, the life assured should submit a declaration of good health along with other details in the membership form, confirming that he or she is in sound health and does not suffer from any illness or critical illness. Further, the learned counsel for respondent no.2 has stated that in the membership form for Dhanaraksha Plus LPPT Group Insurance Scheme, the DLA signed the declaration for good health in which the DLA declared that she was presently in sound mental and physical health and also that she did not suffer from any physical defect/ deformity and performed routine activities independently. Further, in the membership form dated 21.04.2010, under point no.8, in response to the questions posed, the DLA has replied in the negative. The learned counsel for respondent no.2 states that non-disclosure of material information is fatal to the Doctrine of Utmost Good Faith and thus the contract of insurance is vitiated. Learned counsel for respondent no.2 has relied upon the following judgments of the Hon'ble Supreme Court in (i) **Chackochan vs LIC of India** in Civil Appeal no.5322 of 2007 which held that the insurer is justified in repudiating a claim wherever there is a suppression of material fact; and (ii) **Sealark Vs United India Insurance Co. Ltd.**, that held that if a customer fails to furnish necessary particulars while applying for the policy, the company cannot be held liable for non-payment of money. Reliance was also placed on this Commission's orders in (i) **LIC vs Mansa Devi**, II (2003) CPJ 135 (NC) that contract of insurance is of utmost good faith and the life assured is bound to disclose honestly and truthfully to all the questions in the proposal form; (ii) **HDFC Standard Life Insurance Co. Ltd., vs Smt Jayalakshmi** (RP no.336 of 2007) that insurance policy is a contract entered between the parties in utmost good faith, any violation of its terms and conditions by the insured entitles an insurance company to repudiate the claim; (iii) **Neelam Gupta vs Reliance Life Insurance and Anr** (RP no.4486 of 2010) dated 09.02.2011 that non-disclosure of

material information is a serious breach on the part of the policy holder; and (iv) **LIC of India vs Smt Shahida Khatoon and Ors.**, dated 10.09.2013 that repudiation of a claim is on the basis of noting of the history for diabetes of 10 years and the prescriptions given by the treating doctors.

Hence, respondent no.2 prays that the petition be dismissed with exemplary costs.

8. The finding of the District Forum is as under:

“We find that the insurance death claim has been repudiated for the other prime reason that the DLA (Deceased Life Assured) suppressed the fact of her continuing ailments (as alleged) in her ‘proposal form’ pertaining to the policy in question. However, it need be examined against the backdrop that the DLA never herself opted for the insurance policy out of her free will (since it was never routine/standard life/health policy etc.,) and she had to compulsorily go in for its purchase at the instance/ compelling persuasion of the OP 1 Bank from who she had availed ‘housing loan’ and thus being in a subservient position she had to join the OP’s Group Insurance as member and to purchase the said policy that indemnified the Housing Loan outstanding but only in the remotest event of the sad demise of the borrowing DLA. The Ex OP 2/2 and Ex OP 2/ 3 duly show the OP 2 Bank, i.e., SBI as the proposer/master Policy Holder/ Lending Institution and that amply proves the aforesaid contention. And, the additional declaration and name of the witness are conspicuously ‘missing/left blank’ for no cogently held/ apparent reason and that explains the compulsive ‘consent’ to the policy in question. Further, the DLA was delivered Ex C 2 (certificate of insurance) COI, Ex C3 (premium certificate), Ex C 4 (summary features of the Group Insurance Scheme and Ex C 5 (Table of Sum Assured Benefits) only but with no evidence (produced) on record that the copy of the master policy with its terms and conditions were ever delivered or even dispatched or even shown to the complainant and its absence coupled with the nature and objective of the related policy in question, the and its absence coupled with the nature and objective of the related policy in question, the allegation of ‘suppression’ of continuing and known ailments does not get legally proved so as to award a valid and judicious repudiation. It needs also be understood that the insurance policy purchase processing has been in continuation (as a collateral compulsion) to the documentation process of the housing loan disbursement and the complainant simply ‘signed’ at the pre marked destinations on the proposal form along with the other loan documents. Such acts and omissions do add up to amount to unfair trade practice and deficiency in service under the Act and thus making them vulnerable to an adverse award. We have carefully studied the consumer law as set out in the OP cited judgments of the superior courts. We respectfully agree with the above settled propositions but are of the considered opinion that the present policy ratios are decidedly different and the same was sold out to her to cover the Housing Loan outstanding and it was rather forced upon her as a collective network endeavor of the OP bank with the OP insurers. We are somehow, unable to admire the voluminous submissions on points of law (through citations etc.,) in the written version whereas the procedural law demands it to stay confined to points of fact only and of course the court’s judicial notice can be decidedly drawn to relevant decided law on the points of facts in issue. Procedure evolves are (of presentation) in law.”

In the light of the all above, while partly allowing the present complaint we hold the titled OP service providers as guilty of unfair trade practice/ deficiency in service and thus order them to settle the impugned claim in full in terms of the related policy (i.e., liquidate the Housing Loan Outstanding) besides to pay Rs.5000/- as compensation and another Rs.3000/- as cost of litigation to the complainant within 30 days of the receipt of the copy of these orders otherwise the aggregate awarded amount shall attract interest @ 9% per annum from the date of the orders till actually paid.

9. The finding of the State Commission in the impugned order is as follows:

It is evident from the medical treatment record that the DLA suppressed the material information with regard to her health prior to her enrolment to the insurance policy. The policy in question was obtained by concealing the material facts regarding her health as such, the insurance contract became void-ab-initio and the claim of the complainant was rightly repudiated by OP no.2. The findings of the District Forum are contrary to the facts brought on the record by OPs. Therefore, the order of the District Forum cannot be sustained in this appeal. The claim repudiated by OP no. 2 was justified.

Sequel to the above discussion, the appeal filed by the OP No.2 is allowed. The order of the District Forum is set aside and consequently, the complaint filed by the complainant is dismissed.

10. From the foregoing, it is evident that the DLA did not approach the respondent for a policy. It was rather, a policy that was required to be taken as part of the house building loan that was sanctioned by the respondent no. 1 to her. The policy is a Master Policy of the respondent no.1 which had admittedly granted a loan to the DLA. There is no evidence on record that the DLA approached the respondent no. 2 for a policy of life insurance. This is also evidenced by the fact that the respondent no 1, SBI, was the proposer. The policy was approved by the respondent no. 2 based on the proposal and after its due diligence with regard to the health status of DLA. The repudiation of the claim is based on the basis of an investigation by the respondent no. 2 that the DLA suffered from pre-existing diseases which had not been disclosed at the time of obtaining the policy based on a doctor's certificate issued by the hospital where the DLA was admitted prior to her death. The doctor has not been examined by the respondents. There is also no affidavit on record. No evidence showing previous medical treatment has been brought on the record. Hence, in the light of the judgments cited above, this contention of the respondents cannot be considered. As regards violation of *uberrimae fides* or the principle of utmost good faith, this case needs consideration in view of the fact that the policy was not of the DLA's volition but rather was imposed upon her as a condition of the house building loan sanctioned by respondent no. 1. This is evidenced by the fact that the proposer was respondent no. 1 and was not applied for by either the DLA or by any other agent of the insurance company. There is nothing on the record that the DLA had approached the respondent no. 2 for a policy or that it filled in the declaration of good health in which there was concealment of pre-existing illnesses. All the paperwork was done by the respondent no. 1 as the 'proposer'. The District Forum has correctly held that:

“ It need also be understood that the Insurance Policy purchase processing has been in continuation (as a collateral compulsion) to the documentation process of the Housing Loan disbursement and the complainant simply ‘signed’ at the ‘pre marked’ destinations on the ‘proposal form’ along with the other documents. Such acts and omissions do add up to amount to ‘unfair trade practice’ and ‘deficiency in service’ under the act and thus making them vulnerable to an adverse award.

(Emphasis added)

11. The conclusion of the State Commission’s order relying upon the judgment of the Hon’ble Supreme Court in *Satwant Kaur Sandhu vs New India Assurance Company Ltd.* in Civil Appeal no. 2776 of 2002 decided on 10.07.2009 therefore needs to be considered in the light of the facts of this case. The respondents have failed to discharge the burden of proving willful concealment of material information by the DLA at the time of obtaining the policy and have failed to bring on record any evidence of the treating doctor by way of evidence or affidavit. The order of the State Commission is therefore liable to be set aside since it is based on surmise and presumption.

12. In view of the foregoing, and in the light of the facts and circumstances of this case, the revision petition is allowed. The order of the State Commission is set aside and the order of the District Forum affirmed. Parties will bear their own costs. Pending IAs, if any, stand disposed with this order.

.....
SUBHASH CHANDRA
PRESIDING MEMBER