NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 462 OF 2015

(Against the Order dated 05/09/2014 in Appeal No. 496/2013 of the State Commission Haryana)

1. SATNAM SINGH
S/O SHRI GURBACHAN SINGH, R/O HOUSE NO-446,
WARD NO-7, NEAR NAGKSHETRA, TEHSIL SAFIDON
DISTRICT : JIND
HARYANA .....Petitioner(s)

Versus

1. AEGON RELIGARE LIFE INSURANCE CO. LTD.
NOMURA, 'B' FIRST FLOOR FLOOR, UNIT NO-102, NEAR
D MART, HIRANADANI BUSINESS PARK, POWAI
MUMBAI - 400076
MAHARASHTRA .....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH,PRESIDING MEMBER

FOR THE PETITIONER : MR. SIDDHARTH MITTAL, ADVOCATE WITH
MR. ABHIJIT UARSHNEY, ADVOCATE

FOR THE RESPONDENT : MR. PRAVEEN MAHAJAN ADVOCATE WITH
MS. VRINDA AND MR. KUNAL NEMA, ADVOCATES

Dated : 06 December 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 05.09.2014 of the State Consumer Disputes Redressal Commission, Haryana (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 496 of 2013 in which order dated 28.02.2013 of Panipat District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 115 of 2012 was challenged, inter alia praying for setting aside the impugned judgment and order dated 05.09.2014 passed by the State Commission, Haryana at Panchkula in FA/496/2013 and for calling for the records of the case bearing CC No. 115 of 2012 filed before the District Forum**.**

2. While the Revision Petitioner (hereinafter also referred to Complainant) was Respondent and the Respondent No.1 (hereinafter also referred to as Opposite Party-I) was Appellant in the said FA/496/2013 before the State Commission, Respondent No.2 herein

was not a party before the State Commission, the Revision Petitioner was Complainant and Respondents were Opposite Parties-1 & 3 before the District Forum in the CC No. 115/2012. OP-2 before District Forum was neither a party before the State Commission and is not a party before this Commission. Notice was issued to the Respondent No.1 on 20.01.2016. Initially only Respondent No.1 (OP-1 before the District Forum) was made a party in the present Revision Petition. Application for Amended Memo of parties, impleading Respondent No. 2, was allowed vide order dated 05.01.2017 and counsel appearing on behalf of Respondent No.1 accepted the notice on behalf of Respondent No.2. Parties filed Written Arguments/Synopsis on 21.09.2017 and 11.09.2017 respectively.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that:-

Palvinder Singh (minor) son of complainant/petitioner herein got insured by the complainant from the agents of Respondent/insurance company on 02.04.2010 vide policy No. 100311723947 for a sum of Rs.6,30,000/- and after thoroughly checking the complete body of deceased Palvinder Singh and after being satisfied that the deceased was quite hale and healthy, the complainant/petitioner herein deposited the premium instalments of Rs.21,000/- on 29.03.2010 and another premium of Rs.21,000/- on 24.04.2011. Palvinder Singh died on 08.07.2011 at Safidon due to natural death as per medical report submitted by Sairam Clinic Primary Health Centre, Safidon. There was no symptom of any kind of disease at the time of death of deceased Palvinder Singh. Information of death of Palvinder Singh was given by the complainant on 23.08.2011 to the agent of insurance company at Panipat. It was assured by the agents that the entire amount of above insurance policy along with bonus will be paid to the complainant. After some days some officials of the insurance company came to the house of the complainant at Safidon and demanded policy papers and premium receipts and assured the complainant that the insurance claim would be settled very soon and disbursed to the complainant. On 22.09.2011 the insurance company repudiated the claim. The insurance company sent an amount of Rs.31,137/- through a cheque dated 24.08.2011 towards the fund value against the insured policy of the deceased. Thereafter the complainant requested the Respondent/insurance company to pay the entire claim of the policy but they refused to pay the same. Hence, the complainant filed complaint before the District Forum on 25.04.2012.

4. Vide Order dated 28.02.2013, in the CC 115 of 2012, the District Forum allowed the complaint with a direction to opposite parties to pay Rs.6,30,000/- with interest @8% per

annum from the date of filing the complaint till its realization. District Forum also granted Rs. 2200/- towards costs of litigation and granted 30 days' time from the date of order, to comply with the order.

5. Aggrieved by the said Order dated 28.02.2013 of District Forum, Respondent appealed in State Commission and the State Commission vide order dated 05.09.2014 in FA No.496 of 2013 has allowed the appeal and set aside the order dated 28.02.2013 passed by the District Forum.

6. Petitioner has challenged the said Order dated 05.09.2014 of the State Commission mainly on following grounds:-

i. the order passed by the State Commission is illegal, arbitrary and contrary to well settled principle of law and hence is liable to be set aside. The State Commission failed to consider that there was no nexus between the death and disease which has been allegedly concealed by the Petitioner. The deceased died a natural death which is also certified by the doctor of Sri Ram Hospital. It is for the Respondent-Insurance company to prove fraudulent concealment and suppression of material facts. There is no concealment of material facts proved by the Respondent and they are merely alleging concealment on the basis of a MRI scan which was taken 10 years prior to the death which also does not show or prove any treatment taken for disease and merely shows that there was ring enhancing which could be merely because of a fall. The Respondents are under law required to prove the allegations of fraudulent concealment and in the absence of the same, the State Commission merely on the letter dated 28.03.2003, erred in allowing the appeal of the Respondent. The State Commission failed to see that there is no concealment of material facts in as much as the Respondent failed to prove that the deceased was ever treated for tumor. The report dated 28.03.2003 being relied upon by the Respondent to show that the Petitioner has not made full disclosure does not in any manner shows that the Petitioner was ever treated for tumor or cancer. The said report merely concluded that inflammatory granuloma right parietal lube was found which could be tuberculoma. It is submitted that whenever an inflammation occurs, the tissue affected respond producing an inflammatory exudate and a granuloma is formed. A granuloma in the brain is nothing but a localized area of inflammation. It is submitted that it can also be due to tuberculoma or neurocysticercosis but the same cannot be concluded and was not concluded in the report. On the other hand the electroencephalogram report clearly shows that the graph was normal. It is submitted that in such circumstances the finding recorded by the State Commission are completely based on assumptions and presumptions. The Respondent did not produce any other documents to suggest that any treatment was taken by the

Petitioner and in such circumstances without any evidence the State Commission erred in setting aside a well reasoned order of the District Forum.

ii. The State Commission further failed to consider the ratio laid down by this forum in the case of LIC of India vs Charanjit Kaur; IV (2011) CPJ 373 (NC) and Life Insurance Corporation of India Vs. Smt. G.M. Channabasemma (1991)1 SCC357. The District Forum after duly considering the report relied upon by the Respondent rightly held that "on the other hand counsel of complainant referred citation IV(2011) CPJ 130 case titled LIC Versus Vijendra Singh Yadav in which it is held that "Accepting the premium and entering into agreement, insurance company cannot wriggle out of liability merely by saying that contract was made by misrepresentation and concealment …… repudiation of claim on ground of concealment of facts, was on the opposite parties but opposite parties failed to discharge his onus by any cogent believable evidence. Hence repudiation of claim by the opposite parties is unjustified and amounts to deficiency in service. Hence complainant is duly entitled for sum insured."

iii. The State Commission erred in observing that the deceased was having tumor without considering that there is no evidence to show that the deceased was having tumor. The report clearly shows that he died a natural death and the insurance company failed to show that the deceased died a unnatural death or that there was any nexus between the death or the decease alleged. The impugned order is completely based on assumptions and presumptions and the State Commission while discarding the report of the Doctor of the Sai Ram Hospital observed that the same was procured without any evidence or proof of the same. Further the State Commission failed to see that the medical report produced by the respondent was not even proved on record and in such circumstances could not have been considered at all. It is further submitted that the State Commission further casted doubt on the report of Sai Ram Hospital on the ground that it has not been issued by the doctor who has issued it without considering that the same has been proved by Sonu Sharma, who was working as a compounder and since the doctor issuing the report had died in a road accident on 12.10.2012, the Petitioner duly proved the report and the finding of the State Commission is completely erroneous. The State Commission even though sought for the Complainant/Petitioner to prove the report of Sai Ram Hospital but admitted the report produced by the Respondent without any proof. The Respondent did not examine any witness to prove the document and neither the doctor who allegedly prepared the document was examined at any time. The State Commission observed that the policy was obtained just to have compensation under the policy without considering that the death is after more than 1 and half year and in such circumstances, the impugned order is completely illegal. The Hon'ble Supreme Court has time and again held that the approach of the Insurance Company in the matter of repudiation of a policy admittedly issued by it should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner.

7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

7.1 Petitioner in addition to repeating what has been stated in para 6 under the grounds, has contended that apart from MRI report, the Respondent had no other document to allege or plead that there was any non-disclosure by the complainant/petitioner herein. The District Forum while allowing the complaint held that apart from the medical report dated 28.03.2003, there was no evidence to even suggest continued illness of the insured for which he had taken any regular treatment and therefore held that it was not justified to repudiate the police on the ground of non-disclosure or mis-statement. The District Forum also held that the doctor vide its report Exhibit C-3 had concluded that the deceased died a natural death. The State Commission without considering the MRI report dated 28.03.2003 seems to conclude that the deceased was suffering from tumor. However, the report only reveals that there is a presence of a ring enhancing lesion in the right parietal lobe and that the lesion is surrounded by moderate degree of oedema. In the conclusion it was concluded that the findings are consistent with inflammatory granuloma right parietal lobe, tuber culoma and neuro cysticercosis. Merely on the basis of MRI report it cannot be concluded that the deceased was at any time suffering from tuber culoma. The medical literature on diagnosis of intracranial tuber culoma clearly states that CT/MRI diagnosis of tuber culoma is largely presumptive in view of the non-specific appearance. The State Commission erred in shifting the burden on the Petitioner without considering that it was for the Respondent/Insurance Company to prove fraudulent concealment and suppression of material facts.

7.2 On the other hand Respondent contended that complainant failed to prove terms and conditions not explained to him. He thumb marked at the time of issuance of policy, he cannot allege terms & conditions were not read over to him because as per policy he deposited the premium amount. The complainant denied that deceased had tumor, but complainant did not produced any document to show nature of tumor and he was the best person to disclose about treatment and effect of tumor. He was aware of the disease and did not disclose about the same. As per certificate produced, it cannot be presumed to be natural death because the same is not proved by doctor as who issued it claimed to be compounder with said doctor. Dr. Ravinder is not a qualified doctor, only BAMS and did not conduct any post mortem examination to know cause of death. Dr. Ravinder went to see the deceased and he was found dead naturally. Why he went to see him is not mentioned in the certificate. It can be safely presumed that Palwinder Singh was having some problem that is why doctor went to see him. It is the duty of the complainant to clear the clouds. He could have produced

treatment of records. Thus in these circumstances cannot be presumed to be natural death. As per complainant, Palwinder Singh insured on 02.04.2010 and he died on 08.07.2011 after payment of only two installments. Complainant have been aware about the tumor and just to have compensation, the policy was obtained. When there is very short time between taking policy and death, particularly when insured was having tumor, complainant has to clear the dust otherwise presumption go against him. Life assured under obligation to make full disclosure of every material fact which affects underwriting decision of company as per proposal form and law of insurance. As per IRDA regulations, "material" for insurance shall mean and include all important essential and relevant information in context of underwriting risk to be covered by insurer. Thus health of life assured are material thus questions were asked pertaining to health and lifestyle under clause 10 thus truthful answers to such questions are relevant for underwriting risk by company. Death of LA took place before completion of 2 years from taking the policy, company was fully entitled to repudiate the claim according to section 45 since in this case suppression of facts by life assured shall be sufficient for repudiating the policy. It is further contended that complaint can be filed by consumer only. The complainant neither availed the service nor is the beneficiary, thus not entitled to claim. In support of its contention the Respondent relied upon various judgments in Kokilaben Narendrabhai Patel v Life Insurance corporation of India, 2010 CTJ 920 (CP) (NCDRC), Marketing Manager, LIC of India v. Smt. S. Vijaya, Life Insurance Corporation of India & Ors. Vs. Smt. Asha Goel & Anr. (2001) ACJ 806, United Company India Insurance Ltd. Vs. M.K.J. Corporation [1996 (6) SCC 428] , P.C. Chacko and Anr. Vs. Chairman, Life Insurance Corporation of India and Ors, AIR 2008 SC 424, Satwant Kaur Sandhu Vs. Chairman, New India Assurance Company Ltd. (2009) 8 SCC 316 and Tata AIG Life Insurance Co. Ltd. Vs. Orissa State Co-Operative Bank & Anr. (2012) CPJ 310 (NC).

8. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. In this case OP Insurance Company has repudiated the claim on the grounds of suppression of material facts relating to pre-existing ailments. Complainant had argued that he being an illiterate person, did not know the intricacies of the insurance policy, the facts were not explained to him in detail, so it cannot be presumed that he concealed any fact or played any fraud. According to complainant even as per averments of Opposite Party, the tumor was detected on 28.03.2003 whereas death took place on 08.07.2011. There was no nexus between the disease and the death. As per death certificate, it was a natural death. State Commission disagreeing with the contentions of the complainant has observed that *"he thumb marked the proposal form at the time of insurance. He cannot allege that the terms and conditions were not read over to him because as per this insurance policy he deposited the premium."* We do not agree with these observations of the State Commission as it is a normal practice for an illiterate person to put his thumb impression, and in many cases even for an educated person to put his signatures on proposal form containing detailed terms and conditions running into few pages without fully understanding them or reading them, but in good faith based on broad understanding as told by the agent/officials of Insurance Companies. Of course, a person who signs such forms/documents without reading or understanding them, does so at his own risk

as he cannot later on say that he did not agree with the contents or terms and conditions of such form/document. State Commission further observed in its order that *"as per Exb. R-3 the life assured was having a brain tumor. As per clause 6 of proposal form he denied that life assured was having any fumor etc… he was aware of this disease but did not disclose at the time of insurance. As per certificate Ex. C-3 it cannot be presumed that it was a natural death"*. The reason for not accepting is 'the certificate is not proved by the doctor who issued it. AW2 claimed himself to be a compounder with the said doctor and proved the certificate. More so Doctor Ravinder Singh as not a qualified doctor. He was only BAMS and did not conduct any post mortem examination to know the cause of death'. State Commission further observed that:

> *".....Palwinder Singh was insured on 02.04.2010 whereas he died on 08.07.2011, just after payment of two instalments. Complainant might have been aware about the Tumour and just to have compensation this policy was obtained. When there is a very short time in between obtaining insurance policy and death, particularly when life assured was having tumour, the complainant is to clear the dust from the scene, otherwise presumption is to go against him."*

We do not agree with these observations of State Commission, 'might have been aware', which are based on assumptions rather than any definite evidence before it. Just because death happens within about 1½ years of taking policy and/or payment of two instalments, does not mean that complainant has done so with any malafide intentions. In an insurance case, insurance companies are liable even if a mishap happens immediately after taking of policy, provided the claim is otherwise admissible under the terms and conditions of the policy.

9. Relying on the judgments of this Commission in **Kokilaben Narendrabhai Patel Vs. Life Insurance Corporation of India** 2010 CTJ 920 (CP) (NCDRC) and **Marketing Manager, LIC of India Versus Smt. S. Vijaya**, CPC (1995) (10) 341, the State Commission held that since Complainant concealed the fact of previous disease at the time of obtaining insurance policy, District Forum fell in error by allowing the complaint. Complainant on the other hand had placed reliance on the orders of this Commission in **LIC Vs. Charanjit Kaur** IV (2011) CPJ 373 (NC), but the State Commission observed that Complainant cannot deserve any benefit from the cited case law as the same is based on different facts.

10. District Forum in its order has observed as follows:-

> *"4……..In order to discharge his onus opposite parties filed a medical report, copy of which is Ex.P3. This medical report is dated 28.03.2003. This is the report*

of Palvinder Singh whose examination of brain done when he was at the age of 10 years. It is mentioned in this report that C.T. study reveals the presence of a ring enhancing lesion in the right parietal lobe. It measures 1.35 x 1.01cms in maximum dimension n the axial plane and subcalvarial in position the lesion is surrounded by moderate degree of oedema. The remaining cerebral parenchyma appears normal. Rest of the portion in report has been shown as normal and conclusion is given C.T. Findings are consistent with inflammatory granuloma right parietal lube. Further electroencephalogram (E.E.G.) Report is also placed on file. Except this document nothing has been placed on file by opposite parties to prove that treatment was continuing and insured was suffering from disease continuously form 28.03.2003. Insured died on 8.7.2011 after 8 years of this report. Ex.C3 by Which doctor confirmed that Palvinder Singh died due to natural death. Ex.C3 was supported by Affidavit Ex.CW2/B hence there is evidence that insured died in a natural death. Opposite parties did not produce any treatment record or any history of continuing illness of the insured for which he has taken regular treatment till the date of commencement of policy. Counsel of the opposite parties referred citation II (1992) CPJ 493 (NC) case titled Jagdish Prasad Dagar Versus Life Insurance Corporation, III (2008) CPJ Page 78 (SC) and further I(2007) CPJ 248 case titled life insurance corporation of India Versus Kasturi Devi. In all these citations it is held that repudiation of policy is justified on account of non-disclosure and mis-statement of fact in proposal form related to material facts.

5. On the other hand counsel of complainant referred citation IV(2011) CPJ 130 case titled LIC Versus Vijendra Singh Yadav in which it is held that "Accepting the premium and entering into agreement, insurance company cannot wriggle out of liability merely by saying that contract was made by misrepresentation and concealment, insurance policies should not be issued and repudiated in such casual and mechanical manner. It is rather exploitation of customer and more or less fraud on public." Further citation II (2011) CPJ 202 LIC Vs. Gopal Singh. In this case it is held that "Suppression of material facts, assured suffering from Lymphedema, Chronic renal failure and treated for T.B.- Opposite party produced doctor's certificates and personal history of patent as regards its diseases-certificates of not indicate that patient suffering from diseases for long time-no suppression of material fact." In this case patient was treated for T.B. 12 Years back. Above referred citations of the complainant are fully applicable with the fats of the present complaint. In the present case insured was undergone medical test and oedemain the year 2003 and there is no document on file to prove to continuous treatment since 2003. Hence it is not made clear by the opposite parties whether insured was continuing suffering or his disease was not cured during 7 years when the policy of insurance was taken in year 2010. It is also not proved on file that there was any nexus between death and ailment for which insured suffered. Complainant submitted documents to prove that death of the insured was natural death. Onus to prove the justification of repudiation of claim on ground of concealment of facts, was on the opposite parties but opposite parties failed to discharge his onus by any cogent believable evidence. Hence repudiation of claim

by the opposite parties is unjustified and amounts to deficiency in service. Hence complainant is duly entitled for sum insured."

11. In **Sulbha Prakash Motegaonkar and Ors. Vs. LIC of India,** Civil Appeal No. 8245 of 2015 decided on 05.10.2015, it was held by the Hon'ble Supreme Court that:

"We are of the opinion that the National Commission was in error in denying to the appellants the insurance claim and accepting the repudiation of the claim by the respondent. The death of the insured due to ischaemic heart disease and myocardial infarction had nothing to do with his lumbar spondilitis with PID with sciatica. In our considered opinion, since the alleged concealment was not of such a nature as would disentitle the deceased from getting his life insured, the repudiation of the claim was incorrect and not justified.

Accordingly, we set aside the order passed by the National Commission and allow the appeal. The respondent will accept the claim made by the appellants within a period of four weeks from today and make the due payment."

12. In view of the foregoing, we are of the considered view that District Forum has given a well-reasoned order and we tend to agree with its observations and findings. State Commission went wrong in setting aside a well-reasoned order. We agree with the contentions of Petitioner herein that there was no concealment of material facts. Complainant has contended that State Commission went wrong in casting doubt on the report of Hospital on the ground that it has not been issued by the doctor who has issued it without considering that the same was proved by the person who was working as Compounder and doctor issuing the report had died in a road accident on 12.10.2012. In the given facts and circumstances of the case, we hereby set aside the order of the State Commission and restore the order of the District Forum. All payments as per order of District Forum to be paid by the Respondent herein to Petitioner herein within 30 days of this order, failing which, it will carry interest @12% p.a.

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

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DR. INDER JIT SINGH
PRESIDING MEMBER