

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/18/459
(Date of Filing : 01 Nov 2018)**

1. K F FRANCIS

DON HOUSE KALATHIPARAMBIL PEACE LANE SRM RD
PACHALAM KOCHI

.....Complainant(s)

Versus

1. M/S ORIENTAL INSURANCE CO.LTD

WHITE HOUSE OPP.AKSHAYA HOSPITAL
KADAVANTHRA KOCHI

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 14 Mar 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 14th day of March 2024

Filed on: 01/11/2018

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Member Smt.Sreevidhia.T.N

C.C. No. 459/2018

COMPLAINANT

K.F Francis, S/o.Late K.C.Francis, Don House, Kalathiprambil
Peace Lane, S.R.M.Road, Pachalam P.O., Kochi-682 012

(by Adv.George A.P.)

VS

OPPOSITE PARTY

The Oriental Insurance Co.Ltd., BO1, White House, First Floor, opposite to Akshaya Hospital, Kadavanthra P.O., Ernakulam, Kochi-682 012

(op rep. by Adv.Saji Isaac K.J)

FINAL ORDER

V.Ramachandran, Member

1. **A brief statement of facts of this complaint is as stated below:**

The complainant is a senior citizen aged about 70 years who has subscribed the insurance policy of the opposite party and the brief history of the case is as follows:

On 18.05.2015, the complainant had opened an SB account with No.7291000103023966 in Punjab National Bank, Ernakulam Kathrikadavu branch. At the time of opening the SB account, the Punjab National Bank officials informed the complainant that the opposite party is providing health insurance coverage to their account holders and directed the complainant to approach the office of the opposite party at Kadavanthra. Accordingly, the complainant went to the office of the opposite party and met the Manager, conveyed the details of the pre-existing diseases and also requested the opposite party to take action to port the existing policy and the opposite party agreed to take necessary action and accordingly obtained the required papers signed by the complainant. In continuation of this, the opposite party issued policy Nos.440202/48/2016/691 and policy No.440202/48/2017/954 valid from 3rd June 2015 upto 02.06.2017. During the month of December 2016, the complainant got admitted in Indira Gandhi Co-operative Hospital, Kadavanthra, Ernakulam as inpatient from 12th December 2016 to 14th December 2016 with complaints of chest discomfort and continued EECF Treatment as an outpatient from 15th December 2016 to 18th January, 2017 and a total amount of Rs.95,001/- (Rupees Ninety five thousand and one only) was incurred as treatment expenses. The above inaction on the part of the opposite party amounts to blatant violation of the principles of utmost good faith and is also denial of natural justice to the complainant. It also amounts to the violation of IRDA (Protection of Policy Holders interests) Regulation 2002 as well as 2017. The insurer ought to have provided a copy of the proposal Form duly filled and the prospect to the insured within the prescribed period of 30 days. Though the complainant had filed a complaint before the Insurance Ombudsman as early as on 24th May, 2017 notice is still awaited. In the light of the above facts it can be conducted that there is deficiency of service as stipulated under Section 2 (g) of the Consumer Protection Act, 1986 on the part of the opposite party and it is prayed that this Forum may be pleased to summon the opposite party and issue orders to pay the treatment expenses of Rs.95,001/- with interest @18% and compensation of Rs.1,00,000/- towards mental agony and Rs.30,000/- towards cost of the proceedings.

2) **Notice**

Upon notice from this Commission the opposite party appeared and filed their version.

3) **Version of the opposite party.**

In the version the opposite party contended that the details of the policy stated in paragraph 1 of the complaint are not known to the opposite party and hence denied. The opposite party also denied the argument of the complainant that he underwent treatment and claimed from the National Insurance Co.Ltd earlier also denied by the opposite party stating that it not known to them. Further, the opposite party stated that the complainant had contacted the opposite party Manager and conveyed the details of pre-existing diseases and requested to take action for porting the existing policy etc are false. The complainant had not informed any request for porting the policy. As per IRDA conditions a policy holder desirous of porting his policy to another insurance company shall apply to such insurance company to port the entire policy along with all the members of his family, if any, at least 45 days before the premium renewal date. Hence porting of the policy is not automatic, but

has to be complied with the requirements laid down by the IRDA. The complainant had availed the PNB- Oriental Royal Medi Claim Insurance policy by submitting proposal form wherein he had suppressed the pre-existing diseases. The complainant was admitted in Amrita Institute of Medical Sciences and research Centre and coronary angiogram and percutaneous transluminal coronary angioplasty was done in 2002. Hence it is evident that the complainant was a known case of Coronary Artery Diseases, old Acute Anterior Wall Myocardial Infarction, and post percutaneous Transluminal Coronary Angioplasty since the year 2002. Hence it is evident that the complainant was having the ailments prior to the inception of the policy with the opposite party.

Contract of insurance is a contract based on the terms and conditions of the policy and the opposite party is liable only according to the conditions, terms limitations and exclusions of the policy. According to clause 4.1 of the policy conditions, there is an exclusion period of 3 years for pre-existing disease from the date of inception of the policy. For the purpose of applying this condition, the inception of first indemnity bases policy shall be considered provided the renewals are continuous and without any break in period. The exclusion is applicable to any complications arising out of pre-existing ailments/diseases/or injuries. The policy of the complainant with the opposite party incepted for the first time only on 03.06.2015 and hence 3 years exclusion period had not lapsed. Since the claim of the complainant was repudiated by the opposite party in accordance with the terms and conditions of the policy. Even assuming without admitting the letter dated 30.03.2017, according to the letter dated 30.03.2017 produced by the complainant; the complainant had insurance coverage with National Insurance Co.Ltd. for the period from 07.05.2015 to 06.05.2015 and the subsequent policy with National Insurance Co.Ltd was from 14.05.2015 to 13.05.2016. Hence the policy with National Insurance Co.Ltd for the period from 14.05.2015 to 13.05.2016 can only be treated as fresh policy since there was a break in the policy period. The policy availed by the complainant with the opposite party commenced for the first time from 03.06.2015 to 02.06.2016. The policy was later renewed from 03.06.2016 to 02.06.2017. Hence it is evident that there is no continuous policy for a period of 3 years till the date of hospitalization. The present hospitalization claim is lodged in the second year policy availed from the opposite party.

The averments in paragraph 7 of the complaint that prior intimation about the hospitalization was given to the TPA under the opposite party is not known to the opposite party and hence denied. The opposite party had repudiated the claim in accordance with the terms and conditions of the policy. According to the terms and conditions of the policy availed by the complainant, the opposite party is not be liable to make any payment in respect of any expenses

whatsoever incurred by any insured person in connection with or in respect of pre-existing health condition or disease or ailment/injuries: Any ailment/ disease/health condition which are pre-existing (treated/untreated, declared not declared in the proposal form) in case of any insured person of the family, when the cover incepts for the first time, are excluded for such insured person up to 3 years of the policy being in force continuously.

4) **Evidence**

The complainant had produced Exbt.A1 to A14 and he the opposite party produced 3 documents which were marked as Exbt.B1 to B3. The complainant was examined in box as 'PW1'.

Exbt. A1 produced by the complainant it is very clearly shows that the complainant was having insurance coverage with National Insurance Company and had continued till 13.05.2016 as is evident from Exbt. A9. Exbt.A2 is a copy of letter. Exbt.A3 shows that the complainant had opened an account in Punjab National Bank Kaloor Kadavanthra bon 19.05.2015 as is evident from A3 series. Exbt.A4 goes to show that the complainant was issued insurance policy by Oriental Insurance Company Ltd. from 03.06.2015 to 02.06.2016. Exbt.A3 (3) and Exbt.A3 (4) are receipts and Exbt.A4 is regarding the sum insured and other details issued by the opposite party. Exbt.A6 (2) is a letter of repudiation issued by the opposite party and Exbt.A6 (3) also repudiation letter issued by the opposite party.

Exbt.B1 is a proposal form signed by the complainant and Exbt.B2 is the conditions of policy and Exbt.B3 is prospects issued by the opposite party

5.

- i. Whether there is any deficiency in service or unfair trade practice from the side of the opposite parties to the complainants?
- ii.

(iii) Costs of the proceedings if any?

6) **Point No.(i)**

The complainant is a senior citizen aged about 70 years who approached the Punjab National Bank Kaloor Branch for opening an account in his favour. The said branch intimated the complainant that M/s.Oriental insurance Company is giving mediclaim policy to their account holders and ask the complainant to join in the scheme. The argument of the complainant that he had opened an account in PNB is evident from Exbt.A3 in which the date of joining is shown as 19.05.2015. Subsequently, the complainant went to the office of the opposite party and met the Manger of the opposite party. The date of joining of the policy with the opposite party can be seen and is evident from Exbt.A3 (4) is on 03.06.2015 (date of issued) covering the period from 03.06.2015 to 02.06.2016. The complainant had obtained proposal form given by Punjab National Bank as per request vide RTI which is blank in nature. Those blank forms are duly signed by the complainant. It can be seen that a man aged above 70 years

above had approached PNB for opening an account was given advice to change his existing policy from National Insurance Company to Oriental Insurance Company it can be emphasised authentically with speaking evidence. PNB had issued a copy of agreement executed between the PNB and Oriental Insurance Company the former National Insurance Company ought to have instructed the complainant which is proved out of circumstance which is supported to speaking documentary evidences produced by the complainant. The complainant also states that he had not been given prospectus of terms and conditions at the time of inscription of policy which is also to be taken on phase value since even blank forms were gone signed by the PNB the counter part of the opposite party in haste. Without any doubt this can be established from Exbt.A3 series page 1 that the policy coverage from the period from 03.06.2015 to 02.06.2016 was issued to the complainant. The date of joining the account by the complainant in PNB the date of policy etc are highly coinciding each other creating all circumstantial evidence stands in favour of the complainant which is documentary evidences by him. Therefore point No. (i) is in favour of the complainant. The question regarding pre-existing disease and repudiation of claim on that account as is intimated by the complainant by the opposite party shall not lie in the instant case because of the following reasons.

As stated by the complainant he has not been given terms and conditions of policy which is roved from the hasty steps taken by the counter part of the opposite party as described earlier. Hence the statement of the complainant is that he was not given terms and conditions before subscribing into the policy need not be disbelieved. Moreover, in the instant case, PNB has deducting the amount from the account of the complainant as can be seen from Exbt.A3 series (1), (2) and (3) which is equivalent to the conditions of the previous policy eventhough it can be termed as "porting". Hence point No. (2) and (3) are also decided accordingly. Therefore the following orders are issued.

1. The opposite party shall disburse an amount of Rs.95,001/- (Rupees Ninety Five Thousand and one only) to the complainant with 7.2% interest from the date of order till the date of realization.
2. The opposite parties shall pay to the complainant an amount of Rs.20,000/- (Rupees twenty thousand) for unfair trade practice and deficiency of services.
3. An amount of Rs.10,000/- shall be given to the complainant as cost of the proceedings.

The above order shall be complied with by the opposite party within 30 days from the date of receipt of a copy of this order. If the above order is not complied within 30 days, the amount ordered as (1) and (2) above shall attract interest @7.2% per annum from the date of order till the date of realization.

Pronounced in the Open Commission this 14th day of March 2024.

Sd/-

V.Ramachandran, Member

Sd/-

D.B.Binu, President

Sd/-

Sreevidhia.T.N, Member

Forwarded by Order

Assistant Registrar

APPENDIX

Complainants' Evidence

Exbt. A1- complainant was having insurance coverage with National Insurance Company and had continued till 13.05.2016 as is evident from Exbt. A9.

Exbt.A2 copy of letter.

Exbt.A3 - complainant had opened an account in Punjab National Bank Kaloor Kadavanthra on 19.05.2015.

Exbt.A3 (3) and Exbt.A3 (4) are receipts

Exbt.A4 complainant was issued insurance policy by Oriental Insurance Company Ltd. from 03.06.2015 to 02.06.2016.

Exbt.A6 (2) is a letter of repudiation issued by the opposite party and

Exbt.A6 (3) also repudiation letter issued by the opposite party.

Opposite party's evidence

Exbt.B1 is a proposal form signed by the complainant

Exbt.B2 is the conditions of policy

Exbt.B3 is prospects issued by the opposite party

Deposition:

PW1 :: K.F.Francis

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**