

**2023 LiveLaw (SC) 509**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**ABHAY S. OKA; J., RAJESH BINDAL; J.**

**CIVIL APPEAL NOS. 2769-2770 OF 2023; July 04, 2023**

**Om Prakash Ahuja *versus* Reliance General Insurance Co. Ltd. etc.**

**Medical Insurance - Once there is a valid insurance policy in favour of a person, the claim for reimbursement of the expenses incurred must be paid. Once the insurance company has accepted that concealment of a disease at the time of purchasing the policy was not material as it was not related to the disease that caused death, it cannot later refuse further claims or renewal of insurance policy on the same ground.**

*For Appellant(s) Ms. Suruchii Aggarwal, Sr. Adv. Mr. Manish Kumar Vikkey, Adv. Mr. Pankaj Kumar Mishra, AOR*

*For Respondent(s) Mr. Parijat Kishore, AOR*

**J U D G M E N T**

**Rajesh Bindal, J.**

**1.** Common order dated 26.11.2018 passed by the National Consumer Disputes Redressal Commission (for short, “the National Commission”) in Revision Petition Nos. 923 of 2011 and 1417 of 2014 is under challenge before this Court. We deem it appropriate to notice the facts separately, before we deal with the arguments.

**REVISION PETITION NO. 923/2011**

**2.** This petition was filed by the respondent Insurance Company before the National Commission challenging order dated 23.12.2010 passed by Haryana State Consumer Disputes Redressal Commission (for short “the State Commission”) in Appeal No. 1792/09. It was an appeal against an order dated 11.9.2009 passed by the District Consumer Disputes Redressal Forum, Karnal (for short “the District Forum”), in a complaint filed by Om Prakash Ahuja, the appellant. The grievance raised by the appellant in the complaint was that the expenses incurred by him on treatment of his wife for ovarian cancer were not reimbursed by the respondent, Reliance General Insurance Ltd. (hereinafter referred to as “the insurance company”). It was pleaded that the health insurance policy was taken by the appellant for the family, which was valid from 7.7.2007 to 6.7.2008. The coverage was for ₹2 lakhs against any health problem and ₹4 lakhs in case of critical illness. The policy was further renewed up to 6.7.2009. The deceased wife of the appellant was diagnosed to be suffering from ovarian cancer. She was treated in various hospitals from 19.1.2008 to 23.8.2008. Claim of ₹91,496 was lodged for treatment from 19.1.2008 to 11.3.2008 and ₹4,14,464 for the period from 13.3.2008 to 19.9.2008. The claim was repudiated by the insurance company vide letters dated 1.10.2008 and 8.12.2008, respectively on the ground that the appellant’s wife was suffering from rheumatic heart disease and the same was not disclosed in the proposal form. The complaint was filed before the District Forum. Vide order dated 11.09.2009 the District Forum directed the insurance company to reimburse the expenses incurred by the appellant on treatment of his wife along with interest @ 8% p.a. Further, refusal to renew insurance policy was found to be arbitrary. Direction was issued for renewal of the health insurance policy upon payment of premium.

3. The appeal filed by the insurance company against the order passed by District Forum was dismissed by the State Commission vide order dated 23.12.2010.

4. While entertaining the revision petition filed by the Insurance Company against the order passed by the State Commission, the National Commission vide interim order dated 13.5.2011 directed that the renewal of insurance policy shall be subject to its final decision. Vide order dated 26.11.2018, the National Commission upheld the directions of the State Commission to the extent of reimbursement of expenses incurred on the treatment of the deceased wife of the appellant, however, the direction for renewal of the health insurance policy was set aside.

#### **REVISION PETITION NO. 1417/2014**

5. This revision petition was filed by the Insurance Company before the National Commission against the order passed by the State Commission in Appeal No. 689/2013 decided on 2.12.2013, whereby the State Commission upheld the order dated 1.8.2013 passed by the District Forum in a complaint filed by the appellant. It was pleaded in the complaint that the appellant had initially purchased a health insurance policy for the family which was valid from 7.7.2007 to 6.7.2008 and it was subsequently renewed up to 6.7.2009. The said policy was renewed in October 2011 for the period from 7.7.2009 to 6.7.2010 on payment of premium of ₹6105 and for the period from 7.7.2010 to 6.7.2011 on payment of ₹30,560 and for the period from 7.7.2011 to 6.7.2012 on payment of ₹30,560. As the complainant had spent a sum of ₹3,23,486.50 during the period from 11.11.2009 to 11.6.2010, ₹2,31,307.34 during the period from 2.8.2010 to 6.6.2011, ₹1,18,511.50 for the period 27.6.2011 to 30.9.2011 and ₹74,332.80 during the period from 27.9.2011 to 28.10.2011 on treatment of his wife, claim was lodged with the insurance company. The claims having not been accepted, a complaint was filed. The stand taken by the insurance company before the District Forum was that the renewal of the policy was in terms of the order passed by the District Forum in the earlier complaint filed by the appellant as confirmed by the State Commission. However, the same was the subject matter of challenge before the National Commission. Hence, no claim was admissible on that basis. However, finally the District Forum directed for reimbursement of ₹7,47,638.19 along with interest @ 9% p.a. Besides this, a sum of ₹20,000 was awarded for harassment and ₹5,000 towards litigation expenses.

6. The appeal filed by the insurance company before the State Commission was dismissed vide order dated 2.12.2013.

7. The National Commission, vide impugned order allowed the Revision Petition No. 1417/2014 holding that once renewal of the policy beyond 6.7.2009 was not proper, no claim was admissible.

#### **ARGUMENTS**

8. Learned counsel for the appellant submitted that it is a case in which the appellant had got the health insurance policy for the family. Once expenses had been incurred on the treatment of his wife, the same were required to be reimbursed by the insurance company. There is no dispute raised as expenses were actually incurred. The wife of the appellant unfortunately expired. Though the direction was issued by the District Forum, as upheld up to the National Commission, the expenses incurred during the period 7.7.2007 to 6.7.2009 were directed to be paid to the appellant considering the fact that the concealment of rheumatic heart disease had no relation with ovarian cancer. Reliance was

placed on order passed by this Court in ***Sulbha Prakash Motegaonkar v. LIC***<sup>1</sup>. However, for the period subsequent to 6.7.2009, the claim was not accepted by the insurance company. On a complaint filed by the appellant, a direction was issued by the District Forum to the insurance company to reimburse the expenses incurred on the treatment. The order was upheld by the State Commission. However, the National Commission has erroneously set aside that order holding that the renewal of policy was not proper. No doubt, the health insurance policy was renewed on a direction issued by the District Forum, as upheld by the State Commission. However, nonrenewal of a policy by the insurance company has certainly deprived the appellant from taking the policy from any other company. At this stage, it would be unreasonable to deprive the appellant of the fruits of the policy in the form of claim, despite the fact that more than the normal premium was charged by the insurance company at the time of renewal as extra risk was covered.

**9.** On the other hand, learned counsel for the insurance company submitted that no benefit could accrue to the appellant in terms of an order passed by the Commission, which was ultimately set aside. Initially the appellant had got the policy from 7.7.2007 to 6.7.2008, which was renewed up to 6.7.2009. There was some issue with reference to the claim for expenses incurred by the appellant for treatment of his wife as the disease from which she was suffering at the time of purchasing the policy, was not disclosed. Still in a complaint filed by the appellant, direction was issued for reimbursement of the expenses incurred by the appellant. As the direction was upheld up to the National Commission, the insurance company has not challenged the same. Even though there may be dispute regarding the quantum of expenses incurred.

**10.** There is no error in the order passed by the National Commission whereby it has held that renewal of policy from 7.7.2009 onwards is not proper. In fact, the last policy of the appellant expired on 6.7.2009 and thereafter there was no renewal of the policy as the insurance company had refused to renew the same. It was in terms of the order passed by the District Forum on 11.9.2009 as upheld by the State Commission by order dated 23.12.2010 and the interim order passed by the National Commission on 13.5.2011 that the insurance policy from 7.7.2009 to 6.7.2012 was renewed in October 2011. Interim order passed by the National Commission specifically stated that the renewal will be subject to the final decision and finally the National Commission held that the direction issued by the State Commission for renewal of the policy was not proper.

**11.** Issuance of insurance policy is a contract. The insurance company cannot be compelled to sell any policy. In fact, the refusal to renew the policy was in terms of the guidelines issued down by the Insurance Regulatory and Development Authority dated March 31, 2009. The appellant cannot compel the insurance company to violate those guidelines. In terms of the aforesaid guidelines, renewal of an insurance policy can be refused on the ground of fraud, moral hazard or misrepresentation. It is a case in which at the time of purchasing the first policy, the appellant had concealed the factum of illness being suffered by his wife as a result of which the claim for treatment was made. Though that amount is not being disputed by the appellant, however, the claim made for the period during which the policy was renewed in terms of interim order passed by the National Commission will not be admissible to the appellant. He further submitted that reliance on the order passed by this Court in ***Sulbha Prakash Motegaonkar's*** case (supra) is totally misplaced. In the aforesaid order, the earlier binding precedents of this Court in ***Satwant Kaur Sandhu v. New India Assurance Company Limited***<sup>2</sup>, ***Reliance Life Insurance***

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<sup>1</sup> 2015 SCC Online SC 1880

<sup>2</sup> (2009) 8 SCC 316.

***Company Limited and Another v. Rekhaben Nareshbhai Rathod***<sup>3</sup> and ***Oriental Insurance Company Limited v. Mahendra Construction***<sup>4</sup>, were not considered.

## **DISCUSSION**

- 12.** Heard learned counsel for the parties and perused the relevant referred records.
- 13.** As per the facts available, in the complaint No. 50 filed by the appellant before the District Forum, the wife of the appellant was detected suffering from Cancer of Ovary. She was treated in various hospitals from 19.01.2008 onwards. She remained hospitalised from 19.01.2008 to 23.08.2008. A claim of ₹91,416 was submitted for the expenses incurred for treatment from 19.01.2008 to 11.03.2008. A further claim of ₹4,14,464.76 was submitted for treatment from 13.03.2008 to 19.09.2008. The aforesaid claims were repudiated by the insurance company vide letters dated 01.10.2008 and 08.12.2008, respectively. Challenging the rejection of the claim, a complaint was filed before the District Forum.
- 14.** The District Forum vide order dated 11.09.2009 accepted the complaint. The communications of the insurance company repudiating the claims were set aside, while holding that there was no relation of the disease suffered by the wife of the appellant with the disease for which treatment was taken. The action of insurance company in refusing further renewal of the policy was also held to be bad. Accordingly, the direction was issued to renew the policies from the date these expired on payment of renewal charges.
- 15.** The aforesaid order was challenged by the insurance company before the State Commission. However, the said appeal was dismissed. The State Commission observed that even at the time of the first renewal of the policy from 07.07.2008 to 06.07.2009, the insurance company was well aware of the treatment which the wife of the appellant was undergoing, for which the claim had already been submitted. The order dated 23.12.2010 passed by the State Commission was challenged by the insurance company before the National Commission.
- 16.** Vide interim order dated 13.05.2011, the National Commission directed that the renewal of policy in terms of the direction issued by the District Forum, as upheld by the State Commission, shall be subject to final decision in the Revision Petition No. 923 of 2011. The challenge by the insurance company before the National Commission was only to the direction issued by the lower authorities for renewal of the policy from 07.07.2009 onwards, otherwise the amount spent by the appellant for treatment as claimed in the complaint was not disputed and was duly paid.
- 17.** In terms of the interim order passed by the National Commission, the insurance policy was renewed for the period from 07.07.2009 to 06.07.2010 on payment of a premium of ₹6,105. Policy was further renewed for the period from 07.07.2010 to 06.07.2011 and from 07.07.2011 to 06.07.2012, on payment of annual premium of ₹30,560. The fact remains that the sum insured remained the same from the very beginning i.e., two lakhs and four lakhs in case of critical illness. The policy from 07.07.2009 onwards was renewed in October 2011.
- 18.** A complaint bearing number 249 of 2012 was filed by the appellant seeking reimbursement of the amount spent by the appellant on the treatment of his wife of ₹3,23,486.50 for the period from 11.11.2009 to 11.06.2010, ₹2,31,307.34 for the period from 02.08.2010 to 06.06.2011, ₹1,18,511.50 for the period from 27.06.2011 to 30.09.2011

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<sup>3</sup> (2019) 6 SCC 175.

<sup>4</sup> (2019) 18 SCC 209.



and ₹74,332.80 for the period from 27.09.2011 to 28.10.2011. The claim was submitted by the Appellant on 14.10.2011 which was repudiated vide letter dated 31.01.2012, after which the complaint was filed. The reason assigned was that the renewal of insurance policies for the period in question was sub judice before the National Commission.

**19.** The District Forum accepted the complaint vide order dated 01.08.2013 and directed reimbursement of expenses incurred by the appellant. The State Commission in an appeal filed by the insurance company upheld the order passed by the District Forum.

**20.** The aforesaid order was also challenged by the insurance company before the National Commission by filing Revision Petition No. 1417 of 2014. The National Commission decided both the Revision petitions vide a common order.

**21.** There is a letter dated 10.03.2008 on record from the appellant to respondent no.2 namely Paramount Health Services Private Limited, who is the agent of the insurance company. The letter clearly suggests that the claim had been lodged and allotted number 2771734. It was thereafter that the policy for the next year was renewed on 07.07.2008.

**22.** There was no clear answer given by learned Counsel for the respondent insurance company regarding the submission of the claim made by the appellant with its agent on 10.03.2008 which was even allotted a claim number 2771734. All what was sought to be explained was that it was in process and may not be in the notice of the department renewing the policy from 07.07.2008 till 06.07.2009.

**23.** The National Commission in Revision Petition 923 of 2011 set aside the direction issued by the lower authorities for renewal of the policies beyond 06.07.2009, as it was noticed that there was concealment of facts by the appellant at the time of purchase of the policy with reference to the disease already suffered by his wife i.e., rheumatic heart disease. Once the policies for the period from 07.07.2009 onwards are not renewed, the claim for reimbursement of expenses incurred on treatment was also rejected while setting aside the orders passed by the lower authorities.

**24.** A certificate dated June 30, 2009, issued by Rajiv Gandhi Cancer Institute and Research Centre, New Delhi has been placed on record giving the details of the treatment given to the wife of the appellant, who was a registered patient with the hospital since 13.03.2008 and prior to that she had undergone surgery on 31.01.2008 at AIIMS. The certificate further mentions that rheumatic heart disease and carcinoma ovary are not related to each other.

**25.** The main thrust of the argument of learned Counsel for the insurance company is that in terms of the guidelines issued by the Insurance Regulatory and Development Authority on 31.03.2009 regarding renewal of health insurance policies, the renewal of policy to the appellant could be refused. The relevant clause is extracted below from the IRDA letter dated 31<sup>st</sup> March, 2009.

*“A health insurance policy shall be ordinarily renewable except on grounds such as fraud, moral hazard, or misrepresentation and upon renewal being sought by the insured, shall not be rejected on arbitrary grounds. Specifically, renewal shall not be denied on the ground that the insured had made a claim (or claims) in the previous or earlier years.”*

**26.** The ground on which renewal of insurance policy to the appellant is sought to be refused is that while taking the initial policy, the appellant had failed to disclose that his wife (now deceased) was suffering from rheumatic heart disease. Though she expired of cancer. The fact remains that the first policy was taken by the appellant for the period from 07.07.2007 to 06.07.2008, which was renewed for another year. The claims even for the

period, wherein valid policy was available with the appellant, were repudiated. Renewal of policy beyond 07.07.2009 onwards was refused relying upon the guidelines issued by the Insurance Regulatory and Development Authority vide communication dated March 31, 2009. The claim of the appellant was repudiated on that very ground namely non-disclosure of the disease by which the wife of the appellant (now deceased) suffered at the time of purchase of initial policy. The repudiation of claim by the insurance company was subject matter of consideration before the Fora at different levels under the Consumer Protection Act, 1986. The rejection of the claim on the ground that there was concealment of certain material facts by the appellant at the time of purchase of policy, was not found to be tenable and the insurance company was directed to reimburse the expenses incurred for the period from 07.07.2007 to 06.07.2009. The aforesaid amount was paid by the insurance company. The order passed by the National Commission was not challenged any further by the Insurance Company. From this, it is established that even the Insurance Company accepted the fact that non-mentioning of the disease from which the deceased wife of the appellant suffered at the time of purchasing the policy was not material, as the death was caused from a different disease all together. Both had no relation with each other. Now, the insurance company cannot be permitted to raise same plea to deny renewal of insurance policy to the appellant for the period from 07.07.2009 onwards. Even though direction was given by the District Forum vide order dated 11.09.2009 to renew the policy further but it was not renewed, till such time interim order was passed by the National Commission on 13.05.2011.

**27.** Further the impugned order was passed by the National Commission on 26.11.2018, whereby direction for renewal of policies was set aside. The amount of premium charged by the insurance company for renewal of policies has not been refunded. Meaning thereby the premium for renewal of the policies for the period in dispute stands paid.

**28.** The judgments of this Court relied upon by the insurance company in the case of **Satwant Kaur Sandhu vs. New India Assurance Company Limited<sup>5</sup>; Reliance Life Insurance Company Limited vs. Rekhaben Nareshbhai Rathod<sup>6</sup> and Oriental Insurance Company Limited vs. Mahendra Construction<sup>7</sup>** will not come to its rescue for the reason that in the aforesaid cases, the issue under consideration was whether the repudiation of the claim by the insurance company on the ground of concealment of fact at the time of purchase of policy was valid or not. It was with reference to the period during which the policy was valid. Examining the facts of the above-mentioned cases, this Court opined that the repudiation of claim was legally sustainable. In the case in hand repudiation of claim was set aside & order was accepted by the Insurance Company.

**29.** For the reasons mentioned above, the appeals are allowed. The impugned order passed by the National Commission is set aside. The orders passed by the District Forum and State Forum regarding direction to the Insurance Company to renew the policies are restored. Further, once there is a valid insurance policy available in favour of the appellant, the claim made by him for reimbursement of the expenses incurred is justifiable and deserves to be paid to him. Ordered accordingly. There shall be no order as to costs.

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<sup>5</sup> (2009) 8 SCC 316

<sup>6</sup> (2019) 6 SCC 175

<sup>7</sup> (2019) 18 SCC 209