

First Appeal No.
214 of 2015

Sh. Manoj Kumar Pant
Versus
General Manager / Regional Manager
Birla Sun Life Insurance Company Limited

23.04.2024

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 29.09.2015
Date of Final Hearing: 05.04.2024
Date of Pronouncement: 23.04.2024

FIRST APPEAL NO. 214 / 2015

Sh. Manoj Kumar Pant S/o Sh. Naveen Chandra Pant
R/o Ward No. 1, Dak Bangla
Kaladhungi, District Nainital (Uttarakhand)

(Through: Sh. Amit Agarwal, Advocate)
..... Appellant

Versus

General Manager / Regional Manager
Birla Sun Life Insurance Company Limited
Registered Office: - One Indiabulls Centre, Tower 1
15th & 16th Floor, Jupiter Mill Compound
841, Senapati Bapat Marg, Elphinstone Road
Mumbai – 400 013
Branch Office: - Birla Sun Life Insurance Company Limited
Hall No. 15, 1st Floor, Above J4U Junction
Durga City Centre, Bhotia Parao
Haldwani (Nainital)

(Through: Smt. Anjali Gusain, Advocate)
..... Respondent

Coram:

**Ms. Kumkum Rani,
Mr. B.S. Manral,**

**President
Member**

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against the impugned judgment and order dated 25.08.2015 passed by learned District Consumer Disputes Redressal Forum, Nainital (hereinafter to be referred as “The District Commission”) in consumer complaint No. 23 of 2013 styled as Sh. Manoj Kumar Pant Vs. General Manager / Regional Manager, Birla

Sun Life Insurance Company Limited, wherein and whereby the consumer complaint filed by the appellant / complainant was dismissed.

2. The facts giving rise to the present appeal, in brief, are, as such that the appellant / complainant had obtained an insurance policy, namely, BSLI Vision Plan bearing No. 005174216 from the respondent / opposite party on dated 31.10.2011, maturity date of which was 31.10.2089. At the time of obtaining the insurance policy, the complainant was assured that the policy covers accidental death and disability, critical illness, surgical care & hospital care and that in the event of any of above illnesses, on submission of claim, the insurance company will immediately reimburse the medical expenses incurred on the treatment of the life assured / complainant. On dated 07.03.2012, the complainant was coming on his motorcycle bearing registration No. UK04-G-6721 from Nainital to his residence at Kaladhungi and in the way, a Pickup vehicle bearing registration No. UK04-CA-1134, which was being driven by its driver rashly and negligently, collided with the complainant's vehicle, as a result of which, the complainant sustained grievous injuries and his right leg was badly injured. The complainant was got admitted in Soban Singh Jeena Base Hospital, Haldwani, from where he was referred to Krishna Hospital & Research Hospital, Haldwani. The complainant was further referred to Eshan Hospitals, Bareilly for better treatment, where he remained admitted from 08.03.2012 to 14.04.2012. The complainant had spent an amount of Rs. 6,23,896/- on his treatment at various hospitals. An F.I.R. with regard to the accident was lodged with P.S. Kotwali, Mallital on 12.03.2012 and intimation was also given to the insurance company and claim was submitted. The insurance company, however, repudiated the claim on the ground that the date of admission (08.03.2012 to 14.04.2012) falls within 90 days' from the date of issuance of policy, i.e., 29.12.2011 and that the complainant is not entitled to any benefit

if the hospitalization results directly or indirectly from any condition (disease, illness or injury) manifesting itself within 90 days' from the effective date of the rider or its latest revival date, whichever is later. The insurance company has wrongly repudiated the claim of the complainant and by doing so, has committed deficiency in service. Hence, the consumer complaint was submitted by the complainant before the District Commission.

3. The respondent / opposite party filed its written statement before the District Commission, pleading that on receipt of the application of the complainant – Sh. Manoj Kumar Pant, policy bearing No. 005276624 was issued and policy bearing No. 005174216 was not issued due to dishonour of cheque. It was further submitted that as per the regulatory provision, every policyholder has a right to Free Look the policy if he / she is dissatisfied with the terms and conditions of the benefits of the policy. Under such free look, the policyholder has an option to reconsider his / her decision and can apply for cancellation of the policy within 15 days' of receipt of the policy. In case of free look cancellation, entire premium paid by the policyholder (less stamp and other application charges) is refunded back to the applicant. In the present case, the complainant did not come back in free look period. It was also submitted in the written statement that the complainant was hospitalized for accidental crush injuries from 08.03.2012 to 14.04.2012, which falls within 90 days' from the date of issuance of the policy, i.e., 29.12.2011, therefore, the insurance company has informed the life assured / complainant about the rejection of the claim vide letter dated 31.08.2012, stating that since the illness occurred within 90 days' of policy issuance, which is an exclusion clause under the policy, hence the claim is not payable. Apart from it, it was further averred that the complainant has concealed the true facts and has not come before the

District Commission with clean hands and has filed a vexatious and frivolous consumer complaint, which is liable to be dismissed.

4. Learned District Commission, after hearing both the parties and after taking into consideration the entire material available on record, passed the impugned judgment and order on dated 25.08.2015, thereby dismissing the consumer complaint filed by the appellant / complainant.

5. On having been aggrieved by the impugned judgment and order, the present appeal has been submitted on behalf of the complainant as an appellant, alleging that the impugned judgment and order is against facts, evidence and law. Learned District Commission has not exercised the jurisdiction vested in it by law and has not considered the fact that the complainant has claimed the amount of medical expenses, which were actually incurred on his treatment and by not paying the medical expenses to the complainant, the insurance company has committed deficiency in service. It was further stated that the impugned judgment and order is not legally sustainable and the same is liable to be set aside. The appeal deserves to be allowed.

6. We have heard learned counsel for the parties and perused the record. Learned counsel for the appellant has submitted that the respondent / insurance company has committed deficiency in service by repudiating the legitimate claim of the complainant, which pertains to the reimbursement of medical expenses incurred by the complainant / life assured on his treatment during the subsistence of the insurance policy. It was further contended on behalf of the appellant that in **Revision Petition No. 2480 of 2014; Kiranjit Kaur and others Vs. HDFC Standard Life Insurance Co. Ltd. and another**, decided on 05.02.2018, Hon'ble National Commission has awarded the insured amount under the policy. In the said case also, the claim was repudiated

by the insurance company on the ground that the life assured had died within 90 days' of the commencement of coverage under the policy. Per contra, learned counsel for respondent has contended that the claim submitted by the complainant was contrary to the terms and conditions of the insurance policy and since the hospitalization of the complainant on account of accidental crush injuries, was within 90 days' from the date of issuance of the policy, hence the claim was not payable and was rightly repudiated by the insurance company and the repudiation letter issued by the insurance company was totally justified.

7. The record proves that the complainant had obtained an insurance policy bearing No. 005276624 from the respondent / insurance company, which was issued on 29.12.2011. The record further shows that policy No. 005174216, reference whereof has been made in the consumer complaint, was not issued due to dishonour of cheque submitted towards premium amount of the policy, whereafter the complainant had submitted fresh application form on 13.12.2011 and upon due payment of premium, policy No. 005276624 was issued by the insurance company, which was in force on the date of accident in question.

8. It is an admitted fact that the complainant had met with an accident on dated 07.03.2012, when he was coming on his motorcycle bearing registration No. UK04-G-6721 from Nainital to his residence at Kaladhungi and in the way, a Pickup vehicle bearing registration No. UK04-CA-1134, driven rashly and negligently by its driver, collided with his vehicle, on account whereof, the complainant sustained grievous injuries and his right leg was badly injured. It is not disputed that the complainant had taken treatment in various hospitals, mentioned above. Learned counsel for the insurance company has not raised any objection that the medical expenses of Rs. 6,23,896/- were

not incurred by the complainant on his treatment in various hospitals. As per the contention of the insurance company, as the hospitalization of the complainant in connection with the accidental injuries sustained by him was within 90 days' from the date of issuance of the policy, the claim was not payable, as it falls under the exclusion clause of the insurance policy. Learned counsel for the appellant / complainant has argued that the insurance company has continuously received the amount of the premium under the policy, hence any condition that the insurance company will not indemnify the life assured, in case he suffers accidental injury within 90 days' from the effective date of the rider or its latest revival dates, whichever is later, is ultra vires and IRDA has also declared such a condition as null and void.

9. Learned counsel for respondent / insurance company has cited judgment of Hon'ble National Commission in the case of **Col. T.S. Bakshi Retd. Vs. Star Health and Allied Insurance Co. Ltd.** reported in **2014 (2) CPR 373**, decided on 06.05.2014 and has argued that if the insured attracts disease within first 30 days' of the commencement of the insurance policy, the insurance company is not liable to indemnify the insured in regard to medical expenses incurred, unless it is shown that the insured had a continuous health insurance policy.

10. We have gone through the cited case law, wherein Hon'ble National Commission has held that:

“13. On reading of the above, it is clear that if the insured was not agreeable to the terms and conditions, he had an option to seek cancellation of the policy with refund of his premium. The insured had not opted for cancellation of the policy. Therefore, now he can not be allowed to claim that he is not bound by the Exclusion Clause because it was

not explained to him when he remitted the cheque for payment of insurance premium.”

11. Subsequently, Hon’ble National Commission, in the case of **Kiranjit Kaur and others** (supra) decided on 05.02.2018, has held that:

“15..... The insurer sought a lenient view on the ground that from 15th April 2011 they were not applying this particular provision and further since there are only 21 cases, a lenient view sought.

The contention of the insurer is totally unacceptable; in the first instance, the insurer had no business inserting a clause of 90 day waiting period knowing fully well that the Authority had specifically directed that such clause may not be included. This clearly shows that scant regard paid by the insurer to the directions of the Authority on a matter which critically affects the policyholder welfare. It is always open for any insurer to consider the settlement of a death claim in accordance to the provisions of Section 45 of the Insurance Act, 1938. In the instant cases, the insurer has merely applied the 90 day waiting period and has rejected the claim. For this gross and serious violation of the directions of the Authority under File and Use, the Authority has concluded that this is a fit case where a penalty on each occurrence of upto Rs. 5 lakhs should be imposed and, consequently, a fine of Rs. 1,05,00,000 (One Crore Five Lakhs only) is imposed for this violation.

Further, the insurer is directed to reopen all the 21 rejected claims and settle them within thirty days of receipt of this order. Insurer is also directed to forward a communication as an endorsement to the original policy contract specifically deleting the clause in

respect of all the policy contracts that were issued since the launch of the product and are in force. This task shall be completed within 30 days from the date of receipt of this order and shall confirm to the Authority the action taken report accordingly.

16. From the aforementioned Charge and the Decision taken by the Chairman, IRDA, it is clear that Insurance Companies can not apply the 90 day waiting period and reject the claim on the ground that in this case the death occurred on the 90th day.

17. It is manifest that the Insurance Company has taken a hyper technical objection in repudiating the claim on the ground that the death occurred on the 90th day. Also, the evidence on record does not show that the Complainant was in any manner taking advantage of the death of the policyholder. The time of death is in nobody's hand and I find it a fit case to reply on the judgment of the Hon'ble Delhi High Court in Rajiv Khosla Vs. Union of India & Ors. (2010) 17 DLT 103, in which the Hon'ble High Court has held that the schemes made under the Jeevan Kishore Policy will not be repudiated by the LIC on the ground that they have been made before the "differed date", subject of course, to other conditions being satisfied.

18. Even in the instant case the deferred period was 90 days and it is not as if the time of death was planned only to take advantage, under the policy expecting that the insured may not live beyond the period of 90 days. Be that as it may, as both the interpretations are reasonably possible, as the policyholder died on the 90th day, I find it a fit case to accept the interpretation with favours the policyholder as the purpose for which the policy is taken would be in consonance with the object for getting the life assured. The law on the subject is settled by the Hon'ble

Apex Court in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan & Ors. (1987) 2 SCC 654; Shahi Gupta Vs. LIC of India & Anr. (1995) CPJ 14 (SC); B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan (1996) 4 SCC 648 and LIC Vs. Raj Kumar Baigarhia & Anr. (1999) 3 SCC 465.”

12. The principle laid down in the case of **Kiranjit Kaur and others** (supra) is squarely applicable to the case in hand because the condition imposed in the policy that the insured shall not get the accidental benefit under the policy if the injury is caused within 90 days’ of issuance of the policy, can not be said to be valid. It is also worth mentioning that nobody on earth can predict an accident or death. For this reason also, the aforesaid condition mentioned in the insurance policy, is non-est in the eyes of law and is against the public welfare. In our view, as is stated above, such a condition is ultra vires and against the public policy. Thus, in the light of principle laid down in the case of **Kiranjit Kaur and others** (supra), we are of the considered opinion that the insurance company has certainly committed deficiency in service by repudiating the just and reasonable claim of the complainant and we are also of the definite view that the appellant / complainant is entitled to get the claim amount of Rs. 6,23,896/- from the insurance company along with interest @6% p.a. from the date of filing of the consumer complaint, i.e., 27.02.2013 till actual realization and Rs. 5,000/- as litigation charges.

13. For the reasons aforesaid, the appeal deserves to be allowed and the impugned judgment and order passed by the District Commission is liable to be set aside.

14. Appeal is allowed. Impugned judgment and order dated 25.08.2015 passed by the District Commission is set aside. Consumer

complaint No. 23 of 2013 is allowed and the respondent / insurance company is directed to pay the claim amount of Rs. 6,23,896/- to the appellant / complainant together with interest @6% p.a. from 27.02.2013, i.e., the date of filing of the consumer complaint till actual payment and Rs. 5,000/- as litigation charges.

15. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information. The original record of the District Commission be also remitted back forthwith.

16. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. B.S. Manral)
Member

Pronounced on: 23.04.2024