

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
THANE
ROOM NO. 214, SECOND FLOOR, COLLECTOR OFFICE
BUILDING,
COURT NAKA, THANE – 400 601.**

**Consumer Complaint No. : CC/558/2017
Date of Filing: 06/09/2017
Date of Order: 05/09/2023**

Mr.Diliprao D.Mohite
R/o.304, Saiprerna, Kisan Nagar No.2,
Road No.16, Wagale Estate,
Thane- 400 602
v/s.

... COMPLAINANT

1.M/s. Star Health And Allied Insurance Co.Ltd.,
R/o, T-761, 6th floor, Tower No.3,
Above Vashi Railway Station,
International Infotech Park,
Vashi Navi Mumbai -400 705.

2.M/s.Jupiter Lifeline Hospital Ltd.,
R/o, Opp.Flower Valley,
Eastern Express Highway,
Thane (West),- 400 601.

... OPPONENT

BEFORE : **Hon'ble President : Mr.V.C.Premchandani**
 Hon'ble Member : Ms.Poonam V.Maharshi

For Complainant : Adv. Mr.N.B.Vharkate.
For Opponent : Adv.Mr.Balaji M.Umate for OP No.1
 : Adv.Mr.Shenoy for OP No.2.

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

Per : Shri. V.C. Premchandani, Hon'ble President

1. The Complainant has filed present complaint U/s.12 of Consumer Protection Act, 1986.

The gist of complaint is that the complainant is obtained Medical Insurance Policy from the opponent no.1 since 2013 the Policy bearing No.P/171112/01/2018/0000992. The complainant is paying premium of Rs.23,976/- p.a. to the opponent no.1. As per said policy the Health Cover to the complainant is Rs.5,50,000/-. The complainant admitted in the hospital of the opponent no.2 due to severe pain in heart, the complainant intimated to the opponent the same. As per claim intimation and submitted the claim. The complainant was discharged after obtaining the insurance amount by the opponent no.2. The complainant approached insurance company opponent no.1 for claiming remaining amount spent from medical expenses. The opposite party no.1 refused to grant the same and repudiated the claim of complainant. The opposite party no.1 without having any justifiable reason rejected/ repudiated claim of complainant therefore it is amounts to unfair trade practices to the complainant. Hence the complainant pursue this Commission. The complainant prayed that opposite party no.1 may be directed to pay remaining insured claim amount along with compensation and costs of the claim.

2. The consumer complaint is admitted and notice was issued to the opponents. Both the opposite parties appeared and file their Written Statement. The opposite part no.1 submitted that the complainant has filed false and frivolous complaint against the opponent no.1 & 2. The opposite party no.1 further submitted that as per terms and conditions of the policy the Exclusion Clause no.14 which read as under;

“Charges incurred at Hospital or Nursing home primarily for Diagnostic purpose, Xray or Laboratory Examinations not consistent with or incidental to the diagnosis and treatment of the positive existence or presence of any ailment, sickness or injury, for which confinement is required at Hospital/ Nursing home thus the enhancement was withdrawn and the same was informed to the treating hospital and the insured vide letter dated 19/08/2017.”

As from the said exclusion clause the complainant is not entitled to have the claim since the complainant has in which admitted for the diagnosis purpose.

Therefore the opposite party no.1 prayed to reject/ dismiss the complaint of the complainant.

The Opposite party no.2 also filed Written Version and submitted that there is no relationship between the opposite party no.1&2 neither the complainant made any allegation against opponent no.2.

Factual Matrix-23.18/08/2017: Patient was admitted to OP No.2 Hospital.

On examination the patient was in sinus rhythm on Cordarone. Hence DC Cardioversion procedure Written Statement was postponed and patient was advised to undertake sleep studies.

Patient was also examined by the pulmonary team. PEFr was 220 It/min. Complete PFT with DLCO showed moderate reversible obstruction with significant air trapping with mild restrictive defect.

Patient was not willing for sleep studies.

Opposite party no.2 therefore prayed that case be dismissed as frivolous U/s 26 of Consumer Protection Act 1986 for dragging without reason.

3. Perused the complaint, documents, Written Version of parties, Affidavit of Evidence, Written notes of Arguments of complainant and opposite parties and heard oral arguments. This Commission following points are arisen out of the dispute of the complainant and opponents; we answer the said points with reasons given below.

POINTS

Sr. No	Points	Findings
1.	Whether the complainant is consumer of opposite party no.1 & 2?	Yes
2.	Whether opposite party no.2 has provided deficiency in service towards complainant?	No.
3.	Whether opposite party no.1 has provided deficiency in service the complainant?	Yes
4.	What an order?	As per final order.

REASONS

4.AS TO POINT NO.1 :- The complainant obtained the cashless insurance policy from the opposite party no.1 bearing No.P/171112/01/2018/0000992. The said fact

has been admitted by the opposite party no.1. The complainant was admitted in the hospital of opposite party no.2 for the treatment. The opposite party no.2 has charged amount of professional fees the same fact is admitted by the opposite party no.2. Hence it is proved that the complainant is consumer of opposite party no.1 & 2 as per Section 2 (i) (d) of Consumer Protection Act, 1986 therefore the answer of point no.1 is in affirmative.

5.AS TO POINT NO.2 :- The complainant was admitted in the hospital of opposite party no.2. The opponent no.2 has provided medical services to the complainant. There is no complaint pertaining to the services provided by the opposite party no.2 hence it is proved that opposite party no.2 did not committed any deficiency in services towards the complainant. Therefore answer of point no.2 is negative.

6.AS TO POINT NO.3 :- From the evidence of the complainant and the written version of the opposite party no.2 is reveals that the complainant was admitted in the opposite party no.2 hospital on the advice of the doctors the complainant was in

24. On examination the patient was in sinus rhythm on Cordarone. Hence DC Cardioversion procedure Written Statement was postponed and patient was advised to undertake sleep studies.

25. Patient was also examined by the pulmonary team. PEFR was 220 It/min. Complete PFT with DLCO showed moderate reversible obstruction with significant air trapping with mild restrictive defect.

26. Patient was not willing for sleep studies.

As soon as the complainant was stable there is no fresh complaint, the complainant was discharged from the hospital. The patient record, documents submitted by the complainant the letter dated 16/08/2017 therein opposite party no.1 pre authority for cashless for the insured patient and sanctioned initially an amount of Rs.30,000/-. Whether that in case it is found that claim is not admissible from the provisional cashless approval given and initial made sanctioned while withdrawn by the opposite party no.1. The present case later on for remaining amount the opposite party no.1 has repudiated the claim. The complainant was admitted in the hospital for breathlessness since found 4 to 5 months diagnosed with Parozysmal AF with CVA. The complainant was having history of summery Holter monitoring showed AF as per discharge

summery therefore the concern doctor has diagnosed Parozysmal AF with CVA. The doctor's decision to admit hospital to the complainant. The said facts is proved from the discharge summery hence it cannot be said that the complainant was only admitted for the diagnosis purpose only. Therefore Exclusion Clause-14 repudiate the claim policy will not be applicable in the scenario of the facts. The complainant is succeeded for which claim amount repudiate by opposite party no.1 committed deficiency in service towards complainant. Therefore answer of point no.3 in affirmative.

6.AS TO POINT NO.4 :- After going through reasons mentioned in the point Nos. 1 to 3, we pass the following order :

//FINAL ORDER//

1. The Consumer Complaint No. CC/558/2017 is partly allowed.
2. The consumer complaint is dismissed against opposite party no.2.
3. The Opponent party no.1 is directed to pay amount of Rs.33,500/- (Rupees Thirty three thousand Five hundred only) the claim amount along with interest thereon @ 8% p.a. from the date of 06/09/2017 till the realization of the amount to the Complainant.
4. The Opponent no.1 is directed to pay the sum of Rs.15,000/- (Rupees Fifteen thousand only) towards compensation for mental torture Rs. 5,000/- (Rupees Five thousand only) towards the costs to the Complainant.
5. The Opponent is directed to comply the aforesaid order within a period of 30 days from the date of receipt of this order.
6. The copy of this order be furnished to both the parties free of cost.
7. The member sets (if any) shall be returned to the complainant. In case, Complainant fails to collect the said sets within a period of 30 days from the receipt of copy of member set, the same may be destroyed.

Place: Thane

Date: 05/09/2023

(Vijay.C.Premchandani)
President

(PoonamV.Maharshi)
Member