

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 2280 OF 2018

(Against the Order dated 08/10/2018 in Complaint No. 21/2017 of the State Commission
Bihar)

1. SUSHILA SINGH

W/O. LATE MR SANJAY KUMAR, C/O. SUSHILA
AGENCIES NEW PROFESSOR COLONYEY WARD NO 27,
BAHADURPUR
SAMASTIPUR

.....Appellant(s)

Versus

1. BIRLA SUN LIFE INSURANCE CO. LTD. & ANR.

THROUGH ITS CHAIRMAN, BIRLA SUN LIFE INSURANCE
CO LTD G-CORP. TECH PARK 5&6 FLOOR KASAR
VADAVAIL NEAR HYPERCITY MALL GHODBUNDER
ROAD

THANE (W) 400 601

2. M.D & CHIEF EXECUTIVE OFFICER

BIRLA SUN LIFE INSURANCE CO LTD G-CORP. TECH
PARK 5&6 FLOOR KASAR VADAVAIL NEAR HYPERCITY
MALL GHODBUNDER ROAD

THANE (W) 400 601

3. BRANCH MANAGER,

(CLAIMS DEPARTMENT) BIRLA SUN LIFE INSURANCE
CO. LTD G-CORP. TECH PARK 5&6 FLOOR KASAR
VADAVAIL NEAR HYPERCITY MALL GHODBUNDER
ROAD

THANE (W) 400 601

4. REGIONAL MANAGER

BIRLA SUN LIFE INSURANCE CO. LTD. S.S. SASHI ROAD
VISHANPUR

BHAGALPUR

BIHAR

5. BRANCH MANAGER

BIRLA SUN LIFE INSURANCE CO. LTD. S.S. SASHI ROAD
VISHANPUR

BHAGALPUR

BIHAR

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),MEMBER**

FOR THE APPELLANT : MR. MITHILESH KUMAR ADVOCATE

FOR THE RESPONDENT : MS. MEENAKSHI MIDHA, ADVOCATE WITH
MR. GARV SINGH, ADVOCATE

Dated : 29 September 2023

ORDER

AVM J. RAJENDRA, AVSM, VSM (RETD.), MEMBER

1. The present First Appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as “the Act”) against the Order dated 08.10.2018 passed by the State Consumer Disputes Redressal Commission, Bihar (hereinafter referred as “the State Commission”), in Consumer Complaint No. 21 of 2017, wherein the Complaint filed by the Complainant (Appellant herein) was dismissed.

2. For the sake of Convenience, the parties in the present matter being referred to as mentioned in the Complaint before the State Commission. “Mrs. Sushila Singh” is identified as the Complainant who is wife and nominee of the insured policy holder Late Shri Sanjay Kumar (Since deceased). "The Birla Sun Life Insurance Co. Ltd. & Others" are referred to as the Opposite Parties or Insurer in this matter.

3. There was 26 days delay in filing the present Appeal. For the reasons stated in IA/23780/2018, vide Order dated 26.09.2022, the delay was condoned.

4. Brief relevant facts of the case as per the Complainant are that the Husband of the Appellant/Complainant (‘Insured’ for short) obtained a Life Insurance Policy (Dream Endowment Plan), vide policy No. 004334095 with annual premium of Rs.25,524. It covered the insured for Death benefit of Rs.50,00,000/- (Sum Assured for Rs.3,00,000/- and Enhanced Sum Assured for Rs.47,00,000/-). This policy was proposed on 16.08.2010 and was issued on 31.08.2010 for a term of 30 years. Payments for two years was effected and, however, during the year 2012-2013 the policy lapsed on account of non-payment of the third premium installment, due to the alleged insurance advisor's negligence. Thereafter, it was reinstated on 11.03.2013 and the premium instalment due was paid. Notably, during the reinstatement, the Insured was diagnosed with a kidney ailment. This was disclosed to the insurance advisor, who failed to record this crucial health information in the revival form. The Insured passed away on 20.12.2013 while undergoing treatment at Medanta Hospital. Thereafter, as the designated nominee in the policy, his wife claimed the insured amount. The claim was, however, repudiated.

5. Being aggrieved, the Complainant filed consumer complaint No. 21 of 2017 before the State Commission, sought insured amount of Rs.50/- Lacs with interest @16% p.a. from the date of submission of the claim till actual payment and compensation on account of mental agony.

6. The OPs/Insurer, in their written version, denied her claim stating that the complaint lacks merit. The policy in question was initially issued to Shri Sanjay Kumar under policy No. 004334095 on 31.08.2010. But, it lapsed on 30.09.2012 due to non-payment of the premium amount. The policy was reinstated on 11.03.2013 based on a Certificate of Insurability (COI) dated 07.03.2013 signed and submitted by late Shri Sanjay Kumar. This certificate indicated that the life assured was not afflicted by any illness, disease, or injury before the policy's reinstatement.
7. The investigation by the OPs/Insurer revealed that the policyholder was suffering from kidney related problems and was undergoing dialysis before the policy was reinstated by the OPs. It was further stated that when a policy lapses and is subsequently reinstated, it is treated as a fresh insurance contract. Therefore, the life assured was obligated to provide accurate and complete information about their health.
8. The OPs emphasized that agents act as representatives of the insured and, however, they cannot promise anything beyond the terms and conditions set by the insurer. The life assured, possessing insurable interest, should not have blindly relied on a third party and signed the documents, without understanding its contents. Hence, the OPs/insurer repudiated the claim on 18.11.2014 and refunded the premium amount of Rs.22,109 to the Complainant by NEFT transfer. Thereafter, she approached the insurance company for reconsideration of the claim. The matter was duly considered by the Grievance Redressal Committee, which concluded that the Life Assured had deliberately concealed significant health-related information in the Certificate of Insurability (COI). This conclusion was conveyed to the complainant through a letter dated 27.03.2015.
9. The learned State Commission upon hearing the parties, and considering the facts and the circumstances, of the case dismissed the complaint with following observations: -

***“7. On perusal of para 7 of the complaint petition it has been clearly submitted by the complainant herself that during due period for third premium, the policy holder was diagnosed of kidney related problem and the same fact could not enter into the form for revival even after the same was disclosed to advisor who filled up the form for reinstating the lapsed policy. In view of above facts, the findings of investigation conducted by ops insurance co. that the policy holder was suffering from kidney disease prior to reinstate of the policy is established. Apart from that no materials has been brought on record by the complainant as to show advisor of being made aware of the facts with respect to disease suffered by assured not entered in to revival form deliberately, on basis of mere statement such grounds cannot be taken in to consideration. Since, in case of revival/reinstating of a policy correctness of information in given in proposal form regarding health is a vital point and material factor for deciding reissuance of a policy for insurance co., we are of the opinion that the grounds taken for the repudiation of the claim by the OPs Insurance co. appears quite justified. As such we do not find any deficiency in service on part of ops Insurance co. for denial of the claim of the complainant in the present policy.*”**

8. In view of above facts and circumstances of the case, we do not find merit in the complaint and it is accordingly, dismissed with no order as to cost.”

10. Being aggrieved by the impugned order of the learned State Commission, the Complainant (Appellant herein) has filed this present Appeal no. 2280 of 2018 with the following prayer:

A. An order to set aside the impugned order dated 08.10.2018 passed by Hon’ble Bihar State Consumer Disputes Redressal Commission, Patna in Complaint Case No. 21 of 2017 and allow the complaint of the appellant.

B. An order allowing the costs of the present Appeal to the Appellant/ Complainant; and

C. Any other order or direction that this Hon’ble Commission may deem fit and proper in the facts and circumstances of the present case.

11. The Appellant mainly raised the following issues in the present memo of Appeal:

- (a) The State Commission in its order dated 08.10.2018 did not follow Section 13(4) of the Consumer Protection Act, 1986 and Section 45 of the Insurance Act, 1938.
- (b) The State Commission failed in considering the settled law of the Hon'ble Supreme Court and the order is violation of Article 141 of the Constitution of India.
- (c) The State Commission failed to consider the case on merits and decided on illegal means of practice.
- (d) The OP committed gross deficiency in service as well as misrepresented facts on and committed fraud on the Appellant as regards the policy of the deceased.
- (e) The report of surveyor is wrong and improper and failed to conduct proper inquiry. The insurer failed to follow the principles of natural justice while deciding the genuine claim of the Appellant. Such rejection is arbitrary and illegal.

(f) It is a settled principle that a life insurance policy is a husband's privilege, wife's right and their child's claim. It assures that if such an event happens the dependents get financial assistance. However, the OPs intentionally denied the rightful claim of the Appellant.

12. Upon notice on the memo of appeal, the Respondents / OPs have not filed any reply or objection to the present appeal.

13. In his arguments, the learned counsel for the Appellant asserted that the Appellant has genuine grounds for the death claim of the policy as there was no fault on the Appellant's side. It was the company's employees who fabricated the documents of the deceased policyholder. He forcefully contended that the life assured didn't provide any incorrect information in his insurance policy proposal form, which was acknowledged by the insurer. Emphasising that the life assured was unaware of the policy's revival, he contended that the revival form was not filled by him. It was done by the company's financial advisers and manager. The company failed to gather satisfactory evidence on life assured's health during the policy's revival. As per *Regulation 6(1) & 6(2) of the Insurance Regulatory and Development Authority (Protection of Policyholders Interests) Regulations, 2002*, the company is obligated to review terms and conditions of the policy within 15 days of receiving the policy. Their failure would render their right to question the policy to become void. Citing *Hairon Bibi Vs. United India Assurance (1947 Mad 122)* he contended that revival of lapsed policies is a contractual right, subject to compliance with conditions laid down. The learned counsel further referred to the stand of the Hon'ble Supreme Court in various cases, indicating that policy revival should not be arbitrary or unreasonable, and any rejection of a policy must be reasonable and as per good faith standards. Section 45 of the Insurance Act, 1938 should be adhered to for repudiation of claims. The counsel relied on *Life Insurance Corporation of India Vs. The Insurance Ombudsman & Ors WP(C). No. 32758 of 2009(L) and Life Insurance Corp. Of India Vs. Kulwant Kumari, II, 2009 CPJ 317 (NC)* that revival is based on the terms of the contract and should not be arbitrary. The claim is legitimate under the law, and repudiation is unjust, arbitrary, and illegal. He relied on the following judgments to support his case:-

(A) LIC of India Vs Anil Kumar Rastogi, IV, (2009) CPJ 300 (NC).

(B) D. Srinivas vs. SBI Life Insurance Co. [2018] SCCR 196.

(C) LIC of India Vs. Jaswinder Kaur, RP No. 587 of 2018 decided on 05.04.2019 by NCDRC.

(D) Mothoolal Nayak Vs. LIC of India", AIR 1962 SC 814.

(E) Smt. Madhu Vishwakarma Vs LIC of India & Ors (in WP(C) No.- 38226 of 2008) decided on 15.07.2013 by High Court of Allahabad.

14. The Learned Counsel for the Respondents reiterated the facts stated in the written version and affidavit of evidence filed before the State Commission. The State Commission correctly observed that there is no merit in the Complaint as there is no deficiency in services by the Respondent while repudiating the claim. He further argued that deceased insured had taken four other policies from the same Respondent Insurance Company. On receipt of the death claim intimation by the Appellant qua the said other policies, the Respondents duly paid their respective claim amounts. Furthermore, the Respondent Insurance Company has even refunded the amount of Rs.22,109/- being the amount received post lapsation of the Policy and the same is undisputed. The Respondent Insurance Company has placed reliance upon the following judgments: -

A. Policy Revival/Reinstatement constitutes a new Contract.

- *LIC of India & Ors. v. Smt. Shakuntala Devi & Anr. reported as IV (2011) CPJ 645 (NC).*
- *LIC of India v. Memuna -- II (2006) CPJ 86 (NC)*

B. Judgments - Non-Disclosure of prior Ailment Disease

- *Kajol and Guardian Smt. Chander Kanta v. Life Insurance Corporation of India in R.P. 50 of 2011 (NCDRC).*
- *Charanjit Singh v. Life Insurance Corporation of India and Ors. reported as II (2018) CPJ 204 (NC)*
- *Manmohan Nanda v. United India Insurance Co. Ltd. and Ors. reported as MANU/CF/0340/2015.*
- *C.N. Mohan Raj v. M/s. New India Assurance Company Ltd. reported as IV (2012) CPJ 784 (NC)*

15. We have examined the pleadings and the associated documents placed on record. We have also heard the learned counsels for both the Parties and rendered thoughtful consideration to the arguments advanced.

16. The primary issue and objection raised by the Appellant/ Complainant pertains to the insurer's decision to repudiate the Appellant's claim on the grounds of alleged non-disclosure of material fact i.e., health information about the insured at the stage of the policy reinstatement or revival. Additionally, whether the insurer's repudiation of claim is in accordance with law and principles of fairness and good faith.

17. The case of the Appellant revolves around the rejection of a death claim under a life insurance policy. The Appellant, who is the nominee of the deceased policyholder, contended that the claim was wrongfully repudiated by the insurance company. The Appellant asserted

that the policy was revived based on the Certificate of Insurability/ Revival Form filled by the company staff, and not by the policyholder. The policyholder had in fact informed the agent of the insurer about his health condition at that stage. He never concealed any material facts. Therefore, the company's repudiation is unjustified. The appellant cited various legal precedents and Section 45 of the Insurance Act to support her case, emphasizing that revival must adhere to contract terms and should not be arbitrary. The Appellant sought proper settlement of the claim. On the other hand, the contentions and arguments of the Respondent revolved around the assertion that her claim was rightly repudiated due to non-disclosure of material facts during revival of the insurance policy. The Respondent relied on certain legal precedents to assert that the proposer has a duty to disclose pre-existing ailments health condition to the insurer.

18. It is a matter of record that the deceased had obtained a life insurance policy cover for Rs. 50 Lakhs on 31.08.2010 vide Policy No. 004334095 from the OPs. When the said insurance contract was entered into, necessary health and associated eligibility attributes were duly ascertained. The individual paid instalments of premium for said policy from 31.08.2010 to 30.08.2012. On 31.08.2012 the next instalment payment of the premium was due. However, it was not done and the insurance policy lapsed. It is an admitted position that the said insurance policy was reinstated on 11.03.2013 and the instalment due was paid and the policy was revived. The insured Shri Sanjay Kumar subsequently died due to medical condition pertaining to his renal system on 20.12.2013.

19. It is also an admitted position that the insured was suffering renal ailment and was under dialysis at the time of filing the proposal for revival of the said insurance policy. The Appellant urged that the medical condition of the insured was notified to the agent and manager of the Respondent and, however, while filling the proposal they did not include the medical details explained. On the other hand, the Respondents asserted that revival of a policy is an independent contract in itself and the insured was bound to clearly bring out all prescribed details, including his medical condition. However, he failed to do so. His claim of informing the insurance agent is of no consequence and an agent cannot go beyond the terms of policy. Hon'ble Supreme Court in *Bajaj Allianz Life Insurance Company Ltd. v. Dalbir Kaur, 2020 SCC OnLine SC 848* decided on 09.10.2020 has held that:-

“A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk.”

20. Similar view was taken by the Hon'ble Supreme Court in *Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175* decided on 24.11.2019 wherein it was held that suppression of the facts made in proposal form will render Insurance Policy voidable by the Insurer. A Division Bench of the Mysore High Court in *VK Srinivasa Setty Vs M/s Premier Life and General Insurance Co Ltd* which is cited with approval by the Hon'ble Supreme Court in this case:

31. Finally, the argument of the respondent that the signatures of the assured on the form were taken without explaining the details cannot be accepted. A similar argument was correctly rejected in a decision of a Division Bench of the Mysore High Court in VK Srinivasa Setty v Messers Premier Life and General Insurance Co Ltd²¹ where it was held:

— Now it is clear that a person who affixes his signature to a proposal which contains a statement which is not true, cannot ordinarily escape from the consequence arising therefrom by pleading that he chose to sign the proposal containing such statement without either reading or understanding it. That is because, in filling up the proposal form, the agent normally, ceases to act as agent of the insurer but becomes the agent of the insured and no agent can be assumed to have authority from the insurer to write the answers in the proposal form.

- If an agent nevertheless does that, he becomes merely the amanuensis of the insured, and his knowledge of the untruth or inaccuracy of any statement contained in the form of proposal does not become the knowledge of the insurer.

21. In the present case, it is the contention of the Appellant that he was covered under the life insurance policy from 31.08.2010 till the date of his death on 20.12.2013. There was a break in the policy from 31.08.2012 to 10.03.2013 which was revived on 11.03.2013. It is an admitted position that the insured was diagnosed with kidney ailments and was under dialysis at the time of the reinstatement. While the Complainant asserted the same was conveyed to the advisor/agent and it was the agent/ advisor who failed to include this aspect in the revival form, there is not even an iota of evidence to support the same. Further, as stated, the policyholder had multiple policies and thus is expected to be aware of the terms and conditions of insurance contracts. It is also an admitted position that the Certificate of Insurability of the deceased, based on which the policy was revived, contains false information as regards his health condition. There is no evidence to indicate that the proposal form was filled by the insurance advisor and the branch manager by obtaining the insured's signature on a blank form. Notwithstanding the same, having signed and submitted the revival form, he is liable for the contents stated thereat. Further, even after reinstatement of the said policy, the insured made no communication to the insurer as regards his medical condition, not mentioned in the Certificate of Insurability.

22. Even for the sake of deliberation, had the cause of death been for reason entirely independent or disconnected to the medical condition of the policyholder which he failed to disclose, there was some scope for consideration. In the present case, however, the death was apparently due to consequence of the medical conditions which he did not disclose. Thus, there is no impropriety on the part of Respondents in repudiating the claim.

23. Based on the aforesaid discussion as well as the principles laid down by the Hon'ble Supreme Court in Paras 19 and 20 above, we are considered view that the Order of the State Commission does not suffer from any infirmity. The Appeal No. 2280 of 2018 is, therefore, dismissed.

24. No orders as to costs. All pending Applications, if any, stand disposed of accordingly.

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SUBHASH CHANDRA
PRESIDING MEMBER

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AVM J. RAJENDRA, AVSM VSM (Retd.)
MEMBER