

**BEFORE THE BANGALORE URBAN II ADDITIONAL  
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,  
SHANTHINAGAR, BANGALORE - 560027**

**DATED THIS THE 30<sup>th</sup> DAY OF OCTOBER 2023**

**CONSUMER COMPLAINT NO.1167/2012**

**PRESENT:**

**SRI.VIJAYKUMAR.M.PAWALE, B.A., LL.B., (Spl.), ... PRESIDENT**  
**SRI B.DEVARAJU, B.A.L., LL.B., PGDCLP., (NLSIU) ... MEMBER**  
**SMT.V.ANURADHA, B.A., LL.B., ... MEMBER**

**COMPLAINANT:**

Mrs.Lakshmy T Iyengar,  
W/o Rishi Aggarwal,  
R/o No. M - 25,  
25<sup>th</sup> Main, 5<sup>th</sup> Cross,  
J.P.Nagar I Phase,  
Bangalore - 560 078.

(Complainant is Rep. by Adv. Sri.V.G.Bhanuprakash)

V/s

**OPPOSITE PARTIES:**

1. Max New York Life  
Insurance Company Limited,  
12<sup>th</sup> Floor, D.L.F. City, Phase II,  
Gurgaon - 122 002,  
Represented by its  
Chief Executive Officer.
2. Max House,  
3<sup>rd</sup> Floor, No.1 Dr Jha Marg,  
New Delhi - 110 020,  
Represented by its  
Country Head.

*M.V. Kumar*  
30/10/23

Date of filing: 12.06.2012  
Date of Disposal: 30.10.2023

3. Max New York Life  
Insurance Company Limited,  
11<sup>th</sup> and 12<sup>th</sup> Floor,  
DLF Square Building,  
Jacaranda Marg,  
DLF Phase II,  
Gurgaon - 122 001.

4. Max New York Life  
Insurance Company Limited,  
No.1105, Next to S.B.I.,  
24<sup>th</sup> Main, Ist Phase,  
Arvind Marg Road, J.P.Nagar,  
Bangalore - 560 078,  
Represented by its  
Branch Manager.

(OP No.1 is Rep. by Adv. Sri.Girish.B.Mangannavar)  
(OP Nos.2 to 4 are Rep. by Adv. Sri.A.R.Desai)

=====

**BY SRI. B.DEVARAJU, MEMBER:**

**// JUDGMENT //**

1. This complaint is filed by the complainant under Section 12 of the Consumer Protection Act, 1986, (hereinafter referred as the Act) seeking a direction against the opposite parties to refund the entire premium amount with interest at 24% p.a., to pay compensation of Rs.1,00,000/- and to pay cost of litigation expenses.
2. The case of the complainant in brief is as under;

The complainant was issued with an insurance policy bearing No.247487127 with ID No.1535822535 by the opposite parties on the terms that Rs.1,006.56 shall be

*H. T. M.*  
*30/10/23*

Date of filing: 12.06.2012  
Date of Disposal: 30.10.2023


payable on monthly basis as premium with effective from 06.10.2004. The complainant had given a instructions to her banker SBI, J.P.Nagar, Bangalore to pay the monthly premium towards the policy through ECS. The monthly premiums came to be withdrawn by the opposite parties from October 2004 from the account bearing No.10427752612 in the SBI, J.P.Nagar Branch, Bangalore. To the shock and surprise of the complainant, a letter was received from the opposite parties on 07.02.2008 that the insurance premium as on 06.05.2009 is due and unpaid. The complainant contacted the opposite party Nos.1 & 2 by informing that the premium payments were being made through ECS wherein the opposite parties automatically withdraw the monthly premium from her bank account with more than sufficient balance in the account of the complainant.

3. On receipt of the complaint about the ECS issues, the opposite parties No.1 & 2 sought time for verification and to communicate thereafter. Subsequently, the opposite party Nos.1 & 2 apologized on their mistake on entering a wrong account number in their records. It was also admitted by them that it was a repetition of a mistake made earlier as per the letter dated 07.02.2008 sent by the opposite parties. On 06.10.2009 the complainant was informed by the opposite party Nos.1 & 2 that the insurance policy of the complainant lapsed for nonpayment of monthly premium. The complainant contacted the insurance agent through whom the policy was taken and

*M. S. S. S.*  
30/10/23

narrated about the issue and the insurance agent had promised to take immediate action and keep the complainant informed. In spite of several reminders, the opposite parties No.1 & 2 demanded for payment of premium due for the month of January 2008 for which the opposite parties No.1 & 2 had already apologized. The complainant insisted the opposite parties to communicate the reasons for lapse of the insurance policy for no fault of the complainant.

4. The complainant received a letter dated 02.12.2009 informing her that on 08.01.2008 their bankers had informed the opposite parties about direct debit being dishonored for the reason "No such Account". The opposite parties erred again by repeating the mistake of January 2008 and penalizing the complainant for the same. The opposite parties are responsible for the lapse of the policy of the complainant. In spite of sufficient balance maintained by the complainant in her said bank account, the opposite parties are responsible for their mistake in stating a wrong account number. The hard earned money of the complainant paid to the opposite parties in the form of premium from 2004 onwards is wrongfully held by the opposite parties for of fault of the complainant. On the other hand, the complainant is getting incessant calls from the call center demanding payment of insurance premium amounts. The family members and the complainant are put to severe hardships due to the calls made by the opposite parties' call center at odd hours demanding

  
30/10/23

Date of filing: 12.06.2012  
Date of Disposal: 30.10.2023

premium as if the complainant was a defaulter. The complainant has suffered untold due to the act of the opposite parties which amounts to deficiency of service. Hence, this complaint.

5. On service of notice, the opposite parties entered appearance and filed version opposing the claim of the complainant. The opposite parties contend that the complaint is not maintainable. This complaint is filed with ulterior motive by fabricating the material facts and to make illegal gains. The complainant had submitted a duly filled and signed proposal form for issuance of Max Whole Life Participating Plan insurance policy for sum assurance of Rs.5,00,000/- and paid Rs.2,054/- as premium with the proposal form. The said policy was issued with effective date of coverage as on 06.10.2004 at a monthly premium of Rs.1,006.56. The mode of payment as chosen by the complainant was direct debit/ECS to her account maintained at SBI. The opposite parties started collecting premium amount from the said banker. The premium towards the insurance policy came to be paid on 03.11.2004 and the same was bounced on 24.12.2004 and from then onwards the premium deducted for the current month was getting allocated in the previous month. On 08.01.2008 the complainant got the intimation from her banker SBI that the instructions for ECS payment sent were incorrect and the customer did not pay the premium which got bounced in January 2008 by way of cheque or cash. The opposite parties have been sending instructions to the

*W. D. M. L.*  
30/10/23

Date of filing: 12.06.2012  
Date of Disposal: 30.10.2023

complainant for collection of premium and the same was getting deducted and paid to the opposite party. On 07.02.2008 a letter was sent to the complainant about the return of payment of her premium relating to January 2008 for the reason no such account and the opposite parties never apologized to the complainant. The opposite parties informed the complainant on 07.06.2009 that Rs.1,006.56 is due towards premium exclusive of service tax of Rs.18.42 effective from 01.05.2009. Further, the opposite parties informed that in accordance with the policy provisions, the captioned policy will continue as Reduced Paid-up Insurance with a sum insured of Rs.68,208/- and riders, if any, attached to the policy have been terminated.

6. The complainant visited the local branch of the opposite parties on 14.11.2009 and enquired as to why instructions are not been sent to her bank account from October 2009 for payment of monthly premium. The complainant was informed that the premium got bounced in January 2008 and that on payment of Rs.2,122.36 the opposite parties can start debiting her account regularly. The complainant insisted the opposite parties to waive off the bounced premiums and then start the ECS. The complainant failed to pay the same and resultantly the said policy could not be reinstated on account of the bounced premium. Hence, the opposite parties seek dismissal of the complaint.

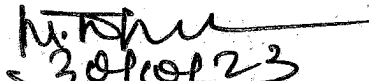
7. Initially, this complaint came to be filed on 12.06.2012 and the same was dismissed for default by order dated 24.08.2013 for not adducing evidence inspite of sufficient

*M. DMU*  
*30/10/23*

Date of filing: 12.06.2012  
Date of Disposal: 30.10.2023

opportunities given. Aggrieved by the said order, the complainant challenged the same before the Hon'ble State Commission in Appeal No.1610/2014 on 19.11.2014 and after hearing, the Hon'ble State Commission set aside the order passed by this Commission by order dated 21.11.2022 with a direction to readmit the present complaint on its file.

8. After remand of this matter, notice was ordered to be issued to the parties to the proceedings and was represented only by the complainant and the opposite party No.1. The other opposite parties No.2 to 4 remained absent throughout the proceedings after the matter readmitted. The Hon'ble State Commission directed this Commission to decide the matter in accordance with law after affording opportunity to both parties as early as possible not later than 3 months from the date of service of notice of the complaint. After the matter remanded to this Commission on 21.12.2022 notices were ordered to be issued on the parties to the proceedings and the complainant entered appearance on 27.03.2023 through her Advocate and filed affidavit evidence. Hence, though endeavor was made to dispose of the matter within 3 months as directed by the Hon'ble State Commission, as the parties to the proceedings sought time for arguments and ultimately the complainant filed written arguments and submitted oral arguments but the opposite parties not addressed any arguments inspite of sufficient opportunities. The delay in disposal of this matter was due to the parties to this proceedings.

  
30/10/23

9. The complainant filed evidence by way of affidavit and relies on 9 documents marked as Ex.P1 to P9. The opposite parties, represented by its Assistant Manager of Customer Service filed evidence by way of affidavit and relies on documents mentioned as Annexure A to H. Heard arguments of the complainant only. In spite of sufficient opportunity, the opposite parties not addressed any arguments. We perused the records.

10. The following points do arise for our consideration;

1. **Whether the complainant proves the deficiency of service on the part of the opposite parties?**
2. **Whether the complainant is entitled to the relief claimed in the complaint?**
3. **What order?**

11. Our findings on the above points are as under;

1. **POINT NO.1:** In the Affirmative,
2. **POINT NO.2:** Partly in the Affirmative,
3. **POINT NO.3:** As per order for the following

### REASONS

12. **POINTS NO.1 & 2:** To avoid the repetition of reasoning, both the points are taken together. It is an undisputed fact that the complainant had subscribed to the insurance policy from the opposite parties for a sum of Rs.5,00,000/- and accrued bonus with rider and the total premium was fixed at Rs.1,006.56 as per the policy document dated 15.10.2004 marked as Ex.P2. The said premium was

*[Handwritten Signature]*  
30/10/23



Date of filing: 12.06.2012  
Date of Disposal: 30.10.2023


scheduled to be deducted from the bank account of the complainant in the SBI as per the standing instructions of direct debit. The premium was getting debited from the account from time to time as presented by the opposite parties for collection. It is also not in dispute that the complainant was having sufficient balance in her bank account so as to supplement the direct debit towards the premium for the insurance policy availed by the complainant by ECS. The savings bank account of the complainant is No.10427752612 as per the statement of account marked as Ex.P8 from which direct debit towards the insurance premium was authorized by way of ECS in favour of the opposite parties. As per Ex.P4 being letter dated 07.02.2008 issued by the opposite parties to the complainant by way of clarification shows that the opposite parties sought apologizes for the inconvenience caused regarding the ECS bounce due to reason "Account not Exist". Further, the opposite parties have undertaken to treat the said episode as an opportunity for them to learn and further improve their internal systems to customer's complete satisfaction. By letter dated 06.10.2009 the opposite parties informed the complainant that in accordance with the non-forfeiture option chosen, the said policy converted into a reduced paid up with a sum assured of Rs.71,792/- and riders, if any have been terminated. We have also perused copy of the pass book of the complainant's bank account marked as Ex.P9 which shows the old account No.01190023896. But in the letter dated 07.02.2008 the opposite parties had presented ECS

W. T. M. U.  
30/10/23

with a wrong account No.011900238696 mentioned by the opposite parties which resulted in bouncing of the said ECS. On careful consideration of the documents and the pleadings led by both the parties it is crystal clear that the opposite parties negligence was the root cause for the inconvenience caused to the said insurance policy held by the complainant with the opposite parties. Since deficiency of service is established against the opposite parties, the premium paid towards the policy is entitled to be returned to the complainant.

13. The complainant has sought for compensation of Rs.1,00,000/- which according to us is excessive. Further, the complainant has also sought for litigation cost from the opposite parties. This is a old matter and looking into the nature of pain and sufferings, the complainant is entitled for a compensation of Rs.10,000/- from the opposite parties. The complainant is also entitled for litigation cost of Rs.5,000/- from the opposite parties. Hence, we answer the above Point No.1 in the Affirmative & Point No.2 Partly in the Affirmative.

14. **POINT NO. 3:** - In view of the discussion referred above, the complaint requires to be allowed in part. The opposite parties are liable to return all the payment received towards the monthly premium of the insurance from the date of inception till the date of termination of the policy. The opposite parties are also liable to pay compensation of Rs.10,000 and Rs.5,000/- as litigation cost to the complainant. We proceed to pass the following;

  
30/10/23

Date of filing: 12.06.2012  
Date of Disposal: 30.10.2023

**ORDER**

The complaint is allowed in part.

The opposite parties are directed to return all the payment received towards the monthly premium of the insurance from the date of inception till the date of termination of the policy.

The opposite parties are also directed to pay Rs.10,000/- (Rupees Ten Thousand only) towards compensation and Rs.5,000/- (Rupees Five Thousand only) towards cost of litigation expenses to the complainant.


The opposite parties shall comply the order within 60 days from this date, failing which interest shall be calculated at 10% p.a. on all heads thereafter, till realization.


Supply free copy of this order to the parties.

Return spare copies of the pleading and evidence to the parties.

(Dictated to the Steno, typed by her, transcript corrected, Revised and then pronounced by the open Commission on 30<sup>th</sup> day of OCTOBER 2023).

VA  30/10/23  
(V.ANURADHA)  
MEMBER

B. Devaraju  30/10/23  
(B.DEVARAJU)  
MEMBER

 30/10/2023.  
(VIJAYKUMAR.M.PAWALE)  
PRESIDENT

Date of filing: 12.06.2012  
Date of Disposal: 30.10.2023

**//ANNEXURE//**

**Witness examined for the complainant's side:**

Mr.Rishi Aggarwal, who being the SPA Holder of the complainant has filed his affidavit.

**List of documents filed by the complainant:**

1. Ex.P1: General Power of Attorney,
2. Ex.P2: Policy document,
3. Ex.P3: Policy owner data,
4. Ex.P4: Copy of the letter dated 07.02.2008,
5. Ex.P5: Copy of the letter dated 06.10.2019 issued for conversion of policy terms,
6. Ex.P6: Certificate under Section 65B of Evidence Act,
7. Ex.P7: Copy of bunch of E-mail communications,
8. Ex.P8: Copy of statement of account,
9. Ex.P9: Copy of the pass book.


**Witness examined on behalf of the Opposite Parties:**

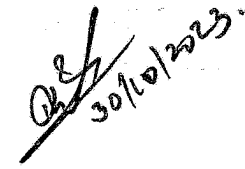
Juhi Kulshrehtha, who being the Assistant Manager, Customer Service in the opposite parties has filed affidavit.

**List of documents filed by the Opposite Parties:**

1. Annexure A: Copy of the Proposal Form,
2. Annexure B to E: Copies of the letters dated 07.06.2009, 02.12.2009, 06.01.2010, 07.04.2010,
3. Annexure F to H: Copies of the e-mail communications.

  
(V.ANURADHA)  
MEMBER

  
(B.DEVARAJU)  
MEMBER

  
(VIJAYKUMAR.M.PAWALE)  
PRESIDENT