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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 18th August, 2023

+ **W.P.(C) 6074/2019**

SAURABH SHUKLA

..... Petitioner

Through: Mr. Siddharth Nath, Mr. Anunay
Chodhary & Ms. Khusbhoo Hora,
Adv. (M:9811004884)

versus

NIVA BUPA HEALTH INSURANCE CO. LTD.

AND ORS.

..... Respondents

(Earlier known as MAX BUPA HEALTH INSURANCE CO. LTD.)

Through: Mr. Pradeep K Bakshi, Adv. for R-1.
(M: 9650881816)

Mr. Rajiv Jaiswal, Adv. for R-2.
(M: 9871901997)

Mr. Neeraj Malhotra Senior Advocate
with Mr. Nimish Kumar & Mr.
Abhishek Nanda Adv. for R-3. (M:
9971613570)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Introduction

2. The United Nations Convention on the Rights of Persons with Disabilities, 2006 unequivocally recognised the rights of Persons with Disabilities (PwD) to lead a dignified life and to be treated in a non-discriminatory manner. Such rights are also inherently recognised by virtue of Articles 14, 19 and 21 of the Constitution of India. The enactment of the Rights of Persons with Disabilities Act, 2016 in India, was with the avowed object of giving effect to the said Convention and the principles enshrined in



the Constitution. Despite these international conventions and statutes which have been enacted recognizing the rights of PwDs, actual equality on the ground remains elusive – though there is positive effort in the right direction. It is also well established that the Right to life includes the Right to avail healthcare including medical insurance. However, PwDs were unable to obtain medical insurance.

3. The present petition highlighted one such aspect of equality for persons with disabilities i.e., the right to obtain medical/health insurance. The Petitioner who is an investment banking professional had filed the present petition as he was refused medical insurance company. The Court was then apprised of the fact that insurance for PWD was almost non-existent. The petition also revealed the complete non-implementation of any regulation or supervision by IRDAI towards this issue. When the petition was initially filed, the Court was apprised of the fact that insurance for PwDs was almost non-existent.

4. It was in these circumstances that directions were issued from time to time in this writ petition, to the IRDAI as also to insurance companies, which has resulted in a positive outcome for PwDs. By the conclusion of the proceedings in the present petition, 29 insurance companies in India have introduced insurance products for persons with disabilities, in effect offering them a ray of hope, to avail of health insurance.

Background

5. The present petition has been preferred by Mr. Saurabh Shukla who is suffering from Tetraplegia and paralysis below his chest due to a spinal cord injury which he had suffered in 2011. He is confined to a wheelchair and has limited use of his arms. Despite the injury, he is currently working as an



investment banking professional with a hedge fund and is working from home. The grievance of the Petitioner in the present petition is that he approached two insurance companies i.e., Max Bupa Health Insurance Co. Ltd. (now Niva Bupa Health Insurance Company Ltd.) & Oriental Insurance Co. Ltd., for seeking a Mediclaim/Health Insurance. However, both the Insurance companies initially refused to issue or offer any health insurance policy to the Petitioner.

6. The Petitioner had initially approached the Court of the Chief Commissioner for Disabilities vide representation dated 7th January, 2018 to raise his grievance against the health insurance companies. Vide letter dated 14th March, 2018, the Dy. Chief Commissioner of the Court of the Chief Commissioner for Disabilities took up the matter with The Chairperson, Insurance Regulatory and Development Authority of India (IRDAI). The relevant extract of the communication addressed to the Chairperson, IRDAI is as follows:

“2. Section 75 of the Rights of Persons with Disabilities Act, 2016 mandates the Chief Commissioner for Persons with Disabilities on his own motion or on application of any aggrieved person or otherwise to look into the complaints inter-alia, with respect to matters relating to deprivation of rights of persons with disabilities and to take steps to safeguard the rights and facilities made available to them.

***3. You are advised to look into the matter and advise the insurance companies to initiate the policies for persons with disabilities. It is ensured that persons with disabilities are not deprived of their legitimate rights.** Action taken in the matter may please be sent to this Court within 30 days from the date of receipt of this communication.”*



7. In response to the said direction, vide reply dated 4th May, 2018 the General Manager (Health), IRDAI stated that the regulatory mechanism to enable insurance companies to provide health insurance covering existing disability already exists. However, the Petitioner was still deprived of a Health Insurance policy and in this factual background, and thus approached this Court seeking quashing of the rejection of his Health Insurance application by the Respondent Insurance companies. Further, the Petitioner also sought a writ of mandamus directing the Respondent Insurance companies to issue a Health Insurance policy to him.

8. The matter was taken by on priority and heard on 8th December, 2022, 13th December, 2022 and 17th March, 2023.

Submissions

9. When this matter was taken up on 13th December, 2023, Mr. Rajiv Jaiswal, Id. Counsel appearing for Respondent No. 2- Oriental Insurance Co. Ltd. submitted that question of issuing a health insurance policy to the Petitioner was considered at the level of the regional office of the Respondent No. 2. However, the said request was denied on the ground of the adverse medical history of the Petitioner, as also on the ground that other insurance providers had also refused to issue Health Insurance to the Petitioner. The same was communicated to the Petitioner vide email dated 8th February, 2019. Id. Counsel also submitted that as per the policies of the insurance company whenever a Medclaim policy is sought, the same is only issued after evaluating the risks involved and the case of the Petitioner was considered not entitled to a policy, considering his medical history.

10. On 13th December, 2022, Mr. Nag, Id. Counsel for IRDAI, while relying upon Regulation 8(b) and 8(c) of the Insurance Regulatory and



Development Authority of India (Health Insurance) Regulations, 2016 submitted that companies require to evolve health insurance policies for persons with disabilities, HIV/AIDS and persons affected with mental illness diseases. He submitted that the IRDAI had circulated a circular dated 2nd June, 2020 to all the general and health insurance companies that they need to publish the underwriting philosophy and approach with regard to offering insurance coverage to persons with disabilities, HIV/AIDS and persons affected with mental illness diseases. However, upon being queried by the Court as to whether IRDAI has received or approved any products for offering health insurance for persons with, Id. Counsel for IRDAI asked for further time to take instructions.

Discussion

11. After hearing Id. Counsels for the parties and perusing the record, this Court analysed the legal position surrounding the present case. The relevant extracts of the judgement dated 13th December, 2022 wherein this Court has considered the legal position is extracted as under:

*“16. It is the settled position in law that the Right to Life includes the right to health and healthcare is an integral part of the same. The Supreme Court in C.E.S.C. Limited and Ors. v. Subhash Chandra Bose and Ors. (1992) 1 SCC 44 has also held that **the term health includes medical care and health care facilities.** The Court held:*

“32. The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers’ best,



physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful, economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt-edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc. health is thus a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. In the light of Articles 22 to 25 of the Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights, and in the light of socio-economic justice assured in our Constitution, right to health is a fundamental human right to workmen the maintenance of health is a most imperative constitutional goal whose realisation requires interaction of many social and economic factors. Just and favourable condition of work implies to ensure safe and healthy working conditions to the workmen. The periodical medical treatment invigorates the health of the workmen and harnesses their human resources...”

17. In W.P.(C) No.10323/2009 titled ‘Vikas Gupta vs. Union of India’ a Division Bench of this Court in a judgment authored by Justice R. S. Endlaw has held that in fact there should be no difference between the insurance premium paid by disabled and non-disabled persons inasmuch as discrimination is itself is prohibited. The relevant portion of the said judgment reads as under:

“4. An affidavit dated 09.02.2010 was



thereafter filed by the GM (PLI), Postal Life Insurance Directorate stating that some extra premium was charged from the persons with disability since disabled persons are more prone to accidental risks as compared to non-disabled persons. It was inter alia stated in the said affidavit:-

“5. That as regards the issue of extra premium it is submitted that the Insurance Policy is a contract between the insurer and the insured. It identifies the insured, the insuring company, risks covered, policy period and premium amount. The Insurance Policy is binding on both the insurer and insured. In the insurance business a pool is created through contributions made by persons seeking to protect themselves from common risk. Premium is collected by insurance companies which also act as trustee to the pool. Any loss to the insured in case of happening of an uncertain event is paid out of this pool. It works on the principle of risk sharing. Therefore prejudice would be caused to the normal insured persons in case of any casualty of the disabled persons. As disabled persons are more prone to accidental risks as compared to normal persons and the amount which is to be paid to the family of the deceased would be paid out of the same pool.

6. That the extra premium payable by the disabled person is marginally different from extra premium payable by normal persons as specified in Rule 14 of Post Office Life Insurance Fund. Also in case of LIC insurance, numerical loading of underwriting system is followed.”

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22. It would thus be seen that disability per se cannot be the basis of discrimination in the matter of insurance. This Court is therefore unable to uphold the action of the respondents and/or the provisions of the Rules (supra) which create persons with disabilities class unto themselves. The same undoubtedly is a violation of the Disabilities Act even though not expressly dealing with the matter of insurance. The persons with disability cannot be grouped together for the purpose of insurance. They are to be treated similarly as others/non-disabled persons and just like in the case of non-disabled persons, the insurance risk is assessed on an individual basis, are liable to be similarly assessed; while so assessing, depending upon the risk assured and the risk assessed, premium is to be computed.”

18. Further, in ***Shikha Nischal v. National Insurance Company Ltd & Anr.***, 2021 SCC OnLine Del 2577, this Court had the occasion to consider a case involving a person suffering from mental illness and the insurance policies in this respect. The Court in the said case has observed as under:

“25. The crux of the above provisions, circulars and affidavits clearly is that mental illnesses cannot be treated differently from physical illnesses. Insurance policies also cannot discriminate between these two types of illnesses. The reasons for the non-discriminatory provisions between mental and physical illnesses are not far to seek. While physical illnesses are manifested in the human body in some form, mental illnesses do not always have visible physical manifestations. However, mental illnesses can also be debilitating and destructive. The



recent pandemic also highlights this beyond any doubt. Circumstances leading to patients requiring isolation, healthy persons being subjected to lock-downs, work from home conditions, loss of employment leading to lack of confidence for long durations have led to several mental problems. Such mental conditions need to be dealt with immediately. Availability of insurance for mental disabilities or conditions is, therefore, not only important but is an essential need. It is in recognition of the importance of a healthy mental state for a human being that both the Convention and the provisions of the MHA, 2017 discussed above, have been introduced. 26. No doubt, the basic obligation is that of the insurance company which is also to blame for having not issued the Healthcare Policy in compliance with the applicable provisions of the MHA, 2017. However, the IRDAI's functions are quite comprehensive and vital under the IRDAI Act, 1999 and if any insurance company is not in compliance with any provisions of the law, the IRDAI cannot turn a blind eye to the same. The IRDAI has a duty to fully supervise and ensure that the provision of the MHA, 2017 are implemented by all the insurance companies for the benefit of the persons who obtain mediclaim policies. This has clearly not happened, as is evident from the facts of the present case.

27. It is clear from a perusal of the provisions of MHA, 2017, as also the provisions of the IRDAI Act, 1999 that immediately upon the MHA, 2017 coming into force, all insurance products ought to have extended the same treatment for mental



and physical illnesses and remove any clause that discriminate between the same. The Insurance Ombudsman’s order which holds that the provisions of the MHA are not relevant to the present Petitioner is untenable. The MHA, 2017 has come into effect from May/July, 2018, and thus the exclusion in the Healthcare Policy of NICL with respect to “all psychiatric and psychosomatic disorders/diseases”, under Clause 4.10 as noted above, is contrary to law.”

19. **The Rights of Persons with Disabilities Act, 2016 (hereinafter ‘RPwD Act’) leaves no ambiguity insofar as the entitlement of persons with disabilities for insurance.** A perusal of Sections 3, 25 and 26 makes it clear that person with disabilities cannot be discriminated against insofar as healthcare and other connected aspects are concerned.

20. Further, the United Nations Convention of the Rights of Persons with Disabilities, 2006 under Article 25 also prohibits discrimination against persons with disabilities in the provision of health insurance and also requires countries to provide the same in a fair and reasonable manner. Article 25 of the said convention which was ratified by India in 2007 reads as:

“States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:



- a. *Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;*
- b. *Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;*
- c. *Provide these health services as close as possible to people's own communities, including in rural areas;*
- d. *Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;*
- e. **Prohibit discrimination against persons with disabilities in the provision of health insurance**, *and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;*
- f. **Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.**

12. After considering the legal position as extracted above, this Court issued various directions to the IRDAI in judgement dated 13th December, 2023. The said directions are extracted as under:



“Analysis

21. *The IRDAI is the sector regulator in the insurance industry in India. Regulation 8 which deals with underwriting reads as under:*

“8. Underwriting

*b. The underwriting policy shall also cover the approach and aspects relating to offering health insurance coverage **not only to standard lives but also to sub-standard lives.***

It shall have in place various objective underwriting parameters to differentiate the various classes of risks being accepted in accordance with the respective risk categorisation.

c. Any proposal for health insurance may be accepted as proposed or on modified terms or denied wholly based on the Board approved underwriting policy. A denial of a proposal shall be communicated to the prospect in writing, by recording the reasons for denial. Provided, the denial of the coverage shall be the last resort that an insurer may consider.”

22. *A perusal of the IRDAI regulations above regulation would show that, unfortunately, the terminology sub-standard lives is used in respect of persons with disabilities which is not an acceptable terminology. Even otherwise, Regulation 8(b) and Regulation 8(c) read with the circular dated 2nd June, 2022 clearly provides that insurance companies have to give insurance coverage to the following three categories three categories of persons:*

- i. Persons with disabilities*
- ii. Persons with HIV*
- iii. Persons affected with mental illness.*

23. *The IRDAI being the regulator of the sector has important functions to perform under the IRDAI Act of*



1999. The IRDAI ought to ensure that its circulars and other policies are duly given effect to by the insurance companies. In the present case, it has been observed the Court of the Chief Commissioner of Disabilities brought the facts of this case to the knowledge of the IRDAI. However, this action also did not yield any positive response from the IRDAI with respect to the case of the Petitioner. The stand of IRDAI before this Court both in the Counter affidavit, Circular and in the oral submissions does not match with the inaction when the issue was brought to its notice. The IRDAI ought to have stepped up and ensured that the insurance companies offer adequate products for persons with disabilities. Refusal to issue a health insurance policy to the Petitioner ought to have been a warning bell to the IRDAI. Unfortunately, despite the above settled legal position and the IRDAI's position on record, there is a disconnect in implementation.

Conclusion and Directions

24. In the background of this case, the manner in which both the insurance companies have simply rejected the proposal of the Petitioner that too with cryptic rejection letters is disconcerting. The Petitioner is a person who is working as an investment professional who can afford an insurance policy by paying a reasonable premium. Irrespective of the economic standing of a person with disability, insurance coverage cannot be rejected or refused.

25. Under these circumstances, this **Court is of the opinion that there is no doubt that persons with disabilities would be entitled to health insurance coverage and products would have to be designed to enable them to obtain health insurance coverage.**

26. In view of the above discussion the following directions are issued:

- i. The IRDAI, shall call a meeting of all insurance companies to ensure that the products are designed for persons with



disabilities and other persons in terms of the circular dated 2nd June, 2020. The process of designing such products shall be supervised by the IRDAI and it shall be ensured that the said products are introduced on an early date, preferably within two months.

- ii. The Petitioner is permitted to approach Max Bupa Health Insurance Co. Ltd. & Oriental Insurance Co. Ltd., once again. The two insurance providers shall consider the case of the Petitioner for issuance of a health insurance policy and the question of extending insurance to the Petitioner shall be reviewed. A proposal shall be placed on record by the next date of hearing.*
- iii. Immediate steps shall be taken by the IRDAI to modify the terminology 'sub-standard lives' in their Regulations so as to ensure that such unacceptable terminology is not used in its Regulations or other documents while referring to persons with disabilities.*

13. The matter was further listed before this Court on 17th March, 2023. On the said date, in compliance with the above directions, IRDAI had placed on record a status report, giving details of the tasks undertaken by IRDAI. As per the said report, IRDAI had called a meeting of all general and health insurance companies on 18th January, 2023, where the relevant issues were discussed and a committee consisting of six senior officials from the various insurance companies was constituted. The Committee was entrusted with the following tasks:

“i. Design and develop specific product/s for the following:

- a. Persons with Disabilities (PWD)*
- b. Persons afflicted with HIV/AIDS*
- c. Persons having mental illnesses*



ii. The design and development of the products shall be comprehensive enough to meet the insurance needs of the respective groups.

iii. The complete documentation shall be developed -- Proposal form, Schedule, the Policy wordings including the various terms and conditions etc., apart from a Customer Information Sheet (Key Features Document).”

14. Thereafter, a model policy was drafted by IRDAI and a circular dated 27th February, 2023 was issued to all general and health insurance providers, directing them to launch products for persons with disabilities (PWD), Persons afflicted with HIV/AIDS, and those with Mental Illness, with immediate effect. IRDAI also complied with the third direction as contained in paragraph 26 of order dated 13th December, 2022 and the previously used expression ‘sub-standard lives’ in Regulation 8(b) of the IRDAI (Health Insurance) Regulations, 2016 was deleted. A comparative table of the text of said provision is set out below:

<u>Older version of Regulation 8(b)</u>	<u>New version of Regulation 8(b)</u>
<i>The underwriting policy shall also cover the approach and aspects relating to offering health insurance coverage not only to standard lives but also to sub-standard lives. It shall have in place various objective underwriting parameters to differentiate the various classes of risks being accepted in accordance with the respective risk categorisation.</i>	<i>The underwriting policy shall also cover the approach and aspects relating to offering health insurance coverage. It shall have in place various objective underwriting parameters to differentiate the various classes of risks being accepted in accordance with the respective risk categorization.</i>

15. The Petitioner was also offered a health insurance policy by Niva Bupa Health Insurance Company and expressed his willingness to avail of



the policy, vide his email dated 1st March, 2023. However, the Petitioner had certain contentions against the specific details of the policy offered. Vide order dated 17th March, 2023, this Court directed the Petitioner to avail the health insurance offered by Niva Bupa, while allowing the Petitioner to make a representation to IRDAI on the issues of Amount of premium being charged, Loading charges, Amount of coverage and Period of Exclusion for Pre-Existing Diseases.

16. In terms of order dated 17th March, 2023, the following compliances were to be undertaken by IRDAI:

- i. IRDAI was to take a decision on the representation by the Petitioner and issue directions by 15th April, 2023;
- ii. IRDAI was to convey the decision on the representation of the Petitioner by 30th April, 2023;
- iii. IRDAI was to notify all the insurance companies to submit their products in terms of circular dated 27th February, 2023 along with model policy and file a status report.

17. Pursuant to the said order, an affidavit has been filed by the Deputy General Manager of the Health Department of IRDAI wherein the deponent states as under:

“2 That after the issuance of circular dated 27.02.2023, all the general and standalone health insurance companies have filed their products for Persons with Disabilities (PWD), Persons afflicted with HIV/AIDS and those with Mental illness with Answering Respondent/IRDAI under the “Use and File” procedure dated 01.06.2022. It is respectfully submitted that as per Use and File circular insurers are not required to obtain any prior approval for launching and marketing their



insurance product. Copy of the Use and File circular dated 01.06.2022 is annexed as Annexure A.

3 That in compliance of the Circular dated 27.02.2023, all general and standalone health insurance companies have also launched their products for Persons with Disabilities (PWD), Persons afflicted with HIV/AIDS and those with Mental illness a list containing the details of products launched in accordance to Circular dated 27.02.2023 is annexed as Annexure B.”

18. In terms of the above averments made in the affidavit, the various general and health insurance companies including the four Government insurance companies namely New India Assurance Company, United India Insurance Company Ltd, Oriental Insurance Company Ltd. and National Insurance Company Ltd. have launched products for persons with disabilities. The complete list of companies who are stated to have launched their insurance products for persons with disabilities, are set out below:

S. No.	Name of the Insurance Company	Name of product	Date of filing	Date of clearance	Date of Launch
1	Star Health and Allied Insurance Co.	Special Care Gold, Star Health and Allied Insurance Co. Ltd	20.03.2023	21.03.2023	21.3.2023
2	Bajaj Allianz General Insurance Company Limited	NIDAAN SWASTHYA BIMA POLICY	20.3.2023	21.03.2023	28.4.2023
3	Go Digit General Insurance Limited	Disability and HIV/AIDS Insurance Policy, Go Digit	20.3.2023	21.03.2023	10.4.2023
4	CARE Health Insurance Co. Ltd.	Care Saksham	21.1.2023	21.03.2023	1.5.2023
5	Royal Sundaram Alliance Insurance Company	Divyang Plus, Royal Sundaram General Insurance Co. Limited	21.03.2023	21.03.2023	21.03.2023
6	Magma HDI General Insurance Company	Saksham Health Insurance	21.03.2023	21.03.2023	6.4.2023
7	Tala AIG General Insurance Company Limited	Model Policy for Persons with Disabilities and HIV/AIDS, Tata AIG	21.03.2023	21.03.2023	26.4.2023



8	<i>SBI General Insurance Company Limited</i>	<i>Divyanga Suraksha, SBI General Insurance</i>	<i>21.03.2023</i>	<i>21.03.2023</i>	<i>31.03.2023</i>
9	<i>HDFC Ergo General insurance Company</i>	<i>HDFC ERGO EquiCover Health</i>	<i>21.03.2023</i>	<i>21.03.2023</i>	<i>5.4.2023</i>
10	<i>NIVA BUPA Health Insurance Company Limited</i>	<i>Empower Health Plan, Niva Bupa Health Insurance Co. Ltd</i>	<i>21.03.2023</i>	<i>21.03.2023</i>	<i>15.5.2023</i>
11	<i>Manipal CIGNA Health Insurance Company</i>	<i>SecureHealth, Manipal Cigna</i>	<i>21.03.2023</i>	<i>21.03.2023</i>	<i>14.4.2023</i>
12	<i>Kotak Mahindra General Insurance Company Limited</i>	<i>Kotak MediShield</i>	<i>21.03.2023</i>	<i>21.03.2023</i>	<i>19.4.2023</i>
13	<i>Raheja QBE General Insurance Company</i>	<i>Health Bharosa Raheja QBE General Insurance Company Limited</i>	<i>21.03.2023</i>	<i>21.03.2023</i>	<i>11.4.2023</i>
14	<i>Reliance General Insurance Company Ltd.</i>	<i>Reliance Specially Abled Health Insurance</i>	<i>21.03.2023</i>	<i>21.03.2023</i>	<i>5.4.2023</i>
15	<i>Future Generali India Insurance Company Limited</i>	<i>HIV & Disability Suraksha, Future Generali India Insurance Company Limited</i>	<i>21.03.2023</i>	<i>21.03.2023</i>	<i>10.4.2023</i>
16	<i>ICICI Lombard General Insurance Company Limited</i>	<i>Special Shield</i>	<i>21.03.2023</i>	<i>22.3.2023</i>	<i>31.3.2023</i>
17	<i>Universal Sompo GIC Ltd</i>	<i>Saksham Bima, USGI</i>	<i>21.03.2023</i>	<i>22.3.2023</i>	<i>12.4.2023</i>
18	<i>National Insurance Company Limited</i>	<i>Divyangjan Sanjeevani Policy - National</i>	<i>22.03.2023</i>	<i>22.3.2023</i>	<i>12.05.2023</i>
19	<i>Acko General Insurance Limited</i>	<i>Acko Specially Abled Health Cover</i>	<i>22.03.2023</i>	<i>22.3.2023</i>	<i>12.05.2023</i>
20	<i>Aditya Birla Health Insurance Co. Limited</i>	<i>Ekam Suraksha, Aditya Birla Health Insurance</i>	<i>22.03.2023</i>	<i>22.3.2023</i>	<i>13.4.2023</i>
21	<i>Zuno General Insurance Ltd (Edelweiss)</i>	<i>Zuno General Insurance Empower Health</i>	<i>22.03.2023</i>	<i>22.3.2023</i>	<i>24.03.2023</i>
22	<i>IFFCO Tokio General Insurance Company Limited</i>	<i>Health Protector for Persons with Special Needs, IFFCO-Tokio General Insurance Co. Ltd.</i>	<i>22.03.2023</i>	<i>22.3.2023</i>	<i>25.4.2023</i>
23	<i>Shriram General Insurance Company Limited</i>	<i>Shri Specially abled Person Health Insurance Policy (PWD/Mental Illness/HIV-AIDS)-SGI</i>	<i>22.03.2023</i>	<i>22.3.2023</i>	<i>27.03.2023</i>



24	<i>The New India Assurance Company Limited</i>	<i>Atmanirbhar Health Policy, New India Assurance Co Ltd</i>	23.3.2023	23.3.2023	31.03.2023
25	<i>United India Insurance Co Ltd</i>	<i>Samaveshi Suraksha Health Insurance Policy</i>	24.3.2023	24.3.2023	12.5.2023
26	<i>Oriental Insurance Company Limited</i>	<i>SAKSHAM SWASTHYA POLICY - ORIENTAL</i>	24.3.2023	24.3.2023	14.04.2023
27	<i>Cholamandalam General Insurance company</i>	<i>Divyang Bima, Chola MS</i>	24.03.2023	24.3.2023	19.4.2023
28	<i>Liberty General Insurance Limited</i>	<i>Sampurna Swashraya, Liberty General Insurance Ltd.</i>	24.03.2023	24.3.2023	25.03.2023
29	<i>Navi General Insurance Ltd</i>	<i>Navi Special Care</i>	12.6.2023	15.6.2023	16.6.2023

19. From the above table, it is clear that several insurance companies have launched products for PwDs. However, in respect of the products which have been launched, the Petitioner raises some objection *qua* the high insurance premium and the loading charges, that is being charged. The said consideration of the amount of premium of any company's specific product would be beyond the scope of this writ petition. It is, however, observed that if any person insured is having a grievance on the amount of premium being charged, remedies in accordance with law are available to such persons. The Petitioner is given liberty to approach the concerned authority if he so desires. This Court however, would reiterate the decision of the Supreme Court in ***Vikash Kumar v. Union Public Service Commission, 2021 SCC OnLine SC 84***, which has also been considered by this Court in ***Akshat Baldwa & Ors. v. Yash Raj Films & Ors., 2023:DHC:345*** wherein the principle of reasonable accommodation has been highlighted to ensure that society and indeed the state, can provide additional support and facilities that are necessary for persons with disabilities to lead a life of



equal worth and dignity. The relevant extracts of the said decision are extracted as under:

“33 The fundamental postulate upon which the RPwD Act 2016 is based is the principle of equality and non-discrimination. Section 3 casts an affirmative obligation on the government to ensure that persons with disabilities enjoy (i) the right to equality; (ii) a life with dignity; and (iii) respect for their integrity equally with others. Section 3 is an affirmative declaration of the intent of the legislature that the fundamental postulate of equality and non-discrimination is made available to persons with disabilities without constraining it with the notion of a benchmark disability. Section 3 is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21 among other provisions of Part III of the Constitution. By recognizing a statutory right and entitlement on the part of persons who are disabled, Section 3 seeks to implement and facilitate the fulfillment of the constitutional rights of persons with disabilities.

34 There is a critical qualitative difference between the barriers faced by persons with disabilities and other marginalized groups. In order to enable persons with disabilities to lead a life of equal dignity and worth, it is not enough to mandate that discrimination against them is impermissible. That is necessary, but not sufficient. We must equally ensure, as a society, that we provide them the additional support and facilities that are necessary for them to offset the impact of their disability. This Court in its judgment in Jeeja Ghosh v. Union of India, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Justice A K Sikri stated in the above judgement:



“40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.”

35 The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality – are an obligation as a society – to enable the disabled to enjoy the constitutional guarantee of equality and nondiscrimination. In this context, it would be apposite to remember Justice R M Lodha’s (as he then was)



observation in Justice Sunanda Bhandare Foundation v. Union of India¹², where he stated: “9...In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic...”

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H. Reasonable accommodation

*43 At the heart of this case lies the principle of reasonable accommodation. Individual dignity undergirds the RPwD Act, 2016. Intrinsic to its realization is recognizing the worth of every person as an equal member of society. Respect for the dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the RPwD Act, 2016 travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the realization of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. **The creation of an appropriate environment in which the disabled can pursue the full range of entitlements which are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed event in providing a legal foundation for equality of opportunity to the disabled.***

44 The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of



reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality – are an obligation as a society – to enable the disabled to enjoy the constitutional guarantee of equality and non- discrimination. In this context, it would be apposite to remember Justice R M Lodha’s (as he then was) observation in *Sunanda Bhandare Foundation v. Union of India*, where he stated:

“9...In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic...

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45 The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. Reasonable accommodation is founded in the norm of inclusion. Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals’ dignity and worth is respected. Under this route, the “powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realization of these ends.”

46 In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates



the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence – whether as students, members of the workplace, participants in governance or, on a personal plane, in realizing the fulfilling privacies of family life. The accommodation which the law mandates is ‘reasonable’ because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.”

20. It is made clear that the merits of each and every product launched and whether the charges are reasonable or not has not been considered by this Court and the same is left open for consideration by any appropriate forum, which may adjudicate a challenge to the same. The IRDAI, being the sector regulator would also have an obligation to ensure that PwDs are not unduly prejudiced and give suitable directions to insurance companies, after reviewing the products launched.

21. Insofar as the decision of the IRDAI *qua* the Petitioner is concerned, the decision is stated to have been taken by the IRDAI on 19th April, 2023. The said decision of the IRDAI has been placed on record. The challenge to the decision is on the following aspects:

- i. Amount of premium being charged and loading charges imposed on the Petitioner etc.
- ii. Amount of Coverage
- iii. Period of exclusion for pre-existing diseases



22. The IRDAI's decision is detailed and reasoned. The Petitioner has already availed of the policy in terms of the order dated 17th March, 2023. The Petitioner is free to avail of his remedies in accordance with law in for any outstanding grievances *qua* this decision of the IRDAI dated 17th April, 2023.

23. This Court appreciates the assistance given by the parties and their Counsels, in ensuring that insurance products for persons with disabilities have been launched in India. While the said products may not be the most ideal for persons with disabilities, this would merely be a first step in the process of achieving Equality for PwDs, which is the solemn intent of legislations including the Right of Persons with Disabilities Act, 2016.

24. In view of the above directions, the present petition is disposed of. All pending applications, are also disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 18, 2023

dj/am

(corrected & released on 25th August, 2023)