STATE CONSUMER DISPUTES REDRESSAL COMMISSION

WEST BENGAL

FIRST APPEAL NO. SC/19/A/258/2024

NATIONAL INSURANCE CO LTD .....Appellant(s)

PRESENT ADDRESS - NATIONAL INSURANCE CO LTD, REGISTERED AND HEAD OFFICE AT 3, MIDDLETON STREET, KOLKATA 700071, P.S. SHAKESPEARE SARANI.,WEST BENGAL.

THE POLICY ISSUING OFFICE OF NATIONAL INSURANCE COMPANY LTD

PRESENT ADDRESS - THE POLICY ISSUING OFFICE OF NATIONAL INSURANCE COMPANY LTD, TOLLYGUNGE BRANCH, 1ST FLOOR, 39/1A, NSC BOSE ROAD, PS- TALLYGUNGE, KOLKATA 700040,WEST BENGAL.

Versus

SHRI SWAPAN MAJUMDAR .....Respondent(s)

PRESENT ADDRESS - PREMISES NO. 25/1F, ROY M.C. LAHIRI ROAD, P.S. SREERAMPORE, DISTRICT HOOGHLY, PIN-712201,WEST BENGAL.

THE MD INDIA HEALTH INSURANCE TPA PVT. LTD.

PRESENT ADDRESS - THE MD INDIA HEALTH INSURANCE TPA PVT. LTD., KOLKATA, CRO I, C-483, LAKE GARDENS, GROUND FLOOR, NEAR LORDS BAKERY CROSSING, KOLKATA 700045,WEST BENGAL.

BEFORE:

HON'BLE MR. RAJES GUHA RAY , JUDICIAL MEMBER

HON'BLE MR. SANTANU SAHA , MEMBER

FOR THE APPELLANT: DEBJYOTI MITRA (Advocate)

DEBJYOTI MITRA (Advocate)

DATED: 17/08/2026

ORDER

Hon’ble Mr. Santanu Saha, Member

Genesis

1. The present appeal has been preferred under Section 41 of the Consumer Protection Act, 2019 by the appellant Insurance Company and its office, challenging the judgment and final order dated 13.08.2024 passed by the learned District Consumer Disputes Redressal Commission, Kolkata, Unit–II in Complaint Case No. CC/363/2022.

2. By the impugned judgment, the learned District Commission directed the opposite parties to pay, jointly and severally, Rs.49,119/- to the complainant together with interest at the rate of 2% per annum from the date of filing of the complaint until realization. The opposite parties were further directed to pay Rs.50,000/- as compensation and Rs.5,000/- as litigation costs within 45 days from the date of the order.

Facts of the case

3. The respondent/complainant (hereinafter referred to as respondent) was insured under a National Senior Citizen Mediclaim Policy issued by the opposite party Insurance Company for the period from 31.03.2022 to 30.03.2023. The sum insured under the policy was Rs.1,00,000/-.

4. On 12.04.2022, the respondent suddenly lost consciousness for a few seconds and thereafter regained consciousness. He consulted a cardiologist attached to B.M. Birla Heart Research Centre on 18.04.2022 and was advised to undergo an Electrophysiological Study (hereinafter referred to as "EPS"), with or without Radio Frequency Ablation (hereinafter referred to as "RFA").

5. A request for cashless authorization was submitted to MDIndia Health Insurance TPA Pvt. Ltd., which was impleaded as Opposite Party No. 3 before the learned District Commission. An initial authorization for Rs.50,000/- under the applicable package was issued.

6. The respondent was admitted to B.M. Birla Heart Research Centre on 25.04.2022. EPS was performed on 26.04.2022. The discharge summary records that EPS revealed normal sinus and AV node conduction, dual AV nodal physiology and inducible atrial tachycardia with variable AV conduction. The respondent was thereafter advised to undergo RFA with a 3D Mapping System.

7. RFA could not be performed at B.M. Birla Heart Research Centre because the required 3D Mapping System was not available there. The respondent was discharged on 27.04.2022 in a haemodynamically stable condition.

8. At the time of discharge, the cashless facility was denied on the following ground:

"As per claim documents received, it is observed that current hospitalization is only for investigation and is not succeeded by an active line of treatment; hence claim is denied as per policy terms and conditions."

9. The respondent thereafter submitted a reimbursement claim for Rs.50,584/- on 13.05.2022. The Insurance Company repudiated the claim by its letter dated 23.06.2022 by relying upon Exclusion Clause 5.16 of the policy, which reads:

"The Company shall not be liable to make payment under the policy in respect of any expenses incurred in connection with or in respect of diagnostic and evaluation purposes where such diagnosis and evaluation can be carried out as an outpatient procedure and the condition of the patient does not require hospitalization."

10. The respondent approached the Insurance Ombudsman. By an order dated 23.08.2022, the Ombudsman declined to grant relief, substantially accepting the insurer's contention that only EPS had been performed and that the hospitalization was for investigative or diagnostic purposes.

11. Aggrieved by the repudiation of his claim, the respondent instituted CC/363/2022. The learned District Commission allowed the complaint by the judgment impugned herein.

Contentions of the appellants

12. Learned Advocate for the appellants has assailed the impugned judgment principally on the following grounds:

a. The learned District Commission lacked territorial jurisdiction;

b. EPS alone was a diagnostic or investigative procedure and the expenses incurred for it were excluded by Clause 5.16 of the policy,

c. Cashless authorization had initially been granted on the understanding that EPS would be followed by RFA in the same sitting,

d. The hospital, and not the Insurance Company, was responsible for the failure to perform RFA because the hospital lacked the required 3D Mapping System,

e. The respondent was given an opportunity to complete RFA within one month, but did not avail himself of that opportunity,

f. The Insurance Ombudsman had already rejected the claim and

g. The learned District Commission failed to give proper effect to the binding terms and exclusions of the insurance policy.

13. In support of the appeal, reliance has been placed upon:

i. New India Assurance Co. Ltd. v. Dr. Girish M. Wagher, 2017 (1) CPR 526 (NC);

ii. National Insurance Co. Ltd. v. Premjibhai Laxmanbhai Motka, 2011 (1) CPR 8; and

iii. Sonic Surgical v. National Insurance Co. Ltd., (2010) 1 SCC 135.

Contentions of the respondent

14. Learned Advocate for the respondent has supported the impugned judgment. It has been contended that EPS cannot be equated with an ordinary blood test, ultrasonography, X-ray or other routine diagnostic examination. It is performed by passing catheters through a blood vessel and advancing them into the chambers of the heart.

16. It has further been submitted that EPS requires a cardiac catheterization or electrophysiology laboratory and is performed by a cardiac electrophysiologist or an interventional cardiologist under continuous medical monitoring. The respondent relied upon medical literature, including material published by the Mayo Clinic, in support of this contention.

17. According to the respondent, the medical advice was for "EPS ± RFA", meaning that EPS was the essential first part of the procedure, whereas the necessity and feasibility of RFA were to be determined according to the findings obtained during EPS. The non-performance of RFA did not convert the EPS actually undertaken into a routine outpatient investigation.

18. It has also been argued that the then head office of the Insurance Company was situated at 3, Middleton Street, Shakespeare Sarani, Kolkata, within the territorial jurisdiction of the learned District Commission, Kolkata, Unit–II. Its subsequent shifting could not retrospectively divest the learned District Commission of jurisdiction.

Points for determination

19. The following points arise for determination in this appeal:

i. Whether the learned District Commission possessed territorial jurisdiction to entertain and decide the complaint,

ii. Whether the order of the Insurance Ombudsman barred or otherwise concluded the consumer respondent/complainant,

iii. Whether EPS is merely a routine investigative test or is an invasive intracardiac medical procedure, notwithstanding that it also serves a diagnostic and evaluative purpose,

iv. Whether the appellants established both the conditions necessary for applying Exclusion Clause 5.16, namely that EPS could be carried out as an outpatient procedure and that the respondent/complainant's condition did not require hospitalization,

v. Whether the failure of the hospital to perform RFA absolved the insurer of liability for the EPS already performed,

vi. Whether the impugned judgment suffers from any illegality or material infirmity warranting appellate interference.

Decision with Reasons

Point No. i)

20. Section 34(2) of the Consumer Protection Act, 2019 permits a complaint to be instituted, inter alia, where the opposite party carries on business or has a branch office, where the cause of action wholly or partly arises, or where the complainant resides or personally works for gain.

21. At the time of institution of the complaint, the appellant Insurance Company's head office was stated to be at 3, Middleton Street, Shakespeare Sarani, Kolkata. The appellants produced no convincing material to show that insurance business was not carried on from that office. Its administrative, supervisory, claims-management and grievance-redressal functions were themselves integral to that business; Opposite Party Nos. 1 and 2 were merely offices of the same juristic person.

22. Sonic Surgical v. National Insurance Co. Ltd. does not assist the appellants: this is not a case of invoking an unrelated branch office to

facilitate forum shopping. The objection to territorial jurisdiction is therefore rejected.

Point No. ii)

23. The Insurance Ombudsman is an alternate grievance-redressal forum. An order rejecting a policyholder's grievance is neither a judgment of a Civil Court or Consumer Commission nor a bar by res judicata to proceedings under the Consumer Protection Act. Although an award accepted under the applicable Rules binds the insurer, the Rules do not make such rejection binding upon the policyholder so as to extinguish other statutory remedy.

24. Section 100 of the Consumer Protection Act, 2019 makes the remedies under the Act additional to those available under other laws. The complaint was therefore maintainable notwithstanding the Ombudsman's order. Its reasoning has nevertheless been independently considered and, for the reasons below, is not accepted.

Point No. iii)

25. The Commission cannot substitute its own medical opinion for that of qualified professionals. The nature of EPS must therefore be gathered from the treatment records and medical literature on record.

26. The medical material from the Mayo Clinic relied upon by the respondent and placed on record describes EPS as “invasive cardiac electrophysiology”. It further states that, during the procedure, “thin, flexible tubes called catheters are placed in three or more areas of the heart.” The said literature explains that the catheters are introduced through a blood vessel and guided to the heart, sensors at their tips record intracardiac electrical activity, electrical signals may be delivered through them to accelerate or decelerate the heartbeat and medicines may, in an appropriate case, be administered to observe the electrical response of the heart. The patient is thereafter kept under observation, with monitoring of heart rate, blood pressure and possible complications.

27. The other medical literature brought on record also describes EPS as a procedure performed in an electrophysiology or cardiac catheterization laboratory through catheters advanced into the heart. It is performed under local anaesthesia with sedation or, where appropriate, under general anaesthesia, followed by monitored recovery.

28. Consistently, the discharge summary records intracardiac findings of dual AV nodal physiology and inducible atrial tachycardia with variable AV conduction, leading to advice for RFA with 3D Mapping. We therefore conclude that EPS is diagnostic and evaluative in purpose but invasive and intracardiac in performance. Its diagnostic purpose does not make it non-invasive, nor does its invasive nature deprive it of a diagnostic component.

Point No. iv)

29. An insurance policy must be enforced according to its terms and cannot be rewritten by the adjudicatory forum. Equally, an exclusion cannot be enlarged beyond its language and the insurer bears the burden of proving that the claim falls squarely within it.

30. Clause 5.16 does not exclude every procedure merely because it has a diagnostic or evaluative purpose. Properly read, the clause requires the insurer to establish two distinct and cumulative conditions:

a. the diagnosis or evaluation could have been carried out as an outpatient procedure and

b. the condition of the particular patient did not require hospitalization.

The word “and” connecting these requirements is significant. The requirements are conjunctive, not alternative. Failure to prove either condition defeats the exclusion. In the present case, the appellants have failed to establish either.

31. No cardiologist, electrophysiologist or other qualified expert stated that the EPS advised for this senior citizen, following transient loss of consciousness, could appropriately have been performed as an ordinary outpatient procedure. The procedure involved vascular access, intracardiac catheter placement, recording and electrical stimulation in a specialized cardiac facility, followed by monitored recovery.

32. Nor is there expert evidence that the complainant's condition did not require hospitalization. The treating cardiologist advised EPS, the hospital admitted him and the TPA initially authorized the proposed cashless treatment. That authorization was not an irrevocable admission of liability, but it is contemporaneous evidence that the hospitalization was not then regarded as plainly unnecessary or foreign to the policy.

33. EPS may, in suitable cases and properly equipped institutions, be completed as a day-care or same-day procedure. That general possibility neither equates it with an ordinary outpatient investigation nor proves that this complainant did not require admission or monitoring.

We therefore are of the considered opinion that the appellants’ failure to relate both limbs of Clause 5.16 to the medical circumstances of respondent no.1 renders the exclusion inapplicable.

Point No. v)

34. B.M. Birla Heart Research Centre ought reasonably to have ascertained the availability of the 3D Mapping System before admitting the respondent/complainant for EPS with possible RFA. Its failure to perform RFA, however, did not retrospectively convert the EPS actually performed on medical advice into an ordinary outpatient investigation or extinguish the expense thereby incurred.

34. The hospital was not the insurer under the mediclaim policy. Liability for the treatment actually received must be determined under the policy terms. Any legally sustainable claim arising from the hospital's alleged non-disclosure, misrepresentation or deficiency may be pursued separately, but cannot by itself defeat the insured's otherwise admissible claim.

Point No. vi)

38. The learned District Commission reached the correct result in holding the repudiation unjustified. Repeated renewal of a policy does not make

every claim payable, the finding is affirmed because the insurer failed to prove the two cumulative facts required by Clause 5.16.

39. Although compensation of Rs.50,000/- is substantial compared with reimbursement of Rs.49,119/-, the respondent/complainant was a senior citizen with a cardiac condition, the cashless facility was withdrawn at discharge, he had to arrange payment, and litigation has continued since 2022. The amount is not so disproportionate as to warrant appellate interference. The impugned judgment therefore discloses no illegality, perversity or material infirmity.

Decisions cited by the appellants

40. Sonic Surgical concerned reliance upon an unrelated branch office, where no part of the cause of action had arisen, to confer territorial jurisdiction under Section 17(2) of the Consumer Protection Act, 1986. The principle against forum shopping is accepted, but the case is distinguishable for the reasons stated under Point No. i).

41. In New India Assurance Co. Ltd. v. Dr. Girish M. Wagher, the insured was hospitalized for diagnostic examinations relating to an abdominal condition, no inpatient treatment was administered, and hospital confinement for the treatment later prescribed was found unnecessary. The diagnostic exclusion was therefore applied on those facts.

42. That decision affirms that a clear exclusion must be enforced, but the present case concerns an invasive intracardiac procedure whose findings led directly to advice for RFA with 3D Mapping. More importantly, no expert evidence established either limb of Clause 5.16 in relation to this complainant. The factual foundation of Dr. Girish M. Wagher is absent here.

43. National Insurance Co. Ltd. v. Premjibhai Laxmanbhai Motka concerned a personal accident claim where blindness was medically attributed to pre-existing absolute glaucoma rather than the alleged accident. Its principle that indemnity depends on proof of a covered loss and the required causal connection is unexceptionable, but it does not govern the present dispute concerning application of a diagnostic exclusion. None of the cited decisions establishes that EPS must invariably be treated as a routine outpatient investigation.

Insurer's offer to keep the claim open

44. The respondent’s letter dated 07.05.2022 records his understanding that the TPA or insurer was prepared to keep the matter open for one month to enable completion of RFA with 3D Mapping. This shows that the insurer did not act mechanically and sought to facilitate completion of what it understood to be a composite EPS-RFA package.

45. We therefore draw no inference of dishonesty or mala fides. The insurer's bona fide accommodation is relevant to its conduct and to compensation, but no policy term has been shown making payment for EPS conditional upon completion of RFA within one month.

46. The offer consequently does not determine the separate contractual question whether the expenses already incurred for EPS fell within Clause

5.16. For the reasons given above, the appellants failed to establish that exclusion.

Deficiency in service and compensation

47. The respondent underwent an invasive cardiac procedure on specialist advice after a transient loss of consciousness. Cashless authorization was first granted but withdrawn at discharge, compelling him to arrange payment of the hospital charges.

48. His reimbursement claim was thereafter repudiated without expert evidence that EPS could appropriately have been performed upon him as an outpatient procedure and that his condition did not require hospitalization. The repudiation was therefore unjustified under Clause 5.16 and amounted to deficiency in service.

ORDER

49. The appeal is dismissed on contest. The judgment and final order dated 13.08.2024 passed by the District Consumer Disputes Redressal Commission, Kolkata, Unit-II in Complaint Case No. CC/363/2022 is affirmed.

50. The appellants shall comply with the directions contained in the impugned judgment within 45 days from the date of this judgment, after adjusting any amount already paid or released to the respondent.

51. In the facts and circumstances, there shall be no further order as to costs in this appeal.

52. Nothing in this judgment prevents any party from pursuing an independent remedy available in law against the hospital concerning the non-availability of the 3D Mapping System. No opinion is expressed on the merits of any such claim.

53. Let a copy of this judgment be supplied to the parties free of cost, as per rules.

54. Let a copy of this judgment be also transmitted to the learned District Consumer Disputes Redressal Commission, Kolkata, Unit-II for information and necessary action.

55. The appeal is accordingly disposed of.

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RAJES GUHA RAY

JUDICIAL MEMBER

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SANTANU SAHA

MEMBER