IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 04.07.2024
Date of Hearing: 02.09.2026
Date of Decision: 22.09.2026

FIRST APPEAL NO. - 452/2024

IN THE MATTER OF

NATIONAL INSURANCE COMPANY LIMITED
NATIONAL LEGAL VERTICAL,
2 E/9, THIRD FLOOR,
JHANDEWALAN EXTENTION,
NEW DELHI-110055.

(Through: Ms. Geeta Malhotra, Advocate)
…Appellant

VERSUS

1. **MR. RAVINDER KUMAR GUPTA**
   S/O LATE SH. KISHAN CHAND GUPTA,
   R/O F-234, PRASHANT VIHAR,
   SECTOR-14, ROHINI, DELHI-110085.

2. **MR. PADAM GUPTA**
   S/O SH. RAVINDER KUMAR GUPTA,
   R/O F-234, PRASHANT VIHAR,
   SECTOR-14, ROHINI,
   DELHI-110085.

3. **MRS. AANCHAL SINGHAL**
   D/O SH. RAVINDER KUMAR GUPTA,
   (W/O MR. NAVEEN SINGHAL),
   R/O H-5/7, SECTOR-11, ROHINI,
   DELHI-110085.

4. **MRS. SHIVANI GUPTA**
D/O SH. RAVINDER KUMAR GUPTA,
(W/O MR. VIDIT GUPTA),
R/O HOUSE NO. 25, ROAD NO.35,
WEST PUNJABI BAGH,
NEAR MAHARAJA AGRASEN HOSPITAL,
DELHI-110026.
(ALL LEGAL HEIRS OF DECEASED LATE MRS. KUSUM GUPTA).

(Through: Mr. Hariom Gupta, Advocate)

…Respondents

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Ms. Geeta Malhotra, counsel for the Appellant.
Respondent in person and Mr. Ananya Giri, counsel for the Respondent No.1 to 4.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

"(1) The present complaint has been filed under Section 12 of the Consumer Protection Act, 1986. The brief details of facts, as alleged by the Complainant in the Complaint in hand, are that:-

a) the Complainant had taken Hospitalization benefit policy from the National Insurance Company Limited for the period from 10/01/2014 to 09/01/2015 vide Policy No. 361500/48/13/850003576 covering himself and his family. During the existence of the said policy, the complainant's wife fell ill and was admitted to the hospital for treatment. The present complaint has been filed for the reimbursement of the medical expenses incurred toward the treatment of the complainant's wife.

b) the Complainant has taken the policy initially from Reliance General Insurance for the period of 11/01/2010 to 10/01/2011. Thereafter, the complainant and his family was insured with the National Insurance Company Limited/Opposite Party under Hospitalization benefit policy continuously for the following periods:-

i. 10/01/2011 to 09/01/2012,
ii. 10/01/2012 to 09/01/2013,
iii. 10/01/2013 to 09/01/2014,
iv. 10/01/2014 to 09/01/2015.

The copies of the policies have been annexed with the complaint as Annexure C-1 (colly).

c) at the time of taking Insurance premium, the representative of Opposite Party had assured the complainant that the policy will cover every disease and any hospitalization expenses and medical bills will be reimbursed. No policy terms and conditions were provided to the complainant.

d) on the said assurances, the complainant continued to insure himself and his entire family. On 11.2.2014 the Complainant's wife felt breathless, chest pain and body ache and thus she was admitted in Deepak Memorial Hospital on 11/02/2014 where it was recorded that

"Patient admitted with complaints breathlessness, chest pain and body ache.....".

e) the X-ray chest report dated 12/02/2014 of Deepak Memorial Hospital also recorded that "there is slight cardiac enlargement and obliteration of left C. P. angle.....".

f) Certificate dated 13/02/2014 of Dr. Kapil Khanna MD, Medicine, of, Deepak Memorial Hospital also stated that ".. Cardiac enlargement with bilateral basal congestion and obliteration of left C.P. angle.....". Copy of the X-ray reports has been enclosed with the complaint as Annexure C-3 (colly).

g) the complainant's wife was discharged on 17/02/2104. The discharge summary of Deepak Memorial Hospital along with copies of bills and receipts has been enclosed with the complaint as Annexure C-2 (colly).

h) Since the Opposite Party had denied cashless treatment and the complainant had to pay the entire expenses of Rs.1,80,000/- (Rupees One Lac Eighty Thousand only) to complete the discharge process. The Complainant lodged the claim for re-imbursement of treatment expenses with the Opposite Party on 20.3.2014.

i) the Opposite Party sought Doctor's certificate and the complainant submitted the certificates dated 19/04/2014, 28/08/2014 and 20/03/2015 of Dr. Kapil Khanna, MD, (Medicine), Deepak Memorial Hospital. Copies of certificates dated 19/04/2014 and 28/08/2014 have been enclosed with the complaint as Annexure C-4 (colly). Copy of certificate dated 20/03/2015 has been enclosed

with the complaint as Annexure C-5.

j) As per the above mentioned Doctor's certificates, it is crystal clear that the complainant's wife was not suffering from any ailment in the past. The wife of the Complainant died on 15/07/2014. The copy of death certificate has been enclosed with the complaint as Annexure C-6.

k) the Opposite Party repudiated the claim of the complainant vide letter dated 31/07/2014 by invoking exclusion clause 4.9 of the terms & conditions. The copy of the repudiation letter dated 31/07/2014 has been enclosed with the complaint as Annexure C-7.

l) the complainant requested the Opposite Party to reconsider the claim vide letters dated 30/08/2014, 07/01/2015, 09/04/2015 but no response received from the Opposite Party. Copies of the letters dated 30/08/2014, 07/01/2015, 09/04/2015 have been enclosed with the complaint as Annexure C-8 (colly).

(2) It has been alleged that the rejection of the claim of the Complainant by the opposite party is totally arbitrary, illegal and baseless being unsustainable in the eyes of law. The conduct of the opposite party amounts to unfair trade practice and deficiency of service. Due to the acts and omission of the Opposite Party, the Complainant suffered extreme mental agony, harassment and pain and is entitled to be appropriately compensated. Therefore, the present complaint has been filed praying that:-
i. The Opposite party be directed to pay Rs. 1,80,000/- (Rupees One Lakh Eighty Thousand only) for the hospitalization and medical expenses, which the complainant incurred upon the treatment of his wife.

ii. The Opposite party be directed to pay interest 18% per annum from 20/03/2014 (i.e. date of lodging the complaint with the opposite party) till 30/05/2016 i.e. Rs 68,528/- and thereafter upto the date of realization.
iii.The Opposite party be also directed to pay Rs. 75,000/- towards causing mental agony and harassment.
iv. The Opposite party be directed to pay the cost of Rs. 30,000/- for this forced litigation.

(3) Accordingly, notice was issued to the OP and in response, the OP has filed its reply with preliminary objection stating that:-

a) the present complaint is liable to be dismissed in view of the fact that the patient Smt. Kusum Gupta was hospitalized on 11th February, 2014 in the Deepak Memorial Hospital with the complaint of difficulty in breathing. As per the discharge summary and other medical documents, the patient is diagnosed with obstructive sleep apnoea and obesity with OHS with LRTI type II respiratory failure, Pulmonary Hypertension, CAD, USA (Trop T+ve) which are the result of morbid obesity.
b) As per Exclusion Clause 4.9 of the Policy "Treatment for obesity or conditions arising there from (including morbid obesity) and any other weight control and Management program/services/supplies or treatment", the claim is not payable. Thus, the claim has rightly been repudiated by letter dated 31-07-2014.

c) the grievance of the insured was again forwarded to the Regional Customer Relationship Committee for reconsideration The matter was reviewed and the complainant was requested to provide the following documents before the final decision:-
I. A certificate from the attending consultant providing

the duration for which the patient is a known case of asthma, obstructive sleep apnoea and obesity. II. Report of treatment taken by the patient after first detection of the above stated disease. However, the complainant has not submitted any of the aforesaid documents despite repeated requests, which is also a violation of Condition No.5.1 of Pariwar Mediclaim Policy which states as under :- "Non Disclosure of the material facts".

d) The Insurance Policy containing the terms and conditions is a contract between the complainant and the O.P. and the terms and conditions therein has to be followed strictly by both of the parties and any violation in respect thereof deserves the complaint to be dismissed with exemplary costs.

e) the complainant has not come to this Hon'ble Court with clean hands and has suppressed the material facts. The complaint is liable to be dismissed on this ground.

f) there is no deficiency of service on the part of the answering opposite party. The claim has rightly been rejected in view of violation of the terms and conditions of the Parivar Mediclaim Policy.

(4) The OP has also filed Parawise reply on merits to the complaint as under:-

i. Para 1 to 4 are matter of record.
ii. the contents of para no.5 of the Complaint are wrong and vehemently denied. The complainant is well aware of the terms and conditions of the Policy. The terms and conditions has been provided to the complainant.
iii. the contents of para no.7 of the Complaint are wrong and denied. The complete facts have not been averred in

this para. The discharge summary of the hospital has divulged the entire facts in respect of the ailment."

2. The District Commission after taking into consideration the material available on record passed the order dated **16.05.2024**, whereby it held as under:

"(5)... the complaint has been examined in view of the facts of the case and averments/documents/Evidence/arguments put forth by the parties and it has been observed that:-

i. In para 5 of the complaint, it has been alleged by the complainant that no terms and conditions were provided by the OP and this allegation has neither been replied properly nor any proof of delivery of the terms & conditions has been filed with the reply of the OP. While replying to this allegation in the reply, the OP has simply denied the allegations without any evidence as under:- "The contents of para no.5 of the Complaint are wrong and vehemently denied. The complainant is well aware of the terms and conditions of the Policy. The terms and conditions has been provided to the complainant." ii. The Complainant had also stated in his letter dated 25.12.2014, duly acknowledged by opposite party, that no terms and conditions were provided to him. iii. It has also been noticed that OP has also filed two sets of terms, and conditions.

In the set of TBC (Bearing No. 19126) filed with evidence by the OP as OFW-1/3, the Exclusion Clause 4.9 & 5.1 has been mentioned as under:

"4.9 Obesity Treatment for obesity or condition arising therefrom (including morbid obesity) and any other weight control and management program/services/supplies or treatment.

5.1. Disclosure to information norm

The policy shall be void and all premium paid hereon shall be forfeited to the company, in the event of misrepresentation, mis-description or non-disclosure of any material fact."

And in the another set of T&C, filed by the OP at the time of arguments, the provisions of Clause 4.9 and 5.1 has been mentioned as under:-

"4.9 General debility, external congenital anomaly Convalescence, general debility, run down condition or rest cure, external congenital anomaly.

5.1 Disclosure of information
The policy shall be void and all premium paid hereon shall be forfeited to the company, in the event of mis-representation, mis-description or non-disclosure of any material fact."

This is sufficient to conclude that the OP is not sure as to which terms and conditions were applicable on the policy in question at the time of issuance of the first policy.

iv. It has also been found from perusal of the copies of the previous insurance policies filed by the complainant, that there is no mention of delivery of terms and conditions alongwith the copies of policies issued by the OP.

v. In this regard, the judgment passed by the Hon'ble Supreme Court of India in the matter of Texco Marketing Pvt Ltd Vs Tata AIG General Insurance Co. Ltd & others (2023) SCC 428 is relevant in the matter wherein it has been held that the Insurance Company cannot rely upon the terms and conditions if the same had not been

supplied to the insured.
vi. The following observations of the Hon'ble NCDRC in the matter of M/S. Anjaneya Jewellery vs New. India Assurance Co. Ltd. & 2 Ors. Passed on 14 February, 2023 in CC/1094/2018 are also relevant:-

"Applying the Principles laid down by the Hon'ble Supreme Court referred to above, to the facts of the present case, we find that there is no material on Record to establish that the Opposite Party Insurance Company had given the Terms and Conditions of the Special Package Insurance Policy or at any point of time or ever informed the Complainant about the same. Thus, the Exclusion Clause on the basis of which the Opposite Party Insurance Company had repudiated the Insurance Claim of the Complainant, cannot be sustained as the Opposite Party Insurance Company could not rely upon the same. The Repudiation letter is, therefore, set aside. There had been Deficient in Service by the Opposite Party Insurance Company in repudiating the genuine claim of the Complainant."

vii. The judgement of Hon'ble Supreme Court in Modern Insulators Ltd. versus Oriental Insurance Company Limited [(2000) 2 SCC 734] is also relevant in the matter wherein it has been held that if the exclusion clause has not been communicated to the insured, then insurer cannot claim benefit of that clause.

(6) In view of the above observations, we are of the considered view that the OP has repudiated the claim in unjustified way and the complainant has suffered directly due to deficient service of the OP-1 (M/s National Insurance Co. Ltd.) in terms of the deficiency defined in the Act which includes any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained in relation to any service and includes any act of negligence or omission or

commission by such person which causes loss or injury to the consumer. Therefore, we feel appropriate to direct the OP to pay:-

i. Rs. 1,80,000/-(Rupees One Lakh Eighty Thousand only) reimbursement of claim of hospitalization and medical expenses, within thirty (30) days from the date of receipt of this order, with interest at the rate of 9% p.a. from 20-04-2014 (date of expiry of 30 days period from filing of claim by the complainant with OP) till the date of the payment;

ii. Rs.75,000/- (Rs. Seventy Five thousand only) as compensation for mental agony and harassment caused to the complainant;

iii. Rs. 10,000/-(Rs. Ten thousand only) as litigation expenses.

(7) It is clarified that if the amount ordered in para 6 (i) to (iii) shall be paid by the OP to the Complainant within the 30 days as directed above, failing which the OP shall be liable to pay interest @12% per annum from the date of expiry of 30 days period."

3. Aggrieved by the aforesaid order of the District Commission, the Appellant/Opposite Party has preferred the present appeal contending that the District Commission failed to appreciate the fact that the treatment in respect of obesity or any disease arising therefrom was not payable as per the terms and conditions of the said policy. Therefore, the Appellant rightly repudiated the claim of the Respondents under Exclusion Clause 4.9 of the policy. He further submitted that the terms and conditions of the policy were applicable to the Respondents and the insurance policy is a contract between the insurer and the insured, which is binding upon both parties. He

further contended that the District Commission erred in accepting the plea of the Respondents that the terms and conditions of the said policy were not supplied to them, as the Respondents had not filed any letter or email showing that they had approached the Appellant regarding the non-supply of the terms and conditions or had requested a copy thereof.

4. The Counsel for the Appellant also contended that the District Commission failed to appreciate the opinion of Dr. A.K. Batra and the alleged non-submission of documents relating to the previous medical history of the deceased. He further contended that the Respondents had continuously purchased hospitalization policies for several years and had never raised any objection regarding the non-supply of the terms and conditions. The Appellant contended that the award of Rs.75,000/- towards compensation and Rs.10,000/- towards litigation expenses was excessive. Pressing the aforesaid submissions, the Appellant has prayed for setting aside the impugned order passed by the District Commission.

5. The Respondents have filed their Reply, denying all the contentions and submissions of the Appellant and submitted that there is no error in the impugned order, as the entire material available on record was properly scrutinized before passing the impugned order. The Respondents reiterated that they had continuously held hospitalization benefit policies and that the terms and conditions were never supplied to them. The Respondents submitted that Respondent No.1 had specifically addressed a communication dated 25.12.2014 to the Appellant stating that no terms and conditions had been provided, which communication was duly acknowledged by the Appellant. He further submitted that the Appellant produced two contradictory sets of terms and conditions before the District

Commission and failed to clarify which set was applicable to the policy in question. The Respondents also submitted that the three medical certificates issued by Dr. Kapil Khanna, the treating physician, established that Smt. Kusum Gupta had no pre-existing ailment at the time of taking the insurance policy. The Respondents further submitted that the repudiation of the claim by relying upon an exclusion clause which had never been supplied or communicated to the insured was arbitrary and amounted to deficiency in service.

6. The Appellant has filed the Written Arguments and reiterated the contentions raised in the present Appeal. He further relied upon the following judgments:

   a) ***Suraj Mal Niwas Oil Mills (P) Ltd V. United India Insurance Co. Ltd., MANU/SC/0814/2010: (2010) 10 reported SCC 567)***
   b) ***Original Insurance Co. Ltd. Vs. Sony Cheriyan MANU/SC/0495/1999: AIR 1999 SC 3252; wherein Hon'bleApex Court***
   c) ***National Insurance Co. Ltd. Vs. Vinod Puri Hon'ble NCDRC, reported in I [2014] CPJ 341 (NC)***
   d) ***General Assurance Society Ltd. Vs. Chandumall Jain and Anr. Reported in (1996) 3 SCR, 500, passed by Hon'ble Supreme Court***
   e) ***Ind Swift Ltd. Vs. New India Assurance Co. Ltd. reported in IV [2012] CPJ 148 (NC)***

f) LIC versus Banwarilal Yadav reported in IV [2013] CPJ 38 (NC) the Hon'ble NCDRC

g) Morein Chemicals Ltd. Vs. UCO BANK reported in III [2013] CPJ 261 (NC)

h) Vikram Greentech (I) Ltd. & Anr. Vs. New India Assurance Co. Ltd. MANU/SC/0519/2009 SC 2493.

7. The Written Arguments have also been filed by the Respondents, wherein the contents of the Reply to the Appeal have been reiterated. The Respondents have submitted that the exclusion clause relied upon by the Appellant was never supplied or communicated to them and that the Appellant had produced two contradictory sets of terms and conditions. The Respondents have relied upon the judgments of the Hon'ble Supreme Court in ***Modern Insulators Ltd. v. Oriental Insurance Company Ltd. [(2000) 2 SCC 734]*** and ***Texco Marketing Pvt. Ltd. Vs. Tata AIG General Insurance Co. Ltd. & Ors. [(2013) 1 SCC 428]*** as well as the decision of the ***Hon'ble National Commission in M/s Anjaneya Jewellery Vs. New India Assurance Co. Ltd. & 2 Ors. [CC/1094/2018, dated 14.02.2023].***
8. We have perused the material available on record.
9. The ***main question*** for consideration before us is ***whether the District Commission has erred in holding the Appellant deficient in providing its services to the Respondents by repudiating of the claim of the Respondents.***
10. The fact that the Respondents had taken Hospitalization Benefit Policy bearing No. 361500/48/13/850003576 with the Appellant for the period from 10.01.2014 till 09.01.2015 is not disputed by the parties. Further, it is

clear from the record that Smt. Kusum Gupta (deceased wife of Respondent No.1) was hospitalized at Deepak Memorial Hospital from 11.02.2014 till 17.02.2014 with complaints of breathlessness, chest pain and body ache and an expenditure of Rs.1,80,000/- was incurred towards her treatment. Thereafter, the Respondents lodged the claim with the Appellant on 20.03.2014. However, the Appellant vide letter dated 31.07.2014, repudiated the claim of the Respondents on the ground that the claim was not payable under Clause 4.9 of the said policy with respect to obesity or any other disease arising therefrom (including morbid obesity) and any other weight control and management programme/services/supplies or treatment.

11. The Appellant contended that the District Commission failed to appreciate the terms and conditions of the said policy under which the claim of the Respondents was not payable. More so, the District Commission erred in holding the Appellant deficient in service on the ground of non-supply of the terms and conditions of the said policy.

12. On the other hand, the Respondents submitted that the terms and conditions were never supplied to them. The Respondent No.1 had also addressed a communication dated 25.12.2014 to the Appellant stating that no terms and conditions had been provided, which communication was duly acknowledged by the Appellant.

13. On perusal of the record, it is noted that the Respondents had been holding the aforesaid policy from 2011 to 2015. However, the Appellant has failed to produce any proof of delivery of the terms and conditions to the Respondents or place on record any material to establish that the terms and conditions containing the relevant exclusion clause were supplied to them.

Moreover, the Respondents has filed the letter dated 25.12.2014 addressed by Respondent No.1 to the Appellant, stating that the terms and conditions had not been supplied, which letter was duly acknowledged by the Appellant. Therefore, we are of the view that the District Commission rightly observed that the Appellant could not rely upon the terms and conditions which were never supplied to the insured.

14. We deem it appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of ***Bharat Watch Company Vs. National Insurance Co. Ltd. 2019 INSC 521***, wherein it was held:-

" 7. ...the conditions of exclusion under the policy document were not handed over to the Appellant by the insurer and in the absence of the Appellant being made aware of the terms of the exclusion, it is not open to the insurer to rely upon the exclusionary clauses."

15. The above dicta reflects that the terms and conditions of the insurance policy, including the exclusion clauses, must be brought to the notice of the insured. In the present case, the Appellant has failed to establish that the terms and conditions containing Exclusion Clause 4.9 were supplied or communicated to the Respondents. Therefore, the Appellant cannot rely upon the said exclusion clause for repudiating the insurance claim.

16. Further, the Appellant has also contended that the District Commission failed to consider the opinion of Dr. A.K. Batra dated 15.01.2018, wherein it was observed that non-submission of records of treatment taken in the past could amount to withholding of material facts. However, the said opinion does not establish that the exclusion clause relied upon in the repudiation letter was applicable to the policy in question, particularly when

the Appellant has failed to establish the supply and applicability of the relevant terms and conditions.

17. Furthermore, it is clear from the discharge summary that the insured person, i.e. Smt. Kusum Gupta, was admitted to Deepak Memorial Hospital on 11.02.2014 with complaints of breathlessness, chest pain and body ache. Thereafter, she was diagnosed with obstructive sleep apnoea and obesity with OSA, OHS, LRTI, Type-II respiratory failure, pulmonary hypertension and CAD. Thus, it is evident that the insured person was admitted for the treatment of the aforesaid medical complaints and not for any treatment relating to morbid obesity or weight control. The Appellant has also failed to place on record any material to establish that the insured person was suffering from the aforesaid medical conditions at the time of taking the insurance policy. In the absence of any such material, the repudiation of the claim merely on the ground that the insured person was suffering from obesity cannot be sustained.

18. As regards the quantum of compensation, the District Commission has awarded Rs.1,80,000/- as reimbursement of claim of hospitalization and medical expenses, Rs.75,000/- towards mental agony and harassment and Rs.10,000/- towards litigation expenses. Considering the fact that the Respondents were required to pursue the claim for reimbursement of medical expenses incurred towards the treatment of Smt. Kusum Gupta, followed by repudiation of the claim and prolonged litigation, we find no sufficient ground to interfere with the compensation awarded by the District Commission.

19. In view of the above discussion, we find no infirmity in the conclusion reached by the District Commission that the repudiation of the claim was unjustified and amounted to deficiency in service.
20. In the foregoing, we are in agreement with the reasons given by the District Commission and fail to find any cause or reason to reverse the findings of the District Commission. Consequently, ***we uphold the order dated 16.05.2024 passed by the District Consumer Disputes Redressal Commission-I, (North District), Govt. of NCT of Delhi, Ground Floor, Court Annexe-2 Building, Tis Hazari Court Complex, Delhi-110054.***
21. Resultantly, the present Appeal stands dismissed with no order as to costs.
22. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
23. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 2019. The judgment be uploaded forthwith on https://e-jagriti.gov.in for perusal of the parties.
24. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
22.09.2026

LR-ZA