Details	DD	MM	YY
Date of disposal	08	10	2026
Date of filing	03	01	2020
Duration	05	09	06

BEFORE THE CONSUMER DISPUTES REDRESSALCOMMISSION
GUJARAT STATE AHMEDABAD.

COURT NO: 01
APPEAL NO. 68/2020

The National Insurance Co. Ltd.
102-106, Rajhans Plaza,
Opp. LMP School,
Collage Road, Billimora,
Dist: Navsari ...Appellant

Vs.

Himanshu Balkrushna Vaidhya
Resident of: 20, Re Aliporia Soc.,
Somnath Road, Bilimora,
Tal: Gandevi, Navsari ...Respondent

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BEFORE: Hon'ble Mr. I. D. Patel, In-charge President
Hon'ble Dr. J. G. Mecwan, Member

APPEARANCE: Mr. A. N. Shah Ld. Advocate for the Appellant
Mr. M. K. Dudhiya, Ld. Advocate for the Respondent

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ORDER BY HON'BLE MR. I.D.PATEL, IN-CHARGE PRESIDENT

1. This appeal is filed by the appellant the National Insurance Company Ltd. against the impugned order dated 21/11/2019 passed by the Ld. District Consumer Disputes Redressal Forum, Navsari in Consumer Complaint No. 19 of 2017 as per the provision of Section 15 of the Consumer Protection Act, 1986 on the grounds stated in the appeal memo.

2. The appellant is original opponent and respondent is original complainant in the complaint before the Ld. District Consumer Disputes Redressal Forum, Navsari and for the sake of

convenience parties will be addressed with the same nomenclature.

3. Brief facts of the case are that the complainant and his family members had availed mediclaim policy viz., Individual Mediclaim Policy for the period from 2012 to 2016 without any break. It is the case of the complainant that initially the complainant and his family members obtained policy for the sum insured of Rs. 3,00,000/- and thereafter, the complainant and his family members enhanced the sum insured of Rs. 10,00,000/- for the period from 10/03/2016 to 09/03/2017. It is further the case of the complainant that at the time of issuance of the policy, the insurance company has not provided any terms and conditions, exclusion clause, warrantee, endorsement with the policy schedule to the complainant nor the insurance company had orally explained the terms and conditions to the complainant and his family members and thereafter, the insurance company has inserted the terms and conditions, exclusion clause unilaterally without the consent of the complainant. It is further the case of the complainant that during the period from 17/05/2016 to 23/05/2016, the complainant's wife was admitted in the Muljibhai Patel Urological Hospital, Nadiyad for urinary infection and complainant's wife had also undergone the operation and was discharged on 23/05/2016 from the hospital and for that, the complainant has spent Rs. 6,15,364/- and thereafter, the complainant has lodged the claim with the insurance company. However, the insurance company has only paid Rs. 2,10,000/- to the complainant and had not paid the rest of the amount considering the sum insured of Rs. 10,00,000/- and therefore, the complainant has filed the complaint before the Ld. District Consumer Disputes Redressal Forum, Navsari against the insurance company.

4. Before the Ld. District Forum, the opponent has appeared through the Ld. Advocate and filed detailed reply whereby, the opponent contended that since the year 2012, the complainant and his family members had only availed the policy of sum insured of Rs. 3,00,000/- and only during the period from 10/03/2016 to 09/03/2017, the complainant and his family member had availed policy for the sum insured of Rs. 10,00,000/-. It is further contended in the written reply that looking to the discharge summary of the Muljibhai Patel Urological Hospital, Nadiyad of the complainant's wife Falguniben it appears that, the wife of the complainant was suffering from the said illness since last three months i.e., from February, 2016 and since the complainant enhanced the sum insured to Rs. 10,00,000/- from Rs. 3,00,000/- in the year March, 2016, the insurance company has paid the amount of the medical reimbursement on the basis of the policy of sum insured of Rs. 3,00,000/- considering the clause 4.1 of the insurance policy and therefore, the insurance company has not committed any deficiency in service. Hence insurance company prays for dismissal of the complaint filed by the complainant with heavy cost.

5. After hearing Ld. Advocates for the parties and after perusing material on record, the Ld. District Forum is pleased to partly allow the complaint against the opponent insurance company and directed the opponent insurance to pay Rs. 2,55,364/- with 9 % interest and cost to the complainant vide order dated 21/11/2019 and being aggrieved and dissatisfied with the said order of the Ld. District Forum, the present appellant has filed the present appeal as per the provision of Section 15 of the Consumer Protection Act, 1986 on ground stated in the appeal memo.

6. We have heard Mr. A. N. Shah Ld. Advocate for the appellant insurance company and the Ld. Advocate Mr. M. K. Dudhiya for the respondent original complainant.

7. The Ld. Advocate Mr. A. N. Shah for the appellant insurance company has submitted that earlier from 2012 up to 2015, the complainant and his family members had availed the policy for the sum insured of Rs. 3,00,000/- only and thereafter, in the year of 2016 and 2017, the complainant and his family members enhanced sum insured of Rs. 10,00,000/- from Rs. 3,00,000/-. The Ld. Advocate Mr. A. N. Shah has also submitted that during the policy period on 10/03/2016 to 09/03/2017, the complainant's wife was admitted in the Muljibhai Patel Urological Hospital for the period from 17/05/2016 to 23/05/2016 for her treatment of Urinary Problem and for that the complainant has spent Rs. 6,15,364/-, but looking to the discharge summary of the Muljibhai patel Urological Hospital at page 69 to 70, the complainant's wife was having the problem since past three months and even looking to the medical certificate to be filed in by the doctor treating the patient at page 68, the patient was suffering from the disease since last three month i.e., from 2016. Therefore, as per the submission of the Ld. Advocate Mr. A. N. Shah, since the complainant's wife was suffering from the said disease since last three months before the enhancement of policy of sum insured of Rs. 10,00,000/-, the exclusion clause 4.1 i.e., pre-existing disease and clause 5.15 enhancement of sum insured are applicable in the case of the complainant's wife and therefore, the insurance company has paid Rs. 2,10,000/- to the complainant considering the sum insured of policy of Rs. 3,00,000/-. However, as per the submission of the Ld. Advocate Mr. A. N. Shah for the appellant, the Ld. District Forum has not considered the exclusion clause 4.1 and clause 5.15 in the right

perspective. The Ld. Advocate Mr. A. N. Shah has also placed reliance upon the decision of the Hon'ble National Commission in the case of *Rakesh Kumar Vs. Oriental Bank of Commerce & Ors*, more particularly page 77 of the said judgment and submitted that when the sum insured is enhanced subsequent to the inception of the policy, the exclusions 4.1 and 4.2 will apply afresh for the enhanced portion of the sum insured for the purpose of this section. Therefore, as per the submission of the Ld. Advocate Mr. A. N. Shah for the appellant insurance company, the impugned order passed by the Ld. District Forum for allowing the complaint is not just and proper and findings recorded by the Ld. District Forum for allowing the complaint cannot be sustained in the eye of law and therefore, impugned order passed by the Ld. District Forum requires to be quashed and set aside by allowing the appeal filed by the appellant.

8. Per contra, the Ld. Advocate Mr. M. K. Dudhiya for the respondent original complainant has submitted that earlier the complainant and his family members obtained policy of sum insured of Rs. 3,00,000/- + cumulative bonus from 2012 to 2015 as per the policy copy at page 62 to 63 and thereafter, for the period from 10/03/2016 to 09/03/2017, the complainant and his family members enhanced the sum insured of Rs. 10,00,000/- and copy of the same is produced at page 64. The Ld. Advocate for the respondent Mr. M. K. Dudhiya has submitted that enhanced sum insured policy is availed by the complainant and his family member as per the letter of the National Insurance Company addressed to all the regional offices in respect of the introduction and implementation of new health products National Parivar Mediclaim Policy and National Parivar Mediclaim Plus Policy at page 24 to page 59. So, the complainant and his family members availed the National Parivar Mediclaim

Policy at page 64 for enhanced sum insured of Rs. 10,00,000/- and migrated from existing policy i.e., Family National Mediclaim Policy as per clause 3 of the letter dated 28/08/2015 of the insurance company at page 26. The Ld. Advocate Mr. M. K. Dudhiya for the respondent has also submitted that the complainant has also filed counter affidavit before the Ld. District Forum at page 80 to 86, wherein also at page 84, the complainant has stated that how he has switched over policy from National Mediclaim Policy to National Parivar Mediclaim Policy. So, as per the submission of the Ld. Advocate Mr. M. K. Dudhiya when the complainant and his family members migrated from existing policy of the National Mediclaim Policy to National Parivar Mediclaim Policy for enhanced sum insured of Rs. 10,00,000/-, the exclusion clause 4.1 that is the pre-existing disease and clause 5.15 for enhanced amount of sum insured are not applicable in the case of the complainant's wife claim and looking to the counter affidavit of the complainant, when the complainant and his family members availed the enhanced sum insured policy of Rs. 10,00,000/-, the complainant is at least entitled to get total amount of Rs. 7,57,500/- and therefore, as per the submission of the Ld. Advocate Mr. M. K. Dudhiya for the respondent that the complainant is entitled to get total medical reimbursement of amount of Rs. 6,15,964/- incurred by the complainant for the treatment of the complainant's wife and therefore, as per the submission of the Ld. Advocate Mr. M. K. Dudhiya for the respondent, the impugned order passed by the Ld. District Forum in favor of the complainant is quite just and proper and it cannot be said to be erroneous or perverse in any manner.

9. The Ld. Advocate Mr. M. K. Dudhiya has also placed reliance upon the decision of the Hon'ble State Commission, Gujarat

rendered in the Appeal No. 368 of 2020 in the case of the *Max Bupa Health Insurance Co. Ltd. Vs. Ishwarbhai K. Padhiyar* and submitted that when the complainant and his family members availed policy of enhanced sum insured of Rs. 10,00,000/-, then, the waiting period of exclusion clause 4.1 also cannot be made applicable.

10. We have considered the submissions of the Ld. Advocates of the parties and we have gone through the impugned order passed by the Ld. District Forum. We have also considered the material on record. That looking to the record of the case, it appears that the complainant and his family members was availing National Mediclaim Policy for the sum insured of Rs. 3,00,000/- + cumulative bonus from 10/03/2012 to 09/03/2016 and copy of the same is produced at page 62 to 63 and thereafter, the complainant and his family members enhanced the sum insured of Rs. 10,00,000/- for the period from 10/03/2016 to 09/03/2017 and availed policy viz., National Parivar Mediclaim Policy at page 64. That the complainant and his family members availed National Parivar Mediclaim Policy of sum insured of Rs. 10,00,000/- as per the insurance company's letter of introduction and implementation of new health products National Parivar Mediclaim Policy and National Parivar Mediclaim Plus Policy at page 24 dated 28/08/2015. That during the policy period from 10/03/2016 to 09/03/2017, the complainant's wife Falguniben was admitted in the Muljibhai Patel Urological Hospital, Nadiyad from 17/05/2016 to 23/05/2016 at page 69 for right pelvi – Ureteric Junction Obstruction and for the said treatment the complainant has spent Rs. 6,15,964/-, however, vide letter dated 19/09/2016 at page 71, i.e., TPA of the insurance company, the insurance company paid Rs. 2,10,000/- as against the Rs. 6,15,964/- for the reasons stated in the said

letter to the complainant and therefore, the complainant has filed the complaint before the Ld. District Forum, which came to be allowed.

11. That it is the case of the complainant that since the complainant and his family members availed the policy of enhanced sum insured of Rs. 10,00,000/- at page 64 as per the letter dated 28/08/2015 of the insurance company, the complainant's wife is entitled to get the total amount of medial reimbursement expenses and exclusion clause 4.1 as well as clause 5.15 of enhancement of sum insured are not applicable. As against the same, it is the case of the insurance company that as per the discharge summary at page 68 of Muljibhai Patel Urological Hospital, Nadiyad and as per the medical certificate to be filed in by the doctor treating the patient, page 68, the complainant's wife was suffering from the said illness since last three months i.e., from the February, 2016 and the complainant and his family members obtained the enhanced sum insured policy of Rs. 10,00,000/- for the period from 10/03/2016 to 09/03/2017 then, exclusion clause 4.1 i.e., waiting period for pre-existing disease of 48 months and clause 5.15 enhancement of sum insured would be applicable.

12. That it is admitted fact that the complainant and his family members availed policy of sum insured of Rs. 3,00,000/- + cumulative bonus for the period from 2012 to 2015 and thereafter, from 2016, the complainant and his family members availed policy of enhanced sum insured of Rs. 10,00,000/- as per the letter dated 28/08/2015 of the insurance company. That looking to the discharge summary of the Muljibhai Patel Urological Hospital, Nadiyad at page 69 and 70, the complainant's wife was suffering from the illness of right pelvi –

Ureteric Junction Obstruction since last three months and the complainant's wife was admitted in the hospital for the period from 17/05/2016 to 23/05/2016. Furthermore, on perusal of the medical certificate to be filed in by the doctor treating the patient at page 68 also, it appears that the complainant's wife was suffering from the illness since last three months i.e., from February, 2016 and the enhancement policy was availed in the month of March, 2016. So, according to our considered opinion, exclusion clause 4.1 of pre-existing disease, which states that all pre-existing diseases shall be covered after the policy has been continuously in force for forty eight months would be applicable. Likewise, clause 5.15 i.e., enhancement of sum insured at page 42 would also be applicable. Therefore, according to our considered opinion, in the case of the complainant's wife, exclusion clause 4.1, i.e., waiting period of 48 months would be applicable and therefore, according to our view, 3rd party TPA has rightly settled the claim for Rs. 2,10,000/- as per the claim settlement advice at page 71 for the reasons stated in the said letter. It also transpires that discharge summary of Muljibhai Patel Urological Hospital, Nadiyad at page 69 and page 70 and medical certificate to be filed in by the doctor treating the patient at page 68, are provided along with claim form by the complainant and therefore, there is no reasons to disbelieve regarding the facts stated in the said documents by the Hospital doctor that, the complainant's wife was suffering from the said disease since last three months and therefore, also according to our considered opinion, exclusion clause 4.1 and clause 5.15 of the policy would be applicable in this case.

13. That Ld. Advocate Mr. A. N. Shah for the appellant has also placed reliance upon the decision of the Hon'ble National Commission in the case of *Rakesh Kumar vs. Oriental Bank of*

Commerce & Ors rendered in Revision Petition No. 3220/2018 and looking to the said decision of the Hon'ble National Commission it also appears that when the sum insured is enhanced subsequent to the inception of the policy, the exclusions 4.1 and 4.2 will apply afresh for the enhanced portion of the sum insured for the purpose of this section. That here, in this case also, when the complainant and his family members enhanced sum insured from Rs. 3,00,000/- in the month of March, 2016 to Rs. 10,00,000/-, then, the exclusion clause 4.1 i.e., waiting period of 48 months would be applicable.

14. That Ld. Advocate Mr. M. K. Dudhiya has also placed reliance upon the decision of the Hon'ble State Commission, Gujarat rendered in the Appeal No. 368 of 2020 in the case of the *Max Bupa Health Insurance Co. Ltd. Vs. Ishwarbhai K. Padhiyar* in support of his submission, that exclusion clause would not applicable. However, on perusal of the said decision of the Hon'ble Gujarat State Commission, more particularly regarding the para 18 and 19 of the said decision, it appears that the Hon'ble State Commission, Gujarat has not entered into the merits of the case nor law point is decided as to whether exclusion clause 4.1 is applicable in the enhanced sum insured or not and the Hon'ble State Commission, Gujarat agreed with the reasoning and justification of the Ld. District Forum and only, the Hon'ble State Commission, Gujarat has reduced the rate of interest from 8% to 7%. So, when the Hon'ble State Commission, Gujarat has not entered into the merits of the case and not decided as to whether, waiting period for the enhanced sum insured would be applicable or not, then, the decision of the Hon'ble State Commission, Gujarat would not be applicable in the facts and circumstances of the present case.

15. That it is the case of the complainant before the Ld. District Forum that at the time of issuance of policy, the insurance company has not provided any terms and conditions, exclusion clause etc., to the complainant and his family members. Hence, also the same would not be applicable. However, looking to the para 11 at page 21 of the written statement filed by the insurance company, it appears that the insurance company has categorically denied the same, and specifically contended that the insurance company has provided terms and conditions to the complainant along with policy and also explained terms and conditions of the policy not only that the insurance company has also contended in the written statement that if the complainant has not received terms and condition of the insurance policy, then, the complainant ought to have made the complaint regarding the same, however, the complainant has not made any complaint regarding the non-receipt of the terms and conditions of the policy. So, according to our considered opinion, when the complainant has not made any complaint regarding the non-receipt of the terms and conditions of the policy in writing, then, contention of the complainant before the Ld. District Forum that terms and conditions are not received by the complainant along with the policy cannot be legally acceptable.

16. That the Ld. Advocate Mr. M. K. Dudhiya for the respondent original complainant has also submitted that insurance company has also not produced afresh proposal form. However, according to our considered opinion, the Ld. Advocate for the complainant has not produced IRDAI rules and regulations i.e., mandatory to obtain afresh proposal form at the time of getting the enhanced sum insured policy. Therefore, said contention of the Ld. Advocate for the respondent original complainant is also not acceptable.

17. So, in view of the above detailed discussion, according to our considered opinion, when the complainant and his family members obtained the enhanced sum insured policy of Rs. 10,00,000/- in the month of March, 2016 and the complainant's wife was suffering from so-called illness in the month of February, 2016, then, the waiting period of 48 months as per the exclusion clause 4.1 of the policy would be applicable and clause 5.15 enhancement of sum insured would also be applicable. However, looking to the findings recorded by the Ld. District Forum for allowing the complaint, it appears that the Ld. District Forum has not properly and rightly considered the policy condition as well as history recorded in the medical certificate to be filed in by the doctor treating the patient, and erroneously and perversely allowed the complaint. Hence, findings recorded by the Ld. District Forum for allowing the complaint are erroneous and perverse and therefore, impugned order passed by the Ld. District Forum requires to be quashed and set aside by allowing the appeal filed by the appellant insurance company in terms of the following final order.

ORDER

1. The Appeal No. 68/2020 filed by the appellant the National Insurance Company Ltd. against the Himanshu Balkrushna Vaidhya is hereby allowed.

2. The impugned order dated 21/11/2019 passed by the Ld. District Consumer Disputes Redressal Forum, Navsari in Consumer Complaint No. 19/2017 is hereby quashed and set aside.

3. There shall be no order as to cost.

4. Office is directed to verify the amount deposited by the appellant in Appeal No. 68/2020 or in CMA No. 11/2020 and if found deposited, refund the same with interest, if any, accrued on deposit to the appellant by RTGS after following due procedure and verification. For this purpose, the appellant has to file an application with details to the account branch of this Commission.

5. Registry is hereby instructed to send a copy of this order in PDF format by E-mail to Learned District Consumer Disputes Redressal Fourm, Navsari for taking necessary action.

6. Office is directed to forward a free of cost certified copy of this judgment and order to the respective parties.

Pronounced in the open Court today on **08th October, 2026**.

[Dr. J.G. Mecwan]
Member

[I.D. Patel]
In-charge President