

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1737 OF 2017

(Against the Order dated 05/12/2016 in Appeal No. 875/2014 of the State Commission
Gujarat)

1. VASANTIBEN ALIAS VARSHABEN LAXMAN DAFADA
R/O. AT DARBHANGA MILL CHAWA, VIJALPORE ROAD,
TALUKA JALALPORE,
DISTRICT-NAVSARI

.....Petitioner(s)

Versus

1. BAJAJ ALLIANZ LIFE INSURANCE COMPANY LTD. &
ANR.
THROUGH MANAGER, LEGAL, REGD. OFFICE GE
PLAZA AIRPORT ROAD, YARWADA
PUNE,
MAHARASHTRA

2. BAJAJ ALLIANZ LIFE INSURANCE CO. LTD.,
4TH FLOOR, TARQUOISE TOWER, PAUDIVATI CHAR
RASTA, C.G. ROAD,
AHMEDABAD
GUJARAT

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MR. ABHIJEET SINHA AND
MS. RIMMI BHARDWAJ, ADVOCATES

FOR THE RESPONDENT :

FOR RESPONDENTS : MS. SHWETA SINGH PARIHAR,
ADVOCATE

Dated : 07 November 2024

ORDER

1. The present Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against order dated 05.12.2016, passed by the learned Gujarat State Consumer Disputes Redressal Commission, Ahmedabad ('State Commission') in FA No. 875/2014 wherein the State Commission allowed the Appeal filed by the OP against the District Consumer Disputes Redressal Forum, Navsari, ('the District Forum') order dated 28.11.2013 wherein the District Forum had allowed the complaint by the Petitioner.

2. As per report of the Registry there is a delay of 91 days in filing of the Revision Petition. For the reasons stated in the Application seeking Condonation of delay, the same is condoned.

3. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

4. Brief facts of the case, as per the complainant, are that her son, Rajubhai Laxmanbhai Dafda, purchased a life insurance policy from Bajaj Allianz Life Insurance Co. Ltd., with policy No. 0084526427, starting on 28.01.2008 and maturing on 28.01.2023. The annual premium was Rs. 12,000/-, with an insurance value of Rs. 4,08,000/-. In the event of the policyholder's death, the insurance value and the fund value were payable. Rajubhai fell ill on 12.11.2012, was admitted to M.G. General Hospital in Navsari, and then transferred to New Civil Hospital in Surat, where he died on 13.11.2012. After his death, the complainant, who was his nominee, submitted the claim form and documents to OP. On 26.02.2013, the OP forwarded the complainant a cheque of Rs.20,618/-, which was the fund value. However, the insurance claim for Rs.4,08,000/- was rejected, citing that the life assured failed to disclose his history of alcohol consumption (500 ml per day for 12 years, recorded in 2011) in the Declaration of Good Health (DGH) form dated 10.03.2011. The OP contended that if they had known about this alcohol consumption, they would not have covered the risk under same terms and conditions. The complainant, however, contended that her son was in good health and did not have any bad habits, including alcohol consumption. His sudden illness led to his death, and the rejection of the insurance amount caused her severe emotional distress. Being aggrieved, the complainant filed a consumer Complaint before the District Forum seeking claim of the sum assured along with compensation.

5. In reply, the OP contended that Rajubhai did not disclose his chronic alcohol consumption and liver disease, which they discovered after his death during their investigation. Had they been aware of his condition, the policy would not have been issued, or it would have been issued with different terms. The insurance policy had lapsed due to non-payment of premium, and Rajubhai had revived the policy by filling out the DGH form. In this form, he failed to disclose his alcohol-related health issues. Based on investigation report, medical records, and the DGH form, the OP concluded that Rajubhai's death was due to alcohol-related liver disease. As a result, they rejected the claim for the insurance amount of Rs. 4,08,000/- but paid the fund value amount of Rs. 20,618/- to the complainant. This was as per procedure and the claim was rightly repudiated.

6. The learned District Forum vide Order dated 28.11.2013 allowed the complaint with the following observations:-

“(8) In this manner the insurance holder filled up—the proposal form and opponent insurance company issued insured paid to him or insurance holder revival the policy prior to the date insurance holder is produced on behalf of the company insurance. In addition considering the D.G.H. form of the insurance company. In that insurance holder is of addition of Alcohol or not such type of question is not asked. The opponent only and only depends upon the assessment form of 01-11-2011 and Govt. Medical Vidyalaya Surat certificate and submit that insurance holder is since last 12 years additions of Alcohol consumption. With reference to this fact there is no any

affidavit of a doctor who has treated him and the insurance company have not submitted any evidence to prove that when the insured person has taken policy or when policy make revival prior to that he has a trouble of liver and was under treatment. So the opponent insurance company is totally failed to prove that prior to the policy issued he was

: order :

(1) Complainant's complaint is hereby allowed.

(2) The opponents jointly or/ independently pay to complainant Rs.4,28,618/- from the today's date order till amount shall pay up to that time period annual 9% simple interest and it is decided that complainant.” (Extracted from translated copy)

7. Being aggrieved by the Order of the learned District Forum, the OP filed First Appeal No.875 of 2014 and the State Commission vide order dated 05.12.2016 allowed the Appeal, set aside the District Forum order and dismissed the complaint with following observations:

“(2) We have heard Learned Ad. Suri P.Y.Joshi and the respondent (Original complaint) herself and read out the written submission. Read out the order of Hon’ble forum. Considering the evidence it appears on behalf of the opponent insurance company investigation made the investigation and received documents. Which were submitted on record out of those paitee M.G.General Hospital Navsari and Govt. Hospital Surat Medical Certificate of dated 1-2-2013 was submitted which submitted by page no.74 in this Appeal worth. In fact column No. 13 a question which is asked in English as per Gujarati translation if deceased has any bad habit for that in column it is clearly mentioned that chronic Alcohol for the last 10 to 15 yrs and in column No. 14 also previously he was admitted to the Govt. Hospital in Navsari. So this fact without any dispute of doubt clears that deceased was in habit consumption of Alcohol for the last 10 to 15 yrs. In this connection proposal form which was submitted by the insurance Company which is submitted on parse No.56. In that in the column is (B) insurance holder asked clearly a question.

(3) The order and judgment of learned Navsari District Consumer dispute Redressal forum given in the consumer case as 87/2013 of dated 28-11-2013 is hereby rejected.

(4) There is no order to the cost of appeal.”

(Extracted from translated copy)

8. Being dissatisfied by the Impugned Order dated 05.12.2016 passed by the State Commission, the Petitioner / Complainant has filed the instant Revision Petition bearing no.1737 of 2017.

9. The learned counsel for petitioner argued the rejection of death claim under a life insurance policy was illegal. He asserted that as the nominee of the deceased policyholder, her claim was within the scope of the policy and contended that the claim was wrongfully repudiated and that the deceased Insured never concealed any material facts. Therefore, the OP's repudiation is unjustified. She cited the case of ***Life Insurance Corporation of India vs. Kulwant Kumari 2009 SCC OnLine NCDRC 64*** and Section 45 of the Insurance Act to support her case, emphasizing that the State Commission has failed to consider the basic premise of the life insurance policy and should not be arbitrary. The Petitioner sought proper settlement of the claim and uphold the order of the District Forum.

10. On the other hand, the learned counsel for the OPs asserted that the claim was rightly repudiated due to non-disclosure of material facts at the time of taking the policy. He argued that the proposer has a duty to disclose pre-existing ailments health conditions to the insurer. The learned Counsel for the OPs relied upon the following judgments:

A. General Assurance Society Ltd. vs. Chandumull Jain & Anr AIR 1966 SC 1644;

B. Grasim Industries Ltd. vs Aggarwal Steel, (2010) 1 SCC 83;

C. Bajaj Allianz Life Insurance Company Ltd. vs. Dalbir Kaur, (2020) SCC OnLine SC 848;

D. Reliance Life Insurance Company Ltd & Anr. vs. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175.

11. I have examined the pleadings and other associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

12. The core issue revolves around whether the policyholder was liable to disclose his history of alcohol consumption and liver disease? Did he fail to so disclose? And if so, whether the same justifies the insurer to reject the claim?

13. In this regard, it is the contention of the OP that the deceased, Rajubhai Laxmanbhai Dafda was consuming liquor about 500 ML per day for 12 years, but did not disclose this in

the Declaration of Good Health (DGH) while renewing his policy. OP rejected the death claim for Rs.4,08,000/- contending that had Rajubhai disclosed his alcohol consumption, they would not have issued the policy under the same terms and conditions. OP emphasized that the policy was based on facts presented in the proposal form, and his non-disclosure of such material health information rendered the policy voidable. The death of Rajubhai's was directly related to his chronic alcoholism, leading to Alcoholic Liver Disease, hepatic failure and cardio-respiratory failure. MG Govt Hospital, Navsari records confirmed these findings. OPs relied on Hon'ble Supreme Court in ***Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175*** decided on 24.11.2019 that suppression of the facts in proposal form will render Policy voidable by the Insurer. Further, Hon'ble Supreme Court in ***Bajaj Allianz Life Insurance Company Ltd. v. Dalbir Kaur, 2020 SCC OnLine SC 848*** decided on 09.10.2020 observed as under:

“A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk.”

14. It is the contention of the Petitioner that the deceased insured was covered under the insurance policy from 10.01.2008 for maturity sum assured Rs.4,08,000 and the insured died during the course of the policy on 13.11.2012. It is a matter of record that the life assured had submitted a proposal form on 29.01.2008 wherein as reply to Question 13(b) he replied to have not ever used alcohol. The policy which had lapsed was revived on 10.03.2011. As per the record of admission of the life assured to MG General Hospital, Navsari dated 01.11.2011 the life assured is stated to be consuming 500 ML alcohol per day for 12 years. He later died on 13.11.2012. After complainant preferred the claim, the OP insurer vide letter dated 26.02.2013 repudiated the claim citing “History of Alcohol consumption @ 500 ml per day since 12 years as recorded on 1/11/2011. His fact was not disclosed in DGH dated 10/3/2011”.

15. It is undisputed that the life assured had submitted a proposal form on 29.01.2008 wherein as reply to Question 13(b) he replied to have not ever used alcohol. The same policy was in vogue for over three years and lapsed due to delay in payment, and the life assured revived on 10.03.2011. While the OP insurer has also contended that, in his request dated 10.03.2011 for revival of the said policy, as part of declaration of good health, the he had not disclosed his consumption of alcohol. Intriguingly, the said declaration of good health does not reveal any such question. Also, while the life assured stated in the proposal form on 29.01.2008 that he never used alcohol, it is not clear as to who at MG General Hospital, Navsari dated 01.11.2011 recorded that the life assured had been consuming 500 ML alcohol per day for 12 years. This was in fact the sole ground on which the claim was repudiated. However, no affidavit has been filed to state that the life assured had been consuming 500 ML alcohol per day for 12 years, including that day on 01.11.2011, and who recorded the same on 01.11.2011? When once the life assured had stated on 29.01.2008 that he never consumed alcohol and the complainant also asserted the same, the onus of establishing the

contrary of he was consuming 500 ML alcohol per day prior to that date, was on the OP. Other than mere filing of an unsigned hospital admission record of the life assured to MG General Hospital, Navsari dated 01.11.2011 suggesting that he was consuming 500 ML alcohol per day for 12 years, evidently there is nothing else on record to reasonably establish the same.

16. In this case, the investigation report by OP surveyor was mainly focussed on the life insured's alleged consumption of alcohol. Even if the surveyor's report is to be accepted as fact, it fails to establish that he had been consuming 500 ML of alcohol daily over a period of 12 years, which was the primary basis for rejecting the claim. It is the contention of the complainant that the life assured was not in the habit of consuming alcohol. The OP relied solely on the said hospital record dated 01.11.2011 to repudiate the claim. In the absence of reasonable evidence beyond the hospital record, whether the life insured was indeed in the habit of regular consumer of alcohol, and to the extent as claimed by the OP remained unclear. Lack of clarity and insufficiency of corroboration makes the OP stand unsustainable.

17. In catena of judgements, the nature of insurance contracts, scope and restraint to be exercised in interpreting the terms of contract are well discussed and crystallized by this Commission and Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of United India Insurance Co. Ltd. Vs M/s Hyundai Engineering & Construction Co. Ltd. & Ors., 2024 LiveLaw 409 has held that :

“16. Insurance is a contract of indemnification, being a contract for a specific purpose, Oriental Insurance Co. Ltd. v. Sony Cheriyan, (1999) 6 SCC 451, which is to cover defined losses, United India Insurance Co. Ltd. v. Levis Strauss (India) (P) Ltd., (2022) 6 SCC 1. The courts have to read the insurance contract strictly. Essentially, the insurer cannot be asked to cover a loss that is not mentioned. Exclusion clauses in insurance contracts are interpreted strictly and against the insurer as they have the effect of completely exempting the insurer of its liabilities, New India Assurance Co. Ltd. v. Rajeshwar Sharma, (2019) 2 SCC 671; Canara Bank v. United India Insurance Co. Ltd., (2020) 3 SCC 455; Oriental Insurance Co. Ltd. v. Samayanallur Primary Agricultural Coop. Bank, (1999) 8 SCC 543.

17. In Texco Marketing P. Ltd. v. TATA AIG General Insurance Company Ltd., Oriental Insurance Co. Ltd. v. Samayanallur Primary Agricultural Coop. Bank, (2023) 1 SCC 428, while dealing with an exclusion clause, this Court has held that the burden of proving the applicability of an exclusionary clause lies on the insurer. At the same time, it was stated that such a clause cannot be interpreted so that it conflicts with the main intention of the insurance. It is, therefore, the duty of the insurer to plead and lead cogent evidence to establish the application of such a clause, National Insurance Company Ltd. v. Vedic Resorts and Hotels Pvt. Ltd., 2023 SCC OnLine SC 648. The evidence must unequivocally establish that the event sought

to be excluded is specifically covered by the exclusionary clause, National Insurance Co. Ltd. v. Ishar Das Madan Lal, 2007 (4) SCC 105. The judicial positions on the nature of an insurance contract, and how an exclusion clause is to be proved, shall anchor our reasoning in the following paragraphs.”

18. In CA No.10671 of 2016 in ***Narsingh Ispat Ltd Vs Oriental Insurance Company Ltd. & Anr 2022 LiveLaw (SC) 443***, the Hon’ble Supreme Court while reiterating ***National Insurance Co Ltd vs Ishar Das Madan Lal (2007) 4 SCC 105 (Para 12)*** held that the burden is on the insurer to show that the case falls within the purview of exclusion clause. In case of ambiguity, benefit goes to the insured.

19. In the absence of establishing the declaration to be false, the claim for his death after over three years on 13.11.2012 cannot be repudiated on such grounds. Based on the aforesaid discussions and the above precedents, I am of the considered view that the learned State Commission erred in due appreciation of facts and law and therefore the order dated 05.12.2016 is set aside and the order of the learned District Forum dated 28.11.2013 is upheld. The Revision Petition No.1737 of 2017 is, therefore, allowed.

20. There shall be no order as to costs.

21. All other pending Applications, if any, stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER