DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM
Dated this the 27th day of March 2025

Filed on: 25/07/2023

PRESENT
Shri. D.B. Binu — Hon'ble President
Shri. V. Ramachandran — Hon'ble Member
Smt. Sreevidhia T.N — Hon'ble Member

CC.No. 502 of 2023

Complainant:

V.V.Sureshkumar, Vaniyappillil House, Enanelloor.P.O, Muvattupuzha, Ernakulam-686681.

(Adv. Tom Joseph, Court Road, Muvattupuzha-686661)

VS

OPPOSITE PARTIES:

1. M/s SBI General Insurance Co. Ltd, 9th Floor, A & B Wing Fulcrum Building, Sahar Road, Andheri (East), Mumbai-400099, Rep by its Managing Director.

2. M/s State Bank of India Ltd, Ayavana Branch, Mangalasseril Building, Ayavana.P.O, Muvattupuzha, Ernakulam-686668, Rep by its Manager.
(Adv. K.C. Bineesh counsel of 2nd opposite party)

FINAL ORDER

D.B. Binu, President

1. A brief statement of facts of this complaint is as stated below:

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The complainant is an account holder of the 2nd opposite party bank (Account No. 36758767425). The 2nd opposite party introduced a health insurance policy from the 1st opposite party and submitted the complainant's insurance application (Application No. PPHC9400072318) through their representative, Mr. Gishnu, on 03.12.2022. The complainant

paid a premium of ₹10,502/- on 14.12.2022 for a policy with a sum insured of ₹3,00,000/-. Despite repeated requests, the complainant did not receive the policy identity card, citing a technical error.

On 07.05.2023, the complainant suffered a fall, leading to severe back pain and weakness of the lower limb. He was admitted to Aster Medicity on 22.05.2023 and diagnosed with Right Cingulate Glioma. He underwent Right Fronto Awake Craniotomy on 25.05.2023, incurring treatment expenses of ₹4,65,485/-. When a cashless claim was submitted, the 1st opposite party denied it, stating that the policy was not issued due to a plan change. The premium amount was refunded on 26.05.2023.

The complainant alleges deficiency in service and unfair trade practice by the opposite parties and seeks ₹3,00,000/- as the insured amount with 12% interest from the date of claim, ₹50,000/- as compensation for financial loss and hardship, and the cost of the proceedings.

2. **NOTICE:**

The Commission issued notices to the opposite parties on 10-08-2023. The first opposite party received the notice on 16-08-2023 but failed to file their version within the statutory period and was consequently set ex-parte. The second opposite party filed a version.

3. **THE VERSION OF THE SECOND OPPOSITE PARTY :**

This Opposite Party stated that the complaint is not maintainable as there is no consumer dispute or cause of action against them. The dispute is solely between the complainant and the First Opposite Party (the insurance provider).

The Second Opposite Party admits that the complainant applied for a health insurance policy with the First Opposite Party on 03.12.2022. Following the complainant's request, the health policy premium of ₹10,502/- was transferred from the complainant's account to the First Opposite Party on 14.12.2022. However, they assert that the responsibility to issue the policy and provide details to the complainant lies with the First Opposite Party.

When the complainant submitted a cashless claim after a medical emergency, the First Opposite Party discovered that the policy had not been issued. As a result, the premium amount was refunded to the complainant on 26.05.2023. The Second Opposite Party stated that they acted only as a payment facilitator and had no role in the issuance of the policy.

The Second Opposite Party denies any negligence or deficiency in service and contends that the complainant's claim for compensation and relief is unjustified. They request the dismissal of the complaint with costs.

4. **EVIDENCE:**

The complainant submitted a proof affidavit along with five documents. The documents in the complaint are marked as **Exhibits A1 to A5.**

- **Exhibit A1** – Copy of the message received from the 2nd opposite party.
- **Exhibit A2** – Copy of the bank account statement from 01 December 2022 to 31 May 2023.
- **Exhibit A3** – Copy of the discharge summary issued by Holy Family Hospital.
- **Exhibit A4** – Copy of the inpatient final bill.

- **Exhibit A5** – Copy of the account statement from 01 May 2023 to 30 May 2023.

5. **POINTS FOR CONSIDERATION:**

i) Whether the complaint is maintainable or not?

ii) Whether there is any deficiency in service or unfair trade practice by the opposite parties?

iii) If so, whether the complainant is entitled to any relief?

iv) Costs of the proceedings, if any?

6. Summary of Written Argument Of the Complainant

1. The complaint is regarding the purposeful omission to provide insurance coverage after retaining the amount towards the premium for one year.
2. No evidence was adduced by the opposite parties, whereas the complainant submitted several supporting documents.
3. The complainant received communication from the 1st opposite party regarding a health condition assessment appointment **(Exhibit A1).**
4. The complainant deposited ₹10,500/- towards the insurance premium for the sum insured of ₹3,00,000/-, which was transferred to the 1st opposite party on 14.12.2022, as shown in the bank statement **(Exhibit A2).**
5. After the complainant's fall on 07.05.2023, he was admitted to Aster Medicity and diagnosed with Right Cingulate Glioma. He underwent Right Fronto Awake Craniotomy on 25.05.2023 and incurred treatment expenses of ₹4,65,485/-, as evidenced by the discharge summary and inpatient bill **(Exhibits A3 and A4)**.

6. Despite lodging a cashless claim, it was denied on the ground that the policy had not been issued due to a plan change. The 1st opposite party subsequently credited ₹10,502/- into the complainant's account on 26.05.2023, as reflected in the bank statement **(Exhibit A5).**

7. The 1st opposite party retained the amount towards the insurance premium from 14.12.2022 to 26.05.2023. Therefore, they were bound to honour the insurance claim of the complainant prior to 26.05.2023.

In light of the above facts and evidence, it is prayed that the complaint be allowed.

We have also noticed that The Commission issued notices to the opposite parties on 10-08-2023. The first opposite party received the notice on 16-08-2023 but failed to file their version within the statutory period and was consequently set ex-parte. The second opposite party filed a version. The complainant had produced five documents marked as Exbt.**A-1 to A-5.** All in support of his case. However, the first opposite party did not attempt to appear in the case and participate in the above proceedings before this commission or set aside the ex-prate order passed against it. It was further stated that this illegal, arbitrary and unjustified act of the first opposite party amounted to deficiency in service, indulgence in unfair trade practice, and caused mental agony and hardship to the complainant.

The first opposite party's conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the first opposite party. We have no reason to disbelieve the words of the complainant. **The**

Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).

We have meticulously considered the detailed submissions of the Complainant and thoroughly reviewed the entire record of evidence, including the argument notes. It is noted that the Opposite Parties failed to submit argument notes.

i). Maintainability of the Complaint

The complainant availed a health insurance policy through the 2nd opposite party which was underwritten by the 1st opposite party. The complainant paid a premium of ₹10,502/- [Ext.A2], but the insurance policy was not issued due to a plan change, which resulted in the denial of the cashless claim when the complainant sought treatment.

The complainant, as a consumer under the Consumer Protection Act, 2019, is entitled to seek relief for the failure of the opposite parties to honour the contractual obligation. The denial of the claim, despite payment of the premium and failure to issue the policy, constitutes a valid cause of action. Therefore, the complaint is maintainable under the provisions of the Consumer Protection Act, 2019.

ii). Deficiency in Service and Unfair Trade Practice

(a) Deficiency in Service by the First Opposite Party the complainant applied for a health insurance policy through the 2nd opposite party, and the premium of ₹10,502/- was debited from the complainant's account and transferred to the 1st opposite party on 14.12.2022.

Despite this, the 1st opposite party failed to issue the insurance policy or provide the policy document to the complainant. When the complainant sought a cashless claim after incurring substantial medical expenses (₹4,65,485/-), the claim was rejected on the ground that the policy was not issued due to a plan change.

The act of accepting the premium and failing to issue the policy amounts to a clear case of deficiency in service and unfair trade practice under Section 2(11) and Section 2(47) of the Consumer Protection Act, 2019.

Failure to honour a policy after accepting the premium constitutes a deficiency in service. Retaining the premium without providing the benefits of the policy amounts to an unfair trade practice.

(b) Liability of the Second Opposite Party:

The 2nd opposite party facilitated the transaction by debiting the premium amount from the complainant's account and transferring it to the 1st opposite party. The 2nd opposite party had no further role in the issuance of the policy or processing of the claim.

- The 2nd opposite party acted only as a payment facilitator and had no responsibility for the issuance of the policy or approval of the claim. The bank, acting as an intermediary or payment facilitator, cannot be held liable for the insurer's failure to issue the policy or honour the claim. Therefore, the 2nd opposite party is not liable for any deficiency in service.
- The complainant deposited ₹10,502/- for a health insurance policy with the 1st opposite party through the 2nd opposite party on 14.12.2022.

- The 1st opposite party failed to issue the policy and retained the premium until 26.05.2023, which amounts to unjust enrichment and unfair trade practice.
- The complainant incurred medical expenses of ₹4,65,485/-, which should have been covered under the policy if it had been issued.
- The 1st opposite party failed to file a written version within the statutory period, leading to an ex-parte decision.

Failure to issue the policy after accepting the premium amounts to deficiency in service and denial of a valid claim amounts to negligence. The 1st opposite party's failure to file a written version is deemed to be an admission of the complainant's allegations.

- **Liability of the First Opposite Party**

The 1st opposite party, by failing to issue the policy after accepting the premium and subsequently denying the claim on the basis of non-issuance of the policy, is liable for deficiency in service under Section 2(11) of the Consumer Protection Act, 2019, unfair trade practice under Section 2(47) of the Consumer Protection Act, 2019, and the mental agony and financial loss suffered by the complainant.

We determine that issue numbers (I) to (IV) are resolved in the complainants' favour due to the significant service deficiency on the part of the first Opposite Party. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the first Opposite Party.

In view of the above facts and circumstances of the case, we believe that the first Opposite Party is liable to compensate the complainant.

Hence, the prayer is partly allowed as follows:

I. The first Opposite Party shall pay ₹3,00,000/- (Rupees Three Lakh Only) to the complainant.

II. The first Opposite Party shall pay ₹10,000/- (Rupees Ten Thousand Only) to the complainant as compensation for mental agony, financial loss, and inconvenience. This amount is awarded for the deficiency in service and unfair trade practices, as well as for the mental agony and physical hardships endured by the complainant.

III. The first Opposite Party shall pay ₹5,000/- (Rupees Five Thousand Only) to the complainant towards the cost of the proceedings.

The first opposite party is liable for the fulfilment of the above orders. These orders must be executed within 45 days from the date of receiving this order. Failure to comply with the payment orders under Points I and II will result in an interest rate of 9% per annum, calculated from the date of filing the complaint (25.07.2023) until the date of full payment realization.

Pronounced in the Open Commission this the 27th day of March 2025.

D.B. Binu, President

V. Ramachandran, Member

Sreevidhla T.N, Member

APPENDIX

Complainant's Evidence:

Exhibit A1 – Copy of the message received from the 2nd opposite party.

Exhibit A2 – Copy of the bank account statement from 01 December 2022 to 31 May 2023.

Exhibit A3 – Copy of the discharge summary issued by Holy Family Hospital.

Exhibit A4 – Copy of the inpatient final bill.