Before District Consumer Disputes Redressal Commission, Mumbai Suburban, New Administrative Building, Third floor, Opp. Dr. Babasaheb Ambedkar Garden, Bandra (East), District Mumbai Suburban – 400051.

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DCDRC/MS/ CC/292/2022

Date of Admission -07/06/2022

Judgement Dated – 31/10/2025

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Alok Rajendra Bector,
R/at- 201, Ashok Beach Home,
Opp. ISKCON, Temple, Gandhi Gram Road,
Juhu, Mumbai – 400049.. …….. Complainant

V/s.

NIVA BUPA HEALTH INSURANCE COMPANY
LIMITED, Through Director,
Branch Office at – Ramee Emerald,
II, 3rd floor, C.S. No. G-571, F.P. Linking,
Road, Santacruz (West), Mumbai – 400054.
AND Regd. Office at – Max House,
1, Dr. Jha Marg, Okhla, New Delhi
110020. .....……Opposite Party

Before**- :** Hon'ble Smt. Samindara R. Surve , President,

Hon'ble Shri. Sameer S. Kamble, Member

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For Complainant – Adv. Lalwani,

For Opposite Party - Adv. Kanojia, Adv. Bangera

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JUDGMENT

PER : Hon. Smt. Samindara R. Surve, President

1. The present Complaint has been filed by the Complainant against the Opposite Party Insurance Company under Section 34 of the

Consumer Protection Act, 2019, for reimbursement of the claim amount of Rs.66,50,000/- with interest, punitive damages, cost etc. on account of the deficiency in service and the unfair trade practice on part of the Opposite Party.

2. Brief facts of the present case are as under;

1. In the year 2017, the Complainant along with his son had purchased a medical insurance policy, bearing no.30718353201700 namely "Heartbeat-Family First Platinum Policy', having worldwide coverage, from the Opposite Party, which was valid from 27th November, 2017 till 26th November, 2018. The sum assured under the said policy was of Rs.65,00,000/- (individual Rs.15,00,000/- + Floater Rs.50,00,000/-) having premium of Rs.72,622/- (1st policy). The Complainant has stated that under clause 3.5, the Complainant was entitled to reimbursement in respect of the specified illness cover outside the geographical boundaries of India as provided under clause 12.6, only on cash-less facility. Clause 9.6.3 of the said policy provided the Complainant to inform the Opposite Party of the diagnosis of the specified illness before commencement of overseas travel with pre-authorisation. Under Clause 12.76 of the said policy, the Complainant was insured for the ailment of cancer. On 1st August, 2018, the Complainant was diagnosed with the Colo-rectal cancer, when he was advised to undergo surgery. The Complainant has stated that accordingly he informed the same to the Opposite Party through his agent's email dated 24th August, 2018. The Opposite Party was also informed that the Complainant would be travelling to USA for his medical treatment. The Complainant submitted his claim for the treatment taken with Raheja Hospital and Hinduja Hospital as well as in USA to the Opposite Party under the first policy.

3. The Complainant in the meantime renewed the said policy and the 2nd policy was issued on 15th November, 2018 by the Opposite Party. However, the Opposite Party by its email dated 17th December, 2018, repudiated the claim of the Complainant under the 1st policy on

account of non -disclosure of his illness of Asthma and cancelled the 1st policy on 26th December, 2019. On being challenged the said cancellation of policy by the Complainant before the Ld. Ombudsman, he by his Award dated 31st March, 2020 allowed, the claim of the Complainant and directed the Opposite Party to reimburse his claim of Rs.20,47,343/- under the 1st Policy. The Complainant has stated that he accordingly received the Claim amount from the Opposite Party on 9th June, 2020.

4. In the meantime, the Complainant kept on taking cancer treatment from USA. The Complainant and his son on 14th August, 2020, renewed the said policy and the Opposite Party issued the 3rd policy. The Complainant submitted his bills by email dated 18th September, 2020 and resubmitted it on 7th December, 2020 amounting to Rs.88,34,560/- for reimbursement for the hospitalisation and the treatment taken at the Memorial Sloan Kettering Cancer Research Centre, New York for the period 26th March, 2019 to 31st March, 2019. However, the Opposite Party by its email dated 6th March, 2021 rejected the said claim of the Complainant without any grounds. The Opposite Party by its email dated 16th March, 2021 informed the Complainant that their claim was rejected on the basis of the terms and conditions of the policy. After exchanging several correspondence, the Complainant issued legal notice through his Advocate on 5th May, 2021to the Opposite Party, which was replied by its letter dated 16th June, 2021 thereby contended that the 2nd claim was for the hospitalization of specified treatment takenoutside India, which was payable on cashless facility under clause 3.5 of the policy and since the claim of the Complainant has been filed for reimbursement, hence has been rejected rightly. Hence, the present Complaint has been filed by the Complainant.

5. On admission of the Compliant and issuance of the notice to the Opposite Party, it appeared through its Advocate and filed the Written Statement and raised the preliminary objection that the claim of the Complainant is Rs.1,02,04,639/- which is beyond the pecuniary jurisdiction of this Commission, hence the Complaint deserves to rejected. The Opposite Party has also contended that the claim of the Complainant has

been rejected rightly as provided under clause 3.5 and 2.1 of the terms of the insurance policy, which was for cashless facility as was mandated in the policy and since the Complainant has sought reimbursement of the amount already paid, the same is not payable it was rightly rejected. The Opposite Party has also contended that the treatment underwent by the Complainant for the period July to November, 2018 in USA and the cashless request was rejected for non -disclosure of Asthma, the earlier illness since childhood. That since the cashless facility was requested by the Complainant as mandated under Clause 2.1, the repudiation of the claim is in terms of the policy terms and the Complaint is not maintainable as the claim if would be paid will amount to re-writing contract between the parties and sought dismissal of the Complaint.

6. Both the parties filed their affidavit of evidence and written argument as also advanced oral arguments. This Commission has considered all the above and framed following points for determination viz.

Sr. No.	Points	Answer
1.	Whether this Commission has the Pecuniary jurisdiction try and entertain the present Complaint?	Yes
2.	Whether the Opposite Party is guilty of and committed deficiency in service and adopted unfair trade practice?	Yes
3.	Whether the Complainant is entitled for the reliefs as prayed in the Complaint?	Yes Partly
4.	What order?	As per final order

Findings

7. As to the Point no.1- The Opposite Party has contended that since the claim of the Complainant is for Rs.1,02,04,639/- and it is beyond

the pecuniary jurisdiction of this Commission, hence the Complaint deserves to be rejected. From the record, it is clear that the Complainant has availed the insurance policy no.30718353201700 of the Opposite Party having validity thereof from 27th November, 2017 to 26th November, 2018 and paid Rs.72,622/- as the premium on it (1st policy).Thereafter, the same was renewed by issuing the insurance policy no.30718353201801 of the Opposite Party having validity thereof from 27th November, 2018 to 26th November, 2019 and paid Rs.75,857/- as the premium on it (2nd policy). Thereafter, the said policy was renewed by issuing the insurance policy no.31316677201900 of the Opposite Party having validity thereof from 27th November, 2019 to 26th November, 2021 and paid Rs.1,51,754/- as the premium on it (3rd policy). The present Complaint has been filed under Section 34 of the Consumer Protection Act, 2019. The said Section 34 (1) of the said Act provides as under, which is reproduced as under;

"Section 34 - Jurisdiction of District Commission – (1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration *does not exceed Fifty Lakhs:"*

Therefore, to determine the pecuniary jurisdiction of the present Complaint, the paid consideration is required to be considered. In the present case, the paid consideration is the amount of the premiums, which is less than rupees fifty lakhs, hence this Commission has pecuniary jurisdiction to try and entertain the present Complaint. We therefore answer the said point in affirmative.

8. As to the Point nos.2 and 3 - Admittedly, the Complainant and his son availed the policy namely "Heartbeat-Family First Platinum Policy', having worldwide coverage including USA and Canada from the Opposite Party and paid the premiums accordingly.

Clause 3.5 of the said policy provided the 'Specified illness Cover (outside the geographical boundaries of India) and the Insurance Company indemnified the reasonable charges of medical expenses of the insured

person incurred towards treatment as provided under the said Clause on cashless facility basis only.

Clause 12.76 of the said policy defines the specified illness 'Cancer' as one of the illness amongst the other illnesses as provided therein.

Under Clause 9.6.3 of the said Policy the duty was casted upon the Complainant to inform to the Opposite Party of the diagnosis of the specified illness and before commencement of the overseas travel for the required treatment and preauthorisation of the treatment and on approval, the Opposite Party to settle the claim of the hospital directly.

9. The case of the Complainant is that on 1st August, 2018, during the subsistence of the 1st policy, he was diagnosed with Colo-rectal Cancer. Pursuant to which he took treatment at P.D. Hinduja Hospital. In the meantime, 2nd policy was obtained, while he was taking treatment in USA. The Complainant's claim under the 1st policy was rejected by the Opposite Party. And by the email dated 26th December, 2018, the Opposite Party informed to the Complainant that it is unable to continue with the policy coverage any further to the Complainant on account of suppression of his pre-existing illness of Asthma. However the same was paid pursuant to the Award dated 31st March, 2020, where under the Ld. Ombudsman specifically gave his findings that the illness of Asthma is nothing to do with the diagnosis of the Cancer. We therefore observe that the Ld. Ombudsman has already held the cancellation of the First Policy to be wrong by the aforesaid Award dated 31st March, 2020, which proves that the cancellation of the insurance policy by the Opposite Party was not justified. As also, the conduct/action of the Opposite Party to issue the 3rd Policy also undermines any claim that the alleged non-disclosure made continued insurance coverage. And the fact that the Opposite Party itself restored the coverage to the Complainant, therefore the Opposite Party is not justified in decline to continue the insurance policy.

10. As far as the contention of the Opposite Party on the issue of non-disclosure of Asthma is concerned, the Complainant had disclosed the same while obtaining the Insurance Policy (1st policy) on 27th November 2017 which is duly recorded in the policy itself to the Opposite Party. The

Opposite Party has failed to prove that the said illness Asthma had any nexus to the colo-rectal cancer treatment for which the claim arises, or that disclosure would have altered the Opposite Party's decision to provide overseas cover. The Opposite Party has therefore failed to discharge its onus that the non- disclosure of said illness of Asthma was a suppression of material fact to the risk of cancer treatment overseas. The fact that the Opposite Party has acted on the Ombudsman's Award and paid a sum of Rs.20,47,343/- to the Complainant on 9th June, 2020 being the claim made under the 1stPolicy, proves that the said alleged non-disclosure illness of Asthma was immaterial to cancel the Policy and it was wrongly cancelled by it.

11. As far the linking the wrongful cancellation with the denial of cashless facility is concerned, Clause 3.5 of the said policy provided cashless mode for overseas specified-illness claims. The said that clause is part of the Policy and valid. However, it is a procedural requirement of pre-authorization / cashless facility which is available only if the policy is live and the insurer processes the pre-authorization. The Opposite Party along with its letter dated 30th November 2017 sent to the Complainant also provided the claim form for cashless as well as reimbursement of claim. In the present case, the Opposite Party cancelled the policy by its own e-mail dated 26th December, 2019 before the Complainant could obtain pre-authorization. Therefore, the Opposite Party cannot rely on its own act of cancellation of the policy to defeat the Complainant's entitlement to treatment cover. To allow the Opposite Party to do so would amount allowing it, to benefit from its own wrong. Therefore, even if Clause 3.5 normally requires cashless mode, the Opposite Party cannot repudiate liability on that ground when its wrongful cancellation made the cashless option impossible to obtain.

12. The Opposite Party has not produced any cogent evidence on record to prove that the Complainant wilfully and knowingly concealed a material fact that would have caused refusal of policy coverage or a premium at materially different terms. The Opposite Party's contention that

the Complainant was suffering with the Asthma since last 10 years, contradicted by the Complainant's position and specifically the Award dated 30th March 2020 issued by the Ld. Ombudsman. As rightly observed by the Ld. Ombudsman that the illness of Cancer cannot be related to the illness of Asthma, which has not justified the cancellation of the insurance policy and therefore the cancelation of the insurance policy was wrongful.

13. The Opposite Party's conduct of arbitrary cancellation of policy and subsequent refusal to allow cashless pre-authorization, thereby forcing the Complainant to incur or seek reimbursement for overseas medical expenses has caused financial loss and mental trauma during active cancer treatment. These acts amount to deficiency of service under Section 2(11) of the Consumer Protection Act, 2019 and adoption of the unfair trade practice on the part of the Opposite Party.

14. We therefore, observe that the Opposite Party wrongfully cancelled the 1stPolicy and, by extension, the Second Policy; such cancellation was not justified on the basis of alleged nondisclosure of Asthma.Because of the wrongful cancellation the Complainant was prevented from availing the cashless pre-authorization and was compelled to seek reimbursement. The Opposite Party cannot rely on Clause 3.5 to deny liability where its own action caused non-compliance. The Opposite Party's conduct constitutes a deficiency of service and has caused financial loss and mental distress to the Complainant and he is entitled to get the compensation. We therefore, pass the order accordingly.

15. The present Complaint has been filed in English language hence, the judgement is passed in English and the same is passed after discussion and unanimously.

Order

1. The Complaint is partly allowed;
2. It is declared that the Opposite Party has committed deficiency in service and adopted unfair trade practice;

3. The Opposite Party is directed and ordered to pay a sum of Rs.66,50,000/- to the Complainant within a period of 60 days from the date of receipt of this order, failing which to pay the interest at the rate of 6% p.a. thereon till the payment and / or realization .

4. The Opposite Party is directed and ordered to pay a sum of Rs.30,000/- towards compensation to the Complainant within a period of 60 days from the date of receipt of this Order;

5. The Opposite Partyis directed and ordered to pay a sum of Rs.10,000/- the towards cost to the Complainant within a period of 60 days from the date of receipt of this Order;

6. The certified copy of this order to be supplied to both the parties free of cost as per rule.

Date :- 31/10/2025

Place :- Bandra – Mumbai.

Sd/-	Sd/-
(Sameer S. Kamble)	(Samindara R. Surve)
Member	President