Date of filing: 06.08.2024
Date of Disposal: 13.03.2025

BEFORE THE BANGALORE URBAN II ADDITIONAL DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, SHANTHINAGAR, BANGALORE – 560027

DATED THIS THE 13th DAY OF MARCH 2025

CONSUMER COMPLAINT NO.297/2024

PRESENT:

SRI VIJAYKUMAR.M.PAWALE, B.A., LL.B., (Spl)., ... **PRESIDENT**

SMT.V.ANURADHA, B.A., LL.B., ... **MEMBER**

KUM.RENUKADEVI DESHPANDE, B.Com., LL.B., (Spl)., ... **MEMBER**

COMPLAINANT:

Mr.John Jacob,
Aged about 44 years,
S/o Mr.Jacob Samuel,
Residing at Villa-19,
Anugraha Layout,
Angalapura, Doddagubbi,
Bengaluru – 560 077.

(Rep. by Mr.George Philip, Advocate)

V/s

OPPOSITE PARTIES:

1. Niva Bupa Health Insurance Co., Ltd.,
(Max Bupa Health Insurance Co. Ltd.,),
Represented by its
Managing Director & CEO,
Having its office at
#30/1, First Floor,
Vaishnavi Silicon Terrace,
Near Hosur Road,
Audugudi Police Quarters,
Bengaluru,
Karnataka – 560 095.

13/3

Also having its registered office address at
C-98, First Floor, Lajpat Nagar 1,
New Delhi – 110 024.

2. Managing Director & CEO,
Niva Bupa Health Insurance,
(Max Bupa Health Insurance Co. Ltd.,),
Having its registered office address at
C-98, First Floor, Lajpat Nagar 1,
New Delhi – 110 024.

3. Director-Operations & Customer Service
Niva Bupa Health Insurance,
(Max Bupa Health Insurance Co. Ltd.,),
Having its registered office address at
C-98, First Floor, Lajpat Nagar 1,
New Delhi – 110 024.

(OPs No.1 to 3 are Represented by Sri.Ashoka.E, Advocate)

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By SRI.VIJAYKUMAR.M.PAWALE, PRESIDENT:

//JUDGMENT//

1. This is a complaint filed by the complainant under Section 35 of the Consumer Protection Act, 2019, against opposite parties (hereinafter referred as OPs) for seeking order directing the OPs to reimburse Rs.53,480/- along with interest @ 12% p.a. from 03.03.2024, to pay compensation of Rs.1,00,000/- towards mental agony, loss, damage, inconveniences caused due to the delay in approval of the Insurance

13/3

Claim which they are liable to pay for the deficiency of service.

2. The facts averred in the complaint, in brief, are as shown below:

The complainant along with his wife and children are holding Bupa Health Insurance Policy bearing No.32894542202200 which was valid for a term starting from 14.12.2022 till 13.12.2025. The complainant had taken the said insurance policy by paying a gross premium of Rs.66,315/- and a base sum insured is Rs.10,00,000/-. The said policy covers Hospital Cash, Inpatient Care, Day Care Treatment, Alternative Treatment, Domiciliary Hospitalization, Pre and Post hospitalization Medical Expenses along with other benefits.

3. Further, in the complaint it is stated that the complainant's wife Mrs.Princy John was admitted at Bangalore Baptist Hospital from 22.01.2024 to 20.03.2024 for Acute Exacerbation of Reactive Airway Disease. The complainant claimed for a cashless request which the complainant can avail as per the policy, but the OPs had rejected the complainant's request by sending a letter for disapproval dated 20.03.2024 in which the OPs have cited a wrong

13/3

diagnosis as "Sleep Disorders" and made a reason for disapproval. In the said disapproval the OPs have also advised the complainant to submit the claim documents for reimbursement.

4. Further, in the complaint it is stated that after the complainant's wife discharge, the complainant had requested for Insurance claim and had submitted the required documents for processing the said insurance claim. The OPs have not approved the complainant's insurance claim for wrong reasons. The OPs have issued a letter dated 03.03.2024 rejecting the complainant's insurance claim mentioning the reason for rejection as under:

> "1. "Ailment (Diabetes) for which treatment expenses are claimed, is specified for Insured under pre-existing disease in the Policy. Any treatment related to this condition is not covered until completion of waiting Period of 36 months from the inception of the First Policy with us". We regret the claim is not payable. Refer: Clause No.6.1(a) of the policy.
> 2. As per submitted documents, patient was admitted primarily for diagnostic and evaluation purpose. Therefore, we regret the claim is not payable policy clause 6.4."

5. Further, in the complaint it is stated that the complainant had provided the OPs with additional

information and clarification to review the claim, and submitted a review request to consider their decision. Further, the complainant had submitted a certificate dated 04.03.2024 issued by Dr.Sajin Sunny Mathew (Consultant-Pulmonologist) along with the request of review through Insurance Online Application. **The Doctor had clearly stated that the patient was not admitted for evaluation of Diabetes Mellitus, but was admitted for Acute Exacerbation of Reactive Airway Disease**. The doctor has also certified that the admission was not for primary evaluation and diagnostic purpose alone.

6. Further, in the complaint it is state that the OPs without considering the review request and the documents annexed had issued an email dated 14.03.2024. The OPs have stated in the email that the decision of rejecting the claim remains unchanged. The reasons mentioned for rejecting the review request was again that Diabetes is a pre-existing disease under the policy and any treatment related to this condition is not covered until the waiting period of 36 months is not completed as per clause 6.1(a) of the policy and the reason that the documents submitted by the complainant are for diagnostic and evaluation purposes, which is not covered by the policy under clause 6.4.

13/3.

7. Further, in the complaint it is stated that the discharge summary mentions that the complainant's wife was **diagnosed with Acute Exacerbation of Reactive Airway Disease**, which is mentioned as the first term in the diagnosis. The In-Patient Bill consultation and treatment was done only by Pulmonologist, which clearly states that the treatment was done related to respiratory system. Further, stated that the In-Patient bill does not reflect any treatments or consultation provided by endocrinologist/diabetes specialist or any consultation related to diabetes issue. **Acute Exacerbation of Reactive Airway Disease is not related to diabetes**. Hence, Clause 6.1(a) of the policy is not applicable.

8. Further, in the complaint it is stated that the consultation, diagnosis and treatment taken was related to Acute Exacerbation of Reactive Airway Disease and was not for any other diseases or diabetes. Hence, the said Clause 6.4 of the policy is also not applicable. None of the clauses in the policy has been violated and it deems fit to be applicable and the claim should have been approved at least after inspecting the review request and also the documents annexed to it.

12/3

9. Further, in the complaint it is stated that the complainant has produced all the documents in support for clarifications, despite which the OPs have failed to consider any of these documents, neither have acknowledged any requests made by the complainant.

10. Further, in the complaint at para No.11 it is stated that the complainant hasn't violated any terms of the policy nor has also acted with an ill intention. The complainant has produced all the documents as per clause 7.2 & 7.3 of the policy for availing the cashless facility and reimbursement claims. The complainant's claim was as per the terms of the policy and not against any terms in the policy, but the OPs have violated the terms containing in the policy.

11. Further, in the complaint at para No.12 it is stated that the OPs have also violated the orders in case precedents passed by the Hon'ble Supreme Court. The object of buying a Mediclaim policy is to seek indemnification in respect of a sudden illness or sickness that is not expected or imminent. If the insured suffers a sudden sickness or ailment, which is not expressly excluded under the policy, a duty is cast on the insurer to indemnify the appellant for the expenses incurred. Once the policy has been issued

after assessing the medical condition of the insured, the insurer cannot repudiate the claim by citing an existing medical condition, which was disclosed by the insured in the proposal form and which conditions has led to a particular risk in respect of which the claim has been made by the insured. The OP's actions clearly amount to violation of precedent court orders.

12. Further, in the complaint at para No.13 it is stated that OP's actions amount to unfair trade/business practices. OPs have rejected an insurance claim which they were bound to approve and cited wrong reasons with an intention to reject the insurance claim. OPs actions amount to breach of representation as they have violated the representations made by them at the time of availing insurance. Their acts also amount to deficiency of services as they have not provided any proper service to the insured person who have availed insurance policy believing that they will provide proper service by approving medical claims made within the terms of the policy.

13. Further, in the complaint at para No.14 it is stated that complainant with no other option had sent a legal notice dated 29.04.2024 to the OPs to reimburse the hospital expenses claimed in the final bill as well as to

pay compensation for the inconvenience caused due to rejection of medical claim. OPs have sent a reply dated 17.05.2024 to the legal notice of complainant pointing the same invalid reasons for rejecting the claim. The complainant tried to reach the OPs and informed regarding their grievances of delay of approving the review request and reimbursement of medical expenses and also submitted all the documents in support of the claim, despite which the OPs have not responded positively nor have directed the complainant in any manner which can support in order to receive the claim. The OPs act of entering into policy and not able to fulfil their obliged duty of providing claim is clearly a deficiency of service. Hence, the complainant has filed this complaint for seeking relief against OPs as prayed in the complaint.

14. After registering the complaint, notices of the complainant's complaint were issued to the OPs by this Commission and in response to the said notice the OPs appeared through Counsel and filed written version mainly contending that the complaint filed by the complainant is vague, false, vexatious and frivolous and to injure the goodwill and reputation of the replying OP. However, the OPs in written version admitted the issuance of policy bearing No.32894542202200 to

13/3

Mr.John Jacob which covers himself and his family members namely Mrs.Princy John i.e., wife of complainant, Ms.Katherine John (daughter) and Mr.Kenz John (Son) under Family Floater under ReAssure Plan for the period 14.12.2022 to 13.12.2025 for sum insured of Rs.10,00,000/- at the gross premium of Rs.66,315/-.

15. Further, in the written OP contended that the OP company received a claim of Rs.53,480/- bearing claim ID No.1659791 on behalf of the complainant for the alleged treatment of his wife Mrs.Princy John for Acute Excacerbation of Reactive Airway Disease which was diagnosed at Bangalore Baptist Hospital, where the patient was admitted from 20.01.2024 to 23.01.2024. After verification of the documents it was revealed that the patient has a history of Pre-Existing Disease, Diabetes (Mellitus), Hypertension and Hypothyroidism which was prior to the policy inception and any expenses related to the pre-existing disease is not covered until completion of waiting period of 36 months from the inception of the first policy.

16. Further, in version it is contended by OPs that as per the submitted documents, patient was admitted primarily for diagnostic and evaluation purpose.

Accordingly, the claim was not payable under policy clause 6.1(a) & 6.4 of the policy terms and conditions and the rejection of the claim was proper, legal, valid and justified. There is no deficiency in service on the part of the OP Company in entertaining the claim.

17. Further, in written version OPs quoted some decisions in support of its rejection of the claim of the complainant and also quoted Standard Exclusions clause existing in the policy terms and conditions.

18. Further, OPs in written version under the caption of Para-wise Reply has denied all the allegations made against OPs in the complaint and contended that there is no cause of action for the complainant's complaint and complainant is not entitled for any reliefs as prayed in the complaint.

19. To substantiate his case, the complainant has filed his affidavit evidence and got marked documents Ex.P1 to P12. It is pertinent to note here that even after giving sufficient opportunities OPs have not filed their affidavit evidence. Advocate for complainant filed written argument with 1 citation. Advocate for OPs neitherfiled written argument nor submitted oral arguments also.

13/3

20. Advocate for complainant submitted a citation i.e., Copy of the Judgment dated 06.12.2021 passed by the Hon'ble Supreme Court of India in Civil Appeal No.8386/2015 (Manmohan Nanda vs. United India Assurance Co., Ltd., &Anr).

21. We have perused the entire records including written argument and also citationsubmitted by Advocate for complainant. We are having in our mind the principles stated in the said decision for the disposal of this complaint.

22. The points that arise for our consideration and determination are as under:

1. **Whether the complainant proves that there is a deficiency of service on the part of the OPs?**
2. **What order?**

23. Answers to the above said points are as under;

POINT NO.1: In the Affirmative;

POINT NO.2: As per final order for the following

REASONS

24. **POINT NO.1:-** Of-course, looking to complaint averments, documents produced by complainant, written version of OPs it appears that it is not in dispute

13/3

that OPs have issued Family Floater under ReAssure Plan for the period 14.12.2022 to 13.12.2025 for sum insured of Rs.10,00,000/- at the gross premium of Rs.66,315/-. Admittedly, the OPs have rejected the claim of the complainant mainly stating that the treatment taken by the complainant's wife is related to pre-exiting disease i.e., Diabetes and so as per terms and conditions of the policy there is a waiting period of 36 months in respect of claim related to pre-existing disease i.e., Diabetes.

25. It is worthwhile to note here that, as already stated above the OPs have not filed their affidavit evidence to prove their contentions taken in written version and also not produced any documents. Burden is upon OPs to show that the treatment taken by the complainant's wife is related to pre-existing disease i.e., Diabetes or atleast OPs ought to have adduced any evidence to show that the treatment taken by the complainant's wife in respect of **Acute Exacerbation of Reactive Airway Disease**is related topre-existing disease i.e., Diabetes. It is settled law that, mere assertions in the version cannot be taken and treated as evidence.

26. Moreover, the complainant has produced documentary evidence i.e. Ex.P4 the letter dated

13/3

04.03.2024 issued by Dr.Sajin Sunny Mathew, MBBS, MD & DNB Respiratory Medicine, EDARM, MNAMS, Consultant Pulmonologist, Bangalore Baptist Hospital, Regn. Number 159683 (KMC). The extract of the Ex.P4 Certificate is as shown below:

"Bangalore Baptist Hospital
Quality with Compassion since 1973

4th March 2024

To Whom It May Concern

This is to hereby inform that Mrs.Princy John, 41 years old female bearing hospital ID:AA982211 was admitted between 20th January 2024 and 23rd January 2024 with the diagnosis of <Acute Exacerbation of Reactive Airway Diseases, Type 2 Diabetes Mellitus, Hypertension, Hypothyroidism, Anemia, Grade 2 Fatty Liver>.

Please note the following in relation to the queries raised:

1. Patient was **not** admitted for evaluation of Diabetes Mellitus during the present stay and on the contrary was admitted for **Acute Exacerbation of Reactive Airway Disease and is not a direct complication of Diabetes Mellitus**.
2. Patient was admitted in view of acute exacerbation of reactive airway disease which required IV medications and nebulizations as mentioned in the discharge summary – which warranted in-patient admission and clinical

13/3

monitoring. **Her admission was not for primary evaluation and diagnostic purpose alone.**
This letter has been issued at the request of the patient and in response to queries issued from insurance provider of the patient.
Thanking you,

Yours sincerely,

Dr.Sajin Sunny Mathew, MBBS, MD & DNB Respiratory Medicine, EDARM, MNAMS,
Consultant Pulmonologist,
Bangalore Baptist Hospital,
Regn.Number 159683 (KMC)".

27. So, looking to Ex.P4 stated supra coupled with other documentary evidence on record produced by the complainant particularly Ex.P6 Discharge Summary and also looking to facts and circumstances of the case and in view of the principles stated in the decision relied on by Advocate for the complainant, we are of the considered view that the complainant has proved that there is a deficiency of service and unfair trade practice on the part of OPs since OPs have rejected the complainant's claim without proper and acceptable reasons. Hence, point No.1 is answered in the affirmative.

28. **POINT NO.2**: The complainant has prayed for seeking order against OPs directing to reimburse Rs.53,480/- along with interest @ 12% p.a. from

13/3

03.03.2024, to pay compensation of Rs.1,00,000/- towards mental agony, loss, damage, inconveniences caused due to the delay in approval of the Insurance Claim which they are liable to pay for the deficiency of service. But looking to facts and circumstances of the case, it appears that seeking compensation of Rs.1,00,000/- towards deficiency of service etc., and cost of litigation appears to be exorbitant. We are of the considered viewthat it would meet ends of justice if OPs are directed to pay Rs.53,480/- to the complainant along with interest @ 8% p.a. from 20.03.2024 till realization and Rs.5,000/- as compensation towards deficiency of service and mental agony and Rs.5,000/- towards cost of litigation to the complainant. Therefore, in view of answer on point No.1 and for the foregoing reasons, the complainant's complaint has to be allowed partly. In the result, we proceed to pass the following:

ORDER

The complainant's complaint filed under Section 35 of the Consumer Protection Act, 2019 is allowed partly.

The OPs are liable to pay Rs.53,480/- (Rupees Fifty Three Thousand Four Hundred Eighty only) to the complainant along with

13/3

interest @ 8% per annum from 20.03.2024 till realization.

Further, OPs are also liable to pay Rs.5,000/- (Rupees Five Thousand only) as compensation towards deficiency of service and mental agony and Rs.5,000/- (Rupees Five Thousand only) towards cost of litigation to the complainant.

The OPs shall comply with the above said order within 45 days from the date of this order, failing which the OPs shall pay interest @ 10% per annum on amount of Rs.53,480/- (Rupees Fifty Three Thousand Four Hundred Eighty only) to the complainant till realization.

Supply free copy of this order to both parties.

Return spare copies of the pleading and evidence if any to the parties.

(Dictated to the Stenographer, typed by her directly on computer, and then corrected, signed and then pronounced by the open Commission on this the **13th day of MARCH, 2025**).

13/03/2025 13/3/2025 13/3/2025

(RENUKADEVI DESHPANDE)
MEMBER

(V.ANURADHA)
MEMBER

(VIJAYKUMAR.M.PAWALE)
PRESIDENT

CC/297/2024

Date of filing: 06.08.2024
Date of Disposal: 13.03.2025

//ANNEXURE//

Witness examined for the complainant's side:

Mr.John Jacob, who being the complainant has filed his affidavit.

List of documents filed by the complainant:

1. Ex.P1: Copy of the Policy Schedule,
2. Ex.P2:Copy of letter dated 20.03.2024 written by OP to complainant,
3. Ex.P3: Copy of letter dated 03.03.2024 written by OP to complainant,
4. Ex.P4: Copy of Certificate dated 04.03.2024 issued by Bangalore Baptist Hospital,
5. Ex.P5: Copy of e-mail,
6. Ex.P6: Copy of Discharge summary dated 23.01.2024,
7. Ex.P7: Copy of In Patient Bill dated 23.01.2024,
8. Ex.P8: Copy of legal notice dated 29.04.2024 issued by complainant to OPs,
9. Ex.P9: Copy of postal receipt,
10. Ex.P10: Copy of postal acknowledgement,
11. Ex.P11: Copy of Reply Notice dated 17.05.2024 written by OPs to complainant,
12. Ex.P12: Certificate under Section 63-B of BSA Act, 2023.

Witness examined on behalf of the Opposite Parties:

-NIL-

List of documents filed by the Opposite Parties:

-NIL-

13/3/2025
(RENUKADEVI DESHPANDE)
MEMBER

13/3/2025
(V.ANURADHA)
MEMBER

13/3/2025
(VIJAYKUMAR.M.PAWALE)
PRESIDENT