

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

RESERVED ON : 03.03.2025
PRONOUNCED ON : 06.03.2025

Case: OWP No. 1448/2010

1. National Insurance Co. Ltd. through its Assistant Manager, Divisional Office-II, Canal Road, Jammu
Sh. S.N.Koul, age 57 years.
2. Branch Manager, National Insurance Co. Ltd. Gandhi Nagar, Jammu.
3. National Insurance Co. Ltd. 3 Middle Town Street, Kolkata.

.....Appellant(s)/ Petitioner(s)

Through :- Mr. Suneel Malhotra, Advocate.

Vs

1. Jammu and Kashmir State Consumer Disputes Redressal Commission, 3 Manda, Jammu through its Chairman.
2. Mr. Galdan Wanchuk, S/o Sh. T.W.Kolong, R/o Tawi Vihar, Sidhra, Jammu through his mother Dr. P. Angmo W/o Sh. T.W.Kolong, R/o Tawi Vihar, Sidhra, Jammu.
3. Family Health Plan Ltd., Aditya J.R.Tower, 3rd Floor, Road D-2, Banjara Hills, Hyderabad.

.....Respondent(s)

...Proforma Respondent(s)

Through :- Mr. Mohit Vaid, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

PER MOKSHA KHAJURIA KAZMI-J :

This Petition under Article 226 of the Constitution of India is directed against Judgment/Order dated 08.10.2010 passed by the Jammu and Kashmir State Consumer Dispute Redressal Commission, Jammu (respondent No.1) passed in Appeal No. 3141/10 titled “*Mr. Galdan Wanchuk Vs. Family Health Plan Ltd.*”

BRIEF FACTS :-

1. Respondent No.2 herein filed a Consumer Complaint against the petitioners and proforma respondent No.3, before the Divisional Consumer

Forum, Jammu alleging therein that the mother of respondent No.2, namely, Dr. P. Angmo had taken the Mediclaim Insurance Policy bearing NO. 420806/48/03/8500962, for the period commencing 24.02.2005 to 23.02.2006. It is stated that during the existence of the Policy, respondent No.2 suffered a major depression & disorders. He was diagnosed as Schizophrenia, for which, respondent No.2 had taken treatment from different hospitals. She sought indemnification of the sum incurred i.e. Rs. 1,44,972/-, Rs.26,250/- and Rs.65,100/- spent on the treatment on different dates i.e. total comes to the tune of Rs.2,26,322/-. It is stated in the complaint that the respondent No.2 remained admitted thrice to the hospitals (i) South Point Hospital from 20th Jan. 2005 to 4th Feb. 05, (ii) South Point Hospital for post hospitalization period on 28th Feb. 2005 and (iii) Santulan from 3.11.2005 to 3.12.2005.

2. Petitioners submitted the claim of respondent No.2 to Family Health Plan Ltd. a TPA, who has a panel of Doctors and on whose advice, the petitioner-Company processes the claim, it was opined by the medical team that the claim does not fall within the preview of the Policy on the ground that outdoor patient treatment is not covered under the Policy and the psychiatric and psychosomatic disorders/diseases are excluded under Clause 4.8 of the Policy.
3. The Learned Divisional Consumer Forum, Jammu after going through the evidence and material on record held that the petitioner Company is not liable and, accordingly, held the repudiation of the claim as valid and justified and, thus, complaint of the respondent No.2 was dismissed. The operative part of the judgment dated 19.02.2010 passed by the learned Divisional Forum is reproduced as under:-

“In view of the rival contentions of L/C for the parties, we hold that the repudiation of the claim of complainant passed by the Ops is justified and does not warrant any interference of this Forum. Accordingly, the complaint is dismissed. In the circumstances of the case, there is no order to cost. File stands disposed of and be consigned to records after its due completion.”

4. Respondent No.2 being aggrieved of the Judgment/Order passed by the learned Divisional Forum, Jammu dated 19.02.2010 filed an Appeal before the Jammu and Kashmir State Consumer Dispute Redressal Commission, Jammu. The Commission after considering the Appeal and the stand taken by the petitioners set aside the judgment of the learned Divisional Forum, Jammu and directed the petitioners as under:-

“We allow the appeal and set aside the impugned order. Accordingly, respondent Nos. 2 & 3 are directed to indemnify the appellant regarding his three claims in the sum of (i) Rs.1,44,972/- (Rs one lac forty four thousand nine hundred and seventy two), (ii) Rs.26,250/- (Rupees Twenty-Six thousand two hundred and fifty) and (iii) Rs.65,100/- (Rupees Sixty-five thousand and one hundred only) along with interest @ 8% p.a from the date of filing the complaint till the final payment is made. They are also liable to pay damages to the appellant in the amount of Rs.30,000/- (Rupees thirty thousand). They have to bear the cost of litigation quantified in the sum of Rs.8000/-. The appeal is consigned to the records and record of the Forum be returned at once.”

5. The petitioners herein have challenged the Judgment/Order dated 08.10.2010, passed by the Jammu and Kashmir State Consumer Dispute Redressal Commission, Jammu on the ground that the Commission has exceeded its jurisdiction, thereby passing the impugned judgment which is illegal and bad in the eyes of law. It is further stated that respondent No.2 was suffering from such a disease/symptoms which could have been treated as an outdoor patient and the suffering of the complainant from psychiatric and psychosomatic disorders is specifically excluded under Clause 4.8 of the Policy. The petitioners have relied upon the judgment passed by the Hon'ble Supreme Court in case titled "*Oriental Insurance Company Limited Vs. Sony Cheriyan*" reported as (1999) 6 SCC 451.
6. Per contra, in the objections, it is stated that the ailment suffered by respondent No.2 and the treatment undertaken by him at various hospitals had taken place during the currency of the Mediclaim Policy, however, the claim of the respondent No.2 was repudiated by the petitioners, without any reasonable ground. The disease with which respondent No.2 was suffering, was fully covered under the Insurance Policy, at the time of obtaining Insurance Policy, the petitioners were

duly made aware about the disease with which respondent No.2 was suffering. The expert in the field has specifically rejected the opinion contained in the letter of Family Health Plan Limited, where Dr. Chugh has specifically mentioned that any individual suffering from major depressive disorder with strong suicidal ideation has to be advised for hospitalization, he cannot be managed at home. Learned State Commission has clearly stated that respondent No.2 has not based his claim on the basis of domiciliary hospitalization as dealt within Condition No. 2.4.

7. Heard learned counsel for the parties and perused the material on record.
8. Learned counsel for the petitioners has vehemently argued that the respondent No.2 could have been treated as an outdoor patient, such treatment stand, specifically excluded under the terms and conditions of the Policy. Moreover, the disease from which respondent No.2 was suffering, psychiatric and psychosomatic disorder, has been specifically excluded in terms of the Policy.
9. The Mediclaim Policy of respondent No.2 was valid from 24.02.2004 to 23.02.2005, subject to certain terms and conditions contained therein, relevant Clauses are as under:-

“1.0. In the event of any claim/s becoming admissible under this Scheme, the Company will pay to the Insured Person the amount of such expenses as would fall under different heads mentioned below, and as are reasonably and necessarily incurred thereof by or on behalf of such Insured Person, but not exceeding the Sum insured in aggregate mentioned in the schedule hereto.

- A) Room, Boarding Expenses as provided by the hospital/nursing home.
- B) Nursing Expenses.
- C) Surgeon, Anesthetist, Medical Practitioner, Consultants, Specialists Fees.
- D) Anaesthesia, Blood, Oxygen, Operation Theatre Charges, Surgical Applications, Medicines and Drugs, Diagnostic Materials and X-Ray, Dialysis, Chemotherapy, Radiotherapy, Cost of Pacemaker, Artificial Limbs and Cost of organs and similar expenses.

Note: Company's liability in respect of all claims admitted during the period of insurance shall not exceed the Sum insured per person mentioned in the Schedule."

"2.4 Domiciliary Hospitalization Benefit means:

Medical treatment for a period exceeding three days for such illness/disease/injury which in the normal course would require care and treatment at a hospital/nursing home but actually taken whilst confirmed at home in India under any of the following circumstances namely:-

- i) The condition of the patient is such that he/she cannot be removed to the hospital/nursing home.
- or
- ii) The patient cannot be removed to hospital/nursing home for lack of accommodation therein."

"4.8 Convalescence, general debility, 'Run-down' condition or rest cure, congenital external disease or defects or anomalies, sterility, venereal disease, intentional self injury and use of intoxicating drugs/alcohol."

10. In terms of Clause 1.0 the claimant/respondent No.2 was fully eligible to claim insurance on account of his hospitalization due to major depressive disorder with strong suicidal ideation. As per the expert opinion, it was not proper to manage respondent No.2, at home. Learned State Commission has already held that petitioners could not substantiate alleged disqualification of an insured, suffering from disease of psychiatric, psychosomatic disorders to claim indemnification either being an indoor or outdoor patient. Moreover, it has also been held by learned State Commission that the respondent No.2 has not based his claim on Clause 2.4 domiciliary hospitalization, as such, the same is not applicable to the claim of the respondent No.2.

11. Learned counsel for the petitioners has also failed to convince us with respect to applicability of Clause 4.8 of the Policy. He has stated that the medical treatment provided to respondent No.2 at "Santulan", was because of his addiction to drugs, whereas it is clearly reflected in the impugned judgment/order that "Santulan" is a specialized centre for Management of Psychiatric and Alcohol/Drug problem, situated at Delhi. The respondent No.2 might have been admitted at "Santulan" for psychiatric treatment and not for any drug related treatment. Petitioners

have failed to substantiate that respondent No.2 was admitted due to drug addiction, as such, his claim has to be excluded in terms of Clause 4.8 of the Policy.

12.Learned counsel for the petitioners has also stated that in terms of the impugned judgment, learned State Commission has not only held Insurance Company liable to pay damages to respondent No.2 in the amount of Rs.30,000/- but has also imposed cost to the tune of Rs.8000/-, thereby imposing cost twice on the petitioners.

13.In view of the above, we do not find any perversity in the impugned judgment, except the liability of damages being imposed upon petitioners. We, therefore, modify the judgment impugned, thereby relieving the petitioners from the liability for the damages to the amount of Rs.30,000/- to be paid to the petitioners. Petitioners have already deposited an amount of Rs.3,45,216/- on 03.01.2011, before the Registry of this Court, the same be released in favour of respondent No.2, excluding the amount of Rs.30,000/- which is to be returned to the petitioners, along with the proportionate interest in favour of the parties.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU :
06.03.2025
Pawan Chopra

Whether the Judgment is speaking: Yes/No
Whether the Judgment is reportable: Yes/No