

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

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ADVANTAGE - IV

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

26th January 2022

Subject: E-filing of complaint before the Consumer Commission

Esteemed Sir,

With due respect beg to state that I have bought a Micromax brand smart phone worth 10000 INR before 5 months through online, from flipkart. After 5months of use, its battery malfunctioned and Sambalpur service centre received my phone, and issuing me with a Job-sheet. Told me to wait one week on 6 /01/2022. But till date they are delaying with reason of not getting parts from Micromax company. Want to know the online filing of consumer complaint through edakhil.nic.in.

I am also unable to calculate the claim amount.

I am unable to take my online classes due to unavailability of my phone in this pandemic situation.

Durlava Patel
At/ po- Gudigaon
Jharsuguda

Ans:

It is nice to know that you are aware of the e-filing facility being offered by the e-daakhil portal (<https://edaakhil.nic.in>) of the Department of Consumer Affairs. The portal is quite user friendly. All instructions are available in document form (.pptx) and video form. Follow the instructions and register in the portal, with your email id and mobile phone.

After registering, the Complainant/Advocate user can file a complaint online. E-daakhil handbook, available in the portal, is providing all the details, following which the Complaint Petition can be filed. Odisha is one of the first states to get integrated in the system.

There is no hard and fast rule for computing the compensation and cost. Based on the loss suffered by the complainant and the inconvenience caused to him, the amount of relief can be quantified. Say, in the instant case, a compensation of Rs. 5,000/- and a cost of Rs. 5,000/- can be sought.

Insurance Company held right in repudiating the claim filed by the Insured on the ground of suppression of material facts.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 475 OF 2016

(Against the Order dated 20/01/2016 in Complaint No. 14/2012 of the State Commission Maharashtra)

SMT. SUNITA

W/d. Sandeep Khedekar, R/o. Hiren Plaza No.1,
3rd Floor, near Radhika Mangal Karyalaya
SahakarNagar, Chandrapur. Maharashtra

.....Appellant(s)

Versus

HDFC STANDARD LIFE INSURANCE CO. LTD.

5th Floor, Eureka Towers MindplaceComplex
Link Road, MaladWest, Mumbai – 440064.

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

HON'BLE DR. S.M. KANTIKAR, MEMBER

Dated : 25 Oct 2021

ORDER

R. K. AGRAWAL, J., PRESIDENT

1. Delay condoned.
2. Challenge in this First Appeal is to the Order dated 20th January, 2016 passed by the State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench at Nagpur (for short, “the State Commission”) in Complaint Case No. 14 of 2012 whereby the Complaint filed by the Complainant/Appellant herein, was dismissed holding that there was no deficiency in service on the part of the Opposite Parties/Respondents herein in repudiating the claim preferred by the Complainant.
3. Concisely put, the facts leading to the filing of the Complaint before the State Commission are that the Husband of the Complainant (for short, the “Deceased”), during his life time, had obtained two Insurance Policies from the Opposite Party No.1, namely, HDFC Standard Life Insurance Company Ltd. (for short, the “Insurance Company”) bearing No.12992586 on 30.06.2009 with assured sum of Rs 12,50,000/- and HDFC Term Assurance Policy bearing No.13006145 dated 25.08.2009 with assured sum of Rs 75,00,000/-. During the validity of the said Policies, the Deceased was murdered by the Naxalites and a case was registered by the Police on 01.05.2011. The Complainant, being legal heir of the Deceased submitted the Claim under the said two Policies with the Insurance Company along with all necessary documents, which were acknowledged by the Insurance Company vide their letter dated 13.09.2011. By the said letter, the Complainant was also informed that since the death of the Deceased has taken place within two years of issuance of Policies, the Claim is an early Claim and the Insurance Company would verify certain facts before deciding the Claim and may call additional information or clarifications to be provided by the Complainant. However, subsequently, vide two separate Letters both dated 12.10.2011, the Complainant was informed by the Insurance Company that they were not able to accept the Claim of the Complainant under the said two Policies inasmuch as the Deceased had not disclosed the information regarding ‘Existing Insurance Covers’ at the time of applying for the subject Insurance Policies. Consequently, Complainant approached the Grievance Committee of the Insurance Company and the Insurance Ombudsman Office The Grievance Committee. vide letter dated 21.12.2011. . informed the

Complainant that her claim had been repudiated by the Insurance Company as at the time of taking the aforesaid Policies her husband has not disclosed the material information about the existing Policies taken from the other Insurance Companies. The Insurance Ombudsman also, vide its letter dated 19.12.2011, informed the Complainant that she may approach any Appropriate Forum like Consumer Forum or Civil Court since the amount of compensation claimed was more than Rs 20,00,000/- which was beyond their pecuniary jurisdiction.

4. Complainant further averred in the Complaint that the Proposal Form for obtaining the Policy bearing No.12992586 dated 30.06.2009 for Rs 12,50,000/-, was filled by the Agent of the Insurance Company and her husband had only signed the Proposal Form. The Proposal Form for taking the second policy for Rs 75,00,000/- was also filled by the Agent of the Insurance Company, however, in the said Proposal Form, the Agent has specifically disclosed the information about the earlier Policy for a sum of Rs 12,50,000/- taken by her husband on 30.06.2009. Since, her husband had disclosed the information about taking of the first policy for Rs12,50,000/- in the Proposal Form for taking the second Policy for Rs 75,00,000/-, the Insurance Company was not justified in repudiating the claims.

5. It is further stated in the Complaint that in view of Section 45 of the Insurance Act, 1938, a Policy can be repudiated within two years from the date of its commencement for the reason of suppression of material fact and not afterwards. In the present case, the policies were taken on 30.06.2009 and 25.08.2009, however, the Insurance Company had repudiated the Claim on 12.10.2011 i.e., after expiry of the period of two years from the date of issuance of Policies as such the repudiation was not justified.

06. Complainant served a legal notice on 24.02.2012 upon the Insurance Company calling them to pay the sum assured under the two Policies with interest within a week of receipt of notice. The Insurance Company replied the legal notice denying any obligation and reiterating their stand that the Deceased did not disclose the information about the Policies obtained from other Insurance Companies, therefore, the claim was not payable.

07. Feeling aggrieved and alleging deficiency in service on the part of Insurance Company, the Complainant filed the Complaint before the State Commission, Maharashtra with the following prayers:

- (i) direct the Insurance Company to release the amount of Rs 87,50,000/-, the sum assured in both the policies, along with accrued interest from the date of death till payment to the Complainant;
- (ii) to pay Rs 5,00,000/- towards mental agony and harassment and
- (iii) to pay Rs.1,00,000/- as costs of litigation.

8. The Complaint was contested by the Insurance Company denying all the allegations of deficiency in service levelled against them and admitting the issuance of the subject Insurance Policies to the Deceased, death of the husband of the Complainant on 01.05.2011, submission of claim form along with documents, issuance of repudiation letter dated 12.10.2011 and the proceedings before the Grievance Committee as well as the Insurance Ombudsman. It was specifically denied that the Proposal Forms for both the Policies in question were filled up by the Agent of the Insurance Company. It was further pleaded that the claim of the Complainant was repudiated for non-disclosure of the true facts regarding the existing Policies taken from other Insurance Companies. Similarly, contention of the Complainant that her claim cannot be repudiated after expiry of the period of two years, as per Section 45 of the Insurance Act, 1938, was strongly resisted. It is contended that the Insurance Company while replying the legal notice dated 24.02.2012 made the Complainant apprised for the reasons of repudiation of the claim. The Insurance Company specifically contended that their action was strictly in consonance with the provisions of the Insurance Act as well as the rules followed by the IRDA from time to time. The dismissal of the Complaint, being devoid of merits, with compensatory costs was prayed for.

09. The State Commission, after perusing the material available on record and observing that number of life insurance policies were obtained by the deceased which were not disclosed in the Proposal Form at the time of taking the aforesaid two Policies, has dismissed the complaint as under:-

“ However, the DLA in his proposal form which was submitted by him for obtaining policy No.12992586 for Rs.12.50 Lacs had informed that the he had not obtained any policy. However, in another proposal form submitted by him for policy No.13006145 for Rs.75.00 Lacs, he had given information only about the aforesaid first policy No.12992386 and about another policy bearing No. 10565923. The specific questions, in both proposal forms submitted by him for said both policies, was asked to him as to whether he has existing insurance cover of premium paying and or paid-up policies. However, he suppressed about the policies in both proposal forms, which were obtained by him from Bajaj Allianz Life Insurance Company, ICICI Prudential Life Insurance Company and LIC of India as mentioned above, though the period of those polices was not over.

We find that this is a suppression of material fact on the part of DLA. There is no evidence to show that the agent had filled the proposal form and he had obtained the signature of the DLA on the proposal form without explaining contents of both said proposal forms to the DLA. Moreover, as per provisions of Sec. 45 of Insurance Act, claim can be repudiated, if it is proved that the assured knowingly and fraudulently suppressed the material facts. We find that as the DLA knowingly and fraudulently suppressed the material fact about his obtaining various policies as noted above from aforesaid four other insurance companies, the OP No.1 has rightly repudiated the claim of the complainant about both the policies. The aforesaid decisions of Hon’ble Supreme Court relied on by the learned advocate of OP are applicable to the present case since all the three conditions contemplated under section 45 of Insurance Act, 1938 as clarified by Hon’ble Supreme court are attracted in this case.”

10. Feeling aggrieved, the Complainant has filed this First Appeal.

11. We have heard the learned Counsel for the Parties at some length and also perused the material available on record as well as Written Submissions filed by them.

12. In brief, it is the case of the Complainant that her husband has obtained two Policies from the Insurance Company bearing Nos. 12992586 on 30.06.2009 for Rs 12,50,000/- and 13006145 on 25.08.2009 for Rs 75,00,000/- which fact is also not denied by the Insurance Company. Her husband was killed by the Naxalites on 01.05.2011 during the currency of the Policies and being the legal heir of the deceased husband, she filed the claim with the Insurance Company under the aforesaid two Policies. However, her claim was repudiated by the Insurance Company on the ground of suppression of material fact by her husband while filling up the Proposal Forms for obtaining the aforesaid policies.

13. As recorded in the Order of the State Commission, the Deceased during his life time, had obtained the following Policies:-

Sl. No.	Name of Insurance Company	Name of Policy	Policy No.	Date of Commencement of policy
1.	HDFC Life Insurance	Unit Linked Pension Plan	10565923	27.03.2006
		Unit Linked Wealth	12992586	30.06.2009
		Term Assurance Regular Premium Plan	13006145	25.08.2009
		Unit Linked Pension maximiser	13540941	15.03.2010

2.	Bajaj Allianz Life Insurance	Unit Linked Century Plan	93019397	20.03.2008
		Unit Linked – New Unit Gain	119193181	28.01.2009
		Unit Linked Century Plus	119192118	28.1.2009
		Unit Linked Unit Gain Plus Gold	119194878	28.01.2009
		Unit Linked Max.Gain	151561384	29.01.2010
3.	ICICI Prudential Life Insurance	Unit Linked Pinnacle Policy	12861823	11.11.2009
		Smartkid New Unit Linked RP Policy	12951616	10.12.2009
		Unit Linked Smartkid RP Policy	13011688	31.12.2009
		Health Saver Policy	15165194	03.03.2011
4.	LIC of India	Jeevan Anand(without profit) + acc.Benefit	970627206	10.07.1998
		Jeevan Anand(without profit) + acc.Benefit	971499059	28.12.2001
		Jeevan Anand(without profit) + acc.Benefit	971502508	15.03.2002
		Unit Linked 188 Plan	974191295	28.12.2002
		LIC's Profit Plus Jeevan Shree Without Profit	974524114	28.12.2003
		Bima Kiran Policy (without profit)	974531638	14.09.2004
		Jeevan Chaya Policy(without profit) + acc.Benefit	974934336	28.08.2005
		Jeevan Chaya Policy(without profit) + acc.Benefit	975786593	14.09.2007
		Unit Linked 188 Plan LIC's Profit Plus	975786593	14.09.2007
		LIC's Jeevan Tarang Policy(with profit)	975786729	24.09.2007

However, while filling up the Proposal Form for obtaining Policy No.12992586 for Rs 12,50,000/-, he mentioned that he had not obtained any other Policy and while taking the Policy No.13006145 for Rs 75,00,000/-, he gave information only about the Policy No.1299586 and Policy No.10565923 in the Proposal Form. A specific information was sought in Column 6 of the first Proposal form that “Do you have any existing insurance cover of premium paying and/or paid-up Policies?”. The answer to the said question was “No”. Even in the second Proposal Form, the Deceased gave information about two existing Policies. Thus, he suppressed the material information by not disclosing all the existing Policies in both the Proposal Forms, which were obtained by him from Bajaj Allianz Life Insurance Company, ICICI Prudential Life Insurance Company and LIC of India. Ld. Counsel appearing for the Appellant contended that the Agent of the Respondent Insurance Company had filled up the Proposal Forms and obtained Signatures of the insured without explaining the contents of both the Proposal Forms and as such the deceased had not suppressed any material information. However, the Complainant has failed to adduce any documentary evidence to that effect.

14. On the contrary, Ld. Counsel appearing for the Insurance Company rigorously urged that as per provisions of Section 45 of the Insurance Act, 1938, the claim can be repudiated, if it is proved that the assured knowingly and fraudulently suppressed the material facts. The deceased has obtained the two policies in question by suppressing the information about various policies taken by him from different Insurance Companies in the Proposal Form and hence, the claim was rightly repudiated by the Insurance company.

15. The question which falls for our consideration is as to whether the suppression of the information about existing policies was material or not for the Insurer to accept the risk or not”.

To be concluded in the next issue.....

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Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of “ **Consumer Protection Council, Rourkela**”.

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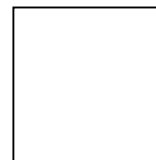
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