

# Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“An aware consumer is an asset to the nation”

Website : [www.advantageconsumer.com](http://www.advantageconsumer.com)

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## Queries & Answers through the Web

([www.advantageconsumer.com](http://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.)

## CONSUMER PROTECTION COUNCIL, ROURKELA CELEBRATED “WORLD CONSUMER RIGHTS DAY – 2024”



The “World Consumer Rights Day” was celebrated on **Friday, 15<sup>th</sup> March 2024** at **Consumer Protection Council, B-90, Sector-07, Rourkela**. **Dr D S Naik**, Ex-AGM, RSP, Rourkela was the **Chief Guest** on this occasion.

The programme was inaugurated with lighting up of the Ceremonial Lamp by the chief guest and other members present. Council President, **Mr. A.K. Goswami** delivered the welcome address and gave council’s brief introduction. Jt. Secretary, **Mr. Rajib Kumar Nayak** presented detailed activities of the council. Later, **Chief Guest Dr. D.S. Naik** addressed the gathering consisting of Council members, newly enrolled members, press reporters and other invitees. He elaborated the consumer movement in the country and gave some tips about the new challenges faced by the Consumer. This year theme for World Consumer Rights Day 2024 has been chosen by Consumers International as ‘**Fair and responsible AI for consumers**’. Last year, breakthroughs in generative AI took the digital world by storm. Thanks to the release of chat bots that appear to mimic human conversation, millions of consumers are already using generative AI in the daily lives. The technology is set to have an enormous impact, in the way we work, create, communicate, gather information and much more. Later, members and audience participated in an open session for discussion and suggestion relating to solution of day to day activities against present advance technological challenges through CPC, Rourkela. At the end, Executive Committee Member **Mr. Bharat Kumar Behera** proposed a formal Vote of Thanks. Our **Vice President Mr. P. Ravi Krishnan** and Executive Committee Member **Mr. Amitav Thakur** were Masters of Ceremony. Treasurer **Shri A. Samantray** and Executive Members **Mr. M.S. Mangar**, **Mr. Banshi Dhar Tripathy**, **Mr. Biswesh Chandra Mishra**, **Ms. C. Gayatri Sinha** and council staff **Mr. Sanjay Senapati** participated in the event. More than 50 people including members and guests were present. Our special thanks to **Our Chief Mentor Shri Vaidyanathan**, Ex-President **Shri R.R. Bitra** and our Council Honorary Secretary, **Shri Bhimasen Pradhan** for their kind guidance.

Continued from February 2024 issue.....

### **Penalty on Bank confirmed for its negligence – Limited Revisional jurisdiction of National Commission clarified.**

The further contention of the 2<sup>nd</sup> opposite party/ appellant is that as stated in Ex.B7, the failure to report the fire accident to the 1<sup>st</sup> opposite party is a clerical error. This goes to establish the deficiency in service on the part of the 2<sup>nd</sup> opposite party.

On considering the entire materials on record, we hold that there is deficiency in service on the part of the 2<sup>nd</sup> opposite party/appellant, and they are liable to compensate the complainant against the loss due to the fire accident.

The District Forum has assessed the complainant's loss in fire accident at Rs.14,18,638/- as assessed by the Surveyor's report, vide Ex.B5, and has deducted the sale proceeds of the salvage of Rs.79,807/- received directly by the complainant, and further deducting the policy excess of Rs.10,000/- and assessed the net loss at Rs.13,28,831/-; and the District Forum has awarded a sum of Rs.50,000/- towards compensation for mental agony etc. The quantum of loss worked out by the District Forum and the award of compensation are quite just and reasonable. There is no infirmity in the order of the District Forum and we agree with the decision of the District Forum and the order does not warrant interference of this Commission.

There is no merit in the appeal, and the appeal is liable to be dismissed.”

08. Hence, the Petitioner Bank is before us.

09. Heard the Learned Counsels for the Parties at some length and also perused the material facts as well as evidence available on record.

10. The question which falls for our consideration is as to whether the Petitioner Bank has intimated about the change in factory address of the Complainant to the Insurance Company or not?

11. The undisputed facts of the case are that the Complainant had obtained credit facilities from the Petitioner Bank during the year 2004. After releasing the credit facility, the Petitioner Bank had taken a Fire Insurance Policy No. 651400/46/7500001 from the Insurance Company covering the fire risk to the Plant, Machinery and Stocks stored at manufacturing unit/business premises of the Complainant at Door No. 582/1, Karuppagoundanpalayam, Opp. Tamil Nadu Theatre, Tirupur – 638602. The Complainant had shifted his business premises to S.F. No.730/1, Navithan Thottam, Thennampalayam East, Tirupur – 641 604. The change of address in the business premises was duly informed by the Complainant to the Petitioner Bank and the Petitioner Bank while granting permission to avail of cash credit and term loan to the Complainant addressed the sanctioned letter dated 29.12.2006 to the Complainant at the new address only. The Petitioner Bank was for ag renewed the policy from the Insurance Company since the year 2004. During the validity of the policy, on 24.06.2009 at 7.30 a.m. a fire took place at the business premises/manufacturing unit of the Complainant which resulted in huge damaged to the stock. Upon intimation, the Insurance Company appointed the Surveyor who assessed the loss. The Complainant restricted his claim to Rs16,00,000/- and gave his consent for the said payment. However, vide letter dated 12.07.2010, the Insurance Company repudiated the claim on the ground that the policy was taken for covering the plant and machinery and stocks situated at 582/1, Karuppagoundenpalayam, Opp. To Tamil Nadu Theatre, Tirupur and the fire accident has occurred at Navithan Thottam, Velliakadu, Tirupur. Since the location of the fire damage was different from the location covered under the policy in question, the claim was not payable. There is no denial from the Petitioner Bank that they were duly intimated about the change in address in the business premises by the Complainant. In their Written Version filed before the District Forum, it had been specifically admitted by the Petitioner Bank that the change in address was duly reported to them by the Complainant and it was noted down in their record. However, they had taken the defence that the change in address in business premises was duly informed to the Insurance Company and there was a clerical error on the part of the Insurance Company in mentioning old insured premises on the policy. On the contrary, it is the stand of the Insurance Company that no information was furnished by the Petitioner Bank to them about change in address of the insured premises. Even otherwise, as per terms and conditions of the Policy, the Bank was under an obligation to get endorsement on the policy with regard to change of the insured premises which obligation they had failed to discharge. On scrutiny of the record, we do not find any cogent evidence wherein the Bank had intimated the Insurance Company about the change of address of the business premises of the Complainant. There is also concurrent finding of facts recorded by the for a below that the Petitioner Bank had failed to adduce any proof showing that the Insurance Company

was informed about the change in insured premises and as such the claim was not payable by the Insurance Company. This Commission in the case of Jai Ambey Trading Co. Vs. National Insurance Co. Ltd. – I (2018) CPJ 296 (NC) has held as under:-

“ Admittedly, the insurer as well as the insured are based at the same place i.e. Kota in Rajasthan. Therefore, in the normal course of conduct the insured if he had to seek change in godown in the insurance policy taken by him, would deliver a letter by hand and obtain an acknowledgement from the insurer. Neither that was done, nor has the complainant given any explanation for not adopting the said course of action. In any case, such a vital information, in the normal course of business would at least be conveyed by Registered Post so as to have an authentic proof of information having been delivered to the insurer. Admittedly, the alleged information was not even sent by Registered Post. In any case, even if it is assumed that the intimation was sent under Certificate of Posting, the petitioner / complainant could not have sat silent on sending the information and ought to have pursued the matter with the insurer for making the requisite endorsement in the insurance policy taken by it. In the absence of such an endorsement, the insurer would not be liable to reimburse the insured for the goods shifted from one godown to other godown. As stated in the reply filed by the insurer, had the complainant communicated the change of location to them, they would have inspected the changed location so as to find out whether the place was suitable to cover the risk of fire and damage to the insured goods or not. No such opportunity was given by the complainant to the insurer.”

12. We are of the considered opinion that the conclusion arrived at by the For a below is based on due appreciation of the facts of the case and the evidence adduced by the parties and it does not call for any interference from us under limited Revisional Jurisdiction u/s 21 of the Act.

13. Even otherwise, it is well settled by the Hon’ble Supreme Court of India in ‘Sunil Kumar Maity vs. State Bank of India & Anr.’ [Civil Appeal No. 432 / 2022 Order dated 21.01.2022] that the Revisional Jurisdiction of this Commission under Section 21(b) of the Consumer Protection Act, 1986 is extremely limited and this Commission cannot set aside the Orders passed by the For a Below in Revisional Jurisdiction until and unless there is any illegality, material irregularity or jurisdictional error in the Orders. The relevant paragraph of the said judgment is quoted as under: -

“9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two for a below had erred in not undertaking the requisite in-depth appraisal of the case that was required. ....”

14. Recently, the Hon’ble Apex Court in the case of “Rajiv Shukla vs. Gold Rush Sales and Services Ltd. And Ors. – (2022) 9 SCC 31 while affirming its earlier view taken in the case of “Rubi (Chandra) Dutta Vs. United India Insurance Company – (2011) 11 SCC 269 that the National Commission has no right to interfere with the concurrent finding of facts of the For a below in its Revisional Jurisdiction, has held as under:-

“ At this stage, it is required to be noted that on appreciation of evidence on record the District Forum as well as the State Commission concurrently found that the car delivered was used car. Such findings of facts recorded by the District Forum and the State Commission were not required to be interfered by the National Commission in exercise of the revisional jurisdiction. It is required to be noted that while passing the impugned judgment and order the National Commission was exercising the revisional jurisdiction vested under Section 21 of the Consumer Protection Act, 1986. As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act.”

15. In view of the law laid down by the Hon’ble Supreme Court in afore-noted Judgments, we do not find any good ground to interfere with the well-reasoned Orders passed by the For a below in Revisional Jurisdiction u/s 21 (b)

the Act. Consequently, the present Revision Petition fails and is hereby dismissed. Keeping in view the facts and circumstances of the case, there shall be no Order as to costs.

16. Before parting with the matter, it is made clear that if any amount is deposited either before the District Forum or the State Commission as pre-condition to stay, the same shall be released in favour of the Complainant immediately with accrued interest and the balance amount in terms of the Orders passed by the District Forum shall be paid within a period of eight weeks from the date of passing of the order. ■

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**Consumers beware!! When there is suppression of material facts by the Insured, denial of claims by the Insurance Company is justified.**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 3635 OF 2017**

(Against the Order dated 18/08/2017 in Appeal No. 14/2016 of the State Commission Telangana)

D. PADMA

W/o. Late Sh. D. Saikumar, R/o. H.No. 16-9-945, Old Malakpet,

Hyderabad - 500 036

Telangana

.....Petitioner(s)

Versus

BRANCH MANAGER, STATE BANK OF HYDERABAD & 2 ORS.

Jillelaguda Branch, Karmanghat, Saroornagar,

Hyderabad - 500 079

.....Respondent(s)

**BEFORE:**

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

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

**Dated : 01 Mar 2023**

**ORDER**

**R.K. AGRAWAL, J., PRESIDENT**

1. The present Revision Petition has been filed by the Original Complainant, the Petitioner herein, under Section 21 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act), against the Order dated 18.08.2017, passed by the Telangana State Consumer Disputes Redressal Commission at Hyderabad (hereinafter referred to as the State Commission) in First Appeal No.14/2016. The Appeal before the State Commission had been filed by SBI Life Insurance Co. Ltd., Navi Mumbai and its Office at Hyderabad, arrayed as Respondents No. 2 and 3 in the present Revision Petition (hereinafter referred to as the Insurance Company), against the Order dated 30.11.2015, passed by the District Consumer Disputes Redressal Commission, Ranga Reddy (hereinafter referred to as the District Commission) in Consumer Complaint No. 204 of 2013, whereby the District Commission had allowed the Complaint, preferred by the Complainant/Petitioner herein, and directed the Insurance Company to pay an amount of Rs.14,46,314/- with interest @ 9% p.a. from the date of the claim, i.e. 03.01.2013, till the date of realization as also costs of Rs.5,000/-. However, by the Impugned Order, the State Commission has allowed the Appeal, preferred by the Insurance Company, and set aside the Order passed by the District Commission. Consequently, the Complaint has also been dismissed.

2. The facts, in brief, are that one D. Sai Kumar, husband of the Complainant/Petitioner herein (hereinafter referred to as the Insured), had taken a housing loan from State Bank of Hyderabad, Opposite Party/Respondent No.1 herein (hereinafter referred to as the Bank) and obtained risk cover of his life as a member through Group Insurance Scheme

under Master Policy No. 93000001610 issued by the Insurance Company to the Bank and paid the single premium of Rs.1,02,300/- on 19.07.2010. The risk commenced from 17.08.2010 for an assured sum of Rs.15,85,300/- at inception. The Insured was issued a Certificate of Insurance with the said details. The Doctors of the Insurance Company had medically examined the Insured before granting insurance coverage and he was found to be in good health. The Insured died on 24.11.2012, leaving behind his wife (Complainant/Petitioner herein) and 3 daughters and the outstanding loan amount of Rs.14,46,314/- as on the date of his death. The Complainant/Petitioner being the nominee under the insurance policy applied to the Insurance Company for settlement of death claim of the Insured. However, the claim was repudiated on 28.02.2013 on the ground that the Insured had not disclosed the material facts with regard to his health. On 22.03.2013, the Complainant/Petitioner made a complaint/representation before the Review committee for reconsideration of the claim, whereupon the matter was referred to the Insurance Ombudsman, who also dismissed her complaint on 13.06.2013 without considering the medical record properly. This prompted the Complainant/Petitioner to file the afore-noted Complaint before the District Commission, *inter alia*, praying for a direction to pay the claim amount of Rs.15,85,300/- along with interest at the market rate and compensation of Rs.4,00,000/- in lieu of physical pain, mental agony and trauma caused to her and three daughters.

3. Upon notice, the Bank filed the Written Version, admitting that the Insured had taken the housing loan and had also obtained risk cover of his life through Group Insurance Scheme from the Insurance Company and had paid the premium therefor. However, it was contended on behalf of the Bank that it had no liability to pay any compensation and the Complainant/Petitioner had to approach the Insurance Company, as there was no deficiency in service on the part of the Bank. The Insurance Ombudsman had also dismissed the complaint made by the Complainant/Petitioner.

4. The Insurance Company had also filed the Written Version, admitting that the deceased Insured had taken a housing loan from the Bank and had applied for Group Insurance Scheme under Master Policy issued to the Bank through Membership Form dated 12.07.2010; the risk commenced from 17.08.2010 for sum assured of Rs.15,85,300/- at inception; as per Clause-C, the death benefit of schedule-1 of the Master Policy, in the event of death of a member, the sum assured is payable; the sum assured is the loan amount outstanding for the month during which the death occurs as specified in the Certificate of the Insurance issued to each member on his admission; and in the instant case, the outstanding loan amount upon death is Rs.14,46,314/- since the Insured had died on 24.11.2012. Further, it was, *inter alia*, contended on behalf of the Insurance Company that the District Commission had no territorial jurisdiction to entertain the Complaint. The life insurance contract is a contract of "utmost good faith", wherein the proponent is duty bound to disclose everything concerning his health habits and other related matters, which are within his knowledge at the time of making the proposal for insurance cover, failing which the insurer has every right to repudiate the claim. In the instant case, the Insured had committed breach of the principle of utmost good faith by suppressing the material fact that he was suffering from liver disease prior to the enrolment into the insurance cover. The Insured had submitted declaration of good/sound health, stating that he was not suffering from any illness or critical illness. The policy resulted in a claim in 2 years 3 months and 7 days and hence the Insurance Company enquired into the matter and found that the Insured was suffering from liver disease prior to issuance of the insurance cover. In the discharge summary of Yashoda Hospital, Secunderabad, it was noted that the Insured was admitted in the Hospital on 18.07.2009 for Cirrhosis with Portal Hypertension. In the past history, it was also noted that the Insured was a known case of chronic liver disease with portal hypertension on regular treatment. The death summary of the said Hospital dated 24.11.2012 disclosed that the Insured was diagnosed for ARF with Sepsis, CLD with Decompensation, UGI Bleed, Refractory Septic Shock and the primary cause of death was shown as Cardiac Arrest and Cirrhosis of Liver. Prior to the enrolment into the Scheme, the Insured was suffering from liver disease and had suppressed his past medical history and gave a false declaration at the time of applying for insurance cover and, therefore, the Claim was repudiated.

5. On appreciation of the material placed on record and the evidence adduced by the Parties, the District Commission, while negating the contentions raised by the Insurance Company that the District Commission had no territorial jurisdiction to entertain the Complaint and that the Complaint was barred by the principle of *res judicata*, as the complaint made by the Complainant/Petitioner before the Insurance Ombudsman had already been dismissed, for the reasons recorded in the Order, allowed the Complaint and issued the aforesaid directions to the Insurance Company, *inter alia*, observing thus:

"Coming to the facts of the present case, the deceased was a government employee and he had to join in the scheme as a member for the purpose of taking house loan from Opposite Party No.1. It is not a case whether the deceased had taken the policy by himself. Evidently, his banker was only shown as the policy holder. Hence, we cannot attribute malafides against the deceased nor presume that he had wilfully suppressed any material facts with regard to his death

for the purpose of getting wrongful gain. Admittedly, the deceased died after two years period and comes within the purview of Sec.45 of Insurance Act. No doubt, the medical record produced by the Insurance Company discloses the primary cause of death as Cardiac Arrest and Cirrhosis of liver. The previous medical record which is marked as Ex.B6 only shows that the deceased was treated for the above disease only for four days, i.e. from 18.07.2009 to 22.07.2009. Evidently, he died only on 24.11.2012, i.e. after three years of the above treatment. ...

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In view of the above rulings, we must conclude that the Insurance company failed to discharge its burden to show that the deceased must have known at the time of making the declaration that it was false or that he suppressed facts which it was material to disclose. Therefore, we hold that there was no justification in rejecting the claim of the complainant who is the widow of the deceased borrower.

For the reasons stated above, we find 'deficiency in service' on the part of the Insurance Company when they repudiated the claim of the complainant illegally."

6. Feeling aggrieved with the Order passed by the District Commission, the Insurance Company filed the afore-noted Appeal before the State Commission. The State Commission, for the reasons recorded in the Impugned Order as also placing reliance on various Judgments and Orders of the Hon'ble Supreme Court, including in the Case of **Satwant Kaur Sandhu vs. New India Assurance Company Ltd. (2009) 8 SCC 316**, allowed the Appeal and set aside the Order passed by the District Commission. Consequently the Complaint was also dismissed. Hence, the present Revision Petition by the Complainant/Petitioner.

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

**Advantage Consumer wishes its readers and well wishers for  
Dolo Purnima and a Safe & Happy & Holi !**

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