# Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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**VOLUME – XXXIII** **OCTOBER 2021** **ADVANTAGE - X**

## 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.)

## Sub: Flat Owner's Right to seek relief for deficient service.

I have purchased a flat. The yearly maintenance charges are Rs. 15,000/-. Does service provider of the flat are under Consumer Protection Act?

Generally housing society engages different vendors on contract basis for different services such as cleaning, plumbing, lift services, etc. Can a resident approach to consumer court if vendor is not giving proper services, as the management is reluctant to take up resident's complaint?

Goutam Ghosal
Asansol, West Bengal.

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**Ans:** As an authorised beneficiary of the services of the Housing Society, any aggrieved member, who has been availing the services of the vendor engaged by the said Society, can seek relief under the Consumer Protection Act, through the District Consumer Commission.

To quote the Consumer Protection Act:
"(7) "*consumer" means any person who—*
*.....*
*(ii)* ***hires or avails of any service for a consideration*** *which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment,* ***when such services are availed of with the approval of the first mentioned person****, but does not include a person who avails of such service for any commercial purpose*."
As per the Act, though an individual might not have directly availed the services, for a consideration, when such services are availed by him with the approval of the first person (***approval*** here implies, as the individual Flat Owner, being a *bona fide* resident, who pays all the subscriptions for the services availed by the Housing Society, will be treated as a consumer, for having availed the services for cleaning, plumbing, etc., though he might not have directly availed the services of the vendor and the ***first mentioned person*** herein is the Housing Society.)

So, if the Management of the Housing Society is reluctant or lackadaisical in attending to the complaints of the resident, the resident can seek redressal before the Consumer Commission, against the service provider (vendor), for whom the resident is also contributing the charges. In such an eventuality (of approaching the Consumer Court), the Housing Society should also be impleaded, in the Petition filed against the Vendor (of services).

Continued from September,2021 issue...

# Though there may be a negative fallout of the treatments given, there is no medical negligence, when the doctor exercises due care and diligence in treating the patient.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**
**NEW DELHI**
**CONSUMER CASE NO. 3 OF 2005**

G. VIJAYASHANKAR & ANR.
Son of Shri. G. Gopalakrishnan Nair, Resident of "Sruthi" No. 2/9, Anantha Ramakrishnan Street Devaraj Nagar, Saligramam
Chennai - 600 093. .....Complainant(s)

Versus

MADRAS MEDICAL MISSION & ORS.
Which owns and manages: Institute of Reproductive Medicine & Women's Health 4-A, 5th Floor, Dr. J.J. Nagar,Mogappair
Chennai - 600 050. .....Opp.Party(s)

**BEFORE:**
**HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT**
**HON'BLE DR. S.M. KANTIKAR,MEMBER**
**Dated : 01 Apr 2021**

**ORDER**

**PER DR. S. M. KANTIKAR, MEMBER**

**FACTS:**

6. **DISCUSSION:**

We have given our thoughtful consideration and perused the entire material on record including the Medical Record and the Medical Literature.

(i) The Medical Record revealed that the patient signed 'Patient Protocol for IVF Form' on 13.11.2000, therein it was clearly mentioned that she was given suitable opportunities to take part in counselling about the implications of the proposed treatment. The invasive techniques and Karyotyping were discussed. On 01.07.2002 in the Medical Record, it was mentioned that in view of the advanced maternal age NT/Triple Screen was suggested, however the couple 'decided to leave things alone, patient did not agree for invasive procedures'. It is also pertinent to note that the couple suppressed the vital information that the daughter of patient's first cousin of about 15 years of age was detected with Down's syndrome.

ii) We have perused the expert opinion from the Medical Board, AIIMS, New Delhi, dated 06.01.2014 which observed and concluded that:

1. Triple screening was suggested in view of her advance maternal age (Page 90) but treatment record does not reveal any documentation of test being performed or laboratory report of triple screen test.

2. Patient treatment record (Page 86) dated 18th June 2012 reveals that invasive techniques to confirm karyotyping was discussed – CVS/Amnio-cordocentesis but no follow up could be traced in the records.

Thus, it confirms the treating doctor suggested triple screening which the patient did not do.

iii) Admittedly the patient was conceived after 15 years of infertility, it was, thus, precious pregnancy. She had previous missed abortion and after genetic counselling, she did not opt for the invasive investigations to avoid miscarriage or losing the existing pregnancy. At the 11th week of pregnancy on 18.06.2002, a non-invasive NT scan ruled out to the risk of Down's syndrome. Thereafter, the subsequent USG assessment was done during 18-20 weeks and no structural abnormality was found. There was ample time for the couple to consider invasive tests which could have usually done around 16–18-week gestation; as per literature invasive tests carry risk of 1 in 100 chances of abortion. The couple decided not to take the risk.

iv) Moreover, the instant pregnancy was twin gestation. At 5th week of pregnancy one foetus was destroyed internally- known as vanishing twin syndrome and the singleton pregnancy was continued. Nuchal translucency (NT) screening increases chances of antenatal detection of Down syndrome (DS) compared to maternal age-based screening. The NT scan was performed by qualified Radiologist Dr. Lata at 11th week. It was found to be within normal limits. We have gone through some references from the International Journal of Ultrasound in Obstetrics and Gynaecology. The article on "Screening for Down syndrome based on maternal age or foetal nuchal translucency: a randomized controlled trial in 39 572 pregnancies" Ultrasound Obstet Gynecol 2005; 25: 537–545

v) It is apparent from the record that during the year 2002, the treating doctor tried her best to attempt the diagnosis of Down's syndrome. In fact, she was in tune with the time. It was the limitation of the screening test and quality of the then available USG machines in India, which showed drastic changes and advancement in the last decade. The much higher performance can be achieved when ultrasound is combined with concurrent first-trimester four-marker biochemistry.

7. It is worth to rely upon few decisions of Hon'ble Apex Court on Medical Negligence. In the case - **Kusum Sharma and others v. Batra Hospital and Medical Research Centre and Others,** (2010) 3 SCC 480 held that:

'the medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals".

> In **Achutrao Harbhau Khodwa Vs. State of Maharashtra,** 1996 Vol 2 643 the Hon'ble Supreme Court has held: "The skill of medical practitioner differs from doctor to doctor. The nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession and a court finds that he has attended on the patient with due care skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence."

In the case in hand the Complainant's main allegation that proper genetic counselling was not done by the treating doctor or the hospital. Factually for more than a decade the couple was under treatment from different hospitals in India and abroad. The couple is highly qualified and had adequate knowledge of various methods and the pros & cons of Assisted Reproductive Techniques. Moreover, from the Medical Record of opposite party No.1 we note counselling of couple was done and advised for the invasive tests for prenatal diagnosis of Down's syndrome.

8. Based on the discussion above, in our considered view, it was an accepted standard of practice in the year 2002. The Complainants fail to prove the act of omission or medical negligence of the Opposite Parties. We find no merit; the Complaint stands dismissed.

There shall be no order as to costs. ■

# LIC Penalised for not speedily processing the Policy proposal and promptly intimating about any shortcoming, to the Policyholder.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**
**NEW DELHI**

**REVISION PETITION NO. 414 OF 2020**

(Against the Order dated 17/12/2019 in Appeal No. 232/2018 of the State Commission West Bengal)

LIFE INSURANCE CORPORATION OF INDIA & ANR.
THROUGH DIVISIONAL MANAGER, JALPAIGURI
DIVISIONAL, VILLAGE SHANTIPUR, P.S. KOTWALI,
P.O. AND
DISTRICT-JALPAIGURI
WEST BENGAL .....Petitioner(s)

Versus

PRAMILA BASAK
W/O. SWAPAN BASAK, VILLAGE GUDRI BAZAR, P.O.
& P.S. KALIAGANJ,
DISTRICT-UTTAR DINAJPUR
WEST BENGAL .....Respondent(s)

**BEFORE:**
**HON'BLE MR. DINESH SINGH, PRESIDING MEMBER**

**ORDER**

**Taken up through video conferencing.**

**1.** Heard learned counsel for the revisionist insurance co.

Perused the material on record.

**2.** The dispute relates to an insurance claim made by the respondent complainant on the death of her son.

**3.** The District Forum vide its Order dated 30.01.2018 allowed the complaint. It directed the opposite party insurance co. (the revisionist herein) to pay the insured value of Rs. 4,00,000/- plus all bonuses, compensation of Rs.10,000/- and cost of litigation of Rs. 5,000/- to the complainant within one month from the date of its Order, failing which the total amount will carry interest @ 5% per annum from the date of filing of the complaint i.e. 12.09.2016 till its realisation.

**4.** The State Commission vide its Order dated 17.12.2019 dismissed the appeal with cost of Rs. 25,000/-.

For ready appreciation, extracts of the appraisal made by the State Commission in its impugned Order of 17.12.2019 are reproduced below:

The dispute between the parties revolves around a death claim being made by the Respondent over the death of her son.

Both sides were heard through their respective Ld. Advocates. Documents on record also gone through extensively in order to derive at a judicious decision in the matter.

Admittedly, the Appellant received premium amount of Rs. 26,441/- from the son of the Respondent, Litan Basak, on 30-04-2014. Said Litan Basak died on 10-08-2014.

It is the case of the Appellant that the proposal form of Litan Basak was declined vide letter dated17-07-2014 over non-submission of certain documents.

It is indeed curious to note that the Appellant has not adduced any scrap of paper to show that such decision was duly communicated to Litan Basak prior to his death and the premium amount returned to him instantly. Thus, the probability of manufacturing documents in order to give it the colour of a 'conscious decision' cannot be ruled out.

We are of view that eligibility of the proposer to avail a policy needs to be examined before acceptance of premium from him, not afterwards. Acceptance of premium pending decision pertaining to eligibility of the proposer is akin to putting the cart before the horse which is not permissible.

It is though claimed by the Appellant that the competent Authority decided negatively about issuance of policy on 17-07-2014 after Litan Basak, since deceased, failed to furnish requisite documents in terms of the letter dated 18-06-2014, it is quite baffling that none of the aforesaid two letters reached the end of the Respondent No. 1. In fact, Appellant has not adduced any cogent documentary proof to establish that the aforementioned two letters were indeed issued and sent to the residence of Litan Basak, since deceased.

Another intriguing fact is that, though the Appellant allegedly declined to accept the proposal form of Litan Basak, since deceased, on 17-07-2014, no endeavour was made from its end to refund the premium amount till 10-08-2014, i.e., the expiry date of said proposer.

Considering all these vital aspects, we refuse to accept the purported letters dated 18-06-2014 and17-07-2014 as genuine documents.

Admittedly, the proposal form was received by the Appellant on 30-04-2014. In view of this, it was highly unusual for the Appellant to sit tight over the proposal form of Litan Basak for so long, who made no bones about his actual state of health in the proposal form.

In terms of Clause 4(6) of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002, Proposals shall be processed by the Insuer with speed and efficiency and all decisions thereof shall be communicated by it in writing within a reasonable period not exceeding 15 days from receipt of proposals by the Insurer.

It is though contended by the Appellant that the same is only directive and holds good inrespectof proposals complete in all respects, no such specific stipulation is mentioned in the afore mentioned Regulation. Further, even if it is assumed for the sake of argument that the same was applicable in respect of those proposal forms which were complete in all respects, it is not understood, why it did not seek requisite documents within a fortnight of receipt of the proposal form from the Respondent No. 1.

Coming to the contention of the Appellant that since the proposal form was not accepted, it did not give rise to any contract between the parties, it appears that the Hon'ble Supreme Court dealt with the issue elaborately in the matter of D. Srinivas Vs. SBI Life Insurance Company Ltd. and Ors. (Civil Appeal No.2216 of 2018) and in fact took into consideration the impact of its earlier decision in LIC v. Raja Vasireddy Komalavalli Kamba and Ors., (1984) 2 SCC 719. Relevant portion of the said decision is appended below which is self explanatory.

> "12. Our attention has been drawn to the case of LIC v. Raja Vasireddy Komalavalli Kamba and Ors., (1984) 2 SCC 719, wherein this Court has clearly stated that the acceptance of an insurance contract may not be completed by mere retention of the premium or preparation of the policy document rather the acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance.
>
> 13. Although we do not have any quarrel with the proposition laid therein, it should be noted that aforesaid judgments only laid down a flexible formula for the court to see as to whether there was clear indication of acceptance of the insurance. It is to be noted that the impugned majority order merely cites the aforesaid judgment, without appreciating the circumstances which give rise to avery clear presumption of acceptance of the policy by the insurer in this case at hand. The insurance contract being a contract of utmost good faith, is a two-way door. The standards of conduct as expected under the utmost good faith obligation should be met by either party to such contract.

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

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