

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-VI
(NEW DELHI), 'M' BLOCK, 1ST FLOOR, VIKAS BHAWAN,
I.P.ESTATE, NEW DELHI-110002**

No. DCDRC/ND/59-61

Case No. CC/12/2022

Date: - 09/01/26

IN THE MATTER OF:

DP
353186

1. **KAVITA GUPTA**
WIDOW OF LATE YOGESH GUPTA,
RESIDENT OF B-4/149, GROUND FLOOR,
SAFDARJUNG ENCLAVE, NEW DELHI-110029
2. **RICHA GUPTA**
DAUGHTER OF LATE YOGESH GUPTA,
RESIDENT OF B-4/149, GROUND FLOOR,
SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. **VARUN GUPTA**
SON OF LATE YOGESH GUPTA,
RESIDENT OF B-4/149, GROUND FLOOR,
SAFDARJUNG ENCLAVE, NEW DELHI-110029

...Complainants

VERSUS

**ADITYA BIRLA SUN LIFE INSURANCE COMPANY LIMITED
THROUGH ITS MANAGING DIRECTOR-
MR. KAMLESH DAYANAND RAO
204, ASHOKA ESTATE, 24, BARAKHAMBA ROAD,
CONNAUGHT PLACE, NEW DELHI**



ALSO AT:

**ADITYA BIRLA SUN LIFE INSURANCE COMPANY LIMITED
HAVING ITS REGISTERED OFFICE AT:**

ONE WORLD CENTRE, TOWER 1, 16TH FLOOR,
JUPITER MILL COMPOUND, 841, S. B. MARG,
ELPHINSTONE ROAD, MUMBAI-400013,
MAHARASHTRA

...Opposite Party

Quorum:

Ms. Poonam Chaudhry, President
Mr. Shekhar Chandra, Member

Date of Institution: 02/02/2022

Date of Order: 06/01/2026

ORDER

SHEKHAR CHANDRA, MEMBER:

1. The present complaint has been filed for alleged illegal action of the Opposite Party (hereinafter referred as OP) as the OP refused to pay insurance amount/sum assured in respect of Insurance Policy bearing no. 008153961 (hereafter "the policy") obtained by the husband of the Complainant No. 1 and the father of the Complainant Nos. 2 and 3. The Insurance Policy was for an amount of Rs. 3,00,00,000/- (Rupees Three Crores only). The duration of the policy was 10 years.

✓



DCDRC-VI, New Delhi

2. The facts in brief as set out in the complaint case are that various representations were made about the exceptional services being rendered by the OP and believing such representations of the OP, Late Yogesh Gupta (hereafter referred to as such, or as "the deceased" or "the life assured") submitted a proposal for obtaining the policy on 20th March, 2020 and paid the first premium of Rs. 30,00,000/- (Rupees Thirty Lacs only) on 21st March, 2020. A copy of first premium receipt issued by the OP, acknowledging receipt of Rs. 30,00,000/- (Rupees Thirty Lacs only) from Late Yogesh Gupta is placed on record.
3. On March 27, 2020, Late Yogesh Gupta underwent a medical examination. All the medical tests were conducted at the clinic prescribed by the OP, viz. at Dr. Charu Kohli's Clinic. Nothing negative was revealed in the medical examination, which would have had any adverse effect of not proceeding with the grant of insurance policy in favour of Late Yogesh Gupta. The medical test result further reveals that the HbA1c level of the life assured was 5.6%, which is a non-diabetic level. Besides the above, before the issuance of the policy, the OP had obtained opinion from another panel of doctors, who found Late Yogesh Gupta/insured to be a non-diabetic person.



4. Accordingly, the OP, on the basis of the medical tests conducted by as well as the opinion of their panel of doctors, issued the policy dated 16th April, 2020.
5. The complainants submit that owing to the pandemic having spread to India also, the life assured tested positive for Covid-19 on 11th April, 2021, the deceased/insured was admitted for his treatment to one of the best hospitals in Delhi/ India, viz. the Apollo Hospital at Indraprastha, Delhi on 12th April, 2021. At the said hospital, the life assured was under the constant supervision of and was treated by a group of doctors under the Pulmonary and Medical Care Division of the Covid Apollo Group, however, his condition subsequently deteriorated and upon experiencing Dyspnea, he was shifted to the Intensive Care Unit (ICU) of the hospital on 21st April, 2021 and was treated with NIV support with critical care management.
6. On 1st May, 2021, the life assured had to be put on a mechanical ventilator due to 'persisting hypoxia on NIV'. On 8th May, 2021, at 02.55 p.m., the life assured suffered a cardio-respiratory arrest, whereupon CPR was given as per ACLS protocol, however, he could not be revived and unfortunately succumbed to the deadly virus on 8th May, 2021 at 03.27 p.m.



7. The cause of death, as stated by the hospital, was severe covid pneumonia with severe acute respiratory distress syndrome in a known case of diabetes mellitus with hypothyroidism. It is submitted by the complainants that after the issuance of the insurance policy, when there were certain complications, the deceased had consulted Dr. Sushil Sharma of Dhama Clinic on 9th November, 2020. A copy of the prescription given by the clinic is filed along with the complaint. It is stated that since the Complainants are truthful, a copy of the prescription was sent by them to the officials of the OP. Thus, even after the demise of Late Yogesh Gupta, the Complainants had been truthful and fair.

8. The complainants submit that the OP had always represented itself to be a company of repute. Even in the policy issued, it was mentioned inter alia that "*Your decision to choose Aditya Birla Sun Life Insurance Health Secure Plan will not only safeguard your future but also that of your loved ones*", and that "*We understand that settlement of claims is of utmost importance*". The complainant, therefore submit that even otherwise, the very purpose of obtaining the policy was that in the case of unfortunate event of death of the life assured, his legal representatives receive the amount assured without any hassle.



9. The complainants state that on 28th May, 2021, a claim was filed by the Complainant No. 2 for claiming the amount of insurance. On 6th September, 2021, the OP rejected the claim citing a 'non-existent ground' that the life assured had suppressed/ concealed his medical conditions at the time of applying for the policy. The complainants further submit that even in their communication dated 6th September, 2021, the OP inter alia mentioned that "*However, our investigations have established that the Life Assured was suffering from Diabetes Mellitus and was under medication for the same prior to the proposal for insurance. Hence, we are satisfied that the aforesaid replies in the proposal for insurance and Medical Examiner's Report are false.*" No specific facts were disclosed/ mentioned which would have shown that the replies submitted by the life assured in the proposal form for insurance and the report of the medical examiner on the panel of the OP were false. This communication, without stating any specific facts, i.e. from where the life assured took medication for the treatment of diabetes, if any, is of no factual/legal consequence. In substance, it is submitted by the complainants, that the grounds taken by the OP are baseless and without any factual foundation. These grounds have been set up to



defeat the just claim of the Complainants; thus, denied the benefit to which the Complainants are entitled on facts as well as law.

10. The Complainants addressed a communication dated 11th October, 2021 to the Grievance Redressal Committee of the OP wherein it was mentioned inter alia as under:

"At the outset, we wish to state that we are absolutely appalled to note the contents of your letter, which wrongfully denies our "just" claim on non-existent and untenable grounds. The contents of your letter, in so far as it states that the deceased was aware of himself being a diabetic before applying for the policy, are baseless and without any merit. It is submitted that there has been no concealment of fact at the time of applying for the insurance. Rather, it is worth mentioning that the deceased had undergone a complete medical examination conducted by the medical team on the panel of the Insurer.

The medical check-up conducted at Dr. Charu Kohli's Clinic reveals that the HbA1c level of the deceased was 5.6%, which clearly indicates that the deceased was non-diabetic at the time of applying for the insurance. It is also noteworthy that the medical board of the Insurer had also duly examined and approved the medical test results of the deceased, and it was only thereafter that the insurance proposal was accepted, and the deceased made the requisite payments, and the insurance policy was issued."

11. No response was received from the Grievance Redressal Committee of the OP. However, a communication dated 13th November, 2021 was



received by the complainants from the Customer Care of the OP, which again repudiated the insurance claim.

12. The complainants further submit that since no positive action/response was being given, and the Complainants had been suffering tremendously, a Legal Notice dated 25th November, 2021 was served by the Complainants through SPN Legal Law Offices, but there was no response.
13. It is submitted by the complainants that the OP issued a letter dated 24th December, 2021, received on 30th December, 2021, seeking a further time of 30 days to respond to the Legal Notice. The complainants submit that the OP has not paid the amount and is adopting dilatory tactics; there is clear deficiency of services on the part of OP.
14. The complainants have based their complaint on the following grounds:-
 - (i) The deceased was clearly a consumer within the definition of 'consumer' under the Consumer Protection Act, 2019. The Complainants, being the legal representatives of the deceased, were/ are clearly entitled to the amount assured. The claim having been denied wrongfully against facts as well as law, this



complaint is filed on the following amongst other grounds:

(ii) Reliance is placed on the law laid down by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, in Revision Petition No. 4461 of 2012, decided on October 08, 2012, titled "*Neelam Chopra vs. Life Insurance Corporation of India & Ors.*". In that case, the Hon'ble National Commission relied on the following observations of the Hon'ble Supreme Court in the case of *Sulbha Prakash Motegaonkar & Ors. vs. Life Insurance Corporation of India*, Civil Appeal No. 8245 of 2015, decided on October 05, 2015:

"It is not the case of the Insurance Company that the ailment that the deceased was suffering from was a life threatening disease which could or did cause the death of the insured. In fact, the clear case is that the deceased died due to ischaemic heart disease and also because of myocardial infarction. The concealment of lumbar spondylitis with PID with sciatica persuaded the respondent not to grant the insurance claim.

We are of the opinion that National Commission was in error in denying to the appellants the insurance claim and accepting the repudiation of the claim by the respondent. The death of the insured due to ischaemic



heart disease and myocardial infarction had nothing to do with this lumbar spondylitis with PID with sciatica. In our considered opinion, since the alleged concealment was not of such a nature as would disentitle the deceased from getting his life insured, the repudiation of the claim was incorrect and not justified."

(iii) The Hon'ble National Commission went on to observe that "*From the above observations of the Hon'ble Supreme Court, it is clear that suppression of any information relating to pre-existing disease if it has not resulted in death or has no direct relationship to cause of death, would not completely disentitle the claimant for the claim.*" It is a case where death did not occur due to diabetes. Rather, it is a matter of record that the cause of death of Late Yogesh Gupta was Covid-19.

(iv) It is also significant to note that the death of the life assured occurred within 30 days from the date of testing/ being clinically determined as a Covid-19 case, which, as per the guidelines dated September 08, 2021, jointly issued by the Union Ministry of Health and Family Welfare and the Indian Council of Medical Research, is to



be treated as death due to Covid-19. Further, even the Hon'ble Supreme Court of India, in Writ Petition (Civil) No. 554 of 2021 titled '*Reepak Bansal vs. Union of India & Ors.*' with Writ Petition (Civil) No. 539 of 2021 titled '*Gaurav Kumar Bansal vs. Union of India & Ors.*', has laid down that all deaths with a diagnosis of Covid-19, irrespective of co-morbidities, are to be classified as deaths due to Covid-19.

(v) Even the death summary issued by the Apollo Hospital at Indraprastha, New Delhi clearly indicates that the deceased was admitted in the Department of Covid and the primary consultant was "Group Dr PULMONARY AND MEDICAL CARE GROUP COVID Apollo Group".

(vi) The life assured did not suffer from diabetes at the time of submitting the proposal for insurance, which is further evidenced from the medical examination reports prepared and studied by the doctors on the panel of the OP. The report of the medical team selected/appointed by the OP is binding on the OP.



(vii) The OP never informed the life assured that the medical examination reports submitted by the doctors on the panel of the OP were false. The deceased also genuinely believed, on the basis of those reports that he was not suffering from diabetes / any such ailment. The OP has very conveniently chosen to wriggle out of its obligations, by now falsely averring that the proposal submitted by the deceased and the medical examination conducted by its panel of doctors, for which even second opinion was sought, were false.

(viii) Furthermore, it is a well-known fact that death owing to Covid-19 may be caused even to a healthy person. Several persons having good health, such as doctors, police personnel and paramedical staff, have also unfortunately succumbed to Covid-19.

(ix) The wrongful denial of the claim by the OP has caused/ is causing extreme distress, hardships and harassment to an already bereaved family, including the Complainant No. 1, who is the widow of the deceased, and is a senior citizen, suffering from various ailments,



including dementia, which requires constant medical care and attention. Besides her medical expenses, she has to meet other basic necessities to run her day-to-day living as well.

(x) The contention of the OP that the demise took place owing to Late Yogesh Gupta being a diabetic patient prior to applying for the insurance, is absolutely wrong and against its own records, and has been raised only to wrongfully extricate itself from paying the dues that it is liable to pay. It is a clear case where the claim on the life of the insured is being unjustly denied on preposterous grounds and with a view to further agonize and harass an already bereaved family/ the Complainants herein.

(xi) The wrongful refusal of the claim on part of the OP and consequential deprivation of the claim amount that the Complainants are entitled to, has caused and is likely to cause grave harm, prejudice, agony, stress, trauma and harassment to the Complainants as well as further deterioration in the health of the widow of Late Yogesh



Gupta, i.e. the Complainant No. 1. It is most unfortunate that an already afflicted family is having to run from pillar to post owing to such mechanical and arbitrary denial on part of the OP and results not only in loss of confidence of the policyholders but also defeats the very purpose for which the policy was taken.

15. It is pleaded by the complainants that they are consumers within the definition of the Consumer Protection Act, 2019 and there is clear cut deficiency in service on the part of the OP. The complainants factually as well as legally are entitled to the reliefs claimed in the complaint.

16. Since the complainants could not get their grievances resolved, they have approached this Commission by way of the present complaint case with the following reliefs:-

- (i) Direct the OP to pay to the Complainants the sum assured of Rs. 3,00,00,000/- (Rupees Three Crores only) on the life of Late Yogesh, along with interest @ 12% per annum from the date it became payable, till realization;
- (ii) Direct the OP to compensate the Complainants in the sum of Rs. 20,00,000/- (Rupees Twenty Lacs only) for



the undue harassment, stress, agony and trauma caused to the Complainants; and

(iii) Grant such other and further relief(s) as this Commission may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

17. Upon receipt of notice of the present complaint case, the OP has filed their written statement/reply by opposing the complaint case inter alia on the grounds that the complaint is false, frivolous, vexatious and is gross abuse of process of this Commission and law and therefore, liable to be dismissed. It is further contended by the OP that the present complaint does not raise any consumer dispute as defined under the Consumer Protection Act, 1986. Therefore, the present complaint is liable to be dismissed on this ground alone. Further, this Commission has no pecuniary jurisdiction to entertain the present complaint.
18. It is further contended by the OP that since the claim of the Complainant is beyond ₹50 Lacs, therefore, this Commission has no pecuniary jurisdiction to entertain the present complaint and the present complaint is liable to be dismissed on this ground alone. Further, this Commission has no jurisdiction to entertain the present complaint as the Complainant has failed to demonstrate any "*Deficiency in Service*" on

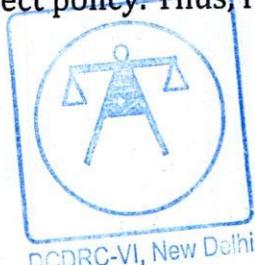


the part of the OP as defined in Section 2(11) of the Consumer Protection Act, 2019, which means "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and (ii) deliberate withholding of relevant information by such person to the consumer. In the present case, the claim of the complainant was repudiated on the basis of intentional non-disclosure of material facts by the Life Assured being the untrue statements and declarations made in the Proposal form dated 23.03.2020. Thus the Complaint is liable to be dismissed. The Life Assured was suffering from Diabetes Mellitus and was under medication for the same prior to the proposal for insurance. This material fact was not disclosed by the Life Assured at proposal stage, rendering the subject policy invalid, in-operative and unenforceable in law. Therefore, the present complaint is liable to be dismissed.



19. The OP submits that this Commission has no jurisdiction to entertain the present complaint as the insurance contract, which culminated into the policy forming subject matter of the complaint, is invalid, void-ab-initio, inoperative and unenforceable. Therefore, the present complaint is liable to be dismissed. It is further submitted that the present complaint is not maintainable as the subject policy has been obtained by the Life Assured fraudulently, dishonestly and by misrepresentation. Thus, the present complaint is liable to be dismissed on this ground alone. It is stated that the contract of insurance is based on a Rocky Foundation of utmost good faith, i.e. Principle of Uberrimafides. The proposer / Life Assured has to maintain and observe a complete good faith in entering into the insurance contract with the insurer. The Life Assured / proposer is under solemn obligation to make full, complete, true and correct discloser of the material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted. If the Life Assured proposer failed to disclose the true and correct material facts to the insurer then the policy obtained by the Life Assured /proposer stand vitiated and the Life Assured or any person claiming under him, is not entitled for any benefits under the said policy. In the present case, the Life Assured was

suffering from Diabetes Mellitus with Hypothyroidism and was under medication prior to the proposal for insurance. The said intentional non-disclosure of the material fact at proposal stage clearly indicate that the Life Assured obtained the subject policy only with an intention to cheat the insurer. It is stated that the said material fact regarding non-disclosure of the past medical history by the Life Assured was critical for the Opposite Party to evaluate the financial risk and the moral hazard involved in the proposal and allowed the OP to issue the subject policy without assessing the risk in a prudent manner. Had the Life Assured disclosed the information sought in a truthful manner, the OP would not have issued the subject policy to the Life Assured. The said intentional non-disclosure of the material facts goes to the root of the matter vitiating the subject policy and rendered it invalid, void ab-initio and unenforceable. Under Section 45 of the Insurance Act, 1938, the Insurance Company can challenge the policy on the ground of concealment of material fact by the Insured within three years from the date of commencement of the policy. In the present case, the subject policy bearing No. 008153961 was issued on 16.04.2020 and the Life Assured was reported to have died on 08.05.2021, i.e. within 1 year and 22 days from the date of issuance of the subject policy. Thus, rejection of



the claim of the Complainant was proper, legal, valid and justified, as the Life Assured intentionally did not disclose the material facts about his past medical history to the OP at proposal stage.

20. We have gone through the record and heard the arguments. For three reasons we cannot accept the submissions of the OP, which are enumerated below:

- (1) The death took place during the Covid-19 pandemic and the Hon'ble Supreme Court of India in the case of '*Reepak Bansal Vs Union of India & Ors*' Writ Petition No. 554 of 2021 and '*Gaurav Kumar Bansal Vs Union of India & Ors.*' Writ Petition (Civil) No. 539 of 2021 has laid down that all deaths with a diagnosis of Covid-19, irrespective of co-morbidities, are to be classified as deaths due to Covid-19.
- (2) In this case before issuing policy, the OP itself examined the deceased/insured and on being satisfied that there is no pre-medical record against the insured, policy was issued. Therefore, the OP cannot take the plea of concealment of fact by the insured/deceased.
- (3) As regard cause of death, we would like to refer to the decision of the Hon'ble National Commission in the case of '*Life Insurance*



Corporation of India Vs Sunita & Others', reported at 2020 SCC

OnLine NCDRC 710 wherein it has been held as under:-

*"7. We have heard the learned counsel of both the parties and perused the material on record.
8. As per the death summary, the death was due to a sudden cardiac arrest and inspite of best resuscitative measures, the patient could not be revived. We note both the for a have arrived at concurrent findings and allowed the complaint.*

*9. In the present case, the deceased assured was suffering from diabetes mellitus and chronic liver disease when brought to the hospital. But, the death was due to cardiac arrest. In our view the cause of death is nowhere connected to his pre-existing disease. Our view dovetails from the decision of Hon'ble Supreme Court in the Civil Appeal No. 8245 of 2015 titled '**Sulbha Prakash Motegaoneker Vs Life Insurance Corporation of India**', decided on 05.10.2015, wherein it was observed that suppression of information regarding any pre-existing disease, it has not resulted in death or has no connection to cause of death, would not disentitle the claimant for the claim.*

21. The aforesaid judgment of the Hon'ble National Consumer Commission has been followed by the Hon'ble Delhi State Commission in the case of '**Ms. Anita Gupta Vs. HDFC Standard LIC Co. Ltd.**', CC 696 of 2018, decided on 12.01.2024.



22. Same view has been expressed by the Hon'ble Delhi State Consumer Commission in the case of '**Ms. Surilla Mathur Vs. Oriental Insurance Company Ltd.**' FA 26 of 2015, decided on 01.12.2024.

23. As regard the question whether claim will be payable if death occurs within two years, the Hon'ble Supreme Court in the case of '**Reliance Life Insurance Co. Ltd. Vs. Rekhaben Nareshbhai Rato**', (2019) 6 SCC 175 (SC) held that the insurer can repudiate a life insurance policy within two years if there is a material misrepresentation or suppression in the proposal form, even if the cause of death is unrelated to the suppressed fact. However, the Hon'ble Apex Court clarified that the insurer must prove that the misrepresentation was material (i.e. it would have influenced a prudent insurer's decision to accept the risk or fix the premium) and that the proposal form is a key part of the disclosure process. Thus, this case confirms that death within two years does not automatically bar the claim; the legal heirs/nominee remains entitled to the death benefit unless the insurer proves a valid ground for repudiation. If the insurer cannot establish material misrepresentation/fraud, or if the non-disclosed fact is not material, the claim must be paid to the nominee/legal heirs even though death occurred within two years.



24. After perusing the record and the law as laid down above by, we are of the view that the complainants are entitled for claim. It is accordingly directed that the OP shall pay the insured amount of Rs. 3,00,00,000/- to the complainants with interest @ 6% per annum from the date of claim till realization, within four weeks, failing which the OP shall be liable to pay interest at increased rate of 9% per annum. A sum of Rs. 25,000/- be paid as litigation expenses to the complainants.

Let the Registry of this Commission may send a copy of this order to all the parties through registered post/speed post. The order be also uploaded on the website of this Commission, promptly.

File be consigned to the record room with a copy of order.



DCDRQ-VI, New Delhi

Sertified True Copy [Poonam Chaudhry]
President
09/01/26
EXAMINER shekar chandra
Distr. Forum-VI [Shekhar Chandra]
Member