
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

121 **CWP-34766-2024 (O&M)**
Date of decision : 03.03.2025

Bajaj Allianz General Insurance Company Limited

...Petitioner

Versus

Kashmir Singh Gill and another

.. Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present:- Mr. Sandeep Suri, Advocate for the petitioner.

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Anupinder Singh Grewal, J. (Oral)

The petitioner-Insurance Company has challenged the order dated 30.09.2024 (Annexure P-1) of the National Consumer Disputes Redressal Commission (for short 'National Commission') whereby the appeal preferred by the respondent No.1-complainant challenging the order dated 01.09.2016 (Annexure P-3) of the State Consumer Disputes Redressal Commission (for short 'State Commission') has been allowed.

2. Learned counsel for the petitioner-Insurance Company submits that the respondent No.1-complainant had purchased a Mediclaim Travel Insurance Policy (hereinafter referred to as Policy) having validity from 17.08.2013 to 14.11.2013 from the petitioner-Insurance Company and the same was extended for a further period of two months i.e., from 15.11.2013 to 13.01.2014. He then bought a similar policy for the period 20.06.2014 to 21.09.2014 after payment of the premium of Rs.13,693/-. After due medical examination was carried out by the

panel of doctors of the petitioner-Insurance Company, the respondent No.1-complainant was declared fit. The respondent No.1-complainant extended his stay in the USA and had sought extension of the above policy. The extension was granted and the policy extended for the period from 23.09.2014 to 27.10.2014. He also submits that the respondent No.1-complainant was suffering from a pre-existing disease of 'Haematuria' which he had not disclosed at the time of submitting the proposal form, although, he ought to have disclosed his pre-existing ailment at the time of renewal of the policy on 23.09.2014 as he had become aware of this medical condition on 20/21.09.2014. In support of his submissions, learned counsel for the petitioner-Insurance Company has relied upon the judgment of the Supreme Court in case of **Biman Krishna Bose vs. United India Insurance Co. Ltd. And another, (2001) 6 SCC 477.**

3. Heard.

4. The respondent No.1-complainant who was then aged about 72 years, had obtained a travel insurance policy from the petitioner-Insurance Company for the period of his travel to the United States of America. He had obtained the insurance policy on 17.08.2013 under the nomenclature "Travel Super Age Elite-US$50000", and it was renewed several times. However, a fresh policy under the same nomenclature was obtained by the respondent No.1-complainant on 24.06.2014 which was valid only upto 21.09.2014 and thereafter, it was renewed on 23.09.2014 extending it till 27.10.2014. During his travel abroad, the respondent No.1-complainant is stated to have developed a medical condition. On 25.09.2014, he had approached the Fairfield Urgent Care Centre, and from there he was referred to the Emergency Department of Bridgeport Hospital, Bridgeport,

Connecticut, USA. Although, in the medical reports the diagnosis is stated to be '*Hematuria, Gross'* but no medicines were prescribed for its treatment. He had incurred medical expenses of $11,516 during the hospital visits and therefore, submitted a claim for reimbursement of these expenses. The claim of the respondent No.1-complainant was rejected by the petitioner-Insurance Company by its letter dated 27.02.2015 (Annexure P-8) in view of the exclusion stipulated in Clause 2.4 of the Policy. The ground taken in the letter is reproduced below:

> "*...You have lodged a claim for medical expenses incurred towards Hematuria. As per received medical records you are known to be suffering from prostatic. Hypertrophy and you had suffered from similar complaints last year. Policy incepted on 23rd September, 2014 and started with treatment for hematuria from 25th September, 2014. You are suffering from Hematuria current episode since 5-7 days. As per policy terms any medical condition or complication arising from it which existed before the commencement of the policy period will not be payable. Since present medical condition is pre-existing in the policy hence we regret to inform you the claim stands repudiated.*
>
> *Standard Travel Policy Exclusions*

2.4 The Company shall be under no liability to make payment hereunder in respect of any claim directly or indirectly caused by, based on, arising out of or howsoever attributable to any to the following:
2.4 Any medical condition or complication arising from it which existed before the commencement of the Policy Period, or for which care, treatment or advice was sought, recommended by or received from a Physician.

> *Hence we regret to inform you that the claim is inadmissible and thus repudiated.*
> *Xxxxxxx"*

5. Aggrieved by the action of the Insurance Company, he filed a consumer complaint before the District Consumer Disputes Redressal Forum, Panchkula (for short 'District Commission') seeking reimbursement of his medical expenses which were quantified at Rs.7,60,000/-.The District Commission by its

order dated 03.03.2016 (Annexure P-2) had allowed the complaint and directed payment of Rs.7,60,000/- along with interest @ 9% per annum, as well as compensation for mental agony at Rs.20,000/- and Rs.5,000/- as litigation costs. The petitioner-Insurance Company filed an appeal before the State Commission which vide its order dated 01.09.2016 (Annexure P-3) had set aside the order of the District Commission and dismissed the complaint. Thereafter, the respondent No.1-complainant preferred revision before the National Commission which was allowed and the order of the State Commission was set aside on 30.09.2024 (Annexure P-1).

ANALYSIS

6. We are not impressed by the argument of the learned counsel for the petitioner-Insurance Company that, in view of Clause 2.4 of the policy, the petitioner-Insurance Company was justified in repudiating the claim, as the pre-existing condition of haematuria was not disclosed by the respondent No.1-complainant, either at the time of obtaining the initial policy in June 2014 or its renewal on 23.09.2014. Relevant extract of the clause 2.4 of the policy reads as under:-

> *"xxxxx*
> *2.4 The Company shall be under no liability to make payment hereunder in respect of any Claim directly or indirectly caused by, based on, arising out of or howsoever attributable to any of the following:*
> *xxxxx*
> *2.4.12 Any medical condition or complication arising from it which existed before the commencement of the Policy Period, or for which care, treatment or advice was sought, recommended by or received from a Physician.*
> Xxx"

7. A bare reading of Clause 2.4.12 indicates that the medical condition should be one for which care, treatment or advice was sought, recommended by, or received from a Physician. No evidence or document whatsoever has been placed

on record by the petitioner-Insurance Company to support its contention that the respondent No.1-complainant had sought care or treatment or advice, which was recommended by or received from any medical practitioner in connection with any pre-existing medical condition or complication wherein one of the symptoms was haematuria, which ought to have been disclosed by him at the time of obtaining the insurance policy, or its renewal.

8. It is apt to notice that, at the time of purchasing the policy in June 2014, the respondent no.1-complainant was declared fit by the panel of doctors of the petitioner-Insurance Company, after the recommended medical examination was carried out. Even a routine urine examination test was carried out, and in the report dated 06.06.2014 no abnormality was detected.

9. It is manifest that, in the instant case, the insurance company had issued the policy after duly considering the medical reports and upon being satisfied about the medical condition of the proposer and that he was not suffering from any pre-existing illness. Therefore, the insurance company now, cannot turn around and repudiate the claim made by the insured under the policy by taking the plea that there is a possibility of a pre-existing illness or ailment. Reliance can be placed on the judgment of the Supreme Court in the case of ***Manmohan Nanda v. United India Assurance Co. Ltd.*, (2022) 4 SCC 582** wherein the appellant had bought an overseas medi-claim policy as he intended to travel to USA. On reaching San Francisco Airport he got a heart attack and was admitted in the hospital where angioplasty was performed on him and three stents were inserted to remove the blockage from the heart vessels. Later on, the appellant therein had claimed reimbursement of the treatment expenses from the respondent-insurer. The

claim was repudiated by the insurer on the ground that the appellant had a history of hyperlipidaemia and diabetes, which was not disclosed at the time of obtaining insurance policy and the policy did not cover pre-existing conditions and complications arising from it. Noticeably, the appellant therein was issued an overseas mediclaim policy after undergoing the requisite medical tests namely blood sugar test, urine examination and electrocardiogram test and after having being examined by the doctor. The doctor had mentioned that the insured had diabetes mellitus-II (DM2) which was controlled by drugs and noted that there was no current illness or disease at the time of issuance of policy, which would possibly require medical treatment before his forthcoming trip. Therefore, the Supreme Court applying the *contra proferentem rule,* had held that the insurer being appraised about the said medical condition of diabetes mellitus-II of the appellant, had issued policy to the appellant which could only lead to the inference that the insurer did not consider the said medical condition as a risk factor for any possible cardiac ailment during the term of the policy, so as to deny the claim under the policy.

10. In the case at hand, the sole basis for the petitioner-Insurance Company to state that the respondent No.1-complainant was suffering from a pre-existing ailment of Haematuria, which he had failed to disclose and therefore, the insurance company was right to repudiate the claim, are the notes of the concerned doctors namely, Sanjeev Rao at Fairfield Urgent Care Centre and Jennifer Cronsell, DO (Physician) at Bridgeport Hospital. Both the doctors had attended to the respondent No.1-complainant on 25.09.2014. Dr Rao in his notes had recorded under the column ‘reasons for visit’ that this episode of blood in his urine had also

happened last year but he did not follow it up for one month. The relevant extract of his notes are reproduced herein below:-

Reasons for visit	
Hematuria Back Pain Reason for Visit History	Sick days clots of blood also, happened last year did not follow it up for one month
Diagnoses this Visit	
Blood in urine-Primary	

Whereas Dr Cronsell mentioned in her notes that the present episode of blood in urine had started 4-5 days ago and it is a new problem. The relevant extract of her notes are reproduced hereinbelow:-

> "*History*
> ***Chief Complaint***
> *Patient presents with*
> - *Hematuria*
>
> *Blood in urine x4-5 days. Denies pain.*
> *HPI comments: 73 yo M with PMH of BPH presents with painless gross hematuria x 5 days and low back pain, Pt visiting from India, plans to stay in country until November or December. Pt denies flank pain, dysuria, discharge, abdominal of pelvic pain, weakness, weight loss.*
> *Patient is a 73 y.o. male presenting Hematuria. The history is provided by the patient and a relative.*
> ***Hematuria***
> *This is a new problem. The current episode started in the past 7 days.*
> *Xxxxxx"*

11. It is evident from a perusal of the proposal form and the medical tests conducted by the petitioner-Insurance Company that the respondent No.1-complainant had disclosed that he was suffering from asthma and hypertension. The factum of episode of blood in urine having been reported to the hospital by respondent No.1-complainant by itself, cannot lead to the conclusion that he had a pre-existing disease, which he did not disclose. What the respondent No.1-complainant had stated to the doctor was only that a similar episode of blood in

urine, had happened last year but he did not follow up, which only indicates that it was not a serious condition otherwise, the respondent No.1-complainant would have sought further medical treatment.

12. The primary submission of the learned counsel for petitioner-insurance company is that the insured had failed to disclose his pre-existing disease, we therefore, deem it necessary to examine whether 'haematuria' is a disease. Clause 23.16 and 23.17 of the policy define the terms 'sickness' and 'disease.' The relevant extract of the two clauses of the policy are reproduced hereinafter:-

> *"**Definitions***
>
> *23.16 "Sickness" means a condition or an ailment affecting the general soundness and health of the Insured's body that first manifests itself during the Policy Period and for which immediate treatment by a Physician is necessary.*
>
> *23.17 "Disease" means an affliction of the bodily organs having a defined and recognised pattern of symptoms that first manifests itself during the Policy Period and for which immediate treatment by a Physician is necessary."*

Black's Medical Dictionary defines 'haematuria' as '*the condition of blood in the urine.'* It then goes on to illustrate the possible causes of the condition. Bansal's Medical Dictionary defines 'haematuria' as '*the presence of blood in the urine, which may come from the kidney (renal heamaturia), the urethra (urethral heamaturia), or from the urinary bladder (vesical heamaturia)'.* A bare reading of the above, would reveal that it would be difficult to consider 'haematuria,' by itself, as an ailment or disease. It simply refers to presence of blood in the urine, which, by itself, is not a disease, though it could be a symptom of several conditions, including urinary tract infections or other diseases. Further, diagnosis

would be required to ascertain the possible cause of haematuria. In the instant case, there is nothing to indicate that the respondent No.1 had followed up the symptoms, sought diagnosis and treatment. We therefore, are of the view that in the afore-noted facts and circumstances, the respondent No.1 was not aware of the fact that he was suffering from any pre-existing disease except asthma and hypertension, which he had disclosed to the Insurance Company.

13. It is trite that a proposer is under a duty to disclose to the insurer all material facts as are within his knowledge. However, the assured is not under a duty to disclose facts which he did not know and which he could not reasonably be expected to know at the material time. Reference may be made to the judgment of the Supreme Court in ***Manmohan Nanda(supra)*.** The relevant extract of the same is reproduced below:

> "42.Thus, a proposer is under a duty to disclose to the insurer all material facts as are within his knowledge. The proposer is presumed to know all the facts and circumstances concerning the proposed insurance. Whilst the proposer can only disclose what is known to him, the proposer's duty of disclosure is not confined to his actual knowledge, it also extends to those material facts which, in the ordinary course of business, he ought to know. However, the assured is not under a duty to disclose facts which he did not know and which he could not reasonably be expected to know at the material time. The second aspect of the duty of good faith arises in relation to representations made during the course of negotiations, and for this purpose all statements in relation to material facts made by the proposer during the course of negotiations for the contract constitute representations and must be made in good faith."

14. It is an undisputed fact that the policy at the first instance was valid from 24.06.2014 to 21.09.2014 and the respondent No.1-complainant had sought the extension of the policy from 23.09.2014 which was accepted as he had duly paid the premium of Rs.11,000/-. He had sought treatment on 25.09.2014 when the policy was operational and therefore, the denial of claim to respondent No.1-complainant is wholly unjustified. The petitioner-Insurance Company having once

accepted the insurance proposal and the premium paid by the respondent No.1-complainant, they cannot later turn around and reject the same on a frivolous ground.

15. Learned counsel for the petitioner-Insurance Company has relied on the judgment in the case of ***Biman Krishna Bose*** (supra) to submit that a renewal of insurance policy means repetition of the terms and conditions of the original policy and, therefore, the respondent No.1 as complainant was not entitled to reimbursement of any claim as he had failed to disclose the factum of existence of a medical ailment at the time of renewal of the insurance policy on 23.09.2014. In the case of ***Biman Krishna Bose*** (supra), the question before the Supreme Court was whether the High Court was justified in directing the complainant to take a fresh medi claim policy instead of directing to renew with retrospective effect. The Supreme Court held that as the act of Insurance Company in refusing to renew the policy was arbitrary, the High Court ought to have directed the Insurance Company to renew the mediclaim policy with effect from the date when it was due for renewal. Learned counsel for the petitioner has placed reliance on paragraph 5 of the judgment, which is reproduced hereunder:-

> *"5. A renewal of an insurance policy means repetition of the original policy. When renewed, the policy is extended and the renewed policy in identical terms from a different date of its expiration comes into force. In common parlance, by renewal, the old policy is revived and it is sort of a substitution of obligations under the old policy unless such policy provides otherwise. It may be that on renewal, a new contract comes into being, but the said contract is on the same terms and conditions as that of the original policy. Where an insurance company which has exclusive privilege to carry on insurance business has refused to renew the mediclaim policy of an insured on extraneous and irrelevant considerations, any disease which an insured had contracted during the period when the policy was not renewed, such disease cannot be covered under a fresh insurance policy in view of the exclusion clause. The exclusion clause provides that the pre-existing diseases would not be covered under the fresh insurance policy. If we take the view that the*

> *mediclaim policy cannot be renewed with retrospective effect, it would give handle to the Insurance Company to refuse the renewal of the policy on extraneous consideration thereby deprive the claim of the insured for treatment of diseases which have appeared during the relevant time and further deprive the insured for all time to come to cover those diseases under an insurance policy by virtue of the exclusion clause. This being the disastrous effect of wrongful refusal of renewal of the insurance policy, the mischief and harm done to the insured must be remedied. We are, therefore, of the view that once it is found that the act of an insurance company was arbitrary in refusing to renew the policy, the policy is required to be renewed with effect from the date when it fell due for its renewal."*

16. It was also held by the Supreme Court that if the policy is renewed, it may be a new contract but is in continuation of the earlier one on the same terms and conditions. In the event of the arbitrary refusal to renew the policy, direction ought to be issued for its renewal which would cover the diseases the insured may be contacted in the interregnum. There is no denying this proposition of law. However, this judgment does not advance the case of the petitioner in any manner whatsoever especially when the insurance policy had been duly extended and was valid when the respondent No.1 had incurred expenses for medical treatment.

17. In view of the above, we have no hesitation to hold that the repudiation of the claim of respondent No.1 for his medical expenses is clearly unsustainable. Therefore, we do not find any illegality in the order of the National Commission.

18. The petition stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

03.03.2025

sapna Whether speaking/reasoned : Yes/No
Whether reportable :Yes/No