HC-KAR
NC: 2026:KHC:60514-DB
WP No. 32029 of 2025
CNR: KAHC010688762025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MRS. JUSTICE N.V.BHAVANI

WRIT PETITION NO.32029 OF 2025 (GM-CON)

BETWEEN:

THE BRANCH MANAGER
BAJAJ ALLIANZ LIFE INSURANCE CO. LTD.,
II ND FLOOR, AKSHAYA COMMERCIAL COMPLEX,
NO 26 VICTORIA ROAD,
BANGALORE – 560 047.

REPRESENTED BY ITS
AUTHORISED OFFICER
MR. M. ARAVINDA.

…PETITIONER

(BY SRI. JAGADISH J.R, ADVOCATE)

AND:

Digitally signed by YASHODA K L
Location: HIGH COURT OF KARNATAKA

SMT. VIRUPAMA
W/O. LATE DODDAPPA,
AGED ABOUT 44 YEARS,
OCC HOUSE HOLD,
R/O. SUGURESHWAR SAW MILL,
NEAR APMC, BAPPUR ROAD,
SINDHANOOR, RAICHUR DIST,
KARNATAKA – 584 128

…RESPONDENT

THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI AND QUASH THE FINAL ORDER DATED 17/01/2025 PASSED IN FIRST APPEAL NO.24/2011, BY THE HONBLE NATIONAL CONSUMER DISPUTES REDRESSAL

COMMISSION WHICH IS PRODUCED AS ANNEXURE-A AND CONFIRM THE FINAL ORDER DATED 11/11/2010 PASSED IN COMPLAINT NO.115/2008, BY THE HONBLE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, BENGALURU, WHICH IS PRODUCED AS ANNEXURE-B AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
AND
HON'BLE MRS. JUSTICE N.V.BHAVANI

ORAL ORDER

(PER: HON'BLE MRS. JUSTICE N.V.BHAVANI)

This petition is filed assailing the order dated 17.01.2025 passed by the National Consumer Disputes Redressal Commission[1] in First Appeal No.24/2011 and for confirming the final order dated 11.11.2010 passed by the Karnataka State Consumer Disputes Redressal Commission[2], Bangalore, in Complaint No.115/2008.

2. The parties are referred to as per their ranking before the State Commission.

[1] 'National Commission'
[2] 'State Commission'

3. The facts in a nutshell are that the complainant's husband (life insured) was hale and healthy and was a businessman by profession and owning sawmill at Sindhanoor, Raichur District. He was an Income Tax Assessee by holding Pan Card No.ADQPD4800J. The said Life Assured by knowing about the Opposite Party's policy in the market by name UNIT GAIN (regular plan), he submitted a proposal form No.4638560 on 24.02.2006, for an assured sum of Rs.30,00,000/- by opting for payment of Rs.50,000/- as annual premium and the same was paid through Cheque No.236360 dated 25.02.2006.

4. After the receipt of said proposal form, the Opposite Party has faxed 3 letters to the life insured through his agent for undergoing various medical examination through their panel doctor H.S.Totad. Accordingly, life insured underwent various medical examination on 21st, 23rd and 24th of March 2006. Thereafter, the said doctor submitted his medical

examination report to the Opposite Party. Apart from this, Opposite Party got fulfilled other requirements from life insured and he offered policy for sum assured for Rs.26,00,000/- by issuing premium receipt on 27.04.2006 by accepting the proposal form on 24.02.2006 and sent the policy to the life assured on 13.05.2006.

5. It is stated that in the first week of August 2006, the life assured got admitted to Rajeev Gandhi Super Specialty Hospital and inspite of best treatment, he died on 15.08.2006 due to Cardio Respiratory Failure. The death intimation was intimated by submitting claim form to the Opposite Party by the complainant, but the Opposite Party illegally repudiated the claim of the complainant through its letter dated 04.12.2006, on the alleged ground of non-discloser of material facts. In that letter dated 04.12.2006 the complainant wrote to the Opposite Party's Claim Review Committee for reconsidering her claim, which went in vain. Being aggrieved by the rejection of

the claim, the complainant filed the complaint before the State Commission in Complaint No.115/2008.

6. It is further stated that the State Commission by its order dated 11.11.2010, dismissed the complaint. Being aggrieved by the said order, the Complainant approached the National Dispute Redressal Commission, New Delhi, by filing First Appeal No.24/2011 and the said appeal came to be allowed vide order dated 17.01.2025.

7. Being aggrieved by the said order dated 17.01.2025, the Opposite Party has preferred this writ petition.

8. Heard the arguments of learned counsel for the petitioner.

9. The sole submission of learned counsel for the petitioner is that the State Commission had considered the complaint filed by the respondent and had dismissed the complaint holding that there was no deficiency in service

on part of the petitioner/opposite party in repudiating the claim made by the complainant. It was observed that the complainant had suppressed the disease, which he had before obtaining the policy.

10. It is further stated that once the aforesaid finding was recorded by the State Commission, the National Commission ought not to have reversed the finding and that too relying upon an opinion of another doctor, which ran contrary to the opinion of the doctor of the petitioner's Insurance Company. His contention is that the matter, since it required taking of evidence, the complainant ought to have been relegated to the Civil Court by filing a civil suit instead of proceeding to adjudicate the appeal by the National Commission. No other submission has been advanced.

REASONING:

11. First and foremost, we would like to answer the contention of the learned counsel for the

petitioner/Opposite Party that the complainant ought to have been relegated to the Civil Court by filing the civil suit instead of adjudicating the appeal before the National Commission. In the instant case, admittedly, the Opposite Party has issued the insurance policy after being fully satisfied with medical examination of the insured and therefore, repudiation of claim of the complainant by citing non-disclosure of pre-existing diseases amounts to deficiency of service as described under Section 2(1)(g) of the Consumer Protection Act, 1986. The Consumer Forum has the jurisdiction to examine whether there was suppression of material facts and repudiation of claim was in accordance with the policy or not. Thus, mere assertion by the Opposite Party/ Insurance Company that there was suppression of pre-existing diseases, does not oust the jurisdiction of the Consumer Forum under the Consumer Protection Act, 1986. Therefore, the contention of the learned counsel for the petitioner that the Consumer Court did not have the jurisdiction to entertain the complaint and

the National Consumer forum ought to have referred the matter to Civil Court, is unsustainable in the eye of law.

12. Secondly, in regard to the contention of the learned counsel for the petitioner/Opposite Party that there was no deficiency in the service on the part of the petitioner/Opposite Party in repudiating the claim made by the respondent/complainant is concerned, we would like to refer to the findings of the National Commission based on the medical report at paragraph Nos.8 to 11, which are extracted hereunder:

> 8. The Medical Superintendent of ABV Institute of Medical Sciences and Dr. Ram Manohar Lohia Hospital, New Delhi vide letter dated 01.07.2024 submitted the report of Dr. P.K.Gupta Professor of Medicine and Dr. S. Murthy also a professor of medicine of the said institute which is extracted hereinunder:
>
> *"This is context to*
> *Subject Virupamma Vs Branch Manager, Bajaj Allianz life insurance company Ltd. first appeal no 24/2011, receipt no-137716/2023/D&D-section, Dairy no- 381. dated 29/05/2024.*
>
> *It is to note that the same file was send to HoD Medicine by Addl. MS Office of Professor M K Jha on 23/12/2023 file no. MKJ-423, received and send to department of microbiology on 18/12/2023, file no. HoD Medicine-995.* ***The report and answer to the query has been given by committee comprising of HoD Medicine Professor Dr MPS Chawla and Dr Shalini Malhotra (Consultant Microbiology)*** *and the*

report was send back to office of HoD Medicine vide file no. micro-56 on 30/12/2023 and that report is attached along with.

Presently the committee comprising of Dr (Prof) Pulin Kumar Gupta & Dr (Prof) S. Murthy are of the opinion that*.*

1. The available ***documents of hospital are not adequate to tell about since how long the patient was HIV positive*** *and what was the drug treatment he was on.*

2. ***Tridot being negative on 23/03/2006 and later positive on 10/08/2006 can happen only if patient acquired this infection during the period between (23/03 till 10/08) or very rarely during window period (1 day 1 month before the first Tridot test on 23/03/2006).***

3. Records of HIV/ART treatment should be procured from Karnataka State AIDS Society.

Sd/-
Dr. Pulin Kumar Gupta
Professor, Medicine
ABVIMS, Dr. RML Hospital
New Delhi-110001

Sd/-
Dr. S.Murthy
Professor, Medicine
ABVIMS, Dr. RML Hospital
New Delhi-110001"

9. The said report is based on the report of another committee as mentioned above comprising of the Head of the department of medicine, Professor M.P.S Chawla and Dr. Shalini Malhotra (Consultant Microbiology). The said report of Dr. Chawla and Dr. Malhotra is extracted hereinunder:

"REPORT

Reference order dated 1.11.2023 delivered by the National Consumer Disputes Redressal Commission under CPA, 2019 regarding appeal NO.24/2011 against the order dated 11th November 2010 in complaint no.115/2008 of State Commission Karnataka. All attached documents including the blood report dated

23.03.2006 have been examined by the expert team at RML Hospital and a report regarding the same is given below:

In our Country, HIV testing guidelines are formulated by ***GOI/NACO-National AIDS Control Organization*** *which keeps updating its guidelines from time to time and hence* ***all inferences will be based with reference to these guidelines****.*

• First point is pertaining to the opinion expressed by Dr. H.S. Totad in his examination dated 17.09.2009 whereby there is a mention ***of window period which means the period between contracting the infection & development of antibodies in blood of a person and test result may show negative report....(****page 62 of the document received by RML hospital from National consumer court). As per NACO operational guidelines for integrated counselling and testing centers for HIV July 2007 pg. no 17.(Annexure 1),* ***Window period represents the period of time between the initial HIV infection and the time when HIV antibodies can be detected in blood (6-12 weeks). A blood test performed during window period may yield a negative test result for HIV antibodies. These cases may require further testing after 12 weeks****. Thus the opinion expressed by examining Doctor in his cross examination on 17.09.2009 has factually* ***depicted the status of blood examination report dated 23.03.2006.***

• Second point is regarding the pathological test being conducted as per protocol .....It is hereby indicated that the protocols for the test in question i.e. HIV testing are issued by NACO as already indicated earlier and as per NACO guidelines for HIV testing March 2007 document. pg 39-40 (Annexure2) and pg. 37 of Annexure 3, detection of anti HIV antibodies is mainstay of testing and diagnosis of HIV. ***Tests to detect*** *specific HIV antibodies can be classified into:* ***Screening test (ELISA/EIA and Rapid test) and supplemental test (ELISA/EIA and Rapid and western blot). Supplemental test are performed only on serum samples found reactive in screening test*** *for purpose of diagnosis of a person.* ***So in this case TRIDOT test was performed which is a rapid test****. A variety of rapid test are available and NACO recommends use of rapid HIV test kits in an ICTC (integrated Counselling and Testing Centre) which*

provide result in 30 min of test. ***The use of rapid test which detects more than equal to 99.5% of all HIV infected individuals and gives false positive results in less than equal to 2% of all those who are tested are recommended for use****. (Annexure 1)*

• A client who has negative result in one test is declared to be HIV negative. ***So the pathological test performed here was TRIDOT test which is a rapid test and if it can be ascertained that it sufficed to required sensitivity of more than equal to 99.5% and specificity of more than equal to 98%, as per*** *requirements of first test kit by NACO document on national testing, guidelines July 2015 page 38 (Annexure 3),* ***then the test carried out was as per protocol in an asymptomatic person. So this information needs to be provided still****.*

• Third point with regard to matters which may emerge in respect of such blood examination report, the governing body to formulate these guidelines is NACO and they may address this issue to consider inclusion of certain more sensitive tests like nucleic acid based tests for screening of insurance clients so as to cover diagnosis of HIV during the window period notwithstanding the fact that ***these tests also become positive only after 7 to 14 days of acquiring infection****."*

10. A perusal of the said report therefore leaves no room for doubt that the infection came to be detected later on 10.08.2006 and the negative test dated 23.03.2006 was in accordance with the protocol as discussed in the report. It was a Tri-dot test which is an accepted form of rapid test.

11. Thus, there was no knowledge to either the Complainant or even to the Insurance Co. about the HIV infection and there was no reason to apprehend the same when the report conducted by the medical panel of the Insurance Co. itself had found the Tri-Dot test to be negative.

13. The above finding of the National Commission clearly demonstrates that it relied on the report conducted by the medical panel of insurance company of the insured

resulting in Tri-dot Test being negative on 23.03.2006 and the expert opinion of the Head of Department of Medicine that the Tri-dot Test is an accepted form of detecting the symptom of HIV positive. On that basis, the National Commission came to the conclusion that neither the complainant nor the insurance company had any knowledge about the HIV infection to the insured and there is no reason to disbelieve the report of the insurance company. Thus, the contention of the learned counsel for the petitioner/Opposite Party that the National Commission has relied upon the opinion of another doctor, which ran contrary to the opinion of the doctor of the petitioner's Insurance Company, is without any substance and contrary to their own set of facts.

14. At this juncture, it is relevant to note that the State Commission in its order dated 11.11.2010 has only referred to the judgment of the Apex Court and High Courts without looking into the facts and circumstances as to its applicability to the present case and blindly

dismissed by not considering the medical report dated 23.03.2006 of the complainant's husband undergone at the instance of the Insurance Company prior to the issuance of policy. In fact, the State Commission was completely swayed away by the decision of ***Life Insurance Corporation of India and Another V. Sunita Hemnani*** reported in ***II (2009) CPJ 172 (NC)***, wherein it was held that the deceased died within 8 months of the issuance of the policy. Hence, it is held that the complainant is not entitled for any relief sought for.

15. The facts and circumstances of the case in ***Sunita Hemnani*** as stated supra, refers where the life insured has submitted incorrect answers to the questions in the proposal form and acted contrary to documentary evidence, which is not so in the present case. At the cost of repetition, in the instant case, the complainant's husband has undergone the medical examination test at the hands of the insurance company and after being fully satisfied with the medical examination report of the

insured, the insurance policy was issued and there is no document produced by the insurance company to substantiate that the insured had availed any treatment prior to submission of the proposal form indicating that there is suppression of material facts by the complainant or complainant's husband. Therefore, the order passed by the State Commission is without any basis and application of mind.

16. Further, it is noted that the judgment in the case of ***Reliance Life Insurance Co. Ltd. & Another V. Rekha Ben Naresh Bhai Rathod*** reported in **(2019) 6 SCC 175** was placed by the insurance company before the National Commission to emphasize the fact of non-disclosure for repudiation of the insurance policy, but the National Commission has justifiably distinguished the aforesaid judgment on facts. Thus, the order of the National Commission requires no interference. The allegation of perversity in the order of the National Commission is baseless.

17. Under the facts and circumstances of the case, the petition is ***dismissed***.

SD/-
(JAYANT BANERJI)
JUDGE

SD/-
(N.V.BHAVANI)
JUDGE

DR,
List No.: 1 Sl No.: 1