

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

Website : www.advantageconsumer.com

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ADVANTAGE - II

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.)

19th Jan. 2022

Sub: Delivering waste paper in lieu of a new laptop, by amazon.in (An illustrative lesson for all online shoppers!!)

Sir,
Sub: Cheating by the Seller of **amazon.in**, while supplying Acer Make Laptop worth Rs.63.500/-, on 11/11/21.
This is to bring to your kind notice that we have purchased an ACER make laptop from Amazon, on 11/11/21. The material was delivered after confirmation message from Amazon, on 16/11/2021. But, after opening the packet we found a bundle of Haryana newspapers, instead of a laptop. Immediately, we contacted the Amazon local office as well as the delivery boy. They were not in a position to solve the problem. Thereafter, we filed an FIR in the local police station about the mischief made by the Seller / Amazon company. We also contacted M/s Giriraj Enterprises, Jind, Haryana who had supplied the Laptop and Mr. Nitin Dhillon, Head of the Branch, but he was also not in a position to solve the problem. We suspect that the entire bunch of staff are involved in this mischief. This is the fate of online purchase of the products and inability to get justice. In this connection all relevant documents / papers connected to the above case are enclosed for your further processing of the case and get the natural justice to save us from mental agony.
The incident took place on 16th Nov 2021, and we thought the matter would be solved by Amazon. But when we got a reply on 19th Nov. 2021, that they cannot help in the matter, then we informed the Police, The Police came to our House on the same day to investigate the matter. They assured that they would try to solve the matter over discussion with Amazon. But when they were unable to do so, they lodged the complaint on 26th November, after taking the Amazon box received into their custody, at the Police Station.
Sir, we had purchased the laptop for our son in connection with his studies but we have been put to so much of hardship. I shall be highly obliged if you kindly look into the matter and help us in getting justice. An expeditious action in the matter shall be highly appreciated.

Yours faithfully,
Binod Kumar Jena
Rourkela-769005 (Odisha)

Ans:

27th Jan. 2022

Sorry to note that you have suffered heavy loss due to the non-delivery of the laptop, after having paid Rs. 63,500/-.
Since the online transactions have their own pitfalls, as experienced by you, sufficient evidence will have to be placed before all concerned, to prove our case. Please check whether the following can be placed before the appropriate authorities / forum, to prove your case and to get appropriate relief:

1. Date and approximate time of delivery of the package (could be by the incoming call of the delivery boy/agent, when he must have asked you for the exact location of the Flat/House, or to seek the OTP to deliver the package). (Since you have given the mobile number of the delivery agent, you can check and confirm the time of call received from him, on that day, you can retain the screenshot of that call.)
2. The package containing newspapers have been shared by you, but the time of taking the snap is not visible. If that can be arranged, that will help.
3. After delivery of the package and ascertaining the contents, did you talk or chat with Amazon Customer Care? If so, the transcript of the conversation / chat will help. Hope, you have retained those details.
4. Was any written complaint lodged with Amazon? If so, did they respond?
5. Since the laptop was purchased through the Debit Card of a Bank, did you inform the Bank (some banks indemnify the Cardholder from such losses, occurring due to non-receipt or pilferage of material, when such material is purchased by payment made through their Card)?
6. Though, the incident took place on the 16th Jan., why there was a delay in lodging the FIR, by nearly 10 days?

Based on answers to the above questions, it will be possible to decide further course of action.

Sir

We have received the amount Rs 63,500. from Amazon on 6th Feb 2022. This is for your kind information and thanks for your help and cooperation.

Thanking you

Binod Jena

Dear Mr. Jena,

Congratulations. Good, that Amazon could conclude that the dealer had cheated. Better late than never. You had also taken due care to record all the details in a systematic manner, providing a scope for legal remedy.

With best wishes,

B. VAIDYANATHAN
CHIEF MENTOR

Continued from January 2022 issue.....

Insurance company penalised, as it could not establish that it had supplied details of Terms and Conditions to the insured, based on which it had disallowed the claim.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 113 OF 2021

(Against the Order dated 12/10/2020 in Appeal No. 614/2019 of the State Commission Delhi)

1. M/S. ORIENTAL INSURANCE CO. LTD.Petitioner(s)

Versus

1. HARINDER PAL SINGHRespondent(s)

BEFORE:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

HON'BLE MR. SUBHASH CHANDRA, MEMBER

Dated: 13 Aug 2021

ORDER (ORAL)

9. The contention that at bottom of page-2 of the policy it is mentioned that in case of any query, the insured could call toll free number is to be mentioned for being rejected only. It is confined to query. Supposed a person has no query, why he should call the toll-free number.

10. The argument that contract of insurance is utmost good faith and terms and conditions thereof are to be complied strictly, is not applicable in the present case.

11. The counsel for the appellant drew my attention towards conditions no. 4.1 at page 45 of bunch of appeal. The same recites that any pre-existing disease which was not declared in the proposal form, would be excluded up to four years of the policy being in force continuously. This does not help the appellant because it is not the case of the appellant that respondent was suffering from the said disease prior to taking the policy.

12. The counsel for appellant also drew my attention towards clause no.4.3 of the terms and conditions at page 45 supra. The same recites that expenses on treatment of different ailments for specified period was not payable, if contracted and / or manifested during the currency of the policy. At serial no.17 of the table below clause 4.3 Hyper tension is mentioned and the period of exclusion thereof is two years.

13. I am unable to persuade myself with the argument. To accept the argument would mean that appellant has cleverly tried to absolve itself of liability in all cases. In case it is pre-existing, it will be excluded. In case it is contracted and / or manifested during the policy, it would be excluded. In that event it is not clear as to in which case the insurance company would pay.

14. The counsel for the appellant relied upon decision of NC in Gas Ghar vs. Oriental Insurance Company Ltd. III (2006) CPJ 377 to make out that when complainant has not raised the plea of non-supply of terms and conditions within 9 months, the same cannot be allowed to be taken for first time in complaint. The same is not applicable to the facts of the case in hand. In the instant case the policy was taken on 01.07.13 and the complainant fell ill on 08.10.13 i.e., just in three months of taking the policy. He did not have enough time to complain about non receipt of terms and conditions.

15. The counsel for appellant also relied upon decision of NC in FA no.1450/14 titled as Kamlesh Gupta vs. ICICI Lombard General Insurance decided on 18.02.16. In that case the observations were that plea of non-supply of terms and conditions cannot be raised by LR's of the insured because the same can be personal knowledge of insuree only. Here the complainant is alive and there is no question of same being taken by the LR's of the insured.

16. Now coming to the question of burden of proof it is settled law that burden has on party who aver the fact. A fact can be proved in positive. There can be no evidence to prove negative that a thing did not happen. Moreover, in AIR 1991 SC 392 it was held that burden to prove exclusion clause is on insurance company.

17. In Modern Insulator vs. Oriental Insurance Company I (2000) CPJ 1 referred to by District Forum in the impugned judgement it is clear that it is for insurance company to convey exclusion clause. Findings of NC that insured did not complaint about non communication of terms and conditions was set aside.

18. In National Insurance Company Ltd. vs. D.P. Jain III (2007) CPJ 34 and United India Insurance vs. SMS Telle III (2009) CPJ 246 NC went to the extent that it is for the insurance to explain the meaning of exclusion clause.”

9. In the present Revision Petition, the same contention has been raised before us.

10. It is a settled proposition of law that this Commission has a very limited revisional jurisdiction. It is not permitted to re-assess and re-appreciate the evidences on record and substitute with its own conclusion on facts, especially when the findings on facts are concurrent. This Commission can interfere with the concurrent findings of the Foras below only when there is perversity in the order or where there is a wrong exercise of jurisdiction. A finding can be said to be perverse finding when it is based on evidences which do not form part of the record or where the material piece of evidence on record has not been considered and this piece of evidence is of such nature which affects the entire conclusion. It has been so held by the Hon'ble Supreme Court in

“Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd. – (2011) 11 SCC 269” has held as under:

“23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora”.

11. Again in *“Lourdes Society Snehanjali Girls Hostel and Ors. Vs. H&R Johnson (India) Ltd. and others, (2016) 8 Supreme Court Cases 286,”* the Hon'ble Supreme Court has reiterated the same principle and has held as under:

“17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons.”

12. In *T. Ramalingeswara Rao (Dead) Through L.Rs. and Ors. Vs. N.Madhava Rao and Ors.* decided on 05.04.2019 passed in Civil Appeal No. 3408 of 2019, the Hon'ble Supreme Court has held as under:

“12. When the two Courts below have recorded concurrent findings of fact against the Plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be perverse, a case for interference may call for by the High Court in its second appellate jurisdiction.”

13. Learned Counsel for the Insurance Company has relied on the findings of the Hon'ble Supreme Court in the case *“General Assurance Society Ltd. Vs. Chandanmall Jain &Anr., (1966) 3 State Commission 500”*. This judgment is of no help to the Insurance Company since it is an old judgment pertaining to the year 1966 and since then a lot has changed in the interpretation of law and the Fora below have relied on the latest judgment.

14. From the above, it is apparent that there are concurrent findings of the Fora below on the fact that the terms and conditions were never supplied to the Complainant. There is nothing on record to suggest that such a finding is perverse finding because it is not based on cogent evidence and discussion of law which was presented to the Fora below. We found no merit in the present Revision Petition.

15. The Revision Petition stands dismissed *in limine* with no order as to costs. Copy of this order be sent to the Complainant free of costs.

Interestingly, the Insurance Companies have started circulating the salient features of the Mediclaim Policy, along with the Policy document, commencing from 2022-23. One such Format is furnished below:



United India Insurance Company Limited.

Regd. Office: 24 Whites Road, Chennai – 600 014

Arogya Raksha (Group Health Insurance Scheme)

TABLE OF BENEFITS

(Details mentioned below are indicative and brief in nature. Please refer to Policy Wordings for complete information on your coverage)

BASE COVER	Coverage Details
Hospitalisation	<ul style="list-style-type: none"> ▪ Room Rent, Boarding & Nursing expenses up to Rs. (1.5% of Sum Insured) per day (In case of admission to a room at rates exceeding the aforesaid limits the reimbursement/payment of all associated medical expenses incurred at the Hospital shall be effected in the same proportion as the admissible rate per day bears to the actual rate per day of Room Rent). ▪ ICU/ICCU expenses up to Rs. (3% of Sum Insured) per day. ▪ Surgeon, Anaesthetist, Specialist Fees, Blood, Oxygen, Operation Theatre Charges, medicines and drugs, diagnostic tests, <i>(For detailed list of covered expenses, please refer to Policy Terms & Conditions)</i>. ▪ Hospitalisation expenses (excluding cost of organ) incurred for donor in respect of organ transplant to the Insured Person. ▪ Expenses for the following illnesses/surgeries shall be restricted as follows subject to waiting period: <ul style="list-style-type: none"> ☐ Cataract: Up to Rs. (10% of Sum Insured) or Rs. 40,000/- for policies purchased on or after 01.07.2021 and Rs. 25,000/- for policies purchased before 01.07.2021. (12 months waiting period) ☐ Hernia: Up to Rs. (15% of Sum Insured) or Rs. 50,000/- for policies purchased on or after 01.07.2021 and Rs. 30,000/- for policies purchased before 01.07.2021. (12 months waiting period) ☐ Hysterectomy: Up to Rs. (20% of Sum Insured) or Rs. 50,000/- (12 months waiting period) ☐ Major Surgeries: Up to Rs. (80% of Sum Insured) (Co-Payment)
Day Care Treatment	All medical treatments and/or surgical procedures which fall under the definition of Day Care Treatment, under Section 3 (Definitions) of the Policy Wordings, are covered.
Pre & Post Hospitalisation	We will cover your medical expenses up to 30 days before hospitalisation & up to 60 days after your discharge from hospital, subject to a maximum of Rs. (Not exceeding 10% of Sum Insured under both).
Ayurvedic Treatment	We will cover reasonable & customary medical expenses incurred for inpatient care treatment under Ayurvedic system of medicine in an AYUSH hospital/AYUSH Day Care Centre

<p>Modern Treatment (Applicable for policy purchased on or after 01.10.2020)</p>	<p>The below mentioned advanced medical procedures shall covered up to the following limits:</p> <ul style="list-style-type: none"> ▪ Uterine Artery Embolization and HIFU up to Rs. (20% of Sum Insured), subject to a maximum of Rs. 2 Lakhs per Policy Period ▪ Balloon Sinuplasty up to Rs. (10% of Sum Insured), subject to a maximum of Rs. 1 Lakh per Policy Period ▪ Deep Brain stimulation up to Rs. (70% of Sum Insured) per Policy Period ▪ Oral Chemotherapy up to Rs. (20% of Sum Insured) per Policy Period, subject to a maximum of Rs. 2 Lakhs per Policy Period ▪ Immunotherapy – Monoclonal Antibody to be given as injection up to Rs. (20% of Sum Insured), subject to a maximum of Rs. 2 Lakhs per Policy Period ▪ Intra vitreal injections up to Rs. (10% of Sum Insured), subject to a maximum of Rs. 1 Lakh per Policy Period ▪ Robotic Surgeries up to: Rs. (75% of Sum Insured) per Policy Period for claims involving Robotic Surgeries for (i) the treatment of any disease involving Central Nervous System irrespective of aetiology; (ii) Malignancies. Rs. (50% of Sum Insured) per Policy Period for claims involving Robotic Surgeries for other diseases ▪ Stereotactic radio surgeries up to Rs. (50% of Sum Insured) per Policy Period ▪ Bronchial Thermoplasty up to Rs. (30% of Sum Insured), subject to a maximum of Rs. 3 Lakhs per Policy Period ▪ Vaporization of the Prostate up to Rs. (30% of Sum Insured), subject to a maximum of Rs. 2 Lakhs per Policy Period. ▪ IONM (Intra Operative Neuro Monitoring) up to Rs. (15% of Sum Insured), subject to a maximum of Rs. 1 Lakh per Policy Period.
<p>Maternity Expenses (Applicable only for first two childbirth)</p>	<p>A waiting period of 9 months is applicable for payment of any claim relating to normal delivery or caesarean. The waiting period may be relaxed only in case of delivery, miscarriage or abortion induced by accident or other medical emergency.</p> <p>We will cover Medical expenses up to Rs. (5% of Sum Insured) in respect of female Insured Person above 18 years during the Policy Period for the delivery of a child in a Hospital/Nursing home arising from or traceable to Pregnancy childbirth including normal caesarean section during the Policy Period or for medically required and lawful medical termination of pregnancy. The hospitalisation expenses in respect of treatment given to the new-born baby in the Hospital as an in-patient for a maximum period of 90 days from the date of its birth shall be covered within the Mother's Maternity expenses.</p>

Arogya Raksha (Group Health Insurance Scheme)
UIN: UIIHLGP22008V032122

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Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of “ **Consumer Protection Council, Rourkela**”.

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