

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

VOLUME – XXXV

JULY 2023

ADVANTAGE - VII

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: **Ola cab issue**

On 10.06.2023 I booked an OLA cab from Apollo hospital, Jubilee Hills, Hyderabad to Ayyapa Society, Madhapur, Hyderabad. I used Ola App for booking. A white Dzire was allotted with driver's name and vehicle number. After arrival of the cab, I found that it was not the allotted white Dzire but an old Tata Indica. As it was a hot summer afternoon and I was accompanying a patient, we boarded on the cab. During my journey we requested the driver to switch on the AC but he told us that AC was out of order. However, after arrival at destination I paid necessary charges (as per OLA APP) to the driver.

I lodged a complaint through OLA app about the non-working of AC and within a second an automated reply was received " Sorry for inconvenience caused. We have raised a complaint against the driver and assure you that an appropriate action will be taken as per OLA quality standard. Thanks for sharing your feedback." and accordingly the ticket was closed. But I didn't find any option (in Ola app) for a complaint regarding the same driver coming with different cab. Sir changing a cab on road by driver is a serious issue as safety and security is associated with this issue. Please advise.

Goutam Ghosal
Asansol-713301

Ans: Sorry to note that you had suffered at the hands of Ola. Of course, I am not quite surprised. Cab aggregators like Ola are trying to fill the need of the public.

But the cab drivers are sometimes engaging in unethical practices, as narrated by you. In such instances, when gross illegal/improper actions come to notice, as an aware citizen, to avoid further issues, it would be better to inform the company (Ola), rather than cooperating with the cab driver, though it could entail delay and inconvenience. I am aware that it is easy said than practiced.

But fact remains that the aggregators like Ola do need time to act on complaints. In case of major security issues, or even excess charging, in a place like Hyderabad, one can complain to the local Police to take appropriate action.

LIC given relief, as insurance claim cannot go beyond the specified terms and conditions specified within words used in the policy

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1026 OF 2017

(Against the Order dated 28/10/2016 in Appeal No. 349/2015 of the State Commission Kerala)

MANAGER, LIFE INSURANCE CORPORATION OF INDIA
THROUGH ASSISTANT SECRETARY, CO LEGAL CELL,
H-39, NEW ASIATIC BUILDING CONNAUGHT PLACE,
NEW DELHI-110001

.....Petitioner(s)

Versus

DOLLY JOSE
W/O. LT. P.D. JOSE, PALIAKKARA HOUSE, PO
CHIYYARAM,
THRISSUR
KERALA

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER

Dated : 05 Jan 2023

ORDER

This Revision Petition has been filed by the Petitioner/Opposite Party-LIC, challenging the order dated 28.10.2016 passed by the Kerala State Consumer Dispute Redressal Commission, Thiruvananthapuram, in Appeal No. 349 of 2015 filed by LIC. Vide such Order, the State Commission had dismissed the Appeal filed by the Opposite Party-LIC and affirmed the District Forum's Order dated 23.4.2015 passed in Complaint Case No. 570 of 2012 filed by the Respondent/Complainant-Dolly Jose, allowing the complaint and directing the Opposite Parties to pay Rs. 10,00,000/- (Rupees Ten Lakhs Only) to the Complainant along with costs of Rs. 2,500/- (Rupees Two Thousand and Five Hundred Only) within one month.

2. The brief facts of the case are that husband of the Complainant-Smt. Dolly Jose, was an Insurance Policy holder under Policy No. 777975414 of the Opposite Party. She was the nominee of the said policy. The Sum Assured of the Policy was Rs. 10,00,000/- (Rupees Ten Lakhs). The Policy was a Double Accident Benefit policy. Her husband expired on 23.3.2011 in a train accident by falling down from train. She submitted her Claim before the Opposite Party and only the Policy amount of Rs. 10,00,000/- was given. But the case of the Complainant was that she was entitled to Rs. 20,00,000/- as per the Policy as her husband had died in an accident, and as per the said Policy she was also entitled for the Double Accident Benefit of Rs. 10.00 lakhs. Thus, the Complainant filed a Consumer Complaint before the District Forum claiming such amount and compensation.

3. The Opposite Party contested the complaint through its version before the District Forum and admitted the existence of the Policy and payment of basic sum assured Rs. 10,00,000/- on June 27, 2011. However, it was stated that the Complainant was not entitled to Double Accident Benefit of the Policy as the deceased was under the influence of alcohol at the time of accident, which was exempted as per Clause 11(b)(i) of the Policy conditions, and consequently the complaint was liable to be dismissed.

4. The District Forum vide its Order dated 23.4.2015 allowed the complaint as mentioned in Para 1 above.
5. Dissatisfied with such Order, an Appeal was filed by the Opposite Party-LIC before the State Commission, Kerala. The State Commission, after hearing the parties and perusing the record, vide Order dated 28.10.2016 dismissed the Appeal with costs of Rs. 5,000/-.
6. Hence, the present Revision Petition.
7. The sum assured in the Insurance Policy was paid by the Petitioner-Insurance Company, but Double Accident Benefit was not acceded to since the Certificate of Chemical Analysis pertaining to the blood sample of the deceased who had fallen down while travelling in the train revealed that Ethyl alcohol to the level of 135.08 mg/100ml was found in such sample. Consequently, the Insurance Company relied upon the Clause 11 (b)(i) which provided that the Insurer would not be liable to pay any Additional Sum if the disability or death of the Life Assured was caused by "*intentional self-injury, attempted suicide, insanity or immorality, or whilst the Life Assured is under the influence of intoxicating liquor, drug, narcotic or.....*".
8. In "*Baby Apoorva Rai Vs. New India Assurance Co. Ltd. & Ors., Consumer Case No. 401 of 2014, decided on 3.9.2015 (NC)*"; the leave preferred by the Complainant in similar circumstances where the death of the Life Assured on account of drowning in swimming pool after he had consumed alcohol prior to his death was dismissed by this Commission. In the said judgment, it was also noted that according to *Lyon's Medical Jurisprudence and Toxicology* permissible limit for blood alcohol in India happens to be 30 mg%, although in many developed countries the threshold was higher.
9. Earlier on 17.11.2022, and thereafter on 6.12.2022 opportunities were granted to the Respondents to show how and what is the "threshold limit" according to any medical recognized journals for being classified as "**under the influence of alcohol**" when alcohol is detected in the body of the person concerned. No revised threshold limit could be placed by the Respondent's side before this Commission.
10. In any case, the quantity of alcohol found in the blood was 4½ time more than the permissible blood alcohol limit in India according to the available information in Lyon's Medical Jurisprudence and Toxicology.
11. It is also settled law that in the matter of Insurance claims, the Courts cannot adopt a beneficial/welfare approach, and have to go strictly by the words used in the concerned Insurance Policy.
12. In the case of "*Export Credit Guarantee Corporation of India Limited Vs. Garg Sons International*" which was delivered in deciding *Civil Appeal No.1557 of 2004* along with other connected Appeals on 17/01/2013, the Hon'ble Apex Court had deprecated the liberal attitude adopted by this Commission in awarding insurance claims in favour of the Complainants, by extending interpretation of the terms of Insurance Policy beyond the words specified in the document itself. Consequently, the Appeals against 15 out of the 17 Respondents in whose favour the insurance claims had been allowed by this Commission, and who had not strictly fallen within compliance of the specific terms and conditions of the Insurance Policy were allowed by the Apex Court.
13. The relevant extracts from the aforesaid decision of the Apex Court are set out as below: -

"8. It is a settled legal proposition that while construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. It is also well settled, that since upon issuance of an account of risks covered by the policy, its terms have to be strictly construed in order to determine the extent of the liability of the insurer. Therefore, the endeavour of the Court should always be to interpret the words used in the contract in the manner that will best express the intention of the Parties (Vide Suraj mal Niwas Oil Mills (P) Ltd. V. United India Insurance Co. Ltd., MANU/SC/0814/2010: (2010) 10 SCC 567).

9. *The insured cannot claim anything more than what is covered by the insurance policy. “...the terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the Parties adversely.” The clauses of an Insurance Policy have to be read as they are..... Consequently, the terms of the Insurance Policy, that fix the responsibility of the Insurance Company must also be read strictly. The Contract must be read as a whole, and every attempt should be made to harmonize the terms thereof, keeping in mind the rule of contra proferentem does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon.*

(Vide: Oriental Insurance Co. Ltd. v. Sony Cheriyan MANU/SC/0495/1999: AIR 1999 SC 3252; Polymat India P. Ltd. v. National Insurance Co. Ltd. MANU/SC/1019/2004: AOR 2005 SC 286; Sumitomo Heavy Industries Ltd. v. Oil and Natural Gas Co. MANU/SC/0540/2010: AIR 2010 SC 3400; and Rashtriya Ispat Nigam Ltd. v. Dean Chand Ram Saran MANU/SC/0327/2012: AIR 2012 SC 2829).

10. *In Vikram Greentech (I) Ltd. and Anr. v. New India Assurance Co. Ltd. MANU/SC/0519/2009 SC 2493, it was held:*

An insurance contract is a species of commercial transactions and must be construed like any other contract to its own terms and by itself.... The Endeavour of the Court must always be to interpret the words in which the contract is expressed by the Parties. The Court while construing the terms of policy is not expected to venture into extra liberalism that may result in rewriting the contract or substituting the terms which were not intended by the Parties.

(see also Sikka Papers Limited v. National Insurance Co. Ltd. and Ors. MANU/SC/0907/2009: AIR 2009 SC 2834)

11. *Thus it is not permissible for the Court to substitute the terms of the contract itself, under the garb of construing terms incorporated in the agreement of insurance. No exceptions can be made on the ground of equity. The liberal attitude adopted by the Court, by way of which it interferes in the terms of an insurance agreement, is not permitted. The same must certainly not be extended to the extent of substituting words that were never intended to form a part of the agreement.* (Emphasis added)

14. Even this Commission, in *“Liberty Videocon General Insurance Company Ltd. Vs. Shivbhajan Sahu and Another in 2018 SCC Online NCDRC 872”* in an earlier Revision Petition No.1871 of 2016 decided on 20/03/2018 had set aside a Judgement of the State Commission in which the insurance claim was allowed in favour of the Respondent who was aged 81 years, even though the insurance premium towards such policy had been debited to his account and transferred to the Insurance Company by the concerned Bank. But this Commission held that since the terms and conditions of the Insurance Claim itself specified that only a person aged between 05 to 75 years was eligible to be a beneficiary of the scheme, the Respondent who was already 81 years old at the relevant time was clearly ineligible to have any benefit, and even transfer of the premium amount to the account of the Insurance Company could not create any right of insurance in his favour. The decision of both the Lower Fora in the case was thereafter set aside by this Commission with the following observations: -

“6. Ld. Counsel for the Petitioner/Insurance Company has contended that Orders of the Fora below are not sustainable because they have totally ignored the relevant condition of the Insurance Policy. It is argued that as per the terms and conditions of the policy, the accidental group insurance cover could be extended only to the persons aged between 05 years to 75 years. The Fora below has ignored the fact that deceased at the time of becoming member of the Group Insurance Scheme was more

than 75 years age. In support of his contention, Ld. Counsel has drawn my attention to Voter ID Card of the insured in which as on 01.01.2003 the age of the deceased Jhumak Lal Sahu S/o Ramadin is shown as 70 years. It is argued that Jhumak Lal Sahu became member of subject insurance policy on 14.01.2014. Therefore, going by the age given in the Voter ID Card at the relevant time, Jhumak Lal was 81 years old. As such, in view of condition No.17 of the general terms and conditions of the insurance contract, Jhumak Lal Sahu was not legible for becoming member of the relevant Group Insurance Policy.

7. on perusal of the judgement of State Commission. I find that State Commission has rejected the plea of Petitioner/Insurance Company that deceased Jhumak Lal Sahu was not eligible for becoming member of the subject accident Group Insurance Policy as he was 81 years old. The State Commission has also ignored that District Forum on consideration of the Voter ID card and the post-mortem report had concluded that at the time of becoming member of the policy, Jhumak Lal Sahu had already crossed the upper limit of eligibility on the basis of age.

8. From the above stated facts, it is clear that Jhumak Lal at the relevant time when insurance cover was extended to him was 81 years old and not eligible for insurance. Respondent No.2/Bank despite of the aforesaid fact deducted the insurance premium and included his name in the group of the persons covered under the subject insurance scheme. **As it was a group insurance policy regarding which the details of the persons included were supposed to be sent by the bank to the insurance company, the Petitioner Insurance Company was not supposed to know about the details pertaining to the age of the insured. Thus, in my opinion it is Respondent No.2/Bank who is guilty of carelessness and deficiency in service. So far as Petitioner/Insurance Company is concerned, it was justified in repudiating the claim.** (Emphasis added)

9. In view of the reasons stated above, I allow the Revision Petition of the Petitioner/Insurance Company and set aside the impugned Order so far as it holds the Petitioner jointly and severally liable to pay the compensation awarded by the District Forum. The impugned Order is modified to the effect that amount of Insurance Claim and compensation awarded by the Fora below shall be paid by Respondent No.2/Bank.

10. As a per condition to the stay of the execution, pursuant to the direction of this Commission, Petitioner has deposited 50% of the awarded amount with the State Commission, Petitioner has deposited 50% of the awarded amount with the State Commission. The amount so deposited be released to the Petitioner with interest, if any, accrued.”

15. In view of the decision of the Apex Court in “*Export Credit Corporation Limited (Supra)*” there can be no doubt that the Forum which decides on an insurance claim cannot go beyond the specified terms and conditions specified within words used in the policy or the relevant scheme and cannot under the guise of a Social Welfare Interpretation extend the meaning of those words artificially.

16. In the present case, Clause 11 (b) (i) had clearly excluded payment of the Double Accident Claim if the life assured were to be under the influence of intoxicating liquor, drug, narcotic, etc. The Ethyl alcohol found in his blood sample (135.08 mg/100ml) was more than 4 ½ times the permissible limit in India, as taken note of by this Commission in the case “*Baby Apoorva Rai*” (Supra). Consequently, there is no scope for this Commission to come to any other conclusion as there remains no room to take any sympathetic view when the specific condition regarding the deceased to have not been under the intoxication or under the influence of alcohol, is found to have been violated.

17. For the aforesaid reasons, the Orders passed by the lower Fora allowing the Double Accident Benefit to the Complainant were untenable.

18. Consequently, the Revision Petition is allowed after setting aside the Orders passed by both the lower Fora below.

Parties to bear their own costs. ■

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Remittance for subscription may be sent to the Secretary, Consumer Protection Council, B/90, Sector-7, Rourkela-769003, through crossed D.D/M.O or Cheque (local only), payable in favour of

‘CONSUMER PROTECTION COUNCIL, ROURKELA’.

For tariff and other details regarding advertisement, contact Editor.

Printed & Published by Sri B Pradhan, Consumer Protection Council, Rourkela at B/90, Sector-7, Rourkela – 769003
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(or) vaidya@advantageconsumer.com

ADVANTAGE CONSUMER
ENGLISH MONTHLY

JULY 2023

To

If undelivered, please return to :
Consumer Protection Council, Rourkela
B/90, Sector-7, Rourkela -769003. Odisha