STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB, CHANDIGARH.

(1)

First Appeal No. 764 of 2022

Date of institution	**:**	**01.09.2022**
Reserved on	**:**	**25.04.2024**
Date of Decision	**:**	**14.05.2024**

1. HDFC ERGO General Insurance Compan Ltd., Re d. And [redacted]

2. HDFC ERGO General Insurance Company Limited, [redacted]

3. HDFC ERGO General Insurance Company Limited, [redacted]

….Appellants/Opposite Parties No. 1 to 3

Versus

1. Shubh Lata wd/o Late Ranjit Singh, [redacted]

….Respondent No.1/Complainant

2. HDFC Bank House [redacted]

3. HDFC Bank [redacted]

….Respondents No.2&3/Opposite Parties No.4&5

(2)

First Appeal No. 788 of 2022

Date of institution : 12.09.2022

HDFC Bank Limited, [redacted]

….Appellant/Opposite Party No.5

Versus

1. Shubh Lata widow of Late Ranjit Singh, [redacted]

….Respondent No.1/Complainant

2. HDFC ERGO General Insurance Co. Pvt. Ltd. [redacted]

3. HDFC ERGO [redacted]

…Respondents No.2-4/OPs No.1-3

5. HDFC Bank House, [redacted]

…Proforma Respondent/OP No.4

First Appeals under Section 41 of the Consumer Protection Act, 2019 against the order dated 15.07.2022 passed by the District Consumer Disputes Redressal Commission, Gurdaspur

Quorum:-

Hon'ble Mrs. Justice Daya Chaudhary, President
Ms. Simarjot Kaur, Member

1) Whether Reporters of the Newspapers may be allowed to see the Judgment? **Yes/No**

2) To be referred to the Reporters or not? **Yes/No**

3) Whether judgment should be reported in the Digest? **Yes/No**

Present in F.A. No.764 of 2022:-

For the appellants : Sh. Vishal Aggarwal, Advocate
For respondent No.1 : Sh. Rajesh K. Sharma, Advocate
For respondents No.2&3 : Ms. Neetu Singh, Advocate

Present in F.A. No.788 of 2022:-

For the appellant : Ms. Neetu Singh, Advocate
For respondent No.1 : Sh. Rajesh K. Sharma, Advocate
For respondents No.2-4 : Sh. Vishal Aggarwal, Advocate
For respondent No.5 : None

SIMARJOT KAUR, MEMBER :

By this common order of ours, two Appeals i.e. **First Appeal No.764 of 2022** and **First Appeal No.768 of 2022** shall be disposed off as both the Appeals are arisen out of the same order passed by the District Commission.

2. F.A. No. 764 of 2022 has been filed by the **Appellants (OPs No.1 to 3-HDFC ERGO Gen. Ins. Co. Ltd.)** and F.A. No. 768 of 2022 has been filed by the **Appellant-HDFC Bank Ltd.** Both the parties are praying for setting aside the impugned order vide which the Complaint filed by the **Respondent No.1/Complainant-Shub Lata** had been **allowed**. The facts of the case have been taken from First Appeal No.764 of 2022.

3. It would be apposite to mention here that hereinafter the parties will be referred, as have been arrayed before the District Commission.

First Appeal No.764 of 2022

4. Briefly, the facts of the case as made out by the Respondent No.1/Complainant in the Complaint filed before the District Commission

are that her husband had taken Housing Loan from HDFC Bank Limited, Pathankot having its Registered Office in Chandigarh. He had obtained loan for an amount of Rs.16.20 Lacs as per the agreement dated 26.12.2019. Said loan had to be repaid in 5 years in Equated Monthly Installments (EMIs). At the time of obtaining the loan, the employees of OP No.5-Bank had advised him to secure the said loan from OPs No.1 to 3 because in unforeseen circumstances like critical illness, personal accident, fire and allied perils, burglary, theft and loss of job, the loan amount would be paid by the said Insurance Company. On such assurance, the husband of the Complainant had agreed to get insured his loan by purchasing the Loan Credit Assure Policy of OPs No. 1 to 3. He had paid premium of Rs.1,00,656/- and the policy bearing Certificate No.291820320814300000 was issued on 27.12.2019. The said policy was valid for the period 27.12.2019 to 26.12.2024.

5. Unfortunately, on 24.03.2021 due to critical illness i.e. Renal Failure and Acute Kidney Injury, insured/the husband of the Complainant had expired. As the Complainant was mentioned as nominee in the policy, therefore, after her husband's death, she had filed the insurance claim with the OPs No. 1 to 3 with the request to repay the Housing Loan secured under Home Credit Assure Policy. The cause of death of the insured was covered under the policy of OPs No. 1 to 3. However, it was illegally and wrongfully repudiated vide letter dated 10.06.2021. On the other hand, OPs No.4&5-Bank made a demand for repayment of the loan amount. The Complainant informed them that loan had been secured with OP-Insurance Company. After the death of the insured, said Insurance Company was liable to settle the loan account. Due to the wrong repudiation by the OPs, the Complainant had suffered mentally and physically. She was compelled

to send Legal Notice to the OPs. She was also forced to knock the doors of Consumer Commission for the redressal of her grievance.

6. Stating the act of the opposite parties to be **unfair trade practice on their part**, it was prayed in the Complaint that the Opposite Parties No. 1 to 3 may be directed to repay the outstanding loan amount to OPs No.4&5-Bank. Further the OPs be directed to pay Rs.1,00,000/- as compensation for mental agony & harassment and Rs.50,000/- as litigation expenses. She had also prayed that OPs No.4&5-Bank may be restrained from forcibly recovering the loan amount.

7. Upon issuance of notice in the Complaint, the Opposite Parties No.1 to 3 had filed written statement by raising certain preliminary objections that the Complaint is bad for non-joinder of all the parties as the same was not filed by all the legal heirs of the deceased-insured and it was filed by the wife of the insured only. The cause of death of the insured had not been covered under the Clause of Major Medical Illness. The liability of the Insurance Company would only arise if the disease of the insured was diagnosed with any of the illnesses as mentioned in the policy and covered under the terms and conditions of the same. On merits, it was admitted that the husband of the Complainant was insured under Home Credit Assure Policy. On perusal of the Claim Form and Documents, it was found that Doctors at PGIMER had diagnosed that the insured was suffering from Chronic Liver Disease, Acute Chronic Liver Failure, Acute Kidney Injury, Hepatorenal Syndrome, Hepatic Encephalopathy and Septic Shock. Further the patient had left the PGIMER in 'Left Against Medical Advice' i.e. LAMA condition on 24.03.2021. The insured in her policy proposal form had opted only for 9 Major Medical Illness/Procedures against the available 18 major Medical Illness/Procedures and the above said diseases of the patient/insured were not covered under the insurance

policy. Therefore, the claim of the Complainant had been rightly rejected. It was prayed that the Complaint be dismissed.

8. OP No.4-Head Office of HDFC Bank Ltd. did not appear before the District Commission and was proceeded ex-parte. OP No.5-Branch Office of HDFC Bank Ltd. had filed its reply, raising certain preliminary objections that as the office of OP No.5 was at Chandigarh only and not at Gurdaspur, therefore, the District Commission had no territorial jurisdiction to entertain and decide the present complaint. OP No.5 had financed the loan amount as well as insurance premium to the deceased-Ranjit Singh. When the insurance claim of the Complainant was repudiated by the OPs No. 1 to 3, therefore, the OP had rightly claimed its outstanding loan amount from the Complainant and other legal heirs of the insured-Ranjit Singh. There was no deficiency in service or unfair trade practice on the part of this OP, hence, the Complaint be dismissed against it.

9. After considering the contents of the Complaint and the reply thereof filed by the Opposite Parties as well as on hearing the oral arguments raised on behalf of both the sides, the Complaint filed by the Complainant was allowed by the District Commission vide order dated 15.07.2022. The relevant portion of said order as mentioned in Para-13 is reproduced as under:

> "13. We find that the OP insurers here have arbitrarily rejected the impugned claim merely in their endeavor to somehow repudiate the same. To remove all ambiguity, it may be clarified here that an 'insurance claim' and for that matter any 'issue' can be neither legally 'favored' nor legally 'ousted' on mere 'conjectures and presumptions' how strong these might appear to be. The OP insurers must realize that their administrative decisions in settling insurance claims are open to judicial review and thus need be taken with due application of mind and not arbitrarily and these

should also be speaking in nature duly explaining the reason and logic of the decision as to how the same has been reached. The facts in issue need be appreciated while awarding sanctity to the current applicable of law. Finally, in the matter pertaining to the present complaint and in the light of the all above, we set aside the OP insurers' impugned repudiation of the Home Assure Loan claim being arbitrary (contra to laws of natural justice) and amounting to 'deficiency in service'. Further, we find that the OP5 Financiers to be in full connivance with the OP insurers and have jointly infringed the consumer rights of the complainant. Thus, we restrict the OP5 by order not to reach/draw demand bills etc forthwith upon the complainant and instead a final demand bill aggregating all the loan accounts will be drawn upon the OP insurers and who are hereby ordered to pay the same out of the claim proceeds and pay the balance amount, if any, to the complainant. Both the Op financers and the insurers shall ensure that no penal-interest or other charges are debited in all the loan accounts since inception and all the deposited EMI stand duly accounted for. The OP insurers as well as the OP financiers shall pay compliance to these ORDERS within 45 days of the receipt of the certified copy of these orders besides to pay a lump sum amount of Rs. 10,000/- to the complainant as compensation and Rs.5,000/- as cost of the present litigation otherwise the awarded amount shall attract interest @9% PA from the date of the complaint till actually paid."

10. The aforesaid order dated 15.07.2022 passed by the District Commission has been challenged separately by the both the **Opposite Parties** by way of filing the above said Appeals by raising a number of arguments and grounds.

11. **Mr. Vishal Aggarwal, Advocate, learned Counsel for the Appellants** in F.A. No. 764 of 2022 has submitted that the impugned order is wrong and illegal because the District Commission had failed to appreciate the facts on record in right perspective. The disease of the insured was not covered under the category of **Major Medical Illness**. Said insurance policy had covered the End Stage Renal Failure only and

the foremost condition is that the patient should have undergone renal dialysis. As the death of the deceased had occurred due to Acute Kidney Injury, which was not covered under the terms and conditions of the Insurance Policy, therefore, the claim of the Complainant had been rightly repudiated. There is no document available on record, which can prove that the insured had died due to Chronic Kidney failure. Kidney injury is only a consequential disease and it had occurred when other vital organs of the body failed to function one by one. It was prayed that the District Commission had wrongly considered the diseases (as diagnosed by PGIMER) of the insured covered under **Major Medial Illness Clause** and illegally allowed the Complaint. The findings of the District Commission are based on conjecture and surmises, which are liable to be set-aside. It was prayed that the Appeal be accepted.

12. **Ms. Neetu Singh, Advocate, learned counsel for the Appellant** in F.A. No. 788 of 2022 has submitted that the District Commission had failed to appreciate the facts that the Appellant-Bank had advanced Housing Loan for an amount of Rs. 16.20 Lakh and had also advanced financial assistance to the tune of Rs.1,00,657/- to secure the said Housing Loan. Said Appellant had no role in deciding/rejecting the insurance claim of the Complainant. The Bank had every right to claim the outstanding loan amount and insurance premium amount paid by it from the legal heirs of the insured in case the insurance claim had been rejected by the Insurance Company. The District Commission has wrongly fastened the joint liability upon the Appellant-Bank whereas the claim had been rejected/repudiated by the Insurance Company i.e. OPs No. 1 to 3. Both Bank and Insurance Company are different entities and their area of operations is independent of each other. The observation of the District Commission that both the Appellants are related to each other in their

areas of function is based on wrong premise. The findings of the District Commission directing the Appellant/OP No.5-Bank not to raise the demand bills is against the principle of natural justice. Said direction would have restricted the Bank to recover its loan amount which was essentially a public money deposited by its customers and released by it to its customers in the form of Loans. As per loan agreement, the liability to repay the loan amount shall be of the borrower and co-borrower. The findings of the District Commission regarding the Appellant are against the law and the impugned order qua the Appellant-Bank may be set aside.

13. **Mr. Rajesh K. Sharma, Advocate, learned counsel for the Respondent No. 1/Complainant** has submitted that the death of the insured had occurred due to critical illness i.e. Renal Failure and Acute Kidney Injury, therefore, his case is covered under the terms and conditions of the insurance policy. The impugned order passed by the District Commission is based on facts, documentary evidence produced by the parties and law applicable on the subject. The grounds taken by the OPs in the Appeals are afterthought as the same were not submitted before the District Commission. It was orally pleaded that in the medical record of the insured, the diseases mentioned was relating to critical nature, however, the Appellants-Insurance Company wrongly and illegally differentiate the sub-categories in these diseases. The medical record clearly reflects that the condition of the patient was critical one, which had not been improved inspite of giving treatment at one of the renowned medical institutes of the country. There is no merit in the present Appeals and the same be dismissed.

14. We have heard the arguments of learned counsel for the parties and have also carefully perused the impugned order passed by the District Commission, written arguments submitted by the parties and all the

relevant documents available on the file. We have also gone through the judgments cited by both the parties.

15. It is not disputed that the husband of the Complainant had availed the Housing Loan of Rs.16.20 Lacs as per Agreement dated 26.12.2019. He had also secured this loan by purchasing Loan Credit Assure Insurance Policy from OPs No.1 to 3. The premium of Rs.1,00,656/- of the said insurance policy was financed by the Appellant-Bank on 27.12.2019. Said financed amount was to be repaid in 5 years Equated Monthly Installments (ECIs). However, during the subsistence of the above said insurance policy, the insured had died on 24.03.2021.

16. Thereafter, the wife of the insured i.e. the Complainant had lodged the claim with OPs No.1 to 3-Insurance Company, was repudiated by them on the ground that the death of the insured had occurred due to Acute Kidney Injury Failure. The medical condition was not covered under the list of **Major Medical Illnesses** as mentioned in the said policy. Meaning thereby only End Stage Renal Failure was covered and not the Acute Kidney Injury as contended by the Appellants.

17. The death of the insured was due to illness, during the subsistence of the policy which is admitted by the Appellants. The issue before us is as to whether the cause of death of the insured falls under the category of 'Major Medical Illness'. If claim is payable, who will be liable to pay the loan amount.

18. To distinguish between Acute Renal Failure and Chronic Kidney Disease, it is important to know the exact nature/meaning of the said diseases. In Dorland's Illustrated Medical Dictionary the word "Acute" has been defined as 'having a short and relatively severe course' and on the other hand "Chronic" has been defined as 'persisting over a long period of time'. Meaning thereby that the acute diseases are sudden and

unexpected. Due to Acute Kidney Injury (AKI), there is sudden reduction in the kidney functions of the patient. AKI suffered patient needs immediate hospitalization whereas in the medical terms, Chronic Liver Disease (CLD) is a progressive deterioration of liver function over a period of more than six months. CLD is a continuous process of inflammation, destruction, and regeneration of liver parenchyma, which can lead to fibrosis and cirrhosis. (Source : Google)

19. To find out the exact disease of the patient/insured, we have also examined the record of the District Commission i.e. Ex.OP1,2,3/6. Said exhibit pertains to 'PGIMER Out Patient Card' of the insured. In the column of Provisional Diagnosis, it has clearly been mentioned that the insured had suffered with the problem of '**CLD ċ HRS'**. **CLD is a Chronic Liver Disease whereas HRS stands of Hepatorenal Syndrome (Liver and Kidney disease)**, which is a life threatening complication of disease relating to liver problem. Liver is an important organ of the body. Most important function of the Liver is to filter toxins from the blood in the body. There are many types of Liver diseases. Some of the most common types are treatable with diet and lifestyle changes, while others may require lifelong medication to manage. If the early treatment is started, the permanent damage can be prevented. In case of such disease, the patient may not have symptoms in early stages. Late-stage liver disease becomes much more complicated to be treated. Chronic Liver Disease have four stages i.e. (i) Hepatitis (ii) Fibrosis (iii) Cirrhosis and (iv) Liver Failure. **However, to understand/diagnose the later stage liver disease, certain symptoms become predominant such as liver no longer produces or delivers bile effectively to small intestine.** In this kind of disease, the patient suffers with the problem of Jaundice, Dark Colored Pee (Urine), Light Colored Poop (Stool), Digestive difficulties etc. etc.

However, in the end stage liver disease following complications may arise, which are as under;-

> "End-stage liver disease refers to decompensated cirrhosis and liver failure, when your liver has lost the ability to regenerate and is slowly declining. **The most significant side effects of end-stage liver disease are portal hypertension and primary liver cancer (hepatocellular carcinoma). Complications of these two conditions are the leading causes of hospitalization and death in people with cirrhosis and liver failure.**" (Source: Cleveland Clinic – Liver Disease)

20. Therefore, from the aforesaid medical terminology, it is clear that the disease of the insured was an old/chronic problem. Therefore, it is established that the disease of the insured would be covered under '**Major Category Disease'** being chronic in nature. As per medical literature, Chronic Liver Disease (CLD) is a progressive deterioration of liver function over a period of more than six months. Further the record of the District Commission contains Medical Reimbursement Claim File (Ex. C-11) and it has transpired that the said claim pertains to the period between 14.03.2021 till 23.03.2021. During this period many tests were conducted upon the insured and he was undergoing continuous medical treatment. When there was no improvement in the condition of the patient, his family members had decided to take him back to their Home in 'LAMA' condition on 23.03.2021 and ultimately, the insured expired on 24.03.2021.

21. It is clear from the above stated discussion that the disease of the patient/insured was of complicated nature, therefore, it ought to have been covered under the category of 'Major Medical Illness'. No cogent reason or evidence has been placed on record by the Appellants-Insurance Company, which can justify the repudiation of the genuine claim of the Complainant/Respondent No.1. The District Commission had rightly held that the Insurance Companies often reject the genuine claims on

frivolous grounds. Accordingly, we do not find any illegality or infirmity in the detailed impugned order of the District Commission. Said order is based on proper appreciation of the record. **Accordingly, the Appeal of the Appellants-Insurance Company i.e. F.A. No. 764 of 2022 without any merit is hereby dismissed**.

22. The Appellants-HDFC ERGO General Insurance Company Limited had deposited a sum of Rs.8,64,079/- at the time of filing of the Appeal and Rs.8,64,079/- in compliance of the order dated 05.09.2022. Said amounts, along with interest which has accrued thereon, if any, shall be remitted by the Registry to the District Commission forthwith. The Respondent No.1/Complainant-Shubh Lata may approach the District Commission for the release of the same and the District Commission may pass appropriate order in this regard in accordance with law.

F.A. NO. 788 OF 2022

23. This Appeal has been filed by the **HDFC Bank Limited** on the ground that the said Bank had financed the Housing Loan amount to the husband of the Complainant, which was secured by the insured keeping of any unforeseen circumstances into consideration. The premium of the insurance policy was financed by the Appellant-Bank in the form of other loan. The findings of the District Commission restraining the Bank to recover the loan amount from the legal heirs of the insured is against the principle of natural justice because the Bank had advanced public money in the shape of loans (Housing Loan & Insurance Premium) to the deceased. The Bank had no role in repudiating the insurance claim of the Complainant. It is not within the jurisdiction of the Bank to accept or reject the claims of the insured.

24. It is not disputed that the Bank had financed the Home Loan as well as Insurance Premium to the insured and it was well within its

rights to claim the said amount from the insured/legal heirs in 5 years Equated Monthly Installments (EMIs). If the death of the insured, who had obtained the loan from the Bank, had occurred during subsistence period of loan, then the liability of the same was to be fastened upon his family members/legal heirs. The functions of the Bank and the Insurance Company are totally independent to each other. In our opinion, the Bank has every right to claim the loan amount from the Respondent No.1/Complainant, whose husband had availed the same from it. As discussed above, the Complainant is entitled to the claim lodged by her with Insurance Company. In the given circumstances, it is bounden upon the Insurance Company to settle the Loan Account of the insured with the Appellant/HDFC Bank Ltd. **Therefore, First Appeal No.788 of 2022 is partly allowed** and the directions issued by the District Commission restraining the Appellant-HDFC Bank **is modified** to the extent that the said Bank can claim the outstanding loan amount from either of the parties i.e. HDFC ERGO General Insurance Co. Ltd. or from Shubh Lata-Complainant. The liability of compensation of Rs.10,000/- and litigation expenses of Rs.5,000/- as fastened qua HDFC Bank Ltd. is set-aside qua it. However, it is made clear that in view of discussion as above, the said amount is liable to be paid by the Appellants-HDFC ERGO General Insurance Co. Ltd. as the District Commission had allowed her Complaint, which is upheld by this Commission.

25. The Appellant-HDFC Bank Ltd. had deposited a sum of Rs.7,500/- at the time of filing of the Appeal. Said amount, along with interest which has accrued thereon, if any, shall be remitted by the Registry to the Appellant forthwith.

26. We deem it appropriate to observe that most of the insurance claims are rejected by the Insurance Companies on baseless grounds. The

same act had been done by the Insurance Company in the present case, therefore, we feel that there is urgent need to enforce the strict provisions, which may safeguard the genuine rights of the insured and complete transparency in the processing of claims. On coming the illegal and unfair act of the Insurance Companies, they may be penalized in some strict manner. As the IRDA is the Authority, who controls the functioning of the Insurance Companies, therefore, to curtail the hands of the Insurance Companies for using unfair means in processing claims and harassing its customer, it is appropriate that IRDA may issue strict directions to the Insurance Companies so that the right of the insured can be safeguarded and claims of the insured/their nominees are scrutinized in a transparent manner. **Therefore,** the **copy of this order be sent to the Head Office of Insurance Regulatory and Development Authority (IRDA), situated at Sy. No. 115/1, Financial District, Nanakramguda, Gachibowli, Hyderabad – 500 032 for doing the needful at their end.**

27. Since the main cases have been disposed of, so all the pending Miscellaneous Applications, if any, are accordingly disposed of.

28. The Appeals could not be decided within the statutory period due to heavy pendency of Court Cases.

(JUSTICE DAYA CHAUDHARY)
PRESIDENT

(SIMARJOT KAUR)
MEMBER

May 14, 2024.
as