

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 30.05.2025
Pronounced on: 07.07.2025

FAO(D) 1/2025

**1. Met Life India Insurance Company Ltd
(previously known as MetLife India Insurance Co. Ltd.)
Having its Regional Head at Baghat
Barzulla, Srinagar- 190005**

**2. Branch Manager, PNB MetLife India
Insurance Company Ltd at Town
Square opposite Amar Singh College,
Gogji Bagh, Srinagar - 190008**

...Appellant(s)

Through: Mr. Mudasir-bin-Hassan, Advocate.

Vs.

**Abdul Aziz Khan.
S/O Gulam Mohi-ud-din Khasn
R/O Wahidine Chandoose,
Baramulla, Kashmir
Pin Code - 193101**

...Respondent

Through: Mr. Ateeb Kanth, Advocate.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

Sanjay Parihar-J

1. The aforesaid appeal is laid against the final order passed by the J&K State Consumer Disputes Redressal Commission [“hereinafter referred to as Commission”] dated 24.11.2023 whereby the Commission has proceeded to allow the claim of respondent and held the appellants guilty of deficiency of service in respect of policy claim bearing No. 20612676 (Date of Commencement: 12th of July 2011) and 20627709 (Date of Commencement: 16th of August 2011) having a sum assured of Rs. 7.60 Lakhs and Rs. 12.60 Lakhs respectively on account of death of Mr. Abdul Majeed Khan (hereafter called as insured). By

allowing the claim, the Commission has proceeded to direct the appellants to indemnify the respondent by paying sum of Rs. 35,56,980/- within 30 days failing which, appellants shall be further burdened with interest @6%.

2. Appellants *inter alia* have raised various grounds including the one of having been defrauded by the insured who had been diagnosed with a heart ailment on 11.11.2010, whereas, the proposal for commencement of policies was initiated thereafter, which makes it evident that the policies were applied for extraneous consideration to defraud the appellants. So much so, the proposal forms bearing No. 165592915 and 167014653, though related to the deceased (insured) but the photographs of the insured in both the proposal forms were different with one of the photographs being that of the respondent. That speaks of the fact that respondent had resorted to misrepresentation and fraud and had deliberately concealed factum of pre-existing disease, whereas, in the proposal form no such disclosure was made which leads to the only conclusion that the policies were not procured in good faith but for extraneous consideration, so the appellants had rightly repudiated the insurance cover. The commission has landed in error in honoring such a contract and once the appellants had demonstrated that the insured had obtained policy by concealment/non-disclosure of true facts, there was no reason for the commission to have approved the claim. There being no deficiency of service on part of the appellants, the commission landed in error in honoring such insurance contract.

3. Briefly stating the facts giving rise to the present proceeding happen to be that on 11.07.2011, after insured, signed two proposals for the purpose of obtaining life insurance cover under **Met Suvidha**

Participating and offered to pay Rs. 24573.34/- as the initial premium against sum assured of Rs.7.60 Lakhs. He nominated his brother (respondent as the beneficiary) in the said proposal form. On that basis policy bearing No. 20612676 was issued on 12.07.2011 to the DLI (deceased life insured) for a term of 15 years. He also obtained a second policy under the product name **Met Smart Platinum Unit Linked Life Insurance Plan** and signed proposal form on 05.08.2011 against sum assured of Rs.12.60 Lakh and also paid initial premium, which form the basis of issuance of policy No. 20627709 dated 16.08.2011 covering the risk of the deceased life insured. In that too, the respondent was shown as nominee. The insured namely Abdul Majeed Khan died due to cardiac arrest on 20.09.2011 and respondent being brother and nominee lodged claim before the appellants which was repudiated by them on the ground that the policies were obtained by misrepresentation of identity and that the insured has concealed that he was suffering from pre-existing heart-ailment. Being aggrieved, the respondent lodged claim before the Commission in the year 2012 being CC No 21 of 2012 at Srinagar, in which the respondent appeared. It is relevant to state that on account of September 2014 floods in Kashmir valley, the record of the commission got destroyed which was later on reconstructed with the help of copies available with the counsels after three months of the flood. It appears that on account of re-construction of record, the commission took note of copies of proposal forms, led by appellants to support the allegations pertaining to misrepresentation of identity. Copy of OPD ticket bearing No. 9630 dated 11.11.2010 and a copy of certificate dated 21.11.2011 allegedly issued by Medical Officer CHC Chandoosa, (to prove that the deceased was having heart ailment).

4. The commission while exercising original jurisdiction of considering the claim has, vide impugned order, proceeded to find that the contention of the appellants of one of the photographs pertaining to the brother of the deceased was on one of the proposal form that fact could not be confirmed for the want of any clear identifiable photograph of the concerned, so it cannot be taken as conclusive evidence and cannot be relied upon. It further found that the OPD ticket (regarding heart-ailment) evidencing a certificate by Medical Officer of CHC Chandoosa was in the nature of a photocopy and as the appellants could not produce necessary evidence before the Commission to confirm the authenticity of such a certificate, it cannot be taken as a credible piece of evidence.

5. On both counts, the Commission was of the view that appellants (opposite party) before the Commission failed to lead evidence in this regard, as such it proceeded to allow the claim.

Learned counsel for the appellants reiterating the grounds raised in appeal additionally have relied upon *Bajaj Allianz, Life Insurance Company Limited Versus. Dalbir Kaur reported in (2020) SCC Online SC 848, Reliance Life Insurance Company Limited & Anr. Versus Rekhaben Nareshbhai Rathod reported in (2019) 6 SCC 175, Life Insurance Corporation of India & Ors. Versus Asha Goel & Anr. reported in (2001) 2 SCC 160, P.C. Clncko & Anr. Versus Chairman, Life Insurance Corporation of India & Ors. reported in (2008) 1 SCC 321, Satwant Kaur Sandhu versus New India Assurance Company Limited reported in (2009) 8 SCC 316*, to argue that since the insurance contract is the outcome of a good faith, there need not be any nexus between the cause

of death and the material facts suppressed and since the insured has made false disclosure and resorted to misrepresentation thus there was no material before the Commission to have reached to the conclusion to approve the claim. That the commission has failed in appreciating these facts and has reached to a summary conclusion without returning finding on the issue of misrepresentation and concealment of terminal disease.

6. *Per contra*, learned counsel for the respondent claims that the Commission has considered all the aspects of the matter threadbare and arrived at a just conclusion especially with regard to the misrepresentation as one of the photographs pasted on proposal form has been verified by the officers of the insurance company, thus the claim of the appellants is based on no evidence as there is a most casual and unusual way have repudiated the contract which amply proves that the appellants are guilty of deficiency of service which *per se* is act of negligence and omission on the part of the insurer has resulted in injury/loss to the respondent. The argument that there was pre-existing disease which the insured did not disclose, for that the appellants led no evidence was rightly rejected by the commission as there appeared to be no concealment of life threatening condition causing death and that the appellants were avoiding consumer claim on irrelevant material. Reliance on unverified OPD ticket, the author of whom has not been examined nor original copy of the said OPD ticket produced goes to the root of the case and vindicates the claim of the respondent.

7. It is needless to mention here that since the appeal was delayed by 366 days in terms of Order dated 15.04.2025, this court proceeded to condone the delay and admitted the appeal for hearing.

8. We have been informed that appellants have already deposited the awarded amount of Rs. 20,20,000/- before the commission.

9. We have heard counsels and examine the record.

10. There cannot be two views about the law laid in the authorities cited at bar, that it is a fundamental principle of insurance law that utmost faith must be observed by the contracting parties. Good faith forbids either party from the non-disclosure of the fact which the party privately knows, to draw the other into a bargain from his ignorance of that fact, and his believing the contrary.

11. In **“Satwant Kaur Sandhu versus New India Assurance Company Limited reported as (2009) 8 SCC 316”**, the insured was accused of having concealed a material fact from the proposal form, and it was held that the assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. The obligation to disclose extends only to facts which are known to the insured and not to what he ought to have known.

12. Dwelling what is material fact, it was observed as under:

The term "material fact" is not defined in the Insurance Act, 1938 and, therefore, it has been understood and explained by the courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be "material". The Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002 defines the word "material" to mean and include all "important" "essential" and "relevant" information in the context of guiding the insurer to decide whether to undertake the risk or not.

Thus, in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance.

13. In “Branch Manager, Bajaj Allianz Life Insurance Company Limited & Ors. versus Dalbir Kaur reported in (2021) 13 SCC 553” death had occurred within a period of one month and seven days from the issuance of the policy. The proposer had failed to disclose vomiting of blood, which took place barely a month prior to issuance of policy of insurance and of hospitalization which had been occasioned as consequence. The investigation by insurer indicating that assured was suffering from pre-existing ailment, consequence upon alcohol abuse and that facts which were within the knowledge of proposer were not disclosed. On such facts it was held as under;

“11. The decision of this Court in *Sulbha Prakash Motegaonkar v. LIC*, which has been relied upon by NCDRC, is clearly distinguishable. In that case, the assured suffered a myocardial infarction and succumbed to it. The claim was repudiated by the insurance company on the ground that there was a suppression of a pre-existing lumbar spondylitis. It was in this background that this Court held that the alleged concealment was of such a nature that would not disentitle the deceased from getting his life insured. In other words, the pre-existing ailment was clearly unrelated to the cause of death. This Court had also observed in its decision that the ailment concealed by the deceased was not a life-threatening disease. This decision must, therefore, be distinguished from the factual position as it has emerged before this Court.

12. The medical records which have been obtained during the course of the investigation clearly indicate that the deceased was suffering from a serious pre-existing medical condition which was not disclosed to the insurer. In fact, the deceased was hospitalised to undergo treatment for such condition in proximity to the date of his death, which was also not disclosed in spite of the specific queries relating to any ailment, hospitalisation or treatment undergone by the proposer in Column 22 of the policy proposal form. We are, therefore, of the view that the judgment of NCDRC in the present case does not lay down the correct principle of law and would have to be set aside. We order accordingly.”

14. Since the proceedings before the Commission have emanated on the strength of the Consumer Protection Act of 1987, which stood repealed with the coming into force of the Jammu and Kashmir Reorganization Act of 2019, however, by subsequent orders in the nature of removal of difficulties in

respect of the Act of 2019, the proceedings already initiated are to be continued as if the repealed Act still existed.

15. In terms of the Act of 1987, the Commission not only acts as an appellate authority over the decisions of the District Forum (now Divisional Forum), but under Section 15, it also exercises original jurisdiction to entertain complaints if the claim exceeds ₹10 lakhs but does not exceed ₹50 lakhs. While exercising original jurisdiction, the Commission is governed by Section 10, 11, and 12 of the Act for the disposal of disputes.

16. Commission is also vested with the powers of a civil court under the Code of Civil Procedure, as if it is trying a suit. It is thereby empowered to enforce the attendance of witnesses and examine them on oath, order discovery and production of documents or material objects, receive evidence on affidavit, and requisition reports from analysts or laboratory staff as the case may be.

17. The main object of the Act is to provide speedy and simple redressal to consumer disputes, and for that purpose, a quasi-judicial machinery has been set up under the Act at the District as well as the State (now UT) level. The authorities under the Act are required to observe the principle of natural justice and are empowered to grant relief of a specific nature and to award compensation to consumers, wherever appropriate.

18. The authorities also have the power under the Act to enforce compliance of their orders. The overall purpose of the Act is to provide an alternative, efficacious, and speedy remedy to consumers. In the present case, upon going through the record

of the Commission, we are surprised to note that the findings returned by the Commission on the issues involved in the complaint are bereft of any reasons. It appears that the Commission has proceeded to allow the consumer complaint in a summary manner.

19. There were two-fold objections raised: (i) a case of mistaken identity or misrepresentation; and (ii) non-disclosure of a pre-existing disease by the insured at the time of entering into the insurance contract. Perusal of record of the Commission would bear testimony that the complainant has examined only himself, whereas the appellants (opposite party) before the Commission had raised the following grounds:

- a. That the deceased had concealed the fact that he was suffering from a chronic heart ailment.
- b. That one investigator, Eagle Eye, investigated the matter and reported that he had contacted the concerned Medical Officer at CHC, and it was certified that the deceased was suffering from chronic heart disease.

20. For that reason, the appellants wanted to examine the investigator, Sagar K. V. Roy, later, it sought production of the investigator who had privately verified the genuineness of the claim. The interim orders recorded on file disclose that although the appellants had been granted time repeatedly to produce the witnesses, but they failed to do so.

21. Resultantly, vide order dated 16th May 2019, it was observed by the Commission that despite directions issued to the opposite party (for producing the investigator), the same had not been done, so the right to call the investigator was closed.

However, the appellants had also requested to examine the doctor, but that too was not allowed.

22. Our attention has been drawn to the nature of documents sought to be proved by the respondents, which, on the face of it, sow seeds of misrepresentation. The same being a question of fact, was required to be proved by the appellants in order to obtain a finding from the Commission on the issues involved. Merely because the documents were in the nature of photocopies does not justify brushing them aside, rather, under summary jurisdiction, the Commission was required to ascertain the genuineness of such documents.

23. It is common knowledge that insurance companies, in the event of processing of claims, conduct independent surveys and verify the claim by way of investigation. In this regard, the investigator Eagle Eye had found that the insured was suffering from heart complications and was a known case of RHD prior to the purchase of the policy. The investigator had also collected the OPD ticket of CHC Chandoosa dated 11th November 2010 to confirm the same.

24. Even the concerned doctor who examined the insured at the relevant time claimed to have disclosed to the insurer that the deceased was under his treatment for one year prior to obtaining the policy. These aspects were required to be evaluated by the Commission by way of evidence, but it has proceeded to allow the claim merely on the strength of sole statement of the respondent.

25. Though the Commission is a quasi-judicial authority which has all the powers of a civil court to enforce the attendance of witnesses, it was required to provide inexpensive and speedy resolution of disputes arising between the consumers and service providers. However, merely because the Commission is created for summary disposal of such disputes does not clothe it with the power to dispose of the complaint by summary adjudication, without affording reasonable opportunity to lead evidence or prove documents.

26. The Commission was dealing with the complaint in the exercise of its original jurisdiction and its order is appealable before the higher forum, it was, therefore, required to return findings based on proper appreciation of evidence.

27. We concluded here that the Commission has resorted to disposal of the complaint of the private respondent in haste, thereby depriving the appellants of a reasonable opportunity of being heard and to lead evidence in rebuttal to the claim of the respondent.

28. We are conscious of the fact that the claim petition was filed on 07.10.2011, however, given the fact that on account of the flood of 2014, the record of the Commission got damaged and subsequently reconstructed, and in the absence of a proper determination of facts as regards the two issues raised by the appellant, this Court, while exercising appellate jurisdiction, is not in a position to appreciate the controversy in its right perspective.

29. Accordingly, the matter is required to be remanded back to the Commission for fresh consideration after affording reasonable opportunity to the appellants to examine its surveyor/investigator and medical expert to disprove the claim of the respondent.

30. It is, however, made clear that in the event the respondent intends to lead any further evidence in rebuttal, reasonable time shall also be given for the same.

31. Having regard to the aforesaid background, the order of the Commission dated 24.11.2023 is hereby set aside and the matter is remanded to the Commission for fresh consideration of the issues in the light of the observations recorded hereinabove.

32. *Disposed of.*

(SANJAY PARIHAR) (SANJEEV KUMAR)
JUDGE JUDGE

SRINAGAR

07.07.2025

"Hilal"

Whether the judgment is approved for reporting: Yes / No