NOLEGEIN Journal of
Corporate & Business Laws

ISSN: 2581-7779
Volume 4, Issue 2, 2021
DOI (Journal): 10.37591/NJCBL

http://mbajournals.in/index.php/JoCBL/index

Case Study NJCBL

Case Studies on Protection of Rights of Insurance Policy Holders with Special Reference to Kolhapur District Consumer Forum

Madhavi Malge*

Abstract

It is an important right of every consumer to get what he pays for. He has rights against the manufacture, retailer at the same time provider of services as well. Insurance Services is not an exception to it. Insurance Companies are regulated by, Insurance Regulatory and Development Authority Act, 1999 and Insurance Act, 1938. Supreme Court has interpreted Policy Holder as a 'Consumer' so, Consumer Protection Act is equally applicable to policy holders as well. Important objective of Consumer Protection Act is consumer's welfare and protection of their rights. Every consumer has right to information about the product before buying, he has freedom of speech and expression as well. Where there is a right, there is a remedy. Consumer is having right to be heard by competent forum. He can exercise this right by filing consumer case in the appropriate forum. Insurance companies are obliged with providing quick and quality services to the policy holders. When policy holder makes claim, generally in majority of cases he is in trauma or suffering. Unlawful denial of their claim makes them to suffer more. So, Insurance Company should act lawfully. Whenever any Insurance Company acts arbitrarily or unlawfully, policy holder has the right to knock the door of court (Consumer Court). On proving violation of his right, Insurance Company is liable for providing efficient service and compensation for previous deficient service.

Keywords: Consumer, insurance, rights, policy, company

INTRODUCTION

Insurance business is growing in India beyond leaps and bounds, due to its utility. Government of India has nationalized Life Insurance as well as General Insurance. There is both private as well as public companies in insurance sector. Insurance business is regulated by Insurance Regulatory and Development Authority Act, 1999 and Insurance Act, 1938 [1]. Supreme Court in the case, Canara Bank V. United Indian Insurance Corporation and Ors [2] decided that the beneficiaries of the policies taken by the Insured are 'Consumers', under Consumer Protection Act and Consumer Redressal Forum can provide remedy for the protection of rights of consumer.

***Author for Correspondence**
Madhavi Malge
E-mail: advmadhavisarvade@gmail.com

Assistant Professor, Department of Law, Ismail Saheb Mulla Law College, Satara, Maharashtra, India

Received Date: November 20, 2021
Accepted Date: November 26, 2021
Published Date: December 30, 2021

Citation: Madhavi Malge. Case Studies on Protection of Rights of Insurance Policy Holders with Special Reference to Kolhapur District Consumer Forum. NOLEGEIN Journal of Corporate & Business Laws. 2021; 4(2): 13–17p.

Every consumer has the right to redressal against unfair trade practices and exploitation committed by the provider of goods and services irrespective of the value of goods or services. So, to protect their rights "Consumer disputes redressal agencies i.e., Consumer Forums or Consumer Courts" are set up under the Consumer Protection Act at District, State and National level. It's main objective is providing simple, cheap and fast remedy in consumer complaints. According to the Consumer Protection Act, 1986, the pecuniary jurisdiction of District Forum is 20 lakhs [3].

However, under new law i.e., the Consumer Protection Act, 2019, which came into effect from 20th July, 2020, the pecuniary jurisdiction of District Forum is not exceeding Rupees One Crore (Section 34(1)).

CONCEPTS

Insurance

Insurance is a contract entered into between two parties i.e., Insurer and Insured and is governed by the law of contract. Insurance contract must contain the essentials of contract under the Indian Contract Act, 1872. i.e., capacity to contract, free consent, lawful object and lawful consideration.

An Insurance Contract is a contract in which, one party i.e., Insurance Company agrees to pay to Policy Holder given sum of money upon the happening of a particular event, contingent upon the duration of the policy in exchange of the payment of consideration.

Insurance protects a person from financial impact of unforeseen events. It also creates financial security. Insurance works on the contributions made by many in the form of premium. From the amount of premium paid the losses of a few are paid by insurance company. Insured has to pay a small portion of his earning called as premium [4]. Insurance plans needs to be selected in accordance with need and premium paying capacity of a person.

Deficiency in Service

Under the Consumer Protection Act, 2019, complainant may file consumer case before District Forum, when he detects deficient in a service [5]. However, the deficiency must fall under the ambit of the definition given under the Consumer Protection Act, 2019.

Deficiency of Service includes any 'fault', 'imperfection', 'shortcoming' or 'inadequacy' in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. It also includes, any act of negligence or omission or commission by such person to the consumer and deliberate withholding of relevant information by such person to the consumer [6].

Duty to follow the Principle 'Ubrrima Fides'

Ubrrima Fides Principle should be followed by both the parties i.e., Insurer and Insured. It means acting in good faith. Proposer/Policy Holder should fill the proposal form correctly and truthfully [7]. Good faith is expected from both the parties of Insurance Contract.

Proposer/Policy Holder should disclose "all material information" about the risk he wants to cover.

Bhawani Bai V. LIC of India [8]

It was held in this case that the insurer cannot avoid or repudiate an insurance policy on the ground of non-disclosure of material facts, which have no bearing on the risk taken by insurer.

LIC V. Shakuntalabai [9]

Under this case, policy holder failed to disclose that, he has suffered from indigestion for a few days and took chooran from Ayurvedic doctor. He died within a year due to jaundice. The Insurance Company repudiated the claim on this account. The court protected the claim of policy holder by not approving the repudiation. Insurance Company could not establish with cogent evidence that it had been explained to policy holder that such casual disturbances shall not be covered under policy.

Effect of Non-disclosure of Material Facts

Duty is imposed upon both insured and insurer to disclose all material facts to each other. The effect of mere non-disclosure does not amount to fraud. In such cases insurer can avoid the contract

and amount of claim as well. However, in certain cases non-disclosure of material fact by policy holder amounts to misrepresentation and it shall be the right of Insurance Company to increase the amount of premium or partly payment of the insurance claim.

Insurer's right to treat a contract null and void is limited by provision provided under Section 45 of Insurance Act, 1938. According to this section, policy cannot be called in a question after two years, on the basis of misrepresentation unless it is proved to be fraudulent.

Other duties of insured are regular payment of premium, to register nomination for policy, to fill the nominee's name correctly, to not to leave any column blank in the policy form, not to sign a blank proposal form, not to hide pre-existing diseases.

Case Studies on Protection of Rights of Policy Holders by Kolhapur District Consumer Redressal Forum

The Confonet Site has been used to study cases.

Limitations to this paper are as follows:

- Names of parties have been changed to maintain confidentiality.
- The decision might change in appeal.

CASE STUDY NO. 1

Ganesh Shriram Patil Versus SBI General Insurance Company Ltd. and Ors

Facts of the Case

Complainant filed consumer case under Section 12 of Consumer Protection Act, 1986 against Insurance Company for deficiency of service. Complainant and his wife are policy holders. Policy Duration was 24/12/2017 to 23/12/2018, Sum Assured was Rupees 200,000 (Two lakh only), Bonus Amount was 45000. Since eighteen years, complainant was policy holder without break. Every year he paid premium amount on time. In the year 2018, the complainant decided to Port the Policy to SBI General Insurance Company. Application was made by the complainant and paid premium amount on 17/11/2018. Complainant made inquiry on 12/4/2019 to renew it, through letter; however, on 25/7/2019, Insurance Company informed to complainant that as complainant is heart patient, policy has not been ported. It was the responsibility of opposite party to inform that the policy is not ported and it cannot be renewed. It caused mental shock to complainant. So, complainant filed consumer case in Kolhapur District Consumer Redressal Forum. Complainant prayed before hon'ble forum to order renewal of policy since 24/12/2018 to 23/12/2019. It was also prayed that in the same period, if there was any claim, till 24/12/18, order to be made to pay off that claim. It was further prayed by complainant to pay Rupees 20,000 for mental agony and Rupees 10,000 for court expenses.

Held

In this case the deficiency of service has been proved before hon'ble forum. On the basis of all the evidences, case was decided in complainant's favor and ordered to renew policy from 24/12/2018 to 23/12/2019, 24/12/2019 to 23/12/2020 and 24/12/2020 to 23/12/2021 by accepting premium for this period. Consumer Redressal Forum also awarded Rupees 8000 for mental agony and Rupees 3000 for court fees within 45 days from the date of order.

In accordance with IRDA, is an obligation of Insurance Company to take decision of granting policy within 15 days. When person wants to port the policy with another Insurance Policy, where within 18 days rejection is not conveyed to the proposer, Insurance Company is not entitle to repudiate the contract. In the above case, Insurance Company conveyed its decision after 8 months. It is violation of right of the policy holder. Accordingly, decision was given in favor of the policy holder.

CASE STUDY NO. 2

Ajit Sitaram Khot Versus Star Health and Allied Insurance Company

Facts of the Case

Consumer case has been filed by complainant Ajit against above Insurance Company under Section 12 of Consumer Protection Act, 1986. Complainant had insured himself with Family, Health Optima Insurance, 2017. Policy Period was 29/3/2018 to 28/3/2019, Sum Assure was Rupees 500,000 (Five lakh rupees). On 28/10/2018, complainant got injured in road accident. Complainant took treatment from Diamond Hospital. Before this incident complainant was never admitted in hospital for any reason. After this incidence the complainant was admitted for treatment from 6/12/2018 to 14/12/2018. For hospital expenses, complainant paid Rupees 64,920 (Sixty four thousand nine hundred twenty only). Complainant claimed this amount from the Insurance Company. Insurance Company denied this claim, showing reason pre-existing disease. So, complainant filed consumer complain in Consumer Redressal Forum.

Held

On the basis of evidences on record, Forum decided case in complainants favour. District Consumer Redressal Forum Insurance Company to pay to the complainant the claim of Rupees 66,000 (Sixty six thousand only), Rupees 5000 (Rupees five thousand only) for mental agony and Rupees 3,000 (Rupees three thousand only) for court expenses within 45 days from 45 days from the date of order.

In this way, while denying the claim on the basis of pre-existing disease, Insurance Company has to prove pre-exiting disease with cogent evidence.

CASE STUDY NO. 3

Ritesh Ramlal Selvi Versus The new India Insurance Company

Facts of the Case

Complainant filed consumer case under Section 12 of Consumer Protection Act, 1986. The complainant has insured himself with Mediclaim policy. Duration of policy was 28/3/202017 to 27/3/2018. Sum Assured was Rupees 300,000 (Three lakh only) and bonus amount was Rupees 67,500. Complainant took treatment from Ratina Care and Laser Centre on 5/8/2017. Name of treatment was Intravitreal Injection Acentric under Absolute Aseptic Precautions. Complainant denied to pay claim. So, the complainant filed complain in Consumer Forum for deficiency of services.

Held

On the basis of evidences on record, Forum decided case in complainants favour. District Consumer Redressal Forum ordered Insurance Company to pay to the complainant the claim of Rupees 24,000 (Twenty four thousand only), and interest at the rate of 6% p.a. from the date of denial of claim. Rupees 5000 (Rupees five thousand only) for mental agony and Rupees 3,000 (Rupees three thousand only) for court expenses within 45 days from the date of order.

SUGGESTIONS

- Proposer should disclose every material fact to Insurer i.e., Insurance Company. He should not leave any column blank.
- To ensure continuity of policy, it is advisable to pay Regularly Payment of Premium.
- Proposer should contact right person or right company, and rights plan for insurance service. He should take experts' advice or get his doubts cleared by contacting toll free number provided by insurance companies.
- It is advisable that proposer/policy holder should go through IRDA Official Website before buying insurance service.

- Awareness regarding Consumers Protection Laws, Rights of Consumers and Redressal Forum needs to be created by state.

CONCLUSION

Every consumer, irrespective of price of product or service has the right to get correct information, right to choose, right to safe product and service. Consumers have the right against malpractices practiced by public as well as private companies. Insurance company is not an exception to it. Consumer has the important right to be heard by competent Redressal Forum. Whenever consumer's right is violated, he has the right not only to reinstatement of service but also compensation for his mental agony and court expenses, which he has paid. It is the responsibility of the state to make the consumers aware about their rights, regarding insurance services. Consumers should read the terms and conditions carefully before buying any plan. If any of the consumer faces any malpractice, he should ask remedies in the form of claim, compensation as well as court expenses from the Consumer Redressal Forum. For this purpose, the consumer should be first made aware and alert about his rights because law helps those who are vigilant with their rights and not the one who sleeps.

REFERENCES

1. Myneni SR. Law of Insurance, 2nd Ed, Asia Law House, Hyderabad, p.139.
2. Civil Appeal No.1042 of 2020, Special Leave Petition (Civil) No. 20393 of 2018.
3. Vikaspedia, Consumers rights and responsibilities, 2021 November 20; Available from: https://vikaspedia.in/social-welfare/social-awareness/consumer-education/consumer-rights-and-responsibilities.
4. Handbook on Insurance by Insurance Regulatory Development Authority. 2021 November 20; Available from: policyholder.gov.inuploads/CEDocuments/handbook%20on%20insurance.
5. Section 12, Consumer Protection Act, 1986.
6. Section 2 (11), Consumer Protection Act, 1986.
7. Banque Financciere de la Cite V. Westigate Insurance Co. Ltd [(1989) 2 ALL ER 982]
8. AIR 1984 MP 126 (301).
9. AIR 1975 AP 68.

