

IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution : 21.09.2017
Date of Reserving the order : 21.10.2024
Date of Decision : 22.09.2025

FIRST APPEAL NO.- FA/491/2017

IN THE MATTER OF

Brijesh Kumar Sharma
S/o Late Sh. S.P. Sharma
B-5/21, Yamuna Vihar,
Delhi-110035

(Through: Mr Rahul Pal, Advocate)

.....Appellant

VERSUS

1. Instant Healthcare Private Ltd
Through its CEO/Managing Director
1111/1107, 11th Floor, New Delhi House
Barakhamba Road, Connaught Place,
New Delhi-110001
2. Bharti Axa General Insurance Co. Ltd.
Through its Legal Manager/CEO

7th Floor, 15, Mercantile House,
Kasturba Gandhi Marg, Connaught Place,
New Delhi-110001.

(Through: Mr Vikas Shokeen, Advocate)

.....Respondents

CORAM:

HON'BLE MS. PINKI, MEMBER (JUDICIAL)
HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)

Present: None for the appellant
 None for the respondent

HON'BLE MS BIMLA KUMARI, MEMBER (FEMALE)

ORDER

1. By this judgement, we shall dispose of the appeal which has been filed by the appellant Brijesh Kumar Sharma against the impugned order dated 07.07.2017 passed by District Consumer Dispute Redressal Forum, (East), Convenient Shopping Centre, first floor, Saini Enclave Delhi.

2. Brief of the case, as per the complainant are that the complainant (appellant herein) was approached by Sh. Krishan Kumar, the agent opposite party no. 1, for taking

Forum ignored the fact that respondent no. 2 did not come out with clean hands and tried to mislead the forum by making false averments. The Ld. District Forum ignored the fact that the respondent no. 2 was the Principal Insurance Company, who issued the policy to the appellant but did not inform the appellant about the cancellation of the policy despite having all the details of the appellant. Ld. District Forum also ignored the fact that earlier, the ex-parte order dated 21.10.2011 was passed, whereby both the respondents were held jointly and severally liable to pay the claim. Ld. District Forum has passed a wrong order by exonerating respondent no. 2 from the liability of the claim. Ld. District Forum ignored the fact that respondent no. 1 was not in-existence since 2011 even then District Forum exonerated respondent no.2. Ld. District Forum ignored clause xviii of the policy regarding the cancellation of the policy by the company. The policy was cancelled by respondent no. 2 without giving mandatory notice of 15 days, either to respondent no.1 or the appellant. The Respondent no. 2 did not file any documents which could show as to why respondent no. 2, cancelled the policy. Therefore, the cancellation of policy was illegal. Ld. District Forum has also ignored the fact that there was no document on record to show that respondent no. 2 had returned the balance premium of the policy to respondent no.

16. **The only question for consideration is whether there is any illegality or material regularity in the order passed by District Forum.**

17. **It is worth noting that Ld. District Forum has categorically observed in the impugned order that there was deficiency in service and unfair trade practice on the part of the opposite parties as complainant was not informed about the cancellation of policy by the opposite parties and opposite parties failed to return the premium to the complainant. Further, Ld. District Forum was also observed that the opposite party no. 2 had informed only opposite party no. 1 about the cancellation of the policy and not to the complainant. It is significant to note that Ld. District Forum of the view that complainant (appellant herein) can't be made to suffer because of the mutual arrangement between opposite party no 1 and opposite party No 2 (respondents herein) and complainant was fully entitled for the reimbursement of the mediclaim expenses but direction was given by Ld. District Forum to opposite party no.1 only to pay the amount of Rs.61,499/- along with 9% interest as opposite party no.1 did not return the amount of the premium and did not inform the complainant. It is worth**

noting that Ld. District Forum has also observed that the opposite party No.2, being the insurer was having the details of its members and had the moral responsibilities to inform the insured. In these circumstances, we are of the considered view that Ld District Forum was not right in not fixing the liability of Principal Insurance Company i.e. respondent no.2.

18. Further, to deal with this issue, we would like to refer the judgement of **Hon'ble Supreme Court in Civil Appeal No.6778 of 2013 decided on 9.12.2021 titled as Jacob Punnen & Anr. Vs. United India Insurance Co. Ltd** wherein it was inter-alia observed as under:-

It was an obligation of the insurer to inform every policy holder about any important changes in the policy conditions and failure to inform amounts to deficiency in service on the part of the insurance company.

19. It is also worth noting that the policy (**Annexure A-3 Page 30** of the appeal) shows that the insurance policy was issued by respondent no. 2 in favour of the appellant and his family members. Further, it is an admitted case of respondent No.2 that it had

informed about the cancellation of policy to respondent no.1 only and returned the premium to it. It is further worth noting that respondent No 1 was not traceable and was proceeded ex-parte and Ld. District Forum passed the ex-parte judgment where both the respondents were held jointly and severally liable to reimburse the claim of the appellant.

20. Further, respondent no. 2 also did not give 15 days' notice to the appellant as per Clause XVIII of the terms and condition of the policy. **(Exhibit R 2 W 1/A, page 71 To 82)** of appeal. The said clause XVIII is reproduced herein for ready reference:-

(XVIII) Cancellation/Termination

The Company may cancel this Policy, by giving 15 days notice in writing by Registered Post Acknowledgment Due to the Insured at his/ their last known address in case of non-cooperation of the Insured / Insured Person in implementing the terms and conditions of this Policy or fraud" committed by any insured person associated with the policy or claim, in which case the Company shall be liable to repay on demand a rateable proportion of the premium for the unexpired term from the date of the cancellation. The insured may also give 15 days notice in

writing, to the Company, for the cancellation of this Policy in which case the Company shall from the date of receipt of notice cancel the Policy and retain the premium for the period this Policy has been in force at the Company's short period scales. Provided however that refund on cancellation of Policy by the Insured shall be made only if no claim has occurred up to the date of cancellation of this Policy.

21. Admittedly, in the present case, the respondent no. 2 did not give 15 days' notice to the appellant before cancellation of the policy and also did not inform the reasons as to why the policy was cancelled. Since, it was the duty of respondent no. 2 to inform the appellant/insured about the cancellation of the policy and in view of the settled law referred above, we are of the considered view that Ld. District Forum was not right by fixing the liability of respondent no1 only. We are of the considered view that respondent no. 2 was also equally liable to satisfy the claim of the appellant, being the Principal Insurance Company.

22. Accordingly, the appeal filed by the appellant is hereby allowed and the impugned order passed by Ld. District Forum is modified to the extent that respondent no.1 and

