

Date of pronouncement:- 03/10/2020

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER COMPLAINT NO. 274 OF 2020

1. MR. JOYDEEP BANERJEE
s/o Mr. Sanjoy Kumar Banerjee
Residing at FE-508/7,
Sector- III, Salt Lake City,
P.S. Bidhannagar South Kolkata-700 106

2. MR. SANJOY KUMAR BANERJEE
S/o Late Ranajit Banerjee
Residing at FE-508/7,
Sector- III, Salt Lake City,
P.S.- Bidhannagar South
Kolkata-700 106

... Complainants

1. RELIGARE HEALTH INSURANCE COMPANY LTD.
An insurance company registered
under the Insurance Regulatory and
Development Act, 1999, and governed
by the Insurance Regulatory
and Development Authority
(Health Insurance) Regulations, 2013,
bearing IRDA Registration No. 148,
having its correspondence office at Vipul Tech Square,
Tower 'C', 3rd Floor, Sector- 43,
Golf Course Road, Gurugram- 122 009,
Haryana
(Presently known as Care Health Insurance Company)

2. CLAIM DEPARTMENT- TRAVEL
Religare Health Insurance Company Ltd.
Vipul Tech Square, Tower 'C', 3rd Floor,
Sector- 43, Golf Course Road,
Gurugram- 122 009, Haryana.

3. MR. BHARAT BHOOSHAN RODHE (Code No. 20049116),

an intermediary within the meaning of section 2(f) of the Insurance Regulatory and Development Act, 1999 having his office at 1-116, Kiriti Nagar, New Delhi 110 015.

4. FALCK GLOBAL ASSISTANCE

Assistance Service Provider of Religare Health Insurance Company Ltd., having its office at Falck India Pvt. Ltd., Upper Floor, The Peach Tree, Block C', Sushant Lok-1, Sector 43, Gurugram-122 015, Haryana.

.... Opp. Parties

5. DEAN INTERNATIONAL INC FLIGHT SCHOOL

14150, SW 129th Street, Miami, Florida 33186, United States of America

6. MR. MANJOT SINGH BHASIN

Administrator Director of Star Flight Training Educare Pvt. Ltd., 2nd Floor, E-1066, Ramphal Chawk Road, Sector-7, Dwarka, New Delhi 110 075 acting as the authorised representative of Pro-Forma Opposite Party No. 5 in India.

7. KENDALL REGIONAL MEDICAL CENTRE

11750 Bird Road, Miami, Florida- 33175-3530 United States of America

..Pro-Forma Opp Parties

CONSUMER COMPLAINT NO. 428 OF 2020

1 Mr. Ponkumar. So. Ponnuswamy
No. 93. Ponnambalam Salai. K.K. Nagar,
Chennai-600 078

2. Mr. Vinodh Kumar
Sio. Mr. Ponkumar No. 93,
Ponnambalam Salai, K.K. Nagar,
Chennai-600 078.

COMPLAINANTS

Versus

1. Religare Health Insurance Company Ltd,
Having its Registered office at 5th floor,
19 Chawla House, Nehru Place, New Delhi-110019

And Corresp. Office at:

Customer Service:

Vipul Tech Square, Tower C, 3rd floor,
Sector-43, Golf Course Road.
Gurgaon-122009

2. Falck Global Assistance,
Assistant Service Provider of
Religare Health Insurance Company Ltd,
having its office at Falck India Pvt Ltd.,
Upper Floor, 'The Peach Tree',
Block C Sushant Lok - 1,
Sector-43, Gurgaon,
Haryana-122015

3. Mr. Bharat Bhooshan Rodhe and
Mr. Suraj Rodhe,
Caratara Investments and Insurance Service,
1-116, Kirti Nagar,
New Delhi-110015.
Authorised Intermediary of
M/s. Religare Health Insurance

4. Insurance Regulatory and Development Authority of India (IRDA)
Having its office at SY No.115/1,
Financial District, Narakramguda, Gachibowli,
Hydrabad-500 032.

PROFORMA OPPOSITE PARTIES

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.), PRESIDING MEMBER
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER**

Appearance at the time of arguments:-

For the Complainant : Ms. Priya Aristotlte, Advocate (VC)

For the Opposite Party : Ms. Suman Bagga, Advocate(VC) for

OP-1
For the Opposite Parties No. 2-7 : Ex parte (Vide Order dated
18.07.2025)

JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

ORDER

1. Two separate complaints (i.e. CC No. 274 of 2020 Joydeep Banerjee & Anr. v. Religare Health Insurance Co. Ltd. & Ors; and CC No. 428 of 2020 Ponkumar & Anr. v. Religare Health Insurance Co. Ltd. & Ors.) have been separately preferred on behalf of the complainants aggrieved against the repudiation of claim by the Insurance Company in respect of treatment undertaken by Joydeep Banerjee in CC No. 274 of 2020 and Vinodh Kumar in CC No. 428 of 2020 at Kendall Regional Medical Centre, Miami, Florida, US despite availing Health Insurance Policy under the plan "Student Explore Super".

For convenience, CC No. 274 of 2020 Joydeep Banerjee & Anr. v. Religare Health Insurance Co. Ltd. & Ors. is taken as a lead case.

CC No. 274 of 2020

2. In brief, complainant no.1 Joydeep Banerjee in CC No.274 of 2020 had procured admission in the Professional Pilot Training Course at Dean International INC Flight School, Miami (pro-forma opposite party no. 5). In order to secure the risk which the complainant no.1 might face

during the course of his training, the father of complainant no.1 Sanjoy Kumar Banerjee obtained a Health Insurance Policy from Religare Health Insurance Corporation Ltd. (opposite party no. 1) for an insurance coverage of US\$ 3,00,000 towards the emergency medical expenses and other benefits based on the representations made by opposite party no. 3 Mr. Bharat Bhooshan Rodhe, an intermediary of opposite party no. 1.

3. As per the complainants, Mr. Bharat Bhooshan Rodhe (opposite party no. 3) represented to the complainants that Religare premium includes adventure sports ADD and the same covers the injuries to travelers outside India taking part in adventure and hazardous sports activities like piloting non-commercial aircrafts among other things. However, post-purchase, when the complainants were presented with the terms and conditions of the policy, they came across Clause 5.33 of the General Exclusions which exempted Insurance Company from any liability arising out of "*any claim relating to aviation training*".

4. It is further the case of the complainant that when this issue was raised with Mr. Bharat Bhooshan Rode (opposite party no.3), complainants were verbally assured that when it has been specifically mentioned in the said policy that the course which the insurance policy covers is 'Pilot Training Course', the Insurance Company (opposite party

no. 1) had full knowledge of the purpose for which the policy had been issued. As such, the same would override the general exceptions incorporated in Clause 5.33 of the policy. In the aforesaid background, the complainants decided to go ahead with the policy.

5. During the course of training, complainant no.1 Joydeep Banerjee met with an accident during a regular flight training course and was admitted in Kendall Regional Medical Centre, Miami, Florida, US Regional Medical Centre, Miami, Florida, USA (proforma opposite party no. 7). Consequently, parents of complainant no. 1 visited USA, wherein after multiple surgeries and treatment, complainant no.1 was discharged and brought back to Kolkata on 16.06.2018. Complainant no.1 continued to receive the treatment thereafter at Kolkata. Complainant no.2 also claims to have signed a bond of liability for payment of medical expenses in USA, in the event of failure of Insurance Company to honour the same.

6. Complainant no.2 after the accident of complainant no.1 exchanged several e-mails with Falck Global Assistance/opposite party no.4 (Assistant Service Provider of the Insurance Company) for disbursement of sums towards treatment of complainant no.1 in terms of the policy. However, such claims of complainant no.2 were rejected by opposite party no.4 (Falck Global Assistance) on grounds of

misrepresentation, mis-description and non-disclosure of material facts. Aggrieved against the same complainants forwarded a legal notice dated 04.07.2018 calling upon the Insurance Company to honour the policy by payment of medical expenses and compensation.

7. *Vide* e-mail dated 11.08.2018 containing an attachment letter dated 10.08.2018, OP-4 on behalf of OP-1 sent a cashless rejection letter to complainant no. 2 rejecting the claim, by invoking Clause 5.33 of the terms and conditions of the policy which provides exclusion for "any claim relating to aviation training". It is also pointed out on behalf of the complainant that earlier *vide* letter dated 06.06.2018 and 08.06.2018 the claim made by the complainant was rejected by the OPs on grounds of misrepresentation, mis-description and non-disclosure of material facts.

8. Finding no other alternative, complainants preferred WP 21044 (W) of 2018 before Hon'ble High Court of Calcutta, which was eventually withdrawn with liberty to file proceedings before appropriate forum. The present complaint has thereafter been preferred before this Commission.

9. Religare Health Insurance Co. Ltd./OP-1 (presently known as Care Health Insurance Ltd.) took a stand that complainant no.1 was issued a policy (Plan-Student Explore Super) from 30.10.2017 till 29.07.2018 for insured sum of US\$ 3,00,000, subject to policy terms and conditions and general exclusions. The same were explained and

understood by the complainants after deliberations and the key features of Student Explore were duly mentioned in the brochure. Complainants were explained that Student Overseas Travel Insurance Plan for pilot training course is an international travel and health insurance for students. OP-1 further submitted that relevant General Exclusion Clause in terms of the policy excluded any claim relating to aviation training in terms of Clause 5.33 as under:-

"5. General Exclusion

Any claim in respect of any Insured person for, arising out of or directly due to any of the following shall not be admissible unless expressly stated to the contrary elsewhere in the policy Terms and conditions."

10. It is further the case of OP-1/Insurance Company that complainants had also taken an optional covering for Adventure Sports which covers injury arising out of any hazardous activities or adventure sports activity. The said add-on cover included only sports activities and not professional pilot training which had been specifically excluded under clause 5.33 of the policy. The correspondence between complainant no.2 and intermediary was further denied in absence of the said record.

11. OP-1/Insurance Company further claimed that in terms of Clause 8.10 of the terms and conditions of policy, a 15 days 'free look period' is

provided in case of any objections or disagreement regarding the policy terms and conditions, during which the insured had full liberty to return the policy as reproduced below:-

"8. Free Look Period

b. The Policy holder may, within 15 days from receipt of the Policy documents, return the Policy stating reasons for his objections, if the Policyholder disagrees with any Policy terms and conditions."

However, the complainants failed to exercise the option under clause 8.10 of the policy and the insurance policy was accepted subject to the terms and conditions including the exclusion clause.

Insurance Company/OP-1 further submitted that since complainant no.1 sustained injuries in a plane crash during aviation training, the repudiation of claim in terms of clause 5.33 of the terms and conditions of the policy was validly made. Further, allegations of 'deficiency in service' or 'adoption of unfair trade practices, were denied.

12. In support of his case, complainant led evidence of complainant no.1 (Joydeep Banerjee) and complainant no.2 (Sanjoy Kumar Banerjee) by way of affidavits and the relevant documents were exhibited as CW-2/1 to CW-2/14. Religare Health Insurance Co. Ltd./OP-1 (presently known as Care Health Insurance Ltd.) led evidence

of Sahil Chauhan, Manager-Legal by way of affidavit and relevant documents were exhibited as Ex.R-1 to R-3.

13. Learned counsel for the complainant submits that mail dated 04.10.2017 received from Bharat Bhooshan Rodhe/OP-3 (an intermediary) represented that Religare premium included adventure sports which is not offered by any another company and the same was qualified with a representation that 'adventure sports add-on' covers injuries to travelers outside India taking part in an adventure or hazardous sports activities like piloting non-commercial aircraft among other things. It is urged that the complainant could have opted insurance from other companies in case it was not represented that the policy offered by OP-1 did not cover aviation training. She emphasized that the educational institute as well as course details are clearly reflected in the insurance policy Ex.CW-2/5. Further, the claim was initially denied by the Assistance Service Provider OP-4 vide e-mail dated 06.06.2018 mentioning that the cashless settlement for hospital cannot be approved as per the policy terms and conditions 5.1 and 5.12 as under:-

...5.1 Disclosure to Information Norm: "If any untrue or incorrect statements are made or there has been a misrepresentation, mis-description or non-disclosure of any material particulars or any material information having been withheld, or if a Claim is

fraudulently made or any fraudulent means or devices are used by the Policyholder or the Insured Person or any one acting on his/their behalf, the Company shall have no liability to make payment of any Claims and the premium paid shall be forfeited to the Company on the cancellation of the Policy."

5.12(f) Cancellation/Termination: "The company may also initiate cancellation of the policy in case any untrue or incorrect statements are made or there has been a misrepresentation, misdescription, or non-disclosure of any material particulars or any material information having been withheld, or if a claim is fraudulently made or any fraudulent means or devices are used by the Policyholder or the Insured Person or any on/his their one acting behalf."

14. However, thereafter, rejection letter was sent denying the claim on the grounds of exclusion clause no. 5.33 of the terms and conditions of the policy (Ex.CW2/14). Learned counsel emphasized that exclusion clause under the instant policy is inapplicable since the policy was issued by OP-1 clearly mentioning the same for 'professional pilot training' and having knowledge of the purpose for which the policy had been obtained. Further, relying upon ***M/s Texco Marketing Pvt. Ltd. v. Tata AIG General Insurance Co. Ltd. & Ors., (2023) 1 SCC 428***, she further contends that in case of inconsistency in the terms and conditions of the policy vis-a-vis the information contained in the policy certificate, the offending clause has to be struck off being *void ab initio*. She clarified that the Insurance Company cannot take advantage of its

own wrong using exclusion clause and resort to unfair trade practice. She also pointed out that since the Insurance Company failed to honour the claim, taking a considerate view of representation made by the complainants, Kendall Regional Medical Centre, Miami, Florida, US (OP-5) gave a huge discount and agreed to settle the claim at reduced amount of US\$ 20,000/- which has been paid by the complainants.

15. On the other hand, learned counsel for the Insurance Company opposed the claim. She urged that insurance policy is subject to the policy terms and conditions and general exclusions which were duly explained to and understood by the complainants. Further, the policy was issued after due deliberations. The key features of the student explore are stated to be duly mentioned in the brochure and complainants were stated to have been explained that Students Overseas Travel Insurance Plan for pilot training course is an International Health Insurance for students. The complainants further took an optional cover for Adventure Sports Injury arising out of any hazardous activities or sports activities which did not include any professional pilot training and is excluded under clause 5.33. Any correspondence by the complainants with the intermediary (OP-3) for clarifications was denied for want of records. Reference was further made to clause 8.10 of the policy which provides for free look period and

the complainants therein had liberty to return the policy in case of any objection or disagreement. She emphasized that the complainant did not exercise the option under clause 8.10 of the terms and conditions at any point of time.

16. Learned counsel for OP-1 further urged that Insurance Policy has to be construed having reference only to the stipulations contained therein and a new contract could not be created affecting the interests of the parties adversely. In support of the contentions, reliance was further placed upon *General Assurance Society Ltd. v. Chandmul Jain*, (1966) 3 SCR 500; *Oriental Insurance Company Ltd. v. Samayanallur Primary Agricultural Co-op Bank*, AIR 2000 SC 10 and *Polymat India Pvt. Ltd. & Anr. v. National Insurance Company Ltd. & Ors.*, AIR 2005 SC 286. As such she reiterated that the opposite party no. 1 had rightly repudiated the claim and was not liable to reimburse the medical expenses.

17. We have given considered thought to the contentions raised and perused the record. It is undisputed that complainant No.1 Joydeep Banerjee had reportedly secured admission at Dean International INC Flight School, Miami, Florida, USA for pursuance of educational course of professional pilot training and had obtained an insurance policy (plan Student Explore Super) for a period of 273 days from 30.10.2017 till

29.07.2018 for insured sum of US\$ 300000, subject to the policy terms and conditions. During the course of training, complainant No.1 Joydeep Banerjee met with an accident while flying an aircraft as co-pilot on 04.05.2018, which apparently occurred due to bad weather conditions and turbulence and suffered multiple fractures and injuries, resulting in admission at Kendall Regional Medical Centre, Miami, Florida.

18. As per the complainants, Mr. Bharat Bhooshan Rodhe (OP-3/Intermediary) represented that Religere Premium includes "adventure sport as add" which is not offered by any other company and the same covers injuries to travelers outside India taking part in adventure or hazardous sports activities like piloting non-commercial aircrafts amongst other things. Further, they would not have got the policy issued from OP-1 in case the policy did not cover aviation training and would have opted for other choices. Learned counsel for the complainants emphasizes that name of the institute as well as the educational course details in the policy clearly reflect "professional pilot training". As such, the Insurance Company was aware of the purpose for which the policy was obtained and could not later on escape the liability by referring to exclusion clause 5.33 of the policy.

19. On the other hand, the case of OP-1/Insurance Company in specific is that the complainants had fully understood the scope of

coverage of policy "Student Explore Super" and the "add-on cover" on the policy optionally covered "Adventure Sports Injury" arising out of any hazardous activities or adventure sport activity but specifically excluded professional pilot training (i.e. aviation training") under Clause 5.33 of the policy. Further, as per Clause 8.10 of the policy terms and conditions, the insured is provided with a 15 days free look period, in case of any objection or disagreement regarding the terms and conditions of the policy and had full liberty to return the policy.

20. It is well settled that in interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties. It is not for the court to make a new contract, however, reasonable, if the parties have not made it themselves, as held by the Hon'ble Apex Court in the case of **General Assurance Society Ltd. v. Chandmull Jain (supra)**.

Further, in **Oriental Insurance Company Ltd. v. Samayanallur Primary Agricultural Co-op Bank (supra)**, Hon'ble Supreme Court observed that the insurance policy has to be construed having reference only to the stipulations contained in it and no artificial farfetched meaning could be given to the words appearing in it.

In **Polymat India Pvt. Ltd. & Anr. v. National Insurance Company Ltd. & Ors. (supra)**, Hon'ble Apex Court further reiterated

that *"the terms of the contract have to be construed strictly without altering the nature of the contract as it may affect the interest of the parties adversely."*

21. We may observe that educational course details which reflect "professional pilot training", under the heading "Educational Institute Details" in the policy, cannot be read in isolation to exclusion of other terms and conditions of the policy. Clause 5.33 of the general exclusions in the policy specifically excludes any claim in respect of any insured person pertaining to "aviation training". The policy cover was already in the hands of the complainants and in terms of Clause 8.10 of the terms and conditions of the policy, complainants could have returned the policy within 15 days stating the reasons for objections in case of disagreement. The said clause admittedly has not been invoked by the complainants. Reliance placed by the complainants on the correspondence and understanding given by intermediary OP-3 Mr. Bharat Bhooshan Rodhe cannot come to the rescue of complainants contrary to the terms and conditions of the policy issued to policy holder. Further, the Insurance Company has denied any such communication with the complainants.

22. The principle of utmost good faith being observed by the contracting parties is fundamental to the insurance contract and forbids

either of the parties from non-disclosure of the facts which are known to the parties. As such, the Insurance Company has an onerous responsibility to provide all material information in respect of the policy to the insured, to enable him to decide the best cover which may be availed by him. The exclusion clauses could not have been invoked by the insurer, if the insured was kept in dark and later on without providing the policy, the claim is repudiated.

23. In the present case, we are unable to agree with the submission made by the learned counsel for the complainant for effacement or removal of the exclusionary clause 5.33 of the Insurance Policy, since the existence of the said clause was known to the insured immediately on issuing of the policy. Any misunderstanding *qua* the terms and conditions could have been still reconsidered by the insured by resorting to Clause 8.10 which provided a period of free look into the policy and for returning the same. It cannot be concluded that policy covered aviation training as contended on behalf of the complainants.

We also do not find any merit in the contention raised by learned counsel for the complainants for invoking the doctrine of blue pencil for effacing the exclusion clause 5.33. The doctrine of blue pencil is a judicial standard for deciding whether to invalidate the whole contract or only the offending words, if it is possible to delete them without

changing, adding or re-arranging the words. The foundation for invoking the blue pencil doctrine is that the very existence of the clause is found to be illegal and detrimental to the execution of the main contract along with its objectives and warrants an effacement.

24. We may further notice that sub-section 2 of Section 49 & 59 of the Consumer Protection Act, 2019 empowers the State Commission as well as the National Commission to declare any of the terms of the contract null and void in case the same is unfair to the consumer. However, for declaring the terms and conditions as null and void, burden lies on the complainant to prove that there is "deficiency in service" and the insurer knowingly entered into a contract for undertaking the risk, but later on taking advantage of its own wrong, pressed the exclusion clause. In the facts and circumstances of the case, it cannot be reasonably inferred if any misrepresentation had been made on behalf of the Insurance Company/OP-1 at the time of issuing of policy with respect to undertaking of risk. The exclusion clause in the policy which was provided to the complainants duly reflects that the policy did not cover the risk arising out of aviation training.

25. *Texco Marketing Private Limited (supra)*, relied upon by the complainants is factually distinguishable. In the aforesaid case, appellant secured a standard fire and special perils policy from the Insurance

Company for a shop situated in basement, which was duly inspected by the Insurance Company prior to issuance of policy. Also, another similar shop was insured by the Insurance Company and appellant continued to pay the premium. In the aforesaid background, the State Commission reached a finding that Insurance Company had indulged in unfair trade practice by repudiating the claim on the ground that shop situated in the basement fell within exclusion clause. Since the finding was reversed by the Hon'ble National Commission, the issue in appeal, whether an exclusion clause destroying the very contract knowingly entered, can be permitted to be used by a party, who introduced it and avoid the liability was considered by the Hon'ble Apex Court. Taking into consideration that both the forums had concurrently held that Insurance Company was conscious of the fact that the contract was entered into for insuring a shop situated in the basement, it was held that once it is proved that there is deficiency in service and the Insurance Company knowingly entered into a contract, then notwithstanding the exclusion clause, the consequence would follow. Accordingly, it was concluded that the exclusion clause in particular was unfair and the Insurance Company had indulged in unfair trade practice.

26. In the present case, liability has been repudiated by the Insurance Company by invoking Clause 5.33 of the General Exclusions as per the

terms and conditions of the policy whereby aviation training was expressly excluded, which was already known to the parties. Further, the optional cover for Adventure Sports Injury under Clause 3.3 supercedes Clause 5.31 and 5.32 of the General Exclusions but does not supercede Clause 5.33 of General Exclusions relating to Aviation Training. As such, there does not appear to be any deficiency in service by the insurer. For the foregoing reasons, we do not find any grounds to allow the complaint and is accordingly dismissed. CC No.428 of 2020 titled "Ponukumar & Anr. v. Religare Health Insurance Company Ltd. & Ors.", which is on identical lines wherein complainant no.2 suffered the injuries in the same accident also stands dismissed. No order as to costs. Pending applications, if any, also stand disposed of.

A copy of this order be provided to both the parties, by the Registry.

Sd/-

.....
(AVM J. RAJENDRA, AVSM VSM, Retd.)
PRESIDING MEMBER

Sd/-

.....
(ANOOP KUMAR MENDIRATTA, J.)
MEMBER

ar/sd/B-4/reserved matter