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2025:PHHC:025056-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CWP-4345-2025**

**Date of decision : 20.02.2025**

**The New India Assurance Co.Ltd.**

**...Petitioner**

**Vs.**

**Vishal Dhupar and another**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

**HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. R.C. Gupta, Advocate  
for the petitioner.

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**ANUPINDER SINGH GREWAL, J.(Oral)**

The petitioner has challenged the order dated 14.11.2024 (Annexure P-1) passed by the National Consumer Disputes Redressal Commission (for short 'National Commission'), whereby the claim of the complainant/respondent No.1 for reimbursement of certain medical expenses has been allowed.

2. Learned counsel for the petitioner submits that the respondent No.1 had purchased a health insurance policy i.e., New India Floater Mediclaim Policy (hereinafter 'Policy'), wherein reimbursement was permissible only for the expenses incurred during treatment as an Indoor Patient, which implies hospitalisation for over 24 hours. The expenses which had been incurred by the respondent No.1 were for administration of an injection of growth hormone therapy, which is not part of 'chemotherapy' or any other treatment for cancer, and therefore it was not covered under the exceptions listed in Clause 2.15 of the policy. He further submits that the claim was for an amount of Rs.1,02,867/- and therefore, the necessary pecuniary

jurisdiction vested with the concerned District Consumer Disputes Redressal Commission (for short 'District Commission'), but the respondent had erroneously preferred the complaint before the State Consumer Disputes Redressal Commission (for short 'State Commission'), which by its order dated 18.01.2023 (Annexure P-5) had rightly dismissed the complaint as not being maintainable, as the State Commission did not have the pecuniary jurisdiction to decide the complaint. He therefore, submits that the National Commission could not have adjudicated the appeal on merits and the matter ought to have been relegated to the concerned District Commission.

3. Heard.

4. The complainant/respondent No.1 had purchased the New India Floating Medi-Claim Policy from the petitioner insurance company, which was valid from 12.02.2020 to 11.02.2021. On 31.10.2020, a tumor had been detected and he was diagnosed as suffering from Stage IV Neuroendocrine Cancer at Rajiv Gandhi Cancer Institute and Research Centre, New Delhi. The treatment protocol which had been prescribed on the advice of an Oncologist, working at Rajiv Gandhi Cancer Institute and Research Centre, New Delhi, was by way of administration of injection – *Sandostatin LAR*. The injection was required to be administered every 28 days for next five to ten years. The treatment had commenced on 07.11.2020 and the petitioner was administered the *Sandostatin* injection. The injection was administered at the Rajiv Gandhi Cancer Institute and Research Centre, New Delhi, and the period of hospitalisation was stated to be less than 24 hours. The respondent had incurred expenses of Rs.1,02,867/- for his treatment on 07.11.2020. The complainant submitted a claim for reimbursement of the same, which was repudiated by the petitioner/insurance company by letter dated 01.01.2021 (Annexure P-3).

5. The respondent had preferred the complaint before the State Commission which in its order dated 18.01.2023 (Annexure P-5) had observed that

the requisite pecuniary jurisdiction vested with the concerned District Commission. However, the State Commission instead of dismissing the complaint as not being maintainable before it, on the ground of pecuniary jurisdiction alone, had gone ahead to examine the matter on merits and had then dismissed the complaint. The petitioner had challenged the order of the State Commission in appeal before the National Commission. The National Commission after going through the record had examined the case on merits and allowed the claim of complainant/respondent No.1.

6. Two questions have arisen for consideration by this Court. Firstly, whether the claim for reimbursement of treatment availed by the complainant/respondent no. 1 stands excluded under Clause 2.10 read with Clause 2.15 of the policy, being a non-listed daycare procedure and the hospitalisation period was less than 24 hours. Secondly, whether the National Commission had erroneously adjudicated the appeal on merits and instead the matter ought to have been relegated to the concerned District Commission.

#### **ANALYSIS**

7. Indubitably, the petitioner was suffering from cancer, he had sought and was accorded treatment for the same. Insofar as the contention of learned counsel for the petitioner is concerned that in view of Clause 2.15 of the Policy, the hospitalisation period had to be of 24 hours to make the respondent eligible for reimbursement, the same deserves to be rejected. Clause 2.15 defines Hospitalization as admission for a minimum period of 24 hours but it also provides an exception i.e. for specified procedures-Where admission may be less than 24 hours. One of the procedures falling under this exemption is 'Parenteral Chemotherapy', which is used for treatment of cancer. It is stipulated in Clause 2.24 of the Policy that any treatment or medication which is required for medical management of the illness and prescribed by a Medical practitioner would be covered under the definition of "Medically Necessary" and will be reimbursed under the policy. The relevant terms

and conditions of the Policy have been reproduced hereinbelow:-

**“1. What We Cover**

*If during the Period of Insurance, You or any Insured Person **incurs Hospitalisation Expenses** which are **Reasonable and Customary and Medically necessary for treatment of any illness or injury sustained in Accident,** We will reimburse such expense incurred by You, in the manner stated herein. Please note that the above coverage is subject to limits, terms and conditions contained in this Policy and no Exclusion being found applicable. In this policy all the members as stated in the schedule will be covered under Single Sum Insured. This sum insured will be available for all claims by one or more persons covered in this policy.*

Xxxxxxxxxxxxx

**2.10 DAY CARE TREATMENT:** Day Care treatment refers to medical treatment or Surgery which are:

- Undertaken under General or Local Anesthesia in a Hospital/ Day Care Centre in less than 24 hours because of technological advancement, and
- Which would have otherwise required a Hospitalization of more than 24 hours. Treatment normally taken on an out-patient basis is not included in the scope of this definition.

Xxxxxxx

**2.15. HOSPITALISATION means admission as an Inpatient in a Hospital for a minimum period of 24 consecutive hours except for the following specified procedures/treatments, where such admission could be for a period of less than 24 consecutive hours.**

139. Parenteral Chemotherapy

Xxxxxxxxxxxxxx”

**2.23 MEDICAL EXPENSES means those expenses that an Insured Person has necessarily and actually incurred for medical treatment on account of Illness or Injury on the advice of a Medical Practitioner, as long as these are no more than would have been payable, if the Insured Person**

*had not been insured and no more than other Hospitals or doctors in the same locality would have charged for the same medical treatment.*

**2.24 MEDICALLY NECESSARY means any treatment, tests, medication, or stay in Hospital or part of a stay in Hospital which**

**-Is required for the medical management of the Illness or Injury suffered by the insured;**

**-Must not exceed the level of care necessary to provide safe, adequate and appropriate medical care in scope, duration, or intensity;**

**-Must have been prescribed by a Medical Practitioner,**

**-Must confirm to the professional standards widely accepted in international medical practice or by the medical community in India.**

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**3. HOW MUCH WE WILL REIMBURSE**

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*3.1(d) Anesthesia, Blood, Oxygen, Operation Theatre Charges, Surgical Appliances, **Medicines & Drugs, Dialysis, Chemotherapy, Radiotherapy,** Artificial Limbs, Cost of Prosthetic devices implanted during Surgery like pacemaker, Relevant Laboratory/Diagnostic test, X-Ray and other medical expenses related to the treatment.*

XXXXXXXXXXXXXXXXXXXX”

*(emphasis supplied)*

8. A conjoint reading of Clause 1, Clause 2.15 and Clause 2.24 of the policy would indicate that when the stay in the hospital is less than 24 hours, but is necessary for the treatment of an illness, it would be covered in the insurance policy. The oncologist at Rajiv Gandhi Cancer Institute and Research Centre, New Delhi having diagnosed the complainant/respondent No.1 as suffering from Stage IV Neuroendocrine Cancer, had prescribed treatment which was also certified in the medical opinion dated 17.07.2021 brought on record by the complainant. The same

indicates that the injection *Sandostatin Receptor Blocker Sandostatin LAR* had been administered with the objective to block the Receptor Samatostatin and to decrease the growth of cancer cells. On the contrary, the petitioner-insurance company has not been able to produce any medical opinion in support of its stand that the injection *Sandostatin* was not meant for treatment of cancer, but was merely a growth hormone. It is, thus, evident that in the light of the medical opinion produced before the Consumer fora, the complainant had duly established that the afore-noted injection was meant for the treatment of cancer, from which the respondent was admittedly suffering.

9. It is trite that coverage provisions of a policy should be interpreted broadly and if there is any ambiguity, it should be resolved in favour of the insured, and the exclusion clauses must be read narrowly. Reference can be made to the judgement of the Supreme Court in the case of ***Canara Bank vs M/s United India Insurance Co. Ltd., (2020) 3 SCC 455***. Relevant extract of the same is reproduced hereunder:

*“21. The principles relating to interpretation of insurance policies are well settled and not in dispute. At the same time, the provisions of the policy must be read and interpreted in such a manner so as to give effect to the reasonable expectations of all the parties including the insured and the beneficiaries. It is also well settled that coverage provisions should be interpreted broadly and if there is any ambiguity, the same should be resolved in favour of the insured. On the other hand, the exclusion clauses must be read narrowly. The policy and its components must be read as a whole and given a meaning which furthers the expectations of the parties and also the business realities.”*

10. Adverting to the second issue, that the National Commission ought to

have dismissed the appeal and relegated the matter to the concerned District Commission, we are of the opinion that the National Commission had the jurisdiction to decide the appeal and it is empowered to do so in view of Section 58(1)(b) of the Consumer Protection Act, 2019. As per this provision, the National Commission has the jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Relevant extract of Section 58(1)(b) of the Consumer Protection Act, 2019 is reproduced below:-

***Section 58. Jurisdiction of National Commission***

*(1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction-*

*“xxxxx*

*(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity”.*

11. In the impugned order, the National Commission had noted that the complainant/respondent No.1 is a cancer patient and the claim was for reimbursement of the expenses for the injection, which had been administered to decrease the growth of cancer cells as per the prescribed treatment. It was in this

background that the National Commission had held that ousting the respondent No.1 on technical grounds and relegating his complaint to the District Commission would tantamount to putting him in the unenviable position of contesting a matter for medical reimbursement while suffering from a terminal disease and therefore, it had examined the appeal on merits.

12. It is also true that the jurisdiction under Section 58(1)(b) is *revisional* in nature, and respondent No.1 had preferred an appeal against the order of the State Commission, but it is trite that technical hurdles should not be allowed to come in the way of advancing the cause of justice. Reference may be made to the judgement of the Supreme Court in “*PIC Departmentals Pvt.Ltd. Vs. Sreeleathers Pvt.Ltd.*” 2024 INSC 654, wherein it was reiterated that procedural technicalities have to give way to substantive justice. Relevant extract of the same is reproduced below:-

*“15. ....It must not be lost sight of that ultimately, procedural technicalities have to give way to substantive justice. Procedure, well and truly, is only the handmaiden of justice. The discretion granted to Courts has to be exercised on a case-specific basis. Undisputedly, ‘procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold.’”*

13. Even otherwise in view of the afore-noted facts and circumstances, especially when respondent No.1 is a cancer patient and claim is for only a sum of Rs.1,02,867/- for medical treatment, it would be wholly inequitable for us while exercising writ jurisdiction to interfere in the well reasoned order of the National Commission.

14. Consequently, we do not find any merit in this petition, which stands dismissed.

15. Pending application(s), if any, also stands disposed of.

**(ANUPINDER SINGH GREWAL )  
JUDGE**

**(DEEPAK MANCHANDA)  
JUDGE**

**20.02.2025**

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Whether speaking/reasoned :  
Whether Reportable :

Yes  
Yes

No  
No