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

Sr. No.112 **CWP-24937-2025 (O&M)**
**Date of decision: 27.08.2025**

PNB Metlife India Insurance Company Limited and another

..... Petitioners

VERSUS

Mandeep Devi and another ..... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**
**HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA**

Present: Ms. Jasmine, Advocate for
Mr. Sanjeev Goyal, Advocate,
for the petitioners.

*****

**DEEPINDER SINGH NALWA, J.**

1. Challenge in the present writ petition is to the impugned order dated 21.05.2025 (Annexure P-1) passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'NCDRC') whereby, the order dated 14.05.2018 (Annexure P-8) passed by the District Consumer Disputes Redressal Forum, Karnal (hereinafter referred to as the 'DCDRF') and order dated 23.02.2024 (Annexure P-9) passed by the State Consumer Disputes Redressal Commission, Haryana, Panchkula (hereinafter referred to as the 'SCDRC') has been upheld whereby, respondent-complainant was held entitled to the insured amount of Rs.14,20,000/-. A further direction was also issued to the petitioners to

pay an amount to the tune of Rs.5,500/- on account of mental agony, harassment suffered by the complainant and litigation expenses.

2. Brief facts of the present case are hereunder:-

That Sh. Rameshwar (since deceased), father of respondent-complainant purchased a Life Insurance Policy No.21888607 “Met Family Income Protect Plus” on 27.4.2016 for a sum of Rs.14,20,000/- from the petitioners and had paid annual premium of Rs.8,212/- at Karnal Branch. Respondent-complainant was the nominee in the said policy. At the time of issuance of insurance policy, father (deceased/insured) of respondent-complainant was hale and hearty, but unfortunately on 27.05.2016, the father of respondent-complainant naturally died due to sudden heart attack. After death of the father (deceased/insured) of respondent-complainant, being nominee, she submitted death claim after completing all the necessary formalities.

3. The petitioners vide letter dated 31.12.2016, repudiated the death claim of respondent-complainant on the ground that her father was suffering from cancer prior to the issuance of the policy. Aggrieved against the abovesaid letter, respondent-complainant filed a complaint under Section 12 of the Consumer Protection Act, 1986 before the DCDRF. In the complaint, the case of respondent-complainant was that at the time of insurance, the insured is examined by the empanelled Doctor and only then, the insurance policy is issued. As there was no

adverse report from the concerned doctor with regard to the insured, therefore, letter dated 31.12.2016 vide which, the claim of respondent-complainant was repudiated was illegal, arbitrary, null and void and is liable to be set aside. It was also the case of respondent-complainant that her father was not suffering from the alleged disease i.e. cancer, as such, there was deficiency in service on part of the petitioners.

4. Upon notice, the petitioners filed a written statement before the DCDRF. It was the case of the petitioners that the father (deceased/insured) of respondent-complainant, after completely understanding the terms and conditions of the insurance policy had offered to pay premium. It was the case of the petitioners that proposal form was explained to father (deceased/insured) of respondent-complainant and he had given a declaration stating that he has furnished the information after fully understanding the contents of the proposal form and after understanding the terms and conditions of the policy/plan, he applied for the same. It was also the case of the petitioners that father (deceased/insured) of respondent-complainant had applied for the policy/plan after making true and accurate disclosure of all the facts and had not withheld any necessary information. Further, upon receipt of the duly filled up proposal form and believing the information provided by the father (deceased/insured) of respondent-complainant, as true, the petitioners evaluated and processed the proposal form and issued the policy on 27.04.2016 to the father (deceased/insured) of respondent-

complainant. It was also the case of the petitioners that if any untrue statement was contained in the proposal form, the policy contract shall be null and void and the money which was paid by the father (deceased/insured) of respondent-complainant shall stand forfeited to PNB Met Life India Insurance Company Limited. It was also the case of the petitioners that as it was an early claim, as the father (deceased/insured) of respondent-complainant had died within a short span of only 30 days, there is a procedure to carry out an investigation to settle the claim. During the course of investigation and assessment of the claim, as per the petitioners, it was revealed that father (deceased/insured) of respondent-complainant did not provide true and correct information in regard to medical history while filling up his proposal form dated 26.04.2016. It was revealed that father (deceased/insured) of respondent-complainant was suffering from cancer prior to the issuance of the policy. Thus, the petitioners has rightly repudiated the claim of respondent-complainant vide letter dated 31.12.2016 on the ground that false information as to the material facts with respect to medical history was furnished by the father (deceased/insured) of respondent-complainant at the time of filling up of proposal form. If material fact was disclosed by the father (deceased/insured) of respondent-complainant, due policy would not have been issued on existing terms and as such, there is no deficiency in service on the part of the petitioners and the complaint filed by respondent-complainant was liable to be dismissed.

5. On consideration of the evidence led by the respective parties, the DCDRF, Karnal vide order dated 14.05.2018 allowed the complaint filed by respondent-complainant with a direction to the petitioners to pay sum of Rs.14,20,000/- to respondent-complainant, with a further direction to pay an amount to the tune of Rs.5,500/- on account of mental agony, harassment suffered by her and for the litigation expenses. The abovesaid order was to be complied within a period of 30 days from the date of receipt of copy of the order. Relevant extract of order dated 14.05.2018 is reproduced below:-

> *"From the pleadings, evidence and submissions of the parties, it is clear that the claim of the complainant has been repudiated by the OPs vide letter dated 31.12.2016 Ex.R10 which runs as under:-*
>
> ***Subject:- claim under policy No.21888507 on the life of late Mr. Rameshwar***
>
> *"This is with reference to the claim made under the above mentioned policy on the life of Late Mr. Rameshwar.*
>
> *We have reviewed and evaluated the claim and wish to bring to your attention, that during the course of reviewing the claim, we have received medical records which Indicate that Late Mr. Rameshwar was suffering from Cancer prior to policy issuance. However, the concerned question in the application form dated 26.04.2016, seeking insurance cover under this policy was answered as "NO" by Late Mr. Rameshwar.*
>
> *We wish to state that the above mentioned fact was a material fact for the purposes of underwriting of the risk and that if this material fact was disclosed to us in the application form, we would not have issued the policy on existing terms. As you may be aware, Insurance contracts are based on the principle of "utmost good*

*faith" and the policies are issued based on the representations made in the application form and any non-disclosure or misrepresentation in the application form, which are material for the purposes of underwriting the risk, renders the contract voidable at the option of the insurer.*

*Therefore, through this letter, we regret to Inform you that we are unable to admit liability for the above claim due to non-disclosure of material facts, as highlighted herein above, as per the terms and conditions of the insurance policy."*

*8. From the repudiation letter it is clear that the repudiation has been made on the ground of non-disclosure of material facts regarding pre-existing disease as the OPs alleged that the DLA was suffering from cancer prior to the issuance of the policy, therefore, the onus to prove that the DLA was suffering from Cancer prior to the issuance of the policy was upon the OPs. The OPs have produced in their evidence documents Ex.R1 to Ex.R10. and affidavit Ex.RW1/A. It is pertinent to mention here that the matter was got invested by the OPs from Investigator i.e. SA Associates. The report of the investigator is Ex.R7. The investigator has specifically mentioned in his report that we were not provided any medical paper from the nominee and the hospital. The investigator has not attached with his report Ex.R7 any medical record regarding the treatment of the DLA vide which it can be proved that the DLA was suffering from Cancer, what to said that the DLA was suffering from Cancer prior to the policy. The OPs have not placed any other evidence on the file, from which it can be said that the DLA was suffering from Cancer prior to taking the policy.*

*9. The complainant has produced the two authorities* ***(i) the copy of the decision dated 26.08.2011 of the Hon'ble Supreme Court of India in Civil appeal no.7437 of 2011 (Arising out of Special Leave Petition, (c) no.35382 of 2010 titled as P.Vankat Naidu Versus Branch Manager, Life Insurance Corporation of India, Kurnool and Another*** *wherein it has been held that since the respondents had come out with the case that the deceased did not*

*disclose correct facts relating to his illness, it was for them to produce cogent evidence to prove the allegation. However, as found by the District Forum and the State Commission, the respondents did not produce any tangible evidence to prove that the deceased had withheld Information about his hospitalization and treatment. Therefore, the National Commission was not justified in interfering with the concurrent finding recorded by the District Forum and the State Commission by asking a wild guesswork that the deceased had suppressed the facts relating to his illness. In the result, the appeal is allowed.*

*10. The other authority is the copy of order dated 17.08.2016 passed by Hon'ble State Commission Haryana* ***in first appeal no.528 of 2016 titled as Life Insurance Corporation of India Versus Sarojini and another*** *which is also on the same footing. Both these authorities are fully applicable to the facts of the present case. So, in view of the aforesaid authorities as well as the facts and circumstances of the case, we are of the considered view that the OPs have failed to prove that the complainant, was suffering from cancer prior to issuance of the policy, therefore, the OPs have committed a mistake in repudiating the claim of the complainant. Hence, the OPs are deficient in providing services to the complainant."*

6. A perusal of the order passed by the DCDRF would show that taking into consideration the report of the investigator dated 14.12.2016 (Ex.R7), it was held that no evidence was led by the petitioners to show that father (deceased/insured) of respondent-complainant was suffering from alleged disease i.e. cancer.

7. Aggrieved against the order dated 14.05.2018 passed by the DCDRF, Karnal, the petitioners filed an appeal before the SCDRC.

8. It was the case of the petitioners before the SCDRC that father (deceased/insured) of respondent-complainant had concealed the material fact with regard to his previous medical history of being suffering from cancer prior to the issuance of the policy in question. As such, the claim submitted by respondent-complainant, who was the nominee of the deceased under the policy, was rightly repudiated. It was the case of the petitioners that the DCDRF had not appreciated the facts in right perspective and has ignored the investigator's report dated 14.12.2016 (Ex.R7). The appeal was also dismissed vide order dated 23.02.2024. The relevant extract of the order is reproduced below:-

> "9. *Learned counsel for the appellants has urged that there was active concealment of material facts by deceased-life assured Rameshwar with regard to his previous medical history of being suffering from cancer, prior to issuance of policy in question. It is urged that claim of complainant, who was nominee of deceased under policy has been rightly repudiated. Learned District Consumer Commission has not appreciated this fact in right perspective and hence impugned order dated 14.05.2018 does not carry any credence. It is urged that learned District Consumer Commission has illegally ignored the investigator report dated 14.10.2016-Ex.R-7.*
>
> *10. Refuting these contentions learned counsel for the complainant/respondent has supported impugned order dated 14.05.2018 passed by learned District Consumer Commission by urging that it is outcome of proper appreciation of facts and evidence by it and same does not warrant any interference.*
>
> *11. Admittedly, Rameshwar was deceased-life assured who had obtained policy No. 21888607 from OPs with risk commencement date from 27.04.2016. Admittedly, complainant-*

*daughter of deceased/life-assured was his nominee under policy. As per plea of complainant; deceased life assured had suffered natural death on 27.05.2016 due to sudden heart attack and complainant, in her capacity of nominee, submitted death claim under policy to OPs. Sole ground to justify repudiation of death claim by OPs is that: deceased life assured had passed medical history of being suffering from cancer, prior to issuance of policy in question, in his name. In proposal form, he had not indicated anything with regard to his past medical history.*

*12. Law on exclusion of insurer from policy is no more res integra. It is, by now well settled legal proposition that if insurer invokes exclusion from policy; then it (insurer) alone has to lead specific positive evidence in order to establish its exclusion. Reliance, in this regard can be placed upon ratio of law laid down by Hon'ble Apex Court in case of* ***National Insurance Company Limited Vs. Vedic Resorts and Hotels Pvt. Ltd. in Civil Appeal No.4979 of 2019 decided on 17.05.2023:*** *wherein it has been held that "It is trite to say that wherever such an exclusionary clause is contained in a policy, it would be for the insurer to show that the case falls within the purview of such clause"*

*13. Too much of emphasis in present appeal, has been laid by insurer/appellants on investigator report dated 14.12.2016 -Ex. R-7. Even, this report will not sub-serve any majestic cause of insurer/appellants to sail them out from consequences flowing from policy issued by it in favor of Rameshwar (deceased-life assured). Material aspect of this report reads as under:-*

***"Vicinity Survey****: We did strong vicinity survey and met several persons without asking their name and contact number for want of vital clue. They all stated that LA died due to throat cancer. All knows him very well.*

***PGI, Rohtak-*** *We visited hospital and met MRD in-charge and asked him to trace record whether there is entry in the name of LA. We visited hospital and met MRD in-charge and asked to trace*

*record whether there is entry in the name of LA but without IPD number he showed us inability tracing record of any patient.*

*Doctors of village,*

*Dr. Rajesh-9050234681- Balbehra,*

*Dr. Jeela-09813063305- Balbehra,*

*We met above mentioned doctors and asked about LA whether they treated LA before in any manner. They stated that they do not know LA and never treated him before in any manner".*

*14. Investigator's report-Ex. R-7 also reflects that: interviews were taken from neighbours/friends/workmates and their statements were recorded. In this process, as per this report Ex.R-7 deceased suffered from throat cancer and took treatment from-PGI-Chandigarh. He suffered operation of throat in 2014. However, as it is clear from. glancing at this report Ex.R-7 that: neither any record from PGI-Rohtak concerning treatment of deceased life assured could be secured, nor any record from PGI-Chandigarh regarding throat cancer treatment of deceased life assured could be secured. Had the investigator been apprised by neighbourers/friends and workmates that deceased obtained treatment of throat cancer from PGI-Chandigarh and had operation of throat in year 2014, then at least, it was expected from investigator to make an effort to lay his hand on above quality medical record from PGI-Chandigarh concerning life assured, but he failed in that arena. Much less than that two doctors of village of deceased life assured had revealed to investigator that they never treated deceased life assured in any manner and there is no specific reference of person(s), by his/their name, address etc. who revealed to investigator that life assured died due to throat cancer. Collectively, Investigator report Ex.R-7 is unambiguous and uncertain with regard alleged past history of deceased life assured being a cancer patient, prior to obtaining policy from OPs/appellants. This being so, it is established and proved that insurer/appellants had not led any cogent and convincing evidence in order to prove its pleaded case that deceased life assured has past medical history of being a patient of cancer.*

*Hon'ble Apex Court in case titled as* ***P. Vankat Naidu Vs. Branch Manager, LIC, Kurnool and another in Civil Appeal No.7437 of 2011 decided on 26.08.2011*** *has held:-*

*"since the respondents had come out with the case that the deceased did not disclose correct facts relating to his illness, it was for them to produce cogent evidence to prove the allegation. However, as found by the District Forum and the State Commission, the respondents did not produce any tangible evidence to prove that the deceased had withheld information about his hospitalization and treatment. Therefore, the National Commission was not justified in interfering with the concurrent finding recorded by the District Forum and the State Commission by asking a wild guesswork that the deceased had suppressed the facts relating to his illness. In the result, the appeal is allowed.*

*15. In opinion of this Commission, above cited judgments squarely cover this case and on applying the ratio laid down to this case, the only inescapable conclusion is that appellants/insurer have failed to prove its case with regard to its exclusions from policy. It is established that appellants cannot avoid their liability to pay the insured amount of Rs. 14,20,000/ to complainant (nominee of deceased-life assured) under policy. Direction to pay amount of Rs.5500/- to complainant also does not warrant any interference. Learned District Consumer Commission has meticulously analyzed all relevant facets of controversy and has rightly non-suited insurer/appellants through order dated 14.05.2018. There is no fallacy in the approach of learned District Consumer Commission. Impugned order dated 14.05.2018 is upheld, maintained and affirmed. Present appeal being devoid of merits is hereby dismissed.*

9. A perusal of the order dated 23.02.2024 passed by the SCDRC would show that the SCDRC has held that if the insurer invokes exclusion from the policy in that case, the insurer alone has to lead the

specific positive evidence in order to establish its exclusion. It was held that as no cogent and convincing evidence was led by the petitioners to prove that father (deceased/insured) of respondent-complainant was suffering from cancer before due issuance of the policy. As such, there was no illegality, and infirmity in the order passed by the DCDRF.

10. Aggrieved against the order dated 23.02.2024 passed by the SCDRC, the petitioners filed an appeal before the NCDRC. The said appeal was also dismissed by the NCDRC vide order dated 21.05.2025. A perusal of the order passed by NCDRC would show that the investigator's report dated 14.12.2016 (Ex.R7) was duly taken into consideration, as there was no records traceable with regard to the alleged ailment i.e. cancer of father (deceased/insured) of respondent-complainant, as such, no error or perversity was found in the order passed by the DCDRF. Relevant extract of the order passed by the NCDRC is reproduced below:-

> *"The State Commission recorded findings in paragraphs 13 and 14 and dismissed the appeal. Paragraphs 13 and 14 of the order are extracted hereunder:*
>
> *"13. Too much of emphasis in present appeal, has been laid by insurer/appellants on investigator report dated 14.12.2016-Ex.R-7. Even, this report will not sub-serve any majestic cause of insurer/appellants to sail them out from consequences flowing from policy issued by it in favor of Rameshwar (deceased-life assured). Material aspect of this report reads as under:-*
>
> ***"Vicinity Survey:*** *We did strong vicinity survey and met several persons without asking their name and contact number for*

*want of vital clue. They all stated that LA died due to throat cancer. All knows him very well.*

***PGI, Rohtak-*** *We visited hospital and met MRD in-charge and asked him to trace record whether there is entry in the name of LA. We visited hospital and met MRD in-charge and asked to trace record whether there is entry in the name of LA but without IPD number he showed us inability tracing record of any patient.*

***Doctors of village***

***Dr. Rajesh-9050234681-Balbehra***

***Dr. Jeela-09813063305-Balbehra***

*We met above mentioned doctors and asked about LA whether they treated LA before in any manner. They stated that they do not know LA and never treated him before in any manner."*

*14. Investigator's report-Ex. R-7 also reflects that: interviews were taken from neighbours/ friends/ workmates and their statements were recorded. In this process, as per this report Ex. R-7 deceased suffered from throat cancer and took treatment from PGI-Chandigarh. He suffered operation of throat in 2014. However, as it is clear from glancing at this report Ex.R-7 that: neither any record from PGI-Rohtak concerning treatment of deceased life assured could-be secured, nor any record from PGI-Chandigarh regarding throat cancer treatment of deceased life assured could be secured. Had the investigator been apprised by neighbourers/friends and workmates that deceased obtained treatment of throat cancer from PGI-Chandigarh and had operation of throat in year 2014, then at least, it was expected from investigator to make an effort to lay his hand on above quality medical record from PGI-Chandigarh concerning life assured, but he failed in that arena. Much less than that two doctors of village of deceased life assured had revealed to investigator that they never treated deceased life assured in any manner and there is no specific reference of person(s), by*

*his/their name, address etc. who revealed to investigator that life assured died due to throat cancer. Collectively, Investigator report Ex.R-7 is unambiguous and uncertain with regard alleged past history of deceased life assured being a cancer patient, prior to obtaining policy from OPs/appellants. This being so, it is established and proved that insurer/appellants had not led any cogent and convincing evidence in order to prove its pleaded case that deceased life assured has past medical history of being a patient of cancer. Hon'ble Apex Court in case titled as* ***P. Vankat Naidu Vs. Branch Manager, LIC, Kurnool and another in Civil Appeal No. 7437 of 2011 decided on 26.08.2011*** *has held:-*

*"since the respondents had come out with the case that the deceased did not disclose correct facts relating to his illness, it was for them to produce cogent evidence to prove the allegations. However, as found by the District Forum and the State Commission, the respondents did not produce any tangible evidence to prove that the deceased had withheld information about his hospitalization and treatment. Therefore, the National Commission was not justified in interfering with the concurrent finding recorded by the District Forum and the State Commission by asking a wild guesswork that the deceased had suppressed the facts relating to his illness. In the result, the appeal is allowed."*

*What we find is that no material was placed either before the District Commission or before the State Commission to support the recital of any medical records available to establish the previous ailment of the Insured as alleged by the Insurance Company. When the Insurance Company has taken a stand on the basis of its Investigator's report to repudiate the claim then the burden lies on the Insurance Company to prove it to the hilt.*

*The issue of discharge of burden of proof has been very recently dealt with by the Apex Court in the case of* ***Mahakali Sujatha Vs. Branch Manager, Future Generali India Life Insurance Co. Ltd. & ANR., (2024) 8 SCC 712,*** *and then*

*subsequently in the case of* ***Mahaveer Sharma Vs. Exide Life Insurance Co. Ltd. and Anr. 2025 SCC OnLine SC 435.*** *A perusal of the said judgments would also indicate that if the Insurance Company has relied on some material, then the onus lay on them to discharge the burden of proof.*

*We have once again read the Investigator's report as extracted in paragraph-13 of the State Commission's order and quoted hereinabove. It is evident that no records were traceable with regard to the alleged ailment and, as noted above, the Insurance Company did not even file the affidavit of the Investigator regarding the said allegation. Thus, there was a complete absence of any proof of past ailment as alleged by the Insurance Company and therefore we do not find any error or perversity in the findings recorded by the District Commission or the State Commission on this count.*

*In the exercise of revisional jurisdiction, we do not find any such material irregularity or illegality so as to interfere with the aforesaid findings of fact in the absence of any such evidence. As a matter of fact, there is no such material placed even before this Commission to take a view to the contrary.*

*Learned counsel for the Insurance Company urged that before the State Commission they had moved an application for summoning of the record from the PGI. It is submitted that the State Commission failed to exercise its discretion thereby causing prejudice to the petitioners/Insurance Company who had also unable to acquire the information from the hospital in spite of having moved an RTI application. The State Commission is not supposed to permit the filling up of any lacuna or to generate any evidence for the benefit of the Insurance Company where it does not exist. The Investigator's report therefore did not inspire any confidence as the Investigator himself had not filed any affidavit indicating as to how he had made an attempt to obtain the record from the hospital. The Insurance Company therefore was*

*completely lacking this obligation to prove the case of the alleged suppression of past ailment and in such circumstances the argument raised on behalf of the Insurance Company cannot be countenanced.*

*The revision petition has no merits and for all the reasons given hereinabove the revision petition is dismissed. Pending application, if any, also stands disposed of."*

11. Aggrieved against the order dated 21.05.2025 passed by the NCDRC, the petitioners have filed the present writ petition.

12. Learned counsel appearing on behalf of the petitioners has argued that as there was an active concealment of material fact by the father (deceased/insured) of respondent-complainant with regard to his previous medical history of being suffering from cancer prior to issuance of the policy in question, as such, the action of the petitioners in repudiating the death claim of respondent-complainant vide letter dated 31.12.2016 (Annexure P5) was legal and valid. No other argument has been raised.

13. We have heard the learned counsel appearing on behalf of the petitioners and gone through the documents available on the record.

14. A perusal of the facts of the case would show that the death claim as claimed by respondent-complainant was repudiated vide letter dated 31.12.2016 on the ground that the false information as to the material facts with respect to medical history of father (deceased/insured) of respondent-complainant was concealed at the time of filling up of

proposal form. Relevant extract of the letter dated 31.12.2016 is reproduced below:-

> ***"Subject:- Claim under policy No.21888607 on the life of Late Mr. Rameshwar***
>
> *"This is with reference to the claim made under the above mentioned policy on the life of Late Mr. Rameshwar.*
>
> *We have reviewed and evaluated the claim and wish to bring to your attention, that during the course of reviewing the claim, we have received medical records which indicate that Late Mr. Rameshwar was suffering from Cancer prior to policy issuance. However, the concerned question in the application form dated 26.04.2016, seeking insurance cover under this policy was answered as "NO" by Late Mr. Rameshwar.*
>
> *We wish to state that the above mentioned fact was a material fact for the purposes of underwriting of the risk and that if this material fact was disclosed to us in, the application form, we would not have issued the policy at all. As you may be aware, Insurance contracts are based on the principle of "utmost good faith" and the policies are issued based on the representations made in the application form and any non-disclosure or misrepresentation in the application form, which are material for the purposes of underwriting the risk, renders the contract voidable at the option of the insurer.*
>
> *Therefore, through this letter, we regret to inform you that we are unable to admit liability for the above claim due to non-disclosure of material facts, as highlighted herein above, as per the terms and conditions of the Insurance policy."*

15. A perusal of the letter dated 31.12.2016 would show that as per the petitioners, if the material fact was disclosed to the petitioners in regard to alleged disease being suffered by father (deceased/insured) of

respondent-complainant before issuance of insurance policy/plan, the insurance policy would have not been issued on the existing terms and conditions and any non-disclosure or misrepresentation in the application form, which were material for the purpose of underwriting the risk, rendered the contract voidable. Investigator's report dated 14.12.2016 (Ex.R7) was taken into consideration while repudiating the claim of the respondent-complainant. It is a well settled law that if insurer invokes exclusion from policy, then insurer alone has to lead specific positive evidence in order to establish its exclusion. A perusal of the investigator's report dated 14.12.2016 (Ex.R7) would also show that information was taken from the neighbourers, friends and workmates and their statements were also recorded. As per the information, father (deceased/insured) of respondent-complainant suffered from cancer and took treatment from PGI, Chandigarh and PGI, Rohtak.

16. A perusal of the investigator's report would also reveal that there was no evidence to prove that father (deceased/insured) of respondent-complainant was suffering from the alleged ailment i.e. cancer before issuance of insurance policy/plan. There were no hospital records available or any doctor's prescription that pre-date the insurance policy in order to prove that the father (deceased/insured) of respondent-complainant was suffering from cancer. In the absence of any evidence led by the petitioners to prove that father (deceased/insured) of respondent-complainant was suffering from cancer, it cannot be held that

the father of respondent-complainant was suffering from the alleged ailment of cancer before issuance of insurance policy/plan. It is well settled law that a person/insured may be entitled to claim provided that there is no evidence to prove direct link between the disease and the cause of death. A perusal of the case would show that no evidence was led by the petitioners to prove that there was a link of alleged disease which led to death of father (deceased/insured) of the respondent-complainant

17. The Hon'ble Supreme Court in **Mahakali Sujata Vs. The Branch Manager, Future Generali India Life Insurance Company Limited and another, 2024 (2) RCR (Civil) 554,** has categorically held that it is for the insurer to prove before the Court that the insured had suppressed the information about the previous policies or any material fact. Therefore, burden of proof has to be duly discharged by the insurer. The relevant extracts are reproduced herein:-

> *"41. At this stage, we may also dilate on the aspect of burden of proof. Though the proceedings before the Consumer Fora are in the nature of a summary proceeding. Yet the elementary principles of burden of proof and onus of proof would apply. This is relevant for the reason that no corroborative evidence to what has been deposed in the affidavit is let in by the insurance company in order to establish a valid repudiation of the claim in the instant case. Section 101 of the Evidence Act, 1872 states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. This Section clearly states that the burden of proving a fact rests on the*

*party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. Simply put, it is easier to prove an affirmative than a negative. In other words, the burden of proving a fact always lies upon the person who asserts the same. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Further, things which are admitted need not be proved. Whether the burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. The party on whom the burden lies has to stand on his own and he cannot take advantage of the weakness or omissions of the opposite party. Thus, the burden of proving a claim or defence is on the party who asserts it.*

*42. Section 102 of the Evidence Act, 1872 provides a test regarding on whom the burden of proof would lie, namely, that the burden lies on the person who would fail if no evidence were given on either side. Whenever the law places a burden of proof upon a party, a presumption operates against it. Hence, burden of proof and presumptions have to be considered together. There are however exceptions to the general rule as to the burden of proof as enunciated in Sections 101 and 102 of the Evidence Act, 1872, i.e., in the context of the burden of adducing evidence: (i) when a rebuttable presumption of law exists in favour of a party, the onus is on the other side to rebut it; (ii) when any fact is especially within the knowledge of any person, the burden of proving it is on him (Section 106). In some cases, the burden of proof is cast by statute on particular parties (Sections 103 and 105).*

*43. There is an essential distinction between burden of proof and onus of proof; burden of proof lies upon a person who has to prove the fact and which never shifts but onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. For instance, in a suit for possession based on the title, once the plaintiff has been able to create a high degree of*

*probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title vide* ***RVE Venkatachala Gounder vs. Arulmigu Viswesaraswami and VP Temple, (2003) 8 SCC 752.***

*44. In a claim against the insurance company for compensation, where the appellants in the said case had discharged the initial burden regarding destruction, damage of the showroom and the stocks therein by fire and riot in support of the claim under the insurance policy, it was for the insurance company to disprove such claim with evidence, if any, vide* ***Shobika Attire vs. New India Assurance Co. Ltd., (2006) 8 SCC 35.***

*45. Section 103 of the Evidence Act, 1872 states that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. This Section enlarges the scope of the general rule in Section 101 that the burden of proof lies on the person who asserts the affirmative of the issue. Further, Section 104 of the said Act states that the burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. The import of this Section is that the person who is legally entitled to give evidence has the burden to render such evidence. In other words, it is incumbent on each party to discharge the burden of proof, which rests upon him. In the context of insurance contracts, the burden is on the insurer to prove the allegation of non-disclosure of a material fact and that the non-disclosure was fraudulent. Thus, the burden of proving the fact, which excludes the liability of the insurer to pay compensation, lies on the insurer alone and no one else.*

*46. Section 106 of the Evidence Act, 1872 states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. This Section applies only to parties*

*to the suit or proceeding. It cannot apply when the fact is such as to be capable of being known also by persons other than the parties. (Source: Sarkar, Law of Evidence, 20th Edition, Volume-2, LexisNexis).*

*47. In light of the aforesaid discussion on burden of proof, it has to be analysed if the respondent in the present case has adequately discharged his burden of proof about the fact of suppression of previous life insurance policies of the insured.*

*48. The respondent insurance company has produced no documentary evidence whatsoever before the District Forum to prove its allegation that the insured had taken multiple insurance policies from different companies and had suppressed the same. The District Forum had therefore concluded that there was no documentary evidence to show that the deceased-life insured had taken various insurance policies except an averment and on that basis the repudiation was held to be wrong. Before the State Commission, the respondent had provided a tabulation of the 15 different policies taken by the insured-deceased, amounting to Rs.71,27,702/-. The same has been extracted above. However, the said tabulation was not supported by any other documentary evidence, like the policy documents of these other policies, or pleadings in courts, or such other corroborative evidence. The respondent sought to mark a bunch of documents before the State Commission, which related to the policy papers of the insured with another insurer, i.e., Kotak Life Insurance. However, the respondent was not granted permission by the State Commission, as the said documents were neither original, nor certified, nor authenticated. Apart from this, there was no effort made by the respondent to bring any authenticated material on record. Thus, in the absence of any evidence to prove that the insured-deceased possessed some insurance policies from other insurance companies, the State Commission upheld the decision of the District Forum in setting aside the repudiation of the claim by the respondent.*

*49. Before the NCDRC, the respondent again provided the aforesaid tabulation of policies of the insured-deceased. The respondents in their affidavit stated that the insured-deceased had taken multiple insurance policies before taking the policy from them. The NCDRC however accepted the averment of the respondents, without demanding corroborative documentary evidence in support of the said fact. The NCDRC, on the contrary, also held that the fact about multiple policies was not dealt with by the appellant in her complaint or evidence affidavit and this therefore proved that the insured had indeed taken the policies from multiple companies as claimed by the respondents.*

*50. The aforesaid approach adopted by the NCDRC is, in our view, not correct. The cardinal principle of burden of proof in the law of evidence is that "he who asserts must prove", which means that if the respondents herein had asserted that the insured had already taken fifteen more policies, then it was incumbent on them to prove this fact by leading necessary evidence. The onus cannot be shifted on the appellant to deal with issues that have merely been alleged by the respondents, without producing any evidence to support that allegation. The respondents have merely provided a tabulation of information about the other policies held by the insured-deceased. The said tabulation also has missing information with respect to policy numbers and issuing dates and bears different dates of births. Further, this information hasn't been supported with any other documents to prove the averment in accordance with law. No officer of any other insurance company was examined to corroborate the table of policies said to have been taken by the deceased policy holder, father of the appellant herein. Moreover, the table produced is incomplete and contradictory as far as the date of birth of the insured is concerned. Therefore, in our view, the NCDRC could not have relied upon the said tabulation and put the onus on the appellant to deal with that issue in her complaint and thereby considered the said averment as proved or proceeded to prove the stance of the opposite party. A fact has to be duly proved*

*as per the Evidence Act, 1872 and the burden to prove a fact rests upon the person asserting such a fact. Without adequate evidence to prove the fact of previous policies, it was incorrect to expect the appellant to deal with the said fact herself in the complaint or the evidence affidavit, since as per the appellant, there did not exist any previous policy and thus, the onus couldn't have been put on the appellant to prove what was non-existent according to the appellant.*

*51. The respondents, vide their counter affidavit before this court, have sought to produce some documents to substantiate their claim of other existing insurance policies of the insured- deceased, but the same cannot be permitted to be exhibited at this stage, that too, in an appeal filed by the complainant who is the beneficiary under the policies in question. Any documentary evidence sought to be relied upon by the respondent ought to have been led before the District Forum but the same was not done. It was before the District Forum that the evidence was led and examined and at that stage, the respondent did not take adequate steps to lead any oral or documentary evidence to prove their assertion. Their attempt to annex documents in support of their claim before the State Commission was also declined due to the presentation of unauthenticated documents. Therefore, it can be safely concluded that the respondents have failed to adequately prove the fact that the insured-deceased had fraudulently suppressed the information about the existing policies with other insurance companies while entering into the insurance contracts with the respondents herein in the present case. Therefore, the repudiation of the policy was without any basis or justification."*

18. A High Court while exercising its power of judicial review against the order passed by the NCDRC, exercises a limited revisional jurisdiction and interfere only in the cases where, there is an error

apparent in law or there is an illegality, impropriety or perversity in the impugned order.

19. Since no defect in the order passed by the NCDRC has been pointed out during the course of arguments and there is no evidence to hold that the orders suffers from any illegality, impropriety or perversity or incorrect appreciation of the evidence brought on record, we find that there are no sufficient grounds existing in the present writ petition to call for any interference in the order dated 21.05.2025 (Annexure P-1) passed by the NCDRC, order dated 23.02.2024 (Annexure P-9) passed by SCDRC and order dated 14.05.2018 (Annexure P-8) passed by DCDRF. Accordingly, the present writ petition is **dismissed** *in limine.*

Pending miscellaneous application(s), if any, also stand(s) disposed of.

**(GURVINDER SINGH GILL)**
**JUDGE**

**(DEEPINDER SINGH NALWA)**
**JUDGE**

**27.08.2025**
Ramandeep Singh

Whether speaking / reasoned Yes

Whether Reportable Yes