

**SUPREME COURT OF INDIA**

New India Assurance Co. Ltd.

Vs.

Satpal Singh Muchal

C.A. No. 1616 of 2009

(Dr.Arijit Pasayat and Asok Kumar Ganguly JJ.)

16.03.2009

**JUDGMENT**

**Dr.Arijit Pasayat, J.**

1. Leave granted.
2. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as the `National Commission') dismissing the revision petition filed by the appellant. Order passed by the State Commission, Madhya Pradesh was under challenge before the National Commission. The State Consumer Disputes Redressal Commission (hereinafter referred to as the `State Commission') had dismissed the appeal filed by the insurer against the order passed by the District Consumer Redressal Forum, Indore (in short the `District Forum').
3. Background facts as projected by the appellant are as follows:

“Respondent took a Medi-claim policy in the month of January, 1999. The policy was renewed lastly on 22.1.2002 for a period of one year i.e. till 21.1.2003. Respondent was suffering from kidney trouble and intimated the same to the Divisional office of the appellant No.1-company. On receiving the intimation that the respondent was suffering from kidney trouble, insurer terminated the policy by letter dated 18.6.2003 with effect from 17.2.2002 by placing reliance on clause 5.9. of the policy. Respondent issued notice to the appellant calling upon them to treat the policy of insurance as subsisting and to bear the expenses of the treatment of the respondent. Another notice was issued on 2.7.2002 calling upon the appellant to pay the claim of the respondent. Appellant replied to the notice. Again respondent issued notice to the appellant stating that he was suffering from kidney trouble for about last two years. The appellant was of the view that there was concealment of the fact of the pre existing disease at the time of taking the policy of the insurance. It was clear that the insurance cover was taken by concealment of material facts and, therefore, the insurance policy was terminated and the respondent was intimated. The respondent

was refunded pro rata premium of Rs.2782/- by cheque dated 6.8.2002. Respondent submitted an application for renewal of the policy. The respondent was intimated by letter dated 11.3.2003 that because of pre-existing disease and adverse claim ratio, the policy of insurance has been cancelled and therefore the request of renewal cannot be considered. Respondent filed a complaint before the District Forum. Stand of the appellant before the District Forum was that every policy whether it is a renewal or a fresh one is purely based on a contract. Since the respondent was suffering from kidney trouble even prior to the taking of the first policy, there was concealment of material particulars. In four years the respondent had been paid as claimed amount of Rs.95,925/- as against the premium of Rs.17,182/- and even in the year 2003-04 a sum of Rs.49,894/- was paid which indicated adverse claim experience and as such in terms of clause 5.9 of the policy, the same had been rightly cancelled. The District Forum directed revalidation of the policy and also directed consideration of the claim of the respondent.”

4. Against the said order an appeal was preferred before the State Commission which as noted above, dismissed the same. Revision was carried before the National Commission which dismissed the same.

5. In support of the appeal learned counsel for the appellant submitted that the National Commission did not consider the relevant aspects. The fact of concealment had not been considered as also the scope and the relevance of clause 5.9 has been totally overlooked.

6. Learned counsel for the respondent on the other hand supported the judgment.

7. Clause 5.9 reads as follows:

“The policy may be renewed by mutual consent. The company shall not however be bound to give notice that it is due for renewal and the company may at any time cancel this policy by sending the insured 30 days notice by registered letter at the insured's last address and in such event the company shall refund to the insured a pro rate premium for an expired period of insurance.”

8. The basic stand of the appellant was that there was concealment of the factum of ailment to the kidney when the first application for insurance cover was made. Additionally the effect of clause 5.9 has not been considered.

9. Reference was made by learned counsel for the appellant to the letter of the respondent dated 24.6.2009 which inter alia contains the following paragraphs:

“My client has been suffering from kidney trouble since last 2 years i.e. during the pendency of the Medi claim policy and claim was already submitted. Now in order to thwart Mediclaim, the insurance Co. cannot cancel the policy and the Insurance Co. is bound to pay the mediclaim of my client.

My client has been suffering vehemently and is undergoing vehemental trouble and agony. Your said notice has told on the nerves of my client and he has become despondent from his life.

The main intention of the said Ruces is not to defeat at the Medi claim of the insured. Since my client has been suffering from kidney trouble during the recurrence of the Insurance policy, in Insurance Company is bound to make payment, of the Medi claim submitted by my client.”

10. It appears that the District Forum, the State Commission and the National Commission have not considered the effect of clause 5.9 and the admissions made by the respondent in his letter as quoted above.

11. That being so, we remit the matter to District Forum to consider the matter afresh, taking into account the consequences flowing from the factum of concealment and the applicability of clause 5.9 to the facts of the case. The appeal is allowed, but there shall be no order as to costs.