



सत्यमेव जयते

न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.114/1092/12-13

Dated:-17.04.2014

In the matter of:

Shri Chander Mohan,
H.No.554A/15B (2nd Floor),
Bhim Gali, Near Mata Mandir,
Vishwash Nagar, Shahdara,
Delhi-110 032. .

..... Complainant

Versus

Insurance Regulatory and Development Authority (IRDA),
(through : its Chairman),
3rd Floor, Parisrama Bhavan,
Basheer Bagh, Hyderabad – 500 004,
Andhra Pradesh.

.... Respondent

Date of hearing : 09.09.2013, 18.12.2013, 27.03.2014

Present :

09.09.2013

1. Shri Chander Mohan, complainant.
2. Shri N.M. Behera, Deputy Director (Health Insurance), IRDA, on behalf of Respondent.

18.12.2013

1. Shri Chander Mohan, complainant.
2. None on behalf of Respondent.

27.03.2014

1. Shri Chander Mohan, complainant.
2. S/Shri V. Jayanth Kumar, Joint Director (Life Insurance) & N.M. Behera, Deputy Director (Health Insurance), IRDA, on behalf of Respondent.

O R D E R

The above named complainant, brother of Ms. Sunita Rani, a person with 40% mental illness filed complaints dated 11.08.2012 and 18.09.2012 respectively under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding refusal by insurance companies to provide health insurance to his sister with mental illness.

.....2/-

2. The complainant submitted that Royal Sundaram Alliance Insurance Co. Ltd., Star Health Insurance Co. Ltd., Bharti AXA General Insurance Co. Ltd., Max Bupa Health Insurance Co. Ltd. and Reliance Life Insurance Co. Ltd. refused to provide health insurance to his sister on the ground of her mental illness. He prayed that insurance companies may be asked to provide medi-claim policy to persons with mental illness.
3. The matter was taken up with the Chairman, Insurance Regulatory and Development Authority (IRDA), Hyderabad vide this Court's letter dated 12.10.2012.
4. The respondent vide letter dated 21.12.2012 and 30.12.2012 informed that they have written to the insurance companies vide their letter dated 29.10.2012 and to the Department of Financial Services vide their letter date No.IRDA/HLT/Disability/2010-11 dated 11.02.2011. The reply was awaited.
5. The complainant vide his letter dated 23.05.2013 requested to expedite the matter and, therefore, a hearing was scheduled on 29.08.2013 which was rescheduled on 09.09.2013.
6. During the hearing, the representative of the respondent submitted a letter dated 29.08.2013 addressed to this Court. A copy of the said letter was made available to the complainant with the advice to file a rejoinder.
7. In their letter dated 29.08.2013, IRDA submitted as under:-
 - “1. *It is not a fact that insurance companies are not covering mental illness. Almost all insurance companies who sell Govt. sponsored health insurance schemes do not exclude mental illness from the scope of the cover. In addition to this, ICICI Lombard has “Nirmaya” policy, which especially covers mental disabilities.*
 2. *Insurance is based on certain accepted principles based on the risk perception and at a financially viable price. In insurance, varieties of risks coexist some of which are insurable risks and some uninsurable. Certain risks deserve acceptance, certain risks are accepted in a restricted manner and certain other risks are declined altogether. Therefore, all insurance policies all over the world have various exclusions, deductibles and other restrictions. Providing insurance cover to all risks equally without discrimination will go against the principles of insurance.*
 3. *Each risk, irrespective of the degree of exposure involved, is insured subject to the underwriting norms of the insurance company,. Persons with mental illness are treated as high risk category from the underwriting perspective.*
 4. *The business of insurance is also based on commercial principles. Viability of the product is one of the basic requirements. Persons with mental illness are comparatively at a greater risk of having a concurrent physical illness going undiagnosed and untreated. This adds further to the existing risk and categorized as high risk in insurance.*

5. *The concept of risk varies from person to person and therefore people who are also not disabled are considered differently and covered at different premium with different terms. Discrimination in some way, therefore, even for the people with good health is permitted in insurance due to medical underwriting..*
6. *HRDA being a regulator, in principle, does not interfere in the design of the products. Products are created solely by the insurance companies. Product design depends on various aspects like risk exposure, risk retention, past claims experience, pricing, viability etc.*
7. *However, IRDA has provided regulations to comply with rural and social obligations of all insurance companies meant for unorganized sector, economically vulnerable and backward people, informal sector and also includes persons with disability as defined in the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 and who may not be gainfully employed and also includes guardians who need insurance to protect spastic persons or persons with disability.*
8. *It is understood that the Government of India has proposed a bill called as "Mental Health Care Bill", the passing of which is awaited.*

Considering the facts as above, it is proposed to take up the matter with General Insurance Council and Life Insurance Council, who are the representative bodies of non-life insurance companies and life insurance companies respectively, for their examination and consideration. Further, it is also proposed to put up the matter before the Health Insurance Forum, which has representatives of all stakeholders of health insurance, for their suggestions. At this juncture, we are not considering issuing any guideline for coverage of persons with mental illness other than what is already provided under Rural and Social Sector Regulations."

8. The complainant in his rejoinder dated 03.10.2013 submitted that he had already placed on record that following insurance companies which sell Govt. sponsored Health Schemes, have declined to issue Health Insurance Policy to his sister suffering from Mental Illness whose disability has been assessed at 40% by the Disability Board:-

- i) Royal Sundaram Alliance Insurance Company Limited.
- ii) Star Health Insurance Company Limited.
- iii) Bharti AXA General Insurance Company Limited.
- iv) HDFCERGO General Insurance Company Limited.
- v) Max Bupa Health Insurance Company Limited.

He submitted that ICICI Lombard, which has "Nirmaya Policy" of National Trust does not cover persons with mental illness. It covers persons suffering from (i) Autism, (ii) Cerebral Palsy, (iii) Mental Retardation & (iv) Multiple Disabilities. Persons with mental illness are not provided insurance cover as they are treated as high risk category. Thus they are deprived of medical

facilities. The complainant requested to give direction to IRDA to prevail upon the Insurance Companies to provide insurance coverage to the persons with mental illness.

9. Upon considering the complainant's rejoinder dated 03.10.2013, a hearing was scheduled on 18.12.2013.

10. During the hearing, reiterating his written submissions, the complainant emphatically stated that persons with mental illness are not covered under the Nirmaya Insurance Scheme as erroneously stated by the respondent. He submitted a copy of letter No.1/67/NAT/2010/5860 dated 01.03.2011 of the National Trust addressed to him which says as follows:-

"..... In this connection I am to state that your sister Ms. Sunita Rani is a case of mental illness which at present is not covered under National Trust Act, hence we will not able to consider your case under Niramaya Scheme."

11. IRDA did not enter appearance without citing any reason. However, in their written response dated 29.08.2013, they had submitted that the matter was proposed to be taken up with General Insurance Council, Life Insurance Council and Health Insurance Forum. Therefore, at that juncture, they were not considering issuing any guideline for coverage of persons with mental illness other than what is already provided under Rural and Social Sector Regulations.

12. Considering that relevant policies should have a human face and in the light of Article 25(e) of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which, specifically provides for prohibiting discrimination against persons with disabilities in the provision of health insurance and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner, this Court advised General Insurance Council and Life Insurance Council to keep the above provisions in mind while deciding the matter. The respondent was directed, among other things, to ascertain the status of the reference made to the above mentioned authorities and get back to this Court.

13. The respondent vide letter dated 24.01.2014 submitted that from the ROP dated 24.12.2013 of the hearing held on 18.12.2013, they have come to know that there was another hearing on 18.12.2013 where they were not present. While cross checking, they realized that by oversight the relevant letter had gone to a different department and had not gone to the concerned which handles the case. The absence was unintentional. Therefore, another hearing was held on 27.03.2014. During the hearing, Shri N.M. Behera, representing IRDA, Health Department and Shri V. Jayanth Kumar representing the Life Insurance Department of IRDA submitted that the recommendations of the General Insurance Council have since been examined and IRDA has taken a view that it cannot interfere in the design of various products offered by respective Insurance Companies. Therefore, it should be left to the insurance company's discretion. He further submitted that the General insurance Counsel had recommended, among other this, as under:-

“It is also to be noted here that the cover against mental illness by its complex nature is evolving and the companies will have to generate more experience and data to offer a product that can be accepted by the insuring public and at the same time sustainable to the insurers. Market Forces will decide as to whether such product has a specific requirement by Insuring Public and whether they are ready to bear the cost attached to it. Hence, there should be no compulsion to issue such covers and it should be left to the discretion of the individual companies to come out with a suitable product as and when they find it feasible.”

14. As regards the report of the Life Insurance Department of IRDA regarding life insurance, the representative of IRDA submitted that the reference to Life Insurance Council dealt with standard underwriting guidelines in case Government offers subsidy for extra premium chargeable to people with disability. He added that the said Council further recommended that the Service Tax policy decision to the people with disabilities that Government may examine the question of weighing the service tax on the premium of the policies issued to persons with disabilities and it also recommended that if a large number of persons with disabilities are uninsurable, Insurance Companies may be encouraged to design products for parents or guardians of persons with disabilities.

15. The complainant submitted that as IRDA being the regulatory body in the field of insurance sector, it should own responsibility and help in issuing instructions to Insurance Companies to provide medi-claim for persons suffering from mental illness who are outside the coverage of Nirmaya Scheme governed by National Trust in association with ICICI Lombard. It is further submitted that he had already submitted that about 7 to 8 Insurance Companies to whom reference was made for issuance of medi-claim policy, had given in writing that they do not cover such cases. Hence, this Court should impress upon IRDA to take a fair approach in providing medi-claim policy to save the lives and provide good health to persons suffering from mental illness.

16. After hearing out all concerned and after a careful perusal of relevant record, it appears that prima facie there has been no violation of any existing norms/rules etc. Besides, it goes without saying that mandate of this Court is to see whether any existing laws, policies or rules have been violated. This explains why this Court is not in a position to issue any direction to the respondent. However, there is a definite and distinct need for the respondent and the Government to revise and re-visit the policy framework of insurance from the perspective of persons with disabilities with a particular reference to Article 25(e) of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which India has since ratified. It is also pertinent to observe that the relevant provisions in respect of insurance contained in the Rights of Persons with Disabilities Bill, 2014 currently pending in the Rajya Sabha is also reflective of the Government's thinking that insurance should be more equitable. It would also be quite in context for this Court to stress the need for the Government even to subsidize where necessary premia, particularly for health insurance, for persons with mental illness and other disabilities and encourage the companies to design the appropriate products accordingly.

17. A copy of this Order also be marked to the Department of Financial Services, Ministry of Finance, Government of India for appropriate action.

18. The matter is disposed off accordingly.

Sd/-

(P.K. Pincha)
Chief Commissioner
for Persons with Disabilities

Copy to :-

Secretary, Department of Financial Services, Ministry of Finance, Government of India for appropriate action.