

Individual Personal Accident Policy

**Ahmedabad Ombudsman Centre
Case No. 11-003-0112
Dr. A J Patel
vs
National Insurance Co. Ltd.**

Award Dated: 5.11.2007

Repudiation of PA Claim under Motor OD Policy: The Insured due to an accidental injury to the spinal cord went paraplegic and was permanently and totally disabled. The Civil Hospital certified the disability as 95%. The Respondent contended that the disability benefits are payable only if the disability is 100%. Since in the instant case, the disability is to the tune of 95% only, the Claim had been repudiated. However, permanent disability benefit is defined as 'disablement of permanent and irrecoverable nature absolutely total, in the sense that the insured person is prevented from engaging in gainful employment of any kind'. The Insured cannot perform his routine work or movement. He is a Surgeon by profession and is not in a position to be employed in any kind of gainful activity. As such, the Respondent was directed to pay the full Claim amount as per conditions of the Motor OD Policy.

**Ahmedabad Ombudsman Centre
Case No. 11-002-0195
Mr. P C Thakar
Vs
New India Assurance Co. Ltd.**

Award Dated : 16.11.2007

Repudiation of Claim under P.A. Policy: The Insured suffered an Accidental Injury to his thumb which required plaster for a period of 4 weeks because of which he could not attend to his routine job as a Cameraman. The Treating Orthopaedist recommended rest for 8 weeks. The Respondent referred the Case papers to their Medical Referee for opinion. TTD was proposed to be settled for 4 weeks, as per opinion of the Referee, for which the Insured was aggrieved. In the absence of any better method to rely, the principle of Golden Mean of the opinion of the two Specialists taken together worked out to 6 weeks of TTD, which was awarded.

**Ahmedabad Ombudsman Centre
Case No. 11-005-0035
Sri M B Gajera
Vs
Oriental Insurance Company Ltd.**

Award Dated: 26.12.2007

Repudiation of Death Claim under PA Policy (Nagrik Suraksha Policy). The Insured died in an accident. Claim thereof was repudiated on the grounds that the policy document had a wrong date of birth as confirmed from his Mediclaim Policy/ Driving Licence. Policy was issued giving his age as 65 years while his actual age is 68 yrs.

The Respondent could not show how this wrong date of birth was entered in their records at the time of renewal of policy. Besides, a Nagrik Suraksha Policy can be renewed upto age 75 yrs. So, the reasons for repudiation is not based on facts. As such, the Respondent was directed to settle the full claim.

Ahmedabad Ombudsman Centre
Case No. 11-011-0343
Ms. J M Rawal
Vs
Bajaj Allianz General Insurance Co. Ltd.

Award Dated : 08.01.2008

Repudiation of Claim under PA Policy: The Insured while on tour to USA fell down and was injured. The treating Doctor noted pain and swelling of leg. The X-Ray report showed calcification along the lateral aspect of the proximal tibia. Claim was repudiated citing pre-existing condition. Calcification could not have formed within 12 days of taking the policy. As such pre-existence being proved, the decision of the Respondent to repudiate the Claim was upheld.

Ahmedabad Ombudsman Centre
Case No. 11-002-0182
Mr. C V Patel
Vs
Oriental Insurance Company Ltd.

Award Dated : 28.01.2008

Repudiation of Claim under PA Policy: The Insured was hospitalised for treatment of an accidental injury. The treating Orthopaedist opined for compensation for 16 weeks since he was advised bed rest for this period. However, the Medical Referee of the Respondent recommended compensation for 8 weeks. During the course of Hearing, a compromise was sought for by following the rule of Golden Mean which was not accepted by the Complainant. In view of the same, the Forum did not pronounce any order for payment. The Complainant may take up his grievance to any other Forum/Court deemed appropriate for resolution of the Complaint.

Ahmedabad Ombudsman Centre
Case No. 11-005-0183
Case No. 11-005-0231
Mr. A K Momin
Vs
Oriental Insurance Company Ltd.

Award Dated : 15.02.2008

Repudiation of Claim under PA Policy. The Insured met with a scooter accident while avoiding a group of monkeys loitering on the road and sustained physical injuries for which he was admitted to an Orthopaedic Hospital for treatment. He was discharged from the hospital after 4 days of admission. Later he was admitted to two different hospitals where he died with the reason being given by the Hospital as 'probably related to the accidental injury and problems relating to it'. From the Claim papers submitted, it was observed that Post Mortem Report was not carried out. Besides no FIR was lodged or Panchanama was made. In view of this the Claim under PA Policy was rejected. As per the Policy conditions, the alleged injury resulting to death must be substantiated by a post-mortem examination report which was not done in the cited

case. The Complainant submitted that LIC has settled the Claim for Double Accident Benefit. However, in a similar case of PA Policy of non-life insurer, the Hon'ble State Commission of Gujarat had upheld the decision of the Insurer to deny the liability in the absence of post-mortem reports etc. As such, the decision of the Respondent to reject the Claim was upheld. The Respondent was however directed to settle the claim for TTD on completion of the procedural requirements by the Complainant.

Ahmedabad Ombudsman Centre
Case No. 11-005-0316
Ms. H B Prajapati
Vs
Oriental Insurance Co. Ltd.

Award Dated : 11.03.2008

Repudiation of Claim under PA Policy: The Insured was going on a two wheeler when a rashly driven jeep collided with his moped. He died on the spot. Claim was repudiated since it could not be proved that he was having an effective and a valid driving licence. The breach alleged by the Respondent is with regard to the provisions of Motor Vehicle Act only. The Respondent has clearly not applied their mind in interpreting the policy conditions while repudiating the claim. As such, the Respondent was directed to settle the Claim with interest for the delay.

Ahmedabad Ombudsman Centre
Case No. 11-004-0244
Ms. P D Mehta
Vs
United India Insurance Co. Ltd.

Award Dated : 18.03.2008

Repudiation of Claim under PA Policy: The Insured suffered from a Vehicular accident. The treating Orthopaedist certified that the Insured be confined to bed for 11 weeks. The Respondent submitted the papers to their Medical Referee, who opined to allow 6 weeks TTD. The subject Policy covers for TTD payment from the date of accident upto the date the insured remains absent from duty, The Insured presented a certificate from the employer who certified that the Insured was on leave for 11 weeks. As such, the Respondent was directed to settle the TTD Claim for 11 weeks.

Ahmedabad Ombudsman Centre
Case No. 11-009-0347
Mr. P V Radhanpura
Vs
Reliance General Insurance Co. Ltd.

Award Dated : 18.03.2008

Partial settlement of Claim under PA Policy. The Insured met with an accident. Claim for TTD was sought to be settled by considering the Sum Insured of Rs. 1 lac instead of Rs. 3 lacs. During the course of Hearing, the Respondent after going through the papers agreed to settle the claim taking the Sum Insured as Rs. 3 lacs and a mutual settlement was reached to this effect.

Ahmedabad Ombudsman Centre

Case No. 11-003-0130
Mr N A Patel
Vs
National Insurance Co. Ltd.

Award Dated : 18.03.2008

Repudiation of Claim under P.A. Policy: The Insured was hospitalised for Treatment of his fractured left leg. The Treating Orthopaedist recommended rest for 12 weeks. The Respondent referred the Case papers to their Medical Referee for opinion. TTD was proposed to be settled for 3 weeks, as per opinion of two Referees, for which the Insured was aggrieved. The Insured argued that the injured leg did not heal completely on the day of removal of plaster. However, he did not submit any proof of X-Ray or physiotherapy taken. In view of this, 6 weeks of TTD was offered to the Complainant in full and final settlement.

Ahmedabad Ombudsman Centre
Case No. 11-002-0255
Ms. R K Shah
Vs
New India Assurance Co. Ltd.

Award Dated : 31.03.2008

Repudiation of Claim under PA Policy. The Insured was covered for PA Benefit for Rs. 3 lacs upto 2003 and then for Rs. 75000/- from 2003 to 2005 and Rs.3 lacs thereafter. The Insured fell down in 2005. He had complaint of pain and swelling of right ankle which showed bi-malleolar fracture. An operation was done by administering Spinal Anaesthesia. The treating Doctor recommended TTD for 20 weeks. The Respondent's Medical Referee opined payment for 12 weeks. Accordingly a voucher was prepared treating Sum Insured of Rs.75000/-. The Insured did not accept the same. He desired TTD by treating Sum Insured as Rs. 3 lacs. He informed that he had always been submitting blank cheques to the Agent and blamed the Respondent to reduce his coverage. However since the premiums too were appropriated only for Rs. 75000/- the Respondent's decision in this matter was found proper. As far as payment of TTD is concerned, the principle of golden mean was applied and TTD was granted for 15 weeks in full and final settlement of the claim.

Ahmedabad Ombudsman Centre
Case No. 11-004-0238
Mr R J Valani
Vs
United India Insurance Co. Ltd.

Award Dated : 31.03.2008

Repudiation of claim under PA Policy. As per his submission, the Insured slipped and got injured. Pain did not subside despite medication. X-ray taken revealed fracture in the toe of his foot for which surgery was required. Claim intimation was given after 28 days. However, it was observed that the treating hospital had given another certificates of treatment stating the disease to have been left foot cellulites, 2nd toe viability and osteomyelitis. These are orthopaedic diseases not caused due to an accident not covered under PA Policy. As such, the decision of the Respondent to repudiate the Claim under Personal Accident Policy was upheld.

Ahmedabad Ombudsman Centre

Case No. 11-005-0172

Mr. K G Panchal

Vs

Oriental Insurance Co. Ltd.

Award Dated : 31-3-2008

Repudiation of Claim under PA Policy: The Insured slipped in the factory and met with an accident on 11-8-2006. He attended office from 12-8-2006 to 25-8-2006 and was on leave from 26-8-2006 to 4-10-2006 on medical advice. The Insured was operated for Hernoplasty and TURP on 26-8-2006. Claim for TTD under PA Policy was repudiated. It was observed that the Insured was present in Office for 15 days after the Accident and thereafter on leave for treatment of diseases which had no connection with the accident. As such, the decision of the Respondent to repudiate the Claim was upheld.

Chandigarh Ombudsman Centre

Case No. : GIC/248/NIC/14/08

Suman

Vs

National Insurance Co. Ltd.

Award Dated : 2.11.07

FACTS : Smt Suman's husband Late Shri Deepak Kumar had insured his motorcycle bearing no. PB-11T-0001 from DO Patiala. He died in a motorcycle accident on 26.12.05. The complainant lodged a claim under the policy with the insurer and completed all the formalities. The insurer was, however, insisting for submission of driving licence of the insured despite her having submitted an affidavit to the effect that all material items such as mobile set, helmet and driving licence of the insured were found missing from the place of accident. Hence she could not produce the driving licence. She clarified that her husband had a scooter earlier which was disposed off. He was driving two wheeler for quite some time and it was not possible that he was doing so without having valid and effective driving licence.

FINDINGS : The insurer informed that as per policy terms the PA risk for owner/driver is covered on payment of additional premium provided the owner/driver at the time of accident carries a proper and valid driving licence. The legal heirs of the deceased were sent many reminders in this regard. However the copy of the driving licence had not been submitted. Hence the claim was made 'no claim' as valid and effective driving licence was pre-requisite for a person driving a vehicle and claiming accident benefit. Further the deceased had purchased motorcycle only a few days back and he could not have therefore possessed a valid driving licence on the date of accident.

DECISION : Held that though the driving licence was a must for honouring the claim, in this case the legal heirs could not produce the same as all personal belongings along with driving licence were missing from the site of accident. This does not conclude that the deceased did not possess a valid driving licence. Therefore, taking an overall view, and giving benefit of doubt to the complainant ordered that 50% of the admissible claim should be paid by the insurer to the complainant.

Chandigarh Ombudsman Centre

Case No. : GIC/428/UII/11/08

Kiran Khanna

Vs

United India Insurance Co. Ltd.

Award Dated : 11.12.07

FACTS : Smt. Kiran Khanna's husband Late Sh Ghanshyam Dass was insured under Individual Personal Accident Policy for sum insured of Rs. 15 lakhs for the period 24.3.06 to 23.3.07. He met with an accident on 4.9.06 and expired. The claim was lodged with the insurer and the relevant papers were submitted but only an amount of Rs. 2,70,000/- had been paid to them instead of Rs. 15 lakhs which was the insured amount.

FINDINGS : The insurer informed that as per Income Tax Return for the year 2004-05 and 2005-06, Shri Ghanshyam Dass was earning Rs. 36,000/- annually. In addition he had interest income of Rs. 1,04,000/- and Rs. 1,68,000/- in 2004-05 and 2005-06 respectively. As per prescribed guidelines by IRDA under the heading Indemnity para 23 reads as under:-

"The principle of indemnity arises under common law and requires that an insurance contract should be a contract of indemnity only and nothing more. The object of the principle is to place the insured after a loss in the same financial position as far as possible, as he occupied immediately before the loss. The effect of this principle is to prevent the insured from making a profit out of his loss or gaining any benefit or advantage".

In view of the above, the earning capacity of the policyholder should be treated as Rs. 36,000/- and the cover should have been limited to Rs. 1.80 lakhs. With 50% cumulative bonus it works out to Rs. 2.70 lakhs. Hence this amount was paid to the complainant. There was an underwriting lapse in giving an insurance cover for Rs. 10 lakhs as underwriter had taken the income from all sources including the interest which worked out to more than Rs. 2 lakhs in 2005-06.

DECISION : Held that the middle year 2004-05 should be taken for arriving at average annual income. Hence interest portion on an average should be Rs. 1.04 lakhs. Taking this as basis 50% of this amount could be included to arrive at insured amount. To compensate the complainant for the underwriting lapse on the part of the insurer, it was ordered that an amount of Rs. 3 lakhs should be paid by the insurer to the complainant on ex-gratia basis as per Rule 18 read with Rule 16 (2) of RPG Rules, 1998.

Chandigarh Ombudsman Centre

Case No. : GIC/463/UII/14/08

Jaswant Kaur

Vs

United India Insurance Co. Ltd.

Award Dated : 31.01.08

FACTS : Smt Jaswant Kaur's husband Shri Lal Gir S/o Sh Sant Gir was covered under Personal Risk to owner driver for the period 26.9.03 to 25.9.04. He met with an accident on 3.5.04 and died on 4.5.04. All the claim papers pertaining to claim were submitted in the Branch Office, Sunam, but the claim was rejected on the ground that the intimation regarding the death was not given in time. She stated that reasons for delayed intimation had already been given vide letter dated 21.8.07. Parties were called for hearing on 31.1.08.

FINDINGS : The insurer clarified that the intimation of death was given on 21.8.07 after a lapse of 3 years and 3 months of the date of death. Moreover the driving licence produced by the complainant was not original and was not stamped duplicate. It was

issued from Agra whereas the insured was staying in Jakshal and was a Govt employee of Haryana. The licence was not in a book form as was the normal format of a driving licence.

DECISION : Held that the case is weak on two accounts. Firstly, the intimation was given after the lapse of 3 years and 3 months from the date of death which was against the terms and conditions of the policy and attracts the provision of law of limitation being time barred. The driving licence shown to me was not stamped duplicate and appeared to have been made at the age of 52 years which normally is not the case. The licence does not appear to be genuine. In my view, therefore, the repudiation of the claim by the insurer is in order. No further action is called for. The case is closed.

Chennai Ombudsman Centre
Case No. : IO(CHN)/11.03.1351/2007-08
Smt.Antony Viagammal
Vs
The National Insurance Co. Ltd

Award Dated : 19.03.2008

Smt.Antony Viagammal, the complainant stated that her son Rajan @ Sebastian, a van driver, was murdered on 26.10.2005. Her son had a Personal Accident Insurance policy with National Insurance Co. Ltd. She had claimed the insured amount under the Personal Accident policy with the National Insurance Co. Ltd. Chennai Division V, Chennai for the policy money. But the insurer had neither settled the claim nor rejected it.

The insurer stated that the death intimation to the company was received after a gap of about 4 months from the date of accident. They had appointed an investigator to find out the facts of the death. The name of insured person given in the Insurance Certificate was "Rajan" whereas the same varied in the documents produced viz., Electoral Card, Passport, etc as evidence or proof of address from which they were unable to decide the case. The date of birth of the insured person was given as 01.01.1973 in the certificate of insurance and the date of birth as per his driving licence was 30.05.1976.

During the hearing, the complainant clarified that her son's pet name was Rajan and he had been as Sebastian. Her son who was a witness in a murder case, had been murdered. The delay in claiming the amount, was because her elder daughter's son who was about 18 years old suffered a shock and emotional damage after hearing her son's death. Her second daughter was in the final stage of pregnancy. She herself was in a state of shock and sorrow with the chain of events which prevented her from claiming the amount in time. Her son had a valid passport and driving licence. Her son's name had been omitted on the ration card ,but when it was noticed she said that got it subsequently rectified. The original assignee under the policy, Antony who was a relative and he had relinquished his rights in her favour.

The representative of the insurer stated that they had repudiated the claim on two grounds viz. the delay in intimation of death claim and the discrepancy in the name of the insured given in the certificate of insurance and other documents pertaining to late Sebastian.

The following documents were perused Road Safety Club Membership Certificate ,Certificate of Insurance, Death Certificate ,First Information Report, Police Inquest Report ,Post-mortem certificate, Newspaper Report, Election Identity Card, Driving Licence, Ration card of Mrs Antony Viakammal endorsed on 02.08.2005 by Tahsildar to include the name of Sebastian Rajan @ Rajan, (29 years).,Passport , Baptism

Certificate of Sebastian ,Certificate from the school ,Legal heirship Certificate of late Sebastianrajan @ Rajan dated 06.01.2006 in favour of Mrs Antony Viakammal, Consent of Mr.Antony, assignee under the policy, Deed signed by the sisters of relinquishing their rights to their mother, Death Certificate of Sesuraj alias Selvaraj, father of Sebastian and husband of Mrs Anthony Viakammal.and Legal Heir certificate of late Jesuraj @ Selvaraj of Nadar Street, Kandiaperi dated 02.09.1996 indicating the heirs to be Mrs Anthony Viakammal, her son Sebastian Rajan@ Rajan and two other daughters., Investigation Reports of two independent investigators

As per the documents submitted to this forum it appears that the person who was murdered was Sebastian@Rajan, S/o Jesuraj.. Two investigations carried out by the insurer confirmed the death of Sebastian Rajan of Kandiaperi. They have not stated that there was another person by name "Rajan" in that area. There was nothing adverse in the reports to establish that "Rajan" who took the insurance policy was different from the deceased Sebastian Rajan. The insurer was not able to provide this forum the proposal form signed by the insured.

Though the complainant claimed that her son Sebastian was also known as Rajan, she did not prove conclusively that "Rajan" who took the policy was her son Sebastian. Further, the lapses on the part of the insured could not also be totally ignored. The errors/discrepancy in the insurance certificate continued even after the renewal. The insured had allowed the wrong information to continue without correction of the data.

In the light of the above facts, the insurer was directed to pay the a sum of Rs.50,000 on ex-gratia basis.

The Complaint is partly allowed on ex-gratia basis.

Delhi Ombudsman Centre
Case No.GI/52/HDFC/06
Shri Sanjeev Kohli
Vs

HDFC Chubb General Insurance Company Limited

Award Dated : 16.10.2007

The complaint was heard on 09.03.2007, 06.06.2007, 27.08.2007 and 05.10.2007. The complainant Sanjiv Kohli was present and the Insurance Company was represented by Shri Rahul Sharma, Regional Claims Manager and Ajit Kr. Singh, Claims Officer.

Shri Sanjiv Kohli had lodged a complaint with this Forum on 25.05.2006 that he was insured under the Personal Accident policy, under policy no. 93603026/00001-BAPPHV with HDFC Chubb General Insurance co. Ltd. He received a letter from the Insurance Company on 12.04.2006 on his previous address refusing his claim. He has requested the Forum that his claim may be paid.

At the time of hearing on 06.06.2007, the Insurance Company was requested by the Forum that since the accident had taken place in Muzaffarpur, they should have got the matter investigated. Further, Shri Sanjeev Kohli was advised by the Forum that there was no disability certificate or cause of disability in the certificate submitted by Shri Sanjeev Kohli as such the case was adjourned. Further, on 05.10.2007, the Insurance Company informed the Forum that they had made the exgratia payment of Rs.350000/- to Shri Sanjeev Kohli for which they had already submitted the indemnity bond along with settlement of claim. Shri Sanjeev Kohli contested that he had agreed to the settlement since he was in need of money, however, the Insurance Company has not been fair and reasonable in dealing and they should have paid the full amount of Insurance as per the policy issued to him. On enquiry by this Forum that since the

matter was sub-judiced and he had earlier agreed on 12.07.2007 for the settlement he could have waited for the hearing which was to take place on 27.08.2007 but could not have taken place because of the fire in the office premises. In view of the exgratia payment made by HDFC Chubb General Insurance Co. Ltd. for Rs.350000/-and Shri Sanjeev Kohli having agreed to the same, this Forum feels that the amount settled is fair and reasonable as Shri Sanjeev Kohli has not been able to establish that he had suffered with Multiple Sclerosis as a result of alleged accident nor he got himself examined by a neurosurgeon as advised by the doctor at the Muzaffarpur and as such the complaint stands resolved.

There is no further relief to be given to the complainant.

Lucknow Ombudsman Centre
Case No.G-34/11/12/07-08
Shri. Ravi Kumar Agarwal
Vs
ICICI Lombard General Insurance Co. Ltd.

Award Dated : 08.02.2008

Complainant Shri.Ravi Kumar Agarwal filed a complaint with the forum against the respondent, ICICI Lombard General Insurance Co. for non-settlement of death claim of his wife.

Facts : Smt. Raj Rajeshwari Agarwal, his wife was granted a PA cover under the Co.'s loan care policy, wherein SI was payable on death as per the policy condition. She died on 15.06.06 due to electric shock.

Findings : Since it was an unnatural death, respondent Co. requested for compliance of certain requirements. During course of personal hearing it was revealed by the respondent Co. that the complainant had filed a case in district forum at Agra for another policy taken on the same property by Mrs.Agarwal. On perusal of the petition filed in District Forum, it was confirmed, it related to same insured ie. Mrs. Raj Rajeshwari Agarwal.

Decision : Though policy under which complaint was filed in District Forum was different, but the cause of action being same, as for policy under consideration in this forum ie. Death of his wife, it was held that the forum was not competent to adjudicate upon the matter in view of clause 13(3) of RPG Rules 1998 which stipulates "No complaint to the Ombudsman shall lie unless the complaint is not on the same subject matter for which any proceedings before any court or Consumer Forum or arbitrator is pending or were so earlier." Complaint disposed off accordingly.

Mumbai Ombudsman Centre
Case No. : GI-234 of 2007-2008
Shri Chanderkiran R Nanda
Vs
The Tata AIG General Insurance Co.Ltd.

Award Dated : 31.12.2007

Shri Chanderkiran R Nanda, has taken the Tata AIG Maharaksha Personal Injury Policy On 12.11.2006, Shri Nanda, while coming down the staircase of his row house, accidentally slipped, hitting his forehead against the wall, which resulted in the retinal detachment of his right eye. He was hospitalized where his right eye was operated for attachment of retina and subsequently had a good visual recovery. When Shri C R Nanda preferred a claim for the expenses incurred by him towards the above surgery under the category, 'Operation under Anesthesia' as per the Policy terms , the Insurer

settled the claim for Rs.1,000/- towards accident hospital cash section for one day only . The Insurer stated that the reason for non-settlement of the claim amount was that the Maharaksha Policy covers dislocations of spine, hip, knee, wrist or elbow, ankle, shoulder blade or collarbone, fingers, toes or jaw and as the loss sustained by Shri Nanda did not come under the above category, his claim could not be considered. Being aggrieved, Shri Nanda approached the Office of the Insurance Ombudsman, Mumbai.

After perusing the records, both the parties were given an opportunity to present their case at the personal hearing on 6.11.2007 However, the complainant did not appear for the hearing. His written statement submitted to this Forum has been taken for the purpose of this hearing. The Tata AIG General Insurance Company was represented by Shri Ramji Mishra. He submitted that The insured's claim was for Retinal Detachment in the right eye for which he was hospitalized for one day. As this is not covered under the coverage C-2, the same was rejected; however, as per coverage C-3, they have paid Rs.1,000/- for one day, in-hospital cash for stay in the hospital due to accidental injury.

It could be seen that surgery consequent on retinal detachment due to accident is not covered under the above condition In view of the above analysis as also on the basis of the documents made available to this Forum, and as per the terms and conditions of the Policy document, the decision of the Insurer was upheld.