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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17th March, 2023

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W.P.(C) 6074/2019

SAURABH SHUKLA

..... Petitioner

Through: Mr. Siddharth Nath & Ms. Khushboo
Hora, Advocates
(Mob. No. 98110 04884)

versus

MAX BUPA HEALTH INSURANCE CO. LTD. AND
ORS.

..... Respondents

Through: Mr. Pradeep K Bakshi, Advocate for
R-1. (M: 9650881816)
Mr. Rajiv Jaiswal, Advocate for R-2.
(Mob No. 9871901997)
Mr. Neeraj Malhotra, Senior Advocate
with Mr. Dipak K Nag & Mr. Fahad
Imtiaz, Advocates for R-3.
(Mob. No. 9643196995)

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AND

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W.P.(C) 9310/2020

NEERAJ MEHTA & ANR.

..... Petitioners

Through: Mr Shyam D. Nandan, Advocate
(Mob. No. 9654848621)

versus

TATA AIG GENERAL INSURANCE COMPANY LTD
& ORS.

..... Respondents

Through: Mr. Arvind Minocha, Sr. Adv. with
Mr. Sachin Daga, Mr. Rajesh Kandari
& Ms. Kajal Bhandari, Advocates for
R-1. (M: 981998 2354)
Mr. Neeraj Malhotra, Sr. Adv. with
Mr. Abhishek Nanda, Mr. Nimish
Kumar and Ms. Shreya Singh

Advocates (Mob. No. 9971613570)
for R-3.
Mr Subhash Tanwar, CGSC with Mr.
Ashish Choudhary, Advocate for UOI.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

C.M No. 12950/2023 in W.P.(C) 6074/2019

2. At the outset, Mr. Pradeep K Bakshi, Id. Counsel for Respondent No. 1 submits that name of Max Bupa Health. Co. Ltd, Respondent No. 1 has been changed to Niva Bupa Health Insurance Company Limited (*hereinafter 'Niva Bupa'*). Therefore, an application being *C.M. No. 12950/2023* which is not listed today has been moved for change of name of Respondent No. 1.

3. Let the said application be brought on record. Considering that the same is a formal application, the application is allowed.

4. The name of the Respondent No. 1 shall now be reflected as Niva Bupa Health Insurance Company Limited. The amended memo of parties be filed by the Petitioner within one week.

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5. The present petition has been preferred by Mr. Saurabh Shukla who is suffering from Tetraplegia and paralysis below his chest due to a spinal cord injury which he had suffered in 2011. His physical condition is such that he is confined to a wheelchair and has limited use of his arms. Despite this injury, as recorded in the previous order, he is an investment banking professional, employed with a hedge fund and works from home.

6. The grievance of the Petitioner is that he had approached two insurance companies namely Max Bupa Health Insurance Co. Ltd. and Oriental Insurance Limited seeking medi-claim/health insurance. However, he was initially denied health insurance by both the insurance companies. The Petitioner was then constrained to approach the Court of the Chief Commissioner for Disabilities, which took up the matter with the Chairperson, Insurance Regulatory and Development Authority of India (IRDAI) and also obtained the response from IRDAI. However, the same continued to linger on and the Petitioner was unable to obtain a health insurance policy.

7. This Court, vide previous order dated 13th December, 2022 had after considering the entire matter and hearing the submissions of all the Id. Counsels for the parties, directed as under:

“24. In the background of this case, the manner in which both the insurance companies have simply rejected the proposal of the Petitioner that too with cryptic rejection letters is disconcerting. The Petitioner is a person who is working as an investment professional who can afford an insurance policy by paying a reasonable premium. Irrespective of the economic standing of a person with disability, insurance coverage cannot be rejected or refused.”

25. Under these circumstances, this Court is of the opinion that there is no doubt that persons with disabilities would be entitled to health insurance coverage and products would have to be designed to enable them to obtain health insurance coverage.

26. In view of the above discussion the following directions are issued:

i. The IRDAI, shall call a meeting of all insurance companies to ensure that the products are designed for persons with disabilities and other

persons in terms of the circular dated 2nd June, 2020. The process of designing such products shall be supervised by the IRDAI and it shall be ensured that the said products are introduced on an early date, preferably within two months.

*ii. The Petitioner is permitted to approach Max Bupa Health Insurance Co. Ltd. & Oriental Insurance Co. Ltd., once again. **The two insurance providers shall consider the case of the Petitioner for issuance of a health insurance policy and the question of extending insurance to the Petitioner shall be reviewed.** A proposal shall be placed on record by the next date of hearing.*

*iii. **Immediate steps shall be taken by the IRDAI to modify the terminology 'sub-standard lives' in their Regulations so as to ensure that such unacceptable terminology is not used in its Regulations or other documents while referring to persons with disabilities.***

27. Let a status report be filed on behalf of the IRDAI and the insurance companies at least two weeks before the next date of hearing.”

8. As can be seen from the above directions, the compliances were to be made by the IRDAI and the insurance companies. In compliance with the above directions, today, IRDAI has placed on record the affidavit/status report, which is deposed by Chief General Manager of IRDAI. As per the said report, it is stated by IRDAI that in compliance of the directions to call a meeting of the general and health insurance companies, the required meeting was called on 18th January, 2023, where the relevant issues were discussed. The minutes of meeting dated 18th January, 2023 have been placed on record, which show that the Committee was constituted consisting of six senior officials from the various insurance companies. The Committee was entrusted with the following tasks.

“i. Design and develop specific product/s for the following:

a. Persons with Disabilities (PWD)

b. Persons afflicted with HIV/AIDS

c. Persons having mental illnesses

ii. The design and development of the products shall be comprehensive enough to meet the insurance needs of the respective groups.

iii. The complete documentation shall be developed -- Proposal form, Schedule, the Policy wordings including the various terms and conditions etc., apart from a Customer Information Sheet (Key Features Document).”

9. In terms of the above discussion, a model policy was drawn up by IRDAI and a circular was issued on 27th February, 2023 to the following effect.

“ *Dated 27.02.2023*

To

All General Insurers (except ECGC, AIC) and Stand-alone Health Insurers

Re: Product for Persons with Disabilities (PWD), Persons afflicted with HIV/AIDS, and those with Mental Illness

1. Reference is drawn to the following sections of the Statutes mentioned below:

a. Section 21(4) of the Mental Health Care Act(MHCA),2017;

b. Section 3 of the Rights of Persons with Disabilities Act, 2016;

c. Section 3(j) of the HIV AND AIDS (prevention and Control) ACT, 2017;

In the light of the above provisions incorporated as the respective Acts and with the objective of making available an appropriate product offering health insurance cover for certain vulnerable sections of society viz. Persons with Disabilities (PWD) Persons afflicted with HIV/AIDS, and those with Mental Illness, all general and health insurers shall offer a specific cover for Persons with Disabilities (PWD), persons afflicted with HIV/AIDS, and those with mental illness. Enclosed is a model setting out the minimum scope and parameters for design of the product. In other words, insurers may widen the scope of this product but in no case can the scope of product be narrowed down.

2. The insurers are directed to put in place a Board approved underwriting policy that ensures that no proposal from the above-mentioned categories of population is denied for reason of the above stated disabilities and/or illness/es.

3. The insurers may determine the price of the product subject to complying with the norms specified in the IRDA (Health Insurance) Regulations, 2016 (HIR, 2016) and Guidelines/Circulars notified there under.

4. The policy tenure of the product shall for a period of one year and renewable as per regulatory framework already laid down.

5. The Standard Product shall comply with all the provisions of IRDAI (Health Insurance) Regulations, 2016, all other applicable Regulations and other applicable Guidelines/Circulars as amended from time to time.

6. Every General and Stand-alone Health Insurer, who has been issued a Certificate of Registration to transact General and/or Health Insurance Business, shall mandatorily launch and offer their respective product immediately.

7. It is reiterated that this circular shall come into force with immediate effect.”

10. The model policy, which was attached with the said circular, states that

it would cover the following conditions as also any subsequent additions which may be made in The Rights of Persons with Disabilities Act, 2016 and The Mental Healthcare Act, 2017.

1. Blindness	2. Muscular Dystrophy
3. Low vision	4. Chronic Neurological conditions
5. Leprosy Cured persons	6. Specific Learning Disabilities
7. Hearing Impairment (deaf and hard of hearing)	8. Multiple Sclerosis
9. Locomotor Disability	10. Speech and Language disability
11. Dwarfism	12. Thalassemia
13. Intellectual Disability	14. Haemophilia
15. Mental Illness	16. Sickle Cell disease
17. Autism spectrum disorder	18. Multiple Disabilities including deaf/blindness
19. Cerebral Palsy	20. Acid Attack victim
21. Parkinson's disease	

11. This model policy has been drafted by IRDAI, for the purpose of giving a reference policy for the insurance companies and all the insurance companies have been mandatorily directed to offer their respective products with **immediate effect**.

12. Insofar as the third direction as contained in paragraph 26 of order dated 13th December, 2022 is concerned, Regulation 8(b) of the IRDAI (Health Insurance) Regulations, 2016 has been modified and the expression 'sub-standard lives', which existed earlier, has now been deleted. The old and new regulation 8(b) is set out below:

Older version of Regulation 8(b)

8(b): "The underwriting policy shall also cover the approach and aspects relating to offering health insurance coverage not only to standard lives but also to sub-standard lives. It shall have in place various objective underwriting parameters to differentiate the

various classes of risks being accepted in accordance with the respective risk categorisation.”

Current version of Regulation 8(b)

8(b): “The underwriting policy shall also cover the approach and aspects relating to offering health insurance coverage. It shall have in place various objective underwriting parameters to differentiate the various classes of risks being accepted in accordance with the respective risk categorization”.

13. Insofar as Max Bupa now known as Niva Bupa is concerned, the offer for a health insurance policy has been given by the said company to the Petitioner in the following terms.

“7. However, post that Respondent No.1 has now submitted a counter offer on 24-02-2023, intimating that the Petitioners proposal can/will be considered subject to the following conditions:

- 1. Offer of coverage under Health Companion for a maximum Sum insured 20 Lac*
- 2. Additional loading of 100% on the premium (excluding taxes)*
- 3. PED waiting period on Chronic Liver Disease*
- 4. PED waiting period on quadriplegia*

The indicative individual premium for sum insured of Rs.5, 10, 15 and 20 lacs respectively for the product it as follows:-

<i>Insured Age/Sum Assured</i>	<i>500000</i>	<i>750000</i>	<i>1000000</i>	<i>1250000</i>	<i>1500000</i>	<i>2000000</i>
<i>36-40</i>	<i>9238</i>	<i>10394</i>	<i>11512</i>	<i>12490</i>	<i>12806</i>	<i>14149</i>

A copy of the offer letter dated 24.02.2023 is enclosed hereto and marked as Annexure-2.”

14. The Petitioner has expressed his willingness to avail of this policy as offered by Niva Bupa, subject to certain clarifications/contentions as made today before the Court.

- First, it is submitted by Id. Counsel for the Petitioner that the loading charges and premium ought not to be so high. It is his contention that in terms of the Id. Division Bench judgment dated 15th February, 2012 in *W.P.(C) No.10323/2009* titled '*Vikas Gupta vs. Union of India*' there is a need for ensuring that the disabled persons are not made to pay the higher premiums.
- Secondly, it is submitted that the Petitioner wishes to obtain the cover of Rs.50 lakh and what is being offered to him is Rs.20 lakh as the maximum amount.
- Thirdly, it is submitted that the exclusionary period for Pre-Existing Diseases (PED), in terms of the relevant IRDAI circular and in terms of Model Policy given by the IRDAI, cannot be beyond 2 years. However, the policy which has been offered to him, excludes the period of 3 years.
- Additionally, the Id. Counsel for the Petitioner submits that the Petitioner was examined by a doctor who was nominated by the insurance company i.e., Niva Bupa, who has submitted reports to the insurance company about the Petitioner's physical condition. The Petitioner seeks copies of the said reports in order to enable him to avail of any treatment, if required.

15. Mr. Bakshi, Id. Counsel on behalf of Niva Bupa submits that the

Petitioner has already agreed to avail the policy offered by Niva Bupa, vide his email dated 1st March, 2023 and any modifications or changes ought not to be permitted to raise any further issues.

16. On behalf of the Oriental Insurance Company, the status report has been filed stating that it is willing to offer Rs.30 lakhs insurance for a premium of Rs.34,443/- in respect of which the Petitioner has not reverted.

17. At this juncture, Id. counsel for the Petitioner, submits that the Petitioner is availing of the policy offered by Niva Bupa and he does not wish to avail of the health insurance policy offered by the Oriental Insurance Company.

18. On a query from the Court as to whether any products have now been created in terms of the IRDAI circular, both the insurance companies submits that no such products have yet been created. However, the same would be under preparation.

19. From the submissions made and the reports, which have been filed on record, it is now clear that the IRDAI has made it mandatory for all the insurance companies to issue policies for persons with disabilities, persons suffering from HIV/AIDS as also persons with mental illness. Various health conditions have also been identified which have been extracted above. In terms of the circular dated 27th February, 2023, every general and stand-alone health insurer has to mandatorily launch and offer their respective products in terms of the circular bearing in mind the model policy and the conditions specified therein.

20. It is expected that all insurance companies providing health insurance policies would submit their respective products, in terms of the circular dated 27th February, 2023, to the IRDAI on or before 15th May, 2023. The IRDAI

shall examine the said policies and also call for all the proposed products from all general insurance and stand-alone health insurance companies. The IRDAI, after perusing all the said products, which have been offered, shall approve the same expeditiously and in any case by 15th July, 2023.

21. In addition, the Petitioner may, for the time being, avail of the policy, which has been offered by Niva Bupa, which shall be issued to him immediately within one week upon the payment of premium demanded by the company. The said payment for the premium for the health insurance policy already offered by Niva Bupa shall be made by the Petitioner by 27th March, 2023. The Petitioner may then make a representation within two weeks, to the IRDAI with respect to the following issues -

- Amount of premium being charged
- Loading charges
- Amount of coverage
- Period of Exclusion for Pre-Existing Diseases

22. The IRDAI shall consider the submissions and the representation made by the Petitioner in respect of the abovementioned issues. The IRDAI shall consider whether the premium, loading charges as also non-issuance of Rs.50 lakhs coverage and the exclusionary period would be in accordance with the IRDAI regulations, model policy as also the decision of the Id. Division Bench in *Vikas Gupta (supra)*. The IRDAI shall make a decision on the representation by the Petitioner expeditiously and directions shall be issued by the IRDAI by 15th April, 2013. The said directions shall be binding on the parties. If any additional premium is to be paid by the Petitioner, the same shall also be paid in terms of the directions of IRDAI.

23. The decision of IRDAI or modifications shall be conveyed by 30th

April, 2023 to the Petitioner and to Niva Bupa.

24. Since the issue of health insurance for disabled persons is being considered by this Court and the IRDAI has recently come out with the model policy and the circular, this direction is being issued in the unique facts of this and shall not form a precedent.

25. The IRDAI shall notify all the insurance companies to submit their products in terms of the circular dated 27th February, 2023, along with the model policy and file the status report in respect thereof as well.

26. Let the present order be circulated to all relevant insurance companies, by the IRDAI. Let a status report of the compliance be filed by the IRDAI by the next date of hearing.

27. Let the copies of the test reports conducted by the doctor nominated by Niva Bupa be given to the Petitioner within one week.

28. List on 18th August, 2023.

29. This is a part heard matter.

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30. The Petitioner, in the present case has approached this Court challenging the denial of a health insurance policy for his minor son who was suffering Bi-Lateral Hearing Loss, which is a hearing disability. The minor son of the Petitioners was prescribed Cochlear Implant and the Petitioners got the same implant done for their minor son on 22nd July, 2020, on their own expense.

31. Since the Petitioners had a family insurance policy which included their elder daughter at that stage, renewal was sought by them, vide application dated 15th June 2020, with the inclusion of their minor son as a co-insured after disclosing the said pre-existing condition. The Respondent

No.1-Tata AIG General Insurance Company Ltd. (*hereinafter 'TATA AIG'*), however, by a communication dated 19th June, 2020 refused to issue a policy on the ground that such a disability would not be covered by their underwriting policy.

32. Vide order dated 25th January, 2023, this Court while reaffirming ***Saurabh Shukla v. Max Bupa Health Insurance Co. Ltd. and Ors., 2022/DHC/005555***, various directions were issued. The relevant extract of the order dated 25th January, 2023 is extracted as under:

12. Prima Facie, in the opinion of this Court, this would be contrary to the provisions in favour of Persons with Disabilities under the Rights of Persons with Disabilities Act, 2016. Moreover, considering TATA AIG General Insurance Company Ltd. is part of a responsible and respected Corporate group, it is expected that persons with disabilities would be treated compassionately. The society in general also has a duty towards persons with disabilities and there is a need to consider and provide for specific products covering disabilities, for such persons.

13. Considering the directions given in Saurabh Shukla (supra) as also considering the facts of the present case, it is directed as under:

i. The IRDAI in its meeting of insurance companies, as directed in Saurabh Shukla (supra) if not already held shall also consider the facts of the present case and consider the manner in which products can be designed for persons with hearing disabilities and persons with implants. The IRDAI while submitting its position to the Court shall consider the existing Policies and Guidelines as may be applicable to persons with disabilities.

ii. The present case shall also be escalated to the higher management of Tata AIG General Insurance Company Ltd. including, if required, to

the Board of Directors to also consider this matter as to how persons with disabilities ought to be accommodated by insurance companies.

iii. A status report in this regard, with the minutes of the meetings and proposals for equitable treatment of persons with disabilities shall be filed, both by Tata AIG and IRDAI, on record by the next date of hearing.

33. TATA AIG General Insurance Company Ltd. has filed an additional affidavit in this matter. As per the affidavit dated 14th March, 2023, which is placed on record, the Product Management Committee of TATA AIG is stated to have held a meeting on 23rd February, 2023. In terms of the said meeting, the stand of the TATA AIG is that it is willing to offer a policy to the minor son of the Petitioners excluding the pre-existing medical condition of the minor son of the Petitioner.

34. The Court has perused the additional affidavit filed by TATA AIG and heard Id. Senior Counsel appearing on behalf of TATA AIG. It is clear that this affidavit does not take into consideration the recent circular of the IRDAI dated 27th February, 2023 as also the model product, which is suggested by the IRDAI.

35. Let the said directions of the IRDAI be considered by the Product Management Committee of TATA AIG and its stand be placed on record *qua* the Petitioner as also in general as to whether it is now designing the products in terms of the circular. Let the stand of TATA AIG be filed by means of an affidavit within 4 weeks.

36. Let a fresh proposal be made *qua* the Petitioner within 4 weeks. Insofar as the designing of products is concerned, for the said purpose, the time schedule as given in *W.P.(C) 6074/2019* titled *Saurabh Shukla v. Max*

Bupa Health Insurance Co. Ltd. and Ors., shall be abided by TATA AIG as well.

37. List on 25th May, 2023.

38. This is a part heard matter.

**PRATHIBA M. SINGH
JUDGE**

MARCH 17, 2023/dk/am

