



**AFR**

**ORISSA HIGH COURT : CUTTACK**

**W.P.(C) No.14213 of 2023**

In the matter of an Application under  
Articles 226 and 227 of the Constitution of India, 1950

\* \* \*

Star Health and  
Allied Insurance Company Limited  
(a Company registered under  
the Indian Companies Act, 1956)  
having its Registered Office  
At 1, New Tank Street  
Valluvar Kottam High Road  
Nungambakkam  
Chennai – 600 034,

Represented by  
Purnedu Kumar Rath  
Aged about 48 years  
Son of Raj Kishore Rath  
Zonal Manager  
Area Office at 2<sup>nd</sup> Floor, Plot No.23(E)  
Ashok Nagar, Behind Hotel Royal Midtown  
P.S.: Capital Police Station, Bhubaneswar  
District: Khordha – 751 009. ...

Petitioner.

-VERSUS-

- 1.** Insurance Ombudsman  
Represented by Secretary  
Office of Insurance Ombudsman  
62, Forest Park, Bhubaneswar – 751 009.
- 2.** Mrs. Sebashree Mohanty  
Aged about 60 years



Wife of Siba Prasad Mohanty  
At: Plot No.37, Ashok Nagar  
Bhubaneswar – 751 009  
District: Khordha.

- 3.** AMRI Hospitals  
(a Unit of AMRI Hospitals Limited,  
a Company registered under  
the Indian Companies Act, 1956)  
having its Registered Office and Hospital  
At: Plot No.1, Beside Satya Sai Enclave  
Khandagiri, Bhubaneswar – 751 030  
District: Khordha.
- 4.** Dr. Amit Jaiswal  
Senior Consultant &  
Director of Department of Neuro Surgery  
AMRI Hospitals, Plot No.1  
Beside Satya Sai Enclave, Khandagiri  
Bhubaneswar – 751 030  
District: Khordha. ... Opposite parties.

***Counsel appeared for the parties:***

- For the Petitioner : M/s. Susanta Kumar Dash,  
Ananga Kumar Otta,  
Swetlana Das,  
Pravin Das and  
Pragyant Harichandan,  
Advocates
- For the Opposite party : M/s. Biswaranjan Das,  
No.2 Sanjeeb Chakravarty,  
Tapaswini Sinha,  
Padma Kar, Advocates
- For the Opposite party : M/s. Durga Prasad Pradhan,  
No.3 Pratyusha Ranjan Nayak,  
Manas Ranjan Kar,



Tofan Kumar Sahoo,  
Advocates

*P R E S E N T:*

**HONOURABLE  
MR. JUSTICE MURAHARI SRI RAMAN**

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**Date of Hearing : 30.10.2024 :: Date of Judgment : 21.11.2024**

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**JUDGMENT**

Assailing Award No.IO/BHU/A/HI/0153/2022-23, dated 16.01.2023 framed by the opposite party No.1, the Insurance Ombudsman, Bhubaneswar, under Annexure-7 with reference to Complaint Ref. No.BHU-H-044-2223-0351 pertaining to Policy No.P/191200/01/2022/018233, by way of filing the instant writ application under Article 226/227 of the Constitution of India, the petitioner has made the following prayer(s):

*“It is therefore prayed that this Hon’ble Court may graciously be pleased to issue notice to the opposite parties, call for the relevant records and after hearing the parties, may graciously be pleased to:*

*Allow the application and set aside the impugned order/award under Annexure-7 to the writ petition;*

*And/or to remit the matter back to the opposite party No.1, for fresh disposal in accordance with law, by taking into account the question of fraud;*



*And may be pleased to pass such other order as it may deem fit and proper in the facts and circumstances of the case.*

*And for this act of kindness, the petitioner-Company as in duty bound shall ever pray.”*

**Facts:**

**2.** Facts, as adumbrated by the petitioner-Insurance Company, reveal that opposite party No.2-claimant before the Ombudsman-opposite party No.1 submitted her Proposal Form dated 14.02.2022 for availing the benefit of health or medical insurance policy. Though the proposal form provided for the insured's consent *qua* the information as contained in the said proposal, the proposer alleged to have given false declaration to the effect that she had no pre-existing health history while submitting such proposal form.

2.1. It was necessary for the opposite party No.2-insured to disclose the true and correct material fact in the proposal form and had the facts in relation thereto made known to the petitioner-Insurance Company or upon the true disclosure in the proposal form, the petitioner-Insurance Company would have consider issue of the policy otherwise.

2.2. The opposite party No.2-insured with UHID registration No.AM40246794 on 16.12.2021 being diagnosed with



Cerebellopontine Angle Tumour<sup>1</sup> (“CP Angle Tumour”, for short), was advised “surgery” by opposite party No.4-Dr.

<sup>1</sup> Visiting <http://www.ijsr.net/archive/v10i12/SR211220184114.pdf>, an article titled, “COMPARATIVE STUDY OF VARIOUS **CP ANGLE REGION TUMORS** IN WESTERN RAJASTHAN” by Akhilesh Kumar [Resident, Department Of Neurosurgery, Dr. S. N. Medical College, Jodhpur, Rajasthan Corresponding author Email: akkithestar2007[at]gmail.com], Vijayveer Singh [Senior Resident, Department of Neurosurgery, Dr. S. N. Medical College, Jodhpur, Rajasthan] , Shailesh Thanvi [Associate Professor, Department of Neurosurgery, Dr. S. N. Medical College, Jodhpur, Rajasthan], Hemant Kumar Beniwal [Assistant Professor, Department of Neurosurgery, Dr. S. N. Medical College, Jodhpur, Rajasthan], Sharad Thanvi [Professor, Department of Neurosurgery, Dr. S. N. Medical College, Jodhpur, Rajasthan] published in the International Journal of Science and Research (IJSR) ISSN: 2319-7064 SJIF (2020) : 7.803, reveals the following feature:

*“Abstract: Introduction: Tumors of the cerebellopontine (CP) angle account for 5%-10% of all intracranial tumors. Schwannomas are the most common tumor with usual presentation as hearing loss and non-acoustic tumors usually presented with variety of symptoms and sign from headache to cranial nerve deficit to cerebellar features to brainstem compression features.*

*Aim: Evaluation of the incidence of various CP angletumors in western Rajasthan and comparison of histopathology with surgical outcome and complications.*

*Methods: A prospective study was conducted in Neurosurgery department of Dr. S. N. Medical College, Jodhpur, Rajasthan for 2 years duration from September 2019 to August 2021. Total 30 patients were evaluated during this period. Evaluation was done on demography, histopathology, clinical and radiological aspects and post-operative outcomes. Simple statistical methods like table and graphs were used. Results: Tumors of the CP angle account for 5%-10% of all intracranial tumors. Most common extra-axial CP angle tumor is Schwannoma (46%), followed by Meningioma (23%), Epidermoid (20%), Arachnoid cysts (15%). 41-50 years is the most common age group involved. Schwannomas are common extra-axial CPA followed by meningiomas and others. **Overall, most common presenting symptom was hearing loss, followed by headache, tinnitus and others. Complication was seen in 10 cases in the form of cranial nerve deficit, hydrocephalous, cerebellar symptoms, hematoma and wound infection.***

*Conclusion: Schwannomas are the most common tumor with usual presentation as hearing loss and non-acoustic tumors usually presented with variety of symptoms and sign from headache to cranial nerve deficit to cerebellar features to brainstem compression features.*

*Introduction:*

**Cerebellopontine angle concerns with the region of brain located between the superior and inferior limbs of angular cerebellopontine fissure formed by the petrosal cerebellar surface folding around pons and the middle cerebellar peduncle.** 5th to 11th cranial nerve are located near or within the angular space between the two limbs commonly referred to as the Cerebellopontine angle. Tumors of the cerebellopontine angle account for 5%-10% of all intracranial tumors. Acoustic neuromas (vestibular schwannomas), arising from the neurilemmal junction of the vestibular nerve, account for between 70%–80% of these tumors. Other sources of tumor in this region include the meninges (meningioma, arachnoid cysts), epidermal cell rests (giving rise to epidermoid cysts, dermoid cyst, and cholesteatomata), arachnoid villi/granulations and



Amit Jaiswal, Senior Consultant and Director of Neuro Surgery (Brain and Spine) engaged in AMRI Hospital, Bhubaneswar. Suppressing this fact, the opposite party No.2-insured misled the petitioner-Insurance Company while submitting the Proposal Form on 14.02.2022.

2.3. The opposite party No.2-insured got herself admitted into AMRI Hospital on 19.06.2022 under the treatment of Dr. Amit Jaiswal in the Department of Neurosurgery with different ID Registration Number, *i.e.*, UHID No.AM 40273927. The said document is under Annexure-3 which reads thus:

*“To whom it may concern,*

*Patient: Mrs. Sebashree Mohanty, aged 54 years, female*

*Presented to Emergency Department on 19.06.2022 with C/o. **Severe Headache, Vertigo, Persistent vomiting, Abnormal gait, Dizziness.***

*At the time of admission she was having local seizures.*

*Initial Stabilization was done in the Emergency Department and Emergency call was attended by myself (Dr. Amit Jaiswal).*

*There was no associated comorbidities or any sign of chronic illness **(no previous reports available).***

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*primary intrinsic lesions glioma, ependymoma), fat cells (lipomas), tumors extending from the cranial base (for example, glomus jugulare tumors), vascular lesions (haemangiopericytoma), and secondary tumors.*  
\*\*\*”



*No evidence of being symptomatic in recent years, no history of hospitalization in recent past.*

*All relevant investigations were done with prior consent.*

*MRI Brain Shaved S/O LT CP ANGLE TUMOUR*

*In view of Present critical condition immediate Surgical Intervention was advised.*

*On 21.06.2022 Craniotomy with excision of tumour was successfully done.*

*Post-operative period was uneventful and patient was managed with Broad Spectrum Antibiotics.*

*Anticonvulsants and Other Supportive Drugs.*

*On 28.06.2022, she was discharged with Oral Medications and Physiotherapy.”*

2.4. A referral consultation to one Dr. P.K. Dash, in the Department of Cardiology, it is, however, come to fore that the opposite party No.2-insured was previously diagnosed with Chronic Obstructive Pulmonary Disease (“COPD”, for brevity) while the Computed Tomography Scan (“CT Scan”) of the brain was undertaken on 22.06.2022. Biopsy Report of opposite party No.2 revealed “Morphological features of Schwannoma”. The said CT Scan report and Biopsy Report as available at Annexure-4, reveals the following:

*“CT Scan of brain  
NCCT Head*



*Sequential axial scans were performed starting from the base of the skull employing 5mm sections.*

*Follow up case of left CP angle tumour, post-craniotomy status.*

*Multiple small extra-axial air foci seen in left fronto-parietal region, right CP angle cistern, supra-sellar cistern and left sylvian fissure.*

*Bilateral cerebral brain parenchyma show normal attenuation pattern.*

*Bilateral basal ganglia, thalami & internal capsule are normal.*

*Cerebellum and posterior fossa structures are normal.*

*Ventricles and cisternal spaces are normal.*

*No intracranial hemorrhage/ shift of midline structures.*

*B/L mastoids are well pneumatized.*

*Visualised para-nasal sinuses and b/ 1 orbits are normal.*

*Radiologist Signature*

*Report Date & Time: 22.06.2022 14:10*

*Sd/-*

*Dr. Nikhil Haribhau Ihare,  
DNB (Radiodiagnosis)*

*Biopsy Large*

*Lab Number: S-22/1748*

*Clinical Information: ? Schwannoma.*

*Specimen Information: CP angle SOL.*

*Gross Description: Received in formalin labelled with patient's name, designated "CP angle SOL" are multiple tan-white to tan-hellow soft tissue fragments, measuring*





*2.5 x 2 x 1 cm in aggregate. Entirely submitted in two cassettes from A1 & A2.*

*Microscopic Description:*

*CP angle SOL, excision:*

*Sections show a tumor showing hypercellular and hypocellular areas composed of elongated cells having spindle to oval nuclei and ill defined cytoplasm. Areas of nuclear palisading noted forming Verocay bodies. No mitotic activity or necrosis noted.*

*Final Diagnosis:*

*- Morphological features of Schwannoma.*

*Advice :*

*- Immunohistochemistry for confirmation and Ki-67 proliferative index.*

*Note:*

*- All the histopathology and bone marrow biopsy paraffin blocks, slides, and corresponding reports are stored for 10 years. The histopathology specimens are stored for 30 days from the day of reporting.*

*---End of Report---*

*Sd/-*

*Dr. Shilpay Jha,*

*M.D. (Pathology)*

*Consultant Pathologist"*

2.5. The opposite party No.2-insured submitted her claim against Policy No.P/191200/01/2022/018233 after undergoing surgery for LT CP Angle Tumour, which was registered as Claim No.CIR/2023/191200/038392, bearing the Hospital I.D. Registration No.AM40273927 disclosing the treating doctor, namely, Dr. Amit Jaiswal, opposite party No.4.



2.6. After receipt of the claim form under Annexure-5 from opposite party No.2-insured, upon investigation by the petitioner-Insurance Company it could come to its notice that the treating doctor, *i.e.*, opposite party No.4 certified on 19.07.2022 that the opposite party No.2-insured complained of sickness just one day before and had no earlier consultation or hospitalization prior to 19.06.2022. Said certificate is apparently false and deceitful in view of the fact that opposite party No.2-insured, being examined by Dr. Amit Jaiswal, opposite party No.4, in the same hospital, *i.e.*, AMRI Hospital, was advised surgery as is evinced from Annexure-2 to the writ petition.

2.7. It is revealed that opposite party No.2-insured had concealed material facts and/or had provided incorrect information with respect to her past medical history, inasmuch as opposite party No.2-insured was under treatment for coronary artery disease and Chronic Obstructive Pulmonary Diseases prior to the issuance of the insurance policy and such material fact was not disclosed by her while seeking to obtain the insurance policy. The petitioner-Insurance Company, in consideration of the relevant materials as furnished by the opposite party No.2 *vis-a-vis* facts came to notice during investigation, took a decision to repudiate the insurance claim by communicating the decision to the



opposite party No.2 through Letters dated 18.08.2022 and 28.09.2022 under Annexure-6 series. The said two letters read as under:

“To

DATE 18/08/2022

Mrs. Sebashree Mohanty  
C/o. Mr. S.P. Mohanty  
Plot No.37, Ashok Nagar,  
Bhubaneswar  
NA  
Pincode: 751009  
Na  
Na  
9437282340  
Dear Customer,

Sub: Repudiation of claim

We refer to the mediclaim preferred by you. Details are briefly given below:

Claim Intimation Number :	CIR/2023/191200/0383928
Name of the insured-Patient:	Sebashree Mohanty
Age/Sex :	54 years 7 months / Female
Product name :	Star Critical Illness MultiPay Insurance Policy
Policy number :	P/191200/01/2022/018233
Policy period :	From: 14-FEB-22 To:13-FEB-23
Diagnosis :	Left CP Angle Schwannoma
Date of admission :	18/06/2022
Name of the Hospital and: Location	Amri Hospitals Limited- Bhubaneswar

We have processed the claim records relating to the above insured-patient seeking reimbursement of hospitalization expenses for treatment of left cerebellopontine angle schwannoma.

It is observed from the submitted indoor case records, the insured patient has a history of coronary artery disease and chronic



*obstructive pulmonary disease but treating doctor letter states no past history of coronary artery disease and chronic obstructive pulmonary disease. Thus there is discrepancy in the records which amounts to misrepresentation of facts.*

*As per Condition No.1 of the policy issued to you, if there is any misrepresentation whether by the insured person or any other person acting on his behalf, the Company is not liable to make any payment in respect of any claim.*

*Further, the insured has not submitted the documents (past treatment medical records) called for by us which amounts to non submission of required documents.*

*As per Condition No.2 of the above policy, the insured person has to submit all the required documents and details called for by us.*

*We are therefore unable to settle your claim under the above policy and we hereby repudiate your claim.*

*The above decision has been taken as per the terms and conditions of the policy and based on the claim details / documents submitted.*

*We are always at your service.*

*Yours faithfully,  
Authorized Signatory.  
S.R.*

*This is an official system generated communication and does not require a signature.*

*In case of any questions on the rejection, kindly contact our Senior Doctor at (7305614888) during 10 AM to 6 PM on all Working days (Monday to Saturday).*

*For any other enquiries kindly use Whatsapp facility on +919597652225.*

*PS:*

*In case you are not satisfied with the above decision, you may wish to represent to our Grievance Department at the following address:*



*Mr. Radha Vijayaraghavan,  
Grievance Redressal Officer,  
Corporate Grievance Department,  
4<sup>th</sup> Floor, Balaji Complex, No.15, Whites Lane,  
Whites Road, Royapettah, Chennai-600014.  
(Landmark: In the lane next to Satyam Theatre Parking Area)  
Telephone:044-4366,  
Exclusive Number for Senior Citizen:044-6900 7500  
E-mail id:-gro@starhealth.in*

*Thereafter if you wish to pursue the matter further, you may represent to the Office of the Insurance Ombudsman whose address is given below:*

*Office of the Insurance Ombudsman,  
62, Forest Park,  
Bhubaneswar-751009,  
Tel: 0674-2596461/2596455  
Fax: 0674 -2596429  
[bimalokpal.bhubaneswar@cioins.co.in](mailto:bimalokpal.bhubaneswar@cioins.co.in)*

*Copy to : Area Office – Bhubaneswar  
2<sup>nd</sup> Floor, Plot No.23 (E), Ashok Nagar,  
Bhubaneswar-751009.”*

*\*\*\**

*“To*

*DATE 28/09/2022*

*Mrs. Sebashree Mohanty  
C/o. Mr. S.P. Mohanty  
Plot No.37, Ashok Nagar, Bhubaneswar  
NA  
Pincode: 751009  
NA  
NA  
9437282340*

*Dear Customer,*

*Sub: Repudiation of Claim*



*We refer to the mediclaim preferred by you. Details are briefly given below:*

<i>Claim Intimation number :</i>	<i>CIR/2023/191200/0383928</i>
<i>Name of the insured-Patient:</i>	<i>Sebashree Mohanty</i>
<i>Age/Sex :</i>	<i>54 years 7 months / Female</i>
<i>Product name :</i>	<i>Star Critical Illness MultiPay Insurance Policy</i>
<i>Policy number :</i>	<i>P/191200/01/2022/018233</i>
<i>Policy period :</i>	<i>From: 14-FEB-22 To:13-FEB-23</i>
<i>Diagnosis :</i>	<i>Left CP Angle Schwannoma</i>
<i>Date of admission :</i>	<i>18/06/2022</i>
<i>Name of the Hospital and: Location</i>	<i>Amri Hospitals Limited- Bhubaneswar</i>

*We have received your request for reconsideration of your repudiated claim and we have scrutinized the submitted documents.*

*Please note that the repudiation of the claim based on the points mentioned in our earlier letter is in order. Hence we regret to inform you that we are unable to pay the claim and reiterating our stand for repudiation.*

*Yours faithfully,  
Authorized Signatory.  
S.R.*

*This is an official system generated communication and does not require a signature.*

*In case of any questions on the rejection, kindly contact our Senior Doctor at (7305614888) during 10 AM to 6 PM on all Working days (Monday to Saturday).*

*For any other enquiries kindly use Whatsapp facility on +919597652225.*

*PS:*

*In case you are not satisfied with the above decision, you may wish to represent to our Grievance Department at the following address:  
Mr. Radha Vijayaraghavan,  
Grievance Redressal Officer,*



*Corporate Grievance Department,  
4th Floor, Balaji Complex, No.15, Whites Lane,  
Whites Road, Royapettah, Chennai-600014.  
(Landmark: In the lane next to Satyam Theatre Parking Area)  
Telephone:044-4366, Exclusive Number for Senior Citizen:044-6900  
7500*

*E-mail id:-gro@starhealth.in*

*Thereafter if you wish to pursue the matter further, you may  
represent to the Office of the Insurance Ombudsman whose address  
is given below:-*

*Office of the Insurance Ombudsman,  
62, Forest Park,  
Bhubaneswar-751009,  
Tel: 0674-2596461/2596455  
Fax: 0674 -2596429*

*[bimalokpal.bhubaneswar@cioins.co.in](mailto:bimalokpal.bhubaneswar@cioins.co.in)*

*Copy to : Area Office – Bhubaneswar  
2<sup>nd</sup> Floor, Plot No.23 (E), Ashok Nagar,  
Bhubaneswar-751009.”*

- 2.8. Being aggrieved by the above decision of the petitioner-Insurance Company repudiating her claim, the opposite party No.2-insured filed a complaint before opposite party No.1-Insurance Ombudsman, constituted under the Insurance Ombudsman Rules, 2017, on 16.12.2022. Her case before the Insurance Ombudsman was to the effect that she was never suffering from any disease at the time of availing the insurance policy. Though the petitioner-Insurance Company is entitled to repudiate the claim under Section 45 of the Insurance Act, 1938, the impugned Award No.IO/BHU/A/HI/0153/2022-2023, dated 16.01.2023 has been passed by the Insurance Ombudsman directing the petitioner-Insurance Company to pay Rs.10,00,000/- to opposite party No.2-insured in terms of conditions stipulated in



the insurance policy. The relevant portion of the impugned award passed by the Insurance Ombudsman reads as follows:

*“21. Observation & Conclusion:*

*In the instant case, the Insurance Company has denied the claim on the ground of pre-existing “Chronic Obstructive Pulmonary Disease (COPD)”. However, neither in the self-contained note nor during personal hearing the Insurance Company could produce any evidence to substantiate their claim of pre-existing disease of prior knowledge of the policy holder regarding such disease. The medical prescription reveals that it was detected in emergency department where a MRI of brain was done on complaint of headache. In the totality of circumstances, I found the repudiation fully unjustified.*

*During hearing, the policy holder claimed that he is entitled for a lump-sum of Rs.10,00,000/- as per the policy provisions. On perusal of the policy this forum finds that a policy holder will be entitled for the lump-sum payment under following conditions:*

- A. Disease must be covered under specified major diseases be first diagnosis must be after 90 days of policy commencement.*
- B. The insured person must survive 15 days from diagnosis of major disease.*

*In the instant case, the policy holder meets all the pre-conditions and hence, the lump-sum amount*





*needs to be paid as per the terms and conditions clearly laid down in the preamble of the policy.*

*AWARD*

*The Insurance company is directed to pay Rs.10,00,000/- (Rupees ten lakh only) as full and final settlement in Complaint No.BHU-H-044-2223-0351 as per the policy conditions.*

*This award is passed accordingly.*

*22. The attention of the Complainant and the Insurer is hereby invited to the following provisions of Insurance Ombudsman Rules, 2017.*

*a. According to Rule 17(6) of Insurance Ombudsman Rules, 2017 the Insurer shall comply with the award within 30 days of the receipt of the award and shall intimate the compliance of the same to the Ombudsman.*

*b. As per Rule 17(8) of the said Rules, award of the Insurance Ombudsman shall be binding on the Insurers.*

*Dated at Bhubaneswar on the 16<sup>th</sup> day of January, 2023.*

*Sd/-*

*Manoj Parida, IAS (Rtd.)  
Insurance Ombudsman  
For the State of Odisha*

*2.9. Hence, the present writ petition questioning the propriety and legality of the impugned Award dated 16.01.2023 under Annexure-7.*



**Hearing:**

3. Notices in the writ petition being issued *vide* Order dated 08.05.2023, the opposite party Nos.3 and 4 being represented by Sri Durga Prasad Pradhan, Advocate and associates filed counter affidavit on 25.07.2023; however, the opposite party No.2-insured represented by M/s. Biswaranjan Das, advocate and associates, chose not to file any response to the averments/contents of the writ petition.

3.1. The instant matter was listed on 25.01.2024, 28.02.2024 and 19.03.2024 for completion of pleadings. None appeared for the opposite parties at the time of call on 22.10.2024 and on the request of the petitioner-Insurance Company the matter stood adjourned to 29.10.2024. Again the matter appeared on board on 30.10.2024 for hearing on admission.

3.2. Since no counter affidavit is forth coming from the opposite party No.2-Sebashree Mohanty even though she appeared through her counsel on 27.06.2023. Therefore, it is construed that she does not wish to file any response, but to support the Award dated 16.01.2023 of the Insurance Ombudsman.

3.3. Dr. Sidharth Mishra, Medical Superintendent of AMRI Hospitals, Bhubaneswar, being identified by Sri Durga



Prasad Pradhan, learned Advocate, filed counter affidavit on 25.07.2023 on behalf of opposite party Nos.3 and 4.

- 3.4. Responding to the averments of counter affidavit of the opposite party Nos.3 and 4, the petitioner-Insurance Company has filed rejoinder affidavit on 02.04.2024.
- 3.5. Despite opportunities afforded, none appeared for the opposite party Nos.1 to 4 on the date(s) of hearing.
- 3.6. As pleadings are complete, finding no alternative, this matter is taken up for final hearing at the stage of admission.
- 3.7. Accordingly, heard Sri Susanta Kumar Dash, learned Advocate for the petitioner. None appeared for the opposite parties at the time of call and the matter stood reserved for preparation and pronouncement of Judgment.

***Rival contentions and submissions:***

4. Sri Susanta Kumar Dash, learned counsel appearing for the petitioner-Insurance Company submitted that if the impugned order is allowed to stand, the same would cause failure of justice, inasmuch as the Insurance Ombudsman while passing the Award under the provisions contained in the Insurance Ombudsman Rules, 2017 having the wider power should have



exercised it with greater care and circumspection, so as to check the fraud element involved in the claim. Non-consideration of relevant aspects in proper perspective has rendered the Award vulnerable.

4.1. Sri Susanta Kumar Dash, learned Advocate for the petitioner further submitted that the proposal form specifically provided for columns in which opposite party No.2-insured was required to furnish all the necessary details in regard to her past medical history. The information as required to be furnished by opposite party No.2-insured was deliberately answered/supplied in the negative by her and, as such, it is amply clear that opposite party No.2 obtained the policy by perpetrating fraud on the petitioner-Insurance Company.

4.2. He further submitted that when the above material was available before the learned Ombudsman, without discussing the evidence particularly that Dr. Amit Jaiswal, Senior Consultant, who examined the petitioner, assigned with UHID: AM40246794, on 16.12.2021 and suggested surgery having detected “CP Angule Tumour” and “Hearing Loss” (Annexure-2), the same doctor with the same designation should not have issued certificate to the effect that “There was no associated comorbidities or any sign of chronic illness



(no previous reports available); No evidence of being symptomatic in recent years, no history of hospitalization in recent past; \*\*\* MRI Brain Shaved S/O LT CP Angle Tumour \*\*\* on 21.06.2022 Craniotomy with excision of Tumour was successfully done” (Annexure-3). The Ombudsman, it is urged that, failed to appreciate that such surgery was undertaken by the said doctor, opposite party No.4, on 21.06.2022 with different ID bearing No.AM40273927 assigned by the said AMRI Hospital as is manifest from Annexure-4.

4.3. The observations and conclusions of the learned Ombudsman are bereft of any reasoning on such material which formed part of the record and are cryptic. The learned Ombudsman has completely overlooked the basic requirements of the insurance contract that there has to be disclosure in “good faith” which is *sine qua non* for an insurance contract to be enforceable when a claim under such contract is made.

4.4. Expanding his submission, Sri Susanta Kumar Dash, learned counsel argued that it is settled principle of law that a contract of insurance is governed by the principle of utmost good faith, *i.e.*, by the doctrine of *uberrima fides* which would imply that all parties to an insurance contract must deal in good faith, making a true declaration of all material facts in the insurance



proposal. In other words, insurance contract requires the highest standard of good faith during the disclosure of all material facts that could influence the decision of the other party. Failure to adhere to *uberrimae fidei* is ground for voiding the agreement.

4.5. In the present case, the insured had certainly not disclosed material information. Learned counsel drew attention of this Court to Claim Form at Annexure-5 of the writ petition to indicate that misleading facts have been furnished by the petitioner. It is submitted that the insurer is within its right to repudiate the contract of insurance policy in the event of lack of making disclosure of relevant particulars.

4.6. He also contended that the opposite party No.2-insured has disentitled herself from getting any relief or assistance on the strength of the Award *vide* Annexure-7, inasmuch as the same is vitiated by fraud. Even after passing of the impugned Award, the petitioner-Insurance Company wrote a letter on 03.03.2023 to the opposite party No.4 seeking further clarification upon his letter stating that the opposite party No.2 had no past record of her ailment, by drawing his attention to the clinical record of the patient in the hospital maintained under his signature on 16.12.2021. Since opposite party No.4 did not respond to the said letter, the petitioner-



Insurance Company again brought the fact to the notice of opposite party No.3 seeking clarification at their end by letter dated 16.03.2023, but the petitioner-Insurance Company ultimately received thoroughly evasive replies thereto. The letters dated 03.03.2023 and 16.03.2023 issued by the petitioner-Insurance Company and replies thereto are reproduced hereinbelow:

*“To* *03.03.2023*  
*Dr. Amit Jaiswal, MS, Mch,*  
*Senior Consultant – Neurosurgery,*  
*AMRI hospitals,*  
*Plot No.1, Beside Sathya sai enclave, Khandagiri,*  
*Bhubaneswar-751030,*  
*Odisha*

*Dear Dr. Amit Jaiswal,*

*This letter is with reference to the claim made on us (vide Claim Number: CIR/2023/191200/0383928- under Criticare Multipay policy – commencing from 14/02/2022 TO 13/02/2023) by our client and your patient Mrs. Sebashree Mohanty, 53/female, who was diagnosed with CP angle tumor.*

*The following are our observations pertaining to this claim:*

- We had enquired from you the duration of the CP angle tumor and when it was first diagnosed.*
- You had given a letter dated 19-7-2022 stating that the patient mentioned above was diagnosed with*



*Left CP angle tumor in the emergency dept evaluation on 19-6-2022.*

- *You had also mentioned that the patient had NO PRIOR consultation prior to 19-6-2022.*
- *Based on the above letter from you we had been awarded against by the Honorable Ombudsman.*
- *Subsequently we had arranged for an internal verification of the records available at AMRI hospital wherein we found a clinical record dated 16-12-2021 (under your sign and letter head) which stated that the patient was diagnosed with Left CP ANGLE TUMOR on 16-12-2021 – this falls much prior to your declaration letter dated 19-7-2022 and much before the Insurance Policy was obtained from us – this act of yours amounts to suppression of material facts and lead our company to a huge financial loss of Rs.10 Lakhs.*

*Based on the above we seek an explanation for the above – In the meantime we would be filing a Writ Petition in the Honorable High Court – and your hospital will be impleaded in the Writ Petition as a respondent so as to enable to make your stand in the legal proceedings.”*

*\*\*\**

*“To* *16<sup>th</sup> March 2023*  
*The Unit Head,*  
*AMRI Hospitals,*  
*Plot No.1, Beside Sathya Sai Enclave,*  
*Khandagiri, Bhubaneswar-751030, Odisha.*  
*Dear Sir,*

*Policy No.P/191200/01/2022/018233*

*Claim No.CIR/2023/191200/0383928*

*We have sent a letter to Dr. Amit Jaiswal, MS, Mch, Senior Consultant-Neurosurgery of your Hospital, by*





*mail on 3<sup>rd</sup> March 2023, seeking clarification from him, the reason for giving a false declaration that the Patient Mrs. Sebashree Mohanty, was first diagnosed with CP angle tumor upon evaluation on 19<sup>th</sup> June 2022, whereas, as per records of your Hospital the said Patient was diagnosed with CP angle tumor on 16<sup>th</sup> December 2021, in OP Department of your Hospital and attended to by the same Dr. Amit Jaiswal.*

*Basing on the certificate dated 19<sup>th</sup> June 2022, the Hon'ble Insurance Ombudsman, Bhubaneswar has awarded a compensation of Rs.10 Lakhs, against our Company.*

*Since we have not received any response from Dr. Amit Jaiswal so far, we are addressing this letter to you. We seek your response within the next 3 days from receipt of this letter, in the absence of which we will presume that your Hospital has nothing to say, and will proceed to take it up with the Hon'ble High Court at Cuttack.”*

*\*\*\**

*“To* *24.03.2023*  
*Mr. Abhijit Mitra,*  
*ZOCA, Odisha,*  
*Star Health And Allied Insurance Co. Ltd.,*  
*2<sup>nd</sup> Floor, Plot No.23(E), Behind Hotel Royal Midtown,*  
*Ashok Nagar, Bhubaneswar-751019.*

*Ref:- This is in reference to your letter dated 21.03.2023.*

*Dear Mr. Mitra,*

*Please note that the matter has been informed to Dr. Amit Jaiswal and he will be sending his response to you very soon.*



*In reference to the above, please note that as per the record of Mrs. Sebashree Mohanty (UHID AM40273927) has no previous history of treatment at AMRI Hospitals, Bhubaneswar prior to dt.19.06.2022.*

*As per your letter, you have mentioned about certain record dated 16.12.2021 of the said patient, but we do not have any such record related to treatment. We request you to share the copy of the said record for further checking of the same from our end.”*

*\*\*\**

*“To*

*24.03.2023*

*Dr. Guru,*

*V.P. (Medical),*

*Star Health And Allied Insurance Co. Ltd.*

*Ref:- This is in reference to your mail dated 03.03.2023.*

*Dear Dr. Guru,*

*This is to inform that as per the records of the hospital, the patient named Mrs. Sebashree Mohanty with UHID. AM40273927 **has no previous history of treatment at AMRI Hospitals, Bhubaneswar prior to dt. 19.06.2022.***

*Based on records maintained with the hospital, on dt.19.06.2022, the patient was admitted for emergency treatment at the hospital. Upon studying the condition of her health, she was referred for inpatient services at the hospital for further treatment.*

*Upon your requisition, the hospital has presented all the documents to the best of documents retained with the hospital.*

*The hospital does not have any record in the name of the patient Mrs. Sebashree Mohanty dtd.16.12.2021.*



*However, since you have mentioned about such record, you are requested to share the copy of the same for further checking of the records by the hospital.”*

4.7. It is also submitted by the learned counsel for the petitioner that the Petitioner-Insurance Company has sent a petition on 31.03.2023 to the learned Ombudsman to recall its Award dated 16.01.2023 passed in Complaint No.BHU-H-044-2223-0351 along with documents and the same was duly received on 03.04.2023. But, the Petitioner-Insurance Company has come to learn that the said petition is not likely to be entertained on the sole ground that the learned Ombudsman has become *functus officio* after passing of the impugned Award dated 16.01.2023.

4.8. It is further submitted by the learned counsel for the petitioner that since the petitioner-Insurance Company did not find any response to its letters dated 03.03.2023 and 16.03.2023 *vide* Annexure-8 series, the petitioner-Insurance Company again sent a letter to the opposite party No.3 on 07.04.2023 to confirm the fact that opposite party No.2 was earlier treated by opposite party No.4 on 16.12.2021. The opposite party No.3 in answering to the aforesaid letter dated 07.04.2023, by its letter dated 17.04.2023 intimated the petitioner-Insurance Company as follows:



“To

17.04.2023

*Mr. Abhijit Mitra,  
ZOCA, Odisha,  
Star Health And Allied Insurance Co. Ltd.,*

*Ref:- Reply to your e-mail dated 07.04.2023.*

*Dear Mr. Mitra,*

*This mail communication is in reference to your e-mail dated 07<sup>th</sup> April, 2023.*

*We would like to inform that the document presented before us regarding the OPD prescription of patient Mrs. Sebashree Mohanty on 16.12.2021 refers to the patient with UHID AM40246794 and the patient in dispute with the name Mrs. Sebashree Mohanty is registered with us vide UHID AM40273927 which was created on 19.06.2022. The Patient ID/UHID in both the cases are different.*

*Moreover, the requisition made by you vide letter dtd.27.07.2022 to Mrs. Sebashree Mohanty for the requirement of additional document / information of the patient with specifically mentioned DOA on 18.06.2022 & DOD on 18.06.2022 refers to the patient with UHID AM40273927 and not AM40246794. Therefore, the report is submitted accordingly by us. Also, we have always provided the details in the same light as per your requisition. We have always maintained transparency in providing the documents / records required by the concerned authorized person/s at all times. But, it is also an official protocol to keep the confidential details of the patient which is so not connected with some matter having no relevancy.*



***However, we cannot provide a conclusive opinion that the patient with UHID AM40246794 is one and the same person with UHID AM40273927 as the address of the patients mentioned in these two cases is different. But, it is a high possibility that the both UHIDs correspond to a single person as the age and mobile numbers in both the cases is same. As because the patient with UHID AM40273927 was only treated for OPD on 16.12.2021, we do not have any ID proof of the patient in order to corroborate the other details with the patient having UHID AM40273927 and come to a conclusion as because the patient with UHID AM40273927 was only treated for OPD on 16.12.2021. As per our general course of practice; we procure and keep records of the patient's ID proof in case of admission (IPD) cases.***

*Therefore, we are unable to provide a conclusion that both the UHID belongs to the same person or not as because, we do not have enough documents to corroborate and derive a concrete conclusion to it. We also do not have the prescription with us as provided by you as because storing of all OPD prescription is not possible in each and every case. However, the prescription seems likely to be true. The bill so generated with UHID AM40246794 on 16.12.2021 bears the same name, age and mobile number to that of UHID AM40273927 except the address of the patient.*

***In general course of practice, a single UHID is created against a patient which is used for the lifetime of that patient for all his/her future encounters at the hospital so as to maintain the treatment record of such patient. It is the onus of the patient/attendant of the patient to disclose the***



***past visits at the hospital so as the same person could be tagged with his/her previously created UHID.*** This allows non-repetition of creation of UHID of same patient time and again as well as maintaining a patient database for better diagnosis of the patient. The hospital does not promote the creation of multiple UHIDs for the same person. In case, two UHIDs is created against the same person, is just because of the suppression of material facts of the patient / attendant of the patient regarding the patients previous consultation at the hospital.

*In case, the two UHID belongs to the same person, then it is high possibility that the patient / attendant of the patient must have suppressed the material facts regarding her past treatment at the hospital and a new Patient ID was generated / created without much delay on an urgent basis as the patient was admitted at the emergency ward and needed urgent medical support. And it is also a fact that, a number of patient with the same name i.e., Mrs. Sebashree Mohanty, exists in our patient databse who have been previously treated at the hospital on several occasions to which the data provided by the patient during the admission on 19.06.2022 did not matched completely with any of the patient retained in our database. Therefore, a new Patient ID was created in her name on an urgent basis.*

*There was no scope of suspicion or doubts regarding the previous treatment of the patient at AMRI Hospitals, Bhubaneswar as the patient / attendant of the patient never disclosed the patient's the past treatment details at the hospital. **The ambiguity has only been arisen due to the non-disclosure of previous consultation by the patient at the hospital due to which a new UHID***



**was created.** *The hospital has no mala fide intentions as there is no scope to derive any benefit out of this.*

*Generally, an average of around 15-30 number of OPD appointments are fixed with Dr. Amit Jaiswal for providing consultations to the patients. Also it is difficult in the part of a prudent man or even a doctor to recognize a patient / person after a long gap of 6 months duration having an appointment of around 5-10 minutes in the past. Therefore, there is no scope to derive any opinion without relying to the documents.*

*You may be pleased to find that the certificates so issued by Dr. Amit Jaiswal pertains to the material facts of the patient with Patient ID/ UHID AM40273927 as per your requisition letter made to Mrs. Sebashree Mohanty dated 27.07.2022. This confirms that we have provided the required documents as per your requisition.*

*Therefore, there has been no deficit in our side in providing the details of the patient as because, the previous requisitions made by you indicated to the patient named Mrs. Sebashree Mohanty with Patient ID/ UHID AM40273927. We have always placed reports / documents as per the requisition of the concerned authorized persons/ s keeping it clear and transparent.”*

- 4.9. Sri Susanta Kumar Dash, learned Advocate has thus submitted that aforesaid material particulars are not considered by the Insurance Ombudsman and he urged that though this Court has afforded opportunity to meet the contentions of the petitioner and explain with respect to the documents of the AMRI Hospital



suggesting that the petitioner had not disclosed about earlier visit on 16.12.2021 with UHID AM40246794 and was advised by Dr. Amit Jaiswal for “surgery” of “CP Angle Tumour”, while she got admitted on 21.06.2022 for undergoing surgery of the same disease, the opposite party No.2 did not choose to file any response to the notice of this Court. Therefore, he fervently made request for setting aside the Award dated 16.01.2023 of the Insurance Ombudsman.

***Analysis and discussion:***

5. On perusal of document of the opposite party No.3-AMRI Hospital it is ascertained that the opposite party No.2 with UHID AM40246794 had visited the opposite party No.4 in the said hospital on 16.12.2021 and was advised “surgery” for she was detected “CP Angle Tumour”. Further perusal of record, particularly Annexure-4 series, reveals that the opposite party No.2 with UHID AM40273927 got treatment as in-patient from 19.06.2022 to 28.06.2022 for undergoing surgery of “CP Angle Tumour”.

5.1. To a clarification sought for by the petitioner *vide* Letter dated 07.04.2023 (Annexure-10), the opposite party No.3-Hospital responded and replied that due to lapse of six months the said fact with respect to the petitioner could not be detected, but it was the patient who was





required to disclose the same. Since the patient was to be admitted for surgery on “urgent basis” new UHID AM40273927 was created. In the counter affidavit at paragraphs 5 and 6, the opposite party No.3 has admitted the following fact:

“5. That answering para-14 and 16 of the writ petition, it is humbly submitted here that as has been aforesaid in terms of vide Annexure A/3, as such and the very assertion; that petitioner received thoroughly evasive replies, and the petitioner did not find any response to its letters dated 03.03.2023 and 16.03.2023 are totally misleading statements for the reason that such aforesaid averment statements is/are made against Opposite Party No. 3 and 4 by the petitioner only after the award dated 16.01.2023 is passed for the fault; of the petitioner only and in fact whenever any authorized authority required any information pertaining to the opposite party-Hospital, then the AMRI Hospital has ever furnished the correct information unhesitatingly in time in as much as vide Annexure A/3 as well which have been also evident in para 16 of the Writ Petition itself at large wherein there remains no suppression nor any personal interest except disclosing the facts (except certain documents which are not possible to preserve or keep on record) on the part of the opposite party-Hospital which have been duly explained in details vide Annexure A/3; and in the context in essence the onus of the patient/attendant of the patient to disclose the detailed past visits at the hospital so that the same person could be tagged with his/her previously created UHID, and the



*hospital does not promote the creation of multi UHIDs for the same person, and in this matter the hospital has also disclosed there is no doubt or suspicion regarding the previous treatment of the opposite party No. 2; The ambiguity arose due to non-disclosure of previous consultation by the opposite party No. 2. The ambiguity arose due to non-disclosure of previous consultation by the opposite party No.2 at the hospital.*

6. *That may it be disclosed herein that the Insurance Ombudsman has passed the Award on 16.01.2023 whereas the said letters sent by the petitioner are of dated 03.03.2023 and 16.03.2023, i.e., after the impugned award, and such award has been passed on the ground that the policy holder-opposite party No.2 met all the pre-conditions, and further as the company-petitioner could not produce any evidence to substantiate their (petitioner's) claim of pre-existing disease or prior knowledge of such disease/ailment/morbidity of the opposite party No.2 and the disease/ailment/morbidity was detected in emergency department where the MRI of brain was done on complaint of headache.”*

- 5.2. At the time of hearing of the present case, though sufficient opportunities were afforded to the opposite parties to appear and participate in the proceeding, none appeared which leads to believe that the factual details *vis-à-vis* evidence placed on record have not been considered duly by the Ombudsman. On bare reading of the Award dated 16.01.2023 it transpires that the



Insurance Ombudsman has merely stated that “the medical prescription reveals that it [Chronic Obstructive Pulmonary Disease (COPD)] was detected in emergency department where a MRI of brain was done on complaint of headache.” This finding of fact appears to be contrary to the advise of Dr. Amit Jaiswal, Senior Consultant of AMRI Hospital on 16.12.2021 (Annexure-2) for surgery on detection of “CP Angle Tumour” of the opposite party No.2 with UHID AM 40246794.

5.3. This Court takes cognizance of the fact that after being aware of CP Angle Tumour being detected on 16.12.2021, proposal form was submitted by the opposite party No.2 on 14.02.2022. It is *ex facie* from the record that just after lapse of ninety days thereafter, in the fourth month from the date of submission of proposal form, the opposite party No.2 was admitted to the AMRI Hospital on 19.06.2022 got the surgery of the same disease “CP Angle Tumour” with the help of Dr. Amit Jaiswal, Senior Consultant of AMRI Hospital. These events supported by evidence on record did require appropriate and conscientious consideration by the Ombudsman.

6. With the aforesaid factual details, Rule 4(a) of the Insurance Ombudsman Rules, 2017, defines “Award” to



mean an Award passed by the Insurance Ombudsman under Rule 17.

6.1. Rule 13 of said Rules reads:

*“13. Duties and functions of Insurance Ombudsman.—*

*(1) The Ombudsman shall receive and consider complaints alleging deficiency in performance required of an insurer (including its agents and intermediaries) or an insurance broker, on any of the following grounds:—*

- (a) delay in settlement of claims, beyond the time specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999;*
- (b) any partial or total repudiation of claims by the life insurer, General insurer or the health insurer;*
- (c) disputes over premium paid or payable in terms of insurance policy;*
- (d) misrepresentation of policy terms and conditions at any time in the policy document or policy contract;***
- (e) legal construction of insurance policies in so far as the dispute relates to claim;***
- (f) policy servicing related grievances against insurers and their agents and intermediaries;*
- (g) issuance of life insurance policy, general insurance policy including health insurance*



*policy which is not in conformity with the proposal form submitted by the proposer;*

- (h) non-issuance of insurance policy after receipt of premium in life insurance and general insurance including health insurance; and*
- (i) any other matter arising from non-observance of or non-adherence to the provisions of any regulations made by the Authority with regard to protection of policyholders' interests or otherwise, or of any circular, guideline or instruction issued by the Authority, or of the terms and conditions of the policy contract, insofar as such matter relates to issues referred to in clauses (a) to (h).*

*Explanation.—*

*For the purposes of this sub-rule, the term "deficiency" shall have the meaning as assigned to it in clause (11) of Section 2 of the Consumer Protection Act, 2019 (35 of 2019).*

- (2) The Ombudsman shall act as counsellor and mediator relating to matters specified in sub-rule (1) provided there is written consent of the parties to the dispute.*
- (3) The Ombudsman shall be precluded from handling any matter if he is an interested party or having conflict of interest.*
- (4) The Central Government or as the case may be, the Authority may, at any time refer any complaint or dispute relating to insurance matters specified in*



*sub-rule (1), to the Insurance Ombudsman and such complaint or dispute shall be entertained by the Insurance Ombudsman and be dealt with as if it is a complaint made under Rule 14.”*

6.2. Rule 15 of Insurance Ombudsman Rules, 2017, speaks about:

*“15. Insurance Ombudsman to act fairly and equitably.—*

- (1) The Ombudsman may, if he deems fit, allow the complainant to adopt a procedure other than under sub-rule (1) or sub-rule (2) of Rule 14 for making a complaint, after notifying the parties to the dispute.*
- (2) **The Ombudsman shall have the power to ask the parties concerned for additional documents in support of their respective contentions and wherever considered necessary, collect factual information relating to the dispute available with the insurer or insurance broker, as the case may be, and may make available such information to the parties concerned.***
- (3) **The Ombudsman may obtain the opinion of professional experts, if the disposal of a case warrants it.***
- (4) The Ombudsman shall dispose of a complaint after giving the parties to the dispute a reasonable opportunity of being heard.*
- (5) The Ombudsman may, on his own or on the request of the complainant, hear a matter through video-conference if he is satisfied that circumstances so require, after notifying the complainant and the*



*insurer or insurance broker concerned, subject to guidelines issued by the Council in this regard and published on its website:*

*Provided that the Ombudsman may allow the insurer (including its agents and intermediaries) or insurance broker, as the case may be, to be heard through video-conference.”*

6.3. Rule 17 of the above Rules, 2017 deals with “Award”, which lays down as follows:

“17. Award.—

- (1) *Where the complaint is not settled by way of mediation under Rule 16, the Ombudsman shall pass an award, based on the pleadings and evidence brought on record.*
- (2) *The award shall be in writing and shall **state the reasons upon which the award is based.***
- (3) *Where the award is in favour of the complainant, it shall state the amount of compensation granted to the complainant after deducting the amount already paid, if any, from the award: Provided that the Ombudsman shall,—*
  - (i) *not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action; or*
  - (ii) *not award compensation exceeding rupees thirty lakhs (including relevant expenses, if any).*



- (4) *The Ombudsman shall finalise its findings and pass an award within a period of three months of the receipt of all requirements from the complainant.*
- (5) *A copy of the award shall be sent to the complainant and the insurer or insurance broker, as the case may be, named in the complaint.*
- (6) *The insurer or insurance broker, as the case may be, shall comply with the award within thirty days of the receipt of the award and intimate compliance of the same to the Ombudsman and upload the details in the complaints management system.*
- (7) *The complainant shall be entitled to such interest at a rate per annum as specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999, from the date the claim ought to have been settled under the regulations, till the date of payment of the amount awarded by the Ombudsman.*
- (8) *The award of Insurance Ombudsman shall be binding on the insurers or insurance broker, as the case may be.”*

6.4. What can be perceived from the aforesaid provisions is that the ombudsman on receipt of complaint is required to consider complaints or disputes and decide. He is instrumental to settlement of disputes based on facts. He is competent to dismiss the case if the complaint has no merit. Making Award is the vital part of Ombudsman's function by acting fairly and equitably. The Ombudsman shall act as counsellor and mediator





relating to matters where there is written consent of the parties to the dispute. The Central Government or the Insurance Regulatory and Development Authority of India can refer matter to the Insurance Ombudsman.

6.5. On plain reading of provisions contained in the Insurance Ombudsman Rules, 2017 it is clearly stipulated that the Insurance Ombudsman is required to finalise the facts based on findings supported by evidence on record and he has to ascribe reasons for conclusion arrived at. As it appears from Award dated 16.01.2023 that the Insurance Ombudsman has proceeded on the conceived approach that the Insurance Company could not produce any evidence of pre-existing disease. Such a finding is contradictory to what has been placed in the writ petition by demonstrating the factual aspect of the matter supported by documentary evidence by the Company. Since none appeared to present the case of the opposite parties to clarify such position, as submitted by the petitioner, more so no counter affidavit has been filed by the opposite party No.2 (patient) nor the opposite party No.4 (doctor). Rather, the opposite party No.3-AMRI Hospital filed counter affidavit supporting the contention of the petitioner to the effect that the opposite party No.2 did not disclose about earlier visit for consultation with UHID AM40246794 and it was not within the knowledge



of the Hospital that such UHID was created prior to 19.06.2022. Since the opposite party No.3 was required to be admitted to the Hospital for surgery, it was assigned with new/fresh UHID 40273927.

6.6. In *T. Takano Vrs. Securities and Exchange Board of India*, (2022) 16 SCR 212 it has been laid down as follows:

*“39. The following principles emerge from the above discussion:*

- (i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and*
- (ii) **An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority.** In all reasonable probability, such material would have influenced the decision reached by the authority.*

*Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.*

\*\*\*

51. *The conclusions are summarised below:*

- (i) The appellant has a right to disclosure of the material relevant to the proceedings initiated against him. A deviation from the general rule of disclosure*



*of relevant information was made in Natwar Singh Vrs. Director of Enforcement (2010) 13 SCC 255 = (2010) 13 SCR 99 based on the stage of the proceedings. It is sufficient to disclose the materials relied on if it is for the purpose of issuing a show cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;*

- (ii) The Board under Regulation 10 considers the investigation report submitted by the Investigating Authority under Regulation 9, and if it is satisfied with the allegations, it could issue punitive measures under Regulations 11 and 12. Therefore, the investigation report is not merely an internal document. In any event, the language of Regulation 10 makes it clear that the Board forms an opinion regarding the violation of Regulations after considering the investigation report prepared under Regulation 9;*
- (iii) **The disclosure of material serves a three-fold purpose of decreasing the error in the verdict, protecting the fairness of the proceedings, and enhancing the transparency of the investigatory bodies and judicial institutions;***
- (iv) A focus on the institutional impact of suppression of material prioritises the process as opposed to the outcome. The direction of the Constitution Bench of this Court in Managing Director, ECIL, Hyderabad Vrs. B. Karunakar, (1993) 4 SCC 727 = (1993) 2 Suppl. SCR 576 that the non-disclosure of relevant information would render the order of punishment*



*void only if the aggrieved person is able to prove that prejudice has been caused to him due to non-disclosure is founded both on the outcome and the process;*

- (v) *The right to disclosure is not absolute. The disclosure of information may affect other third-party interests and the stability and orderly functioning of the securities market. The respondent should prima facie establish that the disclosure of the report would affect third-party rights and the stability and orderly functioning of the securities market. The onus then shifts to the appellant to prove that the information is necessary to defend his case appropriately; and*
- (vi) *Where some portions of the enquiry report involve information on third-parties or confidential information on the securities market, the respondent cannot for that reason assert a privilege against disclosing any part of the report. The respondents can withhold disclosure of those sections of the report which deal with third-party personal information and strategic information bearing upon the stable and orderly functioning of the securities market.”*

6.7. It may, in this context, need to be highlighted that the reason that is assigned by the Insurance Ombudsman to come to conclusion that the disease could be detected by the emergency department on conducting MRI (Magnetic Resonance Imaging) of brain on 22.06.2022 is falsified on bare appreciation of medical prescription dated



16.12.2021 with UHID AM40246794 (Annexure-2). The Insurance Ombudsman-opposite party No.1 himself has not made any inquiry before arriving at such a conclusion. Therefore, the findings given by the opposite party No.1 cannot be sustained.

6.8. In the case of *Steel Authority of India Limited Vrs. Sales Tax Officer, (2008) 9 SCC 407*, in the context of failure of the Appellate Authority to ascribe reasons, it has been held that:

*“12. A bare reading of the order shows complete non-application of mind. As rightly pointed out by learned counsel for the appellant, this is not the way a statutory appeal is to be disposed of. Various important questions of law were raised. Unfortunately, even they were not dealt by the first appellate authority.*

*13. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. [See Raj Kishore Jha Vrs. State of Bihar, (2003) 11 SCC 519].*

*14. Even in respect of administrative orders Lord Denning, M.R. in Breen Vrs. Amalgamated Engg. Union, (1971) 1 All ER 1148, observed:*

*“The giving of reasons is one of the fundamentals of good administration.”*

*In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree 1974 ICR 120 (NIRC) it was observed:*



*“Failure to give reasons amounts to denial of justice.” “Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.”*

6.9. In *SAP Labs India Private Limited Vrs. Income Tax Officer*, (2023) 4 SCR 430 it has been laid down that:

***“Unless perversity in the findings of the Tribunal is pleaded and demonstrated, by placing material on record, no substantial question of law can arise and, therefore, there can be no interference by the High Court. To the extent there can be no dispute between the parties, in view of the settled legal proposition dealing with Sections 260A of the Act and Section 100 of the Code of Civil Procedure, 1908.”***



6.10. It is in *Bombay Oil Industries (P) Ltd. Vrs. Union of India*, (1984) 1 SCC 141 observed as follows:

- “1. The order of the Government dated November 30, 1982 which is impugned in these proceedings leaves much to be desired. But we do not propose to admit the appeal since, after hearing a longish argument from Shri Anil B. Divan on behalf of the appellant, we are satisfied on the material produced before us and on perusal of the counter-affidavit of the Government that, there were good reasons for passing the impugned order. **We must, however, impress upon the Government that while disposing of applications under Sections 21, 22 and 23 of the Monopolies and Restrictive Trade Practices Act, 1969 it must give good reasons in support of its order and not merely state its bald conclusion. The faith of the people in Administrative Tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well considered orders.** The relevant material must be made available to the objectors because, without it, they cannot possibly meet the claim or contentions of the applicants under Sections 21, 22 and 23 of the Monopolies and Restrictive Trade Practices Act, 1969. The refusal of the Government to furnish such material to the objectors can amount to a denial of a reasonable opportunity to the objectors to meet the applicant's case. And denial of a reasonable opportunity to meet the other man's case is denial of natural justice.



2. *On the question of the need to give reasons in support of the conclusions to which the Government has come, the authorities concerned may, with profit, see the Judgments of this Court in Union of India Vrs. Mohan Lal Capoor, (1973) 2 SCC 836 = AIR 1974 SC 87 : (1974) 1 SCR 797, Siemens Engineering & Manufacturing Co. of India Limited Vrs. Union of India, (1976) 2 SCC 981 = AIR 1976 SC 1785 = 1976 Supp SCR 489 and Uma Charan Vrs. State of M.P., (1981) 4 SCC 102 = AIR 1981 SC 1915 = (1982) 1 SCR 353.”*

6.11. Where the fact finding authority has acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, the Court is entitled to interfere. See, *Lalchand Bhagat Ambica Ram Vrs. CIT, (1960) 1 SCR 301 = 1959 INSC 83 = (1959) 37 ITR 288 (SC)*.

6.12. With reference to *Omar Salay Mohamed Sait Vrs. CIT, (1959) 37 ITR 151 (SC)* the Hon'ble Andhra Pradesh High Court in *Spectra Shares & Scrips Pvt. Ltd. Vrs. CIT, (2013) 354 ITR 35 (AP)*, has been pleased to make the observation that Income-tax Appellate Tribunal is a fact finding Tribunal and **if it arrives at its own conclusions of fact after due consideration of the evidence before it, the Court will not interfere. It is necessary, however, that every fact for and against**





**the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence *pro* and *contra* in regard to each one of them and what were the findings reached on the evidence on record before it.** The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by the Court.

6.13. View so expressed being subscribed by this Court, it is, thus, to be observed that pertinent question of law, in the present case, does arise for consideration. On analysis of documents enclosed to writ petition makes it untrammelled for this Court to come to hold that the Insurance Ombudsman failed to exercise power vested under the Insurance Ombudsman Rules, 2017 to delve



deep into the matter by calling for records relating to certificate issued by Dr. Amit Jaiswal, Senior Consultant of AMRI Hospital who advised surgery on 16.12.2021 of the opposite party No.2 with UHID AM40246794. In the present case the reason assigned by the Insurance Ombudsman does not commensurate with the evidence adduced by the petitioner. Therefore, the finding of fact seems to be perverse and sounds illogical.

7. Another limb of argument of Sri Susanta Kumar Dash, learned Advocate takes this Court to scrutiny the application form— “Proposal Form”— which is made available at Annexure-1 *vis-à-vis* Award dated 16.01.2023.

7.1. In the Proposal Form dated 14.02.2022 the insured was required to disclose material particulars under the Heading: “Health History: Please provide answer in detail; A mere dash is not sufficient; Has the person proposed for insurance ever suffered or suffering from any of the following:”, which specified that the opposite party No.2 was to disclose history of her health *inter alia*, “Brain/nervous system/ psychiatric conditions/ disorders: loss of consciousness, fainting, dizziness, numbness/tingling, weakness, paralysis, head injury, stroke, migraine headache or chronic severe headaches, sleep apnea, multiple sclerosis, seizures/epilepsy or any



other brain nervous system disease, mental/psychiatric disorder, disability or unable to perform day to day activities” and “cancer/tumour: benign or malignant tumour, any growth/cyst, any cancer”, &c. Against all the columns relevant to disclose “Health History”, but it is found that the opposite party No.2 has marked as “NO”.

7.2. From the Award dated 16.01.2023 (Annexure-7) it is emanated that for being entitled, the policy holder is required to specify major disease after ninety days of commencement of policy. Nonetheless, the Insurance Ombudsman should have verified the veracity of claim with reference to disclosure in the Proposal Form. Whereas proposal for insurance policy was submitted on 14.02.2022, “CP Angle Tumour” was detected much prior to said date, *i.e.*, on 16.12.2021 and the opposite party No.2-patient was admitted to the AMRI Hospital for surgery of said tumour on 19.06.2022. This clearly establishes that she was just awaiting for ninety days to elapse from the date of proposal.

7.3. On a minute study of events it would reveal that though the opposite party No.2 was conscious of being detected with “CP Angle Tumour” on 16.12.2021, non-disclosure of such vital fact in the Proposal Form dated 14.02.2022 speaks volumes about the conduct and motive of the



claimant. Under such view of the matter, it is manifest that the Insurance Ombudsman has passed the Award on 16.01.2023 without examining the scope of element of “fraud” being played on the Insurance Company.

7.4. Suppression of material particular or concealment of necessary details would tantamount to fraud.

7.5. Hon’ble Supreme Court in the case of *Anand Nishikawa Co. Ltd. Vrs. CCE, (2005) 7 SCC 749* observed that,

*“26. \*\*\* This Court in the case of Pushpam Pharmaceuticals Co. Vrs. CCE, 1995 Supp (3) SCC 462 while dealing with the meaning of the expression “suppression of facts” in the proviso to Section 11-A of the Act (Central Excise Act, 1944) held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The Court further held:*

*‘In taxation, it [‘suppression of facts’] can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.’*

7.6. In the case of *Bibhas Ranjan Prusty Vrs. The Senior Divisional Manager, Life Insurance Corporation of India, 2015 (II) ILR-CUT 574* this Court referring to *Life*



*Insurance Corporation of India and others Vrs. Asha Goel, (2001) 2 SCC 160, held as follows:*

*“\*\*\* the contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic. material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. **If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person.**”*

7.7. In the case of *Indian Bank Vrs. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550*, the Hon’ble Supreme Court of India held as follows:

*“By filing Letter No.2775 of 26.08.1991 along with the Review Petition and contending that the other letter, namely, Letter No.2776 of the even date, was never written or issued by the respondent, the appellant, in fact, raised the plea before the Commission that its judgment dated 16.11.1993, which was based on Letter No. 2776, was obtained by the respondent by practising fraud not only on the appellant but on the Commission too as Letter*



No.2776 dated 26.08.1991 was forged by the respondent for the purpose of this case. **This plea could not have been legally ignored by the Commission which needs to be reminded that the Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as ‘fraud’ and ‘Justice’ never dwell together (fraus et jus nunquam cohabitant). It has been repeatedly said that fraud and deceit defend or excuse no man (fraus et dolus nemini patrocinari debent).”**

7.8. It may not be out of place in the present context to refer to a decision of Hon’ble Supreme Court of India in the case of *Badami Vrs. Bhali*, (2012) 11 SCC 574 to consider the effect of withholding vital information. The said Hon’ble Court held as follows:

“29. Presently, we shall refer as to how this Court has dealt with concept of fraud. In *S.B. Noronah Vrs. Prem Kumari Khanna*, (1980) 1 SCC 52 = AIR 1980 SC 193 while dealing with the concept of estoppel and fraud a two-Judge Bench has stated that:

‘20. It is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made by modern law. Even so, ‘a judgment obtained by fraud or collusion, even, it seems, a judgment of the House of Lords, may be treated as a nullity’. (See *Halsbury’s Laws of England*, Vol. 16, 4th Edn., para 1553.) The point is that the sanction granted under Section 21, if it has been procured by



*fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.'*

30. *In S.P. Chengalvaraya Naidu Vrs. Jagannath, (1994) 1 SCC 1 this Court commenced the verdict with the following words:*

'1. **'Fraud avoids all judicial acts, ecclesiastical or temporal'** observed Chief Justice Edward Coke of England about three centuries ago. **It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of the law.** Such a judgment/decree— by the first court or by the highest court— has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.'

*In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands.*

31. **A person whose case is based on falsehood has no right to approach the court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.**

32. *In Shrisht Dhawan Vrs. Shaw Bros., (1992) 1 SCC 534 = AIR 1992 SC 1555 it has been opined that the*



*fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in Roshan Deen Vrs. Preeti Lal, (2002) 1 SCC 100 = AIR 2002 SC 33, Ram Preeti Yadav Vrs. U.P. Board of High School and Intermediate Education, (2003) 8 SCC 311 and Ram Chandra Singh Vrs. Savitri Devi, (2003) 8 SCC 319.*

33. *In State of A.P. Vrs. T. Suryachandra Rao, (2005) 6 SCC 149 after referring to the earlier decision this Court observed as follows:*

*'16. In Lazarus Estates Ltd. Vrs. Beasley, (1956) 1 QB 702 = (1956) 2 WLR 502 = (1956) 1 All ER 341 Lord Denning observed at QB p. 712:*

*'... No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.'*

*In the same judgment Lord Parker, L.J. observed that fraud **'vitiates all transactions known to the law of however high a degree of solemnity'** (Lazarus case, (1956) 1 QB 702 = (1956) 2 WLR 502 = (1956) 1 All ER 341, QB p. 722).'*

34. *Yet in another decision Hamza Haji Vrs. State of Kerala, (2006) 7 SCC 416 = AIR 2006 SC 3028 it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. **The basic principle is that a party who secures the judgment by taking***





***recourse to fraud should not be enabled to enjoy the fruits thereof.***

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38. *All these reasonings are absolutely non-plausible and common sense does not even remotely give consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay. In this regard we may profitably quote a statement by a great thinker:*

*‘Fraud generally lights a candle for justice to get a look at it; and rogue’s pen indicts the warrant for his own arrest.’ \*\*\*”*

7.9. What is pertinent to perceive in the instant circumstance is that despite entering appearance through M/s. Biswaranjan Das, Advocate and associates by executing *Vakalatnama* on 26.06.2023, the opposite party No.2 neither filed counter affidavit nor any advocate appeared to participate in the final hearing of the matter on 30.10.2023 notwithstanding for the purpose of hearing on earlier occasions adjournments were granted.

7.10. This Court is not oblivious of the effect of non-filing of response as discussed in *Lohia Properties (P) Ltd. Vrs. Atmaram Kumar*, (1993) 4 SCC 6, wherein it has been observed as follows:



- “14. What is stated in the above is, what amounts to admitting a fact on a pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth.
15. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted.
19. **Non-traverse would constitute an implied admission.** In the facts of this case the findings of the trial court and that of the first appellate court could be upheld on this admission.”

7.11. In the case of *Omsairam Steels and Alloys Pvt. Ltd. Vrs. Director of Mines and Geology, BBSR*, AIR 2024 SC 3410 at paragraph 18 it has been observed as follows:

“The present case notably has certain features on facts, which makes it distinguishable from the case in *West Bengal State Electricity Board Vrs. Patel Engineering Co. Ltd.* (2001) 2 SCC 451 = AIR 2001 SC 682. Here, it is not disputed that the Appellant made multiple calls to the first Respondent immediately upon realising that it had committed an error. Specific averments made by the Appellant are present in the pleadings that upon realisation of its mistake, telephone calls were made to



*the first respondent, as well as to the helpline numbers of the second respondent, both of which went unanswered. **The respondents, in their counter affidavit, have not specifically denied the said averments; hence, by application of the doctrine of non-traverse, the aforementioned averments are deemed to have been admitted by the respondents.***”

7.12.A Division Bench of this Court in *Pratap Kumar Jena Vrs. Government of Odisha, 2016 SCC OnLine Ori 830* held as follows:

“26. *In Pyrites Phosphates & Chemicals Ltd. Vrs. State of Bihar, AIR 1998 Pat 57, the High Court of Patna held as follows:*

*‘One cannot be allowed to frustrate the process of the Court by adopting the easy option of non appearing despite valid service of notice. On the basis of doctrine ‘non-traverse’ i.e. acceptance by non-denial, it was held that **the claim of the petitioner is not denied but accepted by the respondents.**’*

27. *Applying the very principle of non-traverse to the present context, **since the opposite parties have not filed the counter affidavit in the present case to controvert the contention raised in the writ application, the facts which have been pleaded by the petitioner are deemed to be admitted.** Therefore, any argument advanced by the learned counsel appearing for the opposite parties cannot sustain in absence of any pleadings thereof.*”



7.13. In the case of *Debendra Ram Vrs. Food Corporation of India, 2015 (1) OLR 1093 = 120 (2015) CLT 465* this Court held as follows:

*“Considering the contention raised by learned counsel for the parties and after going through the records, since no materials has been placed before this Court by the opposite parties and since there is no rebuttal contention raised by the opposite parties, applying the principles of doctrine of non-traverse, this Court proceeded with the matter on the basis of the materials available.”*

7.14. It is not the case of the opposite parties that they had been under disability nor can the State instrumentalities be said to be under some disability. No explanation was ever furnished as to why the counter affidavit had not been filed. Such parties cannot be permitted to take advantage of their own mistake. A person alleging his own infamy cannot be heard at any forum, what to talk of a Writ Court, as explained by the legal maxim ‘*allegans suam turpetudinem non est audiendus*’. If the parties have committed a wrong by not filing the counter affidavit, they cannot be permitted to take the benefit of their own wrong. (*Vide G.S. Lamba Vrs. Union of India, AIR 1985 SC 1019; Narender Chadha Vrs. Union of India, AIR 1986 SC 638; Jose Vrs. Alice, (1996) 6 SCC 342; and T. Srinivasan Vrs. Mrs. T. Varalakshmi, (1998) 3 SCC 112*). Therefore, a person approaching the Court has to satisfy that his action/inaction was lawful, otherwise, he



cannot be heard. In such an eventuality, the legal maxim '*ex turpi causa non oritur actio*' applies.

7.15. If the counter affidavit is not filed, the matter is required to proceed on the basis of the averments in the petition. As has already been made it clear that in spite of her appearance represented through counsel since 27.06.2023, the opposite party No.2-the claimant has preferred not to proffer any reply/explanation by way of counter affidavit to the allegations made and averments contained in the writ petition. Despite opportunity during the course of hearing, none represented her. Therefore, this Court has no other alternative but to construe that the opposite party No.2 has conceded to what has been averred by the petitioner-Insurance Company. Even going by the counter affidavit of the opposite party No.3-AMRI Hospital it is unequivocal that it is the opposite party No.2 who was required to appraise the Hospital authorities at the time of admission for surgery with respect to availability of earlier UHID registration No.AM40246794.

7.16. For the reason stated *supra*, the Award dated 16.01.2023 of the Insurance Ombudsman deserves to be interfered with and is liable to be set aside.

**Conclusion:**



8. The conspectus of decisions as referred to *supra* unambiguously would demonstrate that suppression of material fact by concealing fact of being detected with “CP Angle Tumour” on 16.12.2021 by Dr. Amit Jaiswal-opposite party No.4, who advised surgery is clear indication that fraud has been played by the opposite party No.2-insured while submitting Proposal Form on 14.02.2022. The opposite party No.2-insured by withholding vital information from the petitioner renders the policy void and ineffective in the eye of law.

8.1. “Material fact” contained in Section 45 of the Insurance Act, 1938, is very much relevant for the present purpose to be referred to. Said section stands thus:

*“45. Policy not be called in question on ground of misstatement after three years.—*

*(1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three years from the date of the policy, i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.*

*(2) **A policy of life insurance may be called in question at any time within three years** from the date of issuance of the policy or the date of commencement of risk or the date of revival of the*



*policy or the date of the rider to the policy, whichever is later, on the ground of fraud:*

*Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.*

*Explanation-I.—*

*For the purposes of this sub-section, the expression **“fraud” means** any of the following acts committed by the insured or by his agent, with intent to deceive the insurer or to induce the insurer to issue a life insurance policy:*

- (a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;*
- (b) **the active concealment of a fact by the insured having knowledge or belief of the fact;***
- (c) any other act fitted to deceive; and*
- (d) any such act or omission as the law specially declares to be fraudulent.*

*Explanation-II.—*

*Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent keeping silence, to speak, or unless his silence is, in itself, equivalent to speak.*



- (3) **Notwithstanding anything contained in subsection (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the mis-statement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such mis-statement of or suppression of a material fact are within the knowledge of the insurer:**

*Provided that in case of fraud, the onus of disproving lies upon the beneficiaries, in case the policy holder is not alive.*

*Explanation.—*

*A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.*

- (4) **A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued:**

*Provided that the insurer shall have to communicate in writing to the insured or the legal representatives*





*or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:*

*Provided further that in case of repudiation of the policy on the ground of mis-statement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.*

*Explanation.—*

*For the purposes of this sub-section, the mis-statement of or suppression of fact shall not be considered material unless **it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.***

- (5) *Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.”*

8.2. Section 45 of the Insurance Act, 1938, confers scope for questioning the policy within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the



rider to the policy, whichever is later, on the ground of fraud. In the case at hand the application for the policy being made on 14.02.2022 and the policy is called in question in the year 2022.

8.3. Further, under the said provision insurer can repudiate a life insurance policy on the ground of fraud. For that purpose, the insured is required to prove that the mis-statement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such mis-statement of or suppression of a material fact are within the knowledge of the insurer. The fact that the opposite party No.2 consulted Dr. Amit Jaiswal, Senior Consultant of AMRI Hospital on 16.12.2021, prescription of even date depicts “CP Angle Tumour” was detected and she was advised surgery and the opposite party No.2 having not disclosed such vital information in the Proposal Form dated 14.02.2022 while obtaining policy, she could not plead virtuousness. With the help of the same doctor-opposite party No.4 by taking fresh UHID: AM40273927 suppressing the earlier UHID: AM40246794 she had undergone surgery for the said Tumour during 19.06.2022 and 28.06.2022. Adding to this, non-filing of reply/response to the averment of the writ petition makes it believe that the opposite party No.2 has admitted the facts asserted by the petitioner.



8.4. Relevant observation contained in *P.C. Chacko Vrs. Chairman, Life Insurance Corporation of India*, (2008) 1 SCC 321, may be fruitful to be quoted hereunder:

“13. Section 45 postulates repudiation of such policy within a period of two years. By reason of the aforementioned provision, a period of limitation of two years had, thus, been specified and on the expiry thereof the policy was not capable of being called in question, *inter alia*, on the ground that certain facts have been suppressed which were material to disclose or that it was fraudulently been made by the policy-holder or that the policy-holder knew at the time of making it that the statement was false. Statute, therefore, itself provides for the limitation for valid repudiation of an insurance policy. It takes into account the social security aspect of the matter.

14. There are three conditions for application of second part of Section 45 of the Insurance Act which are:

- (a) the statement must be on a material matter or must suppress facts which it was material to disclose;
- (b) the suppression must be fraudulently made by the policy-holder; and
- (c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.<sup>2</sup>

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<sup>2</sup> See *Mithoolal Nayak*, AIR 1962 SC 814 = 1962 Supp (2) SCR 571



15. *The insured's brother was an agent of Life Insurance Corporation of India. It was he, who had asked the insured to take the insurance policy. He, being an authorised agent of Life Insurance Corporation, presumably knew the effect of misstatement of facts. **Misstatement by itself, however, was not material for repudiation of the policy unless the same is material in nature.***
16. *The insured furthermore was aware of the consequence of making a misstatement of fact. **If a person makes a wrong statement with knowledge of consequence thereof, he would ordinarily be estopped from pleading that even if such a fact had been disclosed, it would not have made any material change.***
17. *The purpose for taking a policy of insurance is not, in our opinion, very material. It may serve the purpose of social security but then the same should not be obtained with a fraudulent act by the insured. **Proposal can be repudiated if a fraudulent act is discovered. The proposer must show that his intention was bona fide. It must appear from the face of the record.** In a case of this nature it was not necessary for the insurer to establish that the suppression was fraudulently made by the policy-holder or that he must have been aware at the time of making the statement that the same was false or that the fact was suppressed which was material to disclose. **A deliberate wrong answer which has a great bearing on the contract of insurance, if discovered may lead to the policy being vitiated in law.***



18. *It is no doubt true that there exists a distinction between a “representation” and a “warranty”. A Division Bench of the Madras High Court in S.P. Maheshwari, AIR 1960 Mad 484 upon taking into consideration the history of insurance laws in the United States of America, in England and in India stated:*

*‘10. One great principle of insurance law is that a contract of insurance is based upon utmost good faith uberrima fides; in fact it is the fundamental basis upon which all contracts of insurance are made. In this respect there is no difference between one contract of insurance and another. Whether it be life or fire or marine the understanding is that the contract is uberrima fides and though there may be certain circumstances from the peculiar nature of marine insurance which require to be disclosed, and which do not apply to other contracts of insurance, that is rather an illustration of the application of the principle, than a distinction in principle. From the very fact that the contract involves a risk and that it purports to shift the risk from one party to the other, each one is required to be absolutely innocent of every circumstance which goes to influence the judgment of the other while entering into the transaction.’*

19. *While the parties entered into a contract of insurance the same shall, subject to statutory interdict, be governed by the ordinary law of contract. The insurer may not rely upon the disclosures made by the insured. It may gather information from other*



sources. The Madras High Court, although in our opinion, has rightly issued a note of caution to construe a “representation” and “warranty” as a general proposition which may operate harshly against the policy-holders, itself noticed: (S.P. Maheshwari case, AIR 1960 Mad 484:

**‘12. The principles underlying the doctrine of disclosure and the rule of good faith oblige the proposer to answer every question put to him with complete honesty. Honesty implies truthfulness. But it happens that no man can do more than say what he believes to be the truth.’**

20. Whether in a given case the court should take judicial notice of practice followed in such cases or not would depend upon the facts and circumstances of each case. If it is found that the agent himself was interested in getting the policy executed by Life Insurance Corporation, such common knowledge takes a back seat.

21. In S.P. Maheshwari, AIR 1960 Mad 484 it was stated:

**‘27. This brings us on finally to the topics of non-disclosure or misrepresentation which are practically the positive and negative aspects of the same thing. The effect of misrepresentation on the contract is precisely the same as that of non-disclosure; it affords the aggrieved party a ground for avoiding the contract. There are a number of dicta and one decision to the effect that life insurance is an exception to the**



*general rule that innocent misrepresentation may afford grounds for avoiding a policy and that the misrepresentation must be fraudulent to have this effect upon a policy of life insurance. But in order to give the insurer grounds for avoidance both under non-disclosure as well as misrepresentations, both must relate only to material information.'*

*The said decision, therefore, is of no assistance to the appellants herein.*

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28. *In Ratan Lal Vrs. Metropolitan Insurance Co. Ltd., AIR 1959 Pat 413 a distinction was made between as to what is material and what is not material. In regard to the disclosure of facts in that case itself, it was opined:*

*'5. The well-settled law in the field of insurance is that contracts of insurance including the contracts of life assurance are contracts uberrima fides and **every fact of materiality must be disclosed otherwise there is good ground for rescission.** And this duty to disclose continues up to the conclusion of the contract and covers any material alteration in the character of the risk which may take place between proposal and acceptance.'*

\*\*\*"

8.5. *In Life Insurance Corporation of India Vrs. Manish Gupta, (2019) 11 SCC 371 it is observed as follows:*



“10. Moreover, non-disclosure of any health event is specifically set out as a ground for excluding the liability of the insurer. The terms of the policy envisage:

‘(xii) Fraud—

*If any of the insured or the claimant shall make or advance any claim knowing the same to be false or fraudulent as regards amount or otherwise, this Policy shall immediately become void and all claims or payments in respect of all the insured under this Policy shall be forfeited. **Non-disclosure of any health event or ailment/condition/sickness/surgery which occurred prior to the taking of this Policy, whether such condition is relevant or not to the ailment/disease/surgery for which the insured is admitted/treated, shall also constitute fraud.***’

11. **The declaration which was furnished by the proposer constituted the basis for the issuance of the policy.** This was particularly so in a case such as the present where no medical examination has been held, for a policy under the NMG category.

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14. A contract of insurance involves utmost good faith. In *Satwant Kaur Sandhu Vrs. New India Assurance Co. Ltd.*, (2009) 8 SCC 316, this Court has held thus:

‘18. \*\*\* Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full





*disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment.'*

15. *The consumer fora have made a fundamental error in allowing the claim for reimbursement of medical expenses in the face of the uncontroverted material on record. The documentary material indicates that there was a clear failure on the part of the respondent to disclose that he had suffered from rheumatic heart disease since childhood. The ground for repudiation was in terms of the exclusions contained in the policy. **The failure of the insured to disclose the past history of cardiovascular disease was a valid ground for repudiation.***"

8.6. In an identical fact-situation of non-disclosure of vital material fact having bearing while taking out the insurance policy in connection with repudiation of claim by the Insurance Company has been dealt with by the Hon'ble Supreme Court of India in *Bajaj Allianz Life Insurance Co. Ltd. Vrs. Dalbir Kaur, (2021) 13 SCC 553* which may have effect to adjudicate the present nature



of case. The Hon'ble Supreme Court has been pleased to make the following observation:

“7. *A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty-bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk.* In the present case, as we have indicated, the proposer failed to disclose the vomiting of blood which had taken place barely a month prior to the issuance of the policy of insurance and of the hospitalisation which had been occasioned as a consequence. The investigation by the insurer indicated that the assured was suffering from a pre-existing ailment, consequent upon alcohol abuse and that the facts which were in the knowledge of the proposer had not been disclosed. This brings the ground for repudiation squarely within the principles which have been formulated by this Court in the decisions to which a reference has been made earlier.

8. *In LIC Vrs. Asha Goel, (2001) 2 SCC 160, this Court held:*

‘12. \*\*\* *The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic material fact) must be disclosed, otherwise,*



*there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of risk which may take place between the proposal and its acceptance. If there is any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person.'*

9. *This has been reiterated in the judgments in P.C. Chacko Vrs. LIC, (2008) 1 SCC 321 and Satwant Kaur Sandhu Vrs. New India Assurance Co. Ltd., (2009) 8 SCC 316. In Satwant Kaur Sandhu Vrs. New India Assurance Co. Ltd., (2009) 8 SCC 316, at the time of obtaining the mediclaim policy, the insured suffered from chronic diabetes and renal failure, but failed to disclose the details of these illnesses in the policy proposal form. Upholding the repudiation of liability by the insurance company, this Court held:*

***'25. The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such***



***fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance.'***

10. *Recently, this Court in Reliance Life Insurance Co. Ltd. Vrs. Rekhaven Nareshbhai Rathod, (2019) 6 SCC 175, has set aside the judgment [Reliance Life Insurance Co. Ltd. Vrs. Rekhaven Nareshbhai Rathod, 2015 SCC OnLine NCDRC 1283] of NCDRC, whereby NCDRC had held that the failure of the insured to disclose a previous insurance policy as required under the policy proposal form would not influence the decision of a prudent insurer to issue the policy in question and therefore the insurer was disentitled from repudiating its liability. This Court, while allowing the repudiation of the insurance claim, held:*

*'30. It is standard practice for the insurer to set out in the application a series of specific questions regarding the applicant's health history and other matters relevant to insurability. The object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant*



*accuracy of statements. **Utmost care must be exercised in filling the proposal form. In a proposal form the applicant declares that she/he warrants truth. The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer.** The system of adequate disclosure helps buyers and sellers of insurance policies to meet at a common point and narrow down the gap of information asymmetries. This allows the parties to serve their interests better and understand the true extent of the contractual agreement.*

31. *The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in Satwant Kaur Sandhu Vrs. New India Assurance Co. Ltd., (2009) 8 SCC 316:*

*‘25. \*\*\* there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance.’*

*Each representation or statement may be material to the risk. The insurance company*



*may still offer insurance protection on altered terms.”*

11. *The decision of this Court in Sulbha Prakash Motegaonkar Vrs. LIC, (2021) 13 SCC 561, which has been relied upon by NCDRC, is clearly distinguishable. In that case, the assured suffered a myocardial infarction and succumbed to it. The claim was repudiated by the insurance company on the ground that there was a suppression of a pre-existing lumbar spondylitis. It was in this background that this Court held that the alleged concealment was of such a nature that would not disentitle the deceased from getting his life insured. In other words, the pre-existing ailment was clearly unrelated to the cause of death. This Court had also observed in its decision that the ailment concealed by the deceased was not a life-threatening disease. This decision must, therefore, be distinguished from the factual position as it has emerged before this Court.*
12. *The medical records which have been obtained during the course of the investigation clearly indicate that the deceased was suffering from a serious pre-existing medical condition which was not disclosed to the insurer. In fact, the deceased was hospitalised to undergo treatment for such condition in proximity to the date of his death, which was also not disclosed in spite of the specific queries relating to any ailment, hospitalisation or treatment undergone by the proposer in Column 22 of the policy proposal form. We are, therefore, of the view that the judgment [Bajaj Allianz Life Insurance Co. Ltd. Vrs. Dalbir Kaur, 2020 SCC OnLine NCDRC 463 of*



*NCDRC in the present case does not lay down the correct principle of law and would have to be set aside. We order accordingly.”*

8.7. With the aforesaid perspective of legal position with factual similarity in the line of cases discussed *supra*, on examination of the Award dated 16.01.2023 of the Insurance Ombudsman, the petitioner has demonstrated that the finding of fact has been returned without proper examination of documents and relevant records. The reasons ascribed to by the Insurance Ombudsman in the Award appear to be jejune and *de hors* weight of evidence on record. The “sphinx silence” of the opposite party No.2-claimant even after entering appearance before this Court by engaging lawyers on 27.06.2023 and thereafter electing not to participate in the proceeding before this Court during hearing despite adjournments speaks volumes. Not a single scrap of paper has been filed by the opposite party No.2 to refute allegations contained in the writ petition. Non-disclosure of material fact of detection of CP Angle Tumour with advise by Dr. Amit Jaiswal, opposite party No.4, on 16.12.2021 against UHID registration No.AM40246794 issued by AMRI Hospital in the Proposal Form dated 14.02.2022 and subsequent undergoing surgery being treated as in-patient during 19.06.2022 and 28.06.2022 with different UHID No.AM 40273927 would entail the



Insurance Company, the petitioner, to repudiate the claim.

8.8. Thus, in the light of the discussions and for the reasons assigned hitherto fore, there is no other opinion possible than to appreciate the evidence furnished in the writ petition and submissions made by Sri Susanta Kumar Dash, learned Advocate for the petitioner-Insurance Company.

9. In wake of the above, this Court is of the opinion that the Insurance Ombudsman having not considered the material and analysed the evidence as referred to herein above in proper perspective and his finding being perverse, the reasons for the decision to frame the Award is untenable in the eye of law. Therefore, the impugned Award dated 16.01.2023 *vide* Annexure-7 is set aside.

9.1. The matter is remitted to the Insurance Ombudsman for the State of Odisha-opposite party No.1 to consider the merit of the matter by affording opportunity to necessary parties afresh.

9.2. It is directed that the Insurance Ombudsman for the State of Odisha is required to consider the evidence adduced and take into consideration further material, if necessary, to be produced by parties and pass Award in the light of the above discussions.





9.3. It is hoped that endeavour shall be made to conclude the proceeding within a period of forty-five days from date.

**10.** With the above observation and direction, the writ petition stands disposed of, but there shall be no order as to costs.

**(MURAHARI SRI RAMAN)  
JUDGE**

*High Court of Orissa, Cuttack  
The 21<sup>st</sup> November, 2024//Aswini/MRS/Laxmikant*