

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSIONHDCF
NEW DELHI**

**RESERVED ON: 01/10/2025
JUDGEMENT PRONOUNCED ON: 06/11/2025**

FIRST APPEAL NO. 81 OF 2022

(Against the Order dated 18.10.2021 in Complaint No. 2014/10 of the State Consumer Disputes Redressal Commission Gujarat)

1. Max Life Insurance Co. Ltd., Rembrandt, Opp. Associated Petrol Pump, C.G. Road, Ahmedabad.
2. Max Life Insurance Co. Ltd., Max House, 3rd Floor, Dr. Jha Marg, Okhla, New Delhi – 1100020.

Through

Max Life Insurance Co. Ltd., 11th Floor, DLF Square, Jacaranda Marg, DLF Phase-II, Gurgaon – 122002.Appellants

Versus

Dinesh Kumar R. Sharma, 24, Amar Society, Nr. Balvatika, Kankari, Ahmedabad -380008.Respondent

BEFORE:

**HON'BLE MR. JUSTICE A.P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER**

For the Appellants : Ms. Suman Bagga, advocate

For the Respondent : Mr. Milan Dudhiya, Advocate (VC)

ORDER

PER BHARATKUMAR PANDYA, MEMBER

1. This appeal has been filed by the insurer (original OP) against State Commission's order dated 18.10.2021 whereby State Commission committed an error in not accepting the calculation of surrender value of the lapsed policy as calculated by the appellants. The brief facts of the case are that the respondent/complainant took a Whole Life Participating Insurance Policy from the appellant insurer in the month of January, 2005. Various medical tests were got done and on the basis of medical history of diabetes, the policy was issued with extra premium for diabetes being under control (fasting blood sugar – 73 mg/dl and urine sugar – Nil). The offer was accepted by the respondent and a higher premium insurance policy was issued by the appellant insurer. On 25.04.2012, due to

non-payment of due premium at relevant point of time by the respondent, the policy got lapsed. Upon the request of respondent for revival of the said lapsed policy, fresh medical tests were done. Respondent was also asked to pay an amount of Rs.2,53,230/- which included the three due instalments with interest and also Rs.1,650/- towards policy reinstatement charges. Respondent paid the said amount, but his policy was declined with a note "*we are constrained to decline your request based on our internal assessment. We are refunding amount of Rs.2,56,530/- lying in your policy account*". Thus, the said amount was refunded to the complainant vide letter dated 15.03.2013 stating that the appellant was declining the revival upon internal assessment.

2. In July, 2013, respondent again made a request for revival of the policy. Second request for revival of the policy was accepted by the appellant insurer on the condition of payment of six premiums which were due, which came to an amount of Rs.5,22,712/- including interest. Respondent was asked to undergo blood sugar tests. The report showing blood sugar level of 90 mg and the amount of Rs.5,22,712/- was submitted with the appellant's office. However, the second revival request was also declined and the aforesaid amount was refunded to the respondent. As per respondent/complainant, appellant insurer illegitimately refused to reinstate his policy and he had fairly disclosed about having diabetes since last 10 years and insurer had also collected 50% more premium for having diabetes. Therefore, they cannot refuse the reinstatement of the policy on the ground of having diabetes. Being aggrieved, respondent/insured filed a consumer complaint before the State Commission, Gujarat on 23.01.2014. After considering the facts stated in the complaint, hearing the submissions advances by learned counsel for both the parties and on carefully examining the evidence and record, the State Commission partly allowed the complaint vide its order dated 18.10.2021 and passed the following detailed order:

.....
.....

19. As per para 8 of the brief note submitted by the complainant, he arrived at Rs. 7,75,401.06/- by adopting the calculation of mode (a) of the clause 14 of the terms and conditions of the policy.

19.1 As per the brief note at page 187, the opponent has varied at Rs. PATE 6,71 296.296/-.

The formula for the mode (a) of the clause 14 of the terms and conditions is as under.

(Total Number of premiums paid) * (Original Sum Insured)
 (Total number of premiums required).

$$\frac{29*50,00,000}{216} = \text{Rs. } 6,71,296.296/-$$

19.2 Here in this case there is no dispute that the total 29 premiums were paid. There is no dispute about the sum insured i.e. Rs. 50,00,000/-. The complainant has considered 187 total number of premiums required, but it is false.

The birth date of the complainant is 26.1.1958. The duration of coverage is up to age of 100 years. The effective date of coverage is 25.1.2005. At the time of commencement of the coverage the consumer was of 47 years old. He will be 100 years of old after 53 years from the effective date of coverage, therefore, he has to pay premium for 53 years. The premiums are required to be paid quarterly therefore, the total number of premiums required are 212. Thus, complainant is entitled for Rs. 6,83,962.26/- under the calculation mode (a) of the clause 14 of the terms and conditions of the policy. It is calculated as under:

(Total Number of premiums paid) * (Original Sum Insured)

(total number of premiums required)

$$\frac{29*50,00,000}{212} = 6,83,963/-$$

20. The complainant has calculated the amount of Rs. 13,35,201.93 under the calculation mode (b) of the clause 14 of the terms and conditions of the policy. He has relied upon the annual statement for the period of 25.1.2011 to 25.1.2012 which is produced at page 70 on record.

20.1 The opponent has calculated the final surrender value by applying different formulas at page 181 and it is explained at page 187-191.

Sr.	Particulars	Amount (Rs.)
a.	Guaranteed Surrender Value	6,18,765.90/-
b.	Base cash value as on NFO conversion date	4,25,150/-
c.	Base reduced paid up CVS	4,82,540.47/-
d.	Proportionate sum insured	6,71,296.30/-
e.	Paid up insurance	8,80,477.38/-
f.	Reduced paid up sum assured	8,80,477.38/-
g.	PUA cash value	6,17,502.22/-
h.	Loan including interest	6,21,531.67
i.	CSV	11,00,042.69/-
j.	Final surrender value	4,76,860.60/-
k.	Recovery of service tax tolerance	1650.42

Finally the opponent has considered Rs. 11,00,042.69/- as final cash surrender value. The above calculation and formula are not given in the terms and conditions. Therefore, it is not a part of contract. Thus, it is not binding to the complainant.

20.2 The calculation of mode (b) is that the amount of paid up insurance which can be purchased by the cash surrender value. The cash surrender value is defining under the Clause 12 of the policy. The clause 12 is a qualifying clause. If the insured satisfied the requirement then he is entitled for refund of premium. The condition are (i) Minimum 3 years premium should be paid. Herein this case the complainant has paid premium for

more than 7 years. (ii) Cash surrender value will not be less than 30% of the premiums excluding first year premium. It may be more than 30% of the premiums. The opponent had considered only 30% of the premium at a minimum level.

20.3 Here in this case initially the amount of premium was Rs. 82,502.12/. The claimant has produced the receipts of the premiums at page 37, 42 to 62 wherein, the amount of premium is varied from 82,502.12 to 83,351.89/. The claimant has not produced all the receipt of the premiums paid. The amount of Rs. 82,502.12 was the premium from 25.1.2005 to 29.5.2008 (at page 37, 42 to 51). Thereafter the premium amount of Rs. 83,351.89/- is shown in the receipt dated 5.9.2010 at page 52-62. Therefore, the amount of Rs.82,927/- is the average premium amount. Complainant has paid 29 premium therefore, it is required to be multiplied by 82.927/-.

$82.927 * 29 = \text{Rs. } 24,04,883.14/-$. The refund amount should not be less than 30% of the premiums.

The 30% of Rs. 24,04,883.14/- is Rs. 7,21,464.94.

As per clause 12 the minimum surrender value will not be less than 30% of premiums that means he can get not less than Rs. 7,21,464.94/-.

20.4 Opponent has calculated cash surrender value of Rs. 11,00,042.69/- considering the formula i.e. Cash surrender value* base cash value + PUA cash value. But this formula is not incorporated in the terms and conditions of the policy. Therefore, we have to consider the figure of Rs. 13,35,201.93/- paid up additions given in the annual statement for the period of 25.1.2011 to 25.1.2012 at page 70.

20.5 As discussed above, the complainant is entitled for Rs 6,83,963.26/- under calculation mode (a) of the clause 14 of the terms and conditions of the policy and Rs. 13,35,201.93/- under the calculation mode (b) of the clause 14 and paid up additions shown in the annual statement provided at page 70.

As per clause 14 the higher amount is required to be considered. We come to the conclusion that complainant is entitled the amount of Rs. 13,35,201.93/- under clause 14 Non-forfeiture option on non-payment of premium.

20.6 It is an admitted fact that the complainant has borrowed the loan. The outstanding loan amount of Rs. 3,31,970.54/- is shown in the annual statement produced at page 70. The amount of Rs. 3,31,970.54 is required to be deducted under clause 12 read with clause 14 of the terms and conditions of the policy as outstanding indebtedness. Thus, the claimant is entitled Rs. 10,03,231.39/- (Rs. 913,35,201.93- Rs. 3,31,970.54/-) as return of premiums after deducting the outstanding indebtedness/borrowed loan with interest.

20.7 Further it is not in dispute that the amount of Rs. 4,76,860.63/- is remitted to the bank account of the complainant by the opponent insurance company the statement is produced at page 158. This amount credited in the account of the complainant on 23.3.2018. Therefore, the said amount is required to be deducted from the above figure. Thus, the complainant is entitled Rs. 5,26,360.76/- (10,03,231.39 - 4,76,860.63) after the so called settlement payment or part payment made during the proceedings.

21. Interest

The complainant is entitled the amount of interest on Rs. 5,26,360.76/- at a rate of 9% from the date of institution of the complaint (23.1.2014) till the realization of the amount. The complainant is entitled the amount of only interest on Rs. 4,76,860.63/- at the rate of

9% from the date of institution (23.1.2014) till the date of amount remitted in his account (23.3.2018).

22. We considered the facts stated in the complaint, averments made in the written statement, documentary evidence on record, arguments advanced by the Id. Advocate for the parties, ratio laid down in the above referred judgments and facts and circumstances of the case. In view of the above calculation made in the forgoing para we are come to the conclusion that the complainant is entitled for the amount of Rs. 5,26,360.76/- with applicable 9% interest. The complainant is also entitled the amount of interest on remitted amount. Therefore, complaint is require to be partly allowed. Hence, following final order is passed.

ORDER

- (i) The complaint No. 10 of 2014 is partly allowed.
- (ii) The Opponent is directed and ordered to pay Rs.5,26,360/- (Rupees Five Lakhs Twenty Six Thousand Three hundred Sixty only) with interest at the rate of 9% from the date of filing of the complaint till its realization to the complainant as compensation.
- (iii) The opponent is directed and ordered to pay only interest at the date of amount remitted in his account (23.3.2018) on the rate of 9% from the date of filing of complaint (23.1.2014) till the amount of Rs. 4,76,860/- paid by opponent as settlement amount/part payment.
- (iv) Opponent is directed and ordered to pay Rs. 25,000/- (Rupees Twenty Five Thousand Only) as mental harassment and Rs. 15,000/- (Rupees Fifteen Thousand Only) as litigation costs of this complaint to the complainant and shall bear its own costs, if any.
- (v) Copy of the judgment and order be provided to the parties free of costs."

3. Being aggrieved by the above impugned Order dated 18.10.2021 passed by the State Commission, Gujarat, appellant (opposite party) preferred the present First Appeal. As per appellant, the amount of lapsed premiums paid by the respondent for reinstatement of the policy had already been refunded by them (Rs.2,56,530/- and Rs.5,22,712/-). The only question to be adjudicated before the State Commission was therefore with regard to the refund of the premiums regularly paid by the respondent prior to lapse of the policy i.e. from January, 2005 till April, 2012 as claimed by the respondent. It is the contention of the appellant insurer that they had provided the coverage to the respondent under the policy for any unfortunate event which could have happened during the said period. Full insurance coverage along with all the benefits was provided by the insurer to the respondent for the time period up to which the premium was regularly paid by him. As per appellant, they had provided the services against the premiums paid by the respondent and upon the stopping of the premium, the insurance cover was discontinued. So there was no question of refunding the premiums paid during the period in question. However, as per terms and conditions of the policy, because the premia were received for more

than three years, the insured had become entitled to some cash surrender value to be calculated as per terms and conditions of the policy, which figure is Rs. 1100042.69, and not Rs.1335201.93 as adopted by the State Commission. It is the averment of the appellant insurer that State Commission passed an order which is contrary to policy conditions and facts of the case and is liable to be set aside by this Commission on the following main grounds:

- That State Commission committed an error in not accepting the calculation of surrender value of the lapsed policy as per policy conditions made by the insurer at Rs. 1100042.69 and instead in accepting the figure of total cumulative PUA value of Rs. 1335201.93 which figure is arbitrary and beyond the policy terms.
- That the State Commission committing an error by ignoring the fact that after signing NOC/discharge voucher dated 19.03.2018, respondent was not entitled for any other claim with regard to the policy in question.
- Surrender value had already been paid by the appellant insurer and therefore there was no deficiency on their part and State Commission ought to have dismissed the complaint.

4. We have heard learned counsel for the parties and have carefully perused the material available on record. Written arguments have also been filed by both the parties, which have been perused. Ms. Bagga has, drawing our attention to the detailed calculation of the paid up value amount of the lapsed policy at pages 69-72 of the appeal file, submitted that the state commission has made a serious error in rejecting such calculation of the surrender value of the policy meticulously arrived at by the insurer mentioned in para 20.4 of its order. The state commission erroneously and baselessly concluded that the formula for PUA has not been provided in the policy conditions, and further wrongly observed that "*Therefore, we have to consider the figure of Rs. 13,35,201.93/- paid up additions given in the annual statement for the period of 25.1.2011 to 25.1.2012 at page 70*". The formula is very much provided in clause 12 and clause 14 which has been demonstrated in the page 69-72. As per clause 14, the non-forefeiture benefit has been granted and the amount in terms of calculation of amount payable after calculation under option (a) and option (b) thereof has been paid. The State Commission has reproduced these clauses and interpreted them as well in para 20 of its order. The actual calculation of PUA under clause (b) of Rs. 1100042.69 is dependent on factors like the age of the insured and the remaining period of policy etc., which vary for each policy-holder under clause

(b), and is determined on the basis of factors arrived at on actuarial tables for this purpose, and has rightly and objectively been arrived at. Drawing our attention further to pages 69-72, it is highlighted that total paid up additions value of Rs. 1335201.93 is fully payable only in one of the two circumstances namely (i) on full maturity date or (ii) insured event of death, and further that in all other cases the payable amount would be less than such amount. As explained on pages 69-72, in the present case, as per option (a) Minimum guaranteed surrender value is Rs. 6,18,766 (b) Base cash value as on NFO date of 25.04.2012 is Rs. 4,25,250/- after adopting CSV (cash surrender value) factor of 85.02 based on table for the purpose (c) Reduced Paid Up Insurance (RPU) value is Rs. 8,80,477.38 after adopting RPU factor of 482.86 based on RPU rate table, (d) paid up addition cash value (PUA) as *on the date on surrender* is, after considering the age of the insured on surrender date and the portion of the period for which the policy has run, i.e. after adopting factor of 462.48 as per table for the purpose, is calculated only at Rs 617502.22, (as against the full amount of PUA which becomes payable only on death or full maturity, i.e. when all the premia are regularly paid for full term upto 100 years of age) (e) base cash value on *surrender* (Rs. 425250) plus PUA cash value as on date (Rs. 617502.22) totalling to Rs. 1100042.96, after deducting the loan amount of Rs. 621531.67, i.e net of Rs.476860/- has duly been calculated as amount payable on surrender and has been paid on 23.03.2018. It is further submitted that the policy terms including the tables for calculations of values on surrender are approved by IRDA and the same are intended to provide proportionate benefits to all policy holders, based on the age of the insured and the period of insurance period for which the insured continues to pay regular premia, and the balance unhonoured period of policy, and consequently, the entitlement for full paid up additions as communicated in the annual statements is available only on death (insured event) or full maturity, and in all other cases of premature surrender of policy, the entitlement would always be less than PUA and therefore the minimum guaranteed surrender values are also provided in the policy. Thus, State Commission has grossly erred in adopting and directing payment of the full value of PUA as on 25.04.2012. Per Contra, Mr. Dudhiya has supported the order of the State Commission and submitted that the complex calculations now canvassed are not forming part of the policy conditions and therefore the State Commission's order cannot be interfered with. The policy conditions are opaque with regard to granular details as to how the

surrender value of the policy shall be calculated, and therefore, the benefit under the policy cannot be restricted on presumed correctness of the such calculations. The insured has paid nearly Rs. 24 lacs in premium and what the State Commission has granted is only a small portion of this amount, which, in view of the absence of clarity in the policy and following the principle of contra proferantum, need not and cannot be interfered with.

5. After hearing the parties and after going through the record, it is seen that there is only a small dispute regarding the amount to be refunded for the premium paid by the respondent survives. State Commission rejected the calculation of surrender value made by the appellant insurer and granted full PUA value as per the last statement holding that the calculation formula is not incorporated in the policy. After considering the totality of the facts, we agree with the submissions made on behalf of the Appellant insurer. It is difficult to agree with the observations of the State Commission, and the submissions of Mr. Dudhiya, that the policy provides no mechanism for calculating the surrender value. It does provide the minimum guaranteed surrender value amount only if and when policy has run for 3 years in clause 12. Clause 13 provides for calculation of bonus by the company on actuarial considerations. Clause 14 provides NFO calculation options. The surrender amount, as calculated by the company and as explained by Ms. Bagga, appears to be neither arbitrary nor illogical nor unreasonable but, on the other hand, is demonstrated to be based on a system and formula which rightly takes into account the age of the insured, the period for which the policy premia are paid and the balance period of the policy all of which are relevant actuarial considerations. Ms. Bagga is also right in submitting that the full value of PUA would be payable only in two eventualities of death or full maturity, and in the third type of cases of premature surrender, the amount obviously has to be and would be less than full PUA but which is based on actuarial consideration and would be more than or equal to the minimum guaranteed amount as provided under the policy. In the present case, the surrender value as computed on this basis is more than 80% of the PUA as on 25.04.2012. There is also error in the logic applied by the State Commission in the observation firstly that the policy terms provide no mechanism or precise formula to compute the surrender value, and secondly that therefore the full PUA as on 25.04.2012 is payable. The error is obvious firstly because it equates the unequal i.e. those policy holders honouring the premia payments for the full term of the policy and those who leave

the contract mid-way by allowing the policy to lapse. Secondly, for that matter, even the computation mechanism of PUA from time to time in the annual statement, including the bonus component, is not, and cannot be categorically specified in the policy terms, but still, such computation of Rs.1335901.93 is accepted unquestioningly by the state commission thus creating contradiction in its approach. As such, for obvious reasons, the value of bonus and surrender value both are dependent on market conditions and actuarial considerations in the IRDA approved policies and the same has got to be accepted if the insurer is able to demonstrate the objective, rational, and universal basis of computing the same. We are unable to find any ambiguity or lack of specificity in policy conditions as canvassed by Mr. Dudhiya, or as observed by State Commission, so as to validly invoke the principle of *contra proferantum*.

6. We therefore hold that the respondent is entitled for a payment of Rs. 11,000,42.96 subject to deducting the loan amount and interest thereon, as rightly computed by the Insurer. It is clear from the order of the State Commission that the "net" amount of Rs. 476860.60 has been paid by the insurer on 23.03.2018 after deducting loan amount with interest of Rs. 621531.67. Therefore, no amount by way of "principal" further need to be paid by the insurer. On the other hand, it is a fact that the outstanding loan amount which stood at Rs.331970.54 as on 25.04.2012 swelled to Rs.621531.67 as computed by the insurer on page 73 which appears to include further interest till the date of payment by the insurer i.e. till 23.03.2018. It would therefore be appropriate to direct the insurer that (a) it would prepare a and provided to the respondent a self-explanatory statement to indicate the methodology of computing the interest on the loan amount i.e what rate of interest on loan has been applied, whether it is simple interest or compounded interest, and applied at what interval; and (b) shall apply the same rate and and same periodicity and formula for computing and granting of compensation to be computed as interest on the whole amount of Rs. 1100042.96 for the period 25.04.2012 to 23.03.2018, and, shall pay such compensation so computed to the respondent within a period of two months from the date of this order, failing which, such amount of compensation shall bear simple interest at 9% on whole the amount of such compensation till the date of actual payment. Directions (i), (ii) and (iii) in the State Commission's order are set aside while direction (iv) is maintained.

7. In the result, we partly allow the appeal and modify the findings and directions of the State Commission to the extent indicated above.

Sd/-

.....
(A.P. SAHI, J.)
PRESIDENT

Sd/-

.....
(BHARATKUMAR PANDYA)
MEMBER

aj