

Medical Insurance Claims - An Introspection of Pre and Post COVID Scenario

Vemuri Phani Pragneya

Student, Tamil Nadu National Law University

Abstract: *Medical Insurance claims are one of the most important insurance policies that are available. In the recent times of Pandemic, humans have understood the importance of health and are also taught that falling ill is not a "let us see if we fall ill", situation. With the changed thought process the need for medical insurance policies are now more important than ever. This research article tries to analyze the medical insurance policies that were available before country encountered the muddled situation of Pandemic, and the new medical policy changes that were brought about as a response to the pandemic. This Article further analyzes the shortcomings of the policies that were existent before the pandemic and policies that were implemented after the pandemic.*

Keywords: COVID, Corona Virus Disease SARS, Severe Acute Respiratory Syndrome, WHO, World Health organization, IRD AI, Insurance Regulatory and Development Authority of India

Humans, in the wake of COVID-19, more than ever started to come out of the oblivion to life threatening diseases. The vicissitude of way of living has got a new outlook on the way how people consider the insurance policies. In the recent times of COVID-19 insurance policies beyond general and life insurance are given more importance. A category of general insurance, Medical/Health Insurance has come to lime light. This work majorly deals with the interpretation and introspection of Medical claims in lieu of pre and post COVID scenarios. Medical policies of two of the most popular insurance organizations have been considered for this work, namely Ayushman Bharat and Star Health insurance policy.

What is COVID-19?

World health organization states:

“Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered coronavirus.

Most people infected with the COVID-19 virus will experience mild to moderate respiratory illness and recover without requiring special treatment. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness.”

According to census-2011, out of a total population of 1,366 million, there are nearly 104 million elderly people in India who are more susceptible to this virus. As per world cancer report India has nearly 1.16 million cancer patients¹, as per world Asthma report², nearly 6% of Indian children and 2% of Indian adults have Asthma. This data is based on only the confirmed and the reported cases. As per International diabetes federation³, “India has an estimated 77 million people with diabetes, which makes it the second most affected in the world, after China. One in six people (17%) in the world with diabetes is from India. (India’s population

as calculated in October 2018 was about 17.5% of the global total.) The number is projected to grow by 2045 to become 134 million per the International Diabetes Federation.”. According to a report by *India State-Level Disease Burden Initiative CVD Collaborators*, “At the turn of the century, cardiovascular diseases (CVDs) became the leading cause of mortality in India. This epidemiological transition is largely because of the increase in the prevalence of CVDs and CVD risk factors in India. In 2016, the estimated prevalence of CVDs in India was estimated to be 54.5 million.”. Considering these figures, as per a report by firm PwC, Pricewater house coopers, titled *COVID-19 : Impact on Indian insurance industry*, private health insurance schemes cover little around 18% of urban population and 14% of rural population. These abysmally low figures point to the gravity of the situation in these testing times. The World Health Organization estimates that impacts of Corona virus will be distinctly noticed for at least two years. It further observes that, developing a vaccine to meet the desired level of immunity, presently, seems improbable due to the highly metamorphical nature of SARS COVID-19 virus. This unique feature of COVID-19 sets it apart from other virus based diseases such as polio and small pox, for which vaccines were developed. Hence it is feared that humanity may have to be prepared to co-exist with the virus.

An Analysis of Health insurances companies and establishments. How good a purpose do they serve?

Consider Ayushman Bharat, an insurance scheme by the government. It is touted to be one of the largest, based on the scale of funding and the policy holders covered under the scheme. Based on budget report, financial year 2019-20, scheme received a fund of Rs.4000 crore. It covers medical insurance of Rs. 5 lakhs for over 100 million families. As reported by the Bloomberg international Corona Virus tracker, infection in India is growing at a rate of 20%, which is one of the highest in the world, resulting in 1.4 million confirmed cases. Based on predicted rate of growth of infections, the large number of people infected in India demands immediate attention.

¹World Cancer Report,2018.

²World Asthma report,2018.

³The Hindu. ISSN 0971-751X. Retrieved 2020-04-29.

High cost of medical treatment involving hospitalization

According to World Health Organization, a person infected with mild traces of virus requires hospitalization for one to two weeks, whereas a person with severe traces requires hospitalization ranging from three to six weeks. The benefits entitled to the insured, under Ayushman Bharat, the insured is entitled to a sum of Rs.1000/- for up to 12 hours of hospitalization. Considering the duration of hospitalization in case of COVID-19, this results in an expenditure far beyond the policy benefits. This pandemic could have positive long-term implications that would help healthcare reach more rural and less prosperous communities including under- or uninsured communities. This problem is further compounded by high population density in major cities and huge population of India.

Force Majeure and Medical insurance

'Force majeure' is described by Black's Law Dictionary as a 'event or result that cannot be expected or regulated.' A force majeure clause allocates risk among contracting parties where performance becomes impossible or impracticable due to such an event. Despite the fact that force majeure clauses are generally common in contracts, however, the application of this legal concept to epidemics or possible pandemics such as COVID-19 is limited by legal guidelines. Accordingly, some organizations that make decisions based on a assumption that coronavirus and the public safety issues that surround it should provide a contractual justification for non-performance could be in for a surprise. As implementing most contractual rules, the implementation, effect and extent of force majeure will be determined by how the parties have themselves defined the contours of force majeure in their consent. For example, New York courts interpret certain clauses very broadly and demand that clauses contain the particular incident alleged to have prevented performance. It is also imperative that those who are potentially involved study the particular language of their agreements in order to decide which form of incidents are protected.

For example, the contract can expressly exclude illnesses unless followed by an official order from the government. Some contracts may also appoint a particular health authority, or may include a travel ban versus a travel advisory or warning. Accordingly, even if the World Health Organization or Centers for Disease Control and Prevention has released cautionary statements or suggested travel restrictions, courts usually can only excuse results if the particular requirements set out in the contract are met.

With so much information from so many different sources out there, insurers should review their essential contracts to determine which sources of statements are relevant to their duties as claimants. In certain cases it may also be necessary for an insurer to negotiate with local authorities to postpone an event, thus causing contractual safeguards that would not otherwise be available if the company or entity actually cancels the event itself.

A case addressing the issue of Force Majeure is *A.KUMARAVEL VS TAMIL NADU ELECTRICITY BOARD ON 14 DECEMBER, 2005*⁴, wherein it was held that

"It is the settled legal position that an unsubstantiated denial is no denial. In effect, it seems to be the Respondents case that the dislodging of the electrical wire/line was on account of strong winds, which according to the Respondents is an Act of God, for which the Respondents cannot be held accountable. In this connection, it is relevant to point out that an Act of God or vis major is an example of a force majeure event and this defence should be established by a party relying upon the same through strong evidence that the accident was a result of something beyond the reasonable control of the party. Strong winds do not qualify as Acts of God because they are a regularly occurring natural phenomenon which the Respondents are expected to anticipate while laying electrical cables and wires/lines. Only events such as earthquakes, tsunamis, unprecedented floods, et cetera would so qualify. The meaning and scope of the expression "Act of God" or "Vis Major" was elucidated by the Hon'ble Supreme Court in *VOHRA SADIKBHAI RAJAKBHAI AND OTHERS Vs. STATE OF GUJARAT AND OTHERS (2016) 12 SCC 1*, at Paragraph 22⁵, inter alia, as follows:

"....An act of God is that which is a direct, violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. Generally, those acts which are occasioned by the elementary forces of nature, unconnected with the agency of man or other cause will come under the category of acts of God. Examples are: storm, tempest, lightning, extraordinary fall of rain, extraordinary high tide, extraordinary severe frost, or a tidal bore which sweeps a ship in mid-water. What is important here is that it is not necessary that it should be unique or that it should happen for the first time. It is enough that it is extraordinary and such as could not reasonably be anticipated...."

Therefore, it can be inferred from the facts and documents on record that the accident is directly attributable to the negligent maintenance of electrical wires/lines by the Respondents and that the defence of Act of God is untenable."

Sample Insurance claim Policies**Star health insurance**

In the clause pertaining to the adverse situations of an event of Force Majeure mentioned in the "first comprehensive policy" of Star Health insurance policy, it is stated that "In the clause 19(1)...this plan will be wholly or partially be suspended during the continuance of such Force Majeure conditions.", further in clause 19(2) it is stated that, "Once the force majeure conditions ceases to exist, then, we will resume our obligations under this plan for such period

⁴A.Kumaravel vs Tamil Nadu Electricity Board on 14 December, 2005

⁵Vohra Sadikbhai Rajakbhai and Others vs. State of Gujarat and others (2016) 12 SCC 1

during which the force majeure conditions existed.”. Considering the meaning of the clause as it is, the insurance company will be providing benefits in prospective effect. This, though helps the insuree in the long run, may seem not so plausible during the short run. An, insuree as stated earlier will be confronted with big money expenses, during the infection period, where the insurers are supposed to relax the burden by providing the benefits.

Ayushman Bharat Medical Claim

Even in the policy of the world’s largest insurers, the Ayushman Bharat, the mode of payment is still the same in the case of Force Majeure situations. Since Medical claims are a part of General insurance, these insurance policies are probably opting for prospective reimbursement. But as seen earlier, pandemic situations like this, should also be addressed as an urgency. The above quoted text clauses mentioned in the Ayushman Bharat Corrigendum (Corrigendum No.2 dated 11.09.2018, Clause 2.7.1., sub clause (a)), which states “... so impractical as reasonably to be considered as an impossible in circumstances...” COVID-19 virus has never been reported since it was first discovered, in Wuhan China. So it is rational in considering it to be an impractical as reasonably to be considered as an impossible in circumstances.

Though Force Majeure does not have a particular legal status in the Indian Contract Act, its reference can be understood in Section 32 of Indian Contract Act, 1872⁶, i.e. happening of an impossible event. In both of the Medical claims above, though they made a mention about force majeure clause, it has not been expressed in the full extent.

These are just a small references to two of the most widely known insurance claim providers. Recently Insurance Regulatory and Development Authority of India (IRDAI) has published a circular in light of COVID-19, and all the insurers, irrespective of the business status (public or private) are expected to follow.

Employment Hazard and Medical insurance

COVID-19 pandemic has severely affected the economies of the state and made well being a serious ambiguity. In spite of all the potential threat the pandemic poses, there are still few citizens who are working relentlessly to help the system be on track. Apart from doctors and nurses who made news, there are also a lot of second grade assistants and helpers who also help in making measured progress in the way of lives of people.

“Accident”, as a general legal term means and unfortunate unforeseeable event that causes injury to one, in spite of taking reasonable precaution and care. The major issue that arises here is that whether a situation of a social worker contracting this disease is an accident? COVID-19 is a communicable virus. World Health Organization one of its reports stated, the time span until which the genome of the virus remains active in the environment, surfaces. The report says the virus can live up to 72 hours on plastic and stainless steel, less than 4 hours on copper and less than 24 hours on

card board. After the stated duration, the virus goes inactive, so there are still chances of people contacting this virus, if the body of the host is adaptable by the virus. The threat of getting infected also increases by great fractions, depending upon the stain of the virus. The recently identified stain of virus is considered 10 times more powerful, communicable than the previous stains. This just shows how prone people are to getting infected. Assuming a case where a doctor or a nurse in a COVID-19 ward gets infected. Whether it can be deemed an accident?, or a policeman who is supposed to guard a quarantined geographical boundary gets infected. Whether in this case it can be considered an accident ?. In both of these cases, it is prudent to assume that the victims have considered reasonable precaution and care. If they still get infected, it checks all the necessary requirements for being considered an accident. The presence of virus unforeseen, the victim has taken all the reasonable precautions and yet gets infected which is unfortunate.

Some Clauses from Health Insurances

Star health insurance

Section i of the “Star First Comprehensive” shows that person will be reimbursed in case of an accident as per the report of medication by a qualified doctor, medical practitioner. Whereas Section 31 of the same document shows that there cant be any reimbursement granted for people evolved in a hazardous activity⁷. These clauses if considered as two individual factors, may not be contradictory but if considered jointly adhering to the case of social workers in wake of COVID-19 will be contradictory. So there can be an approach of Ratio decidendi to come to a conclusion as to whether to get the benefits or not.

In the case of *Additional Secretary vs Bajaj Allianz General Insurance, 19 March, 2014*⁸ the aspects of both Medical insurance and the aspect of accident has been dealt.

“... deceased employee Maniram Sahoo was doing some construction work on an electric pole at 36 height and that he fell down from the said pole, after which he was declared dead by the medical authorities. The version of the complainant that at that time, the power was switched off has also not been denied by the other party. The basic issue to be decided in the present case is whether in this case, the death occurred due to accident and whether the Insurance Company is liable to pay the claim in accordance with the terms and conditions of the Insurance Policy in question.

The report of the post mortem about the cause of death says as follows:-

The cause of death is Cardiorespiratory failure which may be due to associated Cardiac Pathology. Time passed since death is within 12 hours from commencement of Post mortem examination.

⁷Star first Insurance Comprehensive, Unique ID No. SHAHLIP18036V021718

⁸Additional Secretary vs Bajaj Allianz General Insurance, 19 March, 2014.

⁶Section 32 of Indian Contract Act, 1872

As per the above report, the cause of death is cardiorespiratory failure. The cause of cardiac arrest could be the existence of a pre-cardiac disease or even in the absence of such a disease, the cardiac arrest could take place due to shock upon falling from a pole 36 in height. In the event of death by any means, the cardiac arrest or cardiac failure has to take place and only after that, a person is usually declared as dead. The cause of death stated in the post mortem report, therefore, does not support the version of the respondent that it was a death not due to accident. Further, it has been stated in the post mortem report that no external injury was found on the body of the deceased. During fall from a pole, it is not necessary that bodily injury should always take place. The basic point is that there has been a fall from a pole and there has been the death of the employee. The argument taken by the respondent that the employee suffered heart attack while working on the pole, he died then and there, and then fell down, is not substantiated by any medical evidence. Rather, the version that because of his fall from the pole, he got a shock, due to which he suffered a heart-attack and died, seems to be a more plausible explanation. Even if it is believed that heart-attack occurred while he was working on pole, the factum of falling from the pole and his death does not exclude the incident from the nomenclature of accident, based on the test of any prudent thinking and common sense.

It is made out very clearly from the facts on record, therefore, that this is a case where death has occurred because of an accident, involving fall from an electric pole 36 in height and under the terms and conditions of the Insurance Policy, the respondent is liable to pay compensation to the legal heirs of the deceased employee. Since in this case, the amount of ` 4 lakh has already been paid to the legal heirs of the deceased employee, the OP has to pay the said amount to the petitioner/complainant and also a compensation of 5,000/- for mental agony and 1,000/- as litigation cost as ordered by the District Forum.”

So in the same way, can the contradiction in the Star Health insurance policy can be negated.

Another similar case is that of *National Insurance Co. Ltd. vs Balawwa on 4 June, 1993*

Equivalent citations: 1993 ACJ 815, 1993 (2) KarLJ 406, (1994) ILLJ 433 Kant⁹, where it was held that

“It is well-established that under Section 3 of the Workmen's Compensation Act there must be casual connection between the death of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease, he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death or if the death was due not only to the disease but the disease coupled with the employment, then it could be said that the death arose out of the employment and the employer would be liable.”

⁹*National Insurance Co. Ltd. vs Balawwa on 4 June, 1993 ACJ 815, 1993 (2) KarLJ 406, (1994) ILLJ 433 Kant*

Ayushman Bharath

“Pradhan Mantri Rashtriya Swasthaya (PMRSSM)”, this report clearly mentions the investigation and the benefits for treatment, of disease and accident which are attributes of the case will be noted and reported thereby deciding as to whether there can be a benefit that can be availed. Apart from this, Ayushman Bharath will also include non poor too, the scheme will also be providing coverage to employees including government and contractual staff and other beneficiary groups such as building and construction workers, manual scavengers, road accident victims and central armed police force workers.

IRDAI Circular and Impact on Medical Claims

In light of the COVID-19 pandemic, Insurance Regulatory and Development Authority of India (IRDAI) has published a circular to all health insurers about giving medical claim benefits considering Corona virus. But there are some short comings in the circular as well. Clause 4(i) of this guidelines reads out for the establishment of short term health insurance policies offering health insurance cover to COVID - 19 only. Clause 4(vii) expressly prohibits add-ons.

“WHO continues to review the evidence on antibody responses to SARS-CoV-2 infection. Most of these studies show that people who have recovered from infection have antibodies to the virus. However, some of these people have very low levels of neutralizing antibodies in their blood, suggesting that cellular immunity may also be critical for recovery. As of 24 April 2020, no study has evaluated whether the presence of antibodies to SARS-CoV-2 confers immunity to subsequent infection by this virus in humans”.

This proves that the Corona virus takes a heavy toll on the immunity of an individual's body, this makes an individual more susceptible to other diseases. Health insurers should also consider giving special benefits to people who avail this service. Consideration of other illness that a person might probably be exposed to will be a better amendment to the policy.

Short Comings of Short Term Policies

The major disadvantage of the policy guideline that IRDAI has issued is that, all the policies pertaining to COVID-19, should be Short term policies. Short-term health coverage, as by definition, means any health care plan that has been given for a benefit period of less than 12 months. Short-term policies may be issued for a total of three months up to a maximum duration of eleven months. The policy period will be between three months and eleven months, in multiples of completed months. According to the IRDAI circular, only short-term health insurance policy can provide cover applicable to coronavirus disease. The policy will have a waiting period that shouldn't exceed 15 days according to IRDAI. Don't allow specific add-ons. Renewability, relocation, and portability for a lifetime are not applicable to short-term health policies.

COVID-19 has enforced upon humanity changes which were hetero unforeseen and unexpected. This quagmire is directly related to health sector, insurance sector, front line

health workers and public health in general. Based on the sheer magnitude of the people affected and the costs involved, some significant changes have been brought about in medical policies to meet the current challenges. In certain areas of disputes, judgments by courts at various levels have paved the way for reinterpretation of certain terms and conditions in the medical policies and suggested the required changes in existing policies. Corona virus demands a renewed outlook to meet both current problems, and problems that humanity might prospectively face. A medical policy is no longer a “what if”, but a necessity. Recent reports by organizations such as, National Center for Biotechnology Information and the Centers for Disease Control and prevention (CDC), point towards long term medical complications arising out of COVID-19, requiring expensive treatment. This throws further challenges to both the health sector and medical insurance companies, and thus the fight continues against the metamorphical virus and the related consequences.

References

- [1] World Health Organization Reports
- [2] World Cancer Report, 2018.
World Asthma report, 2018.
The Hindu. ISSN 0971-751X. Retrieved 2020-04-29.
- [3] Ayushman Bharat Claim policy : Pradhan Mantri Rashtriya Swasthayaya
- [4] Star Health insurance policies.
- [5] Indian Kanoon:-
 - A. Kumarvel v. Tamil Nadu Electricity board
 - Vohra Sadikbhai Rajakbhai and others v. State of Gujarat and Others (2016) 12 SCC.
 - Additional Secretary v. Bajaj Allianz General Insurance.
 - National Insurance Co. Ltd. V. Balawwa.
- [6] IRDAI Circular on COVID-19
- [7] Indian Contract Act, 1872

Author Profile

Phani Pragneya Vemuri, hails from Hyderabad, Telangana, is a second year law tutee from TamilNadu National Law University, Tiruchirapalli. This article is written while interning at **La Mintage Legal, Hyderabad**. My special thanks to Shri Tangirala Venkata Satya Kumar & Shri Moksha Kalyanram Abhiramula for their insights, guidance and support.