

## Flow Chart

### How to Proceed for the 50 marks Case Study in the Exam?

You should attempt Q1. after completing Q2. to Q6. So that you can attempt the same with free mind and ample time in hand.



Read the Question first and not the passage because it is better to know the destination before starting the journey.



After reading the question, try to understand and analyze that in what combination of chapters, the questions are given in the paper.



After analyzing and depicting about the specified chapters covered, then go for reading the passage.

### Note from the Author:

The 50 marks case study can be theoretical or practical based or a combination of both. The presentation of answer runs parallel to the content. There has to be a balance between Quality and Quantity of answers.

## INSURANCE LAW AND PRACTICE (Elective Paper 9.3)

Time allowed : 3 hours

Maximum marks : 100

**NOTE:** Answer **ALL** Questions.

### Question 1

*Shri Prithipal Singh, 48 years of age, on 7th May, 1990, secured for himself a mediclaim policy from X General Insurance Co. Ltd. Necessary formalities were completed by him in this regard after due consultation with and guidance of the insurance company's agent. Shri Singh nominated his wife Smt. Satwant Kaur as the beneficiary under the policy. The policy was for a period of one year and has to run from 7th May, 1990 to 6th May, 1991. The annual premium charged by the company was ₹1,500 which was duly paid in cash by the insured.*

*In filling the proposal form leading to the issue of the policy Shri Singh, while answering questions 10 and 11 thereof, had clearly stated that he had not suffered from any illness in the past and that he had not undergone any medical procedures.*

*On 11th September, 1990, Shri Singh fell ill suddenly and was admitted to a local hospital at Ludhiana where he was residing. The Ludhiana hospital, in the course of the treatment, suggested his shift to a specialised hospital and hence on 7th December, 1990, Shri Singh was shifted to the Madras Institute of Nephrology, Chennai also known as Vijaya Health Centre. While under treatment in the Chennai hospital, Shri Singh's condition deteriorated and ultimately he died in the Chennai hospital on 26th December, 1990.*

*Smt. Sawant Kaur intimated the insurer X General Insurance Co. Ltd., of her husband's death early in January 1991 and followed up the intimation with a claim statement in February 1991 in which she had claimed a reimbursement of medical and hospital charges of ₹5,23,500.*

*The insurance company made enquiries with the Madras Institute of Nephrology and obtained a certificate from them on 6th May, 1992 stating that the deceased Shri Singh was a known case of chronic renal failure/diabetic nephropathy; that he was on a regular haemo-dialysis for some years and also after admission into their Institute and suffered from severe breathlessness leading to the development of a sudden cardiac arrest leading to death on 26th December, 1990. Their certificate also mentioned that the insured was a confirmed diabetic for the last 16 years of his life. In the circumstances, the insurance company by its letter of 30th August, 1993 repudiated the claim and informed Mrs. Singh so.*

*Feeling aggrieved, Mrs. Singh approached the Consumer Dispute Redressal Forum with the prayer that the insurance company should be directed to pay her claim fully along with interest on the claim amount at 24% per annum and also compensation for causing her mental agony. Additionally, she claimed that the litigation expenses should be fully granted to her. The insurance company, in defence, stated before the authority that the claim was unsustainable and had been refused by it on the*

also pointed out that the proposal form contained a declaration to the effect that if after the insurance is effected, it was found that any statements, answers or particulars stated in the proposal form and its questionnaire were found to be incorrect or untrue in any respect, the insurance company shall incur no liability under the policy.

It was thus asserted that the insured having suppressed the fact of his suffering from chronic renal failure/diabetic nephropathy, which fact was within his knowledge, the insurance company was justified in repudiating the claim. There was a clear suppression of material facts in regard to the health of the insured and, therefore, the insurance company was fully justified in repudiating the insurance claim/contract. The National Commission did not find any merit in the revision petition and dismissed it. No order was made by the Commission as to the costs of litigation.

Based on the facts given above, deal with the following issues :

- (a) Was the insurance company justified in repudiating the claim ? Was there any breach of faith in the case ? (10 marks)
- (b) Define the principle of utmost good faith and state the pertinent interpretation of IRDAI with regard to material facts. (10 marks)
- (c) What is the implication of Section 45 of the Insurance Act ? Is a reference to that section relevant to the above case ? (10 marks)
- (d) Explain the coverage available under a medi-claim policy and state the exclusions under such a policy. (10 marks)
- (e) Explain the importance of conditions and warranties as applicable to medi-claim insurance with reference to the above case. Was there any breach of such provisions ? (10 marks)

#### Answer 1(a)

In the present case, the core question for consideration is whether the fact that at the time of taking out the mediclaim policy, the policy holder was suffering from Chronic Diabetes and Renal failure was a material fact. It is indeed a material fact as, it would have influenced the decision of the company in giving him a policy in the first place. And moreover, this fact was not disclosed by him in his application also.

Therefore, on account of non-disclosure of this fact in the proposal form, the respondent Insurance Company was justified in law in repudiating the claim of the appellant. The National Commission also opined the same thing and held that in the light of the material on record, answer to the question posed has to be in the affirmative.

There was a breach of faith in this case. The principle of "Utmost good faith" has indeed been violated company can refuse to pay for the claim.

#### Answer 1(b)

The principle of Utmost good faith can be defined as a positive duty voluntarily to disclose, accurately and fully, all facts material to the risk being proposed, whether requested or not. Uberrimae Fidei- 'Fidei' means faith and Uberrimae means utmost. Faith is complete between both the parties of contract. 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.