



2024/KER/47860

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

MONDAY, THE 1ST DAY OF JULY 2024 / 10TH ASHADHA, 1946

WA NO. 1349 OF 2023

JUDGMENT DATED 30.1.2023 IN WP(C) NO.21288 OF 2022 &
ORDER DATED 19.06.2023 IN RP NO.304/2023 OF HIGH COURT OF
KERALA

APPELLANT/1ST RESPONDENT IN WP(C)/REVIEW PETITIONER:

N.S.GOPAKUMAR, S/O LATE SREEKUMAR, ADVOCATE,
HILLVALY ESTATE, FLAT NO.A-2, RUBY BLOCK,
TRIKKAKARA, KAKKANAD-682021., PIN - 682021

BY ADVS.
K.SHRIHARI RAO
N.SHOBHA

RESPONDENTS/PETITIONER & 2ND RESPONDENT IN
WP(C)/RESPONDENTS IN RP:

- 1 THE ORIENTAL INSURANCE COMPANY LTD.
REGIONAL OFFICE, RAILWAY STATION ROAD, ERNAKULAM
NORTH, KOCHI - 682018, REPRESENTED BY ITS
REGIONAL MANAGER., PIN - 682018
- 2 HON`BLE INSURANCE OMBUDSMAN,
ERNAKULAM, PIN- 682 015. REPRESENTED BY ITS
SECRETARY, PULINAT BUILDINGS, M.G.ROAD, KOCHI,
PIN - 682015

SMT.K.S.SANTHI, SC FOR R1

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON
04.06.2024, THE COURT ON 01.07.2024 DELIVERED THE
FOLLOWING:



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"CR"**JUDGMENT****SHOBA ANNAMMA EAPEN, J.**

This intra court appeal is filed by the first respondent in WP(C) No.21288 of 2022, challenging the judgment dated 30.01.2023 of the learned Single Judge. The Oriental Insurance Co. Ltd., the first respondent herein, was the writ petitioner. The Insurance Ombudsman, the second respondent herein, was the second respondent in the writ petition.

2. The question involved in this case is whether the Insurance Ombudsman has power to direct the insurance company to issue a medi-claim policy at the same premium as was originally charged and to issue directions, directing payment of premium.

3. The facts of the case are as follows;

The appellant herein had taken a medi-claim policy from the respondent insurance company through the Punjab National Bank as per PNB-Oriental Royal Medi-claim policy from 09.12.2014 onwards. The policy was being renewed thereafter and the last period of policy was from 09.12.2017



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to 08.12.2018. On 29.11.2018, when he approached the Punjab National Bank, Thrikkakara for renewal of policy from 08.12.2018, he was informed that the premium for renewing the policy is enhanced to ₹19,587/-. Originally, the premium was only ₹7,172/- per annum. Hence, objecting to the enhanced rate of premium, the appellant issued Ext.P1 notice to the respondent insurance company to renew the policy on the normal rate. In reply to that, the respondent insurance company issued Ext.P2, stating that the revision of premium is nominal considering the medical inflation that happened during the past years. He was further informed that the said premium was fixed after obtaining approval from the Regulator. Thereafter, a complaint dated 02.01.2019 was given by the appellant before the Grievance Cell of the respondent insurance company. In reply to that, Ext.P3 letter dated 03.01.2019 was issued to the appellant explaining the reasons for the enhancement of premium. However, instead of renewing the policy within the grace period, the appellant filed Ext.P5 complaint before the Insurance Ombudsman, which was dismissed as per Ext.P6 award dated 23.09.2019. Challenging this, the appellant had filed WP(C) No.29027 of



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2019 and this Court, as per Ext.P7 judgment, set aside Ext.P6 award, directing the Insurance Ombudsman to reconsider Ext.P5 complaint after affording the appellant an opportunity of being heard. In compliance of Ext.P7 judgment, the Insurance Ombudsman passed Ext.P8 award, operative portion of which reads as follows:

“(1) The Respondent Insurer shall issue to the Complainant a policy covering himself and his eligible family members as per the PNB Oriental Royal Mediclaim policy for a Family Floater Sum Insured of Rs. 500,000 and at the same premium as was charged under policy No.440202/48/2015/3653 that expired on 08.12.2018.

(2) The new policy shall be issued for a period of one year with effect from the date of payment of premium by the Complainant and shall be for the same coverage as per the PNB Oriental Royal Mediclaim policy or the coverage that most closely approximates the PNB Oriental Royal Mediclaim coverage from among the policies currently offered by the Respondent Insurer. The new policy thus issued shall incorporate all "continuity benefits" as would have been available to the Complainant had his policy been renewed in the normal course from 09.12.2018.

(3) The Respondent Insurer shall be free to apply any duly approved premium revisions at the time of renewal of the new policy issued as per (1) and (2) above, subject to due advance notice sent to the policyholder as per regulatory norms.”

Aggrieved by Ext.P8 award, the respondent insurance company filed the writ petition before this Court with the



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following prayers:

“i) to declare that the Insurance Ombudsman has no power to direct the Insurance company to issue a policy in 2022, accepting pre-revised premium of 2017.

ii) to set aside Exhibit P8 order to the extent it directs the petitioner to issue a Medi-Claim Policy at the same premium as was charged for the policy expired on 8.12.2018 with continuity of benefits.

iii) to allow such other writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of this case in the interest of justice.
iv) to allow the costs of this proceedings to the petitioner.”

The learned Single Judge, after consideration of the entire issue, allowed the writ petition by judgment dated 30.01.2023, quashing the directions in Ext.P8 award and finding that the Insurance Ombudsman has power only to award compensation under Rule 17 of the Insurance Ombudsman Rules, 2017 (hereinafter referred to as, “the Rules”) and directing the Insurance Ombudsman to issue fresh directions in terms of Rule 17 of the Rules. Though the appellant filed a review petition as RP No.304 of 2023, seeking review of the judgment dated 30.01.2023, stating that Rule 13 of the Rules confers the Insurance Ombudsman with the power to direct the insurer to renew a policy by collecting premium at the



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rate originally fixed, the said review petition was also dismissed by the learned Single Judge. Hence, the appellant is before this Court.

4. The learned counsel for the appellant strenuously argued before this Court that the Insurance Ombudsman has power and authority to pass Ext.P8 award and the findings of the Insurance Ombudsman are legally sustainable. It is further submitted that Rule 13 of the Rules confers the Insurance Ombudsman with the power to direct the insurer to renew a policy by collecting premium at the rate originally fixed. To substantiate the said contention, the learned counsel relied on the decisions of the apex court in **Biman Krishna Bose v. United India Insurance Co. Ltd. & Another** [(2001) 6 SCC 477] and **Jacob Punnen & Another v. United India Insurance Co. Ltd.** [2021 KHC 6810]. *Per contra*, the learned Standing Counsel for the respondent insurance company pointed out that Rule 13 of the Rules deals with the duties and functions of Insurance Ombudsman; and the Insurance Ombudsman has power to pass awards only as per Rule 17 of the Rules.

5. We have given a thoughtful consideration of the



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arguments advanced by the learned counsel on both sides. For a better appreciation of the case, it is appropriate to extract the relevant provisions. Rule 13 of the Rules deals with the duties and functions of Insurance Ombudsman, which reads thus:

“13. Duties and functions of Insurance Ombudsman.-

(1) The Ombudsman shall receive and consider complaints or disputes relating to-

(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



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insurance including health insurance; and

(i) any other matter resulting from the violation of provisions of the Insurance Act, 1938 or the regulations, circulars, guidelines or instructions issued by the IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned at clauses (a) to (f).

(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 IRDAI 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.”

As could be discernible from Rule 13 of the Rules, the Insurance Ombudsman can receive and consider complaints relating to disputes over premium paid or payable in terms of insurance policy and the disputes relating to non issuance of insurance policy after receipt of premium in life insurance and general insurance including health insurance.

6. Rule 17 of the Rules is the provision, under which the Insurance Ombudsman can pass awards as follows:



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“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 named in the complaint.

(6) The insurer shall comply with the award within thirty days of the receipt of the award and intimate compliance of the same to the Ombudsman.

(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.”

On a perusal of Rule 17 of the Rules, it can be presumed that



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even if the Insurance Ombudsman passes an award in favour of the complainant, the Ombudsman is only empowered to award compensation to the complainant. Further, it is stated in proviso to Rule 17(3) that the Ombudsman shall not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action or not award compensation exceeding rupees thirty lakhs including relevant expenses, if any. Nowhere in the Rules it is stated that the Insurance Ombudsman has power to issue directions to the insurer to issue a policy at a specified premium. Even if the Insurance Ombudsman finds that an award has to be passed in favour of a complainant, the power conferred on him as per Rule 17 of the Rules is only to award compensation and not to give any direction to the insurer.

7. The decisions relied on by the learned counsel for the appellant are not cases arising from awards passed by the Insurance Ombudsman, but are related to the cases against insurance companies. Though in Rule 13 of the Rules, duties and functions of Insurance Ombudsman include the duty to receive and consider complaints or disputes relating to disputes over premium paid or payable in terms of insurance



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policy, as far as Rule 17 is concerned, it entitles the Insurance Ombudsman to pass awards after consideration of the complaint filed by the complainant. Ext.P8 award passed by the Insurance Ombudsman is found to have exceeded the jurisdiction and it is unsustainable in law, since it gives a direction to the respondent insurance company to issue to the complainant a policy covering himself and his eligible family members at the same premium as was charged under a policy that expired on 08.12.2018. We do not find any reason to interfere with the impugned judgment of the learned Single Judge.

Accordingly, the writ appeal is dismissed.

Sd/-

A. MUHAMED MUSTAQUE

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE