

GAHC010006762014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1168/2014

TATA AIG LIFE INSURANCE COMPANY LTD. and ANR
NOW TATA AIA LIFE INSURANCE COMPANY LTD., REGISTERED OFFICE
6TH FLOOR, PENINSULA TOWERS, PENINSULA CORPORATE PARK,
GANPATRAO KADAM MARG, LOWER PAREL W, MUMBAI- 400013
MAHARASTRA, REP. BY ITS MANAGING DIRECTOR.

2: THE MANAGING DIRECTOR
TATA AIG LIFE INSURANCE COMPANY LTD. NOW TATA AIA LIFE
INSURANCE COMPANY LTD.
6TH FLOOR
PENINSULA TOWERS
PENINSULA CORPORATE PARK
GANPATRAO KADAM MARG
LOWER PAREL W
MUMBAI- 400013 MAHARASTR

VERSUS

THE INSURANCE OMBUDSMAN and ANR.
GUWAHATI CENTRE, JEEVAN NIVESH, 5TH FLOOR, S.S. ROAD,
PANBAZAR, GHY- 1.

2:AZIZUL HOQUE @ AZIRUL HOQUE
S/O- WAJED ALI
R/O VILL.- TUKTUKI
P.S.- DHING
DIST.- NAGAON
ASSAM
PIN- 782123

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the petitioner(s) : Mr. PP Dutta

Advocate for the respondent(s) : Mr. SD Purkayastha
For the Respondent No.2.

JUDGMENT & ORDER(ORAL)

30.07.2024

Heard Mr. PP Dutta, the learned counsel appearing on behalf of the petitioners. Mr. SD Purkayastha, the learned counsel appears on behalf of the respondent No.2.

2. The instant writ petition has been filed challenging the order dated 30.09.2013 passed by the Insurance Ombudsman at Guwahati Centre whereby the said authority had directed the petitioners to settle the claims of the claimant, who is the respondent No.2 herein within a period of 15 days from the date of receipt of the letter of acceptance of the award from the complainant. It was also directed that in the circumstance, the said amount is not paid, an interest @8% per annum would be levied on the settlement amount with effect from the date of submission of the claim papers till the date on which the settled amount is to be released.

3. For deciding the said dispute, this Court finds it relevant to take note of the brief facts on the basis of which the instant writ proceedings has been filed. The respondent No.2 herein as a complainant had filed a complaint before the Insurance Ombudsman at Guwahati Centre, which was registered and numbered as Complaint Case No.21/L03/96/12-13/Ghy. The complainant's case is that his wife had taken a policy from the petitioner company with the date of commencement on 23.03.2010 and while the policy was in force, she died on 21.12.2010. The complainant being the nominee under the policy preferred a claim and submitted all the relevant documents. But the petitioner company had repudiated the claim and communicated a decision by the letter dated 14.06.2012.

4. In support of the complainant's case, the complainant has enclosed the death certificate issued by the Registrar of Births and Deaths as well as the death certificate issued by the concerned Village Headman. In addition to that, another death certificate issued by the attending physician Dr. RC Bordoloi, Dhing PHC dated 21.04.2011 was also taken into consideration.

5. The case of the petitioners' company, on the other hand, was that the wife of the complainant had expired on 07.03.2010 i.e. 16 days prior to the date on which the wife of the complainant had allegedly signed the application of insurance dated 23.03.2010. In that regard, an investigation was carried out and it could be learnt from the post mortem report that the wife of the complainant expired on 07.03.2010 at 1.00P.M. In addition to that, the GD Entry of Bhangagarh Police Station GDE No.172 dated 07.03.2010 was also placed by

the petitioners' company before the Insurance Ombudsman to justify that the insurance contract was entered into by committing fraud *inasmuch as*, the person in whose favour the insurance policy was made was dead 16 days prior to the entering into the insurance contract.

6. The learned Insurance Ombudsman, however, taking into account the materials on record came to an opinion that the wife of the complainant expired on 21.12.2010 at 4.P.M. and as such, directed that the petitioners' company should complete the process of the claim settlement within 15 days from the date of receipt of the letter of acceptance of the award from the complainant and further directed payment of interest @8% per annum, if not paid as directed.

7. I have heard Mr. PP Dutta, the learned counsel appearing on behalf of the petitioners, who submitted that the reasons as to why the petitioners company has approached this Court is on account of the fact that the learned Insurance Ombudsman did not proceed in the manner stipulated in the Redressal of Public Grievances Rules, 1998 (for short, the Rules of 1998). The learned counsel referred to Rules, 12, 13 and 14 and submitted that the learned Insurance Ombudsman did not specifically comply with Rule 13 and 14. The learned counsel further referred to the fact that the Ombudsman had taken into account a report from the In-Charge of Dhing Police Station behind the back of the petitioners and as such, the entire award is liable to be interfered with.

8. I have heard Mr. S D Purkayastha, the learned counsel appearing on behalf of

the complainant, who submits that the documents which were submitted by the complainant were documents issued by the governmental authorities, more particularly, the death certificate which was issued by the Registrar of Births and Deaths. He further submitted that another death certificate was also issued by the attending physician wherein it was categorically stated that he had advised the wife of the complainant, who was suffering from chest pain to be taken to the BP Civil Hospital Nagaon, but she died due to Myocardial infarctions on that date i.e. 21.12.2010 at 4 P.M.

9. I have heard the learned counsels appearing on behalf of the parties and have given an anxious consideration to the materials which have been placed on record.

10. From the materials on record, it is seen that the learned Insurance Ombudsman had duly decided on the basis of the materials placed before the said Ombudsman authority.

11. This Court in exercise of the powers under judicial review would not like to enter into the merits of the dispute. However, it is only with regard to the decision making process, if it is not in accordance with law, this Court can exercise its powers under Article 226 of the Constitution. Challenging the award which has been passed by the learned Ombudsman authority, the learned counsel appearing on behalf of the petitioners submitted that the said award was passed not in accordance with Rule 13 and Rule 14 of the Rules of 1998. Rule 13 and Rule 14 of the Rules of 1998 being relevant are reproduced

hereinunder:

"13. Manner in which complaint is to be made

(1) Any person who has a grievance against an insurer, may himself or through his legal heirs make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complained against is located.

(2)The complaint shall be in writing duly signed by the complainant or through his legal heirs and shall state clearly the name and address of the complainant, the name of the branch or office of the insurer against which the complaint is made, the fact giving rise to complaint supported by documents, if any, relied on by the complainant, the nature and extent of the loss caused to the complainant and the relief sought from the Ombudsman.

(3)No complaint to the Ombudsman shall lie unless:-

(a)the complainants had before making a complaint to the Ombudsman made a written representation to the insurer named in the complaint and either insurer had rejected the complaint or the complainant had not received any reply within a period of one month after the insurer concerned received his representation or the complainant is not satisfied with the reply given to him by the insurer;

(b)The complaint is made not later than one year after the insurer had rejected the representation or sent his final reply on the representation of the complainant; and

(c)the complaint is not on the same subject-matter, for which any proceedings before any Court, or Consumer Forum, or arbitrator is pending

or were so earlier.”

“14. Ombudsman to act fairly and equitably

(1) The Ombudsman may, if he deems fit, adopt a procedure other than mentioned in sub-rules (1) and (2) of Rule 13 for dealing with a claim:

Provided that the Ombudsman may ask the parties for necessary papers in support of their respective claims and where he considers necessary, he may collect factual information available with the insurance company.

(2)The Ombudsman shall dispose of a complaint fairly and equitably.”

12. Rule 13 of the Rules of 1998 stipulates the manner in which the complaint is to be made. The manner in which the complaint was made in the instant case, the learned counsel appearing on behalf of the petitioners could not show any infraction to the said Rule 13.

13. Rule 14 of the Rules of 1998 categorically stipulates that the Ombudsman is to act fairly and equitably. The procedure which is to be followed by the Ombudsman is a procedure which the Ombudsman deems it fit, meaning thereby, that there is a discretion conferred upon the Ombudsman to decide the claim. Only the requirement is that the Ombudsman has to act fairly and equitably.

14. In the instant case, it is seen that the Ombudsman has taken into account the documents which were placed by the complainant as well as the petitioners’

company and on the basis thereof had taken a decision. However, in order to be additionally sure, the Ombudsman also had sought for an enquiry from the Officer-in-Charge of Dhing Police Station to enquire as regards the authenticity of the allegations made by the complainant. This was done so by the learned Ombudsman authority as a matter of abundant caution that it is deciding the said dispute/claim without causing any injustice to either of the parties. This confidential enquiry so made in the opinion of this Court does not affect the adjudication so made by the learned Ombudsman authority taking into account that on the other aspects also the learned Ombudsman authority had duly given its opinion without being influenced by the said report.

15. Under such circumstances, this Court is of the opinion that this is not a fit case for exercising the jurisdiction under Article 226 of the Constitution to interfere with the award passed by the learned Ombudsman authority.

16. Accordingly, the writ petition stands dismissed. Interim order(s), if any, stands vacated.

JUDGE

Comparing Assistant