

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.578 OF 2014

National Insurance Co. Ltd., Mumbai Petitioner

V/s.

Shanbhag Vinay Ramray & Anr. Respondents

Mr. Atul Gatne for the Petitioner.

Mr. Vinay Ramray Shanbhag, Respondent
No.1, is present in person.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 4TH MAY, 2016.

P.C. :

1. By this Petition, under Article 226 of the Constitution of India, the Petitioner has challenged the order passed by the Insurance Ombudsman (Maharashtra and Goa), Mumbai. By that order, the Ombudsman has directed the National Insurance Company Limited, Petitioner before us, to pay a sum of Rs.1,00,000/- on ex-gratia basis to Respondent No.1 against the claim lodged for total knee replacement undergone by him on 5th May 2010 at Lilavati Hospital, Mumbai.

2. This order passed on 18th June 2013 is challenged by the Petitioner on the ground that the Ombudsman could not have awarded any ex-gratia

relief once he arrived at the conclusion that the repudiation of the claim, based on the terms and conditions of the policy, cannot be faulted with.

3. The argument of Mr. Gatne, learned counsel for the Petitioner, is that, if there is a finding of fact reached by the Ombudsman that the Insurance Company was within its right to repudiate the claim, then, for some alleged deficiency in it handling the claim of the policy-holder, this ex-gratia sum is awarded, that is far exceeding the powers of the Ombudsman and in complete disregard to the Notification dated 11th November 1998 setting up a mechanism for redressal of public grievances. The Rules are annexed to the Petition at Page No.39 of the paper-book. Our attention is invited to Rule 12 onwards and upto Rule 18 to submit that, once the Ombudsman concluded that there is no substance in the complaint and if repudiation of the claim by the insurer was justified, then, this ex-gratia relief should not have been granted.

4. The amount has been deposited by the Petitioner-Insurance Company in this Court. With the assistance of Mr. Gatne and in the presence of Respondent No.1, we have perused the entire Petition and all annexures thereto. The Petitioner-Insurance Company has been directed to pay a sum of Rs.1,00,000/- i.e. pure ex-gratia payment. We are mindful

of the fact that the Petitioner-Insurance Company has not been faulted for repudiating the claim of Respondent No.1, nor the order proceeds to hold the Insurer guilty of any gross negligence in processing the claim. However, the Ombudsman found that, after lodging the claim, Respondent No.1-Insured had to follow-up with the Company's agent. The claim repudiation letter dated 6th July 2010 was also sent through e-mail and only from the agent. The e-mails to the Petitioner-Insurance Company and eventually follow-up by a person, who has undergone knee replacement surgery, till 2013 enabled the Ombudsman to grant this ex-gratia relief. It is not necessarily founded on the repudiation of the claim. That was held to be proper.

5. We do not think that the order of the Ombudsman visits the Petitioner-Insurer with such remarks and observations as would enable us to interfere with the grant of ex-gratia relief, that being only in the sum of Rs.1,00,000/-. We keep open all the contentions of the Petitioner-Insurer with regard to the power and jurisdiction, so also the authority of the Ombudsman and to be gone into in an appropriate case.

6. For the present, we do not think that our extra-ordinary jurisdiction, which is equitable and discretionary, should be exercised to interfere with

an order passed by the Ombudsman granting ex-gratia relief and only of Rs.1,00,000/-. The Writ Petition is, therefore, dismissed with the above clarification.

7. The Registry shall make the payment of Rs.1,00,000/-, which is the amount deposited by the Petitioner-Insurer in this Court, with accrued interest, to Respondent No.1 within a period of two weeks from the date of receipt of a copy of this order.

8. All concerned to act on an authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]