IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11420 of 2016

P.Raji ... Petitioner

Vs

1. Office of the Insurance Ombudsman,
(Tamil Nadu & Puducherry),
Fathima Akthar Court,
IV Floor, 453, Anna Salai,
Teynampet, Chennai 600 018.

2. TATA AIG General Insurance Co. Ltd.,
Claims Department,
2nd Floor, Samson Towers,
No.403-L, Pantheon Road,
Egmore, Chennai-600 008. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for an issuance of Writ of Certiorarified Mandamus by calling for the records in Ref: CHN-G-047-1516-0449 dated 19.02.2016 on the file of the first respondent to quash the same and direct the first respondent to entertain the complaint dated 05.02.2016 against 2nd respondent herein on merits and consider and decide the same in accordance with law to allow the complaint.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.S.Masilamani for R1
Mr.S.Manohar for R2

O R D E R

The order of rejection of the insurance policy amount claimed by the writ Petitioner in Ref: CHN-G-047-1516-0449 dated 19.02.2016, is under challenge in this writ petition.

2. The impugned order passed by the first respondent dated 19.02.2016, states that the vehicle belongs to the writ petitioner was a commercial vehicle, which do not come under the purview of the Ombudsman. The second respondent also rejected the claim, on the grounds that the petitioner has violated the

terms and conditions of the Insurance Policy and the very police complaint, in respect of the theft of the vehicle, bearing Registration No.TN 18 V 8302 - TATA ACE, which was given after a lapse of seven days. In view of the fact that police complaint itself was given after the permissible period, the writ petitioner is not entitled to claim the policy amount as per the agreements.

3. The learned counsel appearing for the petitioner states that he approached the police immediately and there was a delay on the part of the Police to furnish the copy of the complaint, for which, the petitioner cannot be held responsible or penalized. The learned counsel appearing for the petitioner further states that the petitioner is an illiterate person and the sole bread winner of the family and owning the said commercial vehicle bearing Registration No.TN 18 V 8302 - TATA ACE for his livelihood. This being the fact, the Insurance claim cannot be rejected on the above said technical grounds and therefore writ petition deserves to be considered.

4. The learned counsel appearing on behalf of the second respondent opposed the contention of the petitioner by stating that it is a contractual obligation between the parties and the policy was governed by terms and conditions. In view of the violation of terms and conditions, the insurer is not entitled to get the insurance amount as per the policy. In the present case, there is a long delay in submitting the police complaint. Even the information regarding the theft of vehicle was not informed to the insurance company and there was a delay of 39 days in informing the fact of theft to the Insurance Company. Thus, there is no infirmity in respect of the rejection of the policy amount to the writ petitioner.

5. The learned Counsel appearing for the writ petitioner states that the IRDA (Insurance Regulatory and Development Authority) issued a circular dated 20.09.2011, which states as follows:

> " The current contractual obligation imposing the condition that the claims shall be intimated to the insurer with prescribed documents within a specified number of days is necessary for insurers for effecting various post claim activities like investigation, loss assessment, provisioning, claim settlement etc. However, this condition should not prevent settlement of genuine claims, particularly when there is delay in intimation or in submission of documents due to unavoidable circumstances.
>
> The insurers' decision to reject a claim shall be based on sound logic and valid

grounds. It may be noted that such limitation clause does not work in isolation and is not absolute. One needs to see the merits and good spirit of the clause, without compromising on bad claims. Rejection of claims on purely technical grounds in a mechanical fashion will result in policyholders losing confidence in the insurance industry, giving rise to excessive litigation.

Therefore, it is advised that all insurers need to develop a sound mechanism of their own to handle such claims with utmost care and caution. It is also advised that the insurers must not repudiate such claims unless and until the reasons of delay are specifically ascertained, recorded and the insurers should satisfy themselves that the delayed claims would have otherwise been rejected even if reported in time."

As per the above circular, the delay has to be considered and the claim cannot be rejected merely on the grounds of delay. The reason for delay also to be considered by the Insurance company. Therefore, the rejection of the claim in favour of the writ petitioner is in violation of the circular issued by the Insurance Regulatory and Development Authority.

6. This Court is of an opinion that if at all the delay has to be properly explained by the writ petitioner and he has to submit all necessary documents and adduce evidence before the competent Forum. The said complex facts and circumstances can never be adjudicated under Article 226 of the Constitution of India. All such factual disputes are to be decided by the competent Court of law by considering the documents and evidences, whether the delay is genuine or not.

7. It is left open to the Writ Petitioner to approach the competent Court of law for the purpose of establishing the disputed facts and circumstances, now arisen, on account of the rejection of the claim of the writ petitioner for honouring the Insurance Policy. This being the procedures to be followed, it is for the petitioner to redress his remedy in the manner known to law. Accordingly, the writ petition is dismissed. No costs.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

ay/rts

To

1. The Office of the Insurance Ombudsman,
   (Tamil Nadu & Puducherry),
   Fathima Akthar Court,
   IV Floor, 453, Anna Salai,
   Teynampet, Chennai 600 018.

+1 CC to Mr.N. Manokaran, Advocate sr 59479
+1 CC to Mr.S. Manohar, Advocate sr 59873.

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SP(03/10/2018)