IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5450 of 2017

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Shriram Life Insurance Company Ltd. through its Assistant Manager Lega, Suman Kukherjee, S/o S.R.Mukherjee, Age-31 years, resident of 203, 2nd Floor, Luv Kush Tower, Exhibition Road, P.S.- Gandhi Maidan, District- Patna.

... ... Petitioner

Versus

1. The State Of Bihar through Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Block Education Officer, Ram Nagar, West Champaran.
3. Banjeer Yadav, Son of Late Rajbali Yadav, resident of Village- Sarhatwa, PO and P.S.- Ram Nagar, District- West Champaran.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Alok Kumar @ Alok Kr Shahi, Advocate
For the Resp. No.3	:	Mr. K.K. Tiwary, Advocate
		Mr. Ashok Kr. Sinha, No. 2, Advocate
For the Resp. State	:	Mr. Hitesh Suman A.C. to S.C.13

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 14-08-2019 Heard learned counsel for the petitioner, learned counsel representing the Complainant and learned counsel for the State.

Petitioner, in the present case, is an insurance company. It is aggrieved by and dissatisfied with the order/award dated 17th February 2017 in Complaint No. PAT-L-043-1617-0401 by which the office of the Insurance Ombudsman in exercise of it's power under Rule 15(1) read with Rule 16 of the Redressal of Public Grievance Rules, 1998, passed the award in the following terms:-

"Taking into account the facts & circumstances of

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the case and the submissions made during the course of hearing, the R/I is advised to settle the claim without further delay. The complaint is treated as Allowed."

Learned counsel for the petitioner has placed before this court the brief facts whereunder the claim in question was repudiated by the Insurance company and the same was communicated to the nominee. The repudiation was based on fraudulent suppression of age of the life assured, as according to the Insurance Company, there was a concealment of at least 20 years in the given age. The said letter of repudiation was subject to the complaint which may be made under the Public Grievance Redressal Rules, 1998 (hereinafter referred to as the "Rules of 1998").

Learned counsel for the petitioner submits that the award passed by the Ombudsman is completely vague, unreasoned and it does not state the amount awarded to the complainant. It is his further submission that prior to passing of the award in terms of Rule 16 of the Rules of 1998, the Ombudsman did not take any step to get the complaint settled through mediation as envisaged under Rule 15 of the Rules of 1998. On this ground alone, according to learned counsel for

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the petitioner, the impugned order/Award is liable to be set aside.

Learned counsel for the complainant submits that the Ombudsman has passed the Award after considering the case of the parties and in the Award portion of it's order it has been clearly stated that the complaint has been allowed meaning thereby whatever was the claim of the complainant has been allowed by the Ombudsman.

In this case, a counter affidavit has also been filed on behalf of the respondent no. 2 i.e. Block Education Officer, Ramnagar, West Champaran. The affidavit has been sworn by the Block Development Officer, Ramnagar. He has brought on record a document vide Annexure 'A' to it's counter affidavit saying that same is the admission register of the school in which the name of the deceased life assured has been mentioned with the date of his birth as 05.01.1965.

Having heard learned counsel for the parties and on perusal of the records, this court finds that without going into the merit of the contentions of the parties the impugned order is liable to be set aside on the solitary ground that it has been passed without following the provisions of Rule 15 and 16 of the Rules of 1998. The Rules of 1998 has been framed to

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govern all insurance companies operating in general insurance business and in life insurance business. The object of the Rule is to resolve all complaints relating to settlement of claim on the part of insurance companies in cost effective and impartial manner. The rule envisages appointment of Ombudsman by the governing body of the insurance council constituted under sub-rule (1) of Rule 5 or (f). The insurance council will consist of Life Insurance Corporation of India, General Insurance Corporation of India and it's four subsidiaries and other insurance companies which will be permitted to do insurance business in future.

Under Rule 12 of the Rules of 1998, the Ombudsman has been conferred with certain powers, Rule 13 deals with the manner in which the complaint is to be made and then Rule 14 casts a duty upon the Ombudsman to act fairly and equitably. Rules 15 & 16 provides for the recommendation made by the Ombudsman and where a complaint is not settled by the agreement under rule 15, the Ombudsman has power to pass an Award in terms of Rule 16. Sub-rule (2) of Rule 16 clearly states that "*An Award shall be in writing and shall state the amount awarded to the complainant.*"

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On a bare reading of the aforesaid provisions of the Rules of 1998 it would appear that the Ombudsman has power to receive a complaint against any partial or total repudiation of claims by an insurer. At the first instance, under Rule 15 the complaint is required to be settled through mediation of the Ombudsman and such settlement may be arrived at with mutual consent of the complainant and the insurer through a mutual agreement. As a result of such settlement through mediation a recommendation will be made by the Ombudsman which he thinks fair in the facts and circumstances of the case. Copies of the recommendations is to be sent to the complainant and the insurance company concerned and if the complainant accepts the recommendation of the Ombudsman he will confirm his acceptance to the same to the Ombudsman. On acceptance of the recommendation of the Ombudsman the same will be sent to the insurance company and the insurance company shall thereupon comply with the same. Where a complaint is not settled by agreement under Rule 15 the award is to be passed. In the present case, from the impugned order/Award, it nowhere appears that any step was taken for mediation between the parties. There is no recording of facts that any

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attempt to get the complaint settled through mediation has failed. Further this court finds that it was a claim of repudiation of claim on certain grounds. The Ombudsman has simply recorded the case of the parties and then relying upon the documents of the Block Education Officer, it has concluded that the decision of the respondent is not based on appropriate evidence.

In the Award portion of the impugned order the Ombudsman has simply directed the insurance company to settle the claim without further delay and then in the next line it is stated that the complaint is treated as Allowed. Direction to settle the claim is one thing whereas saying that the complaint is treated as Allowed would be another thing because in that case the entire claim towards costs and compensation etc. shall be taken to have been allowed without there being any discussion on the same. This makes the Award vague and the compliance of sub-rule (2) of Rule 16 cannot be taken to have been done by the Ombudsman. The Ombudsman must discuss each and every claim and clearly state the amount of award with reasons which the insurance company may be liable to be paid.

In the given facts and circumstances of the case, this

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court is constraint to set aside the impugned order/Award dated 17th February, 2017. It is set aside accordingly.

The matter is remitted to the Insurance Ombudsman for passing of a fresh Award in terms of sub-rule (2) of Rule 16 of the Rules of 1998.

Let the whole exercise in this regard be completed within a period of 60 days from the date of receipt/production of a copy of this order. To pass a fresh order/Award and if in ultimate analysis the complaint is allowed, the Award will clearly state the amount on each count as discussed above and in terms of sub-rule (2) of Rule 16 of the Rules of 1998.

This Writ Application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/-

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