ORDER SHEET
WPO/311/2020
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SATYABRATA CHOWDHURY
-VS-
NATIONAL INSURANCE CO. & ORS.

BEFORE:
THE HON'BLE JUSTICE ARINDAM SINHA
DATE; 19.11.2020

Mr. S. Banerjee, Adv.; Mr. S. Ghosh, Adv.; Ms. S. Sen, Adv.; Mr. R. Mullick, Adv.; Mr. R. Sarkar, Adv., for petitioner.
Mr. A. Doss Mullick, Adv., for respondent no.1.
Ms. S. Dubey Chakraborty, Adv., for IRDAI.
Mr. A. Mitra, Sr. Adv. for respondent.
Mr. D. Sen, Adv., for respondent.
Mr. S. Bhattacharyya, Adv., for respondent.

The Court: A person having had taken out a mediclaim insurance policy is petitioner. Mr. Banerjee, learned advocate, appears and submits, on the contingency happening his client claimed and the insurer refused to pay. The dispute reached Insurance Ombudsman who passed award dated 10th February, 2020. Mr. Banerjee submits, the award was duly communicated to the insurer under cover of letter dated 23rd June, 2020, inviting attention of insurer to rule 17(6) in Insurance Ombudsman Rules, 2017 regarding requirement of compliance with award by payment within 30 days and intimation of compliance to the Ombudsman. Hence, there be direction upon the insurer to forthwith comply by paying.

Mr. Doss Mullick, learned advocate appears on behalf of the insurer. He submits with reference to pages 39 onwards of his client's affidavit-in-opposition, the insurance had two sections. Section 1 is hospitalization and domiciliary hospitalization cover while section 2 is for critical illness cover. Petitioner had claimed under section 2 but could only have claimed under section 1. This the Ombudsman found. However, the award made under section 1 cannot be paid to petitioner because it exceeds the sum assured on one hand and on the other there was already payment made under the policy in this section. Mr. Banerjee responds to submit, there was no challenge to the award, which is now final. He relies on rule 17(6) and (8) to submit that the award of Insurance Ombudsman is binding on insurer and hence, the insurer should be compelled to pay.

It appears resistance of insurer to pay is based on two fold contention, which could have been or may have been urged before the Ombudsman. That the Ombudsman was aware of particulars of the policy and the dispute appears from the award itself. Under heading Brief Facts of the Case, period of insurance, sum assured and other details have been given. The award speaks of the claim not coming within purview of section 2 but says same could have been admitted and settled under section 1 of the policy. The award is of Rs.2,16,815/-, on information had with the authority regarding particulars of the policy.

Writ Court has before it the insurer who did not take any action against this award, which, on the face of it, states insurer's argument regarding its repudiation. The situation before Court is that the insured/petitioner has obtained an award, which, though the rules provide for compliance, is not being complied with by the insurer. This is a fit case for interference and exercise of extraordinary power under article 226 of the Constitution of India to compel the insurer to pay the award amount without being drawn into the argument made on its behalf regarding its resistance to pay.

Respondent no.1 is directed to forthwith pay award amount to petitioner. This sum must be paid as disbursed to petitioner within three weeks from date of communication of this order to respondent no.1, at the address given in the cause title.

Writ petition is allowed as above.

(ARINDAM SINHA, J.)

tk