



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.17471 & 17473 of 2019

and

W.M.P.Nos.16945,16949 & 22817 of 2019

HDFC ERGO General Insurance Company Limited
(Formerly HDGC General Insurance Limited)
Rep. by its Authorised Signatory,
6th Floor, MBC Tower,
Old No.90, New No.199,
Luz Church Road, Mylapore,
Chennai - 600 004. ... Petitioner in both the W.Ps.

vs

1. Insurance Ombudsman,
For the State of Tamil Nadu and Puducherry
Office of the Insurance Ombudsman,
Fatima Akhtar Court,
4th Floor, 453, Anna Salai,
Teynampet,
Chennai - 600 018. ... 1st respondent in both the W.P.s
2. Najimudeen Majeed,
Old No.26/2, New No.30, Ground Floor,
VOC Nagar Main Road,
Anna Nagar East,
Chennai - 600 102. .. 2nd respondent in W.P.17471/2019
3. Dr.Immanuel Arunkumar
Sahayam Pharmacy,
No.349, Thiruvotriyur High Road,
Thiruvotriyur,
Chennai - 600 019. .. 2nd respondent in W.P.17473/2019

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1st respondent in Award No.IO/CHN/A/GI/0326/2018-19 & No.IO/CHN/ A/GI/0325/2018-19 respectively dated 12.02.2019 allowing the complaint of the 2nd respondent and quash the same.



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For Petitioner : Mr.V.T.Gopalan,
Senior Counsel
for Ms.G.P.Bhargavi

For Respondents : Mrs.G.Thilagavathy,
Senior Counsel
for Mr.R.Gopinath for R2
in W.P.No.17471/2019
Ms.C.Mahadevi
for M/s. Pass Associates
for R2
in W.P.No.17473/2019

R1 : No Apperance in both WPs

C O M M O N O R D E R

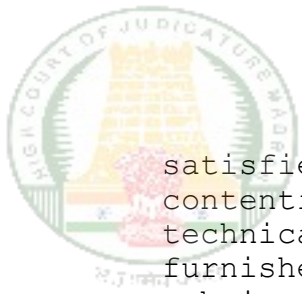
The petitioner in both the Writ Petitions is only and the same viz., an Insurance Company. These writ petitions are filed challenging the award passed by the first respondent dated 12.02.2019, allowing the complaint of the 2nd respondent.

2. Heard, Mr.V.T.Gopalan, learned Senior Counsel appearing for the petitioner, Mrs.G.Thilagavathy, learned Senior Counsel appearing for the 2nd respondent in W.P.No.17471/2019, Ms.C.Mahadevi, learned counsel appearing for 2nd respondent in W.P.No.17473/2019. Though notice was served on the 1st respondent/ Insurance Ombudsman, nobody appears today for the 1st respondent. The name of the 1st respondent is also printed in the cause list.

3. It seems that the 2nd respondent in each case, claiming to be the owners of the subject matter vehicles, made an insurance claim before the petitioner Company, which the petitioner Company repudiated based on certain reasons and circumstances. Challenging such repudiation, the 2nd respondent in each writ petition filed a complaint before the 1st respondent Ombudsman, who in turn passed the impugned award.

4. Since this Court is inclined to set aside the impugned award and remit the matter back to the 1st respondent for reconsidering the matter afresh only on the reason that the technical opinion obtained by the 1st respondent and relied on for passing the impugned award was not furnished to the petitioner, the facts and circumstances warranting the filing of these writ petitions are not discussed in detail.

5. The contention of the petitioner in both the writ petitions is that when a complaint is filed by the 2nd respondent before the 1st respondent and when the 1st respondent has chosen to call for technical opinion on being



satisfied that there were two possibilities, based on the contentions raised by both parties and having obtained such technical opinion, a copy of the same ought to have been furnished to the Insurance Company so as to place their submissions/objections before the 1st respondent, on such technical opinion. It is their categorical case that the said technical opinion was not furnished to them. The 1st respondent has not come forward to appear before this Court to state as to whether such technical opinion was furnished to the petitioner before passing the award. Perusal of the impugned award does not indicate anywhere that the said opinion was furnished to the petitioner before passing the award. Needless to state that when the 1st respondent has relied on the said technical opinion for passing the impugned award, necessarily, the petitioner and the 2nd respondent ought to have been put on notice of the technical opinion so as to enable both parties to place their respective submissions/ objections on the said report. In this case, as this Court finds that no such opportunity was given to both parties, it is evident that the principles of natural justice has not been followed by the 1st respondent in its strict sense while passing the impugned award.

6. The learned senior counsel for the petitioner submitted that they came to know about the technical opinion obtained by the 1st respondent only after receiving the award. Therefore, this Court is of the view that the matter needs to go back to the 1st respondent for reconsidering the same once again on merits and in accordance with law after furnishing a copy of the said technical report to the petitioner as well as the 2nd respondent.

7. Accordingly, these Writ Petitions are allowed and the impugned awards of the 1st respondent are set aside. Consequently, the matter is remitted back to the 1st respondent to pass fresh awards on merits and in accordance with law after giving a copy of the technical opinion dated 01.02.2019 to the petitioner as well as the 2nd respondent. It is also made clear that this Court is not expressing any view on merits and so all the issues raised earlier before the 1st respondent by both parties can be raised once again, so as to enable the 1st respondent to decide the matter afresh on merits and in accordance with law. The 1st respondent shall pass such fresh awards within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar



To

Insurance Ombudsman,
For the State of Tamil Nadu and Puducherry
Office of the Insurance Ombudsman,
Fatima Akhtar Court, 4th Floor, 453, Anna Salai,
Teynampet, Chennai - 600 018.

+2ccs to Ms.G.P.Bhargavi, Advocate SR.No.23303, 23304

+1cc to M/s. Pass Associates, Advocate SR.No.23177

W.P.Nos.17471 & 17473 of 2019

AK(CO)
GMY(01/07/2020)