

S/L 5
16.03.2021
Court No.16
SB

WPA 6526 of 2021
(Via Video Conference)

Tapan Kumar Jana
Vs.
Union of India & Ors.

Mr. Abhishek Banerjee, Advocate

... for the Petitioner.

The affidavit-of-service filed in court today is kept on record.

Mr. Abhishek Banerjee, learned Advocate represents the writ petitioner.

Despite notice, none represents the respondents.

The order dated January 11, 2021 passed by the insurance Ombudsman has been assailed in the present writ petition.

The writ petitioner is the owner of the vehicle (bus) bearing registration no. WB-29-9646. The said vehicle was covered under a valid insurance coverage with the Oriental Insurance Company Limited. The insurance was valid with effect from September 28, 2017 to September 27, 2018 midnight. On December 29, 2017 the said vehicle met an accident and got severely damaged. The writ petitioner immediately

informed the insurance company and all the necessary formalities were duly carried out by the insurance company for assessing the damages caused to the said vehicle.

The writ petitioner then lodged its claim before the insurance company to the extent of a sum of Rs. 10,39,900/-. However, the insurance company fully and finally settled the said claim at a sum of Rs. 1,39,500/-. Such settlement of claim by the insurance company was not accepted by the writ petitioner on account of said insured vehicle.

The writ petitioner then being aggrieved with the said decision of the insurance company, preferred a writ petition being WPA No. 178 of 2020 before this Court. The said writ petition, by an order dated January 8, 2021, was dismissed as infructuous. However, leave was granted to the writ petitioner to file afresh on the self-same cause of action, incorporating the challenge to the subsequent events arising in such connection, if any.

The writ petitioner also challenged the said quantum of compensation before the insurance Ombudsman. On January 11, 2021, the insurance Ombudsman rejected the challenge of the writ petitioner on the plea that, no complaint before the Ombudsman should be maintainable on the same

subject matter on which proceedings are pending before or disposed of by any court or consumer forum or arbitrator and hence, the complaint was rejected without any relief being granted to the writ petitioner.

It is submitted on behalf of the writ petitioner that, the writ petitioner communicated the said order of the co-ordinate bench to the Ombudsman, online, however, nothing in support of such contention had been disclosed in this writ petition and no such document or evidence is before this Court.

After hearing the submissions made on behalf of the writ petitioner and after perusing the material before this Court, this Court finds that the previous writ petition being WPA No. 178 of 2020 was not disposed of on merit, it was dismissed as infructuous and simultaneously leave was granted to the writ petitioner to apply afresh on the self-same cause of action. Inasmuch as, there is no further proceeding as mentioned in the impugned order passed by the insurance Ombudsman on January 11, 2021 is pending relating to the self-same claim. It will, therefore, not be a bar for the Ombudsman now to consider the claim of the writ petitioner on merit in accordance with law and pass its reasoned order after giving adequate opportunity of hearing to the writ petitioner.

Thus, the impugned order passed by the insurance Ombudsman dated January 11, 2021 stands set aside.

The insurance Ombudsman will give an opportunity of hearing to the writ petitioner on his complaint already on record on its own merit, upon giving a notice of hearing of at least seven days and will pass its reasoned decision thereupon in accordance with law and will communicate the same to the writ petitioner.

The entire exercise as stated above, should be carried out within a period of eight weeks from the date of receipt of this order by the insurance Ombudsman.

With the above observation, WPA No. 6526 of 2021 stands disposed of.

There shall be no order as to costs.

(Aniruddha Roy, J.)