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Ct. No.23
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10372 of 2020

Samar Kumar Mondal
Vs.
The Divisional Manager, Howrah Divisional Office,
United India Insurance Company Limited & Ors.

Mr. Sanat Kumar Roy
Mr. Abhishek Banerjee
… For the petitioner

Mr. Soumen Ganguly
Mr. Siddhartha Goswami
… For the respondent insurance company

The petitioner is the owner of a truck bearing Registration No.WB11D 1928 which has a valid carriage permit. The said truck is insured with the respondent no.1. The said truck met with an accident on 25th June, 2018 when the same was seized. The truck was ultimately released upon completion of formalities.

The petitioner lodged a claim with the respondent no.1 as to the damages suffered by the said truck due to the accident that took place on 25th June, 2018. Since the respondent no.1 was not settling the petitioner’s claim, the petitioner approached the Ombudsman. Due to delay in the Ombudsman disposing of the petitioner’s claim, the petitioner filed a writ petition before this Court, being WPA 22492 of 2019. The said writ petition was dismissed having become infructuous, with liberty to the petitioner to file a fresh writ petition on the selfsame cause of action.

Before the Ombudsman the petitioner says, a settlement proposal was given by the respondent insurance company for settling the claim at Rs.1,47,000/-. The petitioner did not agree to such settlement inasmuch as the petitioner's claim was much in excess of the sum offered by the insurance company. Ultimately, the settlement proposal failed and the Ombudsman proceeded to pass an order by rejecting the petitioner's claim. The petitioner claims to have received a letter from the insurance company dated 19th October, 2020 wherein it was mentioned that the petitioner's claim has been settled on "Cash-Loss Basis" for Rs.1,47,139/- on the basis of the assessment by the surveyor. The petitioner says that the surveyor does not have any right to assess. The assessment part is made by the insurance company upon receipt of the surveyor's report. An illegality, therefor, has been perpetrated, according to the petitioner by issuing the letter dated 19th October, 2019 which is the main challenge in this writ petition.

On behalf of the respondents, several objections have been raised, one of which is that the insurance contract contains an arbitration clause and, as such, the petitioner should be directed to pursue the remedy available thereunder since the petitioner disputes the assessment made by the insurance company.

The petitioner denies the allegations made by the respondents, including the existence of an arbitration agreement said to be there between the petitioner and the respondents according to the respondent insurance company.

After hearing the parties and considering the materials on record, I find that the reliefs claimed by the petitioner cannot be granted by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is disposed of granting liberty to the petitioner to avail such relief as may be available to the petitioner in accordance with law for recovery of the loss and damages from the insurance company said to have been suffered by the petitioner.

Nothing further remains to be adjudicated in this writ petition.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)