ORDER OD–2

APOT/44/2021
WITH
WPO/311/2020
IA No. GA/1/2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

NATIONAL INSURANCE COMPANY AND ANOTHER
VERSUS
MR. SATYABRATA CHOWDHURY AND OTHERS

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 14TH DECEMBER, 2021.

[Via Video Conference]

APPEARANCE:

Mr. Subhojit Mullick, Advocate,
Mr. Arijit Doss Mullick, Advocate
……for the appellants.

Mr. Shaunak Ghosh, Advocate,
Mr. Rajib Mullick, Advocate,
Ms. Saheli Sen, Advocate
……for respondent No.1.

Ms. Supriya Dubey, Advocate
……for IRDAI.

The Court:- This appeal is at the instance of the insurance company against the order of the Learned Single Judge dated 19th November 2020 whereby a direction has been issued to the appellants to pay the amount ascertained by the Ombudsman in the award.

The facts in nutshell are that the respondent No.1 (writ petitioner) had approached the Writ Court with the plea that he was having a mediclaim insurance policy issued by the appellants and had raised a mediclaim which was refused. Therefore, the dispute had reached to the Ombudsman who had passed the award dated 10th February 2020 directing the insurance company to admit the claim under Section 1 of the Varisth Mediclaim for Senior Citizen Policy and pay the claim amount of Rs.2,16,815/- towards full and final settlement of the claim subject to certain conditions. Since the claim was not paid, therefore, the respondent No.1 had filed the writ petition claiming the amount in terms of the award and the Learned Single Judge by the order under appeal has issued a direction to the appellants to pay the said amount.

Submission of learned counsel for the appellants is that the appellants are not liable to pay the sum of Rs.2,16,815/- as the sum assured was only Rs.1.5 lakh and that the part of the sum was paid as cashless reimbursement.

Having perused the record, we have noticed that a clear award for a sum of Rs.2,16,815/- with certain conditions was passed by the Ombudsman and the same was not challenged by the appellant insurance company. The appellant insurance company was required to pay the sum mentioned in the award within a period of 30 days of the receipt of the award in terms of Rule 17(6) of the Insurance Ombudsman Rules, 2017 and intimate compliance of the same to the Ombudsman. Since the appellants had accepted the award and had not raised challenge before any forum and it was the respondent No.1 who had approached the Writ Court seeking enforcement of the award, it is not open to the appellants to raise the issue in this appeal that the award is incorrect. The Ombudsman has taken into account all the circumstances while passing the award and the Learned Single Judge has also duly considered the objection raised by the appellants. In these circumstances, we do not find any error in the order of the Learned Single Judge. No case for interference with the order of the Learned Single Judge is made. That apart, we also notice that there is a delay of 82 days in filing this appeal which is not properly explained.

Hence, the appeal is dismissed.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)

sm / s.kumar