

APO/73/2022
WITH
WPO/1827/2022
IA NO.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

MAHESH KUMAR PERIWAL
VERSUS
OFFICE OF INSURANCE OMBUDSMAN AND ORS.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI
DATE : 2ND SEPTEMBER, 2022

APPEARANCE:

Mr. Sirsanya Bandopadhyay, Advocate
Mr. Soham Kumar Roy, Advocate
....for the appellant

Mr. Shiv Shankar Banerjee, Advocate
Mr. Arijeet Doss Mullick, Advocate
....for the respondent

The Court:- This appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 6th April, 2022 whereby WPO/1827/2022 has been dismissed with liberty to the appellant to approach the appropriate civil or other statutory forum to agitate the grievance against the insurance company.

The appellant had filed the writ petition challenging the repudiation letter issued by the insurance company dated 12th April, 2019 as also the decision of the Ombudsman dated 28th March, 2022 with a plea that the appellant is in the business of transport contractor and was having the vehicle being GJ06 AX4542 registered with the Transport Department of Vadodara and the said vehicle met with an accident on 2nd November, 2018. According to the appellant, the vehicle was insured with the respondent insurance company, therefore, the claim was raised, which was wrongly repudiated. The Ombudsman was approached in terms of the Insurance Ombudsman Rules, 2017 who dismissed the complaint.

Learned counsel for the appellant has submitted that the Ombudsman has wrongly dismissed the complaint on the ground that the driving licence does not contain the endorsement to drive vehicle carrying goods of dangerous and hazardous nature. He submits that such a certificate exists and it should have been taken into account, therefore, order of the Ombudsman cannot be sustained.

Opposing the prayer, learned counsel for the respondent insurance company has raised the submission that mere existence of the certificate is not enough. The requisite endorsement in the licence is necessary and that in such cases, remedy exists either to go for arbitration or to approach the civil court or to file appropriate complaint before the Consumer Forum, depending upon the facts of each case. He has also submitted that Rule 9(3) of the Motor Vehicles Rules, 1989 requires such an endorsement. Hence, repudiation of claim does not suffer from any error.

We have heard learned counsel for the parties. It is undisputed before this Court that the order of the Ombudsman is not binding on the appellant. Rule 13(2) of the Insurance Ombudsman Rules, 2017 makes it clear that the Ombudsman acts only as counsellor and mediator. The appellant is required to establish the factual issues relating to issuance of certificate as also legal issues relating to effect of absence of endorsement in the licence as required by Rule 9(3) of the Motor Vehicles Rules, 1989. Since the main challenge is to the repudiation of claim, therefore, the learned Single Judge has rightly reached to the conclusion that the appellant must avail the remedy before the civil court or other statutory remedies. Learned Single Judge has adequately protected the appellant by observing that the finding of the Ombudsman are only tentative and shall not be binding on the forum which may be approached by the appellant. So far as the judgment in the matter of *Baghelkhand Filling Station and Anr. Vs. Brijbhan Prasad & Ors.* reported in 2006 (2) MPLJ 211 relied upon by counsel for the appellant is concerned, in that case, the Division Bench of the High Court was considering an appeal

under the Motor Vehicles Act as against the award of the Claims Tribunal wherein the parties had the opportunity to lead the evidence.

Hence, in the aforesaid circumstances of the case, no error has been committed by the learned Single Judge in refusing to entertain the writ petition. Hence, no ground to interfere in the order of the learned Single Judge in this appeal is made out, which is accordingly dismissed.

(PRAKASH SHRIVASTAVA, C.J.)

(MD. SHABBAR RASHIDI, J.)