

S/L 21
18.9.2023
Court No.26
SD

WPA 21542 of 2016

Bharti AXA Life Insurance Co. Ltd.
Vs.
The Insurance Ombudsman & Anr.

Mr. Shourjyo Mukherjee
Mr. Sourojit Dasgupta
Mr. Vishwarup Acharyya

...for the Petitioner.

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order passed by the Insurance Ombudsman, State of West Bengal dated March 31, 2016.

The order has been assailed on the ground that a sum of Rs.29,43,261/- has been awarded by the Ombudsman which is beyond the pecuniary jurisdiction of the Ombudsman.

None appears on behalf of the respondents in spite of service on several occasions.

Counsel appearing on behalf of the petitioner/insurance company relies on a notification dated November 11, 1998 bearing No. G.S.R. 670 (E) that has been published in exercise of the powers conferred under sub-section (1) of Section 114 of the Insurance Act, 1938. He relies on sub-clause (2) of clause 16 and the proviso therein which are delineated hereinbelow:-

***“16(2). An award shall be in writing and shall state the amount awarded to the complainant:
Provided that Ombudsman shall not award any compensation in excess of which is necessary to cover the loss suffered by the complainant as a direct consequence of the insured peril, or for an amount***

not exceeding rupees twenty lakhs (including ex-gratia and other expenses), whichever is lower.”

From a plain reading on first principles, it appears that the Ombudsman does not have the power to pass an award in excess of Rs.20 lakhs. Accordingly, the impugned award is passed without jurisdiction and is set aside.

The aforementioned notification is superseded by the Insurance Ombudsman Rules, 2017 where under Rule 17(3) the limit to award compensation is fixed at Rs.30 lakhs. However, the Rules were enacted on April 25, 2017, and the impugned order was passed on March 31, 2016, prior to the rules coming into effect. Thus, the limit to award compensation under the Insurance Ombudsman Rules, 2017 shall not apply to the impugned order.

Parties shall be at liberty to proceed before the appropriate forum.

As per Section 14 of the Limitation Act, the period that the private respondent has been before the Ombudsman and the writ petition before this Court shall be omitted for the period of limitation.

With these observations, WPA 21542 of 2016 is disposed of.

There will be no order as to costs.

All parties are to act on the website copy of this order.

(Shekhar B. Saraf, J.)