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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2903 OF 2021

Bharat Hirji Dedhia,	]	
Through his attorney namely	]	
Mr. Rahul Dedhia	]	
Age:68 Years, having address at B-1204,	]	
Bhavya Heights CHSL, Katrak Road,	]	
Wadala (W), Mumbai - 400031	]	...Petitioner

VERSUS

- | | | | |
|-----------|---|---|----------------|
| 1. | Union of India, |] | |
| | represented by the Secretary |] | |
| | for Ministry of Finance having its |] | |
| | address at New India Assurance |] | |
| | Building, 87, M. G. Road, Fort, |] | |
| | Mumbai - 400001 |] | |
| | |] | |
| 2. | The Oriental Insurance Company Ltd. |] | |
| | A public limited Company, having its |] | |
| | office at Maker Bhawan No.1, 5 th Floor, |] | |
| | New Marine Lines, Churchgate |] | |
| | Mumbai – 40020 |] | ...Respondents |

**WITH
WRIT PETITION NO. 706 OF 2024**

Oriental Insurance Co. Ltd.,	]	
Manger, Mumbai Regional Office 1,	]	
Oriental House, 2 nd floor, 7, J. Tata Road	]	
Churchgate, Mumbai -400020	]	...Petitioner

VERSUS

1. **Office of Insurance Ombudsman,**]
Jeevan Seva Annexe, 3rd floor, S.V.]
Road, Santacruz (W), Mumbai-54]
]
2. **Bharat H Dedhia**]
Aged 68 years, Occupation : nil]
B-1204, Bhavya Heights CHS, Katrak]
Road, Near Ram Mandir, Wadala-(W)]
Mumbai – 400 031]...Respondents

**WITH
INTERIM APPLICATION NO.424 OF 2022
IN
WRIT PETITION NO. 706 OF 2024**

Oriental Insurance Co. Ltd.]...Applicant

In the matter between

Oriental Insurance Co. Ltd.]...Petitioner

Versus

Office of Insurance Ombudsman and anr.]...Respondents

APPEARANCES-

Mr Aseem Naphade, a/w Ms Nishtha Malik, Ms Sonali Kochar, Ms Bijal Soni, Mr Tejas Horambe, i/b. NAS Legal Advocates, for the Petitioner in WP/2903/2021 and for Respondent No.2 in WP/706/2024.

Ms S. S. Dwivedi, for the Petitioner in WP/706/2024 and for Respondent No.2 in WP/2903/2021, and for the Applicant.

Ms Karuna Yadav, h/f Mr Parag A. Vyas, for the Respondent-Union of India in WP/2903/2021.

**CORAM : M.S.Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 06 December 2024

PRONOUNCED ON : 09 December 2024

JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties. **Rule** in both these Petitions. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
2. Interim Application No.424 of 2022 seeking leave to amend Writ Petition No.706 of 2024 is allowed. Amendment to be carried out immediately. Reverification is dispensed with.
3. Learned counsel for the parties agree that a common order can dispose of both these Petitions. In any event, Writ Petition No.2903 of 2021 seeks to implement the Insurance Ombudsman's award dated 03 May 2021 and Writ Petition No.706 of 2024 questions the same award dated 03 May 2021.
4. The learned counsel for the parties submitted that Writ Petition No.706 of 2024 be considered first because the fate of Writ Petition No.2903 of 2021 would depend upon the decision in Writ Petition No.706 of 2024. This is correct, and the suggestion of the learned counsel for the parties is accepted.
5. In Writ Petition No.706 of 2024, the Oriental Insurance Company Limited ("Insurance Company") challenges the Insurance Ombudsman's award dated 03 May 2021, directing the Insurance Company to pay to Bharat Dedhia (the second Respondent and the Petitioner in Writ Petition No.2903 of 2021) an amount of Rs.27,13,582/- against the health insurance policy taken by Bharat Dedhia ("Bharat") from the Insurance Company.
6. Ms Dwivedi, the learned counsel for the Insurance Company, submitted that the Ombudsman exceeded the scope of its

jurisdiction in making the impugned award. Therefore, she submitted that the award is illegal, arbitrary, unconstitutional, and without jurisdiction.

7. Ms Dwivedi submitted that Bharat had submitted a proposal form (self-declaration form) based upon which the health insurance policies or at least the additional health insurance policies were issued to Bharat. She submitted that in this proposal form, Bharat had referred to the ischemic heart disease contacted by him on 14 May 2016 and the fact that he was suffering from diabetes mellitus. She submitted that given these proposals/self-declaration forms and the information contained therein, there was no question of offering any health insurance to Bharat.

8. Ms Dwivedi submitted that though, factually, premia were accepted by the Insurance Company and even health insurance policies were issued, the acceptance of such proposal by the Insurance Companies was void. The health insurance policies based upon such acceptance were also void. She submitted that the Ombudsmen should have rejected Bharat's claim at the threshold since the health insurance policies were void.

9. Without prejudice, Ms Dwivedi submitted that in terms of the Insurance Regulatory and Development Authority's ("IRDA") Notification dated 25 April 2017, the Insurance Ombudsman's functions and duties relate to receiving and considering complaints or disputes relating to partial or total repudiation of the claims by the Life Insurer, General Insurer or Health Insurer.

10. Ms Dwivedi submitted that there was no repudiation of the claim in this case, and the Insurance Company offered to pay Rs.5,00,000/- towards the full and final settlement of Bharat's

claim. Accordingly, she submitted that the Insurance Ombudsman had no jurisdiction to consider Bharat's complaint or dispute. She submitted that such consideration by the Ombudsman was beyond the jurisdiction conferred upon the Ombudsman under Clause 13 of the IRDA's Notification dated 25 April 2017. She maintained that the impugned award should, therefore, be set aside as exceeding the jurisdiction vested in the Ombudsman.

11. Ms Dwivedi submitted that Bharat claims to have paid Rs.21,87,500/- as surgeon's charges to Dr Sudhanshu Bhattacharyya at Breach Candy Hospital. However, the Insurance Company had produced material on record to suggest that three other patients who were operated on for similar ailments, i.e. coronary artery diseases ("CAD") in Breach Candy Hospital itself, were charged by Dr. Sudhanshu Bhattacharyya much lesser amounts. She submitted that the Insurance Company deals with public monies and, therefore, could be expected to pay only reasonable and customary charges in terms of the insurance policies. She referred to Clause 3.41 to elaborate upon the concept of reasonable and customary charges, and based upon the same, she submitted that the impugned award was excessive and warranted interference.

12. Finally, Ms Dwivedi submitted that the impugned award directs payment of Rs.27,13,582/-, more than the insured amount of Rs.25,00,000/-, assuming the insurance policies were valid. She submits that even this serious jurisdictional error warrants interference with the impugned award.

13. For all the above reasons, Ms Dwivedi submitted that the Insurance Ombudsman's impugned award dated 03 May 2021 be set aside.

14. Mr Naphade, learned counsel for Bharat Dedhia defended the impugned award based on the reasoning reflected therein.

15. Mr Naphade submitted that the argument based on the alleged and unsigned proposal form was never raised in the written statement filed before the Ombudsmen. This point was sought to be directly argued before the Ombudsmen, but the Ombudsmen rejected it as an afterthought. After receiving the premia and issuing the health insurance policies, the Insurance Company cannot take such an unfair, unreasonable, and illegal stance.

16. Mr Naphade submitted that at no stage was the jurisdiction of the Ombudsman ever questioned. In any event, he submits that Bharat's complaint squarely related to a dispute about partial repudiation or denial of Bharat's claim.

17. Mr Naphade submitted that the Insurance Company never disputed Bharat's payment of Rs.21,87,500/- to the hospital/surgeon. Unimpeachable evidence was produced in this regard. He submitted that the surgeon's fees depended upon the condition of the patient and the complications involved. Even the chart created by the Insurance Company shows the variations. Therefore, relying upon Clause 3.41 or any other Clause, there was no scope to interfere with the impugned award.

18. Mr Naphade submitted that the award is well within the terms and conditions of the insurance policies that the Insurance Company wished to repudiate most unreasonably. Accordingly, the belated contentions now raised are untenable, unfair and most unreasonable.

19. Mr Naphade submitted that in terms of the IRDA's Notification dated 25 April 2017, the Ombudsman's award binds the Insurance Company. Such an award must be complied with within thirty days of receipt, and compliance must be reported to the Ombudsman. He submitted that since this was not done, Bharat was constrained to institute Writ Petition No.2903 of 2021 on 03 September 2021. After intimation of this Petition, the Insurance Company instituted the present Petition on 12 October 2021.

20. Mr Naphade referred to the Insurance company's e-mail dated 17 June 2021, by which Bharat was assured that the payments under the award were being processed and would be made. He submitted that no payments were made, forcing Bharat to file W.P. No. 2903/2021 in September 2021. As a counterblast, the Insurance Company filed W.P. No. 706/2021 in December 2021 with several office objections. The Insurance Company did not bother to clear office objections and get the Petition numbered until December 2024. The award was not complied with on the specious ground of pendency of the Petitions. He submitted that the insurance company had virtually harassed Bharat, who was now over 70 years old, by making him run from pillar to post.

21. Mr Naphade submitted that the insurance company must be imposed with exemplary costs under these circumstances. If necessary, such costs must be recovered from the officers responsible for this delay and harassment of Bharat. He submitted that the awarded amount was payable to Bharat in June 2021. For the delayed period, the Insurance Company must be saddled with interest.

22. By way of rejoinder, Ms Dwivedi submitted that the Ombudsman's award was not complied with because Bharat instituted Writ Petition No.2903 of 2021. She submitted that since, according to the Insurance Company, the policy amount did not exceed Rs.25,00,000/-, even payment of a single rupee over and above Rs.25,00,000/- would have amounted to a waste of public money. She admitted that the objections were cleared only in December 2024, after which the Insurance Company's Petition could be numbered.

23. The rival contentions now fall for our determination.

24. At the outset, we strongly deprecate the conduct of the Insurance Company in this matter. The reasons for such deprecation are set out briefly hereafter.

25. The Ombudsman made and intimated the impugned award on 03 May 2021. There is no dispute about this.

26. Clause 17(6) of the IRDA's Notification dated 25 April 2017, under which the Ombudsman was constituted, provides that the insurer shall comply with the award within thirty days of receiving the award and intimate compliance of the same to the Ombudsman. Further, Clause 17(8) provides that the award of the Insurance Ombudsman shall be binding on the insurers.

27. Thus, by 03 June 2021, or even if some reasonable time is accounted for in communicating the impugned award, by the end of June 2021, the Insurance Company was bound to comply with it. This is more so because, by June 2021, the Insurance Company had neither challenged the impugned award nor obtained any interim relief staying its implementation.

28. As a matter of abundant caution, Bharat called upon the Insurance Company to comply with the impugned award. The receipt of this communication is also not disputed.

29. By email dated 17 June 2021, addressed by the Divisional Manager of the Insurance Company, Bharat was informed that the Insurance Company was working on the release of the payment of the award. The email dated 17 June 2021 acknowledged that Bharat's agent and the concerned Development Officer were requested to inform Bharat that the Insurance Company was processing compliance with the award. The email acknowledges that perhaps this message may not have been communicated to Bharat, and therefore, Bharat was writing to various fora and authorities to make allegations about the non-settlement of the award.

30. The contents of the Insurance Company's email dated 17 June 2021 are transcribed below for the convenience of reference:-

"Dear Sir/Madam,

We are in process of your award and same has been informed to your agent as well as Development Officer Mr. B.D. Mota who has been asked to convey you the message in respect of your claim. It seems that message has not been conveyed to you by these mediaries, and perhaps due to which you are writing to various forum and authorities, making allegation against PSU which are not needed.

The claim once closed is required to be reopen by superior authorities. We have referred issue of reopening and registration of claim under this award to our Regional Office and same is expected soon. You may be aware that due to pandemic, the Offices are not working in the normal ways and therefore the compliance of any matter within appropriate time is become a little difficult task in present situation. We therefore, request you to

kindly cooperate and bear with us, as we are already working on the release of payment of award.

Thanks and regards,

Chandrasen U. Kalkhair

Divisional Manager”

31. Significantly, the Insurance Company, which has now raised several challenges, did not deem it appropriate to plead or enclose a copy of the email dated 17 June 2021 in its Writ Petition No.706 of 2024. This constitutes a willful suppression of a relevant document. At least, public-sector Insurance Companies should not suppress material documents and harass policyholders.

32. Apart from the suppression, there is no justification for not complying with the impugned award within thirty days or, if the Insurance Company was serious about its challenge, then not challenging the impugned award within 30 days or not securing or even moving for interim relief within a reasonable period of the institution of the Petition. The mere institution of a defective Petition or even a petition after clearing all office objections does not operate as a stay on the award. Still, only to harass Bharat, the Insurance Company did not comply with the award, gravely breaching Clause 17(6) of the IRDA's Notification dated 25 April 2017.

33. Ms Dwivedi's explanation that the award was not complied with because Bharat instituted Writ Petition No.2903 of 2021 seeking its enforcement adds salt to Bharat's injuries. With the most profound respect for Ms Dwivedi and the Insurance Company, she represents, such a contention is not very responsible or sensitive in the gross facts of the present case.

34. As if this was not sufficient, Writ Petition No.706 of 2024 was filed on 10 December 2021, after the Insurance Company learned about Bharat instituting Writ Petition No.2903 of 2021 to enforce the impugned award. Writ Petition No.706 of 2024 was not moved for any interim reliefs but, for almost over three years, kept pending in the Registry for objections. As a result, the Writ Petition No.706 of 2024 could not be immediately heard.

35. Thus, by delaying clearance of office objections, the Insurance Company avoided compliance with the impugned award for over four years in the teeth of Clause 17(6) of the IRDA's Notification dated 25 April 2017, requiring compliance within thirty days of receiving the award. This was achieved without securing any interim relief from this Court, providing security, or depositing the awarded amount. This is not the conduct expected of public sector insurance companies.

36. Ms Dwivedi's argument about protecting public money with respect is unacceptable. Suppose the Insurance Company's Writ Petition No.706 of 2024 is to be dismissed. Then, the Insurance Company might be directed to pay interest on the amounts awarded and exemplary costs. In such a situation, the Insurance Company will not hesitate to utilise the public monies for the payment of interest and costs, even though the officers of the Insurance Company are squarely responsible for not complying with the award within thirty days in terms of Clause 17(6) of IRDA's Notification. At that time, the insurance company will have no qualms about expending public money. Therefore, this contention should never have been made, at least in the gross facts of this case, and in any event, this contention cannot be accepted.

37. In a Writ Petition under Article 226 of the Constitution, the conduct of the Petitioner is a crucial factor to exercise discretion. Here, the conduct of the Insurance Company has been gross and disentitles the Insurance Company to any equitable relief under Article 226 of the Constitution. The Petition deserves to be dismissed after being conscious of the gross conduct of the Insurance Company.

38. However, we do not propose to dismiss the Insurance Company's Petition on the above ground. This is because we are satisfied that even on merits, the challenges raised by the Insurance Company are frivolous and do not deserve to be accepted. Therefore, even on merits, the Insurance Company's Petition is liable to be dismissed for reasons discussed hereafter.

39. Ms Dwivedi's contention, based on the proposal form at page 182 of the paper book of Writ Petition No.706 of 2024, was a contention never raised in the written statement before the Ombudsman. This contention involves inquiry into seriously disputed questions of fact. Therefore, without raising such a contention in the written statement and giving full opportunity to Bharat, such a question could not have been examined by the Ombudsman. The Ombudsman has rightly declined to examine such a question by noting that this issue was never raised in the written statement and constituted an afterthought.

40. However, even if extreme latitude is shown to the Insurance Company [though it deserves no such latitude in the facts of the present case], the so-called proposal form does not bear Bharat's signature. Except for the contention across the Bar, no material was produced to substantiate this contention. Further, assuming that the proposal form at page 182 was indeed supplied by Bharat

for the top-up policy, there is no dispute whatsoever that the Insurance Company accepted the proposal, the Insurance Company collected the premium, and even a top-up policy was issued to Bharat. At this point, alleging that the acceptance was improper or that the insurance policy was void is nothing but a desperate, insensitive and dishonest attempt to deny Bharat the benefit under the Ombudsman's impugned award. Accordingly, this contention about the void insurance policies is liable to be rejected and is hereby rejected.

41. Ms Dwivedi's argument based on reasonable and customary charges also lacks substance in the facts of the present case. Firstly, the Insurance Company has not even disputed that Bharat has paid an amount of Rs.21,87,500/- to the hospital/surgeon for the surgery, which was the subject matter of the claim. Secondly, based only on a comparative statement, it would not be correct to conclude that the charges levied by the surgeon were not customary or reasonable. Even though the doctor and the surgical process may be the same or similar, ultimately, the patients are different. The health conditions of the patients are different. Bharat explained this while the insurance company offered no evidence about the other patient's health conditions except for furnishing a comparative chart. Therefore, based on the argument advanced, no illegality can be found in the Ombudsman's award or the reasoning.

42. Clause 3.41 of the terms and conditions of the Oriental Insurance Happy Family Floater Policy 2015, on which Ms Dwivedi relied on, provides that "reasonable and customary charges" means the charges for services or supplies, which are standard and charges for service provider and consistent with the prevailing charges in the geographical area for identical or similar services,

taking into account the nature of illness/injury involved. Thus, even to determine reasonable and customary charges, the nature of the illness and injury must be considered. Here, there is evidence about Bharat's health condition at the time of the surgical procedures; therefore, by merely providing a comparative chart, there is no question of doubting or sustaining a challenge to the Ombudsman's impugned award.

43. Ms Dwivedi's argument that the policy was limited to Rs.25,00,000/— can also not be accepted in the present case. The Ombudsman has considered the various policies under which Bharat was covered. Based on this, an award of Rs. 27,13,582/— has been made after accounting for the earlier payment by the Insurance Company. The evidence on record supports this award. There is no perversity in the finding of this fact.

44. Ms Dwivedi's argument about the Insurance Ombudsman exceeding its jurisdiction is also entirely misconceived. Firstly, such a plea was not even raised before the Ombudsman. Secondly, such a plea is not supported by the construction of Clause 13 of the IRDA's Notification dated 25 April 2017 and the facts of the present case.

45. Clause 13 of the IRDA's Notification dated 25 April 2017 deals with the duties and functions of the Insurance Ombudsman and is transcribed below for the convenience of reference:

“13. Duties and functions of Insurance Ombudsman.-

(1) The Ombudsman shall receive and consider complaints or disputes relating to--

(a) delay in settlement of claims, beyond the time specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999;

(b) any partial or total repudiation of claims by the life insurer, General insurer or the health insurer;

(c) disputes over premium paid or payable in terms of insurance policy;

(d) misrepresentation of policy terms and conditions at any time in the policy document or policy contract;

(e) legal construction of insurance policies in so far as the dispute relates to claim;

(f) policy servicing related grievances against insurers and their agents and intermediaries;

(g) issuance of life insurance policy, general insurance policy including health insurance policy which is not in conformity with the proposal form submitted by the proposer;

(h) non-issuance of insurance policy after receipt of premium in life insurance and general insurance including health insurance; and

(i) any other matter resulting from the violation of provisions of the Insurance Act, 1938 or the regulations, circulars, guidelines or instructions issued by the IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned at clauses (a) to (f).

(2) The Ombudsman shall act as counsellor and mediator relating to matters specified in sub-rule (1) provided there is written consent of the parties to the dispute.

(3) The Ombudsman shall be precluded from handling any matter if he is an interested party or having conflict of interest.

(4) The Central Government or as the case may be, the IRDAI may, at any time refer any complaint or dispute relating to insurance matters specified in sub-rule (1), to the Insurance Ombudsman and such complaint or dispute shall be entertained by the Insurance Ombudsman and be dealt with as if it is a complaint made under rule 14.”

46. Clause 13.1(d) on which Ms Dwivedi relies provides that the Ombudsman shall receive and consider complaints or disputes relating to any partial or total repudiation of claims by the Life Insurer, General Insurer or the Health Insurer. In the present case, as against Bharat's claim of Rs.37,02,293/-, Bharat has been awarded Rs.27,13,582/-. Bharat's claim was covered under several insurance policies. Still, his entire claim was not honoured, but Bharat was paid only Rs.5,81,466/-. Thus, there was repudiation under some of the policies which covered Bharat. In any event, there was a partial repudiation of the claims by the Insurance Company (Health Insurer); therefore, the Ombudsman was well within its jurisdiction to receive and consider Bharat's complaint.

47. Clause 13(1)(i) which was not referred to by Ms Dwivedi is the residuary clause, which provides that the Ombudsman shall receive and consider complaints or disputes relating to "*any other matter resulting from violation of the provisions of the Insurance Act, 1938 or regulations, circulars, guidelines or instructions issued by IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned in Clauses (a) to (f).*"

48. This is a substantially broad clause conferring jurisdiction upon the Ombudsman to receive and consider complaints and disputes regarding short payments under the terms and conditions of the policy contract. Section 13(1)(e) empowers the Ombudsman to receive and consider complaints or disputes relating to the legal construction of legal policies in so far as the dispute relates to a claim. Section 13(1)(f) entitles the Ombudsman to receive and consider complaints or disputes relating to policy servicing-related grievances against insurers and their agents and intermediaries.

49. Clause 13 of IRDA's notification dated 25 April 2017 must be construed liberally and not pedantically. However, in the present case, even if the pedantic construction canvassed by Ms Dwivedi is to be accepted, Bharat's complaint or dispute was within the scope and ambit of the Ombudsman's jurisdiction. The contention that the impugned award is in excess of jurisdiction is, therefore, misconceived and liable to be rejected.

50. No other contention was raised to challenge the impugned award. The contentions raised, lack merit and are therefore liable to be rejected. Besides, this Court does not exercise appellate jurisdiction over the Ombudsman's award. Consequently, it is not for this Court to re-appreciate the evidence/material on record as if it were exercising appellate jurisdiction. However, at the persuasion of Ms Dwivedi, even after re-appreciating the documentary and other evidence on record, there is no scope for interfering with the impugned award.

51. As noted earlier, this is a case where the Insurance Company has suppressed material documents, delayed clearing office objections, taken undue advantage of its delays, defied Clauses 17(6) and 17(8) of the IRDA's notification dated 25 April 2017 regarding the constitution and functioning of insurance Ombudsman, taken false and most unreasonable grounds to deny Bharat the benefits under the impugned award dated 03 May 2021. Even if all this is overlooked on merits as well, no case is made out to interfere with the impugned award.

52. By email dated 17 June 2021, the Insurance Company categorically informed Bharat that his file was being processed for release of payment under the impugned award. Despite this communication, at least we were not shown any material

regarding the stage and level at which a decision was taken to challenge the Ombudsman's award or not to pay under the Ombudsman's award, though Clause 17(6) of the IRDA's notification dated 25 April 2017 provides that the insurer must comply with the award within 30 days of the receipt of the award.

53. Bharat, it appears, out of frustration, had made allegations against the officials of the Insurance Company. Although we cannot, in the absence of the evidence and because the officials against whom such allegations were made are not before us, comment on the veracity or otherwise of such allegations, we cannot, under such circumstances, seriously fault Bharat for making such allegations out of desperation. The records bear out that Bharat has been virtually harassed on account of the wrongful repudiation of his claim, forcing him to approach the Ombudsman. After succeeding before the Ombudsman, Bharat was not paid the amounts awarded by the Ombudsman for almost over three years, despite the Insurance Company's e-mail dated 17 June 2021 assuring Bharat that payments were being processed and would be made. The payments are still not made.

54. Bharat was forced to spend a considerable amount not only on medical expenses but also on legal expenses. The Insurance Company was not even sensitive to Bharat's medical condition before and after his surgical procedures. The Insurance Company has virtually made Bharat, a senior citizen, run from pillar to post in the evening of his life to deprive him of his legitimate claims under the insurance policies for which he had paid full premia to the Insurance Company. The insurance company suppressed vital documents and delayed adjudication by not clearing office objections, so their petition could not be heard. The insurance company took undue advantage of its delay and did not pay

Bharat, in clear breach of Clause 17(6) of the IRDA's notification dated 25 April 2017.

55. For all the above reasons, Writ Petition No. 706 of 2024 deserves to be dismissed with exemplary costs, which we quantify at Rs 1,00,000/-. Apart from costs, the insurance company will have to pay interest of 7% per annum on the amount awarded by the Ombudsman. This amount had to be paid to Bharat, at the latest, by 30 June 2021. Therefore, interest at 7% per annum on this amount will commence from 01 July 2021. This interest amount will have to be paid first by the insurance company.

56. The Insurance Company must first pay the costs and interest to Bharat within four weeks from today, along with the awarded amount. However, the Regional Manager or the appropriate high-level officer must conduct an enquiry and determine which official or officials were responsible for the delay in complying with the Ombudsman's award dated 03 May 2021. Such costs and interest must then be recovered from such official/officials. Besides, entries must also be made in the confidential rolls of such official/officials. All this must be done after due compliance with the principles of natural justice and fair play.

57. The above directions for fixing responsibility on officials/officials are issued because otherwise, the insurance companies and their counsel always seek indulgence from the court by arguing that they are dealing with public money. However, when public funds are wasted or frittered away on account of gross lapses of their officials, the Insurance Companies have no qualms about utilising the public monies to pay for the gross mistakes of their officials. Therefore, unless a message goes out that officials who commit gross and wilful mistakes or officials who harass

citizens and policyholders without any reasonable cause would be made liable to compensate those they harassed personally, this situation will not improve. If, after all this, exemplary costs and interest are to be paid from the public monies or the contribution from the taxpayers, then this culture of irresponsible decision-making, delay in settlement of legitimate claims, and undue harassing policyholders is likely to continue.

58. In **Lucknow Development Authority Vs. M. K. Gupta**¹ the Hon'ble Supreme Court, has explained that the Administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now accepted that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. The law has always maintained that the public authorities who are entrusted with statutory functions cannot act negligently. Under our constitution, sovereignty vests in the people. Therefore, every limb of the constitutional machinery is obliged to be people-oriented. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute, like the consumer commission or the courts entrusted with the responsibility of maintaining the rule of law.

59. The Hon'ble Supreme Court further explained that the issue is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic

¹_{(1994) 1 SCC 243}

outlook. Public administration involves a vast amount of administrative discretion that shields administrative authority's action. But where it is found that the exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment, then the officer can no more claim to be under protective cover. In a modern society, no authority can arrogate to itself the power to act arbitrarily. When the court directs payment of damages or compensation against the State, the ultimate sufferer is the common man. It is the taxpayers' money which is paid for the inaction of those who are entrusted under the Act to discharge their duties in accordance with law.

60. The Court held that a public functionary, if it acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law protects it. He who is responsible for it must suffer it. Compensation or damage may arise even when the officer discharges his duty honestly and bonafide. But when it arises due to arbitrary or capricious behaviour, then it loses its individual character and assumes social significance. The Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally, but the injury to society is far more grievance. The award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally, but helps cure social evil. It may improve the work culture and help change the outlook.

61. The Court held that it is, therefore, necessary that the Consumer State Commission, when it is satisfied that a

complainant is entitled to compensation for harassment or mental agony or oppression, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries. Accordingly, directions were issued to the Lucknow Development Authority to fix the responsibility of the officers responsible for causing harassment and agony to the respondent within six months and to recover the amount from such officials accordingly.

62. Therefore, by following the decision of the Hon'ble Supreme Court, we have issued the above directions to the appropriate high level officer to inquire into this matter in which Bharat was unduly harassed, and now that the Insurance Company is held liable to pay exemplary costs and interest, to examine and fix responsibility on the official/officials involved. The amount of interest and exemplary costs should then be recovered from such official/officials, if necessary, proportionately. This exercise must be completed within six months from today, and the Regional Manager Oriental Insurance Company must file a compliance report in this Court on or before 16 June 2025 with a copy to Mr. Naphade, the learned counsel for Bharat.

63. At this stage, we also note that in the past, directions similar to the above have been frustrated by some government departments or public sector undertakings by conducting cursory inquiries and concluding that none of the officials were responsible. If unreasonable delay and resulting harassment is

beyond dispute, to say that none of the officials are accountable, is not prima facie acceptable. In any event, in such a situation, the highest officials of the Insurance Company will have to accept the responsibility and face the consequences. Besides, we have noted that if no compliance report is called for, then the government departments or even public sector undertakings, which the officials ultimately operate, tend to ignore or, in any event, make light work of such directions. Therefore, the Regional Manager must file a compliance report on or before 16 June 2025.

64. The IRDA's notification dated 25 April 2017 is reasonably detailed. The constitution of an Insurance Ombudsman to expeditiously resolve disputes concerning payments under health insurance policies is a welcome move. IRDA has recently directed Health insurance providers to develop specialised policies to cater to senior citizens' needs and establish dedicated channels for addressing their grievances and claims. All this is necessary and welcome.

65. The IRDA's notification also specifies that the Ombudsman's award binds the Insurance Provider, and the awards must be complied with within 30 days. However, no provision is probably made to secure compliance with these salutary requirements. There is possibly no follow-up by IRDA on compliance. As a result, we suspect that there might be several instances like the present one, where Insurance companies, despite the Ombudsman's awards, have not settled health insurance claims within the time limit set by IRDA or at least within some reasonable period.

66. Insurance companies' disobedience contributes to the harassment of citizens, particularly senior citizens. This harassment is most acute when health insurance claims are not settled within a reasonable period or withheld for frivolous or sometimes even extraneous reasons. The IRDA's efforts to avoid all this are then frustrated by errant insurance company officials. Instances are scarce where insurance company officials are made to account for the losses caused to the insurance companies due to frivolous defences, unreasonable delays in settlement of health insurance claims, mounting interest etc. Most of the insurance company officials seem to be oblivious to the substantial social costs of their actions.

67. Forcing the citizens to run from pillar to post, forcing the citizens to litigate and increasing the long winding queues in the Courts, and ultimately creating a climate where a citizen feels it is better to yield to officials' unofficial demands reflects on governance issues in these very sensitive areas. Despite the best efforts of IRDA and the Ministry of Finance, as reflected in its Notification of 25 April 2017, the mechanism for quick and easy settlement of at least health insurance claims cannot be frustrated.

68. The IRDA must, therefore, consider whether, in addition to the mechanism already provided, any further directions or advisories could be issued to the Health Insurance providers to report compliances or for the IRDA to monitor compliances so that policyholders are not forced to approach Constitutional Courts only to enforce Ombudsman's awards.

69. The IRDA must also consider having some digital monitoring

system so that it has data on the awards made under its Notification of 25 April 2017 and the status of compliances. To consider all these aspects and suggestions, we direct forwarding a copy of this judgment and order to the IRDA and the Ministry of Finance for necessary action.

70. Accordingly, we dispose of both these Petitions by issuing the following order:-

(a) Writ Petition No.706 of 2024 is dismissed with costs of Rs.1,00,000/- (Rupees One Lakh only). The costs should be paid to Bharat within four weeks from today, and a compliance report must be filed by the Regional Manager in this Court by 24 January 2025 after necessary intimation to the learned counsel for Bharat;

(b) Writ Petition No.2903 of 2024 is allowed. The Insurance Company is directed to pay Bharat the entire amount awarded by the impugned award dated 03 May 2021 within four weeks from today with interest at the rate of 7% on the said amount commencing from 01 July 2021 till the date of actual payment.

(c) The Regional Manager or any Higher Official must inquire into and fix the responsibility upon the official/officials responsible for the delay in complying with the directions in the impugned award dated 03 May 2021 and paying Bharat by 30 June 2021. Upon fixing the responsibility on the official/officials, the amount towards

exemplary costs and interest must be recovered from such official/officials, if necessary, by making deductions from their salaries. Necessary entries must also be made in the confidential rolls/service records of such official/s. The principles of natural justice and fair play must be followed before fixing the responsibility, recovering the amount, making deductions or making entries in their service records.

(d) The Regional Manager or any officer higher than the Regional Manager must file a compliance report regarding the fixing of responsibility, recoveries/deductions of the above amounts and entries in service records in this Court on or before 16 June 2025 with a copy to be served upon the Advocate for Bharat.

(e) Though these petitions are disposed of, the Registry must place the matters for directions (to consider the compliance reports) on 27 January 2025 and 30 June 2025. Mr Naphade is requested to assist this Court on those dates.

(f) Rule is discharged in Writ Petition No.706 of 2024 with costs, and Rule is made absolute in Writ Petition No.2903 of 2021 in the above terms.

(g) Interim Application No.424 of 2022 is disposed of.

(h) The Registry must forward a copy of this judgment and order to the Insurance Regulatory and Development

Authority of India and the Secretary [Ministry of Finance],
Government of India, for information and action.

(i) All concerned to act upon an authenticated copy of
this order.

(Jitendra Jain, J)

(M. S. Sonak, J)