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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 20th August, 2024**

\+ W.P.(C) 10643/2024

KARAN TOMAR .....Petitioner

Through: Mr. Ashutosh Lohia, Mr. Rohit Saraswat and Mr. Karan Sharma, Advs.

versus

INSURANCE OMBUDSMAN & ANR. .....Respondents

Through: Mr. Pankaj Gupta Adv. for respondent No.2.

**CORAM:**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**DHARMESH SHARMA, J.(ORAL)**

**CM APPL. 43828/2024 (Ex.)**

1. Allowed, subject to all just exceptions.

2. The application shall stand disposed of.

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3. The petitioner is invoking the extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India, 1950, assailing the impugned Award passed by the respondent No.1, i.e., Insurance Ombudsman dated 04.07.2022, as also a subsequent letter dated 02.03.2023 passed by respondent No.2, i.e. ICICI Lombard General Insurance Company Limited.

4. Learned counsel for the respondent No.2 is present on advance notice and he requests some time to seekinstructions.

5. Having heard the learned counsel for the petitioner, this Court

finds that no instructions are required from the respondents and the present Writ Petition, which raises a question of law, can conveniently be disposed of by passing appropriate directions.

6. Shorn of unnecessary details, the petitioner, aged 42 years, subscribed to a Health Insurance Policy with Apollo Munich Health Insurance for two yearsand subsequently with respondent No.2 for one year, from 02.08.2020 to 01.08.2021. On 08.04.2021, he underwent a comprehensive health check-up at Medanta Hospital, Gurgaon, as he was feeling weak and sick, and was diagnosed with chronic kidney disease, leading to hospitalization for about 10 days. He submitted a request for cashless payment of medical expenses, which was rejected on the grounds of non-disclosure of his diabetes and hypertension at the time of taking the policy. He approached to the grievance department of the respondent No.2 on 14.04.2021 and 22.04.2021 but no positive response.

7. Thus, a complaint was lodged with the respondent No.1, who after notice to the respondent No.2 and recording their submissions passed the following order:

> "At this stage, the Insurers state that they are willing to share within 2 days the documents basis which, they had declined the request for cashless and for renewal of the policy, and that they are willing to review the matter, if the Complainant submits the reimbursement claim along with the requisite documents. The Complainant accepts this offer. Thus an agreement of conciliation could be arrived at between the Complainant and the Insurers, which I consider as fair and reasonable for both the parties.
>
> **Award**
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> The complaint is resolved in terms of the agreement of conciliation arrived at between the Complainant and the Insurers. Accordingly, the Insurers shall share with the Complainant the documents basis which, they had declined the request for cashless and for renewal

> of the policy, within 2 days. Thereafter, the Complainant shall have the option of submitting the reimbursement claim along with the requisite documents, and the Insurers shall then review the claim as well as the issue of renewal of the policy and take a decision within the next 3 weeks.
> Parties should implement this agreement within 30 days."

8. The learned counsel for the petitioner has urged that the aforesaid award is couched as an 'Award' but it is not an 'Award'. It was contended that a cryptic order was passed, stating that 'requisite documents'needed to be supplied to the Insurance Company, even though all the relevant documents had already been provided. Despite his efforts, including repeatedly approaching the authorities, his grievance remains unresolved. Furthermore, a letter dated 21.03.2023 was received, stating that there is no provision for review of the order under the **Insurance Ombudsman Rules, 2017.**

9. At this stage, it would be pertinent to reproduce the relevant provisions contained in the Insurance Ombudsman Rules, 2017, which provide the scope of functions and powers of the Ombudsman, which read as under:-

> "**16. Recommendations made by the Insurance Ombudsman**.-
> (1) Where a complaint is settled through mediation, the Ombudsman shall make a recommendation which it thinks fair in the circumstances of the case, within one month of the date of receipt of mutual written consent for such mediation and the copies of the recommendation shall be sent to the complainant and the insurer concerned.
> (2) If the recommendation of the Ombudsman is acceptable to the complainant, he shall send a communication in writing within fifteen days of receipt of the recommendation, stating clearly that he accepts the settlement as full and final.
> (3) The Ombudsman shall send to the insurer, a copy of its recommendation, along with the acceptance letter received from the complainant and the insurer shall, thereupon, comply with the terms of the recommendation immediately but not later than fifteen

days of the receipt of such recommendation, and inform the Ombudsman of its compliance.

**17. Award**.-(1) Where the complaint is not settled by way of mediation under rule 16, the Ombudsman shall pass an award, based on the pleadings and evidence brought on record.

(2) The award shall be in writing and shall state the reasons upon which the award is based.

(3) Where the award is in favour of the complainant, it shall state the amount of compensation granted to the complainant after deducting the amount alreadypaid, if any, from the award:

Provided that the Ombudsman shall,-(i) not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action; or (ii) not award compensation exceeding rupees thirty lakhs (including relevant expenses, if any).

(4) The Ombudsman shall finalise its findings and pass an award within a period of three months of the receipt of all requirements from the complainant.

(5) A copy of the award shall be sent to the complainant and the insurer named in the complaint.

(6) The insurer shall comply with the award within thirty days of the receipt of the award and intimate compliance of the same to the Ombudsman.

(7) The complainant shall be entitled to such interest at a rate per annum as specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999, from the date the claim ought to have been settled under the regulations, till the date of payment of the amount awarded by the Ombudsman.

(8) The award of Insurance Ombudsman shall be binding on the insurers"

10. A bare perusal of the aforesaid provisions would show that Insurance Ombudsman is enjoined upon to bring about an amicable settlement between the parties and in case there is no settlement arrived at, the Insurance Ombudsman is empowered to pass an Award finalising its findings and pass an appropriate award containing its recommendations, including granting of compensation.

11. In the instant case, it is evident that no 'Award' has been passed, asthe impugned Award dated 04.07.2022 does not

effectivelysettle the claims and counter claim of the parties. It mechanically records a submission by respondent No.2 that they would be supplied with "requisite documents", without specifying what those relevant documents are. Such kind of orders do not serve the cause of justice but instead create further complications. It is also manifest that on the strength of directionless orders, respondent No.2 has been successful in taking the justice system for a ride, and now denying the claim of the petitioner in an arbitrary manner.

12. For the foregoing reasons, the instant writ petition is allowed, and the impugned award dated 04.07.2022, as well as letter 02.03.23, are hereby quashed. Respondent No.1 is directed to make tangible attempts to bring about an amicable settlement between the parties and in case of its failure, Respondent No. 1 is directed to pass an Award containing the findings, reasons and recommendations, if any. Additionally, the Respondent No.1 shall decide on the justification of Respondent No.2's decision not to renew the petitioner's Medical Insurance Policy any further. The respondent No.1 is further directed to decide the complaint in case the negotiations fail, within an overall period of four weeks from today.

**DHARMESH SHARMA, J.**

**AUGUST 20, 2024**
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