

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 6847 of 2025

Shaleen Khemani

Vs.

Union of India & Ors.

With

W.P.A. No. 6852 of 2025

Bhavana Khemani

Vs.

Union of India & Ors.

Mr. Ranjan Bachwat, Sr. Adv.

Mr. Satyaki Mazumdar

Mr. Uttiyo Mullick

Mr. Raunak Bose

Mr. Sayan Banerjee

Mr. S. Mukherjee

....For the petitioners.

Mr. Shourjyo Mukherjee

Mr. Vishwarup Acharyya

....For the respondent no.3.

Hearing Concluded On : 28.11.2025

Judgment on : 18.12.2025

Krishna Rao, J.:

1. The petitioners are husband and wife. They both have purchased two separate insurance policies, namely, "TATA AIA Life Insurance Fortune Guarantee Plus" (UIN: 110N158V09) being Policy Nos. C265766705 and C240336712 respectively, (herein after referred to as "Policies") from TATA AIA LIFE INSURANCE COMPANY LIMITED, being the respondent no.3 herein, on 30th March, 2023 for an assured sum of Rs. 20,40,00,000/- each policy through the intermediary/ broker/ agent, namely, Bajaj Capital Insurance Broking Limited being the respondent no.4.
2. Mr. Ranjan Bachwat, Learned Senior Advocate representing the petitioners submits that there are two methods of getting the policy i.e. (i) digital mode and (ii) non-digital mode. At the time of purchasing the policy, neither the insurer nor the agent informed the petitioners that there are two methods of purchasing the policy and sold Non-Digital Policies to the petitioners. After purchasing the policies, the petitioners came to know from their relatives and friends that there is an option of getting Digital Policy also with the same premium but the return of the digital policy is 5% higher than the Non-Digital Policy.
3. Mr. Bachwat submits that when the petitioners came to know about the said fact, immediately the petitioners approached the respondent nos. 3 and 4 requesting for conversion of their Non-Digital Policy to Digital Policy. In spite of several requests of the petitioners, the respondent nos. 3 and 4 failed to consider the grievances of the petitioners, subsequently, the petitioners

approached IRDAI. The IRDAI directed the respondent insurer to resolve the issue and immediately inform the same to the petitioners and update the status in Bima Bharosa, but the respondent insurer rejected the request of the petitioners.

4. Being aggrieved with the rejection of the representation of the petitioners, the petitioners have approached the respondent no.2 through their Learned Advocate but the respondent no. 2, namely, Office of the Insurance Ombudsman, Kolkata, rejected the complaint of the petitioners on the ground that the same has been filed by third party. Thereafter, the petitioners have filed a fresh complaint to the respondent no.2 but the respondent no.2 had failed to consider the complaint of the petitioners. The petitioners were constrained to file a writ petition before this Court being W.P.A. No. 7593 of 2024 and the same was disposed of by an order dated 4th September, 2024, directing the respondent no.2 to decide the matter independently upon hearing the parties and to pass a reasoned and speaking order within a period of two months from the date of communication of the order.
5. On 13th September, 2024, the respondent no.2 informed the petitioners that the matter was previously examined twice and the case was disposed of suitably. As the respondent no. 2 failed to comply with the order passed by this Court, the petitioners have issued notice for initiation of contempt proceeding. On receipt of notice, the respondent no.2 dismissed the complaint of the petitioners on the ground that insurance company has denied the availability of any discount in premium or enhanced maturity payout due to purchase of policy through digital mode.

6. Mr. Bachwat further submits that the respondent no. 2 has not considered the screenshots provided by the petitioners from the TATA AIA app of the difference in maturity payouts between the Digital and Non-Digital Mode.
7. Mr. Shourjyo Mukherjee, Learned Advocate representing the respondent no.3 submits that by an order dated 4th September, 2024, this Court directed the respondent no. 2 to dispose of the application of the petitioners in accordance with the provisions of the Insurance Ombudsman Rules, 2017 and as per Rule 13(2) of Insurance Ombudsman Rules, 2017. Smt. Bhavana Khemani, the petitioner in W.P.A. No. 6852 of 2025 has not provided consent to the respondent no. 2, thus there is no cause of action on the part of the petitioners to prefer the present writ application.
8. Mr. Mukherjee submits that the policies of the petitioners are separate and distinct insurance products and have its own Unique Identification Number, being 110N158V09 and is governed by its own terms of conditions. He submits that in the terms and conditions of TATA AIA Life Insurance Fortune Guarantee Plus, Unique Identification Number, being 110N158V09, nowhere it was reflected that the Maturity Benefits as enumerated under Clause 3.1.1 changes if a policy is soured digitally or non-digitally.
9. Mr. Mukherjee submits that insurance is a contract entered between the parties and the same is governed by the general laws of contract. The “Free-Look Period” clause forms a part of such contract wherein after the expiry of 15 and/or 30 days from the date of receipt of policy by the proposer, the terms and conditions of the said policy cannot be changed or altered. He submits that the petitioners have received the policy documents on 5th April, 2023 and the “Free-Look Period” expired on 5th May, 2023 but the petitioners have raised their grievances for the first time on 25th June, 2023.

10. Mr. Mukherjee submits that if the petitioners would want to opt out of the present policy and choose another policy, then the petitioners have to abide by the terms and conditions stipulated under Clause 4.2.1 of the Terms and Conditions being the Surrender Benefit and as provided under the Benefit Illustration of the policy. He submits that the petitioners are paying all the annual premiums of the policies regularly and not stated that they do not want the policies to be cancelled and the money to be refunded.

11. The petitioners prayed for the following reliefs:

***(a)** A Writ of or in the nature of Certiorari do issue calling upon the concerned Respondents to certify and transmit to this Hon'ble Court the records of the case resulting in the order dated 31.01.2025, being marked as with the Letter "P-25" hereto, so that upon consideration thereof, the same may be quashed and conscionable justice be rendered to the petitioners;*

***(b)** A writ of and/or in the nature of Mandamus do issue directing the respondent no.2 to consider the representation of the petitioner made vide complaint dated 28.02.2024, being marked as with the Letter "P-10" hereto afresh, and to issue necessary and/or appropriate reasoned directions, after hearing the parties, in the presence of counsel, in relation thereto within such time as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case;*

***(c)** A writ of and/or in the nature of Mandamus do issue directing the premium payments of the petitioner that are due and payable shall be adjusted appropriately after the rights and interests of the petitioners in respect of conversion of the policy of the petitioners from non-digital format to digital format with effect from 30.03.2023 have been duly adjudicated by the proper forum;*

***(d)** Rule NISI in terms of prayers above;*

***(e)** Rule be made absolute if no cause or insufficient cause is shown by the Respondents;*

***(f)** Ad-interim and interim orders in terms of prayer above;*

***(g)** Costs;*

(h) Such further or other order or orders be passed and/or direction or directions be given as Your Lordships may deem fit and proper.”

- 12.** The only question is whether the return is 5% higher in case of Digital Policy compared to Non-Digital Policy even though the premium and all other aspects of both policies are identical in all respects. By an e-mail dated 5th June, 2023, the petitioners have requested the respondent no.3 to change their Non-Digital Policy to Digital Policy. In reply to the said request, the respondent no.2 informed the petitioners that *“as per our firm Digital stands as online method of enrolling policies with the help of OTP send on your mobile number, and Non-Digital stand as offline method of enrolling policies with the help of manual signature.”*

“Further would like to inform you that the above mention method does not impact any benefit of the policies.”

The petitioners are relying upon the screenshots from the TATA AIA app wherein difference of the benefits from Digital Policy and Non-Digital Policy are reflected. As per the said screenshots appearing at page 182 of the WPA No. 6847 of 2025 and at page 187 of the WPA No. 6852 of 2025, it reveals that the total guaranteed benefits for one Digital Policy is Rs. 7,62,43,724/- and for another Digital Policy is Rs. 31,55,52,650/- wherein the guaranteed benefits for one Non-Digital Policy is Rs. 7,38,43,800/- and for another Non-Digital Policy is Rs. 30,56,20,000/-.

- 13.** Before the Insurance Ombudsman, the Insurance Company stated that the petitioner confirmed that they have received application provided by the Insurance Company and policy applications and sales illustration was authenticated on the basis of OTP received in their mobile numbers. They have read and understood the same by sharing their OTP with Insurance

Company endorsing that they had been convinced about the contents and features of the policy plan that they have applied for. The Policy was authenticated on the basis of OTP and “*no manual signature was opted from customer*”. The Insurance Company also informed to the Ombudsman that Digital stands as online method of enrolling policies with the help of OTP send on the mobile number of the customers and non-digital stands as offline method of enrolling policies with the help of manual signatures.

- 14.** The Insurance Ombudsman though has taken note of the submissions of the Insurance Company but has not given any finding to the said submissions whether the policies of the petitioners have been approved by way of OTP or on the basis of manual signature or whether it could be the digital policies or non-digital policies.
- 15.** Secondly, the Insurance Ombudsman has recorded that the Insurance Company has denied the availability of any discount in premium or enhanced maturity pay out due to purchase of policy through digital mode but has not recorded any reasons why the documents relied by the petitioners (screenshots) cannot be relied upon though the said documents shows the difference of maturity amount through Digital Mode and Non-Digital Mode.
- 16.** In such view of the circumstances, the order passed by the Insurance Ombudsman, Kolkata dated 31st January, 2025, is set aside and quashed. The matter is remanded back to the Insurance Ombudsman, Kolkata to hear the matter afresh and after giving an opportunity of hearing to both the parties to pass reasoned and speaking order within a period of six (6) weeks from the date of receipt of this order.

17. W.P.A. No. 6847 of 2025 and W.P.A. No. 6852 of 2025 are disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)