18.06.2025

Court No.25

Sl. No.58
Mujahid

CO 3144 of 2023

Chiranjan Mandal & Anr.
Vs.
The Insurance Ombudsman & Ors.

Mr. Sudeep Sanyal, Sr. Adv.,
Mr. Chandrachur Lahiri
…for the petitioner
Mr. Rajesh Singh,
Mr. Shibashis Nandy
…for the opposite party no.2
Mr. Vikas Baisya,
Ms. Akanksha Mukherjee,
Ms. Ranjana Seal
…for the opposite party nos. 1 & 3

1. Present petition has been filed challenging the order of Insurance Ombudsman dated 31st January 2023 passed by Ms. Kiran Sahdev, Insurance Ombudsman in complaint filed by the petitioner Chiranjan Mandal regarding the mis-selling policy on pretext of false representation.

2. Learned senior counsel for the petitioner submits that petitioner took four insurance policies of total Rs.25 lakh having a single premium. Learned senior counsel submits that later on the petitioner came to know that he has been defrauded as the policy premiums were deducted from the bank account of the petitioner and his wife without informing them. The petitioner who had recently retired, was having monetary problems and asked Ms. Anjana Bose, an agent, from whom the policies were purchased. The petitioner was informed that it was a mistake on the part of the bank. The petitioner later on got the insurance policy in October, 2021 through one of her colleagues at Ranchi. Petitioner agreed of the action on the part of the agent approached the insurance company vide communication dated 30th June, 2022. The insurance company responded while communication dated 16th August, 2022. The insurance company, inter alia, informed that the insurance policies were duly delivered to the petitioner and a verification SMS was also sent on the registered number. It was further informed that request for cancellation was received beyond the pre-free look period of 15 days and, therefore, the insurance company expressed its inability to cancel the policies and refund the premium paid. The insurance company further demanded the premium to avail the benefits of this policy fully.

3. Learned senior counsel for the petitioner submits that in the communication dated 16th August, 2022 the date of receipt is obliquely missing as actually the policies were never received by the petitioner. Learned senior counsel has further invited the attention of the court that in the insurance company record the telephone and the e-mail of the petitioner are not correct. Learned counsel further submits that for the fraud being committed, petitioner has also lodged a general diary with the local police station. However, admittedly general diary has not been placed on the record. Learned senior counsel has also taken a serious objection as to the fact that Ms. Ranjana Seal is appearing for the insurance company as well as the Insurance Ombudsman. Learned senior counsel submits that it speaks about the impartiality and neutrality of the Insurance Ombudsman. Leaned senior counsel has also submitted that the court in its writ jurisdiction may order for the refund of the entire amount.

4. Learned counsel for the opposite party nos.1 and 3 has submitted that there is no illegality or perversity in the order of the learned Insurance Ombudsman. It has further been submitted that she has been engaged by the insurance company and the Insurance Ombudsman and this alone cannot be taken as a nexus between the insurance company and the Insurance Ombudsman.

5. The Insurance Ombudsman Rule 2017 have been promulgated by the Central Government in exercise of the power conferred under Section 24 of the Insurance Regulatory and Development Authority Act, 1995. The Insurance Ombudsman Rule 2017 duly published in the Gazette of India on 27th April 2017. Section 4 of Sub-Section (e) defines “Insurance Ombudsman” which means the Insurance Ombudsman established under Rule 7. Rule 7 provides that the executive council of insurers as established under Rule 5 shall establish the Insurance Ombudsman for such territorial jurisdiction for discharging the duties and functions prescribed under these rules. Rule 9 provides that IRDAI, that is, Insurance Regulatory and Development Authority shall decide upon the action to be taken if any against the concerned Insurance Ombudsman and shall communicate such decision to the Executive Council of Insurers. The IRDAI is also empowered to initiate an inquiry/suo moto against any Insurance Ombudsman. The reading of these rules indicates that IRDAI is an umbrella authority over the Insurance Ombudsman.

6. Rule 17 of the Insurance Ombudsman Rule provides that in case if the complaint is not settled by a way of mediation then the Insurance Ombudsman shall pass an award based on the pleadings and evidence brought on record. Rule 17 of sub-rule (2) provides that the award shall be in writing and shall state the reasons upon which the award is based. Now if the present award is tested on the touchstone of the prerequisite of Rule 17, it is apparently an award which is manifest illegal.

7. Perusal of the record indicates that the Insurance Ombudsman after noting the brief facts and contention of the complainant and the respondent merely reproduced the plea taken by the parties and then noted that the insurance company as a service gesture is ready to convert the policies as single premium loan after cancellation of all existing policies on the respective lives as on current date with five years lock in period with no option of provision of free look period for cancellation of the new policies towards full and final settlement of the claim. The Insurance Ombudsman also noted that the new policies should be with provision of risk coverage on respective lives.

8. The Insurance Ombudsman thereafter proceeded to pass an award and inter alia held as under:

> "Without going into merits of the case & considering the offer made by the Insurance Company, they are advised to cancel the 2 policy nos. 57XXX8120 & 33XXX2927on the life of Sri Chiranjan Mondal & rest 2 policy nos. 32XXX0139 & 51XXX3340 on the life of his wife, Mrs. Suparna Mandal & utilize all premiums paid under the captioned policies to issue 2 (Two) fresh single premium unit linked policy, each on the life of Mr. Chiranjan Mandal & Mrs. Suparna Mandal respectively under debt/ low risk fund as on current date. The free look clause will be kept inoperative in the new policy. The attention of the Complainant and the Insurer is hereby invited to the following provisions of Insurance Ombudsman Rule 2017. As per Rule 17(6) of the

> said rules the Insurer shall comply with the Award within 30 days of the receipt of the award and intimate compliance of the same to the Ombudsman and upload the details in the Complaints Management System. If the decision is not acceptable to the Complainant, he is at liberty to approach any other Forum/ Court as per Law of the Land against the Respondent Insurer."

9. It is quite astonishing to see that a quasi judicial authority, i.e., Insurance Ombudsman has proceeded to pass an award which is totally bereft of any decision. Insurance Ombudsman is an important institution which has been established under the law to resolve the complaints of all personal lines of insurance, group insurance policies, policies issued to sole proprietorship and micro enterprises on the part of insurance companies and their agents and intermediaries in a cost effective and impartial manner. Numerous people takes the insurance policies under the belief that what is being represented by the agent is true and correct representation and that is the reason that the Insurance Ombudsman Rule 2017 takes into account the conduct of the agent and intermediaries also. The award passed in this present case by Insurance Ombudsman presents a very gloomy picture which indicates that Insurance Ombudsman seems to have ignored the basic principles for passing an award.

10. This court considers that IRDAI, which seems to be an umbrella authority, should conduct training programmes for Insurance Ombudsman and must sensitize them regarding basic principles and norms forpassing of an award on the complaints being made by the agreed consumers. The award in the present case cannot sustain in the eyes of law. Thus, the award dated 31st January 2023 is set aside and the matter is remanded back.

11. The appropriate authority shall ensure that the complaint is heard and decided by a different Insurance Ombudsman in accordance with the law expeditiously not beyond a period of three months.

12. The IRDAI/concerned authority shall also file a comprehensive plan for imparting training to the Insurance Ombudsman in coordination with the other concerned authority. List the notice for compliance report on 5th August, 2025.

13. The matter stands disposed of.

14. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)