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

% ***Date of Decision: 25th February, 2025***

+ **W.P.(C) 2377/2025 & CM APPL. 11255-11256/2025**

SHANTI UPADHYAY

.....Petitioner

Through: **Mr. Krishna Chanda Dubey,**
Advocate.

versus

**SR. DIVISIONAL MANAGER OF NEW INDIA ASSURANCE,
COMPANY LTD. & ANR.**

.....Respondents

Through: **Mr. J.P.N. Shahi,** Advocate for New
India Insurance Co.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is aggrieved by order dated 06.12.2023 whereby despite her having a medical insurance, her claim has been rejected.
2. According to learned counsel for the petitioner, New India Assurance Company Limited has rejected the claim on the ground that the patient remained admitted for less than 24 hours and, moreover, the disease in question did not come under *Day-Care Procedures*.
3. Learned counsel for the petitioner submits that respondents have taken a very strict and rigid interpretation of the word '*hospitalization*' and claim has been rejected while observing that '*hospitalization*' means *admission in a hospital for a minimum period of 24 consecutive hours of in-patient care*.
4. Learned counsel for petitioner submits that even as per the



policy in question, there is a Note attached with Clause 11 which provides that for treatment like dialysis, chemotherapy, radiotherapy etc., if the insured person is discharged on the same day, the treatment shall be considered to be taken under Hospitalization Benefit Section.

5. Petitioner submits that she had taken treatment for Osteoarthritis of knee joints and petitioner had even undergone surgery though she was discharged, same day.

6. Feeling aggrieved by the aforesaid rejection of her claim, petitioner escalated her complaint to *Insurance Ombudsman*.

7. Her such complaint was taken up by *Insurance Ombudsman* on 22.05.2024 and during such hearing, the representative of the Insurance Company was also present.

8. The observations and conclusions given by *Insurance Ombudsman* are as under:-

“Observation and conclusions:

Case called and parties of the case were present. The husband of complainant stated that the policy Bhavishay Aarogya was purchased on 08/01/2003 and according to the terms and conditions of the policy, the benefit of policy starts after the retirement age of 60 years and Rs.40,000/- was the limit of per ailment against the sum insured of Rs. one lac. He further stated that one claim for the ailment of eye was taken against the admission of hospital less than 24 hours & this is second claim in the policy.

In the present case one injection was given in spine in OT and discharged in less than 24 hours. The insurer stated that previous claim falls in the category of DAY CARE and list was submitted during the hearing. The present claim falls beyond the purview of DAY CARE and hence hospitalization was required for minimum of 24 hours. However insurer agreed to review the claim for which complainant also agreed. Hence conciliation was arrived at between the parties of the case.”

9. It is, thus, very obvious that when the hearing took place before



Insurance Ombudsman, the insurer itself had agreed to *review the claim* and, accordingly, on the basis of same, no further order was passed by *Insurance Ombudsman*.

10. Unfortunately, when the complainant was laid again before the Insurance Company, the Insurance Company, for the reasons best known to them, reiterated its earlier decision and held that hospitalization should have been for a minimum period of 24 hours and, therefore, the treatment in question could not be considered to be taken under *hospitalization benefit*. Accordingly, despite undertaking to review the claim all over again, the Insurance Company took the same very decision.

11. However, this is not the end of the matter.

12. Petitioner, again, feeling aggrieved, knocked the doors of *Insurance Ombudsman* but according to her, such complaint was not even entertained.

13. Petitioner has made reference to her communication dated 20.07.2024 addressed to *Insurance Ombudsman* and it is submitted at the bar that such complaint was not even entertained and, therefore, in the abovesaid backdrop, petitioner is left with no remedy but to invoke the jurisdiction of this Court by filing a petition under Article 226 of the Constitution of India.

14. As already noted, when the complaint was, initially, made, the *Insurance Ombudsman* seems to have merely remanded the matter as the insurance company had agreed to review the claim. Thus, there was no effectual resolution as per Rule 16 or Award under Rule 17 of *Insurance Ombudsman Rules, 2017*.



15. Manifestly, the matter was merely remanded back to concerned insurance company to review the claim.

16. Since, thereafter, the claim was, again, rejected by the insurance company and a fresh complaint was lodged with the *Insurance Ombudsman*, it is now incumbent and obligatory for the *Insurance Ombudsman* to consider such complaint in terms of Rule 16 and Rule 17 of *Insurance Ombudsman Rules, 2017*.

17. Rules 16 & 17 of *Insurance Ombudsman Rules, 2017* read as under: -

“16. Recommendations made by the Insurance Ombudsman. —

(1) Where a complaint is settled through mediation, the Ombudsman shall make 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 already paid, 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.”

18. As already noticed above, by virtue of the aforesaid order dated 22.05.2024, there was no adjudication or any resolution by way of mediation and the parties were merely relegated back, on the basis of assurance given by the insurance company to review the claim. In such a situation, when there is again a rejection of claim by insurance company, it is obligatory for the Insurance Ombudsman to re-register the complaint of the petitioner and to decide the same in terms of aforesaid Rules.

19. Reference be made to judgment of this Court given in *Karan Tomar Vs. Insurance Ombudsman and Another: 2024 SCC OnLine Del 5979* wherein it has been observed as under:-

“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 instance case, it is evident that no ‘Award’ has been



passed, as the impugned Award dated 04.07.2022 does not effectively settle 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."

20. Reference be also made to *Puneet Singhal vs. The Insurance Ombudsman, New Delhi & Anr.*: 2025 SCC OnLine Del 734.

21. Situation is, more or less, similar here as there is no resolution by mediation and, therefore, Ombudsman is mandated to pass Award.

22. In view of the above, present petition is disposed of with direction to *Insurance Ombudsman* to consider the aforesaid representation made by the petitioner on 20.07.2024 and to dispose that of in consonance with Rule 16 & Rule 17 of Insurance Ombudsman Rules, 2017, within a period of six weeks from receipt of this order.

23. A copy of this order be also sent to Insurance Ombudsman by the Registry through a Special Messenger for her information and due compliance.

24. We make it clear that, in any such situation, when any such matter is not finally disposed of by Ombudsman and Insurance Company seeks liberty to review the claim and if such claim is not again disposed of to the satisfaction of the insured person, the *Insurance Ombudsman* is under obligation to entertain any such subsequent complaint. It cannot be refused on the premise that the decision has already been taken. The previous decision is, actually



speaking, no decision in the eyes of law, in view of the abovesaid statutory provisions.

25. Copy of the order be given dasti under signatures of Court Master.

(MANOJ JAIN)
JUDGE

FEBRUARY 25, 2025
st/ss