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

\+ W.P.(C) 17279/2024

KHUSHPREET & ORS.

.....Petitioner

Through: Petitioner No.1 in person.

versus

NIVA BUPA HEALTH INSURANCE COMPANY LTD. & ORS.

.....Respondent

Through: Mr. Abhishek Nanda, Advocate for R-2/IRDAI.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

O R D E R

% 27.02.2025

1. Petitioner No.1 appears in person.

2. Heard.

3. The issue raised is very short.

4. Mother of petitioner No.1 got admitted in Max Super Speciality Hospital, Patparganj on 25.07.2023.

5. She was, eventually, discharged on 07.08.2023.

6. According to petitioner No.1, though as per the policy issued by respondent No.1/Niva Bupa Health Insurance Company Ltd., the entire treatment was to be on cashless basis, it not only refused cashless treatment but also rejected the claim on filmsy grounds.

7. After rejection of claim by the Insurance Company, the complaint was accelerated to *Insurance Ombudsman*, Chandigarh. It seems that the jurisdiction of such Ombudsman was invoked as the petitioners were

residents of Karnal, Haryana.

8. When the matter was considered by *Insurance Ombudsman*, Chandigarh it was disposed of while giving following observations and conclusions:-

> *"Case called for hearing, both the parties are present and recall their arguments as noted in Para above. The complainant once again reiterated his complaint and requested for payment of his claim. Insurance company reiterated their stand of SCN for dismissal of complaint. The discrepancies noted by insurance company may be pertinent, but it has been observed from the SCN or during the online submissions that no written clarification of the alleged discrepancies has been sought form their empanelled hospital or the treating doctors which should have been done prior to repudiation of liability. Therefore, the repudiation of claim by insurer is not in order and or is in line with policy clauses, terms and conditions. During the online hearing on 26-06-2024, Insurance Company stated that they are ready to review the claim of complainant by taking detailed query letter to complainant and post receipt of the documents they will review the complainant claim as per policy terms and condition, Complainant also agrees with the offer given by the insurance company. Accordingly, an agreement by way of conciliation was arrived at between the insurer and complainant, which I consider as fair and reasonable for both the parties."*

9. Since the Insurance Company had acknowledged that they would review the claim of complainant, the complainant made another request for settlement of her claim to the Insurance Company. However, the Insurance company *vide* communication dated 31.08.2024, again, came to the same conclusion while also supplying additional reasons of rejection, which according to petitioner, were not permissible.

10. According to Insurance Company, the treatment was falling in the permanent exclusions and some mandatory documents had not been submitted by the claimant and, therefore, the claim was not payable on account of non-submissions of such documents. While reiterating the

rejection of the claim, the Insurance Company also mentioned in the above said e-mail that in case, the petitioners were not satisfied with their decision, they may approach *Insurance Ombudsman*.

11. When asked, Petitioner No.1, very fairly, submitted that she did not approach the *Insurance Ombudsman* again, while supplementing that there is no such provision under which she could have invoked the jurisdiction of *Insurance Ombudsman* again.

12. However, her such contention does not seems to be tenable.

13. On careful perusal of the rules in question i.e. *Insurance Ombudsman Rules, 2017*, it cannot be said that the petitioners are remediless.

14. 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.*
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> ***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."

15. As would be very obvious from the admitted case of the parties, when the matter was initially considered by *Insurance Ombudsman*, no specific decision, as such, was taken by the *Ombudsman* and since the Insurance Company had agreed to review the claim of complainant and since the complainant was also agreeable to such proposal of review and re-consideration, the abovesaid complaint was closed while holding that there was an agreement by way of conciliation.

16. Such agreement is neither a final resolution nor can be deemed to be an award, in terms of Rules 16 and Rules 17 of *Insurance Ombudsman Rules, 2017.*

17. Mere remanding the matter back to the *Insurance Company* would not also mean that in case, any such complainant is again aggrieved by the decision of such Insurance Company, the doors of *Insurance Ombudsman* would be deemed to be closed.

18. Since there was never any final resolution, either by way of conciliation or otherwise and since there was never an award either in terms of the

aforesaid rules, the petitioner is always entitled to approach *Insurance Ombudsman* again. Reference be made to *Puneet Singhal vs. The Insurance Ombudsman, New Delhi & Anr.: 2025 SCC OnLine Del 734 and Karan Tomar vs. Insurance Ombudsman and Another: 2024 SCC OnLine Del 5979.*

19. After hearing arguments for some time, Petitioner No.1 submits that in view of the above, she does not press her present writ petition and seeks liberty to make appropriate complainant before *Insurance Ombudsman*, Chandigarh. She also submits that in case, she is aggrieved by the decision, to be taken by *Insurance Ombudsman,* she be granted liberty to invoke writ jurisdiction by filing appropriate petition under Article 226 of Constitution of India.

20. In view of the above, the petition is disposed of in aforesaid terms.

21. Liberty, as prayed, is granted.

22. All rights and contentions of parties are reserved.

23. A copy of this order be given *dasti* under the signatures of Court Master to petitioner No.1.

24. Registry is also directed to transmit a copy of this order to *Insurance Ombudsman,* Chandigarh for his information and compliance.

MANOJ JAIN, J

FEBRUARY 27, 2025/ss/