(2018) 01 CAL CK 0054

In the Calcutta High Court

Case No : 971 of 2017

Ajoy Kumar Das APPELLANT

Vs

National Insurance Company Limited & Ors. RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

Insurance Act, 1938, Section 114(1) - Power of Central Government to make rules

Citation : (2018) 01 CAL CK 0054

Hon'ble Judges : Jyotirmay Bhattacharya, Arijit Banerjee

Bench : Division Bemnch

Advocate : Srijib Chakraborty, Sunny Nandy, Rajesh Singh

Judgement

1. By consent of the parties, the appeal and the application are taken up for hearing together and the same are treated as on day''s list.

2. The writ petitioner claims to be the nominee under an Insurance Policy taken out by his brother. His brother, being the insured, died on 17th November 2014. His dead body was found floating in a pond. Police investigation report was to the effect that there was no foul play and it is a case of accident. The Insurance Company''s stand is that it was a case of suicide out of mental depression. Since suicide is not covered under the insurance policy, the claim made by the writ petitioner under the policy was repudiated. This was done initially by a letter dated 10th July 2014 and finally by a letter dated 21st March 2017.

3. Being aggrieved, the writ petitioner approached this court by filing W.P. No. 11732 (W) of 2017. The learned single judge dismissed the writ petition holding that disputed questions of facts are involved which are required to be gone into in a more elaborate proceeding than what is available by way of a writ petition.

4. Being aggrieved with the said order of the learned single judge, the writ petitioner is before us by way of the present appeal. We have heard the learned counsel for the parties.

5. We are of the view that the learned single judge rightly dismissed the writ petition and relegated the writ petitioner to a more appropriate forum. However, our attention has been drawn to Rule 12 of the Redressal of Public Grievances Rules, 1998 (hereinafter referred to as the ''said Rules'') framed by the Central Government under Section 114(1) of the Insurance Act, 1938. Under Rule 12 of the said Rules, the Insurance Ombudsman is empowered to receive and consider a complaint inter alia, regarding partial or total repudiation of claims by an insurer. The said Rules also lay down an elaborate procedure for disposal of such complaints.

6. We are of the opinion that it would be appropriate if the writ petitioner/ appellant approaches the Insurance Ombudsman having his office at "Hindustan Building Annexe", 4th Floor, 4, Chittaranjan Avenue, Kolkata-700 072, and the Insurance Ombudsman shall consider the complaint of the appellant in accordance with the said Rules.

7. If the appellant files the complaint within four weeks from date, the Insurance Ombudsman shall dispose of the same on merits without going into the question of time bar specified under the said Rules. The complaint should be disposed of within the time period specified in the Rules.

8. We make it clear that we have not gone into the merits of this case. The Insurance Ombudsman shall be at liberty to decide any complaint that may be filed by the appellant in accordance with law without being influenced by any observations of this order. With the above observations, the appeal and the application are disposed of.

9. Since no affidavit has been called for in connection with the stay application, the allegations contained in the stay application shall be deemed to be not admitted by the respondents. Urgent Photostat certified copy of this order, if applied for, be supplied to the Learned advocates for the parties immediately.

