

(2002) 11 KL CK 0050

In the High Court Of Kerala

Case No : O.P. No. 26301 and 26302 of 2002

Indus Motor Co. (P) Ltd.

APPELLANT

Vs

National Insurance Company

RESPONDENT

Date of Decision : 06-11-2002

Acts Referred:

Insurance Act, 1938 — Section 114(1)
Redressal of Public Grievances Rules, 1998 — Rule 13, 2

Citation : (2003) 1 ILR (Ker) 274

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

**Advocate : N. Sukumaran, N. Shyam and Tisvy Vincent, for the Appellant;
Bechu Kurian Thomas, Thomas Mathew Nellimoottil and George Cherian, for the
Respondent**

Final Decision : Allowed

Judgement

M. Ramachandran, J.—The United India Insurance Company Limited as also the National Insurance Company Limited had business relations with the petitioner. However, certain disputes had arisen between the petitioner and the said companies which led them to file complaints before the Insurance Ombudsman, Ernakulam, purported to be under Rule 13 of the Redressal of Public Grievances Rules, 1998 (hereinafter referred to as the Rules). The applications were returned to the petitioner by separate orders, which are produced in both the Original Petitions as Ext. P2, on 27.8.2002. I may extract the order in full as herein below:

"ORDER

On an examination of the allegations in the complaint and the cause title of the complaint, I find that the Insured is a company registered under the Indian Companies Act, 1956 and hence the Insurance Policy cannot be said to have been taken on "Personal Lines" or in other words, in an "Individual Capacity" as defined in Rule 4(i) and in Rule (k) of the Redressal of Public Grievances Rules,

1998 and as such, the Insurance Ombudsman, Kochi has no jurisdiction to entertain the above complaint and grant the relief.

Therefore, for the reasons as aforesaid, I have to hold that the Insurance Ombudsman has no jurisdiction to entertain the above complaint and therefore, the above complaint is liable to be returned to the complainant for presentation to the proper forum.

Hence, return the above complaint along with the xerox copies of documents presented to the Office of the Insurance Ombudsman to the complainant for presentation to the proper forum after retaining a xerox copy of the complaint in the Office of the Insurance Ombudsman, Kochi."

The Original Petitions have been filed challenging the above said orders as also the proceedings of the Secretary of the Ombudsman returning the complaints and documents which had been filed. Since the issues raised are identical, the above two Original Petitions are being disposed of by a common judgment.

2. I had heard Sri. N. Sukumaran, counsel for the petitioner in both the cases, as also Sri. Bechu Kurian Thomas, who had represented on behalf of the Insurance Ombudsman. Sri. George Cherian, counsel for the National Insurance Company Limited and Sri. Thomas Mathew Nellimoottil, counsel for the United India Insurance Company Limited also were present.

3. While issuing Ext. P2, the Insurance Ombudsman has relied on the definition pertaining to the words "Insured Person" and particularly "Personal Lines", which appears in the definition of "insured person". Rules 4(i) and 4(k) could be extracted herein below, for easy reference.

"(i) "insured person" means an individual by whom or on whose behalf an insurance policy has been taken on personal lines;

xxx xxx xxx

(k) "Personal lines" means an insurance policy taken or given in an individual capacity,"

Mr. Sukumaran submits that the Ombudsman had adopted a technical stand altogether not envisaged by the rules notwithstanding the circumstance that the complaints had been justifiably highlighted and were justiciable. According him, the 4th respondent had erred in passing Ext. P2 and returning the complaints, and there was an abdication of jurisdiction vested on him by the rules. The steps, if not challenged and got reviewed, according to the counsel, would have defeated the very purpose of the institution of Banking Ombudsman.

4. Now we may also just refer to the facts of the case as well. The petitioners are authorised dealers of Maruti Udyog Limited, who are motor vehicle, manufacturers. It is admitted that as part of its business promotion, the petitioner had introduced Extended Warranty Package to its customers in association with the Insurance Companies. The manufacturer of the vehicle was

in the habit of providing warranty for one year from the date of delivery of the vehicle. The petitioner had landed upon an idea to extend the warranty beyond the above period by two more years, free of cost, to the customers. For this purpose, the petitioner had arranged for getting a comprehensive motor insurance policy in respect of the vehicles so sold. It is pointed out that the policy contains a clause for cancellation thereof at the instance of the Insurance Company or at the volition of the insured, namely the petitioner. There is no dispute that the petitioner is the insured.

5. While this arrangement was going on, change of circumstances had occurred, wherein the principal had decided to extend the original warranty to the first as well as the second year of sale and this necessitated the petitioner to restrict the warranty for the third year alone. Consequently, there was a reduction in the premium payable as agreed by the memorandum of understanding. Steps had been taken for terminating the contract appropriately and for agitating a claim for refund that have been admissible. The petitioner's complaint appears to be that the Insurance Companies had not taken this requests in the right spirit; they had kept silence over the demands. A complaint under Rule 13 of the Rules had been thought of so as to get round this impasse, and Ext. P1 in the Original Petitions, are such complaints prepared and submitted.

6. On behalf of the Insurance Ombudsman - 4th respondent, it has been submitted that being a quasi-judicial authority, it should not have been impleaded as a respondent in a petition under Article 226 of the Constitution of India. Counsel had referred to a decision of the Supreme Court reported in 1998 (7) SCC 353 (Andhra Pradesh S.R.T.C. v. State Transport Appellate Tribunal). However, at this juncture, I do not think that the Original Petitions have to be rejected for the alleged misjoinder, though I may point out that the circumstances under which the observations were made by the Supreme Court may not be available on all fours to be applied to the present case. The Supreme Court had even went to the extent, on earlier occasions, that the Tribunals are made parties, so as to facilitate the Court to issue Rule nisi, and excepting to produce the materials, they are not expected to defend or justify the orders passed.

7. Sri. Bechu Kurian Thomas strongly urged that there was no error in issuing Ext. P2 or Ext. P3 since this course alone might have been possible in view of the restricted application of the rules. He pointed out that the "insured person" defined under the Rules only referred to an individual by whom or on whose behalf an insurance policy has been taken on personal lines and when personal lines had been explained further by another definition clause, the view cannot be but that only claims filed in an individual capacity automatically were to be entertained. Referring to the decisions of the Supreme Court, reported in Agarwal and Co. v. Commissioner of Income tax, U.P., (1970) 2 SCC 48 as also Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, , it had been urged that the petitioner, who is admittedly a company, could not have

been assigned the status of an individual so as to take recourse under the Rules. According to him, the rules were intended to see that individuals who had disabilities from proceeding with protracted legal battles were alone to be the beneficiaries as a forum was prescribed for them facilitating securing of remedies provided. Notwithstanding the presumption that a company is a "person" as per the definition in Section 3(42) of the General Clauses Act, 1897, the claim was plainly not maintainable, for the reason that definition clauses are incorporated in the statutes with a definite purpose. Counsel submitted that the indications were strong that a company could not have preferred a claim or complaint, soliciting protection of the rules.

8. The respective insurance companies had urged contentions supporting the stand point as aforesaid. Shri. George Cherian further submitted that on the facts of the case it may not be possible for the petitioner to prefer a claim even before the Consumer Forum as the contract had been entered into by the company for commercial purposes and lines. According to him, only a suit, if at all, might have been maintainable and the rule making authority had made it clear that the remedies are individualistic and the Government cannot be divested of the court fee that might have been payable in case of a civil suit. The extra ordinary remedy was reserved in favour of only individual.

9. The issue was examined in the above background. Adverting to the rules and the arguments that had been urged by the parties, I do not think that the Ombudsman was justified in declining jurisdiction. The Rules of 1998 had been framed on the basis of the powers conferred by Section 114(1) of the Insurance Act, 1938. The Central Government had been so conferred with rule making powers. Rule 2 offered some guidance in the matter. It is prescribed that these Rules shall apply to all the insurance companies operating in general insurance business and in life insurance business. There is a clause for exemption, but it is only in cases where there is grievance redressal machinery already in existence with the Company. Therefore, it is almost clear that unless there is grievance redressal machinery the rules are to apply to the respondent-companies who are in general insurance business. We may also assume that the petitioner might have been able to get remedies from the grievance redressal machinery had it been formulated as a discrimination as between an individual and a company would have been basically a proposition bordering absurdity.

10. We may go to the rules bearing in mind the above. The objects of the rules are stated to be to resolve oil complaints relating to settlement of claim on the part of insurance companies in cost effective, efficient and impartial manner, (underline supplied). Therefore, apart from other considerations, the Government wanted to introduce the system of Ombudsman, to resolve complaints, minimising unnecessary expenditure of money and time. There is nothing in the rule to indicate that a company, for the only reason of its incorporated status was to lose privilege of a speedy adjudicating mechanism. The relevant rules appear to be Rules 12 and 13. The power of the Ombudsman

is prescribed as follows:

"12. Power of Ombudsman- (1)The Ombudsman may receive andconsider:-

- (a) Complaints under Rule 13;
- (b) any partial or total repudiation of claims by an insurer;
- (c) any dispute in regard to premium paid payable in terms of the policy;
- (d) any dispute on the legal construction of the policies in so far as such disputes relate to claims."

Rule 13(1) also could be adverted to and for easy reference it is extracted herein below:

"13. Manner in which complaint is to be made: (1) Any person who has a grievance against an insurer, may himself or through his legal heirs make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complaint against is located."

The words used are "any person who has a grievance". There might have been some arguable basis if the expression in the Rule were "insured person" which alone has been specifically defined. What is stated in Rule 13 "any person". "Any person" is obviously different from "insured person". Therefore, so long as this expression alone has been used in the Rules, 1 cannot accede to the stand taken by the respondents that the word should be substituted and read as "insured person" and then the expression "personal lines" has to be further imported and read into the rule.

11. I am also not able to appreciate the arguments of the respondents that there was an attempt on the part of the rule making authority to see that suits were to be encouraged in so far as the claimants were lodged at the instance of incorporated companies. This does not plainly go with the purport of the rules and the expressions that are used.

12. The rule prescribed that within a period of one month of the complaint, the matter has to be fairly adjudicated. Finality is attached to the decision. A person who is endowed with special knowledge and experience is appointed as Ombudsman. In the face of these provisions, to suggest that the petitioner has to go through the ordeal of a civil suit running for years when the matter could have been adjudicated within a few weeks is beyond comprehension.

13. The consequence is that Ext. P2, in both the cases, are set aside. The petitioner, if chooses, may resubmit the complaints once again before the Ombudsman, and in that event, it has to be adjudicated as a claim maintainable under Rule 13.

14. In view of the circumstance that the insurance companies also had opportunity to present their view points, it may riot be permissible for them to agitate about the maintainability of the complaints before the Ombudsman any

more.

15. The Original Petitions are allowed to the above extent. Parties are directed to bear their respective costs.