(2005) 09 KL CK 0037

In the High Court Of Kerala

Case No : W.A. No''s. 95, 224 and 228 of 2003

National Insurance Co. Ltd. — APPELLANT

Vs

Indus Motor Co. (P) Ltd. — RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

General Clauses Act, 1897 — Section 3, 3(42)
Insurance Act, 1938 — Section 114, 114(1), 2(9), 3, 93(4)
Redressal of Public Grievances Rules, 1998 — Rule 12, 13, 4, 5, 6

Citation : (2005) 4 ACC 469 : (2005) 4 ILR (Ker) 273 : (2005) 4 KLT 391

Hon'ble Judges : Rajeev Gupta, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

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

Judgement

K.S. Radhakrishnan, J.—Insurance Ombudsman has rejected the complaints filed by Indus Motor Co. Pvt. Limited under Rule 13 of the Redressal of Public Grievances Rules, 1998, (for short "the Rules") claiming an amount of Rs. 9,44,551/- with interest from the United India Insurance Company Limited and also Rs. 10,94,404/- with interest from the National Insurance Company Limited. Insurance Ombudsman, Kochi dismissed both the complaints stating as follows:

"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 4(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."

2. Petitioner, a private limited company registered under the Companies Act, contended before the learned single Judge that the Ombudsman was not justified in rejecting the complaints filed under Rule 13 of the Rules stating that the

insurance policy was not taken on personal lines. It was also pointed out that the objects of the rules are stated to be to resolve all complaints relating to settlement of claim on the part of the insurance companies in cost effective, efficient and impartial manner and therefore it was contended that there was no justification in excluding companies from the jurisdiction of the Ombudsman. Interpreting Rules 12 and 13 of the Rules, learned single Judge took the view that there was 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. It was also held that on the face of the above 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 was beyond one''s comprehension. Learned single Judge therefore set aside Ext. P2 order and held that the complaint preferred under Rule 13 is maintainable and that the Ombudsman has got jurisdiction to examine those complaints filed by the incorporated companies as well. National Insurance Company as well as the Insurance Ombudsman are aggrieved by the judgment of the learned single Judge and have filed these appeals.

3. Sri George Cherian, counsel appearing for the National Insurance Company, submitted that the learned single Judge has committed an error in holding that the Insurance Ombudsman has got jurisdiction to entertain the complaint preferred by a private limited company. Counsel submitted that the scheme of the rules specifically excludes policies taken by the Corporation/Association etc. since insured person means an individual by whom or on whose behalf an insurance policy has been taken on personal lines. Counsel submitted that the learned single Judge ought to have found that "any person" referred to in Rule 13 as insured only is entitled to make a complaint. Counsel appearing for the Insurance Ombudsman Sri Bechu Kurian Thomas submitted that Insurance Ombudsman should not have been impleaded as a respondent in the Writ Petition. Counsel referred to the decision of the Apex Court Andhra Pradesh S.R.T.C. v State Transport Appellate Tribunal ((1998) 7 SCC 353) and contended that while construing the statutory provision and deciding the scope of power of the Ombudsman it is not necessary for the court to make that authority a party. Counsel however tried to justify the decision of the Ombudsman holding that complaint under Rule 13 by a limited company is not maintainable.

4. The Insurance Act, 1938 as amended by Act 42 of 2002 and 11 of 2003 is an Act to consolidate and amend the law relating to the business of insurance. Section 114 of the Act confers power on the Central Government to make rules. In exercise of the powers conferred under Sub-section (1) of Section 114 of the Insurance Act, Central Government framed Redressal of Public Grievances Rules, 1998. The Rules apply to Life Insurance Corporation of India and the General Insurance Corporation and any other Company which has been given a licence to carry on business of life insurance or of the general insurance, as the case may be. Central Government may exempt an insurance company from the provisions of the Rules if it is satisfied that an insurance company has already a grievance

redressal machinery which fulfills the requirements of the Rules. The objects of the Rules are to resolve all complaints relating to settlement of claim on the part of the insurance companies in cost effective, efficient and impartial manner. Rule 5 states that there shall be a governing body of the Insurance Council which shall consist of one representative from each of the insurance companies. The representatives of an insurance company shall ordinarily be Chairman or Managing Director or any one of the Directors of such company. The Governing Body shall formulate its own procedure for conducting its business including the election of the Chairman. Governing Body constituted under Rule 5 shall appoint one or more persons as Ombudsman for the purpose of the rules.

5. Rule 12 deals with powers of Ombudsman. Power is conferred on the Ombudsman to receive complaints under Rule 13. Rule 13 deals with the manner in which complaint is to be made. Ombudsman appointed under Rule 6 of the Rules has to function within the four corners of the rules. Rule 12 confers power on the Ombudsman and he cannot go beyond the powers conferred on him under the Rules. For easy reference we refer to Rule 12.

12. Power of Ombudsman.-- (1)The Ombudsman receive and consider:

(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;

(e) delay in settlement of claims;

(f) non-issue of any insurance document to customers after receipt of premium.

(2) The Ombudsman shall act as counsellor and mediator in matters which are within his terms of reference and, if requested to do so in writing by mutual agreement by the insured person and insurance company.

(3) The Ombudsman''s decision whether the complaint is fit and proper for being considered by it or not shall be final.

Above mentioned rule would confers power on the Ombudsman to receive complaints under Rule 13. Rule 13 which is relevant for the purpose of this case, is extracted 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.

(2) The complaint shall be in writing duly signed by the complainant or through

his legal heirs and shall state clearly the name and address of the complainant, the name of the branch or office of the insurer against which the complaint is made, the fact giving rise to complaint supported by documents, if any, relied on by the complainant, the nature and extent of the loss caused to the complainant and the relief sought from the Ombudsman.

(3) No complaint to the Ombudsman shall lie unless:

(a) the complainants had before making a complaint to the Ombudsman made a written representation to the insurer named in the complaint and either insurer had rejected the complaint or the complainant had not received any reply within a period of one month after the insurer concerned received his representation or the complainant is not satisfied with reply given to him by the insurer;

(b) the complaint is made not later than one year after the insurer had rejected the representation or sent his final reply on the representation of the complainant; and

(c) the complaint is not on the same subject matter, for which any proceedings before any court, or Consumer Forum, or arbitrator is pending or were so earlier.

The manner in which complaint is to be made is prescribed in Rule 13 which says that 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. Contention was raised by the counsel that the expression "any person" takes in company as well. Reference was made to Section 3(42) of the General Clauses Act which states that "person" shall include any company or association or body of individuals, whether incorporated or not.

6. The word "person" as such is not defined either in the Insurance Act or in the Rules. Rule 4(i) of the Rules defines the words "insured person" to mean an individual by whom or on whose behalf an insurance policy has been taken on personal lines. Section 4(k) of the Rules states that "personal lines" means an insurance policy taken or given in an individual capacity. Only an insured person as defined in Rule 4(i) read with Rule 4 (k) would fall under the term "any person" in Rule 13. Rule 13 also uses the expression "may himself or through his legal heirs". Rule 13 states that any person who has a grievance against an insurer, may himself or through his legal heirs make a complaint. The expression "may himself or through his legal heirs" qualifies the expression "any person". Definition clause available under the General Clauses Act, in our view, cannot be imported to explain the meaning of the expression "any person" in the Rules, since Rule itself gives sufficient indication with regard to the expression "any person". Further definition clause in Section 3 of the General Clauses Act giving the definition says that the definition clause would apply to the General Clauses Act.

7. We may in this connection refer to the decision of a Full Bench of the Andhra

Pradesh High Court in Sri Ramadas Motor Transport Private Ltd. Vs. Vijayawada Municipality, wherein it was held that several features in the Act and the very scheme of the Act are repugnant to the view that person in Section 93(4) of the Act should be treated as including company so that the provision u/s 3(22) of the Andhra Pradesh General Clauses Act can be of no avail. In this connection, reference may also be made to the decision of the apex court in Agarwal and Co. v. Commissioner of Income tax, U.P., (1970) 2 SCC 48 and M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, .

8. Legislature as a rule making authority makes several rules from the experience gathered from the past and may design to use the words to deal with certain classes of persons. This rule firmly establishes that the intention of the legislature must be found by reading the statute as a whole. In order to examine the nature of the power conferred on the Ombudsman we are guided by Rule 13 read with Rule 4(1)(k) which places emphasis on the words "individual", "personal lines", "himself or through his legal heirs". There is nothing to show that incorporated company would fall under any of those expressions. We may in this connection refer to the definition of the expression "insurer" in Section 2(9) which states that any individual or unincorporated body of individuals or body corporate incorporated under the law of any country. If the legislature wanted the incorporated company also to come within the definition clause of "insured person" or "any person" within the meaning of Rule 13 the same could have been incorporated in the Rules. Having not incorporated we are of the view, the court is not justified in importing a meaning which has not been attributed by the rule making authority to the expression "any person" since the context clearly shows otherwise. Above being the legal position, we find it unable to subscribe to the view of the learned single Judge.

9. We therefore set aside the judgment of the learned single Judge and uphold the order of the Insurance Ombudsman. On the basis of the declaration of law made by learned single Judge, several complaints might have already entertained by the Insurance Ombudsman or pending consideration. By passage of time, it would not be possible to re-agitate their claim in a civil court. We hold that the declaration of law made by us would act only prospectively. The Writ Appeals are allowed.

C.M.P.Nos. 732, 739 and 278 of 2003 are dismissed.