**(2010) 07 KL CK 0226**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No. 6245 of 2010

Noushad Khalid APPELLANT

Vs

Oriental Insurance Company Ltd. and Others RESPONDENT

**Date of Decision :** 06-07-2010

**Acts Referred:**

Redressal of Public Grievances Rules, 1998 — Rule 13(3)

**Citation :** (2011) ACJ 1187

**Hon'ble Judges :** S. Siri Jagan, J

**Bench :** Single Bench

**Advocate :** V. Jayapradeep and E. Shanavas Khan, for the Appellant; A.R. George, for the Respondent

**Final Decision :** Allowed

## Judgement

S. Siri Jagan, J.—Petitioner''s Mahindra Scorpio van was stolen. That was insured with insurance company, Respondent No. 1. Since his claim for insurance money was repudiated, he approached this Court. By judgment Exh. P3, this Court directed him to seek his remedies in a forum, where he can adduce evidence in support of his contention. The Petitioner filed an application before the Insurance Ombudsman Respondent No. 3. By order, Exh. P8, the Secretary of the Insurance Ombudsman informed the Petitioner as follows:

We have received your letter dated 14.1.2010, regarding the above matter. On going through the judgment of the Hon''ble High Court of Kerala, in W.P. (C) No. 27922 of 2008 it is stated that it is only appropriate that the Petitioner seeks his remedies in a forum where he can adduce evidence in support of his contention.

Hon''ble Ombudsman has no authority to collect such evidence in relation to the complaint. Moreover, in terms of Rule 13(3)(c) of Redressal of Public Grievances Rules, 1998, ''No complaint to the Insurance Ombudsman shall lie, unless the complaint is not on the same subject-matter, for which any proceedings before any court, or arbitrator, or consumer forum, is pending or were so earlier.''

 

In view of the above, we regret our inability to entertain your complaint and hence the complaint is closed at our end.

2. The Petitioner is challenging the same. On 21.5.2010 this Court passed the following interim order:

The Petitioner is challenging Exh. P8. That has been issued by the Secretary of the Insurance Ombudsman refusing to entertain the application filed by the Petitioner. I had earlier also, in another judgment, deprecated the practice of the office of the Insurance Ombudsman in rejecting applications by orders of the Secretary. Further, Exh. P8 order does not prima facie show that the Insurance Ombudsman had applied his mind to the application. The function of the Ombudsman is a quasi-judicial function. He cannot relegate it to his Secretary. Further, I had earlier, by Exh. P5 judgment permitted the Petitioner to approach the appropriate authority who can take evidence to decide the issue. I am surprised why the Secretary of the Ombudsman found that the Ombudsman is not such an authority, when, admittedly, a petition for the purpose for which a Petitioner has approached the Ombudsman would lie before the Ombudsman.

Therefore, prima facie, I find that the action of the Ombudsman is not in accordance with the legal principles applicable. Hence, Ombudsman shall file a counter affidavit in this matter explaining his stand. Issue notice to the additional Respondent, viz., the Insurance Ombudsman, along with a copy of this order.

There is no response from the Insurance Ombudsman. Therefore, both sides were heard. By Exh. P3 judgment this Court held as follows:

The Petitioner is aggrieved by repudiation of his insurance claim in respect of theft of his vehicle. The contention of the Petitioner is that it has been repudiated on the ground that there have been some discrepancies in the two F.I.R.''s filed by the Petitioner before two police stations. According to the Petitioner, going by the decision of the Supreme Court in National Insurance Co. Ltd. Vs. Nitin Khandelwal, , in case of theft, the nature of use of vehicle cannot be looked into and the insurance company cannot repudiate the claim. The insurance company contends that the question as to whether there was theft at all is very much in doubt. They point out that in Exh. P2, complaint, which itself was filed after five days of the theft, the time of theft is stated to be between 9 a.m. on 2.11.2006 and 7 a.m. on 3.11.2006. In the second F.I.R. before another police station, which is Exh. P8, the Petitioner has given the time of theft to be between 3.30 p.m. and 7 p.m. on 2.11.2006. It is further submitted by the counsel for the insurance company that the Petitioner has not informed the insurance company about the theft within a reasonable time and it took 13 days for him to inform the insurance company about the theft. He also submits that the place of theft given in F.I.R., Exh. P2 and F.I.R., Exh. P8, differs.

(2) After hearing both sides, in view of the fact that there are very serious disputed questions of fact, it is only appropriate that the Petitioner seeks his remedies in a forum, where he can adduce evidence in support of his contention.

 

Therefore, without prejudice to that right, this writ petition is dismissed.

3. Insurance Ombudsman is an authority before whom persons can adduce evidence in support of their claims. That being so, Insurance Ombudsman comes within the purview of the authorities mentioned in Exh. P3 judgment. As such the Insurance Ombudsman could not have validly rejected the petition filed by Petitioner, as done in Exh. P8 order Further, Exh. P8 order is not passed by the Insurance Ombudsman at all. It is only a communication from the Secretary of the Insurance Ombudsman to the Petitioner. Insurance Ombudsman being a quasi-judicial authority, when a petition is filed before him, he has a duty to pass orders by himself and give copy of the order to the parties, which has not been done in this case. There is nothing to indicate that the Ombudsman has applied his mind to the petition with reference to Exh. P3 judgment. Accordingly, Exh. P8 is quashed.

4. The Insurance Ombudsman is directed to consider the Petitioner''s application on merits, after affording opportunity to both sides to adduce evidence in respect of their respective claims and pass orders on the Petitioner''s petition. Orders in this regard shall be passed as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

 