(2022) 09 KL CK 0159

In the High Court Of Kerala

Case No : Writ Appeal No. 573 Of 2021 & R.P. No.689 Of 2022

Puthen Modern Rice Mill — APPELLANT

Vs

Bajaj Allianz General Insurance Co.Ltd — RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 3
Insurance Act, 1938 — Section 114, 114(1)
Redressal of Public Grievances Rules, 1998 — Rule 4(i), 4(k), 12, 12(2), 13, 16(5)

Citation : (2022) 09 KL CK 0159

Hon'ble Judges : S. Manikumar, CJ;Shaji P.Chaly, J

Bench : Division Bench

Advocate : Dr. Ramesh Babu S., Thomas M. Jacob

Final Decision : Dismissed

Judgement

S. Manikumar, CJ

1. The captioned appeal is filed by M/s. Bajaj Allianz General Insurance Company Limited, a company incorporated under the Companies Act, 1956, challenging the judgment dated 5.3.2021 in W.P.(C) No.27441 of 2015, by which the learned single Judge, after considering the submissions, statutory rules, and the decisions relied on by the writ petitioner/1st respondent, allowed the writ petition and set aside Exhibit-P10 award passed by the Insurance Ombudsman dated 14.07.2015, on the ground that as per the decision of a Hon'ble Division Bench of this Court in National Insurance Co. Ltd. and Others v. Indus Motors Co. Pvt. Ltd. and Another [2005 (4) KLT 391], a partnership firm will not fall within the ambit of the term “any person” as contained in Rule 13, and hence, a complaint by a partnership firm is not maintainable under the Redressal of Public Grievances Rules, 1998, before the Insurance Ombudsman.

2. The review petition is filed by respondent No.1, seeking to review an order passed in the appeal directing to make an interim payment, which would be dealt

with separately hereafter.

3. Contentions raised in the appeal are, appellant is a partnership firm, which had taken a Standard Fire and Special Perils Insurance Policy from the 1st respondent - Bajaj Allianz General Insurance, Kaloor, Ernakulam, for the period from 4.2.2013 to 3.2.2014 (Exhibit-P1). The insurance policy was renewed year after year, after the 1st respondent thoroughly inspected the building, plinth, foundation, superstructure of the Mill, plant and machinery; and stock of paddy, bran, rice etc.

4. Appellant has further stated that on the night of 24.06.2013 and early morning of 25.06.2013 between 1 a.m. and 6 a.m., heavy wind and rain lashed over the rice mill at Okkal, Kalady, Ernakulam, damaging the Chimney of Puthen Modern Rice Mill, the insured. The Chimney was brought down in the presence of and with the permission of Surveyor of the insurance company, using a duty crane.

5. It could be seen from Exhibit-P1 policy that subject to the condition and exclusions contained therein, the insurance coverage is for destruction of damage of the property insured and described in the schedule, by any of the perils specified therein during the period of insurance. Hence, the appellant/1st respondent made a claim in respect of the policy that the chimney of their rice mill was broken in the middle and bent over due to the alleged storm/heavy wind and rain on 25.06.2013 between 1 a.m. and 6 a.m.

6. On receipt of the claim, the 1st respondent/writ petitioner deputed a duly licensed Surveyor and Loss Assessor, who submitted a report dated 10.07.2013 and a detailed final report dated 26.10.2013 (Exhibits-P3 and P4) along with a few photographs (Exhibit-P5) of the chimney in question. It can be seen from Exhibits-P3 and P4 that the chimney was damaged by wind and rain is false. The photographs show that the same was corroded, rusted and in bad condition, and therefore, in need of repair. Further, it was reported that the chimney was badly worn out and the bend was obviously due to weakness developed at the joint. It was also reported that the insured had tried to prove that there was a storm in the night of 24.06.2013 or early morning of 25.06.2013 by relying upon some newspaper reports.

7. The Surveyor has further reported that on close scrutiny, all the reports were pertaining to various other locations and not to the locality surrounding the insured property; there were no known incidents of storm damage around the insured location; there was also no supporting report from the Meteorological Department; the premises appeared as poorly maintained and there was no stock of rice or paddy in the premises; there are no fire extinguishers or hose reels seen installed; the mill was not functioning properly and appeared to be shut down for long; and the licenses issued by various authorities were not continuous. In view of the said report, the 1st respondent/writ petitioner repudiated the claim of the appellant.

8. Thereupon, the appellant preferred Exhibit-P8 complaint before the learned Ombudsman on 03.12.2014 for settlement of disputes between the insured and insurer, and the quantum to be paid. Along with the complaint, they have produced the insurance policy, copy of email requesting surveyor to inspect and give permission to bring down the damaged chimney, copy of claim repudiation letter dated 29.10.2013, letter dated 7.8.2014 for grievance/dispute redressal unit at Ernakulam, Mr. Wasim Shaikh's email dated 7.8.2014 etc.

9. First respondent insurance company contested the complaint by filing a written statement dated 11.03.2015 stating various reasons, repudiating the claim. However, the Insurance Ombudsman passed an award (Exhibit-P10) directing the respondent insurance company to settle the claim of the appellant for an amount of Rs.6 lakhs, which according to the insurer is, without appreciating the correct facts, circumstances and law. Being aggrieved, W.P.(C) No.27441/2015 has been filed seeking to issue a writ of certiorari or such other writ, direction or order, quashing Exhibit-P10 award.

10. Before the writ court, it was contended by the 1st respondent insurance company that none of the newspaper reports showed that there was any storm or heavy wind and rain in the area of the insured on the crucial date. That apart, it was contended that the appellant did not produce any report of the Meteorological Department; past policies issued to Puthen Modern Rice Mill through their agents IDBI bank by the insurance company, showing the insured amount and premium with all clauses; details of the insurance companies, Surveyors detail and experience in settling a similar claim to a rice mill in Kerala during the past 13 years; scientific proof that the chimney had fallen due to rust as per their repudiation of claim letter etc., to substantiate that there was storm, and therefore, there is no basis or foundation for fixing the liability against the insurer at Rs.6 lakhs. However, it was stated by the 1st respondent in the counter that the losses suffered by the appellant was due to the insured peril.

11. After considering the rival contentions, Redressal of Public Grievances Rules, 1998, and decisions relied on, writ court vide impugned judgment, allowed the writ petition and set aside Exhibit-P10 award passed by the learned Ombudsman. Being aggrieved, instant writ appeal is preferred by the 1st respondent.

12. Relying on the decision in National Insurance Co. Ltd. (cited supra), the appellant Dr. Ramesh Babu S., party in person, submitted that under Rule 13 of the Redressal of Public Grievances Rules, 1998, an Insurance Ombudsman has jurisdiction to entertain complaints made only by any person or individual, in respect of an insurance taken on personal lines. In support of the said contention, he has relied on Rule 13 of the Rules, 1998.

13. It is the further contention of the appellant that Exhibit-P10 award passed by the Ombudsman is perfectly justified and in conformity with the object of Redressal of Public Grievances Rules, 1998. According to the appellant, writ petition is not maintainable as against the award of the learned Ombudsman,

which is a fact finding authority under the statutory rules. Only after giving sufficient opportunity of hearing to all the stakeholders, learned Ombudsman held that the repudiation is bad and improper.

14. Appellant has further contended that in order to succeed in a writ of certiorari, the person applying has to demonstrate the existence of a jurisdictional error or violation of principles of natural justice, which is conspicuously absent in the present case. The jurisdiction of this Court is not that of an appellate authority, and as such re-appreciation of facts is impermissible. In view of the built in mechanism provided under the rules, scope of review under Article 226 of the Constitution of India is very limited and unless the findings and conclusions arrived at by the learned Ombudsman are patently unfair, palpably perverse, and suffer from jurisdictional error, the same is not amenable to jurisdiction of this Court under Article 226 of the Constitution of India.

15. Appellant has also contended that the plea of respondent No.1/writ petitioner that there is no strong wind or rain during 1 a.m. and 6 a.m. on 25th June, 2013 and that the chimney was bent due to rust is not sustainable in the absence of any cogent and convincing proof/material in support of the same.

16. When the writ appeal came up for consideration on 21.06.2022, we passed an order dated 21.06.2022, wherein, taking note of the fact that the litigation is pending for the last 9 years, the Bajaj Allianz General Insurance Co. Ltd., Ernakulam - respondent No.1, was directed to pay a sum of Rs.2,00,000/- to the appellant, within a period of one week from the date of receipt of a copy of the order. Against the said order, the 1st respondent has filed R.P. No.689/2022, inter alia, contending that there is error apparent on the face of the order, in so far as the order is passed without deciding the contentions raised by the review petitioner. It is also contended that the said order is as good as allowing the appeal before deciding upon the issues raised and that the Surveyor has not assessed the loss at Rs.2 lakhs.

17. Referring to the provisions of Redressal of Public Grievance Rules, 1998, Mr. Thomas M. Jacob, learned counsel for the insurer submitted that role of learned Ombudsman is to primarily act as a Counsellor and Mediator. According to him, Rule 12(2) of the said rules stipulates mutual agreement by the insured person and Insurance Company for the Ombudsman to act as a Counsellor and Mediator. According to the insurer, the Redressal of Public Grievances Rules, 1998 is a Subordinate Legislation, which is framed in exercise of powers conferred under Sec. 114(1) of the Insurance Act, 1938.

18. It is the further contention of learned counsel for the insurer that, none of the provisions of the Insurance Act or Sec. 114 thereof stipulates adjudication of disputed facts between insurer and insured. Section 114 of the Insurance Act does not provide for making any rule or regulation with respect to granting powers to the Insurance Ombudsman to adjudicate upon disputed questions of

facts. A Subordinate Legislation cannot be vested with powers that are not stipulated in the parent Act i.e., the Insurance Act, 1938. This also shows that there is no power or authority vested with the Insurance Ombudsman to adjudicate upon a disputed question of fact.

19. It is the further contention of the insurer that Exhibit-P10 award passed by the Ombudsman is not supported by reasons and there is no justification for directing payment of Rs. 6,00,000/-. Even before this Court, there is nothing placed on record to show that such expenses are incurred by the complainant.

20. Reliance is placed on the decision in Star Health and Allied Insurance Co. Ltd. v. Byju S. and another [2019 (4) KHC 113], by which, this Court held that when amounts are awarded by the Ombudsman, it should be supported by reasons.

21. Therefore it is submitted that if money is directed to be paid before the legal contentions are considered by this Court, it would result in miscarriage of justice, irreparable injury and hardship to the review petitioner. Substantial justice requires that the order dated 21.06.2022 be reviewed and the contentions raised by the review petitioner be considered on merits.

22. Refuting the averments made in the review petition, 1st respondent has filed a detailed counter affidavit dated 03.08.2022, inter alia, contending that all the legal contentions raised by the review petitioner against the award of learned Insurance Ombudsman were considered by the Hon'ble Division Bench while passing the interim order dated 21.06.2022, and hence, there is no error apparent on the face of record seeking to review the said order.

23. Heard the appellant and 1st respondent in the review petition Dr. Ramesh Babu, who appeared in person, learned counsel for the insurance company, and perused the material available on record.

24. Standard Fire and Special Perils Policy taken by the 1st respondent (Exhibit-P1) makes it clear that in consideration of the insured named in the schedule hereto having paid to the Bajaj Allianz General Insurance Company Limited (hereinafter called the Company) the full premium mentioned in the said schedule, the company agrees (subject to the Conditions and Exclusions contained therein or endorsed or otherwise expressed thereon) that if after payment of the premium the property insured described in the said schedule or any part of such property be destroyed or damaged by any of the perils specified thereunder during the period of insurance named in the said schedule or of any subsequent period in respect of which the insured shall have paid and the Company shall have accepted the premium required for the renewal of the policy, the Company shall pay to the Insured the value of the property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof:

1. Fire

Excluding destruction or damage caused to the property insured by

a. i) Its own fermentation, natural heating or spontaneous combustion.

ii) Its undergoing any heating or drying process

b. burning of property insured by order of any Public Authority.

2. Lighting

3. Explosion/implosion

Excluding loss, destruction of or damage.

25. Clause (6) of Exhibit-P1 Standard Fire and Special Perils Policy, which speaks about Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, flood and Inundation, states about loss destruction or damage directly caused by storm, cyclone, typhoon, tempest, hurricane, flood and inundation, excluding those resulting from earthquake, volcanic eruption or other convulsions of nature.

26. Clause 13 in General Conditions of Exhibit-P1 states that if any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996. It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the Company has disputed or not accepted liability under or in respect of this policy. It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator/ arbitrators of the amount of the loss or damage shall be first obtained.

27. In the case on hand, the complainant has relied upon certain newspaper reports. The Surveyor and Loss Assessor, approved by IRDA has stated in Exhibit-P4 survey report that there was no signs of any storm or heavy wind in the locality and that there was no damage reported in the locality, due to any storm or heavy rains or wind. That apart, the insurer has submitted that there is no report from the MET Department or known incidents of storm damages. On inspection of the rice mill and chimney, it was found that the chimney suffered a bend at the flange joint connecting the 3rd section from ground with the 4th one and the bend was as a result of weakening of the chimney, due to severe rusting. It was also found that the rice mill remained closed and there were no employees or no regular work. The licence is also expired.

28. In Exhibit-P2 claim form submitted by the appellant, the date of occurrence is shown as 25th June, 2013, whereas in Exhibit-P8 complaint dated 29.10.2014,

it is stated that the chimney was heavily damaged on 24.06.2013, due to heavy winds, storms, rains. That apart, in the detailed statement of the property destroyed or damages, the amount claimed by the 1st respondent is shown as Rs.9,50,000/-.

29. Further, in Exhibit-P3 immediate loss advice report dated 10.07.2013 submitted by the Surveyor & Loss Assessor, situation of loss is stated as the chimney installed at the rear end of the Mill and forming part of the boiler plant; time, day and date of loss is stated as between 1.00 am and 6 am on 25.06.2013; and nature of damage/loss is stated that the tubular metal chimney was found badly corroded, lost its stability and bent a middle.

30. In Exhibit-P4 final report on claim under Fire & Special Perils Policy dated 26.10.2013, submitted by the Surveyor and Loss Assessor, situation of loss is stated to be chimney installed at the rear of the insured Rice Mill at the above address; time, day and date of loss is stated to be 'time not known -Tuesday, 25 June, 2013'; and clause of damage is stated as alleged to be storm-but no proof. In the said report, the assessed gross loss is shown as Rs.1,94,000/-. For brevity, Exhibit-P4 is extracted hereunder:

"INTRODUCTION

Under instruction on 25 June 2013, from Bajaj Allianz General Insurance Co. Ltd, Kochi Regional Office, I immediately contacted the insured and a survey was scheduled considering the insured's convenience also. Now, having completed the related investigations and verification, I am concluding my final report, as follows, for insurers consideration.

THE INSURED

The insured firm is a Partnership between Dr. Kumar and his wife. The insured firm has been in business for many years and the rice mill was acquired about a decade ago, from its previous owners. For various reasons and particularly due to the competition in the field, the insured could not progress in this business. At the time of survey, the rice mill was idling and there were no employees or regular office work.

The insured Mill is licensed by a number of authorities such as Pollution Control Board, Inspectorate of Factories and Boilers, Local Authority etc. But, the licenses were not continuous and the local authority license was found valid only up to 30/06/2012 and not renewed thereafter

DESCRIPTION OF THE PREMISES

The insured premises comprises a large industrial shed of about 150 x 40 ft size with a boiler installed at the rear end. There are also other machines necessarily required for a rice mill. The premises appeared as poorly maintained and not in operation for quite a long time. There was no stock of rice or paddy in the premises. No fire extinguishers or hose reels were seen installedThe chimney for

the purpose of expelling the smoke generated in the operation of the boiler was found to be about 84 ft in height and diameter 60 mm at top and 120

mm at bottom.

CIRCUMSTANCES OF LOSS

Insured had acquired the property about 7 years ago, for operating the Rice Mill. For various reasons including the stiff competition in the trade, insured could not survive successfully for long and was compelled to keep the mill shut down for long.

CAUSE

Insured had alleged that the Chimney suffered a bend due to the storm. The chimney was dismantled for repair, but on dismantling, it was found as badly worn out and required making new Certain newspaper reports were also presented in an attempt to establish that there was storm in the night of 24 June 2013 or early morning of 25 June 2013, that effected in the area where insured Mill is situated

But close scrutiny of the submitted documents, revealed that there was no such storm in the area in question. The chimney was corroded and holed near the flange joint. The holes developed by corrosion were visible from the ground. The condition of the dismantled chimney revealed doubtlessly that the chimney was badly worn out and the bend was obviously due to the weakness developed at the joint.

NATURE & EXTENT OF DAMAGE

The chimney suffered a bend at the flange joint connecting the 3" section from ground with the one This bend was the result of weakening of the chimney due to severe rusting. For the safety of the Mill and the surrounding people and property it was found necessary to replace the chimney with new material to avoid major casualties. Insured had produced an estimate prepared by themselves and not prepared by an experienced repairer.

Insured had alleged storm damage to two uppermost sections of the chimney. The replacement of the said portion was estimated as follows.

The chimney is made of 6mm plate and in 60cm dia. Total height comprising 5 sections is 84 ft. A quotation received from a reputed fabricator for installing a new chimney is Rs.1,30,000 MT for fabrication and installation, including materials. The quantity for the entire Chimney is estimated to be requiring 4MT of steel. So, the total cost involved for a new chimney comprising 5 sections is estimated to be Rs. 5,20,000. Length of one section is about 16 ft. Two uppermost sections work out to 32 ft.

Material cost for 1.5 tons of steel plate @ Rs.46/kg = Rs. 69,000

Fabrication @ Rs.40,000 per ton = Rs. 60,000

Installation including crane charges (approx) = Rs. 65,000

Dismantling charge is debris removal. So actual is not considered, only 1% of the claim amount is to be assessed as loss.

SALVAGE

The worn out chimney may fetch a scrap value of Rs. 18,000.

xx xxxxx xxxxxxx

POLICY LIABILITY

Insured is holding a Fire & Special Perils Policy for the Period 04/02/2013 to 03/02/2014 covering Building Plant & Machinery and Stock with values for individual sections and a total Sum Insured of Rs. 95,92,000. The policy covers Storm damage also. Insured has alleged that there was a storm, some time in the night of 24 June 2013 and that next day he noticed damage to the chimney. Insured had tried to prove the incident by providing newspaper reports on storm damage incidents. But, all the reports were pertaining to incidents at various other locations and nothing in the locality surrounding the insured property. There was no supporting report from the MET department. No known incidents of storm damage around the insured location.

The corrosion seen on the chimney, the discontinuity in the license issued by Factories and Boilers Inspector, non production of local Authority License (trade license) for the material time, etc. proves the fact that the insured Rice Mill was not properly functioning and that the damage to chimney was only due to corrosion and not due to Storm So the Policy should not respond to this loss.

ISSUED WITHOUT PREJUDICE"

31. Exhibit-P7 is the letter sent by the insurer to the appellant, wherein it is stated that after due inspection and verifying the documents submitted, the surveyor has submitted the final survey report, wherein it confirms the following:

? The damaged chimney is badly worn out and corroded and the damages to the chimney is due to deterioration and wear and tear and not due to any insured peril.

? As per the claim form submitted by your good self the damage to the chimney is due to storm/heavy wind and rain. There is no circumstantial evidence to prove the loss is due to the storm and no other damage is visible in the premises to substantiate the occurrence of the storm.

32. It was also stated in Exhibit-P7 letter that in view of the above, the insurer is not in a position to entertain the claim of the appellant and the claim stands repudiated.

33. Exhibit-P8 is the complaint submitted by the 1st respondent to the office of the Insurance Ombudsman, wherein it is stated that due to the heavy winds,

storm, rains which lashed over the Rice Mill at Okkal, Kalady, Ernakulam, on 24.6.13, and its Chimney was heavily damaged and relied on various paper reports to substantiate the same.

34. Exhibit-P10 is the award passed by the learned Insurance Ombudsman dated 14.07.2015, the relevant portion of which reads thus:

"Both the complainant and Respondent Insurer had given consent for the Insurance Ombudsman to act as mediator for the resolution of the complaint.

4. Notice was issued from this Forum for the appearance of parties for hearing The complainant was represented by Self. The Respondent Insurer was represented by their authorized official. They were heard. The complainant states that he had availed a Loan from IDBI Bank of Rs. 5 crore to purchase the said Rice Mill The fixed assets and stock was inspected by the Bankers before releasing the loan. The loan has been repaid as per the schedule and the balance amount due to the Bank is only Rs 1.4 Cr now. The complainant states that the factory has been functioning continuously. He states that the Survey Report of the insurer is totally untrue and baseless He also states that the newspaper reports clearly indicate that heavy rains lashed in the area where their factory was located He also submits photographs and a video taken of the damaged chimney. He states that the insurer alleging that the rice mill was not functioning was totally false. He submits that the insurer has insured the said premises and is bound to compensate for the damage. Instead the insurer is denying his rightful claim by stating false and misleading statements. The respondent insurer submits that as per the Surveyor's Report the claim is not payable and also they have arrived at the assessed gross loss as Rs. 1,94,000/-.

5. The insured has produced evidence to prove that his property has been damaged due to storm and rain. He has also produced all licenses, copies of his financial statements which confirm that the said factory has been functioning well. There is circumstantial evidence to indicate that the insurer has been denying the claim on false ground. The company surveyor has assessed the loss at Rs 1,99,000/- as against the claim of Rs.9,50,000/-Taking an overall view of the facts and circumstances of the case, the Respondent insurer is directed to pay Rs.6,00,000/- to the complainant.

In the result, an award is passed directing the respondent insurer to settle Rs.6,00,000/- as the settlement under the claim to the complainant within the period mentioned here under. No costs.

In order to implement the award, the complainant shall furnish to the insurer a letter of acceptance of the award in full and final settlement of the claim as prescribed in Rule 16(5) of RPG Rules, within a period of one month from the date of receipt of the award, and the Insurer shall comply with the award within 15 days of receipt of acceptance letter and intimate compliance to the Ombudsman."

35. The question with respect to power of Ombudsman to consider a complaint filed by a company was considered by a division bench of this court in National Insurance Co. Ltd. and Others v. Indus Motor Co. Pvt. Ltd. and Another reported in 2005 (4) KLT 391, after considering the statutory provisions, the Court held as under:

"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. S.114 of the Act confers power on the Central Government to make rules. In exercise of the powers conferred under sub-s.(1) of S.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 license 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 claims on the part of the insurance companies in a cost effective, efficient and impartial manner. R.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. The Governing Body constituted under R.5 shall appoint one or more persons as Ombudsman for the purpose of the rules.

5. R.12 deals with powers of Ombudsman. Power is conferred on the Ombudsman to receive complaints under R.13. R.13 deals with the manner in which a complaint is to be made. Ombudsman appointed under R.6 of the Rules has to function within the four corners of the rules. R.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 R.12.

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

(a) Complaints under R.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 confer power on the Ombudsman to receive complaints under R.13. R.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 a complaint is to be made is prescribed in R.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 S.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. R.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. S.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 R.4(i) read with R.4(k) would fall under the term "any person" in R.13. R.13 also uses the expression "may himself or through his legal heirs". R.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 clauses 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 S.3 of the General Clauses Act giving the definition says that the definition clause would apply to the General Clauses Act.

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 R.13 read with R.4(1)(k) which places emphasis on the words "individual", "personal lines", "himself or through his legal heirs". There is nothing to show that an incorporated company would fall under any of those expressions. We may in this connection refer to the definition of the expression "insurer" in S.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 R.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.”

36. Taking into account the provisions of Redressal of Public Grievances Rules, 1998 and decision of the Hon'ble Division Bench of this Court in Indus Motor Co. Pvt. Ltd. (cited supra), the primary question to be considered is as to whether the complaint preferred before the learned Insurance Ombudsman by the firm is maintainable or not.

37. It is admitted fact that such a contention was not taken by the insurer before the learned Ombudsman though it was raised before the learned single Judge. This we say because, as per Rule 4(k) of the Redressal of Public Grievances Rules, 1998, the word “personal lines” is defined to mean an insurance policy taken or given in an individual capacity. That apart, Rule 4(i) defines “insured person” to mean, an individual by whom or on whose behalf an insured policy has been taken on personal lines. It was taking note of the said provision, that the Hon'ble Division Bench has arrived at the conclusion that except an insurance policy taken or given in an individual capacity, a complaint cannot be maintained

before the learned Ombudsman.

38. Further, the power of the learned Ombudsman is stated under Rule 12 of the Rules, 1998 and the same is extracted hereunder:-

"12. Power of Ombudsman.- (1) The Ombudsman may 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 or payable in terms of the policy;

(d) any dispute on the legal construction of the policies insofar as such disputes relate to claims;

(e) 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."

39. The manner in which a complaint is to be made before the learned Ombudsman is stated in Rule 13 of the Rules, 1998. For brevity, Rule 13 is extracted hereunder:

"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 complained 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 the 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."

40. Going through the Rules, 1998, it can be seen that the person contained under the rules for preferring a complaint before the learned Ombudsman can only be an individual and not by any firm or company. In fact, the Hon'ble Division Bench of this Court in Indus Motor Co. Pvt. Ltd. (cited supra) has taken into account the entire issues relating to the rule vis-a-vis maintainability of the complainant, by a company and has arrived at the conclusion that except an individual, no other body corporate, entity, or a partnership firm, are not entitled to seek refuge under the provisions of the Rules, 1998.

41. In the light of the above and the decision in Indus Motor Co. Pvt. Ltd. (cited supra), we are of the view that the appellant is not entitled to succeed in this appeal. We are also of the view that in the award passed by the learned Ombudsman, except stating the amount to be paid, no reasons are assigned or the contentions raised by the insurer are not considered. Therefore, the award passed by the learned Ombudsman is also erroneous for want of adequate reasons.

42. Upshot of the above discussion is that appellant has not made out a case of jurisdictional error or other legal infirmities, in order to interfere with the judgment of the learned single Judge dated 05.03.2021 passed in W.P.(C) No.27441/2015, in an intra court appeal, for our own reasons stated above.

Appeal fails and accordingly dismissed.

In view of dismissal of the writ appeal, we are of the considered opinion that the interim order passed by this Court on 21.06.2022 in the writ appeal has no sustenance. Therefore, we allow the review petition filed by the insurer and recall the order dated 21.06.2022 passed in W.A. No.573/2021.

