IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6625 OF 2024

Tata AIG General Insurance Co. Ltd. }
Having Its Registered Office at }
Peninsula Business Park, Tower A, 15th }
Floor,G.K. Marg, Lower Parel, Mumbai- }
400013, Thr. Its Authorised Signatory }
Mr.Mohammad Azhar Wasi } ....Petitioner

Versus

1. Insurance Ombudsman for Mumbai }
Office of the Insurance Ombudsman, 3rd }
Floor, Jeevan Seva Annexe, S.V. Road, }
Santacruz (W), Mumbai-400054. }

2. Mr.Kunnath Sriramanarayanan }
Flat No.A3/503, Sandeep Vihar Awho, }
Kannamangala, Banglore, Karnataka, India- }
560067 }
}
Also At }
Flat No.501, E-21, Creek View CHS Ltd., }
C-Block, Yogi Nagar, Boriwali (E), }
Mumbai-400091 } ....Respondents

Mr.Shreyas Shrivastava a/w Mr.Anup Kumar Mathur, Mr.Saurabh Shrivastava i/b Shrivastava Legal LLP, for the Petitioner.
Mr.K.B. Adyanthaya i/b R.K. Shetty, for the Respondents.

CORAM : R.M. JOSHI, J.

DATE : 14th AUGUST 2024

JUDGMENT :-

. By consent of both sides heard finally at the stage of admission.

2. The Petitioner is a Insurance Company and being aggrieved by the award passed by the Insurance Ombudsman dated 4th March 2024 has filed this Petition. Parties are referred to as Insurer and Insured for convenience.

3. The facts which lead to filing of the present Petition can be narrated in brief as under:-

Insured approached to the Insurer through online platform on 15th December 2022 for issuance of an Overseas Travel Insurance Policy titled as "Travel Guard Policy Silver without Sub Limits". Policy and the Schedule No.7100774653 was issued to the Insured on the basis of declaration furnished online. The Policy purchased by the Insured became effective from 17th January 2023 and was valid upto 16th May 2023. Insured along with his wife undertook overseas journey to Europe on 3rd May 2023. It is the case of the Insured that during the said travel he experience symptoms of vertigo. On 8th May

2023 he sought medical consultation from Dr.Giulio Bosco in Rom for symptoms of vertigo. It is his further case that, due to persistent symptoms he decided to abort the overseas visit and returned to India. He arrived back in India on 10th May 2023. He was admitted in Reliance Hospital between 15th May 2023 to 22nd May 2023. He was diagnosed with Subacutes Infarct in the right Costerolateral Medulla. Insured made claim with Insurance through email dated 10th June 2023 claiming the expenses incurred towards his treatment at Reliance Hospital in Mumbai. The Insurer by email dated 20th June 2023 denied the liability of claim on the basis of the Terms and Conditions of the Insurance Policy. Insurance Ombudsman received complaint from Insured, Insurer opposed the Complaint. Insurance Ombudsman by passing award dated 4th March 2024 has directed Insurer to process the entire claim under advice to the Ombudsman within 30 days of receipt of the order, hence this Petition.

4. The learned counsel for the Insurer submitted that the Insurance Ombudsman has committed error in not taking into consideration the terms of the policy which precludes the

insured from making any claim in respect of the medical expenses incurred in India. He drew attention of the Court to the terms of the Policy which according to him disentitles Insured to take up any claim of medical expenses after his return to India with Insurer. It is his submission that in complete ignorance of the terms of the Insurance contract, the Ombudsman has wrongly passed the impugned award by recording reason that since the company is ready to pay Overseas medical expenses, it is concluded that permission is granted as treatment in India is in continuation from the treatment from abroad. This finding according to him is unsustainable on facts as well as in law.

5. At the outset, the learned counsel for the Insured submits that the Ombudsman has not passed any direction for allowing the claim of Insured but a simple direction is issued to process the entire claim within a period of 30 days from the receipt of the award. On merit is it his contention that since the Insured became so ill that he had no other option but to abort his tour and returned to India. It is submitted that, in view of exclusion Clause-12, he is entitled to seek recovery of the

expenses though the Insured was not in a proper physical state to seek approval therefor. On these amongest other submissions he sought dismissal of the Petition.

6. At the outset, it needs to be recorded that the Insurance Ombudsman is exercising the power to entertain the complaint under statutory scheme following under Ombudsman Rules 2017.

> "Rule *13.* ***Duties & Functions of Insurance Ombudsman*** *:-*
> *1) The Ombudsman shall receive and consider complaints or disputes relating to--*
>
> *(a) delay in settlement of claims, beyond the time specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999;*
>
> *(b) any partial or total repudiation of claims by the life insurer, General insurer or the health insurer;*
>
> *(c) disputes over premium paid or payable in terms of insurance policy;*
>
> *(d) misrepresentation of policy terms and conditions at any time in the policy document or policy contract;*
>
> *(e) legal construction of insurance policies in so far as the dispute relates to claim;*
>
> *(f) policy servicing related grievances against insurers and their agents and intermediaries;*
>
> *(g) issuance of life insurance policy, general insurance policy including health insurance policy which is not in conformity with the proposal form submitted by the proposer;*
>
> *(h) non-issuance of insurance policy after receipt of premium in life insurance and general insurance including health insurance; and*

> *(i) any other matter resulting from the violation of provisions of the Insurance Act, 1938 or the regulations, circulars, guidelines or instructions issued by the IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned at clauses (a) to (f).*

7. Rule 17 provides for award this requires where the award is in favour of the Complainant, it shall state that the amount of compensation granted to the Complainant after deducting the amount already paid from the award. It is clear from the relevant Rules that the object of the Rules is to provide dispute resolution mechanism to an insured against rejection of the Claim. The Ombudsman therefore performs the duties in the nature of *qusia judicial* Tribunal while adjudicating issue raised in the complaint by the Insured.

8. The operative part of the award passed by the Ombudsman reads thus :-

> *"Under the facts and circumstances of the complaint, the Insurer is directed to process the entire claim under advice to us, within 30 days of receipt of this order.*
> *The complainant is advised to provide necessary information/documents for processing, to the Insurer, within 7 days of receipt of this award.*
> *The complaint is closed at our end."*

This clearly indicates that the Ombudsman has not

decided the claim of the Complainant and has not determined the amount of the compensation as contemplated by Rule 17.

9. Apart from this the observations and conclusions drawn by the Ombudsman are not in consonance with law. Infact they are in complete ignorance of the terms of the Insurance Contract. For the sake of the convenience, the said observations are reproduced herein below:-

> *"Observation and Conclusion :*
> ** The company is ready to pay overseas medical expenses as mentioned during the Hearing. It is therefore concluded that permission is granted as the treatment in India is in continuation for the treatment abroad. Hence, all expenses for the same ailment/symptoms/treatment are tacitly approved.*
> ** The company is directed to process the claim in entirety for treatment in Rome as well as Mumbai, after obtaining the required documents from the Complainant, if not available with the insurer."*

10. It is clear from the above observations that the said conclusions are drawn only on the basis that the company has shown its readiness to pay overseas medical expenses during the hearing. A conclusion therefore is drawn that in view of the readiness of the Insurer to pay the overseas medical expenses, it amounts to permission granted as the treatment in India is in

continuation for the treatment in abroad. First of all, there is no admission of the claim by the Insurer before the Ombudsman. It is settled law that in order to pass any orders/award on admission the same must be unequivocal and should not require any interpretation. Merely, because the Insurer has agreed to pay the overseas medical expenses, it cannot be held that the Insurer is liable for the medical treatment taken up in India.

11. Apart from this there is no finding recorded as to how the treatment in India is in continuation of the treatment abroad when as per the case of the Insured he was a diagnosed for vertigo. Admittedly, the Insured has been treated in India not for vertigo but for other disease. Unless there is evidence on record in order to indicate that the treatment in India was in continuation of treatment for the disease diagnosed overseas, no such finding could have been recorded. Moreover, in absence of any term of Policy or any acceptance of liability in advance by Insurer, no such liability can be fasten on Insurer.

12. It is clear from the above discussion that the Insurance Ombudsman has not determined the amount of

compensation as contemplated by Rule 17. Similarly, while passing the impugned award the terms of the policy are not taken into account and the statement of the insured is wrongly treated as admission of the claim of the Insured.

13. Having regard to the afore-stated facts the impugned award cannot sustain. Hence, award stands set aside. The proceedings are relegated back to the Ombudsman for the decision in accordance with the Rules and on taking into consideration terms of Insurance Contract. It is clarified that Ombudsman to decide the complaint of Insured, without getting influenced by observations made by this Court.

14. Petition is allowed in above terms.

(R.M. JOSHI, J.)