

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN  
AND  
THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ W.P.No.45471 of 2022

% Date: 03-04-2023

Between:

# N VijayaLaxmi

... Petitioner

v.

\$ Insurance Regulatory and Development  
Authority of India, Survey No.115/1,  
Financial District, Nanakramguda,  
Gachibowli, Hyderabad and another

... Respondents

! Counsel for the Petitioner : Mr. Ramesh Vishwanathula

^ Counsel for respondent No.1 : Mr. M.V.Suresh

Counsel for respondent No.2: Mr. Bathula Raj Kiran

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➤ HEAD NOTE:

? CASES REFERRED:

AIR 2022 Bombay 307  
(2005)6 SCC 344  
(2010)8 SCC 24

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

**AND**

**THE HON'BLE SRI JUSTICE N.TUKARAMJI**

**W.P.No.45471 of 2022**

**ORDER:** *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Ramesh Vishwanathula, learned counsel for the petitioner; Mr. M.V.Suresh, learned counsel for respondent No.1; and Mr. Bathula Raj Kiran, learned counsel for respondent No.2.

2. This petition has been filed under Article 226 of the Constitution of India seeking a declaration that Rule 14 of the Insurance Ombudsman Rules, 2017 (briefly 'the Insurance Ombudsman Rules' hereinafter) includes representation by advocates or representatives of the insurer, legal heirs, nominee or assignee in any proceedings before the insurance ombudsman.

3. Petitioner before us is the widow of late N.Parvathalu, who had availed a loan of Rs.30 lakhs on 04.08.2021 from United Small Finance Bank Limited (briefly 'the bank' hereinafter) for his business purpose. While sanctioning the loan

amount, the bank got the same insured with ICICI Prudential Life Insurance Company Limited (briefly 'the insurer' hereinafter). For this purpose, insurance premium of Rs.37,184.00 was deducted by the bank while releasing the loan amount. Thereafter, the insurer issued life insurance policy covering the death of the insured for a sum of Rs.30 lakhs and in this connection, policy certificate was issued.

4. It is stated that at the time of sanctioning of the loan, bank had included the name of the petitioner as a co-applicant for the purpose of securing the loan advanced; title deeds of the petitioner's house property had to be deposited with the bank as collateral security for the loan availed of.

5. Unfortunately a week after availing the loan, petitioner's husband developed medical complications on 18.08.2021 whereafter he had to be admitted in the Apollo Hospital at Hyderabad. The medical condition was detected as sudden brain rapture because of which the husband went into a state of coma and expired on 20.08.2021.

6. On the death of her husband, petitioner moved the insurer for processing the insurance death claim as per the insurance policy. A letter dated 31.03.2022 issued by the insurer was received by her on 28.06.2022 whereby the insurer had repudiated the claim of the petitioner. On legal advice, petitioner approached respondent No.2 *i.e.*, the insurance ombudsman by filing an application under Rule 14(1) of the Insurance Ombudsman Rules. It is stated that being an illiterate person, her application was drafted by her counsel which was thereafter submitted in the office of the ombudsman. When personal hearing was scheduled on 20.12.2022, petitioner authorized her counsel to be present along with her and also to present her case before the ombudsman. However, office of the ombudsman orally informed the petitioner that lawyers or representatives are not allowed in proceedings before ombudsman as per Rule 14(1) of the Insurance Ombudsman Rules.

7. Contending that insurance ombudsman is a tribunal exercising judicial powers in respect of which Section 30 of the

Advocates Act, 1961 would be applicable as it enables lawyers to appear before the insurance ombudsman as a matter of right, the present writ petition came to be filed seeking the relief as indicated above.

8. Respondent No.2 *i.e.*, office of the insurance ombudsman has filed counter-affidavit through Smt. S.Nirmala Devi, Secretary, office of the insurance ombudsman, Hyderabad. Stand taken in the counter-affidavit is that the office of insurance ombudsman is a grievance redressal forum to redress the complaints of insured persons against insurance companies; it is not a tribunal. In this connection, reference has been made to Rule 13 of the Insurance Ombudsman Rules to contend that the ombudsman acts as a counsellor as well as a mediator. It is basically an alternative grievance redressal forum, which is cost-effective and impartial. It is contended that the Insurance Ombudsman Rules does not contemplate any provision for representation of a complainant by an advocate; insurance ombudsman is not vested with any judicial powers. Referring to

Rule 14(1) of the Insurance Ombudsman Rules, it is contended that a person, who has a grievance against an insurer may himself or through his legal heir or nominee or assignee make a complaint to the ombudsman. The counter-affidavit refers to the Reserve Bank Integrated Ombudsman Scheme, 2021, which specifically excludes an advocate from appearing and participating in hearing before the ombudsman. Adverting to Rule 17(8) of the Insurance Ombudsman Rules, it is stated that award passed by the insurance ombudsman is binding on the insurers only. Had it been a tribunal, the insurer would have been given the right to appeal. If the insurance ombudsman is treated as a tribunal, the very purpose of enactment of the Insurance Ombudsman Rules would be defeated. In support of the contention that the insurance ombudsman is a forum of grievance redressal and not a tribunal, it is stated that no fee is charged by the insurance ombudsman for filing a complaint. Insofar petitioner is concerned, upon her complaint, the ombudsman had posted the matter for hearing on several dates,

but the petitioner has been taking time. Therefore, respondent No.2 seeks dismissal of the writ petition.

9. Learned counsel for the petitioner has drawn the attention of the Court to the Insurance Ombudsman Rules and submits therefrom that the scheme of ombudsman clearly points out to the adjudicatory role of the ombudsman. He submits that in such circumstances, to say that the insurance ombudsman is only a grievance redressal forum not conferred with any adjudicatory powers, would not be a correct proposition. In this connection, learned counsel has drawn the attention of the Court to the decision of a Single Bench of the Bombay High Court in **Aditya Birla Sun Life Insurance Company Limited v. Insurance Ombudsman, Goa**<sup>1</sup> and submits that in the said decision, learned Single Judge of the Bombay High Court has rendered a categorical finding that insurance ombudsman discharges quasi-judicial functions like a tribunal. If that be so, then Section 30 of the Advocates Act, 1961 would be attracted and an advocate

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<sup>1</sup> AIR 2022 Bombay 307

would be entitled to appear before the insurance ombudsman as a matter of right.

10. On the other hand, learned counsel for respondent No.2 reiterating the contentions made in the counter-affidavit submits that if the entire scheme of the Insurance Ombudsman Rules is looked at in a holistic manner, it would be evident that the primary objective of setting up the institution of ombudsman is to mitigate the grievances of claimants of insurance companies. It is basically a grievance redressal forum. No adjudication takes place before the ombudsman. Therefore, to say that insurance ombudsman is a tribunal will be an erroneous interpretation of the provisions of the Insurance Ombudsman Rules. Regarding the decision of the Bombay High Court in **Aditya Birla Sun Life Insurance Company Limited** (1 supra), it is contended that the said decision was rendered in a different factual context and it cannot be applied to the facts of the present case. It is therefore contended that the writ petition is devoid of any merit and is liable to be dismissed.



11. Learned counsel for respondent No.1 has supported the stand taken by respondent No.2.

12. Submissions made by learned counsel for the parties have received the due consideration of the Court.

13. In 1998, a set of rules were framed *viz.*, Redressal of Public Grievances Rules, 1998, which were made applicable to all the insurance companies operating in general insurance business and in life insurance business. The object of the said Rules was to resolve complaints relating to settlement of claims on the part of insurance companies in a cost-effective, efficient and impartial manner.

14. Rule 6 of the aforesaid rules provided for ombudsman. As per sub-rule (1) thereof, the governing body of the insurance council could appoint one or more persons as ombudsman for the purpose of the aforesaid Rules. The selection was to be made from those having experience or exposed to the industry, civil service, administrative service *etc.*, in addition to those drawn

from judicial service. Various other provisions were made regarding appointment, removal from office, remuneration *etc.*, of ombudsman. Rule 12 thereof, which provided for power of ombudsman, reads as under:

“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) 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.”

15. From a perusal of the above, it is seen that the ombudsman was required to act as a counselor and mediator while considering the complaints made regarding partial or total repudiation of claims by an insurer or in connection with other related disputes with finality attached to the decision of the ombudsman.

16. The Insurance Regulatory and Development Authority Act, 1999 was enacted by the Parliament to provide for establishment of an authority to protect the interest of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act, 1938; Life Insurance Corporation Act, 1956; and the General Insurance Business (Nationalization) Act, 1972. The prime object of the aforesaid Act was establishment and incorporation of an authority called the Insurance Regulatory and Development Authority to regulate, promote and ensure orderly growth of the insurance business.

17. Section 24 of the Insurance Regulatory and Development Authority Act, 1999 is the rule making provision. As per subsection (1) thereof, the Central Government may by notification, make rules for carrying out the provisions of the Act.

18. In exercise of the powers conferred by Section 24 and in supersession of the Redressal of Public Grievances Rules, 1998, the Central Government has framed the Insurance Ombudsman Rules, 2017 (already referred to as ‘the Insurance Ombudsman Rules’). The object of the Insurance Ombudsman Rules is to resolve all complaints of all personal lines of insurance, group insurance policies, policies issued to sole proprietorship and micro enterprises on the part of insurance companies in a cost-effective and impartial manner. These rules would apply to all insurers, their agents and intermediaries in respect of complaints of all personal lines of insurance, group insurance policies, policies issued to sole proprietorship and micro enterprises.

18.1. Clause (g) of Rule 4 of the Insurance Ombudsman Rules defines 'ombudsman' to mean a person appointed as an insurance ombudsman under the Insurance Ombudsman Rules. While Rule 5 thereof provides for a council for insurance ombudsman, Rule 7 deals with selection committee for appointment of insurance ombudsman. Rule 7A prescribes the qualification for appointment of insurance ombudsman. As per the said provision, a person shall not be qualified for appointment as insurance ombudsman unless he is not less than fifty-five years but not exceeding sixty-five years of age as on the last date specified for receipt of application; he has or has been a member of all India service or a civil service of the Union of India and has held a post of joint secretary to the Government of India or of equivalent post; or has served for at least twenty-five years in the insurance industry and has held a post not less than one level below that of director of a board.

19. Rule 13 of the Insurance Ombudsman Rules deals with duties and functions of insurance ombudsman. Rule 13 reads as follows:

13. Duties and functions of Insurance Ombudsman. —

(1) The Ombudsman shall receive and consider complaints alleging deficiency in performance required of an insurer (including its agents and intermediaries) or an insurance broker, on any of the following grounds:-

- (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 arising from non-observance of or non-adherence to the provisions of any regulations made by the Authority with regard to protection of policy holders' interests or otherwise, or of any circular, guideline or instructions issued by the Authority or of the terms and conditions of the policy contract, in so far as such matter relates to issues referred to in clauses (a) to (h).

[Explanation.- For the purposes of this sub-rule, the term "deficiency" shall have the meaning as assigned to it in clause (11) of section 2 of the Consumer Protection Act, 2019 (35 of 2019).]

(2) The Ombudsman shall act as counsellor and mediator relating to

matters specified in sub-rule (1) provided there is written consent of the parties to the dispute.

(3) The Ombudsman shall be precluded from handling any matter if he is an interested party or having conflict of interest.

(4) The Central Government or as the case may be, the Authority may, at any time refer any complaint or dispute relating to insurance matters specified in sub-rule (1), to the Insurance Ombudsman and such complaint or dispute shall be entertained by the Insurance Ombudsman and be dealt with as if it is a complaint made under rule 14.

20. Thus, it is seen that while sub-rule (1) lists out the subject matters to be dealt with by the ombudsman, sub-rule (2) thereof specifically provides that the ombudsman shall act as counsellor and mediator relating to matters specified in sub-rule (1) provided there is written consent of the parties to the dispute. As per sub-rule (3), the ombudsman shall be precluded from



handling any matter if he is an interested party or is having conflict of interest.

21. Rule 14 lays down the procedure or the manner in which a complaint is to be made. Rule 14 is as under:

Manner in which complaint to be made. —

(1) Any person who has a grievance against an insurer or insurance broker, may himself or through his legal heirs, nominee or assignee, make a complaint in writing to the Insurance Ombudsman within whose territorial jurisdiction the branch or office of the insurer or the insurance broker, as the case may be, complained against or the residential address or place of residence of the complainant is located.

(2) The complaint shall be in writing, duly signed or made by way of electronic mail or online through the website of the Council for Insurance Ombudsmen, by the complainant or through his legal heirs, nominee or assignee and shall state clearly the name and address of the complainant, the name of the branch or

office of the insurer against whom the complaint is made, the facts giving rise to the complaint, supported by documents, the nature and extent of the loss caused to the complainant and the relief sought from the Insurance Ombudsman.

(3) No complaint to the Insurance Ombudsman shall lie unless—

(a) the complainant has made a representation in writing or through electronic mail or online through website of the insurer or insurance broker concerned named in the complaint and—

(i) either the insurer or the insurance broker, as the case may be, had rejected the complaint; or

(ii) the complainant had not received any reply within a period of one month after the insurer or the insurance broker, as the case may be, received his representation; or

(iii) the complainant is not satisfied with the reply given to him by the insurer or insurance broker, as the case may be;

(b) The complaint is made within one year—

(i) after the order of the insurer or insurance broker, as the case may be, rejecting the representation is received; or

(ii) after receipt of decision of the insurer or insurance broker, as the case may be, which is not to the satisfaction of the complainant;

(iii) after expiry of a period of one month from the date of sending the written representation to the insurer or insurance broker, as the case may be, if the insurer or

insurance broker, as the case may be, named fails to furnish reply to the complainant.

(4) The Ombudsman shall be empowered to condone the delay in such cases as he may consider necessary, after calling for objections of the insurer or insurance broker, as the case may be, against the proposed condonation and after recording reasons for condoning the delay and in case the delay is condoned, the date of condonation of delay shall be deemed to be the date of filing of the complaint, for further proceedings under these rules.

(5) No complaint before the Insurance Ombudsman shall be maintainable on the same subject matter on which proceedings are pending before or disposed of by any court or consumer forum or arbitrator.

(6) The Council for Insurance Ombudsman shall develop a complaints management system, which shall include an online platform developed for the purpose of online submission and tracking of the status of complaints made under Rule 14.

22. From the above, as per sub-rule (1), any person who has a grievance against an insurer or insurance broker may himself or through his legal heirs, nominee or assignee, make a complaint in writing to the insurance ombudsman within whose territorial jurisdiction a branch or office of the insurer or the insurance broker, as the case may be, complained against or the residential address or place of residence of the complainant is located.

23. Rule 15 of the Insurance Ombudsman Rules mandates the insurance ombudsman to act fairly and equitably. While deciding a complaint he has the power to seek additional documents or collect factual information relating to the dispute and may also obtain opinion of professional experts, if it is necessary. Before disposing of a complaint, he has to provide reasonable opportunity of being heard to the parties.

24. Rule 16 of the Insurance Ombudsman Rules deals with recommendations made by the insurance ombudsman. As per sub-rule (1), where a complaint is settled through mediation, the

ombudsman shall make a recommendation which it thinks fair in the circumstances of the case within the time specified. Sub-rule (2) deals with a situation where recommendation of the ombudsman is acceptable to the complainant in which event the complainant is required to communicate to the ombudsman that he accepts the settlement as full and final. Thereafter, in terms of sub-rule (3) the ombudsman shall send to the insurer or to the insurance broker, as the case may be, a copy of its recommendation along with the acceptance letter received from the complainant and in such an eventuality, the insurer or the insurance broker shall comply with the terms of the recommendation immediately within fifteen days of receipt of such recommendation and inform the ombudsman of its compliance.

25. Rule 17 provides for award. Sub-rule (1) thereof says that where the complaint is not settled by way of mediation under Rule 16, the ombudsman shall pass an award based on the pleadings and evidence brought on record. Sub-Rule (2) says

that such an award should be in writing and shall state the reasons for passing the award. Sub-rule (3) provides that where the award is in favour of the complainant, it shall state the amount of compensation granted to the complainant after deducting the amount already paid, if any, from the award. As per the proviso thereto, the ombudsman shall not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action or not award compensation exceeding Rs.30 lakhs which includes relevant expenses, if any. As per sub-rule (4), the ombudsman shall finalise its findings and pass an award within three months of receipt of all requirements from the complainant. In terms of sub-rule (5), a copy of the award shall be sent to the complainant as well as to the insurer or insurance broker, as the case may be, named in the complaint. As per sub-rule (6), the insurer or insurance broker, as the case may be, has to comply with the award within thirty days and intimate compliance of the same to the ombudsman. Sub-rule (7) says that the complainant would be entitled to such interest at a rate per annum as specified in the

regulations framed under the Insurance Regulatory and Development Authority Act, 1999. As per sub-rule (8), the award of insurance ombudsman shall be binding on the insurer or the insurance broker, as the case may be.

26. A circular was issued by the office of the executive council of insurers on 27.05.2009 on the issue regarding allowing an advocate to represent the case before the ombudsman on behalf of the complainant. In this connection, reference was made to paragraph 14 of Circular dated 26.11.1999 as per which it was held that there was no need for a lawyer to present the case of the complainant or that of the insurer and that the practice of engaging lawyer should not be encouraged, since the purpose of institution of ombudsman is to bring about an amicable resolution of the complaint in quick time and with minimal cost. However, it was mentioned that if there was an insistence on the part of the claimant/insurance company for engaging a lawyer to represent their point of view, ombudsman may at his discretion decide depending upon the merits of the case. Adverting to the

Banking Ombudsman Scheme, 2006, it is stated that the said scheme allows all authorized representatives other than an advocate to represent the complainant. Finally, it was decided that an advocate would not be allowed to represent the complainant or insurer.

27. Having noticed the above, we may briefly analyze the evolution of the concept of ombudsman. 'Ombudsman' is a Scandinavian word, meaning an officer or commissioner. In its special sense, it means a commissioner, who has the duty of investigating and reporting to parliament on citizens' complaints against the government. An ombudsman would have no legal powers except the power of inquiry. The main object of the institution of ombudsman is to safeguard the citizens against the misuse of powers by the administration. Though the institution of ombudsman had its origin in the Scandinavian countries, slowly but surely it was adopted in the other countries as well. In India, office of ombudsman has been introduced mainly in sectors like banking, insurance *etc.*



28. Insofar insurance ombudsman in India is concerned, if we carefully analyse the Insurance Ombudsman Rules, the same can be compartmentalized in two stages; Stage I deals with the complaints filed under Rule 14 and ending with the recommendations made in Rule 16. Stage II deals with Rule 17.

29. If we look at Rule 13, more particularly to sub rule (2) thereof, we find that while the insurance ombudsman has the mandate to deal with complaints on the grounds mentioned therein, while doing so the ombudsman has to act as a counsellor and a mediator but with the written consent of the parties to the dispute. If the ombudsman is an interested party to the dispute or is having conflict of interest, he should recuse himself from dealing with the matter. Once a settlement is reached through mediation, a recommendation is made by the ombudsman under Rule 16. If the recommendation is acceptable to the complainant, he shall communicate in writing within fifteen days, his acceptance of the same. Once that is done, the ombudsman shall send to the insurer a copy of the recommendation along

with acceptance of the complainant, in which event the insurer shall comply with the terms of the recommendation immediately and inform the ombudsman of its compliance. Thus, what is noticed above is a mediation process by the ombudsman upon receipt of complaint from the complainant. In this stage, he acts as a mediator.

30. Section 89 of the Civil Procedure Code, 1908 (CPC) deals with settlement of disputes outside the court. It came into the statute w.e.f. 01.07.2002. It provides for resolution of dispute through any one of the modes of alternative dispute resolution mentioned therein including by way of mediation.

31. In **Salem Advocate Bar Association (II) v. Union of India**<sup>2</sup>, Supreme Court adopted the following definition of mediation, which has been adverted to with approval in **Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited**<sup>3</sup>:

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<sup>2</sup> (2005)6 SCC 344

<sup>3</sup> (2010)8 SCC 24

Settlement by ‘mediation’ means the process by which a mediator appointed by parties or by the court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasising that it is the parties’ own responsibility for making decisions which affect them.

All over the country the courts have been referring cases under Section 89 to mediation by assuming and understanding ‘mediation’ to mean a dispute resolution process by negotiated settlement with the assistance of a neutral third party. Judicial settlement is understood as referring to a compromise entered by the parties with the assistance of the court adjudicating the matter, or another Judge to whom the court had referred the dispute.

Section 89 has to be read with Rule 1-A of Order 10 which requires the court to direct the parties to opt for any of the five modes of alternative dispute resolution processes and on their option refer the matter. The said Rule does not require the court to either formulate the terms of settlement or make available such terms of settlement to the parties to reformulate the terms of a possible settlement after receiving the

observations of the parties. Therefore the only practical way of reading Section 89 and Order 10 Rule 1-A is that after the pleadings are complete and after seeking admission/denials wherever required, and before framing issues, the court will have recourse to Section 89 of the Code. Such recourse requires the court to consider and record the nature of the dispute, inform the parties about the five options available and take note of their preferences and then refer them to one of the alternative dispute resolution processes.

32. The concept of mediation has engaged the attention of the courts and various other stakeholders as an effective mode of alternative dispute resolution process; mediation is a voluntary cooperative process in which an impartial mediator facilitates disputing parties to reach a settlement. It is an informal process as well as a completely voluntary process. It is different not only from the adjudicatory process but also from other modes of alternative dispute resolution. Mediation is a tried and tested alternate method of dispute resolution. It is a structured process where a neutral person uses specialized communication and negotiation techniques. It is a settlement process facilitating the disputing parties to arrive at a mutually acceptable agreement.

33. Going by the very nature of mediation it is evident that it is a completely voluntary process without any element of compulsion. It is a dispute resolution mechanism arrived at by and between parties which is under the guidance of the mediator. While the mediator strives to bring the parties to a settlement, he himself would not suggest as to what should be the settlement, but encourages the parties to strive for resolution of the dispute by arriving at their own terms of settlement. Thus, in such a process *i.e.*, upto the stage of Rule 16 we do not see the role of a lawyer coming into the picture.

34. However, as the insurance ombudsman role progresses from Rule 16 to Rule 17 of the Insurance Ombudsman Rules, it enters into a different stage. Rule 17 will come into play only when the mediation processes ends in failure. In such a situation, the ombudsman is required to pass an award based on the pleadings and evidence brought on record. He must record the award in writing, stating the reasons upon which the award is based. Where the award is in favour of the complainant, it shall

state the amount of compensation granted to the complainant. Once an award is passed, it shall be sent to the complainant and to the insurer. The insurer is bound to comply with the award within the time specified and intimate compliance of the same to the ombudsman. The complainant would be entitled to interest from the date when the claim ought to have been settled till the date of payment of the amount awarded by the ombudsman. The award of insurance ombudsman shall be binding on the insurer or the insurance broker as the case may be.

35. Though the word 'award' is not defined in the Insurance Ombudsman Rules, Black's Law Dictionary (9<sup>th</sup> Edition) defines the word 'award' as a final judgment or decision, especially one by the arbitrator or by a jury assessing damages; to grant by formal process or by judicial decree.

36. The Law Lexicon (5<sup>th</sup> Edition) by P.Ramanathan Iyer defines the word 'award' to give, to adjudge, to be due; assign or bestow as of right; or give by judicial determination; the award is not a mere agreement but is equivalent to a judgment.

37. Similarly, in *Supreme Court Words and Phrases* (3<sup>rd</sup> Edition), it is stated that the expression 'award' has a distinct connotation. It envisages a binding decision of a judicial or a quasi-judicial authority.

38. Therefore, what we notice is that once the stage of Rule 16 is crossed and the proceedings travel to Rule 17, the role of the ombudsman also changes; from being a mediator, he becomes an arbitrator and is mandated to pass an award based on the pleadings and evidence brought on record.

39. If this be the position, Section 30 of the *Advocates Act, 1961* would come into play. As per Section 30 of the aforesaid Act, every advocate whose name is entered in the roll of advocates shall be entitled as of right to practice throughout the territories to which the *Advocates Act, 1961* extends, (i) in all courts including the Supreme Court; (ii) before any tribunal or person legally authorized to take evidence; and (iii) before any other authority or person before whom such advocate is by or

under any law for the time being in force entitled to practice. Therefore, in the context of the present case, what Section 30 (ii) says is that an advocate as a matter of right is entitled to practice before any tribunal or any person legally authorized to take evidence.

40. Adverting to Rule 17 of the Insurance Ombudsman Rules, it is evident that it is a forum mandated to pass an award based on pleadings and evidence brought on record. As such, when it comes to adducing of evidence the role of an Advocate cannot be dispensed with.

41. As already noted above, an award involves an adjudicatory process, which is equivalent to a judgment awarding compensation. Therefore, it is evident that till Rule 16 of the Insurance Ombudsman Rules, it is a mediation process where no role of an advocate is envisaged but the moment the matter progresses to Rule 17 upon failure of mediation, then an adjudicatory process is set in motion which is to be decided on



the basis of pleadings and evidence. In such a process, role of the lawyer becomes inevitable.

42. In the above backdrop, we may now analyse the decision of the Bombay High Court in **Aditya Birla Sunlife Insurance Company Limited** (1 supra). This was a case where a petition was filed under Article 227 of the Constitution of India challenging the award passed by the Insurance Ombudsman. In the context of the challenge, Bombay High Court posed two questions for its consideration:

1. Once an award is passed by the insurance ombudsman, which is binding on the insurance company, whether the insurance company has the remedy of assailing such award in a writ petition under Article 227 of the Constitution of India ?
2. Whether non-disclosure of any information on existing ailments by an insured in the proposal form submitted to avail life insurance policy would disentitle the claimant under the policy to the benefit under the insurance policy ?

43. From the above, it is quite clear that the challenge before the Bombay High Court was to an award passed by the insurance ombudsman under Rule 17 of the Insurance Ombudsman Rules and the challenge was made by the insurance company. It is in that context Bombay High Court held that when the ombudsman makes an award under Rule 17, while exercising his duties and functions under Rule 13, the insurance ombudsman is in fact adjudicating the dispute as made in the complaint. The adjudication being undertaken by the insurance ombudsman has all the trappings of an adjudication by a tribunal when the insurance ombudsman adjudicates a complaint. In the course of such adjudication he is under an obligation to act judicially. He is required to follow all the essential ingredients of what a tribunal would be required to follow in adjudicating such disputes, namely, hearing to be granted to the parties before him and taking a decision by furnishing reasons on such decision in pronouncing upon the rights or liabilities arising under the insurance contract. Thus necessarily, the functions which are

discharged by the ombudsman are akin to the functions as discharged by a tribunal in adjudicating a dispute.

44. The decision of the Bombay High Court supports the line of reasoning which we have adopted. When the insurance ombudsman starts proceedings under Rule 17 of the Insurance Ombudsman Rules, he discharges his duties as an arbitrator and ultimately passes the award. When he does so, he performs the duties of an arbitral tribunal and therefore, he would be a tribunal when he exercises the powers under Rule 17. But prior to Rule 17 as we have already discussed above, it is a mediation process which does not envisage any role for a lawyer.

45. Adverting to the facts of the present case, we find that the complaint of the petitioner is now pending in the first stage *i.e.*, from Rules 14 to 16 involving a mediation process. At this stage, we do not find any good reason to direct appearance of a lawyer in the mediation process being undertaken by the insurance ombudsman. We do not know what would be the outcome of the mediation process, but, if and when Rule 17 comes into the

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picture, certainly, petitioner would have the right to be represented by her lawyer.

46. Writ Petition is accordingly disposed of. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

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**UJJAL BHUYAN, CJ**

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**N.TUKARAMJI, J**

**Date: 03.04.2023**

Note:  
LR copy.  
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