IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5102 OF 2011

The National Insurance Company Ltd. … Petitioner
Versus
Pankaj Munni … Respondent

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Mr. Shasvat Vidyarthi i/b. Mr. Asim Vidyarthi for the Petitioner.
None for the Respondent.

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CORAM : M.M. SATHAYE, J.

DATE : 21st SEPTEMBER, 2026

P.C. :

1. Heard the learned Counsel for the Petitioner. Office note indicates that as per the Court's recent Order dated 06.07.2026, the notice issued to the sole Respondent has been duly served. None appeared for the Respondent, despite due service.

2. Invoking Article 226 of the Constitution of India, the Petitioner - Insurance Company is challenging the Order dated 04.08.2010 passed by the Insurance Ombudsman in Complaint No.GI-1136/2009-2010. By the said impugned Order, the Petitioner - Insurance Company is directed to settle the claim lodged in respect of hospitalization of deceased Mr. Manish Muni at Hinduja Hospital from 24.10.2008 to 14.12.2008 for the treatment of Leukemia for 50% of the admissible expenses against the balance claim amount of Rs.7,23,574/-, on ex-gratia basis.

BACKGROUND

3. The Complainant is the brother of the deceased Manish Muni.

4. The deceased was covered under Individual Mediclaim Insurance Policy. In the present case, admittedly, two such policies were issued. The first policy issued by the Petitioner covered the deceased for a period from 14.11.2007 to 13.11.2008 for sum insured of Rs. 5,00,000/- plus cumulative bonus ('C.B.' for short) of Rs.1,50,000/-. The second policy issued by the Petitioner covered the deceased for a period from 14.11.2008 to 13.11.2009 for sum insured of Rs.5,00,000/- plus C.B.

5. The deceased was admitted for treatment of Leukemia from 24.10.2008 (which admittedly falls during the period of the first policy) to 14.12.2008 (which admittedly falls during the period of the second policy). Admittedly, the deceased passed away on 14.12.2008.

6. Therefore, in the peculiar facts of this case, the insured was admitted when the first policy was in force, but died in the hospital during his treatment when the second policy was in force.

7. The claim was lodged for reimbursement of the hospitalization expenses to the tune of Rs.13,73,574/- under the insurance policy. The amount of Rs.5,42,000/- was settled. Further claim of the balance amount, though lodged, it was neither paid nor any communication was sent.

8. In these circumstances, the brother of the deceased approached the Insurance Ombudsman.

SUBMISSIONS

9. Learned Counsel for the Petitioner-Insurance Company submitted as under :

9.1. That the claim is lodged on the basis of the hospitalization that started during the period of the first policy under which the amount of Rs.5,42,000/- has already been paid. However, the second claim for the balance amount cannot be entertained as per Policy Condition No.3.13.

9.2. That under Condition No.3.13, there is limit of indemnity making reference to the 'hospitalization taking place during currency of the policy' which in the present case is during the first policy. Therefore, the indemnity is limited and therefore the claim of balance amount cannot be granted. That the Ombudsman found favour with this argument, but still awarded payment.

9.3. That the Ombudsman has not given any reason for arriving at the ex-gratia amount which is in the nature of voluntary payment. That ex-gratia amount could only be on its own volition of the Insurance Company.

9.4. That ex-gratia amount can be ordered as token / lump-sum amount but and can not be based on calculations and therefore the learned Ombudsman should not have taken any basis (such as 50%

of the balance claim) for ordering the ex-gratia payment.

9.5. Apart from Condition No.3.13, learned Counsel for the Petitioner has also relied upon Rule 16(2) of the Redressal of Public Grievances Rules, 1998 ('the said Rules' for short) and its proviso to contend that there was no insured peril for passing award.

10. None appeared for the Respondent.

REASONS AND CONCLUSION

11. I have considered the submissions and perused the record.

12. For the sake of the clarity, Condition No.3.13 of the policy document as well as proviso to Rule 16(2) are reproduced below :-

> "3.13 Limit of Indemnity : means the amount stated in the schedule against the name of each insured person which represents maximum liability for any and all claims made during the policy period in respect of that insured person with regard to hospitalization taking place during currency of the policy. "

> "R. 16. **Award** -
>
> (1) Where the complaint is not settled by agreement under rule 15, the Ombudsman shall pass an award which he thinks fair in the facts and circumstances of a claim.
>
> (2) An award shall be in writing and shall state the amount awarded to the complainant:
>
> *Provided* that Ombudsman shall not award any compensation in excess of which is necessary to cover

> the loss suffered by the complainant as a direct consequence of the insured peril, or for an amount not exceeding rupees twenty lakhs (including *ex gratia* and other expenses), whichever is lower."
>
> (emphasis supplied)

13. The argument of the learned Counsel for the Petitioner – Insurance Company about the hospitalization taking place during currency of the policy is based on Condition No.3.13. Bare reading of Condition No.3.13 clarifies that the indemnity is limited to the claims made during the policy period with regard to hospitalization taking place during currency of the given policy. It is nobody's case that such condition was not there in the second policy. The word 'hospitalization' in Condition No.3.13 is not qualified by any specific period and will therefore have to be interpreted as a general term. In the present case, admittedly, the deceased was hospitalized from 24.10.2008 to 14.12.2008. First part of hospitalization is from 24.10.2008 till 13.11.2008 which falls under first policy. And second part of hospitalization from 14.11.2008 to 14.12.2008, which falls under second policy. Therefore even under second policy there was hospitalization.

14. When a patient is admitted in the hospital taking medical treatment, every day he is subjected to charges such as room charges, doctor's charges and other charges. It is inconceivable that the patient who is admitted in the hospital (especially for disease such as Leukemia) will not be charged per day. It is matter of common knowledge that the room charges, doctor's charges as well as other charges are recurring events during the hospitalization of the patient,

happening each day. Therefore, for the aforesaid period of hospitalization falling under the second policy, the deceased was certainly charged by the hospital under various heads. Therefore I see no reason why for such hospitalization during the second policy period should not be covered by term 'hospitalization' under Condition 3.13 of the second policy. The deceased clearly had 'insured peril' during the second policy also.

15. In that view of the matter, though the Ombudsman found that the stand of the Petitioner-Insurance Company is *"technically in order and cannot be faulted with." (in the words of the Ombudsman)*, in my considered view, the said argument of Petitioner has no merit and ought to have been rejected.

16. Therefore it cannot be said that under proviso to Rule 16(2) of the said Rules, the learned Ombudsman cannot award any compensation.

17. Viewed in the light of what is observed above, the deceased clearly had insured peril during the second policy also. Therefore, Rule 16 permits the Ombudsman to pass an Award which he thinks fair in the facts and circumstances of the claim. Proviso to Rule 16(2) of the said Rules, permits the learned Ombudsman to grant compensation including ex-gratia and other expenses. Hence, no fault can be found with the decision taken by the Ombudsman to award compensation.

18. So far as the argument that 'for granting ex-gratia payment, the Ombudsman could not have taken the balance amount as basis

and could not have directed 50% thereof', it is important to note that the Petitioner – Insurance Company has not volunteered any ex-gratia payment and has not paid anything out of its own volition for balance claim. Since the complaint was not settled by agreement under Rule 16(1), the Ombudsman was called upon to pass an Award. In such circumstances, the ex-gratia amount directed under the impugned order need not be limited to the volition of the Petitioner – Insurance Company. It can most certainly be a direction by the Ombudsman under the head of 'ex-gratia' specifically mentioned under the proviso.

19. It is settled position of law that to arrive at any figure of monetary liability, the deciding authority has to have a basis. The Ombudsman has chosen to take the balance amount as basis and has permitted only 50% of the admissible expenses. The Ombudsman has not directed the full amount claimed by the Respondent – complainant. *Ex-facie*, proviso to Rule 16(2) provides for a spectrum / band / limit upon the power to grant compensation. It can not be in excess of which is necessary to cover the loss suffered or can not exceed Rs.20 Lakhs whichever is lower. Considering that the balance claimed has not been fully granted and is limited to only 50%, the Ombudsman was well within his limit as provided under Rule 16 of the said Rules.

20. In the aforesaid facts and circumstances and for the reasons indicated above, there is no reason to interfere in the impugned order. No perversity is found in the impugned order.

21. Writ Petition is accordingly dismissed. Rule is discharged. No order as to costs.

22. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)