

INSURANCE OMBUDSMAN'S AWARD CAN BE ASSAILED IN WRIT JURISDICTION: ADITYA BIRLA SUN LIFE INSURANCE CO LTD v FATEMA F CHHATRIWALA^[1]

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In a recent landmark decision, the Bombay High Court has held that an Insurance Ombudsman's Award can be set aside in a writ petition on the ground of perversity.

Facts

In this case, the Insured obtained an ABSLI Life Guaranteed Milestone Insurance Policy in December 2017. On 10 October 2019, the Insured expired. The cause of death was recorded as "septicemia with multiple organ failure k/c/o (known case of) Diabetes Mellitus/Hypertension (DM/HTN)".

After a claim was lodged with the Insurer, investigations were undertaken, and it transpired that the ailments were not disclosed prior to inception and liability was denied on the ground of non-disclosure.

The Insured's wife filed a complaint with the Insurance Ombudsman, Goa against the denial of liability and sought the payment of ₹75 lacs, and the Insurance Ombudsman allowed her claim to the extent of ₹30 lacs. The Insurer approached the Bombay High Court under a writ petition to challenge the Award under Articles 226/227 of the Constitution.

Bombay High Court

The writ was held maintainable, and the Award was set aside for the following reasons:

1. The Award failed to consider the doctrine of *uberrima fide* and the fact that the Insured had failed to disclose his pre-existing ailments in the proposal form. The Ombudsman incorrectly observed that non-disclosure of material facts by the Insured did not have any relevance to the cause of death.^[2]

¹ Decision dated 18 August 2022 passed by the Bombay High Court in Writ Petition No. 7804 of 2021

² Reliance Life Insurance Company Ltd. v Rekhaben Nareshbhai Rathod (2019) 6 SCC 175; Branch Manager, Bajaj Allianz Life Insurance Company Ltd. v Dalbir Kaur (2020) SCC OnLine SC 848

2. The Ombudsman's finding that the proposal form was completed by the Insurer's agent, not by the Insured, was bereft of valid reasoning and extraneous as it was not the Insured's wife's case that the Insured was unaware of the contents of the proposal form.
3. The Ombudsman had no jurisdiction to entertain a complaint which was beyond his pecuniary jurisdiction of ₹30 lacs - the sum insured in this case was ₹75 lacs.

Conclusion

An Insurance Ombudsman's award is assailable under the court's writ jurisdiction.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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