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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**
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CWP-8789-2026
Date of Decision: 23.03.2026

M/S STAR HEALTH ALLIED INSURANCE CO LTD

...Petitioner

Versus

INSURANCE OMBUDSMAN, CHANDIGARH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vishal Sharma, Advocate (through V.C.) for petitioner

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JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 17.02.2026 whereby petitioner has been directed to pay a sum of Rs.81,468/- by Insurance Ombudsman, Chandigarh.

2. The respondent-Lakshmi Kant Data filed complaint before Insurance Ombudsman against petitioner alleging illegal rejection of hospitalization claim of his wife. The petitioner had issued insurance policy on 05.09.2023 with sum assured of Rs.5,00,000/-. The first policy was issued on 05.09.2022. The policy dated 05.09.2023 was valid for one year. The insured was hospitalized from 05.05.2024 to 11.05.2024. She was diagnosed with chronic osteomyelitis right distal radius shaft. The respondent requested for cashless treatment which was denied by Insurer. The respondent claimed

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reimbursement of Rs.1,02,914/-. The petitioner rejected his claim on the ground of pre-existing ailment. The respondent approached Insurance Ombudsman. The petitioner filed reply. The Insurance Ombudsman by impugned award has partially allowed claim of the insured.

3. The findings recorded by ombudsman read as:

> *"1. Case called for hearing under Rule 17 and both the parties were present and heard. The Complainant stated that despite submitting all the required documents, the Insurer rejected his claim. In response, the Insurer reiterated the stand taken in their SCN and requested for dismissal of the complaint.*
> *2. On examination of the documents placed on record, it is observed that Complainant has been covered under the health insurance policy since 05.09.2022. In the discharge summary, the treating doctor has specifically mentioned that the Insured developed spontaneous, insidious-onset, gradually progressive pain over the lower forearm, more on the volar radial side, about two months ago and the patient had earlier sought an orthopedic opinion in Punjab, where she was diagnosed with chronic osteomyelitis of the right distal radius shaft.*
> *3. It is further observed that the Insured had consulted PG on 23.03.2024 for complaint of right forearm pain and swelling persisting for the past two years. It is a fact that pain and swelling are clinical symptoms and cannot be taken as a diagnosis/ disease. The actual medical diagnosis was established only after the commencement of the policy, that makes it fall under the onset of a new ailment.*
> *5. It is further noted that the Insured has submitted all earlier consultations, diagnostic reports, and relevant medical records to the Insurer which clearly indicates that he has acted with utmost transparency and good faith by disclosing the relevant medical history.*
> *6. In view of the foregoing facts, the Insurer's decision in repudiating the reimbursement claim of the Complainant is*

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incorrect and unjustified and not in line with the subject policy's terms.

7. As per the billing sheet submitted by the Insurer, an amount of Rs. 81,468/- is found admissible, after the deductions of Rs. 21,446/-towards non-payable items.

8. During the course of hearing, the Complainant contended that the Insured also underwent a second surgical procedure but the requisite documents could not be submitted by him as the Insured's name had already been removed from the subject policy on 17.08.2024."

4. The Insurance Ombudsman partially allowed claim of the respondent-insured on the ground that the insured acted with utmost transparency and disclosed the relevant medical history. The petitioner is assailing the award on the ground that the insured was suffering from ailments for a period of two years prior to the purchase of Insurance Policy. Finding of the Ombudsman that existence of prolonged symptoms such as pain and swelling cannot be treated as indicative of a pre-existing disease for the purposes of determining liability under the policy is erroneous.

5. From the perusal of record, it is evident that the petitioner consulted PGI on 23.03.2024 for pain in right forearm and swelling which had been persisting for the past two years. It was only after purchase of policy dated 05.09.2022 that the actual medical diagnosis was established.

6. A Constitution Bench in ***Syed Yakoob Vs K.S. Radhakrishnan, AIR 1964 SC 477*** and a two judge bench of the Hon'ble Supreme Court recently in Central Council for Research in ***Ayurvedic Sciences and Another Vs Bikartan Das and Others 2023 SCC Online SC 996*** have reminded us that there are two cardinal principles of law governing issuance of writ of certiorari

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under Article 226 of the Constitution of India i.e. (i) High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record; (ii) in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

7. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. Error of jurisdiction includes order by inferior court or tribunal without jurisdiction or in excess of it or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled

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to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, High Court must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.

8. In the case in hand, the Ombudsman has recorded categoric finding that the alleged pre-existing disease forming the basis of rejection of claim was actually established after the purchase of policy. The consultations at PGI do not confer nature of '*pre-existing disease*'.

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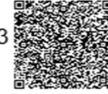

9. This Court does not find any factual or legal infirmity in the impugned order warranting interference.

10. In the wake of above discussion and findings, this Court is of the considered opinion that the instant petition deserves to be dismissed and accordingly dismissed.

11. Pending Misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

23.03.2026
SDK

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No