



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 41 of 2018

PICIC Insurance Limited

...Appellant

Versus

Commissioner Insurance

...Respondent

Date of hearing:

April 15, 2024

Present:

For the Appellants:

Mr. Zeeshan Abdullah, Advocate

For the Respondent:

Mr. Shafiq ur Rahman Additional Joint Director, Adjudication-I, SECP

## ORDER

1. This Order shall dispose of Appeal No. 41 of 2018 filed by PICIC Insurance Limited (the Appellant) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated October 08, 2018 (the Impugned Order) passed by the Commissioner Insurance SECP (the Respondent) under the Insurance Ordinance, 2000. (The Ordinance).
2. The brief facts of the case are that the Federal Insurance Ombudsman (FIO), vide its letter dated October 24, 2017 recommended to the Securities and Exchange Commission of Pakistan (the Commission) to initiate legal action against the Appellant for violation of insurance laws, rules and regulations including



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review of their licence to carry out insurance business in Pakistan due to the failure of the Appellant to comply with the order of the FIO dated January 26, 2017. In view of the aforementioned violations of the Ordinance, the Respondent issued the Show Cause Notice dated November 06, 2017 (the SCN) to the Appellant. The hearing was held on July 3, 2018 and was attended by the authorized representative of the Appellant. After examining the submissions and considering the facts, the Respondent, vide the Impugned Order, imposed a penalty of Rs. 100,000/- under section 156 of the Ordinance on the Appellant and directed the Appellant to pay the remaining claim of the complainant along with the liquidated damages.

3. The Appellant has preferred this appeal *inter alia* on the grounds that the order of the FIO is *corum non judice*, thus, is a void order having no legal effect in the eyes of the law. The Appellant argued that the exclusive jurisdiction to adjudicate upon a claim arising from an insurance policy vests exclusively with the Insurance Tribunal (the Tribunal) under section 122(3) of the Ordinance. The Appellant further added that the Tribunal is constituted under section 121 of the Ordinance, and has been functioning under the special powers conferred to the District and Session Judge Karachi (Central), therefore, entertainment of the complaint by the FIO was itself without jurisdiction and as a necessary implication, order passed by the FIO is also without jurisdiction, hence, void. The Appellant further stated that no action, under the law, can be taken for the non-compliance of a void order. The Appellant further contended that the Respondent has also seriously fallen in error by issuing directions to the Appellant for the payment of alleged claim to the insured as, under the Ordinance, there is no provision empowering the Respondent to issue any directions for the payment of claim within a stipulated time period as directed in the Impugned Order and is, therefore, liable to be set aside. The Appellant has prayed that by considering these factors a lenient view may be taken by waiving off the penalty amount imposed upon the Appellant through the Impugned Order.
4. The Respondent rebutted the grounds of Appeal and put forth the arguments that the Appellants were required to ensure compliance with section 130(3) of the Ordinance by adhering to the Order of the FIO dated January 26, 2017, wherein the Appellant was directed to pay the remaining 50% of the claim amount i.e. Rs.1,831,800/ to the Complainant along with the liquidated damages, as specified under section 118 of the Ordinance, within a period of 30 days from the receipt of the said Order. The



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Respondent stated that the Appellant was non-compliant with section 130(3) of the Ordinance as the said provision clearly states that any Order passed by the FIO, which has not been appealed against, shall become final and operative and if not implemented shall render the insurance company concerned, liable to such action including the imposition of a fine or penalty as the Commission may deem fit. The Respondent further argued that the Impugned Order was reasoned, sustainable and, therefore, liable to be upheld. The Respondent stated that it does have authority to make such direction under the Ordinance, 2000 and S.R.O. 750(1)/2017 dated August 2017.

5. The Appellate Bench (the Bench) has heard the arguments of both the parties and perused the record. The Bench is of the view that the Appellant was penalized under section 156 of the Ordinance due to the contravention of section 130(3) of the Ordinance which states that:

*“(3) Any order passed by the Insurance Ombudsman which has not been appealed against, or any order passed by the Commission in appeal, as the case maybe, shall become final and operative and if not implemented shall render the insurance company concerned liable to such action including the imposition of a fine or penalty as the Commission may deem fit, and in relation to a insurance company officer, to the appropriate disciplinary or other proceedings.”*

Similarly, section 118 of the Ordinance states that:”

“ *“Payment of liquidated damages on late settlement of claims.(1) It shall be an implied term of every contract of insurance that where payment on a policy issued by an insurer becomes due and the person entitled thereto has complied with all the requirements, including the filing of complete papers, for claiming the payment, the insurer shall, if he fails to make the payment within a period of ninety days from the date on which the payment becomes due or the date on which the claimant complies with the requirements, whichever is later, pay as liquidated damages a sum calculated in the manner as specified in sub-section (2) on the amount so payable unless he proves that such failure was due to circumstances beyond his control.*

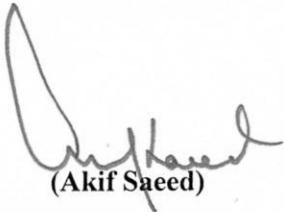
The Bench is of the view that the order of the FIO has attained finality as it was not challenged by the Appellant before the relevant forum. It is further apprised that the Respondent has acted in continuation for implementation of the order of the FIO under section 130 of the Ordinance, and the order has already attained finality so the argument of the Appellant that the base of the Impugned Order was void is



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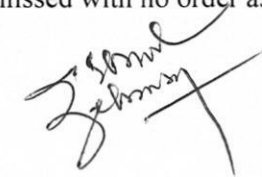
baseless. It is to be noted that at this forum the Bench cannot touch upon the merits of the case as the same has been decided by the FIO and was never challenged by the Appellant within the limitation period provided under the law. The Bench has also noted that determination of the policy holder's claim was ascertained and admitted by the Appellant itself and now it is apparent from the conduct of the Appellant that it is trying to avoid the liability due upon it. The Bench is also of the view that the rights and obligations of the policy holders should be the priority of an insurer, and the same has been breached by the Appellant.

6. In view of the above, the Bench does not find any justification to interfere with the Impugned Order, therefore, upholds the same, resultantly the instant appeal is hereby dismissed with no order as to cost.



(Akif Saeed)

Chairman/Commissioner



(Abdul Rehman Warraich)

Commissioner

Announced on: 03 JUN 2024