



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 05 of 2016

State Life Insurance Corporation of Pakistan

Appellant

Versus

1. Director Insurance, SECP
2. Prof. (Retd.) Syed Aijaz Ali Shah

Respondents

Date of hearing:

25/05/16

Present:

For Appellant:

Mr. Waqas Asad Sheikh, Advocate

For Respondents:

1. Mr. Hasnat Ahmad, Director Insurance, SECP
2. Mr. Muhammad Mateen Abbasi, Management Executive
3. Prof. (Retd.) Syed Aijaz Ali Shah (Respondent No.2)

ORDER

1. This order shall dispose of appeal no.05 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 30/12/15 (the Impugned Order) passed by the Respondent No.1.
2. Brief facts of the case are that the Respondent No.2 filed a complainant before the Respondent No.1 against the Appellant, therefore the Respondent No. 1 vide letter dated 27/11/15 sought comments of the Appellant with respect to the allegations contained in the complainant. The Appellant replied vide letter dated 09/12/15. The Respondent No.1

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has observed that as per the illustration provided to Syed Aijaz Ali Shah (the Respondent No.2) at the time of purchase of Insurance policy (the Policy), cash surrender values of policy at the end of 9th and 10th years were Rs.948,875 and Rs.1,840,000 respectively. However, the Appellant paid only Rs.1,144,000 to the Respondent No.2 upon maturity of the policy. The Respondent No.2 being aggrieved in the matter approached the Respondent No.1 for seeking the relief in accordance with provisions of the law. The Appellant in its letter dated 09/12/15 has admitted that the high projected values at 10th year of policy was a result of an initial teething problem in programming and the same was rectified once detected. The Respondent No.2 relied upon the said illustration and made premium payments to Appellant till maturity of policy. The Respondent No.1 observed that said act of the Appellant was misleading and deceptive which not only breached Respondent No.2 trust but also caused financial loss to him. The Respondent No.1 vide Impugned Order, advised the Appellant to make payment of the compensation amounted Rs.696,000 to the Respondent No.2 on account of loss suffered as a result of reliance on the deceptive and misleading illustration.

3. The Appellant being aggrieved from the Impugned Order preferred an appeal on the following grounds:
- i. The Impugned Order is a result of misapplication of law. An error caused due to malfunction of a software program cannot be construed as misleading or deceptive.
 - ii. The Respondent No.1 has failed to prove malafide and willfulness of the Appellant which was necessary element to establish misleading and deceptive conduct. Furthermore the decision to pay in excess of Rs.1,144,000 to the Respondent No.2 would be detrimental to the interest of other policy holders.
 - iii. The Respondent No.1 has wrongly took cognizance of the instant matter and as per section 20 of the Act, the Respondent is not empowered to adjudicate the disputes between insurer and policy holder.
 - iv. The Respondent No.2 has approached the wrong forum therefore, the Respondent No.1 should have directed the Respondent No.2 to approach the Insurance


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Tribunal in accordance with section 115 of Insurance Ordinance, 2000 (the Ordinance).

- v. The dispute between Appellant and Respondent No.2 requires recording of evidence to determine the liability, if any. Therefore the proper forum is Insurance Tribunal, however the Respondent No.1 acted against the provisions of law and natural justice and concluded one sided proceedings on the basis of incomplete facts.
- vi. The Appellant was not given adequate hearing opportunity and the allegations levelled in complainant and the allegations contained in the Impugned order are inconsistent
- vii. The superior courts have held that "a statute providing a mode for doing a thing in a particular manner-such thing shall be done in prescribed manner and in no other or not at all".
- viii. The Impugned Order lacks the reasoning as required by section 24-A of General Clauses Act, 1897, therefore, the Impugned Order cannot be considered as a speaking Order.

4. The Respondent No.1 has denied and rebutted the grounds of appeal in the following manner:

- i. Calculations and reports coming out of flawed software and that too in respect of insurance policies is gross negligence on part of the Appellant and also it can be construed as deceiving the innocent policyholders due to the Appellant's own negligence with regard to its duties and responsibilities as shouldered by Section 12 and 45 of the Ordinance.
- ii. Absence of proper internal controls and non-maintenance of accurate and fair record on part of the Appellant is adequate to prove mala fide and malicious intent not only to deceive the policyholders but also to forge its record of policies.
- iii. The Preamble of the Ordinance, section 76 of the Ordinance and section 20(6)(fa) & (fb) of the Act, require the Commission to safeguard the interest of the insurance policyholders. Therefore, the Commission is empowered through mandate given by the aforementioned statutes.

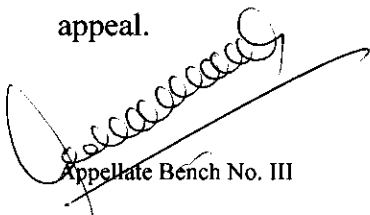


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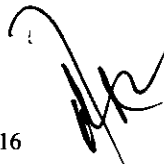
- iv. The Respondent No. 2 had multiple options such as the Insurance Tribunal and the Federal Insurance Ombudsman, however, the Respondent No.1 was fully empowered by the provisions of Section 76(4) of the Ordinance to ask the Appellant to pay compensation and same power was exercised by the Respondent No.1.
- v. The Insurance Tribunal, the Federal Insurance Ombudsman and the Small Disputes Resolution Committees are the external forums which the Respondent No. 2 could have approached. However, as stated earlier, the Preamble of the Ordinance, section 76 of the Ordinance and section 20(6)(fa) & (fb) of the Act, require the Commission to safeguard the interest of the insurance policyholders, which the Commission did through the Respondent No. 1.
- vi. The section 76 of the Ordinance does not require affording of opportunity of hearing. However, the Honorable Appellate Bench may, if deemed appropriate, pass an order thereby directing the Respondent No. 1/the Commission to provide opportunity of hearing to the Appellant and to pass a final order thereafter.
- vii. The claim of the Appellant is denied in view of the foregoing counter arguments.
- viii. The Impugned Order is a speaking order and reasons have been adequately given.

5. The Respondent No. 2 has stated that he has suffered the loss due to Appellant and it was agreed and decided before the Federal Ombudsman, that the matter should be referred to the Director Insurance Division Securities and Exchange Commission of Pakistan for final determination and his decision shall be final. He provided evidence of the same in Appeal Annexure C, Page 18. Consequently he filed a complaint before the Director Insurance Division, and now, the appellant states that it is wrong forum. The Respondent No. 2 and Respondent No. 1 have only complied with the decision of the Federal Ombudsman hence, the statement narrated by the Appellant tantamount contempt of the Wafaqi Mohtasib.

6. We have heard the parties i.e. Appellant and Respondents and perused the record of the appeal.


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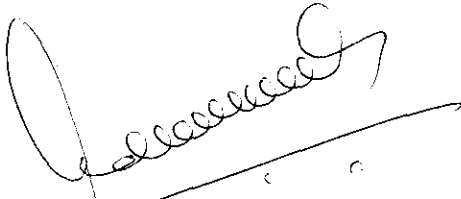


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7. The Impugned Order was passed while adjudicating a complaint filed by the Respondent No.2, against the Appellant, however it has been observed that the Appellant was not provided personal opportunity of hearing while deciding the complaint, which amounts to violation of appellant fundamental right. As per settled law no man should be condemned unheard, therefore, no order affecting the right of a party could not be passed without providing opportunity of hearing to that party. The Respondent No.1 in his written comments has stated that "Section 76 of Insurance Ordinance, 2000 does not require affording on opportunity of hearing". The observation made in the Impugned Order is violation of principle of natural justice, enshrined through legal maxim *Audi alteram partem*. It is important to remember that the Principle of *audi alteram partem* is applicable to judicial as well as non-judicial proceedings and it is read in every statute as its part if right of hearing has not been specifically provided therein.
8. In the above circumstances, we find it appropriate to remand the case to the Respondent No.1 without going into the merits, to consider and evaluate the claims of parties. The Respondent No.1 is further directed to provide adequate opportunity of hearing to both the parties before final adjudication. We further, direct the Respondent No. 1 to address the issue as per his jurisdiction. In view of the above discussion and observations, we hereby set aside the Impugned Order dated 30/12/15 and remand the case to Respondent No.1 to decide it afresh.
9. Parties to bear their own cost.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: **22 JUN 2016**