



# Securities and Exchange Commission of Pakistan

## **BEFORE APPELLATE BENCH NO. III**

In the matter of

**Appeal No. 58 of 2016**

State Life Insurance Corporation of Pakistan

Appellant

Versus

1. Commissioner Insurance, SECP.
2. Ms. Nazir Fatima

Respondents

**Date of hearing:**

17/02/16

**Present:**

For Appellant:

Mr. Waqas Asad Sheikh, Advocate

For Respondents:

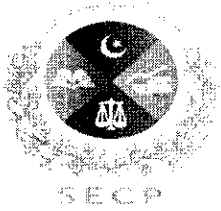
1. Mr. Ali Azeem Ikram, Executive Director (Insurance) SECP
2. Mr. Hasnat Ahmad, Director Insurance, SECP.

### **ORDER**

1. This Order shall dispose of Appeal no. 58 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against the Order dated 03/08/16 (the Impugned Order) passed by the Respondent No.1. The representation of Appellant and Respondent No.1 was as above, whereas the Respondent No.2 vide letter dated 10/02/17 requested to decide the matter as per available record.
2. Brief facts of the case are that the Respondent No.2 obtained an insurance policy (the Policy) from the Appellant in December, 2004 with an annual premium of Rs.22,188/- for a period of ten years. The Appellant also provided an illustration to the Respondent No.2 whereby the cash surrender value at time of maturity of the Policy was shown as

Appeal No. 58 of 2016

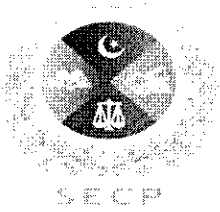
Date: 17/02/16



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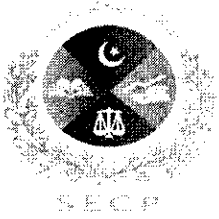
Rs. 460,000/-. The Respondent No.2 made premium payments for ten years however, upon maturity of the Policy, the Appellant paid only Rs.282,194/- to the Respondent No.2. Feeling aggrieved, the Respondent No.2 filed a complaint against the Appellant with the Securities and Exchange Commission of Pakistan (the Commission). Subsequently, the Respondent No.1 issued a Show Cause Notice (the SCN) dated 06/06/16 to the Appellant and its Board of Directors.

3. The Appellant's Counsel (the Counsel) replied to the SCN vide letter date 28/06/16, whereby it was contended that the Commission has no jurisdiction to entertain policyholder disputes and it has not committed any misrepresentation. The Counsel further stated that the dispute in hand requires recording of evidence and a trial before a competent forum vested with all powers of Civil Court under the Code of Civil Procedure, 1908. It was also contended by the Counsel that the SCN has been issued prematurely and the Commission does not have power to grant compensation in the instant matter. Hearing in the matter was held on 27/07/16, which was attended by the Appellant's representatives including the Counsel. The Counsel reiterated the aforementioned submissions and stated that the discrepancy in the computer software which led to miscalculations in the illustration, has been rectified and a new ERP has been procured by the Appellant.
4. The Respondent No.1 being dissatisfied with the Appellant response, passed the Impugned Order and directed the Appellant to settle the grievances of Respondent No.2. The Appellant was further directed to be careful in future of any such misleading or deceptive conduct towards the policyholders. The Appellant has challenged the veracity of the Impugned Order through the instant appeal. The Appeal has been preferred on the following legal and factual grounds;
  - i. The Respondent No.2 being a necessary party should have been part of proceedings before the Respondent No.1 therefore, the Appellant has asked the Respondent No.1 to implead her as a party, however, this objection has not been reflected in the Impugned Order.



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- ii. The decision to purchase the policy was not influenced by the illustration because it was provided to the Respondent No.2 after the purchase of policy therefore, it cannot be regarded as misleading or deceptive conduct within the meaning of Section 76 of the Insurance Ordinance, 2000 (the Ordinance).
- iii. The Impugned Order is a result of misapplication of law because an error caused due to malfunction of a software program cannot be construed as misleading or deceptive conduct under Section 76(2) of the Ordinance.
- iv. The Respondent No.1 has failed to prove malafide intention and willful default of the Appellant, which was necessary element to establish misleading and deceptive conduct. Furthermore, the decision to address the grievance of the Respondent No.2 without leading evidence and due process would be detrimental to the interest of other policyholders of the Appellant.
- v. The Respondent No.1 was not empowered to take cognizance of the matter and to adjudicate the disputes between insurer and policyholder in terms of powers of the Commission enumerated in Section 20 of the Act. The Commission is also not competent to adjudicate the disputes between insurer and policyholder due to bar contained in Section 121(3) of the Ordinance, therefore, the Respondent No.1 was required to direct the Respondent No.2 to approach the Insurance Tribunal.
- vi. The dispute between the Appellant and Respondent No.2 requires recording of evidence to determine the liability (if any) therefore, proper forum was the Insurance Tribunal however, the Respondent No.1 has acted against the provisions of law and natural justice and conducted the proceedings in a slipshod manner to arrive at a pre-conceived false and incorrect conclusion.
- 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". However, the Impugned Order is against the verdict of the superior courts. (PLD 1964 SC 253 & PLD 1979 Lahore 54).
- viii. The Impugned Order is devoid of any reasoning and independent findings, which is violation of Section 24-A of General Clauses Act, 1897.

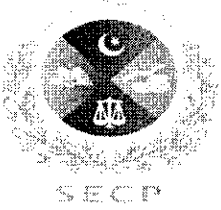


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ix. The Counsel has raised further legal objections with respect to jurisdiction of the Respondent No.1 whereby he took the cognizance of the matter and passed the Impugned Order. In this regard, the Appellant has relied upon two documents (the Referred Documents). The first document was a complaint filing procedure provided at an investor education website named "Jamapunji" (<http://jamapunji.pk/protect-yourself/complaint-lodging-process>), whereas, the other document was a Circular no. 5 of 2016 dated 26/01/16 issued by Respondent No.1 whereby, the insurers were asked to display the names of insurance disputes resolution forums i.e. Federal Insurance Ombudsman and Small Dispute Resolution Committees on their websites and premises. The Counsel stated that in view of relevant laws and the Referred Documents, Respondent No. 2 was required to lodge a complaint with the Insurance Tribunal, Federal Insurance Ombudsman or Small Dispute Resolution Committees therefore, taking cognizance of the instant matter by the Respondent No.1 is illegal.

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

- i. The Appellant never took the plea during the hearing proceedings that the Respondent No. 2 should have been part of the proceedings. Furthermore, the applicable law does not require the Respondent No. 1 to implead the Respondent No.2 as necessary party.
- ii. The plea of Appellant that illustration was provided to the Respondent No.2 after the purchase of the policy therefore, it is not a misleading or deceptive conduct , cannot be accepted because the Respondent No. 2 continued the policy under the impression given by the said illustration, which led the Respondent No. 2 to suffer the loss on maturity.
- iii. The Respondent No.1 has exercised the vested jurisdiction in accordance with law. The referred Section 76(2) of the Ordinance cannot be read in isolation. The Impugned Order has been passed under Section 76 of the Ordinance and Section



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76(3) makes it clear that; *"Nothing contained in sub-section (2) shall be taken as limiting by implication the generality of sub-section (1)."* and Section 76(1) states that; *"(1) An insurer shall not, in the course of its business as an insurer, engage in conduct that is misleading or deceptive or is likely to mislead or deceive."* The Impugned Order has been passed as per the mandate given by the above quoted provisions.

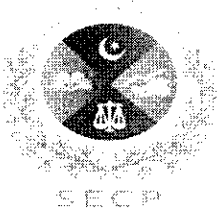
- iv. The Appellant was required to maintain adequate internal controls across all its systems and processes in view of Section 45 of the Ordinance read with Section 11(1)(f) and Section 12(1)(a) & (e) and Section 12(4) of the Ordinance, however, it failed. The Appellant is liable for flawed functioning of computer software, which generated the illustration and turned out as deceptive and misleading. The act of not maintaining adequate internal controls and adoption of flawed computer software appeared to be willful, which misled the Respondent No.2 (insurance policyholder).
- v. The preamble and Sections 12(4), 60 and 156 of the Ordinance read with Section 20(6)(fa), (fb), (fc) and (g) of the Act, empower the Commission to monitor the conduct of insurers towards the insurance policyholders, and to issue direction under Section 60 of the Ordinance and also to impose penalties under Section 76(5) and 156 of the Ordinance, in respect of all matters that are of similar nature i.e. deceptive and misleading conduct on part of the insurers. The policyholder disputes are not dealt with by the insurance tribunals only, as in addition to the mandate given to the Commission to protect the interests of the insurance policyholders. The Ordinance also provides two other external forums i.e. the small dispute resolution committees and the Federal Insurance Ombudsman to address the grievances of the policyholder. The powers and jurisdiction of the insurance tribunals should not be read in isolation. Principles of natural justice and provisions of the law and due process of adjudication were also followed in letter and spirit during the proceedings and while passing the Impugned Order.
- vi. The Commission took cognizance for the misleading and deceptive conduct of the Appellant within the bounds of the afore-quoted provisions of the Act and the



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Ordinance. The Commission is the apex regulator of the insurance industry, which is bound to implement and enforce the provisions of the Ordinance, and in pursuance of this, the Respondent No. 1 performed his duties on behalf of the Commission under a duly delegated power vide S.R.O. 122(I)/2016 dated 12/02/16.

- vii. The Respondent No. 1 acted within the bounds of the law i.e. the Act and the Ordinance.
  - viii. Para nos. 17 to 23 of the Impugned Order contain the reasons behind the Impugned Order. Furthermore, the Respondent No.1 has not imposed any penalty under Section 76(5) or Section 156 of the Ordinance, rather the Appellant was only directed to settle the grievance of the Respondent No. 2. However, it appears that the Appellant is not willing to act in good faith towards its policyholders, which is an alarming situation.
  - ix. The Respondent No.1 has stated that provisions of the Act and the Ordinance empowers the Commission to decide the issues related to policyholders. Furthermore, the Referred Documents contains the information with respect to available alternate dispute resolutions forums, however, existence of such forums does not debar the Commission to redress the grievances of the policyholders. It is also not mandatory for the policyholders to file complaints with alternate forums, before they approach the Commission.
6. The Appellate Bench (the Bench) has heard the parties and perused the record of the Appeal. Before going into the merits of the case, we want to dispel the impression, developed by the grounds of appeal that the Impugned Order has been passed without observing the fundamental principles of evidence, necessary to evaluate the evidentiary value of the facts brought before the Respondent No.1. As a matter of fact, the Impugned Order has been based on the facts admitted by the Appellant i.e. sale of policy and provision of the illustration to the Respondent No.2. However, the Appellant has taken plea that the illustration was provided once the policy was sold therefore, Respondent No.2 decision to purchase the policy was not based on the illustration. The other admitted



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fact is that the Illustration cash surrender value was Rs.460,000/- however, this value was caused due to computer software error, therefore, the Appellant cannot be held liable for misleading and deceptive conduct under Section 76 of the Ordinance.

7. The Bench accepts the plea of Appellant that the illustration provided to the Respondent No.2 (depicting the cash surrender value of Rs. 460,000/-) was a result of computer software error and it was provided to the Respondent No.2 after the purchase of the policy. This plea is of no use because as per Section 45 of the Ordinance read with Section 11(1)(f) and Section 12(1)(a) & (e) and Section 12(4) of the Ordinance, the Appellant was required to maintain adequate internal controls across all its systems and processes however, it failed to maintain adequate computer software.
8. The Respondents were not required to establish malafide intention and willful default to prove the misleading and deceptive conduct of the Appellant under Section 76 of the Ordinance. Therefore, Appellant's plea in this regard cannot be acceded to. Even otherwise, the conduct of Appellant is self-explanatory and speaks about the malafide intention and willful default because after the detection of computer software error, the Appellant never informed the Respondent No.2 that the cash surrender value of Rs.460,000/- provided in the Illustration was caused due to computer software error and upon maturity the Respondent No.2 shall not be entitled of said amount. In result, thereof, the Respondent No. 2 continued to pay the annual premium of the policy, which eventually led the Respondent No. 2 to suffer the loss on maturity.
9. The Bench rejects the plea of Appellant that Respondent No.2 being a necessary party should have been a part of the proceedings before the Respondent No.1, because the Appellant has failed to substantiate this claim through any provision of the Act or the Ordinance.
10. The Bench has anxiously taken into account the plea of Appellant whereby, the jurisdiction of the Commission/Respondent No.1 has been questioned. We have carefully



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examined the Primary laws i.e. the Act and the Ordinance- in our view the Commission is competent to entertain the complaints of the policyholders. The Appellant's argument, with respect to lack of Commission's jurisdiction to take cognizance of a dispute between the insurer and the policyholder, is not tenable by virtue of Section 20(6)(fa) and (g) of the Act, that empower the Commission to monitor the conduct of insurers towards the insurance policyholders. The relevant part of section 20 is reproduced here for reference;

*"20. Powers and functions of the Commission. .... (6) In performing its functions and exercising its powers, the Commission shall strive-*

*.....  
(fa) to maintain the confidence of holders of insurance policies by protecting the interests of policy holders and beneficiaries of insurance policies in all matters, including assignment of insurance policies, nomination by policy holders, insurable interest, surrender value of policies of life insurance, and other terms and conditions of contracts of insurance;*

*.....  
(g) to take whatever action it can take, and is necessary, in order to enforce and give effect to this Act, any administered legislation<sup>59</sup> or any other law." [Emphasis Added]*

The Ordinance also empowers the Commissions to address the grievances of shareholders and as per Sections 76(4), 76(5) and Section 156 of the Ordinance. The Commission, by virtue of the aforesaid provisions, can also award compensation to the aggrieved party and can impose a fine on the party at default, respectively. Hence, there is no doubt in our minds that the Respondent No.1 was competent to entertain and decide the complaint of the Respondent No.2. Section 60 of the Ordinance also does not restrict the Respondent No.1 or the Bench to issue direction to the insurer engaged in misleading conduct and failed to maintain adequate internal controls and systems, to safeguard the interest of policyholders.

11. The Bench has also examined the documents referred and presented during the hearing. One document is a webpage of Jamapunji website which lays down the procedure of filing of a complaint with the complaint cell of the concerned insurer and thereafter with the Commission, if the complaint is not addressed by the insurer within reasonable time. We have gone through the relevant laws and found nothing which makes the above stated procedure mandatory for the policyholder or the Commission, therefore, a webpage





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containing the procedure to file complaints, cannot override the express provisions of relevant laws. Furthermore, the documents relied upon itself, does not make it mandatory for the policyholder to file a complaint with the complaint cell of the insurer, prior to approaching the Commission. The other document which has been relied upon by the Appellant is Circular no. 5 of 2016 dated 26/01/16 issued by the Respondent No.1 whereby, the insurers were asked to display the names of insurance disputes resolution forums i.e. Federal Insurance Ombudsman and Small Dispute Resolution Committees on their websites and premises for the policyholders' awareness. It has been clearly stated in the Circular that the Commission actively takes up the complaints of the policyholders, however, to resolve the complaints in a prompt and effective manner the office of the Federal Ombudsman and Small Dispute Resolution Committees have been established under Sections 125 and 117 respectively. The said Circular does not illustrate that the Commission has no jurisdiction to redress the complaints of policyholders. The rationale behind establishment of alternate dispute resolution forums is none other than speedy disposal of the complaints. Section 115 of the Ordinance also does not bar the Respondent No.1 to proceed to address the grievances of policyholders with respect to insurer. Therefore, the Commission being an apex regulator of Insurance Sector cannot be considered *coram non judice* whereby complaints have been directly lodged with it against the insurers.

12. The Bench has gathered the certain figures from the record and accordingly calculations have been made;

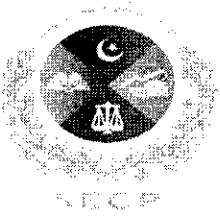
Respondent No.2 obtained the Policy for ten years	In December, 2004
Annual Premium Paid by Respondent No.2	Rs.22,188/-(total premium paid Rs.221,880/-).
Cash surrender value upon maturity of policy (As per Illustration )	Rs. 460,000/-
Actual cash surrender value received by the Respondent No.2	Rs.282,194/- (Per year/total Profit Rs.6031.4 (10)= Rs.60,314/-).



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Difference B/w Cash Surrender Value of Illustration and Actual Cash Surrender value Received	Rs. 460,000 - Rs. 221880= Rs. 177,806
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13. In the light of aforesaid facts and figures, the Bench is of the view that the defense hypothesis formed by the Appellant is an effort to escape from the consequences of misleading and deceptive conduct because nothing is on record to show that the Appellant has performed its duties in a required manner to refrain from any misleading or deceptive conduct. As a matter of fact, the Appellant neither informed the Respondent No.2 until the maturity of the Policy that the cash surrender value of Rs.460,000/- reflected in the illustration was an error caused due to computer software nor provided the new cash surrender value i.e. Rs. 282,194/-. As a result, the Respondent No.2 being unaware of any change in the given illustration, continued to pay the premium for ten years. It is our conviction that the Appellant has not informed the Respondent No.2 about the changed cash surrender value because there was apprehension that she may take a decision to discontinue/ withdraw the policy. The Appellant is the largest public sector life insurance entity in Pakistan, therefore, it is expected that the conduct of such an entity must be in accordance with the law and in the interest of policyholders. The case in hand is a classic example of breach of trust and this act of the Appellant can hamper the confidence of existing and potential policyholders.
14. It is also important to mention here that another Appellate bench Appeal No. 94 of 2016 (the Other Appeal) with similar facts was pending adjudication before this Bench. These two appeals have evolved a suspicion in our minds that possibly, there would be numerous policyholders, who have suffered similar agony at the behest of the Appellant. The matter in hand and in the Other Appeal pertains to the year 2004, therefore, we direct the Respondent No.1 to initiate an extensive investigation with respect to other policies sold.
15. The available record is sufficient to prove that the Appellant has violated the relevant provisions of the law. The Appellant's deceptive and misleading conduct has infringed the




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rights of Respondent No.2 and it has not come to the Bench with clean hands hence, Appellant is not entitled for any leniency. The Respondent No.2 was entitled to get Rs. 460,000 at the time of maturity of policy however, Appellant paid only Rs. 282,194/-, meaning thereby, the Respondent No.2 has sustained a loss of Rs. 177,806/-. Therefore, we hereby, modify the Impugned Order and direct the Appellant to compensate the loss of Rs. 177,806/- suffered by the Respondent No.2 and pay a fine of Rs. 355,612/- under Sections 76(4) & 76(5) of the Ordinance, respectively. The Appellant has also failed to maintain adequate internal controls and systems as required under the Ordinance, therefore, we also impose a fine of Rs. One Million on the Appellant under Section 156 of the Ordinance. The Appellant is directed to deposit the amount of fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within 30 days and furnish the challan to the Respondent No.1, as evidence of deposit of fine.

16. In view of the above, we hereby dismiss the appeal accordingly. Parties to bear their own cost.



( Zafar Abdullah )  
Commissioner (SCD)



(Tahir Mahmood)  
Commissioner (C&CD-CLD)

Announced on: 04 APR 2017

