



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 37 of 2016

1. Chief Justice (R) Mian Mahboob Ahmad, Chairman
2. Maheen Yunus, Chief Executive Officer
3. A. K. M. Sayeed, Director
4. Umeed Ansari, Director
5. Javed Yunus, Director
6. Pervez Yunus, Director
7. Naved Yunus, Director
8. Omar P. Yunus, Director
9. M/s. East West Life Assurance Company Limited

Appellants

Versus

The Commissioner (Insurance) SECP

Respondent

Date of hearing:

September 30, 2021

Present:

For the Appellant:

Mr. Ali Ahmed Shah (Counsel)

For the Respondent:

- i. Mr. Hammad Javed, Additional Director, Adjudication-I, SECP
- ii. Mr. Shafiq ur Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This order shall dispose of Appeal No. 37 of 2016 filed by M/s. East West Life Assurance Company Limited (Company), its Chairman, Chief Executive Officer (CEO) and directors against the order dated May 17, 2016 (Impugned Order) passed by the Commissioner Insurance (Respondent) under section 76, 118 read with section 60 and 156 of the Insurance Ordinance, 2000 (the Ordinance).



Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that six complaints regarding delayed settlement/payment of policy claims were forwarded to the Company for necessary action. The Company made payment to four complainants after numerous reminders of the Respondent, however, it failed to make payment to two complainants. Therefore, a Show Cause Notice (SCN) dated March 9, 2016 was issued to the Company, its Chairman, CEO and directors. The Appellants vide letter dated March 24, 2016 replied to the SCN and stated that the offence of 'misleading' as provided in Section 76 of the Ordinance cannot be attributed to the Appellants because the delay in processing of claims occurred due to late or non-submission of the required documents/information by the policyholders and, therefore, the Company is not liable to pay liquated damages under section 118 of the Ordinance. Hearing in the matter was held on April 21, 2016, wherein the Representative of the Appellants reiterated the arguments contained in the written reply. The Respondent being dissatisfied with the response, passed the Impugned Order and imposed penalty on the Appellants in the following manner:

S.No.	Name of Respondents	Amount
1.	Mr. Chief Justice (R) Mian Mahboob Ahmad, Chairman	110,000/-
2.	Mr. Maheen Yunus, Chief Executive Officer	110,000/-
3.	Mr. A. K. M. Sayeed, Director	110,000/-
4.	Mr. Umeed Ansari, Director	110,000/-
5.	Mr. Javed Yunus, Director	110,000/-
6.	Mr. Pervez Yunus, Director	110,000/-
7.	Mr. Naved Yunus, Director	110,000/-
8.	Mr. Omar P. Yunus, Director	110,000/-
9.	M/s. East West Life Assurance Company Limited	120,000/-
Total		1,000,000/-

3. The Appellants filed this appeal against the Impugned Order, *inter alia* on the ground that there has been no delay on the part of the Appellants which could be termed as 'misleading' to the policyholder as defined in section 76 of the Ordinance. The Appellants have taken the plea that delay in settlement of the insurance claims was caused due to late or non-submission of the required necessary documents/information and the baseless disputes initiated by certain policyholders. During the hearing, before the Appellate Bench (Bench), the Appellants' Counsel (Counsel) stated that upon submission of the required documents four claims of the policyholders were settled,



Securities and Exchange Commission of Pakistan

however, claims of two policyholders have been delayed due to non-submission of necessary documents including CNICs and declarations, therefore, Section 118 of the Ordinance cannot be invoked against the Appellants. The Counsel stated that application of Section 118 of the Ordinance is subject to fulfillment of two conditions; **Firstly**, payment of claim should have been due and **Secondly**, 90 days should have been passed after submission of required documents by the policyholders. The Counsel clarified that the Company has settled claims of three policyholders within 90 days of receipt of the required documents, whereas payment cheque issued to Mr. Abniaz Khan became invalid therefore, a new cheque was issued during December 2015, hence, the policyholders are not entitled to claim liquidated damages. The Counsel further argued that even after completion of the two conditions contained under Section 118 of the Ordinance, if the Insurer is unable to settle the claims within 90 days due to circumstances beyond control, then the Appellants shall not be liable to any penal action.

4. The Counsel stated that the Impugned Order is silent with regard to the alleged delay in terms of days. The Counsel agreed with the query of the Bench that payment of claims becomes due after receipt of duly filled discharge voucher, however, in case payment is delayed due to factors beyond the control of the Insurer even then it shall not be liable to pay liquidated damages under Section 118 of the Ordinance. While answering another question of the Bench, the Counsel stated that Insurer can demand documents from a policyholder, however, it has no authority or control to compel policyholders to submit required documents within a certain time period.
5. The Respondent has rebutted the grounds of Appeal and submitted that it came on record through multiple complaints that there has been substantial delay in settlement of policyholders' claims. During the hearing the Bench has asked the Respondent representative (Representative) to apprise the Bench that how Section 76 of the Ordinance has been invoked against individuals, however, the Representatives were unable to answer the query.
6. The Bench has heard the parties and perused the record. The Counsel and the Representatives reiterated their grounds of appeal and rebuttal thereof. The Bench has examined the provisions of the Ordinance, which have been invoked to establish default of the Company, its Chairman, CEO and directors, however, Section 76 and 118 of the Ordinance are applicable on the insurer only. The Bench



Securities and Exchange Commission of Pakistan

has also perused the definition of “Insurer” contained in the Ordinance, which revealed that natural persons have not been included therein. For reference relevant part of definition is reproduced below;

“any company or other body corporate carrying on the business of insurance, which is a company or other body corporate incorporated under any law for the time being in force in Pakistan”

7. Therefore, we have no doubt that by imposing penalty on Chairman, CEO and directors of the Company, the Respondent had transgressed the permissible scope of the law under Sections 76 and 118 of the Ordinance. Furthermore, cognizance of the matter under Section 76 of the Ordinance is also critical because in our view adjudication of alleged violations cannot be termed as ‘deceptive or misleading’ conduct because insurance policies had already matured or had been claimed by the policyholders/legal heirs. Therefore, the question of ‘deceptive or misleading’ conduct cannot be attributed. The Bench believes that the terms ‘misleading and ’deceptive’ are purely related to offer, offer document and commencement of insurance policy and essence of this section is to indemnify policyholders from the consequences of incorrect, deceptive and misleading representation while entering into a policy. For reference Section 76 of the Ordinance is reproduced below;

*76. Insurer not to engage in misleading or deceptive conduct.- (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.***

(2) The inclusion in an insurance policy of unusual terms tending to limit the liability of the insurer, without the express acknowledgement of the policy holder, shall constitute misleading or deceptive conduct.

(3) Nothing contained in sub-section (2) shall be taken as limiting by implication the generality of sub-section (1).

(4) Where a policy holder has relied upon any representations by an insurer or by an agent of an insurer which are incorrect in any material particular, inasmuch as it has the effect of misleading or deceiving the policy holder in entering into a policy, the policy holder shall be entitled to obtain compensation from the insurer for any loss suffered.

(5) Notwithstanding the provisions of the foregoing sub-section, the Commission shall also have the power to levy a fine on the insurer which shall be equal to the lesser of twice the loss determined to be suffered by the policy holder under the foregoing subsection and ten million rupees.

8. The Bench has also examined the other core issue of liquidated damages under Section 118 of the Ordinance. The Counsel argued that late settlement of claims cannot be attributed to the Company, its Chairman, CEO and Directors, therefore, they are not liable to pay liquidated



Securities and Exchange Commission of Pakistan

damages under Section 118 of the Ordinance. The Bench is of the view that liquidated damages under Section 118 of the Ordinance are applicable if the insurance claim has not been paid by the Insurer within 90 days from the date when the claim becomes due and after submission of the required documents by a policyholder, whichever is later in time. For reference Section 118 of the Ordinance is reproduced below;

118. 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.

Explanation: for the purposes of this sub-section, failure or delay by any person in making payment (including without limitation payment under a contract of reinsurance) to an insurer shall not constitute circumstances beyond the control of the insurer.

(2) The liquidated damages payable under sub-section (1) shall be payable for the period during which the failure continues and shall be calculated at monthly rests at the rate five per cent higher than the prevailing base rate.

9. In the instant case, payments of three claims have been made within 90 days of receipt of the required documents, therefore, the Company is not liable to pay liquidated damages. The Bench has also examined the case of Mr. Abniaz Khan to whom the Company has issued a settlement cheque within 90 days of completion of documents, however, he failed to present that cheque in Bank for payment which became invalid, therefore, a new cheque was issued during December 2015, hence, the policyholder is not entitled to claim liquidated damages. The Bench has perused the record of the two complainants who have since passed away namely; Mst. Kiran Amjad and Mst. Shaheen Amjad, whereby the claimants completed all requirements on November 20, 2014 whereas discharge vouchers were issued by the Company after a delay of more than one year, on January 4, 2016. The Bench has noted that instead of filling and returning the discharge vouchers issued by the Company, claimants of Mst. Kiran Amjad and Mst. Shaheen Amjad served a legal notice to the Company. Therefore, we are of the view that due to the aforementioned legal notice the Company is not responsible for non-settlement of claims in Mst. Kiran Amjad and Mst. Shaheen Amjad's cases, however, the one-year unexplained delay in processing of the claims and issuance of the discharge voucher is a



Securities and Exchange Commission of Pakistan

clear lapse on the part of the Company. In the circumstance, the Company is liable to pay liquidated damages in a manner specified under Section 118 of the Ordinance to the claimants of Mst. Kiran Amjad and Mst. Shaheen Amjad's polices for the delay caused by the Company during November 20, 2014 to January 4, 2016.

10. In view of the forgoing, we hereby *set aside* the Impugned Order and admit this Appeal to the extent of penalty of fine imposed on Chairman, CEO and Directors of the Company, whereas, Impugned Order is *upheld* and Appeal is *dismissed* to the extent of fine imposed on the Company. This order has been passed without any order as to cost.

(Farrukh Hamid Sabzwari)

Commissioner

(Aamir Ali Khan)

Chairman/Commissioner

Announced on: **16 NOV 2021**