



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

Review Application No. 02 of 2017

In the matter of

Appeal No. 53 of 2012

M/s. EFU General Insurance Limited

Versus

Executive Director, Insurance – SECP

Date of hearing:

September 20, 2023

Present:

For the Applicant:


1. Mr. Rashid Sadiq
2. Mr. Azeem Rashid

For the Respondent:

1. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication -I, SECP
2. Mr. Shafique Ur Rehman, Additional Joint Director, Adjudication-I, SECP
3. Mr. Obaid ur Rehman, Additional Director, Onsite Department, SECP (Member Inspection Team)

ORDER

1. This Order shall dispose of Review Application No. 02 of 2017, filed by M/s. EFU General Insurance Limited (the "Applicant") against order dated February 17, 2015 (the "Impugned Order") passed by the Appellate Bench (the "Bench") in Appeal No. 53 of 2012 (the "Appeal").
2. The background of the instant Review Application is that the Bench vide Impugned Order upheld the Order-in-Original dated September 28, 2012, passed by the Respondent whereby penalty of Rs. 500,000/- was imposed on the Applicant under section 156 of the Insurance Ordinance, 2000 (the "Ordinance") on account of non-compliance of section 45 thereof.

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3. The authorized representative of the Applicant contended that the Bench. vide Impugned Order, did not consider that section 45 of the Ordinance permits the maintenance of records in any form, including electronic records. He asserted that the Applicant has been diligently maintaining computerized records of its claims data, and the allegedly 'missing' data, as reported by the inspection team, has indeed been provided to the inspection team in electronic form and the same suffice in terms of compliance with section 45 *ibid*. Moreover, the Applicant argued that the conclusion drawn vide the Impugned Order that 87% of the files were missing is misleading as the said figure only reflect 0.05% of the total claims processed by the Applicant in the years 2009 and 2010. Furthermore, the authorized representative of the Applicant contended that the Impugned Order is against the law as the same has been passed on the basis that survey reports were not provided by the Applicant during inspection. He argued that in terms of rule 24(2) of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Rules"), an independent survey is required where the claim is for more than twenty-five thousand rupees yet the Applicant has been penalized for not maintaining of survey reports of claims which do not meet the said threshold. The authorized representative contended that despite the fact that the Applicant took all reasonable precautions while shifting its offices from one place to another, few claim files were lost, however, the record was available in electronic form and the same was also shown to the inspection team. While summing his arguments, the authorized representative of the Applicant contended that it is erroneous to draw connections between the missing claims files and payments made to workshops owned by close relatives, as the Applicant engages with various workshops and in case there is an element of 'fraud' involved, then action is taken against the individuals responsible and not against the insurance company i.e. the Applicant.
4. In response to the contention of the Applicant, the Respondent contended that the Applicant violated section 45 of the Ordinance, as it failed to produce 116 out of the required 133 files pertaining to the specific workshops. The Respondent further contended that the survey report is a crucial document to substantiate the veracity of a claim. The Respondent defended the imposition of penalty vide Impugned Order and contented that the instant Review Application is liable to be dismissed for the reason that the Applicant failed to highlight any illegality floating on the surface of the Impugned Order.



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5. The Bench has heard the arguments and perused the record. The Applicant vide the instant Review Application has sought review of the Impugned Order *inter alia* on the ground that section 45 of the Ordinance allows maintaining books and records in electronic form which were available for inspection, however, the inspection team insisted on providing the 116 missing claim files in physical form. The Applicant has contended that the said files were not available due to the reason that they were lost during shifting of offices of the Applicant despite reasonable measures being taken. The said contention of the Applicant has already been considered by the Bench while passing the Impugned Order and determination on questions of facts and law has already been made thereunder. The contention of the Applicant that the Bench has erred in imposing penalty on the Applicant vide Impugned Order for the reason that survey reports were not available is also not tenable as the matter regarding non-availability of the survey reports pertaining to the inspected claims has also been determined vide Impugned Order. Reliance of the Applicant on sub-rule (2) of the rule 24 of the Rules is misplaced as the said provision pertains to power of the Commission to issue direction to an insurer to conduct an independent insurance survey in the event of situations mentioned in sub-rule (1) of rule 24 *ibid* subject to the threshold provided in sub-rule (2) thereof. The argument that the Applicant, in terms of rule 24(2) of the Rules, was not required to conduct survey of motor insurance claims where the amount of loss is below twenty-five thousand rupees is misconstrued *firstly* for the reason that the Applicant in its pleadings has admitted that as a policy, small losses below Rs. 25,000 were not uploaded to the intranet system and the Applicant started the practice of uploading all losses in their intranet system from 2011. Moreover, the said rule provides the threshold in connection with the independent insurance survey to be conducted on the direction of the Commission and not the survey that is conducted as a consequence of filing of a claim by the policy-holder.
6. In light of the above discussion, the Bench is of the view that the Applicant failed to highlight any legal or factual error discernable on the surface of the Impugned Order. Accordingly, the instant Review Application is **dismissed** without order as to cost.


Mujtaba Ahmad Lodhi
Commissioner


Akif Saeed
Chairman/ Commissioner

Announced on: 04 OCT 2023