



SECP
Insurance Division
Karachi

Before Mr. Tariq Hussain Director (Insurance)

In the matter of

Appeal No. 09 of 2012

Mr. Muhammad Imran S/o Fazal-ur-Rehman
R/o. 3-Y-7, Medina Town,
Faisalabad.

..... Appellant

Versus

Chief Executive Officer
of MetLife American Life
Insurance Co. (Pakistan) Ltd.

..... Respondent

ORDER

Under Section 130 (2) Insurance Ordinance 2000

Dated: 30th April, 2013

Issue: Non-Payment of Claim

Hearing: 12-02-2013 at SECP Office, Lahore

Present:

For the Appellant:

Mr. Muhammad Younus Advocate
Mr. Fazal-ur-Rehman (Father of the Appellant)
Mr. Dr. Rizwan (Brother of the Appellant)

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For the Respondent:

Mr. Barrister Tariq Saeed Rana
SurrIDGE & Beechno
60-The Mall,
Lahore.

This Order shall dispose of the Appeal No.09 of 2012 under Section 130 (2) of the Insurance Ordinance, 2000 (the Ordinance) which was filed with this office on 27-07-2012 by M. Imran S/o Fazal-ur-Rehman, CNIC# 33100-4835497-1, R/o 3-Y-7, Medina Town, Faisalabad.

Wherein the Appellant protested against the Order the Hon'able Insurance ombudsman passed on 25-06-2012 (the "Impugned Order") u/s 130(1) of the Ordinance. He made the Order on the complaint the Appellant filed on 26-06-2009 that the Respondent i.e. the insurance company had unjustifiably denied the payment on the claim made under the Policy. The Medical Policy# 46027017 was bought in the year 2004, effective 14/09/2005 with a Basic Policy face Amount of Rs. 1,000,000/- and a basic premium of Rs. 27,000/-. Added to the main policy were Supplementary Contracts of waivers, riders and benefits, covering risks of disability due to accident/disease, thus the annual premium rose to the amount of Rs. 42,036/-.

The Appellant prayed therein the Appeal that the impugned order be set aside and the Respondent Insurance Company be directed to settle the claim, reimburse the medical bills pending with them along with liquated damages for the undue delay and the agony he had suffered so far.

Background Facts:

Recalling the facts briefly, the Appellant, a young businessman of Yarn Market, Faisalabad, married, having three children, purchased an insurance policy, said above, from the Respondent effective September, 2005. That on 19/6/2009, some four years after the purchase of the Policy, he slipped and fell from stairs at home and lay unconscious. He was administered first aid from a local doctor and then was immediately removed to General Hospital Lahore's Neurosurgical Department for urgent treatment and there he was subjected to X-Ray, CT Scan, etc. Recovering consciousness thereafter he cried out that he could not see around. He was admitted to Eye Department wherein after a couple of days' treatment he was operated upon. But the vision could not be restored. His both eyes were injected to remove the interior bleeding but nothing worked and he reportedly lost sight of both eyes, thereby suffered disability as total/permanent, leading to the closure of his shop.

He therefore filed the accident claim on 26/6/2009 with the insurance company that allegedly did not show much interest during the first eight months of the claim notification while the Respondent rebutted that the non-availability of the Appellant on certain dates hampered the proceeding. According to the Appellant that after serving a number of

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reminders, the Respondent insurance company finally arranged his first post-accident medical examination with Dr. Tahir Mahmood FRCS, Head of the Eye Department, Sheikh Zaid Fed. PG Medical Institute, Lahore. As recommended by the Respondent, he examined the patient, issued the report, confirming the loss of vision and affirming the Appellant's contention that the loss happened possibly because of trauma. And that the loss is "*Traumatic Atrophic Neuropathy*" ... "*Accidental Injury? Yes Hemorrhage suggests may of traumatic origin.*" But the insurance company was unimpressed of its credibility as they pointed out that the Appellant's brother, being himself an eye doctor there, must have exerted his influence in getting the favorable report. Later an investigating official of the company made a surprise visit to the Appellant with a view to probe into the Appellant's contention of vision loss. He stated in his report dated 06/4/2010 his findings that the Appellant, as he learned from the neighborhood, has been suffering from the vision problem but no one could confirm the exact cause. And that his vision problem is not that of total vision loss, as the Appellant admitted himself to the official. That he walked on his own without any support from gate to the drawing room and then during conversation, he used his mobile phone, dialing phone numbers to his brother. The Appellant admitted to the investigating officer that he still had vision of 15 to 20 pc but he could not see in the dark. The inspection was followed by a second test on 21/5/2010 at Al-Shifa Int'l Hospital Islamabad and then the Respondents made the Appellant to undergo the third test after a month at Lahore. Finally based upon these couple of subsequent reports the Respondent, repudiated the claim and the reimbursement of the medical bills amounting to 60,000/-rupees as well on the plea that the Appellant had, "pre-condition of RP (Retinitis pigmentosa)" and that the claimant failed to disclose the material fact at the time of buying policy.

The Appellant submits in his Appeal that on his objection to the decision, the Respondent asked him to produce the reports from some senior doctors on his own expense and the company would consider the claim payment. Accordingly he consulted a number of eye specialist professors/institutions and they issued the reports favoring the appellant's contention and he annexed the copies thereof. But the Respondent however denied that they ever asked the claimant to do so.

2. The Insurance Ombudsman office: Proceedings and Order

The Respondent eventually lodged a complaint with the Honorable Insurance Ombudsman on 13th Dec.2010. The Appellant submitted, inter alia, that the onus lay with the insurance company to prove that the Appellant has been suffering the RP prior to buying the policy. Furthermore the Company doctor fully examined him before the policy was issued to him. Thus the formation of contract simply meant that there was no disease afflicting him prior to that.

The Respondent Company in its comments submitted on 27/4/2011 that claim papers were received on July 01, 2009, giving out the picture of post traumatic vision loss. But no injuries to face or skull were found and that the CT Scan found the brain perfectly normal. An enquiry into matter made in the neighborhood revealed that the claimant suffered from some eye problem due to some old disease, much before the insurance contract was effected. The first test by Dr. Tahir Mahmood only stated that,

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"May be of Traumatic origin." This same specialist suggested acquiring the second opinion by further examination as he himself was not sure of the reason of vision loss. The Respondent's investigative officer in his fact finding report and then in the written statement, signed and submitted by the Appellant as well affirms existing vision of 15 to 20 pc. The medical examination at Al-Shifa, Islamabad made it clear that insured was suffering from a rare ophthalmic progressive retina disease that in due course led to blindness. Signs and symptoms of this disease often first appear in childhood but severe vision problems do not usually develop until adulthood. The vision loss is not due to accident and that he suggested having a further opinion from an ophthalmologist having specialty of retina diseases to reconfirm the finding they had made. Thus the test at Lahore by a Retina Specialist confirmed in his report the earlier diagnosis of Retina Pigmentosa and also that the vision loss was not due to any accident. The literature made it clear that it is a congenital disease and that the insured failed to disclose it at the time of insurance proposal for policy and at subsequent medical test for issuing him the policy. Had he not failed to disclose the material fact, they would have issued him the life policy without the disability benefits, etc.

The Appellant maintained in his rejoinder that Respondent received the claim papers on 01/07/2009 and after wasting 08 months, they set an examination first time on 01/03/2010. This willful negligence on the part of the Respondent washed out all the most immediate post traumatic signs, bruises and injuries of the accident of fall. That Dr. Tahir Mahmood chosen by the Respondent was not only the first doctor who conducted test, but also the most important one than the later consultants, authors of the three reports. He differed with the company stance and declared the loss of vision due to traumatic reason. But the subsequent consultants who favored the Respondent's view were the juniors than Dr. Tahir Mahmood. And the on an understanding with the Claims Department, he had his eyes examined on his own cost from the four senior consultants, and got the reports which were supportive to his case.

On hearing session on 10th October, 2011 both parties mainly reiterated their views as discussed above. On the suggestion of the Respondent, the Hon'able Insurance Ombudsman constituted a Medical Board vide a short order dated 11/8/2011 at Lahore but due to non-availability of two members at the given date the examination could not take place. By accord of both parties, another examination by a Medical Board comprising the senior doctors at JPMC Karachi was scheduled. The Respondent Company undertook to bear the cost of air ticket and boarding for two persons. The complainant was advised vide a letter dated, 31/5/ 2012 to appear before the Board on 19/6/2012 , whereas the Respondent was directed to make necessary arrangement of tickets and lodging. But the Appellant afterwards stated his inability to go to Karachi vide a letter dated, 1/6/ 2012 and requested that matter be decided on the basis of the reports already furnished.

Thereupon the Ombudsman concluded the order dated 25/6/2012 that the case called for the inquiry and recording of evidence, the Appellant may take it up at the Insurance Tribunal working under section 121 of the Ordinance or on any other forum under law and thus disposed of the case.

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3. Appeal u/s 130(2):

The Appellant thereafter filed an appeal (No. 9 of 2012) with this office on 27/07/2012 praying therein that the impugned order may be set aside, the Respondent be directed to settle /pay the claim based on the very first medical report, etc. He stated therein that the impugned order did not reflect the highlights of the hearings. A number of significant instances, discussions and remarks he cited in the Appeal, which had supported the Appellant's stand had not been included in the Order.

Besides the Appellant alleged in his appeal that certain acts of the Insurance Ombudsman during the course of the proceeding of the case were contrary to the law, perverse and arbitrary, for example, some facts material to the case had not been put on record like the reports of Dr. Sultan, Lahore, constitution of Board at Lahore was not kept confidential rather the Respondent was assigned this task. And that the constitution of Med Board at Mayo Hospital, Lahore promised to be held within seven days of Hearing but it took 85 days, and that too was not kept confidential rather it was formed and finalized by the Respondent Company despite the objections raised by the Appellant. Hence the Board was not impartial and unbiased. The Appellant stated that when he went to Lahore to appear before the Board, it did not take place as the Board members refused to get together as they were just telephoned by (Respondent) Alico personnel not directed by the Ombudsman office. The Appellant reportedly brought the matter through a letter and a meeting into the notice of the Ombudsman but no response was made by him. Then the office of the Insurance Ombudsman later took a sudden turn by shifting the venue to Karachi from the agreed /declared venue of Lahore. Thus the Ombudsman office gave a free hand to the Respondent Company to influence the Board doctors.

The Appellant further added that the Respondent Company offered total disregard to the opinions of the two doctors, one who conducted the very first test before issuing the insurance policy and second one by Dr. Tahir Mahmood, 'the Main Reference', in March 2010 who did not discern anything like PR. Nevertheless, the Appellant maintained, if there was a doubt, and then the Benefit of Doubt is a legitimate right of the sufferer, the appellant on compassionate ground.

Furthermore his letter dated 1/6/12 and 6/6/12 to the Insurance Ombudsman requesting therein to deliver judgment without reference to Medical Board and to make a Board in Lahore but no attention was paid to them. Rather they went on constituting a Board at Karachi without answering a legitimate call made by the Appellant. But the appellant reportedly, could not go to Karachi on medical grounds.

And that the impugned Order held it wrongly that certain factual controversies require full dress enquiry and requiring of evidence. The Insurance Ombudsman could have addressed the issue independently without making any reference to the Insurance Tribunal u/s 121 of the Ordinance.

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4. Hearings:

As per the Hearing Notices dated, 5/11/2012, the hearing at Lahore on 30th of November was fixed and both parties acknowledged it. But on that day in the morning, the Respondent expressed his inability to appear before the office as per schedule and requested for another date. However the Appellant side comprising Mr. Fazal-ur Rehman, father of the Appellant Mr. Imran, his brother along with their legal counsel Mr. M Younus Advocate turned up.

Another hearing was fixed and held accordingly on 12/2/2013 at Lahore and it was attended by both parties. On the Respondent's side Barrister Mr. Tariq Saeed Rana at the very outset argued that Section 127 of the Ordinance restricts the jurisdiction of the Insurance Ombudsman to the, "...any investigation into any allegation of mal-administration on the part of any insurance company." And then in the sub-section (2) "mal-administration" has been defined. Whereas the Insurance Ombudsman's Order issued on 25/6/2012 u/s 130(2) clearly enunciates, "...this matter stands disposed of with an observation that the Complainant may seek remedy as available under the law by filing a claim either before an Insurance Tribunal or any other court or forum as may be available under the law of the land." The Section 122 pronounces, "In the exercise of its civil jurisdiction, have in respect of a claim filed by a policy-holder against an insurance company in respect ofpolicy of insurance...." And Section 123 lays down the procedure of the Tribunal. As the grievance of the Appellant undoubtedly relates to the claim matter and as has rightly been observed by the Insurance Ombudsman in his order said above and the law as well provides the Tribunal for such matters, the Appellant should take the way to the Tribunal for the redress of his grievance, if there is any.

Moreover the company repudiated the claim after fully processing it by consulting the doctors and in the light of their opinions. Still we have gone to the extent of constituting a Medical Board at Karachi offering to bear out the expense of travelling and lodging of two persons but they chose to decline it.

In reply thereto the Appellant's counsel Mr. Younas rebutted the view expressed above by explaining that the Respondent Company has all along been responding and taking part in the proceedings before the Ombudsman, its attitude towards the claim lodged by the Appellant and to the subsequent medical opinions established the phenomenon of mal-administration u/s 127 of the Ordinance on the part of the insurance company.

As the whole issue essentially revolves around the single point whether the loss of vision of the Appellant has been caused by the fall he had had while descending the stairs as claimed by him or it was the eventual result of some ailment the Appellant had contracted and suffered much before entering into insurance contract with the Respondent. Both the parties maintained their arguments endorsed by the respective medical consultants. Hence this office assumed that going back to the exercise would not yield much in the way of resolving the issue. The approach to discern fact from the fiction via medical tests have already been tried and exhausted without leading to conclusion. Thus in the back drop of

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this dilemma this office assumed it would be better if both parties try to reach an amicable settlement on their own while this office would facilitate them.

Thus at this juncture this office passed the remark that it would be a waste of time if we start repeating all that has already been done or tried before at the ombudsman office. The parties better move forward to resolve the issue and in this regard onus falls upon the Appellant side to propose some practical offer in a direction to sort out the dispute. The Appellant side was asked to take seats away in the Lounge of the office, discuss among themselves for 15 minutes and come back with some suggestions in a view to settle down the matter.

The hearing resumed with some suggestions the Appellant side advanced as modus vivendi, either the Respondent Company undertake the treatment of the blinding disease of the Appellant, then they would have no more due on the them. The brother of the Appellant being himself a doctor opined that owing to modern research the disease of Retina Pigmentation currently afflicting the Appellant's eyes is no longer incurable. Another suggestion moved that the Respondent refund the entire premium already paid and the main life Policy be continued. Still another option discussed was the waiver of the premium in the respective future term period and the Policy be continued as such. Adding one more suggestion was to pay the compensation to the Appellant under the policy in a fair way with main policy on life remain intact. This office however floated and discussed as a last resort another suggestion that was to refund of the total premium the Appellant paid to the Respondent company under the Policy with no deduction plus something on compassionate ground that is the payment of the likely expenses Respondent would have incurred had the Appellant (two persons, claimant along with one attendant according to one offer the Respondent made previously before the ombudsman) chosen to go to Karachi for the medical test, approximately amounting to Rs.50,000/- and thus the policy would stand cancelled in toto. In order to enable the parties to discuss and thrash out some way out as an amicable settlement on their own, the undersigned along with his assistant left them in the Conference Hall for 15 minutes.

On resumption of the hearing both the parties were found in an accommodating mode. This office helped the parties in defining and bringing them round to the viable settlement suggestions. The Respondent Barrister sympathetically put forward all the three options discussed and assured that he would convey the view points of the Appellant to his Client Company and try to bring it round to help the Appellant in some way. The Respondent Counsel also said that he would be accessible to the Appellant side for any further discussion at his given address and contact numbers. At this positive note the hearing/discussion of the appeal concluded.

Later the learned Barrister on the part of the Respondent Company conveyed to this office that after subsequent meeting with the Appellant party they reached out a settlement. He told this office that the Respondent company (his Client) is willing to refund the whole premium with no deduction at all to the Appellant plus Rs.50,000/- (the Respondent

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company's previous offer made before the Insurance Ombudsman to the Appellant for bearing the travelling, lodging expenses of the two persons, policy holder claimant and one attendant for medical test in Karachi) and the Policy would stand cancelled altogether.

On the Appellant side Mr. Fazal-ur-Rehman made phone calls to this office and expressed his readiness to accept the final settlement offer with the proviso that no deduction be made from the premium refund. While on this point the Respondents have already expressed their approval.

5. Order:

As the parties ironed out the settlement on their own quite agreeably with the enabling atmosphere provided by this office, hence this settlement would be the order of this office that:

- 1- The Respondent would refund the premium already paid to the Appellant with no deduction under any head,
- 2- plus the payment of Rs.50,000/- (Fifty Thousands only) on compassionate ground the Respondent would pay to the Appellant,
- 3- and the Policy # 46027017 along with all auxiliary benefits thereafter would stand terminated.

Copies of the Order to both parties be sent.



Tariq Hussain
Director