



SECP

Insurance Division
Karachi

Before Mr. Tariq Hussain Director (Insurance)

In the matter of

Appeal No. 01 of 2012

M/s. East West Life Assurance Company Limited

Head Office 3rd Floor,

310 EFU House

M A Jinnah Road

Karachi

.....

Appellant

Versus

Mst. Tehmina Bashir

Widow of Bashir Ahmed

Rehman Colony

Model town, "C"

Bilouri Hall, Shahdara Chowk

Bahawalpur.

.....

Respondent

ORDER

Under Section 130 (2) Insurance Ordinance 2000

Dated 15th March, 2013

Date of Hearings

Lahore

30-11-2012 and 11-02- 2013 at SECP Office

Present:

For the Appellant:

Sheikh Khalid Mahmood

Regional Manager

EW Life Assurance Company Ltd

Naqi Arcade, 2nd Floor,

71-The Mall

Lahore.

M. Imran Butt

An Official of

the Insurance company

SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN

Insurance Division, State Life Building-2
4th Floor, Wallace Road, Karachi. Pakistan

Tel: 92-21-32461053, +92-21-32465469 **Pak Law Publication** www.secp.gov.pk

**Office # 05, Ground Floor, Arshad Mansion, Near Chowk A.G Office,
Nabha Road Lahore.Ph. 042-37350473 Cell # 0300-8848226**

For the Respondent:

Mst Tehmina Bashir
Bahawalpur.

Dr. S M Sarosh
Nephew of the Respondent

This Order shall dispose of the appeal No.01 of 2012 dated 1-2-2012 filed by M/s. East West Life Assurance Company Limited under Section 130 (2) of the Insurance Ordinance, 2000 (the Ordinance) against the Order dated 10-01-2012 (the "Impugned Order") passed by the Hon'ble Federal Insurance Ombudsman (the Ombudsman) on the complaint filed by Mst Tehmina on 02-07-2010, that the certain officials and agents of the Appellant insurance company, posted there at Bahawalpur had unduly deprived her of Rs.3,90,000/- in the name of issuing her insurance policies of the insurance company.

1. Background Facts:

Recalling the facts briefly, Mst. Tehmina in her a complaint with the Insurance Ombudsman submitted that the employees and agents of the Appellant insurance company, (therein the complaint, Respondents No.4 to 7) approached her and persuaded her to buy four policies from the insurance company. Thus she paid Rs.390,000/- (Three lacs and Ninety Thousands) in cash to them in various amounts and dates. One Mr. A Rehman, the agent of the Appellant, issued three provisional receipts for Rs.1,15,000/-, Rs.25000/-, and Rs.15000/-. On 07-10-2009, Mr. S Kazafi, Branch Manager, Bahawalpur of the Appellant, issued her provisional premium receipts for Rs.115,000/- thus totaling Rs.270,000/- as per the receipts she received. But for other amount Rs. 120,000/- she paid, no receipt was issued to her. Thus the total amount she paid now came to Rs.3, 90,000/- which she reportedly paid in total to the insurance company. On her demand to refund the money for which no receipt, no policy was issued to her, Mr. Kazafi initially issued two cheques for Rs.35,000/- and Rs.40, 000/- on Soneri Bank but both were later bounced.

2. Complaint with the Insurance Ombudsman:

She firstly approached the senior officials of the insurance company including Mr. K. M Sheikh but no help was given to her then eventually she lodged a complaint with the Insurance Ombudsman and prayed that the whole amount of Rs. 390,000/- be returned to her. The Insurance Company in its Comments to the Ombudsman on 18-03-2011 maintained that the CEO of the insurance company and Mr. Khalid Mahmood Sheikh, Regional Manager (Respondents 1 and 2 in the Complaint with the Ombudsman) had received no money, no premium, nor their company issued any Policy to

Min:

her, nor receipts, nor cheques. And that the copies of the cheques produced by the complainant to the ombudsman allegedly issued by the Company official were not the official ones nor did the company have any account with the bank. And that Mr. S Kazafi was terminated on 29-04-10 reportedly because of his poor business. Mr. K Sheikh admitted that the complainant had met her before and he suggested to her that her complaint was about fraud made to her and the company would take disciplinary action against the officials involved and that's all.

The investigating official, Mr. Aftab sent out for fact finding mission by the Ombudsman office, went to Bahawalpur and held investigation on 10-11-10 to 12-11-2010. Mr. K M Sheik had given him assurance that there was no company branch office. But the investigating official traced the office of the company there at Bahawalpur and met the in charge Mr. R M Farooqi Regional Officer of the insurance company. He stated that he had been working with the company since 2008 and respondents 4 to 7 as given in the Complaint were employees of the insurance company. He said they were involved in cheating and mal-practices and he brought their mal-practices into the notice of Mr. K M Sheikh and Miss Bushra, the senior officials of the company but no action was taken on the ground reptred. But in 2010, all the four officials reportedly involved in the fraud were terminated by the company. He said there was no record about the complainant in the office but all the record present there at Lahore.

The investigating official of the Insurance Ombudsman office also met the Respondent Mst. Tehmina Bashir (complainant before the Insurance Ombudsman) who told him that out of Rs.3,90,000/-, she got receipts for only for Rs. 2,70,000/- and one receipt for Rs.25,000/- and that she had never been given any policy but only one protection plan.

The ombudsman observed later in his order that Mr. K M Sheikh obstructed the proceeding u/s 132 (2) of the Ordinance by concealing the address of the company offices. The agents and employees of the insurance company (Respondents 4 to 7 in the complaint) committed fraud in connivance with Mr. K M Sheikh on the complainant by depriving her of Rs. 2,70,000/- . The Company is liable to pay the amount u/s 76 (4) of the Ordinance. The ombudsman ordered on 03-01-2012, to the respondent company to pay the amount cited within 30 days of the receiving the order.

3. Appeal u/s 130(2):

Thereafter the Appellant has submitted in an appeal with this office on 01-02-2012 that the impugned order is illegal, unlawful, result of misinterpretation of facts and liable to set aside. That Mr. K M Sheikh fully cooperated with the ombudsman office during the proceedings by providing all the information and documents whatever the Ombudsman asked for. That the Ombudsman while passing the impugned order totally relied upon the report of his investigation officer which was incorrect,



imaginary and outcome of collusion between the investigating officer and Mst. Tehmina Bashir and that the investigation officer failed to follow the due procedure. That they had denied the allegations fully was a fact which was ignored by the ombudsman. The appellant also denied they had issued any insurance policy and this fact needed evidence but the Ombudsman took no notice of it and committed material irregularity by drawing the wrong conclusion. The Appellant therefore prayed before this office that the impugned order be set aside.

4. Hearings:

During the first hearing before the Director Insurance of the Commission on 30-11-2012 at Lahore, Mr. K M Sheikh, RO of the Appellant insurance company besides reiterating the points cited above in the Appeal, said that they did not recognize the receipts produced by the Respondent, that the Company maintained no account with the Soneri Bank, that the cheques were issued privately, that the company agents and Mst. Tehmina appeared to be hand in hand in a plot to loot the company. He further alleged that the officials of the company nominated by the lady were already on friendly terms with her son. The Company dismissed Kazafi Ali, the Branch Manager and other officials of the company there at Bahawalpur in 2010, responsible for this mishap. He admitted that the aggrieved lady had visited her before and asked for help in getting the money back to her.

The Respondent, a semi-literate widow repeated the facts of the case that how she was robbed of Rs.270,000/- by Company's agent Mr. Abdul Rehman for issuing four different policies but only a protection policy # 11929 was issued and provisional receipts for the rest of the amount. Later Mr. Kazafi Ali got another amount of Rs. 120,000/- from her but no such policy was given to her against the amount. On her insistence to refund the amount, he issued the two cheques, Viz: A/c No. PLS Soneri Bank, Saving- 0102-1362342, Cheque # 8815758, dated 22/03/10 for the amount Rs. 40,000/- and A/C No. 0102-1362342, Cheque# 8815119 dated 19-01-2010 for Rs. 35,000/- as said above; both were dishonored by the bank.

Mr. K M Sheikh however could not deny the fact that the officials and the agents who cheated the widow were the regular employees and agents of the Appellant Company at the time they perpetrated the fraud. And when confronted with the copies of the receipts issued by the company officials to the widow and produced by her at the time of hearing, he could not deny that the Insurance Company's official letter heads, seals and stamps were used to hoodwink the Respondent. Then he could not tell the Commission what disciplinary action the company took against the responsible officials, if not helping the widow in refunding the money they cheated when the aggrieved widow visited him and made a complaint to her against the misdeeds of his company. On what ground the subsequent dismissals were made? Why no FIR was lodged by the



Appellant against the fraudulent officials with the police? At the end of the hearing Mr. K M Sheikh however promised that if he were given some time, he would persuade the senior company officials to refund the money she had paid or help to some extent to allay her loss. At this offer the hearing was adjourned to next date to enable the Appellant to fulfill the promise.

It was later reported to this office by the Respondent that the appellant company took no interest in pursuance of the pledge made in the hearing before the Commission. No monetary compensation was offered to the Respondent.

Hence at the next hearing dated 11/2/2013 for which the notices and phone calls were already made to the parties, Mr. K M Sheikh did not appear but he chose to be represented by two junior level officials. They simply conveyed the message of Mr. K M Sheikh that the submissions and arguments made earlier in the first hearing by him still stood valid and be considered for any decision/order the Commission deemed fit. Whereas the Respondent was represented by her nephew doctor, an officer in the Government of Punjab who again requested for the refund of the money plus the damages under law.

5. Conclusion:

Coming to the conclusion it comes to forth that the key issues pinning the responsibility like: the accused mainly M/s Kazafi and Abdul Rehman being regular officials of the appellant at that time, the use of the Appellant Company stationery and stamps, inaction of the Appellant Company when fraudulent activity was reported to Mr. K M Sheikh in person by the Respondent, reportedly non-provision of the necessary record to the office of the Insurance Ombudsman when asked for rather misleading that office as reported by the Hon'able Ombudsman in the Order dated 10-01-2012. He rather suggested to the aggrieved widow therein the registering of the *"...case under section 489-F P.P.C at the concerned Police station and may cite any one as accused whose dubious conduct establishes connivance and collusion in the matter."*

The facts recounted above and the discussion made leads one to conclude that the Appellant's company failed to exercise adequate control over its field officials and agents which in the first instance resulted in cheating the widow by the company's officials. This flaw of poor internal control in the management of the company also caused in the past some troublesome situations for a number of people in other cases too.

This phenomenon of weak control over the field staff can now be witnessed in the fact that the appellant company officials as stated above defrauded the Respondent at least to the amount of Rs.270,000/- and the section 76 (4) of the Insurance Ordinance 2000 holds the appellant company directly and substantially responsible for any act:

," Where a policy holder has relied upon any representations by... agent of an insurer ...misleading or deceiving the policy holder in entering into policy, the policy holder shall be entitled to obtain compensation from the insurer for any loss suffered."

6. Order:

With the observations made above, the undersigned sees no reason to differ with the impugned Order and thus the order passed by the Insurance Ombudsman is upheld in terms of section 130(2) of the Insurance Ordinance 2000 and the Appellant Company is hereby directed to pay Rs.270,000/- (Two Lacs and Seventy Thousands) to the Respondent plus the compensation as damages as given under section 118 of the Insurance Ordinance 2000, within 30 days of the receiving of this Order for the mental agony she has been suffering since the day she was robbed of her money.



Tariq Hussain
Director (insurance)