

(2015) 12 DEL CK 0225
In the Delhi High Court
Case No : Arb. P. 459/2015

Worldfa Exports Pvt. Ltd.

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)
Consumer Protection Act, 1986 — Section 2(1)(g)
Contract Act, 1872 — Section 15, 16, 19, 19A

Citation : (2016) 1 ARBLR 110 : (2016) 1 CPJ 98 : (2016) 1 CPJ 8 : (2015) 225 DLT 722 : (2016) 154 DRJ 306

Hon'ble Judges : J.R. Midha, J.

Bench : Single Bench

Advocate : Sachin Datta, Sr. Advocate, Dinesh Sharma and Ritika Jhurani, Advocates, for the Appellant; A.K. De and Rajesh Dwivedi, Advocates, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J.—The petitioner is seeking appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. Factual Matrix

2.1. The petitioner insured its factory at 449-450, HSIIDC, EPIP, Kundli, Sonapat, Haryana - 131001 with the respondent under Standard Fire and Special Perils Policy No. 222700/11/11/11/00000916 for the period 28th February, 2012 to 27th February, 2013.

2.2. On 25th October, 2012, a fire broke out in the insured premises whereupon the petitioner lodged a claim with the respondent. The respondent appointed M/s. Cunningham Lindsey International Pvt. Ltd. as surveyor to assess the petitioner's loss on 27th October, 2012. In February, 2013, the respondent appointed second surveyor, M/s. Jain Ambavat & Associates.

2.3. On 17th November, 2014, the surveyor assessed the petitioner's loss at Rs. 6,04,36,887/- and sought the concurrence of the petitioner whereupon the petitioner gave its concurrence vide letter dated 17th November, 2014 and executed the undated discharge voucher. The petitioner claims that the respondent forced it to give the concurrence. According to the petitioner, the respondent refused to release the assessed amount unless the concurrence was given and the petitioner, who was suffering because of the inordinate delay of two years, gave the concurrence under duress and coercion. The petitioner, in the letter dated 17th November, 2014, clearly protested that the concurrence was without prejudice to its rights under the policy. The petitioner also reserved the right to invoke the arbitration in terms of the policy. The relevant portion of the letter dated 17th November, 2014 is reproduced hereunder:

"2. We hereby give concurrence to the net assessment of Rs. 6,04,36,887 (Rupees Six Crore Four Lacs Thirty Six Thousand Eight Hundred & Eighty Seven Only) including re-weighment expenses amounting Rs. 8,01,988, under the above policy of United India Insurance Co. Limited.

3. Please note that the concurrence is without prejudice to our/insurers rights and subject to various terms and conditions of the policy."

(Emphasis supplied)

2.4. On 7th July, 2015, i.e. eight months after the aforesaid concurrence, the respondent released a sum of Rs. 5,62,32,959/- to the petitioner.

2.5. On 10th July, 2015, the petitioner protested that the receipt of Rs. 5,62,32,959/- against their claim of Rs. 12,69,51,063/- was under duress and protest. The petitioner invoked the arbitration clause of the policy with respect to the balance claim amount. The relevant portion of the letter dated 10th July, 2015 is reproduced hereunder:

"In the process of settlement of claim, an inordinate delay has been caused and our financial interest has been harmed. In view of difficulties, delay and lack of transparency in sharing the documents and information by the insurance company and persons appointed by insurance company, we have been denied an actual amount of indemnity under the contract of insurance under this policy, since we claimed an amount of Rs. 126951063.00 and substantiated the same whereas we have been given Rs. 56232959.00 only.

We hereby invoke the provisions of arbitration clause of the policy and seek appointment of an arbitrator which should be fair and experienced to grant us the justice.

We await your advice on the above subject. It is needless to say that we have accepted the amount of claim paid to us on 07.07.2015 under stress, duress and protest, which should not be treated as full and final settlement acceptable to us."

2.6. Vide reply dated 03rd August, 2015, the respondent raised an objection to

the appointment of an arbitrator on the ground that the payment of Rs. 5,62,32,959/- has been made in full and final settlement to the petitioner and, therefore, no arbitral disputes survive in the matter.

3. Submissions of the petitioner

3.1. The insurance sector in India is regulated by Insurance Regulatory and Development Authority (IRDA) an autonomous body constituted under IRDA Act, 1999. IRDA has, from time to time, issued various rules and regulations prescribing guidelines to be followed by insurance companies in settling the claims. The relevant guidelines contained in IRDA (Protection of Policyholders Interests) Regulations, 2002 are as under:

"9. Claim procedure in respect of a general insurance policy

(1) An insured or the claimant shall give notice to the insurer of any loss arising under contract of insurance at the earliest or within such extended time as may be allowed by the insurer. On receipt of such a communication, a general insurer shall respond immediately and give clear indication to the insured on the procedures that he should follow. In cases where a surveyor has to be appointed for assessing a loss/claim, it shall be so done within 72 hours of the receipt of intimation from the insured.

(2) Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.

(3) If an insurer, on the receipt of a survey report, finds that it is incomplete in any respect, he shall require the surveyor under intimation to the insured, to furnish an additional report on certain specific issues as may be required by the insurer. Such a request may be made by the insurer within 15 days of the receipt of the original survey report.

Provided that the facility of calling for an additional report by the insurer shall not be resorted to more than once in the case of a claim.

(4) The surveyor on receipt of this communication shall furnish an additional report within three weeks of the date of receipt of communication from the insurer.

(5) On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.

(6) Upon acceptance of an offer of settlement as stated in sub-regulation (5) by the insured, the payment of the amount due shall be made within 7 days from the date of acceptance of the offer by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it."

3.2. The aforesaid regulations do not provide any penal consequences for their breach which has led to inordinate delay in settling claims of the insured, as is in the instant petition, where the insurance company has taken more than three years to settle the claim. In most cases, the insured is not even informed about how the claim is being settled, or on what stage of settlement the case is pending, and the insured is made a "take it or leave it" offer many years after the mishap. The insured gets to know about the settlement amount at the stage of signing the discharge voucher and at that point of time, the insured after having languished for a considerable amount of time is not left with any option but to sign on the dotted line and accept whatever amount the insurance company is offering. It would tantamount to compounding the miseries of the insured if in such a situation, the insured is prevented from even seeking adjudication of these disputes on the basis that a "discharge voucher" has been issued.

3.3. A discharge voucher executed under financial stress, duress and coercion is void ab initio. However, much of the Court's time and resources are wasted in setting aside the discharge voucher and hence, defeating the entire purpose of the arbitration clause being inserted in the insurance policy.

3.4. There was no effective regulatory regime to keep a check on insurance companies and to ensure that the rights of the insured are not jeopardized during the process of claim assessment. Resultantly, the insurance companies have developed an unfair trade practice of insisting on discharge voucher/no claim certificate as a pre-condition of payment of the assessed amount to the insured. The necessary safeguards, which are prevalent in other foreign jurisdictions with regard to the enforcement of strict timelines, payment of amount within a prescribed time period, payment of interim amount, are in fact, practically non-existent. A practice has developed whereunder the insured is asked to sign on a pre-prepared discharge voucher as a pre-condition for receiving payment. This practice has been commented upon in a number of judicial pronouncements that furnishing of such discharge vouchers does not come in the way of right to seek adjudication of unpaid/wrongfully denied claims

through arbitration or by taking recourse to the jurisdiction of the consumer courts. Reliance is placed on National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd., , Chairman and M.D., N.T.P.C. Ltd. Vs. Reshmi Constructions, Builders and Contractors, , The Oriental Insurance Co Ltd Vs. Mercury Rubber Mills, , Pacific Garments Pvt. Ltd. Vs. Oriental Insurance Co. Ltd., , National Insurance Company Ltd. v. Rajan Sood Oriental Insurance Co. Ltd. V. Government Tool Room and Training Centre , (2008) CPJ 267 (NC) , R.L. Kalathia and Co. Vs. State of Gujarat, , Bharat Coking Coal Ltd. Vs. Annapurna Construction, and United India Insurance Co. Ltd. v. K. Gangadharan, , 2003 2 AWC 472 NC . In Oriental Insurance Co. Ltd. v. Government Tool Room and Training Centre (supra), the National Consumer Disputes Redressal Commission deprecated this practice of obtaining discharge vouchers from the insured and holding it to be a full and final settlement.

3.5. In developed countries, there are strict provisions and safeguards to protect the right of the insured and to ensure transparency in the manner of processing claims due under insurance policy. There are strict timelines which are binding on the insurance companies; the process for assessment of claims is subject to strict regulatory provisions which are designed to protect the insured against harassment, unreasonableness and arbitrariness. No insurance company is allowed to avoid payment of the legitimate amount due to the insured and take shelter behind a so-called discharge voucher. The reliance is placed on following legal position in different countries:

"United Kingdom

3.5.1. Unfair Terms in Consumer Contracts Regulations 1999 prohibit the unfair practices to the detriment of the consumer. A contract term which has not been individually negotiated is regarded as unfair, if contrary to the requirements of good faith, which causes significant imbalance on the parties' rights and obligations under the contract to the detriment of the consumer. In D & C Builders Ltd. v. Rees [1966] 2 QB 617, the Court held a contract entered into as a result of economic duress (or illegitimate threat to the economic interests of a party) as voidable.

United States

3.5.2. In United States, there are strict provisions which lay down standard of prompt, fair and equitable settlement namely Fair Claims Settlement Practices Regulations (California Code of Regulations) and New York Code - Section 2601: Unfair claim settlement practices; penalties.

3.5.3. In US, if an insurance company deprives an insured of its legitimate claim amount in the guise of a release of discharge voucher, it is exposed to bad faith action and in which extremely high punitive damages can be slapped on the insurance company.

3.5.4. In Cynthia Phelps v. State Farm Mutual Automobile Insurance Company

[United States Court of Appeals decision dated June 13, 2012], the Court held that the insurance company had violated Kentucky's Unfair claims Settlement Practices Act Section 304.12-230 Sub-sections (6) & (7) by not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear and compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds. The Court also held that an extensive delay of three years for settlement of claim amounted to bad faith.

3.5.5. As in UK, there is a very strict regulatory framework of assessment of claim to ensure that the interest of the insured is not jeopardized or compromised as a result of unequal bargaining position of the insurance company. The National Association of Insurance Commissioners (NAIC's) model legislation covers unfair methods of competition and general deceptive practices in the insurance business. The core provisions of such statutes are general and justifiably broad in scope. For example, there is a near uniform provision that requires insurers to communicate "reasonably promptly" with respect to claims, and the requirement to adopt and implement "reasonable standards" for claims investigation. This requirement is often supplemented by an obligation to affirm or deny a claim within a "reasonable time." These statutes typically contain a prohibition against refusing to pay claims without a "reasonable investigation," and the essential duty to negotiate "in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. Many statutes also contain provisions prohibiting insurers from "compelling insureds to institute litigation...by offering substantially less than the amounts ultimately recovered" when an insured makes a claim. The regulations adopted by different states are based on these model regulations. For example, Oklahoma imposes a fine, enforced by the state Insurance Commissioner, between \$100 and \$5000 for each violation of its statute., while Nebraska imposes a penalty upto \$30,000 for each and every violation. A number of States also allow punitive damages for private claimants. Massachusetts's bad-faith statute expressly permits punitive damages up to twenty five percent of the underlying bad faith claim. States that recently amended their bad faith statutes have also significantly heightened available extra-contractual damages. For example, since 2007, Maryland had increased penalties up to \$750,000, and Washington has enacted a treble damages multiplier for first party insurance bad faith claims.

Singapore

3.5.6. The Singapore contains provision for safeguarding the rights of the insured. Clause 7.2 of the Code of Practice imposes strict timelines and procedural requirements to ensure that claim is fairly and promptly assessed and the legitimate amount paid to the insured.

3.5.7. A consumer who is not satisfied with his insurer can file a dispute with the Financial Industry Disputes Resolution Centre (FIDReC). FIDReC is an

independent organisation that offers services for the resolution of disputes between consumers and insurers in an amicable and inexpensive manner. A consumer who is not satisfied with the outcome of the hearing can commence legal action against the insurer.

3.5.8. In *Projection Pte. Ltd. v. Tai Ping Insurance Co. Ltd.* [2001] SGCA 28, the Singapore Court had taken note of the fact that a discharge voucher is no more than an acknowledgment of the receipt of the sum in full settlement of the claim, and, as is the common practice of insurance companies, is prepared in advance of the payment that had yet to be received. It is a procedure normally adopted by insurance companies as a follow-up to a settlement which they have agreed.

Australia

3.5.9. Australia has enacted a General Code of Practice for Insurance. The Code is supported by a transparent and independent governance framework to ensure Code compliance is effectively monitored and enforced. The Code imposes strict timelines on the insurance companies with respect to settlement of claim. The insurance company is required to make a decision on the claim within four months from lodging of the claim. In the event, the claim is denied, the insurance company has to provide reasons in writing for the same and provide a copy of the survey report to the insured. The insured may then choose to challenge the decision of the insurance company and take recourse to an elaborate and effective dispute resolution mechanism.

3.5.10. Under the provisions of the Code, the insurance company is mandated to resolve all complaints and disputes quickly and fairly and keep the insured informed of the progress of the response to their complaint. It appears that usually the internal dispute resolution team can sort out many problems the insured may have, but if the dispute remains unresolved or the insured is unhappy with the decision, the insured may make a reference to the free and independent external dispute resolution scheme administered by the Financial Ombudsman Service (FOS).

3.5.11. The Financial Ombudsman Service (FOS) independently and impartially examines general insurance disputes between general insurance companies and customers. FOS is independent and provides a free service for consumers. It can mediate between the insurer and the consumer, and when mediation is unsuccessful, an ombudsman can make a determination. FOS decisions are legally binding on the insurance company but the insured are not bound by its decisions.

3.5.12. A notable feature of the Australian Code is that it makes provisions for insureds who are suffering from financial hardships caused due to the event that triggered insurance. In such cases, the Code mandates that the insurance company should assess the claim quicker as well as provide interim financial assistance to the insured."

4. Submissions of the respondent

4.1. The respondent is opposing the appointment of arbitrator on the ground that no arbitral claim survives under the arbitration clause of the policy on receipt of the assessed amount in full and final settlement after execution of a discharge voucher.

5. Whether the insurance company can withhold the payment of the assessed amount unless a complete discharge is given.

5.1. It is well known that the insurance companies do not release the assessed claim amount to the insured unless the insured executes a complete discharge voucher. The question has arisen with respect to the legality of this practice.

5.2. There is no clause in the insurance policy that the amount assessed by the insurance company shall not be paid unless complete discharge is given.

5.3. No law permits the insurance company to withhold the payment of the admitted amount unless the receipt of full and final settlement is issued by the insured.

5.4. The amount assessed by the insurance company is the admitted liability of the insurance company to the insured and the insurance company is obliged to make the payment of the same to the insured whether the insured accepts the assessment or not.

5.5. In *Oriental Insurance Co. Ltd. v. Government Tool Room and Training Centre*, (2008) CPJ 267 (NC), the National Consumer Disputes Redressal Commission held the practice of insurance companies in not paying the claim amount without a discharge voucher of full and final settlement as an unfair trade practice. The National Commission directed the insurance companies to abandon this practice. The National Commission further directed Insurance Regulatory Development Authority (IRDA) to take appropriate action so that the option/choice of the insured to approach the legal forum for just settlement of his claims is not curtailed/frustrated. The relevant portion of the said judgment is reproduced hereunder:

"1. This case illustrates how the Insurance Company can even harass the Government Department which is a part and parcel of Union of India, i.e. Industries and Commerce, the Government Tool Room and Training Centre.

2. The sole dispute in this first appeal is with regard to the discharge voucher signed by the Vice Chairman of the respondent with regard to the amount received from the Insurance Company as full and final settlement.

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5. It is to be stated that if the Government department is required to accept the amount for one or other reason and sign the document as full and final settlement, think of the fate of a consumer whose entire factory is gutted by fire;

when the banks are insisting for repayment of the loan amount and the creditors are harassing the owner of the factory by various means. In that set of circumstances, if a person requires the money and signs the voucher as receipt of full and final of claim, it amounts coercive practice by the Insurance Company. Various such illustrations can be given but this is only to highlight that wrong practice followed by the Insurance Companies in not paying the single pie without having a discharge voucher stating that the amount is received by the claimant as full and final settlement of his claim. In our view, it is a coercive practice. And, it is suggested that the Insurance Companies may abandon this practice and do not try to snatch away the right of the insured to approach the legal forum for getting just and reasonable reimbursement.

(1) In support of its claim the Managing Director of the Government Tool Room and Training Centre, Bangalore, has filed an affidavit to the effect that Insurance Company informed that it was a standard format prescribed by them and unless and until voucher was signed, they would not release the fund. They also informed that it would be always open for the complainant to agitate the matter if they were not satisfied with the amount but so far as Insurance Company is concerned unless the voucher was signed the issue of release of funds could not be made.

It appears that this wrong practice is required to be given up by the Insurance Company or in any set of circumstances we would suggest to IRDA to keep control upon such unfair trade practice.

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7. The Registry is directed to send copy of this order to Shri C.S. Rao, Chairman of Insurance Regulatory Development Authority, Hyderabad for taking appropriate action so that option/choice of the insured to approach the legal forum for just settlement of his claim is not curtailed or frustrated."

(Emphasis supplied)

5.6. In National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd., , the Supreme Court held that the procedure of the insurance company requiring the claimant to issue an undated receipt (acknowledging receipt of a sum smaller than his claim) in full and final settlement as a condition for releasing and admitting lesser amount is unfair, irregular and illegal. Para 49 of the said judgment is reproduced hereunder:--

"49. Obtaining of undated receipts-in-advance in regard to regular/routine payments by government departments and corporate sector is an accepted practice which has come to stay due to administrative exigencies and accounting necessities. The reason for insisting upon undated voucher/receipt is that as on the date of execution of such voucher/receipt, payment is not made. The payment is made only on a future date long after obtaining the receipt. If the date of execution of the receipt is mentioned in the receipt and the payment is

released long thereafter, the receipt acknowledging the amount as having been received on a much earlier date will be absurd and meaningless. Therefore, undated receipts are taken so that it can be used in respect of subsequent payments by incorporating the appropriate date. But many a time, matters are dealt with so casually that the date is not filled even when payment is made. Be that as it may. But what is of some concern is the routine insistence by some government departments, statutory corporations and government companies for issue of undated "no-dues certificates" or "full and final settlements vouchers" acknowledging receipt of a sum which is smaller than the claim in full and final settlement of all claims, as a condition precedent for releasing even the admitted dues. Such a procedure requiring the claimant to issue an undated receipt (acknowledging receipt of a sum smaller than his claim) in full and final settlement, as a condition for releasing an admitted lesser amount, is unfair, irregular and illegal and requires to be deprecated."

(Emphasis Supplied)

5.7. In para 52(iv) of the judgment, the Supreme Court held such a discharge voucher to be not voluntary but under duress, compulsion and coercion. Relevant portion of para 52 is reproduced hereunder:--

"52. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject are:

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(iv) An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The "accord" is not by free consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration."

(Emphasis supplied)

5.8. In *The Oriental Insurance Co Ltd Vs. Mercury Rubber Mills*, , the Division Bench of this Court held that the denial of payment to the insured at the relevant time defeats the very purpose of taking out the policy. The insurer has a superior bargaining position as the insured having suffered a loss is faced with "take it or leave it" position. The Division Bench held that there was no question of final accord of satisfaction to make the insured ineligible for making a claim against the insurer.

5.9. In *Pacific Garments Pvt. Ltd. Vs. Oriental Insurance Co. Ltd.*, , this Court

rejected the similar plea of the insurance company holding that the discharge voucher was not signed by the insured of its own free will and accord but on account of indebtedness to the banks.

5.10. In *National Insurance Company Ltd. v. Rajan Sood*, the National Consumer Disputes Redressal Commission rejected the similar plea of the insurance company holding that the insured who had lost household goods in fire accident and had been waiting for settlement of his claim for more than a year, accepted the cheque offered by the insurance company in full and final settlement, under coercion to salvage a part of the loss suffered by him. Thus, the settlement relied upon by the insurance company is not a settlement based on free consent and the insurance company cannot take advantage of the same.

6. IRDA's Circular dated 24th September, 2015

6.1. On 17th August, 2015, this Court issued notice to IRDA with respect to unfair trade practice being indulged into by the insurance companies despite the numerous judicial pronouncements mentioned above. Relevant portion of the order dated 17th August, 2015 is reproduced hereunder:

"2. Learned senior counsel for the petitioner submits that the insurance companies are indulging in unfair trade practice of insisting on a receipt of full and final settlement even to release the admitted amount. Learned senior counsel refers to the order dated 17th May, 2007 passed by the National Consumer Disputes Redressal Commission in *Oriental Insurance Co. Ltd. & Ors. v. The Government Tool Room & Training Centre*, , (2007) NCDRC 41 directing the IRDA to take appropriate action against the insurance companies with respect to the aforesaid unfair trade practice. Learned senior counsel submits that there is a gross violation of the aforesaid direction by IRDA as well as the insurance companies.

3. On the oral prayer of the petitioner, IRDA is impleaded as respondent No. 2. Mr. D.K. Nag, learned counsel for respondent No. 2 accepts notice.

4. The competent officer of United India Insurance Company Ltd. shall also remain present in Court along with the original record and relevant policy of the insurance company with respect to the release of the admitted amount. The senior competent officer of IRDA shall remain present in Court on the next date of hearing along with complete instructions on the above aspect."

6.2. On 24th September, 2015, IRDA issued a circular to all the insurance companies directing them not to withhold the claim amount where the liability is established. IRDA further directed the insurance companies not to use the discharge vouchers as a means of estoppel against the insured to seek higher compensation before any judicial forum. Circular dated 24th September, 2015 is reproduced hereunder:

"INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

Ref. No: IRDA/NL/CIR/Misc/173/09/2015

Date: 24th September, 2015

To CEOs of all General Insurance Co.,

Circular

Reg: Discharge Voucher in settlement of claim

The Insurance Companies are using "discharge voucher" or "settlement intimation voucher" or in some other name, so that the claim is closed and does not remain outstanding in their books. However, of late, the Authority has been receiving complaints from aggrieved policyholders that the said instrument of discharge voucher is being used by the insurers in the judicial for a with the plea that the full and final discharge given by the policyholders extinguish their rights to contest the claim before the Court.

While the Authority notes that the insurers need to keep their books of accounts in order, it is also necessary to note that insurers shall not use the instrument of discharge voucher as a means of estoppels against the aggrieved policy holders when such policy holder approaches judicial fora.

Accordingly insurers are hereby advised as under:

Where the liability and quantum of claim under a policy is established, the insurers shall not withhold claim amounts. However, it should be clearly understood that execution of such vouchers does not foreclose the rights of policy holder to seek higher compensation before any judicial fora or any other fora established by law.

All insurers are directed to comply with the above instructions.

(Suresh Mathur) Senior Joint Director"

(Emphasis supplied)"

7. The position as it emerges

7.1. The insurance companies cannot deny the payment of the admitted claim amount to the insured unless a complete discharge is given by the insured. The insistence of the insurance company to sign a discharge voucher of full and final settlement before release of admitted claim amounts to coercion and undue influence as defined in Sections 15 and 16 of the Contract Act and such contracts are voidable under Section 19 and 19A of the Contract Act.

7.2. The withholding of the admitted amount by the insurance companies unless complete discharge is given, amounts to deficiency in service within the meaning of Section 2(1)(g) of the Consumer Protection Act, 1986 as the insurance companies are not expected to withhold the admitted claim amount till the insured gives the receipt of full and final settlement.

7.3. Despite well settled position of law, insurance companies are indulging in unfair trade practices and therefore, the Court issued notice to the IRDA on 17th August, 2015.

7.4. The IRDA has promptly set the controversy at rest by issuing the circular dated 24th September, 2015. All insurance companies are bound to comply with the circular dated 24th September, 2015 issued by IRDA and shall not insist on discharge voucher for releasing the admitted amount in view of the circular dated 24th September, 2015 issued by IRDA. However, in cases where such discharge voucher has been already been taken, the insurance companies shall not raise any objection to the maintainability of the claim on the basis of the discharge voucher.

7.5. This Court hopes that the pending and future claims will no longer consume the Court time for deciding this issue and to this extent, the Court's time will be saved and the claims on this account shall not be delayed or denied.

7.6. IRDA shall ensure that the insurance companies do not indulge in the unfair trade practice any more. In *Yashpal Luthra and Another Vs. United India Insur. Co. Ltd. and Another*, , this Court noticed that the insurance companies were openly flouting the directions issued by Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA) with respect to their liability towards the occupants in a car and pillion rider on a two wheeler under a comprehensive/package policy. This Court, therefore, issued notice to IRDA whereupon IRDA issued a fresh circular dated 16th November, 2009. IRDA thereafter convened a meeting on 26th November, 2009 of all the insurance companies who admitted their liability in respect of the occupants in a private car and pillion rider of two wheelers under a comprehensive/package policy. All the insurance companies agreed to comply with the circular dated 16th November, 2009 issued by IRDA and to withdraw the contrary plea taken before various claims tribunals. The insurance companies further agreed to withdraw all appeals filed by them before various High Courts in which a contrary plea had been taken. *Yashpal Luthra v. United India Insurance Limited and Anr.* (Supra) was approved by the Supreme Court in *National Insurance Company Ltd. Vs. Balakrishnan and Another*, and *Oriental Insurance Company Ltd. Vs. Surendra Nath Loomba and Others*, . This Court is of the view that it would be appropriate for the IRDA to convene a meeting of all the insurance companies to ensure the compliance of their circular dated 24th September, 2015.

7.7. IRDA is directed to convene a meeting of all the insurance companies to record their undertaking to abide by the circular dated 24th September, 2015. The meeting shall be convened by IRDA within 10 days at a convenient venue at New Delhi. Mr. Dayan Krishnan, Senior Advocate, is appointed as a Court Observer for the said meeting. Mr. D.K. Nag, learned counsel for IRDA shall also attend the said meeting. The Court Observer shall place the report of the meeting before this Court on 22nd December, 2015.

8. Conclusion

8.1. There is a valid arbitration agreement between the parties contained in clause 13 of the insurance policy. The disputes have arisen between the parties as the respondent has paid Rs. 5,62,32,959/- to the petitioner against their claim of Rs. 12,69,51,063/-. The petitioner has validly invoked the arbitration vide letter dated 10th July, 2015.

8.2. The respondent's objection to the appointment of the arbitrator is not sustainable in view of the catena of judgements discussed in para 5 above and IRDA's circular dated 24th September, 2014. That apart, there is no merit in the respondent's objection because the petitioner, in its letter dated 17th November, 2014, agreed to accept the part payment without prejudice to its rights and subject to the terms and conditions of the policy, meaning thereby that the petitioner reserved its right to claim the balance amount in terms of the policy.

8.3. The petition is allowed and Justice Mukul Mudgal (Retd.) is appointed as the sole arbitrator to adjudicate the disputes between the petitioner and respondent No. 1 including their claims as well as counter claims.

8.4. The learned arbitrator shall ensure the compliance of the Arbitration and Conciliation (Amendment) Ordinance, 2015 before commencement of the arbitration.

8.5. IRDA is not a necessary party with respect to the disputes between the petitioner and respondent No. 1 and, therefore, is not required to appear before the learned Arbitrator.

8.6. This matter will remain on Board for the limited purpose of receiving the compliance report of the IRDA and passing, if need be, any orders thereon.

8.7. List for reporting compliance as a part heard matter on 22nd December, 2015.

8.8. This Court appreciates the assistance rendered by Mr. D.K. Nag, Advocate for IRDA. This Court also appreciates the prompt action taken by the officers of IRDA namely T.S. Vijayan, Chairman, Ms. Pournina Gupte, Member Non-Life, H. Ananthakrishnan, J.D. Legal, Y.S. Prasad, OSD (Legal), Suresh Mathur, J.D. (Non-Life), Ms. Yagnapriya, J.D. and Mukesh Sharma, J.D. (In-charge) Delhi R.O. in issuing the circular dated 24th September, 2015.

8.9. Copy of this judgment be given dasti to Id. counsels for the parties, the learned Court Observer as well as to Mr. D.K. Nag, learned counsel for IRDA under signature of Court Master. Copy of this judgment be sent to the learned Arbitrator.