



Ref. No:IRDAI/NL/ORD/ONS/ 198/12/2018

Date: 05.12.2018

ORDER

**In the matter of M/s. HDFC ERGO General Insurance Company Limited -
Settlement of Motor Claims**

Based on the reply to Notice to Show Cause dated 6th April, 2017 issued to M/s. HDFC ERGO General Insurance Company Ltd. and their submissions made during personal hearing chaired by Sri. P.J. Joseph, Member (Non-Life), Insurance Regulatory and Development Authority of India (hereinafter referred to as IRDAI/ the Authority) on 12th June, 2017 at the office of the Authority, 3rd Floor, Parishrama Bhavanam, Basheerbagh, Hyderabad, the following are being stated:

(I) Background

On receipt of a few complaints relating to General Insurers settling lesser amounts than the Insured Declared Value (hereinafter referred to as IDV) in case of motor vehicle total loss / theft claims, the Authority had called for motor claims data from General Insurers.

Upon analysis of the data received from HDFC ERGO General Insurance Company Limited (hereinafter referred to as the Insurer / the Company), the Authority had conducted focused onsite inspection of the Insurer during 29th October, 2012 to 7th November, 2012 on settlement of Motor (Own Damage) Total Loss/Theft Claims cases. The inspection covered the settlement of motor claims by the Insurer during the financial years 2009-10 and 2010-11.

The Authority communicated the findings of the Inspection to the Insurer vide letter dated 28th June, 2016. Upon examining the submissions made by the Insurer vide their letter dated 26th July, 2016, the Authority issued a 'Notice to Show Cause' dated 6th April, 2017 which was responded to by the Insurer vide their letter dated 26th April, 2017. As requested therein, a personal hearing was given to the Insurer on 12th June, 2017. Sri Ritesh Kumar, Managing Director & CEO, Sri Mukesh Kumar, Executive Director, Sri Samir H. Shah, Member of Executive Management and CFO and Sri Anurag Rastogi, Chief Actuary and Head (Retail Underwriting and Claims) were present in the hearing on behalf of the Insurer. On behalf of the Authority, Sri P.J. Joseph, Member (Non-Life), Sri. K. Mahipal Reddy, Deputy General Manager (NL) and Sri. P. Narasimha Reddy, Officer on Special Duty, were present in the personal hearing.

(II) The Charges

Charge No.1:

The Company has violated the Provisions of General Regulation 8 of All India Motor Tariff, 2002 while settling motor claims, which states as follows:

“For the purpose of TL/CTL claim settlement, this IDV will not change during the currency of the policy period in question. ”

“The IDV shall be treated as the 'Market Value' throughout the policy period without any further depreciation for the purpose of Total Loss (TL) / Constructive Total Loss (CTL) claims.”

Charge No.2

The Insurer has violated File & Use Guidelines / Circulars issued by the Authority from time to time advising General Insurers that they shall continue to use the coverage, terms & conditions, wordings, warranties, clauses and endorsements of the erstwhile tariff of classes of insurance covers until further orders.

- a) Circular ref. no.021/IRDA/F&U/Sep-06 dated 28-09-2006
- b) Circular ref. no.048/IRDA/De-tariff/Dec-07 dated 18-12-2007
- c) Circular ref. no.066/IRDA/F&U/Mar-08 dated 26-03-2008
- d) Circular ref. no.19/IRDA/NL/F&U/Oct-08 dated 6th Nov, 2008

- e) Circular ref. no. IRDA/NL/CIR/F&U/073/11/2009, dated 16-11-2009
- f) Circular ref. no. IRDA/NL/CIR /F&U/003/01/2011 dated 06-01-2011

(III) Submissions by the Insurer

The gist of submissions made by the Insurer in (a) reply to the findings of Inspection, (b) reply to Notice to Show Cause and (c) Personal hearing are as under.

(a) (1). IDV is the maximum liability of the insurer which is to be taken into consideration for settlement of the loss with a condition that, the scale of depreciation stated in the GR 8 and GR 9 is followed. We have followed both these general rules but the claim procedure cannot be a mathematical equation as stated in the GR about the depreciation and the value etc. The quantum of the claim settlement is substantially driven by specific terms, in addition to the GR 8 and GR 9, stated in the policy contract and its schedule.

(2). It is more about application of the principle of indemnity along with the principle of utmost good faith requiring maintenance of vehicle as if it is not insured to ensure that vehicle owner in question having met with the accident gets only that much of reimbursement which is genuine and really required for repairs/ total loss etc., so that the owner is not put to any advantageous position. Insurer, being a trustee of lakhs and crores of policyholders' money has to do a delicate job to ensure that the money of those insured persons who have not met with the accident.

(b) (1). We have not violated IMT GR-8 when it is read in its letter and spirit in the context of:

- i. Regulations 9 & 10 of policyholders' protection of interest regulations, 2002.
- ii. Claims assessed and surveyed by IRDAI licensed surveyors in performance of their functions and duties and code of conduct as per regulation 13 & 16 of IRDAI (Insurance Surveyors) Regulations, 2015 and sub-section (2) and (4) of Section 64 UM of the Insurance Act, 1938 (as amended).

- iii. Claims procedure disclosed by us to the Authority at the time of product filing and clearance.
- iv. Fairly settling claims as per terms of the policy to ensure that a particular policyholder does not benefit out of loss and that he draws more than what is reasonable and necessarily incurred indemnity.

(2). Certain claims involved breach of policy terms and conditions or non-compliance with the provisions contained in the Motor Vehicle Act. Hence, these claims have been paid on non-standard basis for a value lower than the IDV. Many of these claims could have been repudiated but we have taken a compassionate view and paid the claims as non-standard. Hence, we fully believe that these claims do not constitute any breach of GR 8.

(3). No part of the IDV stated in the policy contract was altered or amended. It was only that the claims were fairly settled with the consent and satisfaction of the policyholders. We have not received any complaint of the policyholder and there has been no coercive approach adopted by us in demanding consent of the policyholders whose theft/total loss claims have been settled. Since there is no alteration of IDV, there is no question of recording reasons thereof.

(4). We have not changed the policy or IDV of the insured during its currency period but it has been fairly applied to ensure that interest of those policyholders (who have not suffered the loss) is not prejudiced.

(5). We have confirmed compliance of above IRDAI circulars. All these circulars relate to: coverage – terms and conditions – wordings – warranties – clauses and endorsements – of erstwhile motor tariff which is not to be abridged. They are also required to be adhered along with File & Use clearance of products. We have followed these circulars in letter and spirit and not disregarded any part thereof.

- (c) (1). Regarding the claims settled on sub-standard basis, some deduction was made from the claim amount but not to cause inconvenience to the claimants. The reduction is up to a maximum of 25% depending upon the nature of breach of policy conditions. The approval of claims is centralized – hence, no guidelines were issued internally. The reasons were recorded for such reductions.



(2). The Company will improve the record keeping to ensure that the reasons for deductions are recorded so as not to cause inconvenience to the policyholders.

(3) Going forward, the company will standardize the manual / documentation and record keeping. The IDV master will be maintained.

(IV) Examination of the issues

- (a) The provisions of the erstwhile tariff do not entitle the Insurer to arbitrarily deduct any amount from the IDV in respect of TL/CTL claims. Though the Insurer has stated that *"the claims were fairly settled with the consent and satisfaction of the policyholders"*, there is no evidence of the same in the records, in certain cases. Their submission that *"the Company will improve the record keeping to ensure that the reasons for deductions are recorded so as not to cause inconvenience to the policyholders"* seems to confirm the observation that there is no record of explanation, in writing, to policyholders. I do not agree that merely obtaining a consent letter from the claimants would indicate that the IDV was mutually negotiated and discussed, leaving aside the legality of such negotiation and discussion to reduce the IDV on grounds not on record.
- (b) It is not disputed that in case the policyholder has breached a material condition or is guilty of contributory negligence, he may not be entitled to the full claim, depending upon the gravity of each such breach or contributory negligence. Reduction *per se* may not be incorrect if it is for valid reasons duly communicated to the policyholder at the time of issuing the policy. If reduction is made for valid reasons as mentioned above, such reductions cannot be deemed to be reduction of IDV (which is the Sum Insured). Just because there is a Sum Insured, it does not mean that under all circumstances irrespective of policyholder's contributory negligence or breach of material conditions leading to the loss, the full Sum Insured must be paid. However, the principle of natural justice would warrant communication of the rationale and reasons for deductions made, to the claimant. In the cases cited in the inspection records, I proceed to examine whether the above principle has been complied with or not.
- (c) Sample cases are taken for examination (details as per claims records).



Claim No.	Reduced amount in % (to claim payable)	Observations from claim records
Sample 1	43.4%	Reasons for deduction are not recorded
Sample 2	5.1%	(i) Amount for which Insured lodged claim in the 'Deed of Subrogation cum Indemnity' (hereinafter referred to as DSI) is = IDV (ii) Amount for which Insured gave consent, is kept blank (iii) Reasons for deduction are not recorded
Sample 3	12.6%	(i) Amounts for which Insured lodged claim / gave consent are NOT mentioned in the DSI (ii) Reasons for deduction are not recorded
Sample 4	14.6%	(i) Amount (for which Insured lodged claim) in the DSI is = IDV (ii) Amount for which Insured gave consent is not mentioned. Instead, it is mentioned that the <i>Insurer has to settle the claim for an amount less than IDV</i> (iii) Reasons for deduction are not recorded
Sample 5	5.4%	Reasons for deduction are not recorded
Sample 6	20.0%	(i) Amount (for which Insured lodged claim) in the DSI is = IDV (ii) It is mentioned that the <i>Insurer has to settle the claim for an amount less than IDV</i> (iii) Reasons for deduction are not recorded
Sample 7	11.1%	Reasons for deduction are not recorded
Sample 8	19.8%	(i) Amount (for which Insured lodged claim) in the DSI is = IDV (ii) It is mentioned that the <i>Insurer has to settle the claim for an amount less than IDV</i> (iii) Reasons for deduction are not recorded
Sample 9	32.8%	(i) Amount (for which Insured lodged claim) in the DSI is = IDV (ii) Reasons for deduction are not recorded
Sample 10	27.5%	Reasons for deduction are not recorded
<ul style="list-style-type: none"> • <i>Policy deductibles are applied in all the above samples.</i> 		

As indicated in the table above, certain cases do not contain any reasons for deduction. The insurer has attributed the reduction in claim amount to the alleged breach of policy conditions or non-compliance with the provisions contained in the Motor Vehicle Act. Even assuming that there is merit in the claim settlement for a value lower than IDV, reasons for reduction should have been clearly shown to the policyholder as per Regulation 9(5), of IRDA (Protection of Policyholders' Interests Regulations), 2002.

(V) Conclusion

GR 8 of IMT 2002 (as described in Charge 1) deals with regard to treatment of IDV during the currency of the policy period. Circulars referred to in Charge 2 reiterate various provisions (including GR 8) of erstwhile Tariff.

An analysis of the above facts shows that the relevant provisions, (General Regulation 8 of All India Motor Tariff, 2002) and those of relevant circulars indicated under charge no.2 above, have been violated to the extent of having been non-transparent regarding deductions made from the claims. The insurer has maintained that regarding claims settled on sub-standard basis, some deduction was made from the claim amount but not to cause inconvenience to the claimants. This however, does not offer any ground for the Insurer to deduct amounts from the claims with the claimants and arriving at 'compromised amounts'. The insurer also submitted that the reduction is up to a maximum of 25% depending upon the nature of breach of policy conditions and the reasons were recorded for such reductions. However, the sample cases (cited above) reflect that the above averment (i.e., *reduction is maximum of 25%*) made by the insurer is not correct. There is no transparency about what can constitute a non-standard claim and the amounts deducted from the IDV in various cases seem to have been made arbitrarily. The cases, however, as already mentioned above, do reflect instances of claimants found wanting in some respect, of the procedures laid down for the claims.

(VI) Decision

After considering all the above factors, I am of the opinion that Charges 1 and 2 relating to Total Loss/Constructive Total Loss claims stand confirmed and the samples given above stand testimony to this. Simultaneously, certain lacunae in compliances by the claimants have also been observed. Keeping these in mind and in exercise of powers vested in the Authority as per the provisions of Sec. 102(b) of Insurance Act, 1938 (as amended from time to time), I hereby conclude that a penalty of an amount of Rs.5 lakh be imposed on the Insurer.



The penalty of Rs. 5,00,000 (Rs. Five Lakh only) shall be remitted by the Insurer through NEFT / RTGS (details of which will be communicated separately) by debiting shareholders' account within a period of 15 days from the date of receipt of this order. An intimation of remittance by the Insurer may be sent to Smt. Yegnapriya Bharath, Chief General Manager (NL), IRDAI, Sy. No. 115/1, Financial District, Nanakramguda, Hyderabad, 500032.

If the Insurer feels aggrieved by the above decision in this order, an appeal may be preferred to the Securities Appellate Tribunal as per Section 110 of the Insurance Act, 1938.

Place: Hyderabad

Date: 05.12.2018



(P.J. JOSEPH)

Member (Non-Life)