भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA

Ref. No: IRDAI/NL/ORD/ONS/ 134 /08/2018 Date: 21.08.2018

ORDER

In the matter of M/s. Reliance General Insurance Company Limited (RGICL) - Settlement of Motor Claims

Based on the reply to Notice to Show Cause dated 9th August, 2017 issued to M/s. Reliance 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 (IRDAI) on 16th November, 2017 at the office of Insurance Regulatory and Development Authority of India, 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 Reliance General Insurance Company Limited (hereinafter referred to as RGICL / the Insurer), the Authority had conducted focused onsite inspection of RGICL from 18th to 20th October, 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 10th August, 2016, the Authority issued a 'Notice to Show Cause' dated 9th August, 2017 which was responded to by the Insurer vide their letters dated 28th August, 2017 & 4th

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October, 2017. As requested therein, a personal hearing was given to the Insurer on 16th November, 2017. Sri Rakesh Jain, Chief Executive Officer, Sri Mohan Khandekar, Company Secretary and Chief Compliance Officer, Sri Sudip Banerjee, Chief Operating Officer and Ms. R. Lakshmi, Head (Motor Claims) were present in the hearing on behalf of the Insurer. On behalf of the Authority, Sri P.J. Joseph, Member (Non-Life), Smt. Yegnapriya Bharath, Chief General Manager (NL), 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

Submissions by the Insurer

1. The claims are settled based upon their individual merit and by observing legal principles. The Company has based its claim settlement decision on independent judgement of facts arising from claim investigations and ensuring the overall interest of the policyholders, which is protected at all times.
2. The Company has adopted 'non-standard settlement' in the matter where there is non-observation / breach of any terms and conditions of the insurance policy by the customer. The Company has followed standard industry practice duly recognized by the various judicial forums. Such practice is construed in favour of insured / policyholder where insurance company does not rescind its liability in the event of failure of insured to abide by the terms and conditions of the policy.
3. While evaluating and settling claims, the Company also observed the well-established principles laid down by the various judicial forums particularly Hon'ble Supreme Court of India. In this regard, the Apex Court had laid down in numerous cases (more specifically in Civil Appeal No. 2703 of 2010) that wherever the insured violates any terms & conditions laid down in the policy, the insurance company cannot repudiate the claim 'in Toto' but should settle the claim on 'non-standard basis'.
4. While abiding by the law laid down by the Hon'ble Supreme Court of India, the Company processed the claims on non-standard basis, instead of repudiating the same on the ground of breach of policy condition. The investigators are not given any mandate to negotiate or settle clam amount, and the observation made by the investigators are more of finding arising from the facts apparent from the investigation. The decision of the Company to settle any claim on non-standard basis is based upon the principle of indemnity, to ensure that interest of the policyholders, as a class has been protected while the Company duly observes the law laid down in judicial pronouncements.
5. All claim files duly carry an observation on the reason for non-standard deduction. The Company would like to submit that the deduction amount only differed based on the gravity of the violation and the circumstances.
6. There were some discrepancies in the claims where IDV was reduced. The intent of the Company was to settle the claim and support the customer but not give the

same to standard customer. If the number of discrepancies is more, it will be a cumulative percentage in the reduction of the claim that may defeat the purpose of settlement of claim. A claim with full requirements and a claim with deficiency in requirements cannot be treated at par. The negligence on the part of claimant cannot be quantified. Hence, the Company takes the overall view of the claim. The intent was only to go for settlement and extend support to the customer.

7. Technically speaking, there is no way but to discuss with the customer and take his consent. Most of the claims were negotiated, discussed with the claimants. The discharge voucher signifies the consent of the claimant. Negotiation of the claim was due to the errors and omissions of the customers. Instead of rejecting the entire claim for violation of terms and conditions of the policy, the claim was negotiated with the claimant and consent was obtained for the reduction in the claim amount. This was done with an intention to help the customer. There is significant improvement in the current handling of the claims compared to past.
8. There were some flaws in the claim files. The deficiencies were not properly recorded in the claim notes. The documentation was not in order. However, there was no intent to reduce any legitimate claim. Now there is a robust system to efficiently handle the claims.

(III) 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 reasons for deduction have been explained to the policyholders and their consent obtained for the final amount in discharge of the Insurer's liability, there is no evidence of the same in the records, in certain cases. Their submission that such a system would be put in place in future seems to confirm the observation that there is no record of explanation to the policyholder, in writing. 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 invalid 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 policy holder's contribution to the loss through his negligence or breach of material conditions 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 of natural justice has been complied with or not.

(c) Sample cases are taken for examination (details as per claims records).

Claim No.	Reduced amount as a % to IDV	Reasons noted in the claim records for deduction in IDV
Sample 1	25.0%	Nil
Sample 2	12.9%	Insured could not produce 2nd key – claim amount negotiated and saved certain amount.
Sample 3	20.1%	One key – Non-standardized basis
Sample 4	24.9%	Permit no. not valid at the time of theft - One key - Negotiated for discrepancy.
Sample 5	20.0%	Permit ineffective at the time of loss.
Sample 6	19.1%	Only 1 key submitted

Sample 7	17.7%	On account of loss of one key and parking was not proper - hence IDV was negotiated - Delay in intimation
Sample 8	12.6%	Only one key - original documents lost -
Sample 9	5.3%	Delay in submission of claim documents.
Sample 10	11.6%	Delay in intimation & FIR -1 key only- IDV negotiated
Sample 11	25.0%	25% is deducted on account of delay in FIR & intimation
Sample 12	16.4%	Delay in intimation - Amount deducted through negotiation.
Sample 13	3.7%	Nil
Sample 14	29.9%	Fitness certificate not submitted - 30% negotiated for discrepancy - delay in intimation – delay in FIR
Sample 15	32.8%	Negligence on the part of insured (cabin door was not locked).

The recording in the claim note is that by negotiation, certain amount has been saved. This only goes to show the intent of the company to save money rather than settling the claim on merits. Even assuming that there is merit in the settlement, reasons for reduction should have been clearly shown to the policyholder [Ref: Provision 9(5), of IRDA (Protection of Policyholders' Interests Regulations),2002 (subsequently modified in 2017).

The Insurer has attributed the reduction in claim amount to the alleged breach of policy conditions by the policyholder. However, there are only some notings to this effect in the claim note at the time of processing the claim.

(IV) Conclusion

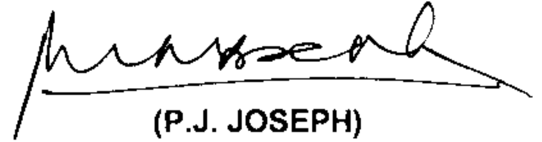
An analysis of the above facts shows that the relevant provisions, (General Regulation 8 of All India Motor Tariff, 2002) and those of relevant guidelines indicated under charge no.2 above, have been violated to the extent of having been non-transparent regarding deductions made from the claims. The Insurer has maintained that the insureds have been found wanting on some compliances as has been illustrated in the samples above. This, however, does not offer any ground for the Insurer to deduct amounts from the claims based on purported negotiations with the insureds and arriving at 'compromised amounts'. In fact, it is seen that there has been lack of transparency in the transaction of these so called negotiations as the insureds more often than not have not been given any details of deduction made. Also, 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 insureds found wanting in a few compliances in respect of the procedures laid down for the claims.

(V) 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 testimonies to this. Simultaneously, given certain lacunae in compliances by the insureds, 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: 21.08.2018

(P.J. JOSEPH)

Member (Non-Life)