



Ref. No: IRDAI / NL / ORD / ONS / 205 / 12 / 2018

Date: 19.12.2018

ORDER

**In the matter of M/s. IFFCO TOKIO General Insurance Company Ltd -
Settlement of Motor Claims**

Based on the reply to Notice to Show Cause dated 1st August, 2017 issued to M/s. IFFCO TOKIO General Insurance Company Ltd. and their submissions made during the personal hearing (through video conference) chaired by Sri. P.J. Joseph, Member (Non-Life), Insurance Regulatory and Development Authority of India (IRDAI) on 6th October, 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 IFFCO TOKIO General Insurance Company Limited (hereinafter referred to as the Insurer/ the Company), the Authority had conducted focused onsite inspection of the Insurer from 15th to 17th 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 18th July, 2016, the Authority issued a 'Notice to Show Cause' dated 1st August, 2017 which was responded to by the Insurer vide their letter dated 14th August, 2017. As requested therein, a personal hearing was given to the Insurer on 6th October, 2017

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through video conference. Sri Warendra Sinha, Managing Director & Chief Executive Officer, Sri R. Kannan, Executive Director were present in the hearing (through video conference) 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. Sankara Srinivas, Officer on Special Duty, were present.

(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 is as under.

- (a)
1. As Insurance is a contract between two parties, both the parties are bound by the terms & conditions of the contract. During the claim settlement process, Insurer verifies whether all the terms & conditions, as mentioned in the Policy contract are complied with or not. In the event of any violation of Policy condition, a suitable penalty is imposed by way of deduction in the claim.
 2. The policy document normally carries all deductibles. There could have been some deficiency in some of the documents as at the time, cover notes were in use transacting motor business and cover notes would have been incomplete or errors would have been committed when cover notes get converted to a policy document. As per GR 3 of India Motor Tariff, Insurer can impose certain imposed excess on case to case basis.
 3. We never encourage the practice of deduction of IDV under the head of depreciation. However, in a few cases this might have happened inadvertently, which will be rectified at our end.
 4. Sometimes discharge vouchers are taken blank, i.e., without filling any claim details and it becomes difficult to call the insured again to fill up the relevant details as some of the insured reside in off locations.
 5. Notarized consents are taken from the insured (in case of cash loss settlement) as a confirmation of their agreement on the net amount payable by the insurers so as to avoid any dispute in future with regard to quantum. However, we'll explore the possibility of arranging the consent letter at our own cost or to give away with this practice.
- (b)
1. As a matter of practice, Theft claims are settled on IDV after applicable excess. However, in a few such cases where the client did not take adequate precaution or did not inform the Police authorities within reasonable time or declared higher than market value as IDV, we have settled the claims primarily under the provisions of the Tariff, where it allows the Insurer to repair, reinstate or replace the vehicle insured or



part thereof and / or its accessories or may pay in cash the amount of the loss or damage.

2. We do not advise our Investigators to negotiate the claim amount for the sake of reduction.
 3. Consent is obtained from the Insured before settling any claim. The purpose of consent is not to reduce the claim amount but to ensure that Insured is satisfied with the settlement as per Policy terms & conditions.
 4. Claims are processed on IDV less applicable Excess basis, unless there are reasons on account of laxity on the part of Insured / declaration of higher IDV.
 5. By and large we follow General Regulations (GR 8) of India Motor Tariff, 2002 and settle TL/CTL claims on IDV basis. However, there could be stray cases, where the final settled amounts were different because of the reasons mentioned above.
 6. We assure that guidelines issued by the Regulator from time to time are followed diligently. Any lapse, which might have been observed during the Inspection would have happened inadvertently, which is regretted and may please be condoned. The said guidelines would be fully complied with in future, in letter & spirit.
- (c) 1. There were some lapses but the percentage of such claims settled is much lesser when compared to the number of theft claims settled.
2. The deduction in IDV was done in the cases where IDV was taken at a higher value. In some cases, higher IDV was taken where policies were issued online.
 3. As far as depreciation is concerned, it was applied where there was inordinate delay and claims were to be settled on non-standard basis.
 4. After Authority's inspection, the practice of deduction in IDV has been stopped.

(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 claims are processed on IDV less applicable Excess basis, unless there are reasons such as laxity on the part of Insured / declaration of higher IDV, there is no

evidence for the same in the records, in certain cases. Their submission that the purpose of consent is not to reduce the claim amount but to ensure that Insured is satisfied with the settlement as per policy terms and conditions does not seem to be correct. I do not agree that merely obtaining a consent letter from the claimants would indicate the Insured's satisfaction, leaving aside the legality of such consent, 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.

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

Claim No.	Reduced amount in % (to claim payable)	Observations from the claim records
Sample 1	6.5%	Delay in intimation
Sample 2	10.1%	One key not submitted
Sample 3	10.1%	The Investigator's report says: "However we negotiated the IDV of the said vehicle with the Insured.... Therefore, we succeeded to reduce the insurer's liability by..."

		Reasons are not recorded in the <i>Claim Scrutiny Sheet</i> for reduction
Sample 4	7.7%	NIL
Sample 5	10.7%	NIL
Sample 6	10.0%	The Investigator's report says: "However we negotiated the IDV of the said vehicle with the Insured.... Therefore, we succeeded to reduce the insurer's liability by..." Reasons are not recorded in the <i>Claim Scrutiny Sheet</i> for reduction
Sample 7	11.2%	Investigator's report says: "...the IDV for the vehicle has been taken in a higher side."
Sample 8	10.1%	Delay in intimation
Sample 9	25.0%	FIR was lodged on next day of theft of the insured vehicle - Delayed intimation to the insurer - recommended for settlement on sub-standard basis
Sample 10	12.4%	The Investigator's report says: "However we negotiated the IDV of the said vehicle with the Insured.... Therefore, we succeeded to reduce the insurer's liability by..." Reasons are not recorded in the <i>Claim Scrutiny Sheet</i> for reduction

On examination of a few sample claim records, it is understood that by negotiation, certain amount has been saved. This only goes to show the intent to save money rather than settling the claim on merits. The Insurer has attributed the reduction in claim amount to the violation of policy conditions resulting in sub-standard claims on account of laxity on the part of Insured / declaration of higher IDV etc. However, there are only some notings to this effect in the claim note at the time of processing the claim. Even assuming that there is merit in the settlement, 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 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 claimants 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 claimants and arriving at 'compromised amounts'. In fact, it is seen that there has been lack of transparency in the process of these so called negotiations as the claimants more often than not have not been given any details of deduction made. 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

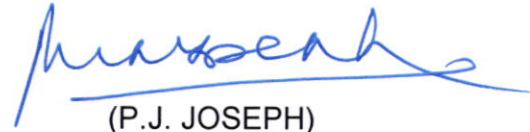


this order. An intimation of remittance by the Insurer may be sent to Smt. Yegnapriya Bharath, Chief General Manager (NL), IRDAI, Sy. No. 115/1, Financial District, Nanakramguda, Hyderabad, 500032.

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: 19.12.2018



(P.J. JOSEPH)

Member (Non-Life)