

# INSURANCE INSIGHT

Mandatory to supply insurance policy T&Cs

Routine appointment of second surveyor not permissible

Insurance ombudsman's award subject to writ jurisdiction



### Mandatory to Supply Policy T&Cs

The Hon'ble National Consumer Disputes Redressal Forum ("NCDRC") has through its order dated 01.08.2022 in M/s Park Leather Industries v. UII (CC No. 171 of 2008) reiterated that an insurance company is obligated to supply the terms of the insurance policy to the insured. The Commission emphasized that the said obligation is not a mere formality and is fundamental to its service. The insurer is prevented from relying on the exclusion clause of the policy if the terms of the policy are not supplied to the insured.

The judgment makes a reference to IRDAI's ("Insurance Regulatory Development Authority of India") Circular No.

IRDAI/HLT/REG/CIR/235/09/2020 whereby in view of the then ongoing pandemic it permitted all General and Health Insurers to supply their policy documents using e-mode. The notification specifically required the insurer to maintain necessary mechanisms to ensure not only the supply of policy documents but also the receipt thereof by the insured. Additionally, the Circular also mentioned that the policy document so sent using electronic mode must contain the terms and conditions of the policy.

The Circular stood to reemphasize the significance of the supply of terms and conditions of an insurance policy to the insured.

Both, IRDAI and NCDRC have time and again reiterated the mandatory nature of the requirement to supply the terms and conditions of the policy to the insured.

### Appointment of Second Surveyor To Be Reasoned

The Hon'ble National Consumer Disputes Redressal Forum ("NCDRC") in its judgement dated 01.08.2022 in the matter of M/s Suresh Pharmaceuticals Pvt. Ltd. v. OIC (CC 324 of 2013) has cited its displeasure on the practice of appointment of 2nd surveyor by the Insurance companies.

While Section 64UM of the Insurance Act, 1938 allows an insurer to appoint a second surveyor, the Hon'ble Supreme Court had, in the case of Sri Venkateswara Syndicate v Oriental Insurance Company Limited and Another [(2009) 8 SCC 507] settled the position of law on the subject that it is not open to the insurance company to routinely reject the survey report of the 1st surveyor and appoint a second surveyor. Such rejection of the 1st surveyor's report and appointment of 2nd surveyor must be well reasoned.

Though the surveyor's report is neither final nor binding on the insurance company adequate reasons must be given when departing from a surveyor's report. This is imperative to preserve the sanctity of survey reports and the assessment of loss made thereunder.

The Hon'ble NCDRC reiterated that it is not open for the Insurer under Section 64UM(2) of the Insurance Act, 1938 to appoint successive surveyors with a view to obtain a tailor-made report. The appointment of a second surveyor must be based on valid reasons premised on

deficiencies found in the Survey Report, which must be duly recorded while appointing a second surveyor. The claim being of a substantial amount alone cannot be deemed to be adequate reason requiring appointment of a second Surveyor.

Thus, we can conclude that appointment of 2nd surveyor by the Insurance co. is not valid in the absence of sufficient reasons for disagreement with the 1st survey report.

### **Insurance Ombudsman's Award Subject To Writ Jurisdiction**

The Hon'ble Bombay High Court in the matter of Aditya Birla Sun Life Insurance co. v. Fatema [Writ Petition No. 7804 of 2021] disagreed with the view taken by the Hon'ble Calcutta High Court in the case of Life Insurance Corporation of India v. The Insurance Ombudsman [2017 SCC Online Calcutta 1238] that a writ petition under Article 227 of the Constitution of India against an award passed by the Ombudsman would not be maintainable.

The Hon'ble Bombay High Court while discussing the scheme of Insurance Ombudsman Rules, 2017 observed that the ombudsman while adjudicating a complaint is under an obligation to act judicially, follow all the essential ingredients of what a tribunal would be required to follow in adjudicating such disputes, namely of a hearing to be granted to the parties before it and taking a decision by furnishing reasons.

The Hon'ble Bombay High Court held that because the Insurance ombudsman possesses all essentials of a judicial/quasi-judicial adjudication akin to an adjudication by a tribunal, therefore, its award is amenable to writ jurisdiction under Article 227.

Merely because an award is binding on the insurer it cannot be said that the insurer would be precluded from assailing the award by invoking the jurisdiction of this Court under Article 227 being a remedy guaranteed by the Constitution of India.

The Hon'ble High Court further clarified that where the claim amount was beyond the pecuniary jurisdiction of the Insurance Ombudsman under Rule 17(3) settlement of such a claim for a sum within the pecuniary jurisdiction does not ipso facto amount to an amendment to the claim amount itself to vest the ombudsman with jurisdiction over the complaint.





E 10 SF Defence Colony  
New Delhi - 110024



asp@sintahapartners.com  
www.sinthapartners.com



+91 11 41 046 911  
+91 11 40 536 008