



SECP  
Insurance Division  
Karachi

Before Mr. Tariq Hussain Director (Insurance)

In the matter of

Appeal No. 10 of 2012

**M/s Pakistan Packages (Pvt.) Ltd**  
Plot No. 19/2, Sector-17  
Korangi Industrial Area  
Karachi.

..... Appellant

Versus

**M/s Adamjee Insurance Company Limited**  
Head office, 6<sup>th</sup> Floor  
Adamjee House  
I.I. Chundrigarh Road  
Karachi.

..... Respondent

ORDER

Under Section 130 (2) Insurance Ordinance 2000

Dated: 7<sup>th</sup> June, 2013

Issue: Non-Payment of Claim

Hearing:

22-11-2012 at SECP Office, Karachi

SECURITIES & EXCHANGE  
COMMISSION OF PAKISTAN

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**Present:**

**For the Appellant:**

Mr. Zafar Khokhar Advocate  
Nadeem Haider (A.G.)  
Zaheer-ul-Haq

**For the Respondent**

Mr. Jameel Khan, General Manager  
Mr. Yahya Ajmal, Manager

This Order shall dispose of the Appeal No. 10 of 2012 under Section 130 (2) of the Insurance Ordinance, 2000 (the Ordinance) which was filed with this office on 01-08-2012 by Mr. Zafar Khokhar, the counsel of the Appellant. The Appellant protested therein against the Order the Hon'able Insurance ombudsman passed on 03-7-2012 (the "Impugned Order") u/s 130(1) of the Ordinance. He made the Order on the complaint, the Appellant filed on 24-02-2011 that the Respondent had unjustifiably denied the payment on the claim made under the Policy. The Normal Fire Policy# 02/P/041/00004405/-/01/2009, was issued to the Appellant, M/s Pakistan Packages (Pvt.) Ltd., extending cover against damage caused by Riot and strike, Malicious acts, Atmospheric Disturbance, Explosion, Earthquake Fire and Shock, Impact, with the date of issue 22/01/2009, effective 03/01/2009 to 03/01/2010 having Sum Insured, 45,000,000/- rupees plus while the Net Premium amounts to 166,104 plus 33,479 rupees on account of Fire Endorsement, issued on 06/04/2009 .

The Appellant prayed therein the Appeal that findings of the Honorable Insurance Ombudsman may kindly be set aside and allow claim of the Appellant to the extent of 70% of the assessed loss along with liquidated damages as provided in the Insurance in the Ordinance.

**2. Background Facts:**

Recalling the facts briefly that after some seven months of having the current Policy, on 18 July, 2009 the monsoon rains lashed the city of Karachi, resultant damage

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included the factory stock consisting of paper and card board boxes stored there in the factory premises. The rain water reportedly entered the factory from the roof tops drenching the paper stock lying there in the designated store and other rooms and water also came from the adjacent streets, flooding the ground, spoiling the merchandise stored in the shed there.

The claim was lodged with the Respondent insurance company which in pursuance thereto assigned survey job to M/s Sipra & Company (Pvt.) Ltd. to survey the loss. The assessment of the quantum of loss, the surveyor reached amounted to about 3 (three) million rupees. But the surveyor simply denied the claim liability upon the shoulders of the insurers in the following words:

*"As the entire stock of paper and board, finished goods were lying in a shed/godown of 2<sup>nd</sup> class construction and no preventive measures were taken to plug the cavities and to close the open space posing as ventilators and damaged due to natural calamity (Atmospheric Disturbance), hence under this condition, the insurer claim is not indemnifiable."*

As the conclusion made by the surveyor went contrary to the expectation of the Appellant, he approached the Respondent insurance company for the appointment of another surveyor. The Respondent conceded for another survey but appointed the same surveyor to conduct the resurvey. But he upheld his earlier findings.

### **3. The Insurance Ombudsman office: Proceedings and Order**

Aggrieved by the conduct of the Respondent insurance company, the Appellant lodged the complaint u/s 127 of the Ordinance with the Hon'able Insurance Ombudsman on 24<sup>th</sup> February 2011, objecting the repudiation of the claim. In his complaint they stated that they were doing business since 1995 and were availing comprehensive insurance package. Alleging that the survey report was completely unjustified as it was not expected of them to keep/store their valuable goods in open with no protective measures. But the quantum of rain was so massive and sudden that it damaged the entire area badly, blocked the outlets, sewerage lines and the resultant over flow damaged the stock. And that the insurance company was informed without delay but their surveyor drew up an unjust report. On their protest, the insurance company agreed to resurvey but then too very unfairly reappointed the same surveyor who made it clear to them at the very outset that he was not going to change his earlier findings. Lastly, the insurance company rejected the claim on 23/11/2009 while the Report issued on 31<sup>st</sup> December 2009, after 37 days.

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The Respondent in their comments submitted that the insured building consisted of a first and second class construction and the Policy warranted that second class construction was not covered under the atmospheric disturbances. The surveyor assessed the loss to the tune of some 3 million rupees but he also reported therein that the entire stock was lying in the second class construction. And that the Appellant did not take any preventive measure to close the open space, ventilators and rain water damaged the stock. Strengthening the ground for repudiation, they referred to the statement of the chief Accountant of the Appellant who stated that the water entered into the premises from roof top and main gates. Such type of findings obliged them to declare that the loss did not warrant indemnity and thus it was rejected.

Rebutting the view forwarded by the Respondent insurance company, the Appellant submitted that they had already mentioned in their claim filed with the Respondent company and later explained it to the surveyor too that damage to the stock happened in both locations, the First class as well as Second class construction. But the surveyor declared quite arbitrarily that the entire stock had been placed in Second Class construction which was quite wrong.

In the subsequent hearing too, the Appellant maintained that 70% area of their factory was of 1<sup>st</sup> Class construction and only 30% was of Second class construction. And when the rains finally hit the stock, they shifted the wet goods to the open to dry.

An official from the Ombudsman's office also made an investigatory visit of the site on 30/11/2011 and reported back the possibility of rain water entering the 1<sup>st</sup> class and 2<sup>nd</sup> class construction. But the Ombudsman obviously found it hard to determine the veracity of the respective contentions of both sides whether the entire damaged stock was actually lying in the 1<sup>st</sup> class as asserted by the Appellant or in the 2<sup>nd</sup> class as stated by the Respondent or both locations contained the stock in varying amount.

The near impossibility to determine the validity of the conflicting assertions of the respective parties obliged the Hon'able Ombudsman to ask the parties to resolve the matter through negotiation and reach an amicable settlement vide an order dated 30/11/2012 within 30 days. In case of failure order would be passed apportioning the portion of losses primarily happened in the 1<sup>st</sup> and in the 2<sup>nd</sup> class construction as the latter was not covered by the Policy. But the Appellant reported later that the Respondent insurance company offered only 10% of the claim amount, too meager to be accepted by them. On nudging further by the Ombudsman, the Respondent insurance company, as reported by the Appellant, raised the offer to 15% of the total assessed loss.

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The Ombudsman ultimately concluded, inter alia vide an Order dated 03/07/2012 that,

*"...the complainant has been unable to establish convincingly the extent of damage to the stock that was lying in the 1st class construction area and the whole claim is based upon their word which obviously construed as subjective.....this matter stand disposed of .....Complainant may seek remedy as available under the law....before any other ...forum."*

#### **4. appeal u/s 130(2):**

The Appellant thereafter filed an appeal (No. 10 of 2012) with this office received on 01/8/2012 praying therein that, "...kindly set aside the findings of the Hon'able Federal Insurance Ombudsman .... and allow claim ...to the extent of 70% of the assessed loss along with liquidated damages...." The prayer has been predicated on the fact that the Ombudsman confirmed in the Order (impugned) that the factory area contains 30% of 2<sup>nd</sup> class while 70% of 1<sup>st</sup> class. Therefore logically claim amount also be granted as such 70% of the assessed loss.

The Respondent in its comments rebutting the contention denied that the Appellant took preventive measures to safe guard the goods damaged. Rain water entered through main gate and also through cavities of tin sheet roof which damaged the stock lying in the 2<sup>nd</sup> class construction. That surveyor found the insured material was lying in the 2<sup>nd</sup> class construction and the Appellant agreed that the 2<sup>nd</sup> class construction lay outside the policy cover on account of atmospheric disturbance. The Respondent in pursuance of the Ombudsman's direction offered 10% (not the 15%) of the assessed amount without prejudice that the claim was not payable. The Respondent could not make payment on the basis of the 70% of the 1<sup>st</sup> class construction as the Policy cover was for the goods only and that the entire stock were lying in the shed of 2<sup>nd</sup> class. The Appellant failed to establish the extent of damage to the stock in that lay in the 1<sup>st</sup> class construction.

#### **5. Hearings:**

The whole issue essentially revolves around the single inextricable point whether the damaged goods were lying in the 1st class or in the 2nd class construction of the factory. As the Hon'able Ombudsman observed that there has been no way to determine by that office so the Appellant better seek remedy elsewhere. As per schedule a hearing was held at this office chaired over by the undersigned along with my deputy director.

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Mr. Nadeem on behalf of the Appellant said that they immediately informed the Respondent about the calamity that hit the factory. But when asked to produce evidence to that effect, he could not. He further stated that the Respondent insurance company has not asked us to adopt certain precautions in anticipation of the monsoon rains and the risk it posed. And the the findings of the surveyors were highly unjust and partial.

Mr. Jameel Advcate representing the Respondent denied that the Appellant informed them immediately. The onus lay on him to prove the fact he stated. The precautionary measures were the responsibility of the insured. We rather tried to settle the matter by making an offer in line with instruction of the Ombudsman by offering him 10% of the assessed loss.

The undersigned however remarked that insurance company should have informed and educated the insured about the likely loss from the monsoon rains and that they should have guided them. But the Respondent maintained that it was the insured's responsibility. The undersigned asked the Appellant about any documentary evidence which could help determine the quantity of damaged goods lying at the respective locations at the time of mishap. The Appellant stated that the aforesaid evidence had already been handed over to the surveyor. He further stated that for the last five years they had been purchasing the insurance policy cover from the Respondent company but it was very saddening thing that at the time honoring the commitment they have backtracked. At this point thought may be given that had the evidence as said above by the Appellant been so convincing, the survey report would have been different and later the Ombudsman might have ascertained the quantum of loss falling under the Policy cover. That he was right in recording the fact that no evidence had been put forth by either party that could help establish the fact of storage of goods before being hit by rains. Weak spots on part of both the sides were found floating on the surface of the whole episode.

At this juncture of apparent cul-de-sack, the only way to sort out the dispute appeared to be an amicable settlement of some sort, as before tried by the Hon'able Ombudsman. Hence the undersigned nudged both parties to the necessity of reaching the settlement. The Respondent stepped forward and said our old offer was 10%, now honoring the Commission; we raise it to 15% without prejudice to our stance that the claim was non-payable. But the Appellant insisted that basis for claim payment be made on the basis of 30:70 ratio, i.e., 70% of the assessed loss be paid to the Appellant. The undersigned responded that it was too high still the Commission would try that the Respondent Company consider to raise the offer. The hearing thereafter came to an end.

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Later the Deputy Director of the undersigned, on my direction, pursued the matter with the Mr. Jameel from the Respondent side who promised that he would put up the matter before the Board for their consideration, when the meeting took place. Finally the office received a letter from the Respondent's office on 07/02/2013 wherein they enhanced the offer to the 20% of the assessed amount. It was conveyed but the Appellant sent their regrets to accept the offer. This office asked them to hold meeting with the Respondent company officials and they requested for some time. As in their view the Respondent Company looked to be in an accommodating disposition regarding their demand with an enhanced offer. But finally it appeared that their efforts to bring round the Respondent could not bear fruit as the office received the Appellant letter on 23/4/2013, demanding therein 50% of the claim amount which of course is not acceptable the Appellant. Later the Appellant official told this office on phone, requesting for some more time as some administrative changes in the Respondent Company had enkindled hope for a good settlement but no response thereafter was made to this office till the writing of this order.

#### 6. Order:

The situation as the discussed above, led this office to nowhere, nor in determining the magnitude of loss falling under the Insurance Policy nor in effecting an amicable settlement as both parties lacked the substance to establish their respective assertion. Having no other way but to act in accordance with the conclusion reached by the Hon'able Ombudsman, the Appellant party is at liberty to look for redressal at some other judicial forum under the law of the land.

Copies of the Order to both parties be sent.



**Tariq Hussain**  
Director