

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD

Rep. No. 07/FIO/2022
Decision Dated: 22.12.2022

Najma Nasir Vs M/s Jubilee Life Insurance Company Ltd.

SUB: **REPRESENTATION FILED BY MST. NAJMA NASIR AGAINST ORDER OF THE FEDERAL INSURANCE OMBUDSMAN DATED 05.07.2022 IN COMPLAINT NO. 3183 & 3184/2021**

Kindly refer to your representation addressed to the President in the background mentioned below: -

2. This representation has been filed by Mst. Najma Nasir (the complainant) assailing the order dated 05.07.2022 of the Federal Insurance Ombudsman whereby it has been held as under:-

“The Respondent Company is accordingly advised, in terms of Section 130(1) of the Ordinance, to reimburse an amount of Rs. 1,200,000/- (Rupees twelve hundred thousand only) to the complainant within thirty (30) days of this order and submit compliance report along with closure documents.”

3. The complainant had obtained two insurance policies from M/s Jubilee Life Insurance Company Limited (the respondent company) on 30.01.2016 and 28.11.2016 for sum assured of Rs. 1,250,000/- each with annual premium of Rs. 250,000 each. She had deposited premiums worth Rs. 1,500,000/- and after expiry of three years, she requested the respondent company for discontinuation of the policies due to financial constraints and for refund of the paid premiums. The respondent company however offered the prevailing cash value of the policies to the complainant amounting to Rs. 781,084/-. During the hearing before the learned Federal Insurance Ombudsman, the respondent company offered to pay an amount of Rs. 1,200,000/- to the complainant on the intervention of the said forum.

4. The complainant being unsatisfied with the impugned order has filed the instant representation with the prayer to reimburse the full deposited amount of premiums with profit.

5. The hearing of the case has been held on 07.12.2022. Sadaf Jamil advocate who is attorney of the complainant has appeared while Zahir Shah, Manager Legal, Muhammad Junaid, Department Head Legal along with counsel Muhammad Faisal Malik advocate on behalf of the respondent company have attended the hearing.

6. It has been contended on behalf of the complainant that the impugned order is not based on law and facts; that the learned Ombudsman has not kept in view the principle of unjust enrichment while passing the impugned order; that the preamble of the Insurance Ordinance, 2000 envisages to ensure the protection of the interests of insurance policy holders but in the instant case, a widow had been deprived of her admissible amount unjustifiably; that the learned Ombudsman has failed to appreciate the fact that the respondent company had kept the deposited premiums of both the policies with it for a period of six years but denied the payment of its benefits to the complainant. She has finally prayed to set aside the impugned order by accepting the instant representation. She has placed reliance on certain dicta of superior courts such as 2021 SCMR 1728, 2017 SCMR 907, 2018 PLC(CS) 228, 2015 CLC 1625 and an order of the President in a similar case.

7. Conversely, the learned counsel for the respondent company has contended that both the policies were issued in 2016 and its maturity date was in the year 2026 but the complainant before the expiry of the maturity period had requested for cancellation of the policies; that the prevailing cash value worth Rs. 781,084/- is admissible to the complainant in accordance with the terms and conditions of the policies which were duly accepted by the complainant; that the respondent company on sympathetic considerations and on the directions of learned Ombudsman had offered to pay an amount of Rs. 1,200,000/- to the complainant as ex-gratia amount; that no interference is warranted with the impugned order which deserves to be upheld.

8. The respective contentions of the parties have been considered in the light of the material on record.

9. Admittedly, an amount of Rs. 1,500,000/- had been deposited by the complainant as premiums of the policies which commenced in 2016. The complainant on account of financial constraints had requested the respondent company for surrender of the policies and the respondent company in response had offered to make payment worth Rs. 781,084/- on the basis of prevailing cash value. There is no denial of the fact that an amount of Rs. 1,500,000/- had been received by the respondent company and invested the money of the policy holder in some profiteering business and earned considerable profit on it. The equitable principle of unjust enrichment envisages that one should not unjustly and unduly enrich himself at the expense of others. Any civilized system of law is bound to provide remedies against unjust enrichment. This doctrine rests upon the principle of economic and distributive justice enshrined in the preamble of the Constitution of the Islamic Republic of Pakistan, 1973 which attaches significance to the unethical consequences and the fiscal and financial chaos which would flow if it is not rationalized. Moreover, Section 72 of the Contract Act, 1872 contains inter alia the equitable principle and consideration for this doctrine of unjust enrichment. It would be unjust to deprive the complainant of her contribution in respect of which the respondent company would have earned considerable profit. It escaped the notice of the learned Federal Insurance Ombudsman that the amount directed to be refunded to the complainant under the garb of ex-gratia amount is not even the actual amount deposited by the policy holder. The preamble of the Insurance Ordinance, 2000 states that:-

“An Ordinance to regulate the business of the insurance industry to ensure the protection of the interests of insurance policy holders.” Article 3 of the Constitution of the Islamic Republic of Pakistan, 1973 envisages that *“The State shall ensure the elimination of all forms of exploitation.”*

The spirit of this Article is that it is incumbent upon the State to ensure that people are not exploited because of their wants, needs and economic compulsions. The respondent company in the garb of prevailing cash value is exploiting the policy holder which is not tenable. The principle indeed has been invoked and enforced by the superior courts of the country in several cases and even by the President while deciding representations. (Rep. No. 02/FIO/2022 dated 11.04.2022)

10. In view of the above, the impugned order deserves to be modified to the extent of directing the respondent company to reimburse an amount of Rs. 1,500,000/- to the complainant within 30 days of the receipt of this order.

11. Accordingly, the Hon'able President has been pleased to dispose of the instant representation in the above terms.

Sd/-
(Muhammad Saleem)
Director (Legal-I)

- 1) The Managing Director/Chief Executive,
M/s Jubilee Life Insurance Company Limited,
Head Office: 74/1-A, Lalazar,
M.T. Khan Road, **Karachi**
- 2) Mst. Najma Nasir Wd/o Malik Nasir Ullah
Through Sadaf Jamil, Advocate High Court,
R/o House No. D-754, Satellite Town,
Rawalpindi. (Mob.No. 0313-5171936)

Copy to:-

The Insurance Ombudsman, Insurance Ombudsman's Secretariat, PRCS Annexe
Building, Plot No. 197/5, 2nd Floor Dr. Daud Pota Road, Near Cantt. Station, **Karachi.**