



बीमा विनियामक और विकास प्राधिकरण
**INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY**

IRDA/Legal/MAD/HC/Madurai/C-8

5th August, 2010

Shri. R.K. Elango
Secretary
Indian Institute of Insurance Surveyors
& Loss Assessors
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Sub: Order dated 09.12.2009 passed by the Madurai Bench of Madras High Court in W.P. No. 10048/09

Ref: Your Representations dated 09.03.2007 and 05.09.2009

The Indian Institute of Insurance Surveyors and Loss Assessors (for brevity's sake hereinafter referred to as IISLA) filed a petition being Writ Petition No 10048/09 before the Madurai Bench of the Madras High Court praying that the Insurance Regulatory Development Authority (Authority) be directed to dispose of its representations dated 09.03.2007 and 05.09.2009 and pass such other order or order as deemed fit. The Authority and all the general insurance companies were impleaded as respondents in the said petition. By an order dated 09.12.2009, the Hon'ble Court directed the Authority to dispose of the representation dated 05.09.2009 on merits and in accordance with law after providing an opportunity of hearing to the concerned parties. In pursuance thereof, the Authority granted an opportunity of hearing to the representative of IISLA and the general insurance companies on 8.2.2010.

The issues raised by IISLA in their representation dated 05.09.2009, the submissions advanced on its behalf during the course of the hearing, the views of the representatives of the general insurance companies in the context of the same as also the findings of the Authority in this regard are elaborated below.

I. Alleged violation of Section 64 (UM) of the Insurance Act, 1938:-

1. The primary challenge of the IISLA is towards the practice of general insurance companies of engaging their employees to assess losses on the ground that the provisions of Section 64UM of the Insurance Act, 1938 (Act) mandated the assignment of surveying losses to 'approved' insurance surveyors and loss assessors (SLAs) which must mean 'independent approved SLAs' and not an approved SLA who is an employee of any insurer since the employees of the

insurers could not be termed as 'independent' to assess the losses, free from any form of influence or bias and hence sought the discontinuation of such a practice being allegedly violative of Section 64UM(2) of the Insurance Act, 1938(Act). IISLA also drew an analogy to the restrictions imposed upon the practicing chartered accountants and lawyers when employed by any organization.

2. In response to the said contention, the various insurance companies made their submissions which are summarized below:

(a) M/s IFFCO Tokio General Insurance Company Limited :

- (i) The provisions of section 64UM of the Act do not mandate claims less than Rs.20, 000 to be assessed by an approved surveyor and loss assessor (SLA) and hence, implicitly companies can make their own arrangements for assessing and settling such claims.
- (ii) While assessing claims in excess of Rs.20,000, the provisions of Section 64UM of the Act require an assessment by a licensed surveyor but do not specify whether such a person should be an independent surveyor or whether he should not be an employee. In any case, employee surveyors cannot be stated to be biased in their judgments and assessments and consequently the action of the insurance companies is perfectly in accordance with the provisions of Section 64UM of the Act.

(b) The representative of M/s Royal Sundaram Allied Insurance Company Limited stated as follows:-

- (i) The system of employee surveyor was not introduced in the year 2000 since in the 1950s, prior to nationalization, engagement of staff surveyors was a feature of M/s Madras Motor and General Insurance Company which, upon nationalization, was merged into United India Insurance Company, and this practice continued in United India since then.
- (ii) The Courts have held that independent surveyors when engaged by an insurance company, act as an agent of an insurance company and consequently it would be incorrect to suggest that an independent surveyor is less biased than an employee surveyor.
- (iii) Between the year 2005 to 2009, the company had processed 5,50,000 claims out of which 158 claims were disputed before the judicial/ ombudsmen forums, of which 108 cases were disposed of in favour of the insurance company and only in three of such cases was the allegation of bias raised indicating that such an allegation is incorrect.



