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Insurance Ombudsman settles death claim in rail accident in compassionate way

March 22, 2016, 6:12 pm



Dr. Wickrema Weerasooria

Responding to the News item in The Island of March 18 Dr. Wickrema Weerasooria, Sri Lanka's Insurance Ombudsman stated:

I was indeed very happy to read The Island's excellent and accurate coverage of my address at the IPS auditorium to mark World Consumer Day. In that talk I had referred to the settlement of an insurance claim of about Rs. 8 million resulting from an accident at a Railway crossing in the Kandana area in October 2014. The father, a businessman of about 45 years had failed to stop at a red light and the train had hit the vehicle.

All four passengers were seriously injured and were hospitalized in a private hospital in Colombo. The father died a short while later. The daughter and son who were in the back seat, recovered from their injuries but regrettably their mother, who was in the passenger seat is still in a coma after sixteen months from October 2014.

The insurance company was entitled to reject the insurance claim on the basis that the policy holder had wrongfully driven the vehicle into the oncoming train by ignoring the red light. Also, the insurance company could have argued that by this wrongful act there was "contributory negligence" on the driver's part and hence, any compensation, even if possible, could have been considerably reduced.

However, in this case, the insurance company was very understanding and magnanimous. They realized the plight of the mother and her two children. The daughter was an undergraduate student at a university and the son was still studying. The mother continued to be in a coma and was in need of nursing attention and medicines which cost over Rs. 50,000/= per month. In these circumstances the insurance company agreed to pay and settle the claims for Rs. eight million. They initially paid Rs. 1.5 million to settle the bills of the private hospital.

However, there was another legal hurdle in paying the agreed balance of Rs. 6.5 million. There were two claims and the mother who was now in a coma was a beneficiary in both claims. She had to give her consent and accept the payment and this she could not do because she was in a coma.

In such a case, in normal circumstances, the insurance company wants the family members who are to benefit from the payment to take legal steps and get a curator or guardian appointed over the mother who is in a coma.

Such curator or guardian can only be appointed by a court of law and in this case the proper court would be the District Court of Negombo, because the accident occurred in Kandana. Also, the family would have had to spend their own money and appoint and pay lawyers to attend to these court proceedings which would also have taken sometime at least over an year.

It was at this point that I stepped in and helped as the Insurance Ombudsman. Earlier also I had approved the decision of the insurance company to pay the claim dispute of the driver's fault in ignoring a red light at the railway crossing.

Now, as the Ombudsman I mediated and requested the insurance company to pay for the lawyers and other legal fees in getting a curator or guardian appointed over the mother. The curator or guardian could then accept the mother's share of the money from the insurance company and give a valid discharge.

I also requested the insurance company to allow the judicial application to be made in the appropriate District Court of Colombo and not insist on the Negombo District Court. This can be done if the insurer consents.

The insurance company very kindly agreed to both my above requests. Firstly, they agreed to pay for the costs of the lawyer and agreed to my nominating a suitable lawyer to attend to this matter. Secondly, they agreed to the relevant District Court of Colombo to hear and decide this matter.

The above facilitator process in settling a complicated insurance payout on death and serious injury caused at a level crossing was made possible because of the ombudsman system.

The legal procedure that courts of law and judges have to follow does not permit the steps and interventions that I made as an ombudsman. Ombudsmen are not bound by legal rules and procedures. On the other hand they must act fairly and justly and reasonably. This is exactly what I did

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to help in this matter. This is why I advocate that Sri Lanka should have more ombudsmen schemes. They can be set up by each industry and need not be a burden on the taxpayer or the consolidated fund of the Treasury.

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