

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
 SUIT No. 19 / 2007

DATE ORDER WITH SIGNATURE OF JUDGE

Plaintiff: **Fakhare Alam through Mr. Zahid Marghoob Advocate.**

Defendants: **Adamjee Insurance Co. & another through Mr. Anwar Kamal Advocate.**

- 1) **For hearing of CMA No. 5843/2013.**
 2) **For hearing of CMA No. 5844/2013.**

Date of hearing: **19.02.2018.**
Date of order: **19.02.2018.**

This is a Suit for Recovery of Damages and the claim of the Plaintiff is set up in Para 31 which reads as follows:-

“i)	Amount of Policy	...	Rs.8,01,150/-.
II)	4 items for which my client was deprived in dacoity valued at	...	Rs.35,750/-
iii)	Amount of damages due to non-Availability of Generator	...	Rs.01,00,000/-
iv)	Special and General damages further sustained by my client for non releasing of the insured amount	...	<u>Rs.01,00,00,000/-</u> Rs.01,09,36,900/-

(Rupees One Crore Nine Lacs Thirty Six Thousand Nine Hundred only)”

On 15.01.2018 the Counsel for the Plaintiff was directed to come prepared as to maintainability of this Suit as according to the Defendant’s Counsel this relates to an Insurance Policy and this Court has no jurisdiction in the matter. Today, I have heard both the learned Counsel on the question of maintainability.

Learned Counsel for the Plaintiff submits that the claim through instant Suit is in respect of Damages sustained by the Plaintiff and the jurisdiction of this Court is not barred as contended under Insurance Ordinance, 2000. He further submits that the Defendant No. 2 (Surveyor) failed to perform his duties, which has also been challenged through this Suit and therefore, it is very much competent. Learned Counsel has referred to various paragraphs of the plaint in support of such contention.

On the other hand, Learned Counsel for Defendant No. 1 submits that this is a case of an Insurance Policy issued by Defendant No. 1 whereas, a claim was lodged by the Plaintiff with the Surveyor who did not recommended for payment of any insured amount, whereas, the claim in respect of an Insurance Policy including damages can be filed before the Insurance Tribunal; hence the Suit is incompetent. In support he has relied upon ***Messrs AS Enterprises and another V. Messrs National Bank of Pakistan and another (2011 CLC 529), State Life Insurance Corporation of Pakistan through Zonal Head V. Faisal Tahir and 3 others (2011 CLD 1594, Messrs East West Insurance Company Ltd. and another V. Messrs Muhammad Shafi & Company and 2 others (2009 CLD 960), EFU Life Insurance Limited V. Additional District Judge, Gujranwala and another (2017 CLD 1575), Regional manager Adamjee Insurance Company Ltd. V. Presiding Officer, District Consumer Court, Lahore and 3 others (2012 CLD 846).***

On perusal of the plaint and specially Para 31 as above as well as the prayer clause, it reflects that the entire case as set up on behalf of the Plaintiff is on the basis of an Insurance Policy issued by Defendant No. 1. Though the Plaintiff in addition to the claim of the entire amount

as above has also claimed special and general damages as well as the claim in respect of some lost items; however, it is to be appreciated that the claim of Damages etc. is not an independent claim in this matter. It flows out of the Insurance Policy for which the claim has been made and therefore, it cannot be said that this is a case merely for claim of Damages. The Insurance Ordinance, 2000 in terms of Section 121 to 123 provides a complete mechanism for an insured person to seek settlement of the claims arising out of an Insurance Policy. Section 118 of the said Ordinance further provides payment of liquidated damages on late settlement of claims. Therefore, apparently it appears that this Court has no jurisdiction as the matter falls within the exclusive jurisdiction of an Insurance Tribunal established under the Insurance Ordinance, 2000. The claim of Damages if any, would only materialize once the Plaintiff establishes its claim firstly to the extent of holding a valid Insurance Policy, and thereafter, right of a claim and its settlement by the Surveyor in his favour, and only then, if any payment is not made as per the Policy, the Plaintiff could assert a claim of Damages. Mere addition of claim of damages along with the amount of insurance claim cannot confer jurisdiction on this Court in clear and express violation of a Special Law, viz; Insurance Ordinance 2000.

In the case reported as ***Abdul Qayyum V. State Life Insurance Corporation of Pakistan through Chairman and 3 others (2011 CLD 1157)*** a learned Single Judge of this Court in somewhat similar situation, wherein, the insured party had filed a Suit for Declaration, Settlement of Accounts and *Damages* before a Civil Court and which Suit was dismissed and thereafter, Appeal was also dismissed, the matter came in Revision before the learned Judge who was pleased to hold as under:-

"11. Looking at the above Notification, issued under section 121(1) of the Insurance Ordinance, 2000, it becomes clear that it is the District and Sessions Judge, Karachi (Central), which has been constituted as an Insurance Tribunal by the Federal Government and therefore, it is such an Insurance Tribunal which is to entertain and decide the cases emanating from insurance policies and/or cases regarding insurance claims.. Section 122(3) of the Insurance Ordinance 2000, expressly bars the jurisdiction of the courts, including civil courts other than an Insurance Tribunal in the matters of claims under the insurance policy.

12. Gauging the case on the tough-stone of the above law, it would become clear that the bar was already operative when the suit was filed by the applicant on or about June, 2009 before the IIIrd Senior Civil Judge, Larkana. Therefore, the learned Civil Judge and then the learned IInd Additional District and Sessions Judge, Larkana, correctly refused to entertain the suit and/or the plaint of the applicant. In the present facts and circumstances of the case, it seems that none of the courts below exercised jurisdiction not vested in them by law or failed to exercise a jurisdiction so vested or acted in excess of their jurisdiction illegally or with material irregularity. On the contrary, it would appear that the courts below refrained from exercising jurisdiction which did not vest with them by law. It is well settled by now that the provisions of section 115, C.P.C. are applicable only in those cases which involve illegal assumption, non-exercise or the irregular exercise of the jurisdiction and would not be available against conclusions of law or fact which do not in any way affect the jurisdiction of the court."

Similar view has been expressed in the case of Regional manager Adamjee Insurance Company Ltd. supra and EFU Life Insurance supra.

In view of hereinabove facts and circumstances of this case, I am of the view that instant Suit is not competent before this Court for lack of jurisdiction and therefore, the Suit is not maintainable and is accordingly dismissed with all pending applications.

J U D G E

ARSHAD/