ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

C.P. No. D – 956 of 2018.

DATE	ORDER WITH SIGNATURE OF JUDGE

19.06.2018.

FOR ORDERS ON OFFICE OBJECTIONS.
FOR KATCHA PESHI.

Mr. Shoukat Ali Pathan, Advocate for the petitioner.

Mr. Ali Nawaz Chandio, Advocate for respondent No.4.

Mr. Allah BachayoSoomro, A.A.G. along with Asghar Ali SolangiIncharge Legal Affairs Department on behalf of respondents No.2 & 3.

Through this petition the petitioner has sought the following relief:-

> ***That this Honourable Court may be pleased to direct the respondents specially respondents No.1 to 3 to deposit the amount of policy No.6073539242 dated 19.11.2014 of deceased Ghulam Mustafa Chandio with the registrar of this Honourable Court and he may be directed to disburse the same amongst the legal heirs of late son of petitioner as per Shariat-e-Muhammad.***

Notice was ordered and comments have been filed on behalf of respondents 1,2 and 3.

Learned Counsel for the petitioner at the very outset was confronted regarding maintainability of this petition as apparently the petitioner has appropriate remedy in terms of the Insurance Ordinance 2000, and to this learned Counsel submits that such remedy is though available but is not efficacious, whereas, this Court under Article 199 of the Constitution can also provide relief as claimed. As to merits of the case learned Counsel submits that the petitioner is also a legal heir of deceased Ghulam Mustafa Chandio, husband of respondent No.4, and is accordingly entitled to her share in respect of Insurance Policy issued by respondents 1,2 and 3. In support he has relied upon the cases (i) ***Mrs. SHAISTA YOUNUS KHAN v. Mrs. ASIA KHATOON*** [P.L.D.1995 Karachi 560], (ii) ***Mst. RUKHSANA v. PROVINCE OF SINDH***

[S.B.L.R. 2013 Sindh 157] and (iii) ***Mst. AMTUL HABIB v. Mst. MUSARRAT PARVEEN*** [P.L.D. 1974 Supreme Court 185].

On the other hand as per comments of respondents 1,2 and 3 firstly; the petition is not maintainable as alternate remedy has been provided under the Insurance Ordinance 2000, whereas the deceased at the time of purchasing the Insurance Policy had nominated his wife/respondent No.4 and, therefore, as per the procedure invogue the petitioner is not entitled for any share from the Insurance Policy.

We have heard both the learned Counsel and perused the record.

In so far as maintainability of instant petition is concerned we are of the view that alternate and efficacious remedy has been provided under the Insurance Ordinance 2000, whereby under Section 121 ibid, Insurance Tribunal has been established which has exclusive jurisdiction in respect of disputes between an insured and Insurance Company, therefore, according to us instant petition is not maintainable. But since in this matter, petitioner claims to be mother of deceased / insured, we have dilated upon the merits of the case as well to cut short the issue.

Notwithstanding the above observations even otherwise on merits we are of the view that in so far as an Insurance Policy and its payment is concerned, the same does not form part of the estate of deceased as it only matures on the death of an insured, and therefore, respondents 1,2 and 3 are fully justified in refusing the claim of the petitioner and making payment of the Insurance Policy to the 'Nominee' of the deceased.

In so far as the case of ***Mrs. SHAISTA YOUNUS KHAN*** (*supra*) relied upon by the learned Counsel for the petitioner is concerned, we may observe that firstly; it is a Single Bench Judgment and not binding on this Court. Moreover, even otherwise perusal of the same reflects that the same while dealing with an issue of 'Nominee' in an Insurance Policy of a deceased has placed reliance on the case of ***Mst. AMTUL HABIB*** (*supra*), a decision of Honourable Supreme Court. However, in our respectful view in doing so the Court has failed to take note that the decision of the Honourable Supreme Court

was not in respect of an Insurance Policy of a deceased; but a nomination under section 27 of the Bombay Cooperative Societies Act, which was dealing with an immovable property. Therefore, in our considered view, this Judgment is of no help to the case of the petitioner.

Similarly insofar as the case of ***Mst. RUKHSANA*** (*supra*) is concerned again the same Judgment of the Honourable Supreme Court in the case of ***AMTUL HABIB*** has been relied upon, and as observed such reliance is of no help in cases of Insurance Policy of a deceased. Further in this case though reliance has also been placed on the case of ***FEDERAL GOVERNMENT OF PAKISTAN v PUBLIC ATLARGE*** [P.L.D. 1991 Supreme Court 731], which is the leading case on the issue in hand; however, again with utmost respect we may observe that the conclusion so drawn in respect of the Insurance claim is perhaps not exactly in the same context to the findings so recorded in that case. Hence reliance on this case also is of no help to the case of the petitioner.

Insofar as the role of the Nominee is concerned, it is settled law if it is a case of benefits which form part of the **"Tarka"** of the deceased, it is the responsibility of the Nominee to collect such amount and distribute the same amongst the legal heirs, whereas, if the amount or asset which is not part of **"Tarka"** must ordinarily go to the nominee as otherwise, it would defeat the purpose / intention of any such nomination. The Shariat Appellate Court of the Hon'ble Supreme Court in the case of ***Federal Government of Pakistan v. Public at Large*** (Supra) has been pleased to rule that a Nominee can only be a legal heir (which in this case is), however, it may be observed that Shariat Appellate Court while passing the said judgment was considering the Federal Employees Benevolent Fund and Group Insurance Act, 1969, whereas, in this matter, it is the Policy and its terms and conditions so agreed by the deceased and Insurance Company which has to govern the proceedings.

A learned Single of this Court in the case of ***Late Javed Iqbal Ghaznavi*** **PLD 2010 Karachi 153** has been pleased to hold as under:-

> "12. Thus any financial benefit which an employee can claim from his employer in his lifetime and have also become payable in his lifetime is to be treated as an absolute right of the employee and if any benefit or any

part of it remain unpaid during his lifetime then the same becomes heritable and is to be distributed amongst all his heirs. **However, a service benefit, which has not fallen due to an employee in the lifetime of an employee and being a grant or concession on the part of the employer, then whatever amount that become payable after the death of the employee is to be distributed only to those members of his family who are entitled for the same as per rules and regulations of service. It is the discretion of the employer to make rules and regulations in relation to any grant or concession that is intended to give to an employee or after his death to any member of his family.**

13. Thus benefits such as special retirement benefits, special, compensation group insurance under term insurance policy and group insurance under provident fund policy benefits definable as grant and concession on the part of employee and payable after the death of the employee cannot be treated as heritable by all heirs of the employee but are to be distributed to those who are entitled to it under the rules and regulation of service provided by the employer. Let the service benefits be distributed in terms of this order."

This Judgment as above was impugned before a learned Division Bench of this Court through High Court Appeal No.28/2010 and was upheld with certain modifications in respect of the special retirement benefits of the deceased, which according to the learned Division Bench formed part of the **"Tarka"** of the deceased as they pertain to his retirement benefits. There was special mention of General Provident Fund Balance and Special Retirement Benefits and according to the learned Division Bench at Para 8 & 9 of the judgment, these were benefits which could have been claimed if deceased had retired or separated from service during his lifetime. The learned Bench has been pleased to hold as under;

8. From the above definition of Tarka given in the above judgment [***Federal Government of Pakistan v. Public at Large***] it is clear that only those benefits are heritable which the deceased could have claimed in his life time and those benefits which the deceased could not claim in his life time are not heritable and have to be passed on to the person who has been named as beneficiary/ nominee for the purpose of these benefits.

9. When we review the payments made in the light of the definition given in those judgments and in the light of the revised compensation package available on page 43 of this file we see that ***General Provident Fund Balance*** **and**

> ***Special Retirement benefits*** **were part of the package of the deceased and could have been claimed even if he had retired or separate from the service during his lifetime as they are included in the revised package. Therefore, in accordance with the above judgment of the Honourable Supreme Court we are of the considered view that Special Retirement Benefits amounting to Rs.26,34,464/- fail within the definition of heritable assets and in our opinion the learned Single Judge was not correct by ordering that this Special Retirement Benefits will not be heritable by the heirs of deceased employee but are to be distributed amongst the heirs who are entitled to it. However so far as Special Compensation amounting to Rs.400,000/- and Group Insurance Death Claim amounting to Rs.1,900,000/- (total amounting to Rs.2300,00/-) are concerned we are of the view that the deceased was not entitled to these payments during his lifetime which were to be paid to his nominees/entitled persons only in case he dies during service and therefore the learned Single Judge has rightly held that these benefits are not heritable and will have to be distributed only amongst the persons who are entitled to it and the decision of the learned Single Judge on this point is unexceptionable and no interference is called by this Court."**

In the case reported as **2001 MLD 1***(Messrs Pakistan International Airlines Corporation v. Mst. Alia Siddiqa and 3 others),* a learned Single Judge of this Court has been pleased to hold that amount of *Group Insurance* could not form an estate and/or **Tarka** of the deceased, whereas, the payment of such amount was correctly made by the employer to the Nominee of the deceased; and other legal heirs had no right to challenge and compel the employer to pay such amount to them.

Another learned Single Judge of this Court in the case reported as **2006 CLC 1589** *(NaseemAkhtar alias Lali v. Khuda Bux Pechoho and others)* had the occasion of deciding an issue in respect of various financial benefits, including *Benevolent Fund, Group Insurance and General Provident Fund* and so also the salary dues. The learned Single Judge came to the conclusion that insofar as *Benevolent Fund* and *Group Insurance* are concerned they are to be paid to the husband of the deceased, whereas, the *General Provident Fund* was the amount deposited by the employee, and he was entitled to receive that amount on retirement, therefore, this would fall within the purview of **"Tarka"** to be inherited by the legal heirs. As to the amount of *salary outstanding* in favour of

the deceased, again that was to be treated as the estate of the deceased employee and was also to be distributed along with *General Provident Fund* to the legal heirs.

In another case reported as **2010 CLC 219** ***(Mst. Fauzia Noureen v. Muhammad Asghar)*** a learned Single Judge of the Lahore High Court has been pleased to hold that the amount of *Group Insurance* is not to be treated as part of the estate of the deceased, and such amount is to be exclusively paid to the person, who is duly nominated by the deceased.

In the case reported as **PLD 1994 Karachi 237** ***(Inre:Mst. Shamim Akhtar and others)***, a learned Single Judge of this Court has been pleased to hold that the amount payable as *Group Insurance* would not form part of the estate of the deceased, whereas, the *Death Claim Insurance against Provident Fund* was also not part of the estate of the decease, and therefore, such amounts were **payable to the Nominees of the deceased**, who alone would be entitled to it and no legal heir of deceased, other than the nominee would be entitled to such amount. The observations of the learned Judge which are relevant for the present purposes are as under;

> There was no dispute as regards the first three items mentioned above, that is, Miscellaneous Heads, Pension, and Provident Fund Dues that these amounts formed part-of the estate of the deceased which devolves on all the legal heirs according to the Muslim Law of Inheritance. However, there was some difference of opinion as regards the other two items, namely, Death Claim Insurance against Provident Fund and Group Insurance. **By order dated 28-3-1993, after hearing learned counsel for the parties, it was held that the amount payable as Group Insurance does not form part of the estate of the deceased and is to be paid according to rules and instructions of PIA in that behalf. It was also noted that as Mst. Kaniz Fatima, the first widow, was the nominee of the deceased, she was- entitled to receive the said amount payable as Group Insurance and she may apply to PIA for payment of the said amount and for such payment production of any Succession Certificate was not required to be produced by the nominee. It may be observed here that according to the copy of the Nomination Form dated 16-8-1977, signed by deceased Muhammad Tufail, the first nominee was shown as mother of the deceased who had died earlier; the second nominee was shown as Mst. Kaniz Fatima, first widow, and the third nominee was shown as Chiraghdin, father of the deceased, who had also died earlier.**

A learned Single Judge of this Court in the case of **1999 YLR 759** ***(Fatima Bi v. Mehnar Gul)*** has though drawn a final conclusion which does not appear to be in line with the settled law that the amount which is outside the definition of **Tarka** is also to be paid to the legal heirs and not to the nominee, but while saying so, the said learned Judge has been pleased to hold that the *Provident Fund* and *Pension dues* fall under the scope of **"Tarka"**, whereas, the *Death Claim Insurance* and *Group Insurance* are outside the scope of **"Tarka"** and are to be distributed accordingly.

The learned Single Judge who had authored the judgment in the case of ***Late Javed Iqbal Ghaznavi*** (supra), also had the occasion to deal with similar issue subsequently, and that case is reported as ***Zaheer Abbas v Pir Asif*** (**2011 CLC 1528**), wherein, the dispute amongst the legal heirs was again in respect of service benefits of the deceased and its distribution. The service benefits in that case included payment of gratuity, family pension, leave encashment, group insurance and General Provident Fund. The learned Judge concluded by holding that insofar as group insurance, family pension and gratuity is concerned, the same was payable after death of the employee being grant or concession on the party of the employer and cannot be treated as part of inheritance and are to be received by the person entitled to it under the service rules and regulations of the employer. The relevant observations are as under;

> Whether an employee dies while in service or dies after retirement, in both the situations there can be an occasion where he may not have received certain service benefit from his employer that had already become due for payment in his lifetime. Such unpaid service benefits shall invariably become part of the estate of the deceased employee and are to be distributed among all his heirs according to the personal law of the deceased employee. It matters not whether any of those service benefits fall under any of the two categories of benefits defined by Shariat Appellate Bench of the Hon'ble Supreme Court in PLD 1991 SC 731. The reason being that any of the two categories of service benefit upon their becoming due for payment in the lifetime of an employee but remained unpaid to him becomes part of his inheritance and thus inheritable by

all his heirs according to their respective share in the estate left by the deceased. However, the service benefits that have accrued i.e. become due for payment after the death of the deceased employee need to be first classified on the basis of interpretation given in the case reported in PLD 1991 SC 731. If a service benefit is definable under the category of a 'grant' or 'concession' on the part of the employer and have accrued for payment after the death of the employee, then the same cannot be treated as part of the estate of the deceased employee. They can only to be paid to such persons who are made beneficiaries of such grant or concession under the rules and regulations of service or under any law. Any heir of the deceased employee, not being beneficiary of such grant or concession cannot claim any share in such benefits merely because he is also an heir of the deceased employee.

The upshot of the above discussion is that any service benefit which an employee can claim from his employer in his lifetime and have also become payable to him in his lifetime but for any reason remained unpaid then to such extent only would become part of his estate and become heritable by all his heirs according to their respective shares. However, a service benefit, which has not fallen due to a deceased employee in his lifetime and is of a nature definable as a grant or concession on the part of the employer, then whatever amount that becomes payable after the death of the employee under such benefit is to be distributed only to those members of his family who are entitled for the same as per rules and regulations of service or under any provision of law. It is the discretion of the employer to make rules and regulations in relation to any grant or concession that an employer intends to give to an employee or after employee's death to any member of his family.

Thus benefits such as gratuity, group insurance and family pension being grants and concessions on the part of the employer if payable to the employee after his death cannot be treated as heritable by all heirs of the employee but are to be distributed to those who are entitled to it under the rules and regulations of employment or under any law for the time being in force. In the present case therefore group insurance, family pension and gratuity payable after the death of an employee being a 'grant' or 'concession' on the part of the employee cannot be treated as part of inheritance and are to be received by the person entitled to it under the service rules and regulations of the employer.

The upshot of the above discussion, to reiterate, is that whatever benefits an employee can claim from its employer during his life time are to be

treated as part of **"Tarka"** and being inheritable, are to be distributed amongst the legal heirs only according to shariah. And at the same time, the benefits which an employee is not entitled to claim from the employer during his lifetime and are to be matured on his / her death, are not part of the **"Tarka"** and can be handed over to a nominee, if there is any.

In view of hereinabove facts and circumstances of this case we are of the view that though the petition is not maintainable, but even otherwise we have considered the merits of the case as it pertains to the distribution and payment of Insurance claim of a deceased and are of the view that on merits also the petitioner has no case. Accordingly, instant petition stands dismissed whereas respondents 1,2 and 3 are directed to act according to the nomination given by the deceased for payment of the Insurance Policy amount to Respondent No.4 and without asking for a Succession Certificate as held in the case of ***Mst. Shamin Akhtar & Others (Supra).***

JUDGE

JUDGE

A.