

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 2963 of 2017

Present:-

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Adnan-ul-Karim Memon

Date of hearing:

& decision:

20.11.2019

Petitioner:

Mst. Shamim Akhtar present in person

Respondents:

through Mr. Aslam Pervaiz Khan,
Assistant Attorney General

ORDER

ADNAN-UL-KARIM MEMON, J: - Through this petition, the petitioner has prayed for setting aside the order dated 2.1.2017 passed by the respondent No.1, whereby he upset the decision dated 22.2.2016 passed by Federal Insurance Ombudsman.

2. The case of the petitioner is that she purchased life insurance policy under GIP Plan (Guaranteed Income Policy, renamed as Accident Protection Plan), from M/s. East-West Life Assurance Company Ltd (hereinafter called as 'respondent company'). The representative of respondent-company promised to pay monthly profit of Rs. 5000/- on each investment of Rs.60,000 under GIP Plan. Petitioner invested an amount of Rs. 70,000/- in the year 2011 and received profit from the respondent-company; however, the area manager who committed fraud with her fled away with entire deposit of the petitioner, thereafter the respondent-company closed all of its branches including Regional Branch Hyderabad. She being aggrieved by and dissatisfied with the aforesaid action of representative of respondent-company approached learned Federal Insurance Ombudsman for redressal of her grievances, who allowed her application by directing the Respondent -company to refund the amount of Rs.70000/- to her within thirty (30) days. They being aggrieved by and dissatisfied with the aforesaid order impugned the

same before the Appellate Forum i.e. President of Pakistan, who after considering the factual position of the case set aside the findings of learned Federal Insurance Ombudsman vide order dated 2.1.2017. Petitioner being aggrieved by and dissatisfied with the decision approached this court on 19.9.2017.

3. Case of the respondent-insurance Company is that on 25.8.2015 petitioner was paid an amount of Rs. 56,059/- through cheque towards final payment therefore no liability stood against the respondent company. Petitioner denied the receipt of aforesaid amount. However upon approach to learned Federal Insurance Ombudsman Pakistan, who after hearing the parties directed the respondent company to compensate the petitioner by returning her amount an amount of Rs. 70,000 within thirty (30) days.

4. Upon notice, the respondents have controverted the stance of the petitioner and raised the question of maintainability of the instant petition, in view of Section 18 read with Section 24 of Federal Insurance Ombudsman Institutional Reforms Act No.XIV of 2013.

5. Petitioner who is present in person has submitted that learned Federal Insurance Ombudsman redressed her grievance but the appellate forum upset his decision without hearing her, hence has committed gross violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Further, the action on the part of Respondent-company was arbitrary and capricious thus untenable in law; that Section 24- A of the General Clauses Act, 1897, obliges every person exercising powers conferred by a statute, to act "reasonably, fairly, justly and for the advancement of the purpose of the enactment"; It also stipulates that the person making any order under the power conferred by any enactment shall, so far as necessary or appropriate, "give reasons for making the order". Therefore, unreasoned order of rejecting the genuine claim of the petitioner is violative of various provisions of the Constitution and law; that there is no other efficacious and adequate remedy available with the Petitioner but to invoke the Constitutional Jurisdiction of this Court for the relief(s) as prayed in the Memo of Petition.

6. Learned A.A.G. has supported the decision of respondent No.1 and argued that the instant petition involves question of disputed amount, which has been finally resolved by the order of appellate

forum therefore no interference is required by this Court in writ petition; that the petitioner has a remedy to file suit for recovery against the private respondent-company. Learned A.A.G. further contended that the representation filed by the respondent-company was decided in accordance with the procedure provided in law and right of personal hearing could not possibly be given by the President to the parties and calling of the written reply / comments to the representation would be sufficient in compliance of the law laid down by the Honorable Supreme Court in the case of Federation of Pakistan through Secretary Establishment Division v. Muhammad Tariq Pirzada (1999 SCMR 2744). He lastly prayed for dismissal of the instant petition. In rebuttal, the petitioner, on the other hand, has contended that in the present case even written reply of petitioner was not called before passing an order adverse to her interest and thus, it was passed in utter disregard to the law laid down by the Honorable Supreme Court and the principle of natural justice.

7. We have heard the petitioner who is present in person, however the respondent-company is called absent without any intimation and learned AAG has been heard, and perused the entire material available on record.

8. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution, 1973.

9. Having dilated upon on the aforesaid proposition, the instant Petition relates to refund of investment of the Petitioner with the respondent-company, whereby Respondent-company claim that they settled the dispute with the petitioner by paying full and final payment through cheque but the aforesaid factum is denied by the petitioner. An excerpt of the Office Order dated 22.2.2016 passed by the Federal Insurance Ombudsman is reproduced as under:-

“As per the above discussion, I am of the confirmed view that gross mal-administration of the respondent Co. as defined under Section 127(2) of the Insurance Ordinance, 2000, is evident and, therefore, direct the Respondent Co. to compensate the complainant by returning his paid amount of Rs.70,000/- within thirty (30) days of receipt of this order.

A copy of this order is being forwarded to SECP for taking appropriate action in such cases, to issue necessary instructions to Insurance Companies to avoid recurrence of such fraudulent activities by the officials / agents of the Insurance Companies.

However, any party aggrieved by this order, is at liberty to avail the remedy of review / representation under Section 13 and 14 of the Federal Ombudsman Institutional Reforms Act, 2013 (Act No. XIV of 2013), within thirty (30) days of the receipt of this order, if so desired.

10. Record further reflects that respondent-company preferred representation against the aforesaid order dated 22.2.2016 which was allowed by the Competent Authority vide order dated 2.1.2017, with the following reasoning:-

“undoubtedly, the matter has involved several factual controversies, which are required to be settled down by a competent court of competent jurisdiction / forum after recording the evidence. In the circumstances, it has been established that there is no record with the company of the complainants/ petitioners. So a burning question of the day arises whether any relationship / clientage was established between the insurance company and the complainants or not? Whether the complainants were involved in the parallel banking / insurance system with the fraudster or not? Whether the complainants have made essential inquiries from the Headquarters of the Company or regional headquarters of the company about the exorbitant rate of a profit on monthly basis or not? Undoubtedly, there are numerous controversies yet to be settled in the particular case. In view of the current scenario, the representation of the Agency merits to be accepted and the impugned orders of the learned FIO are required to be set aside by the appellant forum. The orders of FIO are not sustainable / maintainable in the eyes of law being exceptional in nature having a no strong foundation stone, which is pre-requisite of the law. Thus, the findings of FIO are based on mere surmises and conjectures. There was no unassailable evidence to prove the particular case. In the light of oral assertion, it was a fit case for decision of the court of competent jurisdiction. Rather, it was a case, which is based on factual controversies which can only be resolved / settled after recording evidence, which is prime function of the court of competent jurisdiction, where both parties have an equitable opportunity for examination, reexamination and cross-examination. Thus, it was not a fit case for decision in slipshod manner, as is decided by FIO. Unquestionably, the orders of FIO are required to be dismissed and the representation of the Agency merits to be accepted by the appellant forum. However, the complainant can seek remedy for the court of competent jurisdiction, if so advised.

11. The pivotal questions which need to be addressed in order to reach a just decision are that when a decision on factual position has been given by the Federal Insurance Ombudsman in paragraph No.2 of the order can be called in question before President of Pakistan through representation, what is its effect, and whether decision of competent authority concurring with the opinion of Respondent-company without hearing is sustainable in law?

12. This is an admitted fact that the representation of Respondent-company was allowed and order passed by Federal Insurance

Ombudsman was reversed without notice to the petitioner and in her absence so much so a written reply to the representation was not obtained from her before passing the order in question. In our view before deciding a representation against the recommendations of Federal Insurance Ombudsman, the valid and justiciable reasons must be given for arriving to the conclusion contrary to the recommendations of Ombudsman. However, an opportunity of hearing is not confined to the personal hearing rather it may also be in the form of written reply and thus as per scheme of law in a representation to the President against the order of Ombudsman it is not possible for the Worthy President to provide personal hearing to each party in such representation therefore, inviting the comments/written arguments in reply to the representation by the concerned quarters would be considered sufficient compliance of the law, but in the present case Respondent-company has admitted before the learned Federal Insurance Ombudsman that complainant / petitioner was paid amount by cheque dated 24.8.2015 for Rs.56,059/- towards final settlement. Prima facie the aforesaid admission explicitly show that respondent admitted her claim and settled the issue which payment, however, has been shown to have been made in favour of one Shamim Akhtar Sahar of Lahore and not to the present petition whose claim was lodged before the Ombudsman, therefore, the finding of the respondent No.1 on this issue is borne out of record which needs to be set at naught.

13. For the reasons given in the preceding paragraph, we are of the considered view that the findings of learned Federal Insurance Ombudsman Pakistan in complaint No. 13 of 2014 vide order dated 22.2.2016 is just and reasonable under the law thus the same is maintained.

14. This petition stands disposed of in the above terms.

JUDGE

JUDGE