

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 710 of 2016

Plaintiffs : Mrs. Sanam Irshad Shah and others
through Mr. Ahmed Ali Hussain,
Advocate.

Defendant No. 1 : State Life Insurance Corporation
Limited, through Mr. Mian
Muhammad Mushtaq, Advocate.

Dates of hearing : 25.11.2019

ORDER

YOUSUF ALI SAYEED, J – The Plaintiffs profess to be the legal heirs of Syed Irshad Ali Shah (the “**Deceased**”), who was apparently the holder of various Policies of Life Assurance issued by the Defendant No.1, and are aggrieved by the refusal of the Defendant No.1 to make payment thereunder, upon being called upon to do so following his demise.

2. The cause of action is stated in the Plaint to have arisen as follows:

“That the cause of action accrued in favour of the Plaintiffs against the Defendant on 20.09.2010, 29.11.2010, 19.05.2011, 26.03.2012 when the deceased bought/obtained insurance policies from Defendant. It again once on 24.11.2013 when the deceased died and Defendant failed to fulfill its obligations/paid the insured amount to the legal heirs/ nominees of the deceased. It again arose on 07.01.2014 when the legal heirs of the deceased/Plaintiffs approached the Defendant to settlement of claim as per insurance policies. It again arose on 1st July 2015 and 12th October 2015 when Defendant repudiated/rejected the claim of the Plaintiffs on the grounds that the Plaintiffs concealed material facts at the time of buying insurance policies. The cause of action continues to date.”

3. It is on this basis that the Suit has apparently been filed, with it being prayed that this Court be pleased to pass judgment and decree in favour of the Plaintiffs and against the Defendant, as follows:-

“A. Declare that the Defendant’s failure to settle the claim in terms of the contract between the Defendant and the deceased is malafide, arbitrary, discriminatory, violative of the principles of natural justice, & fundamental rights of the Plaintiffs as enshrined in Articles 10-A, 19-A & 25 read with Article 4 of the Constitution.

B. Declare that repudiation of claim of the Plaintiffs by the Defendant vide its letter dated 1st July 2015 and 12th October 2015 is malafide, illegal, arbitrary and ab-initio void and of no legal effect.

C. Cancel/set aside impugned letters dated 1st July 2015 12th October 2015 as being illegal, malafide, arbitrary and of no legal effect.

D. Declare that the Defendant is liable to fulfill its obligations under the insurance policy and the Plaintiffs are entitled to receive claimed amount of Rs.170,000,000/- (Rupees One Hundred Seventy Million) as per insurance policies as well as Rs.1400/- Million as special as well as general damages.

E. Direct the Defendant to pay liquidated damages on account of delay in settlement of claim from October 2012 till the claim is settled.

F. Direct the Defendant to submit before the Court all the records/ proceedings in relation and subsequent to claim of the Plaintiffs on the basis of which death claim of the Plaintiffs was rejected.

G. Any other relief(s) may deem fit and proper according to the circumstances of the case.

H. Cost of the Suit.”

4. It is in this backdrop that an Application under Order 7, Rule 11 CPC, bearing CMA No. 15261/16 has been filed, seeking rejection of the Plaint on the ground that the Tribunal constituted under Section 121 of the Insurance Ordinance, 2000 (the “**IO**”) has exclusive jurisdiction to

adjudicate on the matter in terms of Section 122 thereof, which stipulates as follows:

122. Powers of Tribunal.- (1) A Tribunal shall:

- (a) in the exercise of its civil jurisdiction, have in respect of a claim filed by a policy-holder against an insurance company in respect of, or arising out of a policy of insurance, all the powers vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908);
 - (b) in the exercise of its criminal jurisdiction, try the offences punishable under this Ordinance and shall, for this purpose, have the same powers as are vested in the Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898);
 - (c) exercise and perform such other powers and functions as are, or may be, conferred upon, or assigned to it, by or under this Ordinance; and
 - (d) in all matters with respect to which procedure has not been provided for in this Ordinance, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898) as the case may be.
- (2) The jurisdiction of a Tribunal shall not extend to appeals to which section 33 and section 34 of the SECP Act apply.
- (2) No Court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Tribunal extends under this Ordinance, including a decision as to the territorial limits and the execution of a decree, order or judgment passed by a Tribunal:

Provided that for the purposes of this section a Small Claims Settlement Committee established under section 117 shall not be deemed to be a Court.

5. The definition of the term “policy holder” has been set out in Section 2(xlvi) of the IO, in the following terms:

“policy holder” means the person to whom a policy is issued or, in the case of a policy of life insurance, the person to whom the whole of the interest of the policy holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition;

6. Learned counsel for the Defendant No.1 submitted that the matter thus fell squarely within the domain of the Tribunal. He submitted that, as provided under section 121 (1) of the IO, vide Circular Notification dated 30.10.2006 the Federal Government had conferred the powers of Insurance Tribunal for the whole Province of Sindh on the District and Sessions Judge Karachi, Central, and that was the competent forum to entertain and decide the cases emanating from insurance policies and/or cases regarding insurance claims.

7. It was submitted that in view of the bar envisaged in terms of Section 122 (3) of the IO, the instant Suit for recovery of the alleged insurance claims was not maintainable before this Court, it being pointed out that Section 9 of the CPC states as follows:

Courts to try all Civil Suits unless barred--.

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

8. In support of the Application under reference, reliance was placed on the judgments in the cases reported as Haji Muhammad Hanif v. State Life Insurance Corporation of Pakistan 2007 CLD 490, Messrs. East-West Insurance Company Limited v. Messrs. Muhammad Shafi & Company 2009 CLD 960, and Abdul Qayoom v. State Life Insurance Corporation of Pakistan 2011 CLD 1157, and it

was submitted that the plaint ought to be rejected accordingly under Order VII, Rule XI (d) CPC.

9. Conversely, learned counsel for the Plaintiffs submitted that the prayer for rejection of the Plaint was misconceived. He contended that when an order was mala fide or suffered from a lack of jurisdiction or was in violation of the principles of natural justice, then the same could be challenged before the Civil Courts even if there was a specific bar contained in the statute.
10. He submitted that such principle was well settled in terms of a catena of judgments of the Honourable Supreme Court of Pakistan, leading up to and including the judgment in the case reported as Searle IV Solution (Pvt) Ltd and others v. Federation of Pakistan and others 2018 SCMR 1444.
11. He invited attention to the allegations set out in Paragraph 15 of the Plaint, wherein it had been alleged that the Defendant No.1 had acted in a illegal and underhanded manner and that as the impugned letters dated 1st July 2015 and 12th October 2015 issued by the Defendant No.1, as had been assailed vide the Suit, were illegal, mala fide, arbitrary and of no legal effect, with a prayer having been made to that effect, it was contended that the Suit was therefore maintainable.
12. Having examined the pleadings and considered the arguments advanced by learned counsel, it is apparent that the dispute falls within the ambit and purview of the IO, as circumscribed by Section 122 thereof. As to the

contention on behalf of the Plaintiff that this Court may and ought to nonetheless exercise jurisdiction in the face of such a provision in view of the principles laid down as to the application of statutory ouster clauses, in the judgment of the Honourable Supreme Court in the case of *Searle IV Solution (Pvt) Ltd and others v. Federation of Pakistan and others* 2018 SCMR 1444, it was held that where the jurisdiction of the Civil court is challenged on the ground of ouster of jurisdiction it must be shown that, (a) the authority or tribunal in the Statute creating such a bar is validly constituted (b) where the order passed or action taken by the authority is not tainted with mala fide; (c) where the order or action taken was such which could be passed or taken under the law which conferred exclusive jurisdiction on the authority or tribunal; or (d) where in passing the order or taking the action, the principles of natural justice were not violated, and if one or more of these four conditions are violated an exception is carved out for the Civil Court to assume jurisdiction. In the matter at hand, the valid constitution and competence of the Tribunal is not a point in dispute, and it has merely been alleged that the ouster envisaged in terms of Section 122(2) of the IO would not serve as a bar as the letters dated 1st July 2015 and 12th October 2015 are mala fide and were issued by the Defendant No.1 without hearing the Plaintiffs.

13. However, such contention is patently misconceived, as the letters referred to are not the order(s) of any authority but are merely the responses of the Defendant No.1 to the claims made under the policies, expressing their refusal to make payment in respect thereof for the reasons stated. As per its very preamble, the IO has been promulgated inter alia to ensure the protection of the interests of insurance policy holders, and in terms of Section 123 thereof, all of the powers as are vested in a Civil Court

trying a suit under the CPC have been conferred upon the Tribunal in respect of (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents and material objects; (c) receiving evidence on affidavits; and (d) issuing commissions for the examination of witnesses or documents. As such, the Tribunal is not handicapped in any way from adjudicating on the matter, and the question as to whether the reasons stated by the Defendant No.1 in its letters constitute a valid basis for denying the Plaintiff's claims or are mala fide is clearly a matter for determination falling within the competence of the Tribunal, and if the very reasons for refusal of an insurer to entertain a claim were to be treated as constituting grounds for carving out an exception to the ouster clause, that would negate the very purpose of the Tribunal.

14. In view of the foregoing, it is apparent that the Suit is barred under Section 122(3) of the IO read with Section 9 CPC. As such, CMA No. 15261/16 is allowed and the Plaintiff stands rejected. Other miscellaneous, having become infructuous stand dismissed accordingly.

Karachi
Dated _____

JUDGE