

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

Miscellaneous Appeal No.01 of 2022

Appellant : M/s. EFU General Insurance Ltd.
through M/s. Moin Azhar Siddiqui & Ali
Ahmed Turabi, Advocates

Respondents 1 to 3: M/s. Hanif Sattar Plastic
M/s. Al-Amin Plastic
M/s. Arsalan Plastic
through Mr. Muhammad Salim
Thepdawala & Muhammad Umar Javed,
Advocates

Respondent No.4: M/s. Haji Ikhlas Godown
Nemo.

Date of Hearing : 06.05.2026

Date of Judgment: 19.05.2026

J U D G M E N T

Amjad Ali Sahito, J. This Miscellaneous Appeal has been preferred by the appellant (Defendant No.1 in the Suit) against the Judgment and Decree dated 04.08.2022 passed by the learned Insurance Tribunal for Sindh at Karachi, whereby the Suit instituted by Respondents No.1 to 3 (Plaintiffs in the Suit) was decreed for recovery of insurance claim along with liquidated damages. Respondent No.4 was impleaded as Defendant No.2 before the learned Tribunal, being the owner/occupant of the godown wherein the insured goods of Respondents No.1 to 3 were allegedly stored at the time of the fire incident.

2. Briefly stated, the facts giving rise to the present appeal are that Respondents No.1 to 3 are jointly carrying on business in plastic goods. They had obtained a fire insurance policy bearing No.55314857/07/2006 dated 03.07.2006 from the appellant company for a sum insured of Rs.100 million in respect of goods

allegedly stored at Haji Ikhlas Godown, S.I.T.E., Karachi. The said policy was issued by the appellant after inspection of the premises and verification of the goods and remained valid up to 01.07.2007. During the subsistence of the said policy, a fire allegedly erupted at the aforesaid godown on 21.09.2006, resulting in damage to the goods claimed to have been stored therein. The incident was duly intimated to the appellant/Insurer, claim forms were submitted, and Surveyors were appointed who sought various documents and conducted inspection of the premises. According to Respondents No.1 to 3, despite furnishing the requisite record and extending full cooperation to the Surveyors, the claim was unnecessarily delayed and ultimately remained unsettled, thereby constraining them to institute the Suit for recovery of Rs.84,680,737/- along with liquidated damages under the provisions of the Insurance Ordinance. The learned Tribunal ultimately decreed the Suit in favour of Respondents No.1 to 3/Plaintiffs. Being dissatisfied and aggrieved by the said Judgment and Decree, the appellant has preferred the instant appeal.

3. Learned counsel for the appellant contended that the impugned judgment and decree passed by the learned Insurance Tribunal are contrary to law and the facts of the case and suffer from serious legal as well as factual infirmities. It was argued that prior sanction from the S.E.C.P. under Section 162 of the Insurance Ordinance, 2000 was mandatory before institution of the claim before the Tribunal and, since no such sanction was obtained in the present matter, the claim itself was not maintainable. He further submitted that the suit was also barred under Section 69 of the Partnership Act, 1932, as no certificate evidencing registration of the alleged firm had been produced before the learned Tribunal. According to him, the prohibition contained in Section 69 of the Partnership Act is mandatory in nature and goes to the very root of the jurisdiction of the Court to entertain the proceedings. He argued that despite specific objection having been raised in the written statement, the learned Tribunal failed to return any proper finding on this material legal issue.

4. Learned counsel next contended that the Suit was hopelessly barred by limitation inasmuch as the fire incident admittedly occurred on 21.09.2006 whereas the Suit was instituted in December 2008, beyond both the contractual as well as statutory period of limitation. He submitted that under the terms and conditions of the insurance policy, particularly Clause-19 thereof, the claim was required to be enforced within the stipulated period, failing which the claim itself stood extinguished. According to the learned counsel, the learned Tribunal fell into error while holding that the cause of action was continuing in nature. He argued that mere exchange of correspondence between the parties could not extend the period of limitation in the absence of any acknowledgment of liability on the part of the Insurer.

5. It was further argued that no sufficient or reliable evidence was available on record to establish that the alleged goods were actually lying in the godown at the relevant time of the incident. Learned counsel submitted that Respondents No.1 to 3 failed to produce authentic stock registers, warehouse records, tax documents, or any independent evidence to substantiate the exact quantity, ownership, and valuation of the alleged goods. He contended that the respondents deliberately withheld material evidence and sought to rely upon manipulated and subsequently prepared documents. According to him, the insurance policy covered only such goods as were actually stored in the godown at the relevant time and not any hypothetical or subsequently introduced stock.

6. Learned counsel further submitted that the Surveyors appointed by the appellant had repeatedly called upon Respondents No.1 to 3 to furnish complete record, including sale invoices, purchase receipts, tax returns, bank statements, stock registers, delivery challans, and ownership documents. However, despite repeated reminders, the said respondents failed to provide complete and satisfactory material, as a consequence whereof the Surveyors were unable to finalize the assessment within time. According to the learned counsel, the delay in submission of the

survey report was solely attributable to the conduct of Respondents No.1 to 3 themselves. He argued that the learned Tribunal completely overlooked this material aspect while fastening liability upon the appellant.

7. Learned counsel also argued that the survey report itself reflected serious discrepancies and deficiencies in the claim of Respondents No.1 to 3 and specifically concluded that, owing to lack of supporting evidence, no recommendation could be made by the Surveyors. According to him, once the Surveyors themselves were unable to verify the alleged loss, no decree could legally have been passed merely on the basis of the assertions advanced by the plaintiffs.

8. He next contended that Respondents No.2 and 3 neither entered the witness box nor filed independent affidavits in evidence and, therefore, an adverse inference ought to have been drawn against them. Learned counsel argued that the attorney of the plaintiffs was incompetent to depose regarding facts exclusively within the personal knowledge of the principals and, therefore, the entire evidence produced on behalf of the plaintiffs was legally insufficient and devoid of evidentiary value.

9. Learned counsel further argued that the learned Tribunal failed to appreciate that a contract of insurance is to be construed strictly in accordance with its terms and conditions and unless strict compliance thereof is established, no liability can be imposed upon the Insurer. According to him, the learned Tribunal proceeded on equitable considerations rather than the settled legal principles governing insurance contracts. Lastly, he submitted that the findings recorded by the learned Tribunal are based upon conjectures and surmises and, therefore, are liable to be set aside by this Court in exercise of its appellate jurisdiction. In support of his contention, learned counsel has relied upon the cases reported as Sargodha Central Co-operative Bank Ltd. vs. New Hampshire Insurance Co. (PLD 1982 Karachi 627), Ali Pipe Industries Faisalabad vs. Universal Insurance Co. Ltd. (PLD 1989 Lahore 390), EFU General Insurance Co. vs. Fahimul Haq (1997 CLC 1441 Quetta), Jaffar Khan vs. Muhammad Achar (PLD 1961

Karachi 335), Alpha Insurance Co. Ltd. vs. Poly Foils (Pvt.) Ltd. (2017 CLD 1091 Karachi) and State Life Insurance Corporation of Pakistan vs. Mst. Shazia Mir Arshad (2019 SCMR 1917).

10. Conversely, learned counsel appearing on behalf of Respondents No.1 to 3, while supporting the impugned Judgment, submitted that the same is based upon proper appreciation of the evidence available on record and settled principles of law; therefore, no interference by this Court is warranted in exercise of appellate jurisdiction. Learned counsel contended that the appellant had neither disputed the issuance of the insurance policy, receipt of premium, occurrence of the fire incident, nor the appointment of Surveyors. According to him, these admitted facts alone sufficiently established the contractual relationship between the parties as well as the liability of the Insurer, subject only to assessment of the loss sustained.

11. Learned counsel further argued that prior to issuance of the policy, the appellant itself had conducted inspection of the premises and verified the existence and nature of the goods stored in the godown. He submitted that once the Insurer had satisfied itself regarding the existence of the stock and issued the policy after receiving the premium, it could not subsequently deny the existence of such goods merely to evade settlement of the claim. He further contended that the occurrence of the fire incident was an admitted fact and even Respondent No.4 had categorically admitted that goods belonging to Respondents No.1 to 3 were stored in the godown at the relevant time.

12. Learned counsel vehemently argued that Respondents No.1 to 3 had fully cooperated with the Surveyors and furnished each and every document demanded by them from time to time. In support thereof, he referred to the extensive correspondence and documentary exhibits available on record and submitted that acknowledgment of receipt of the documents by the Surveyors was also admitted during the cross-examination of DW-1 and DW-2. He contended that despite receipt of all relevant material, the Surveyors deliberately prolonged the matter by demanding wholly irrelevant documents, including previous years' business records,

income tax documents, and financial statements having no nexus whatsoever with the assessment of the fire loss.

13. According to the learned counsel, the conduct of the Surveyors clearly reflected mala fide intention to delay and ultimately defeat a genuine insurance claim. He submitted that under Rule 22(4) of the Insurance Rules, 2002, the Surveyors were legally bound to finalize and submit their report within a period of ninety days; however, admittedly the report was submitted after approximately eighteen months without any lawful justification. He argued that such inordinate and unexplained delay itself established negligence and lack of bona fides on the part of the appellant and its Surveyors.

14. Learned counsel further contended that Respondents No.1 to 3 had produced overwhelming documentary evidence, including the insurance policy, premium receipts, claim forms, fire brigade report, inventory details, correspondence exchanged with the Surveyors, delivery challans, bank statements, warehouse records, and other supporting documents, all of which conclusively established the existence of the stock as well as the extent of loss suffered by the respondents. He submitted that not only the documentary evidence but also the admissions made by the appellant's own witnesses sufficiently proved the claim set up by Respondents No.1 to 3.

15. Learned counsel also argued that the objection with regard to limitation was misconceived and legally untenable. According to him, the claim remained under active consideration of the Surveyors and the appellant continuously maintained correspondence with the respondents regarding assessment of the loss; therefore, the cause of action remained subsisting and continuing in nature. He submitted that in insurance matters, limitation commences from the date of final repudiation or denial of the claim and not merely from the date of occurrence of the incident. Since no final repudiation was communicated within a reasonable period, the Suit was well within the prescribed period of limitation. In support of his contention, learned counsel has relied upon the cases reported as State Life Insurance Corporation

of Pakistan through Chairman and another vs. Muzafar Ali (2018 CLD 1300), Khurshid Ali and 6 others vs. Shah Nazar (PLD 1992 Supreme Court 822), Mst. Nur Jehan Begum through Legal Representatives vs. Syed Mujtaba Ali Naqvi (1991 SCMR 2300), Messrs M.R. Transport Co. vs. Messrs National General Insurance Co. Ltd. (2001 CLC 1618), Messrs Eastern General Insurance Co. Ltd. Mst. Khatija Begum (1984 CLC 2927), Tarmohamed Janoo & Company vs. The Central Insurance Company Ltd. and 2 others (1988 CLC 177), Eastern Federal Insurance Co. vs. Muhammad Iqbal (PLD 1990 Karachi 307), Messrs SHaheen Insurance Company Limited through Assistant General Manager vs. Cell Star (Franchise Mobilink) Sumandri Road, Jhal Chowk Faisalabad through Sole Proprietor (2018 CLD 131), Universal Insurance Company Limited vs. Hamayun Khan (2019 CLD 1216), Mst. Razia Ameer vs. State Life Insurance Corporation of Pakistan through Chairman and 2 others (2018 CLD 289), EFU General Insurance Ltd. vs. Jahangir Mughul (2021 CLD 1334) and Jubilee General Insurance Co. Ltd., Karachi vs. Ravi Steel Company, Lahore (PLD 2020 Supreme Court 324).

16. None appeared on behalf of respondent No.4 (M/s. Haji Ikhlas Godown) despite service having been effected through all prescribed modes, including publication.

17. We have heard the learned counsel for the parties at considerable length and have carefully examined the entire record with their able assistance.

18. From the pleading of the parties the Tribunal has framed the following Issues.

- 1). Whether the defendant No.1 had issued the Insurance Policy No. 55314857/07/2006 dated 03.07.2006 valid upto 01-07-2007 for the sum insured Rs.100.00 Million in favour of the plaintiff to cover the losses of the goods stored at Haji Akhlas Godown at Plot No.F.526. S.I.T.E. Karachi against receipt of the valid premium?
- 2). Whether due to deliberate delay as part of the surveyors in the verification process of the claim by asking irrelevant and inapplicable details/documents,

the plaintiff has been suffering monetary losses and mental torture, if so to what effect?.

- 3). Whether the defendant No.1 is liable and responsible to pay the actual claim of Rs.84,680,735/- to the plaintiff alongwith penalty as alleged in Section 118 of the Insurance Ordinance, if so to what effect?
- 4). What should the decree be?

19. The principal controversy involved in the present matter revolves around three core aspects, namely: (i) limitation, (ii) maintainability of the suit, and (iii) proof of the claim. Besides these issues, learned counsel for the appellant has also raised certain legal objections regarding maintainability of the suit before the Insurance Tribunal, namely: (i) that prior sanction of the S.E.C.P. under Section 162 of the Insurance Ordinance, 2000 was mandatory before institution of the suit; (ii) that the suit suffered from non-joinder of other alleged claimants/respondents; and (iii) that the suit was barred under Section 69 of the Partnership Act, 1932, as no certificate evidencing registration of the alleged firm was produced before the learned Tribunal.

20. Before adverting to the principal controversies involved in the matter, we deem it appropriate to first address the legal objections raised by the appellant regarding the maintainability of the proceedings.

21. Insofar as the objection raised by learned counsel for the appellant regarding maintainability of the claim before the Insurance Tribunal on the ground that previous sanction from the S.E.C.P. under Section 162 of the Insurance Ordinance, 2000 was mandatory, is concerned, it may be observed that such objection was never raised before the learned Tribunal and has been agitated for the first time before this Court. Nevertheless, in order to settle the controversy, we have examined the same.

A bare reading of the scheme of the Insurance Ordinance, 2000 reflects that Part XV, comprising Sections 121 to 124, exclusively governs the constitution, jurisdiction, powers, and procedure of the Insurance Tribunal in relation to insurance claims. Conversely, Part XIX, comprising Sections 156 to 163,

deals with offences and penalties, including criminal proceedings against insurers and their officers.

A harmonious reading of Section 162 with the other provisions contained in Part XIX clearly demonstrates that the requirement of prior sanction from the S.E.C.P. is confined to criminal prosecution contemplated under the said part and does not extend to civil insurance claims instituted before the Insurance Tribunal. Had the legislature intended otherwise, such requirement would have been expressly incorporated in the provisions dealing with insurance claims under Part XV.

It is a settled principle that statutory provisions must be interpreted in harmony with the overall scheme and object of the enactment. Any interpretation requiring prior sanction even for institution of bona fide insurance claims would unnecessarily suppress the remedy available to policy holders and defeat the very purpose of the legislation.

Accordingly, the contention advanced by learned counsel for the appellant is misconceived and without legal substance.

22. Insofar as the objection regarding non-joinder of alleged other claimants is concerned, the record reflects that the subject insurance policy was obtained and pursued throughout by Muhammad Hanif Sattar, acting as proprietor of the respondent concerns. He alone remained in correspondence with the appellant, conducted the salvage proceedings before the Nazir, furnished affidavits, and signed all relevant documents available on record.

Despite raising the objection, the appellant failed to produce any documentary material, including the insurance policy itself, showing involvement or signatures of any alleged co-proprietors or other claimants. No objection of such nature was ever raised either at the time of issuance of the policy or during the salvage proceedings. Moreover, no person ever approached the appellant or the Court claiming independent ownership or interest in the respondent concerns.

In these circumstances, the objection regarding non-joinder appears to be misconceived, frivolous, and devoid of legal substance.

23. As regards the objection that the suit was barred under Section 69 of the Partnership Act, 1932 on the ground that no certificate evidencing registration of the alleged firm was produced before the learned Tribunal, the record reflects that no such objection was either raised in the written statement or specifically pleaded in the memo of appeal. Consequently, the question of framing any issue on this aspect did not arise.

Be that as it may, even otherwise, the objection is wholly misconceived on the face of the record, as the respondents are proprietary concerns and not partnership firms. A proprietary concern is not required under law to produce any certificate of registration under the Partnership Act, 1932. The record further reflects that the proceedings were instituted through the proprietor of the respondent concerns, which is legally permissible.

Accordingly, the objection being frivolous and misconceived is not sustainable in law.

24. Now adverting to the main controversy. Insofar as the question of limitation is concerned, the record reflects that Respondents No.1 to 3/Plaintiffs, being a business group of Muhammad Hanif, had lodged a fire insurance claim with the appellant in respect of losses allegedly sustained due to the fire incident, to the extent of the insured amount of Rs.100 million. However, after adjustment of the value of the salvage goods, the final claim was submitted on 15.03.2007 in the sum of Rs.84,680,737/-. Ultimately, Respondents No.1 to 3 instituted the Suit for recovery of the final loss allegedly caused by the fire incident covered under the subject insurance policy, along with liquidated damages.

25. The record further reveals that Respondents No.1 to 3 had obtained Fire Insurance Policy No.55314857/07/2006 dated

03.07.2006, valid up to 01.07.2007, for a sum insured of Rs.100 million to cover loss or damage caused by fire to the stock of Respondents No.1 to 3 stored at Haji Ikhlas Godown belonging to Respondent No.4. The subject policy was admittedly issued by the appellant after conducting complete inspection of the said godown and verification of the stock/goods stored therein, which were covered under the said policy. In this regard, DW-2, namely Naeemuddin Farooqui, Vice President of the appellant company, admitted during cross-examination that prior to issuance of any policy, the company used to inspect the subject goods and scrutinize the premises where such goods were stored, and that the subject policy had been issued only after compliance with all requisite formalities.

26. On 21.09.2006, a fire incident took place at the said godown, whereupon Respondents No.1 to 3 immediately informed the appellant both telephonically as well as through written intimation vide letter dated 22.09.2006. In accordance with the prescribed procedure of the appellant company, Respondents No.1 to 3 submitted the prescribed Fire Claims Form bearing Loss No.355000171/2006 on 30.10.2006 (Exh.P/3). Thereafter, the appellant appointed M/s. Khalid & Associates (Pvt.) Ltd. and M/s. Nanjee & Company (Pvt.) Ltd. as authorized Surveyors for the purpose of determining the actual loss allegedly caused to Respondents No.1 to 3 on account of the said fire incident.

27. The Surveyors, through their joint letter dated 02.10.2006 (Exh.P/4), called upon Respondents No.1 to 3 to furnish complete particulars of the insured goods along with other relevant record so as to enable them to properly scrutinize and assess the loss allegedly sustained due to the fire incident. In compliance with the various demands raised by the Surveyors, Respondents No.1 to 3 furnished item-wise details of the insured goods through several covering letters dated 30.10.2006 (Exh.P/5-a to Exh.P/5-t), 01.11.2006 (Exh.P/7-a), 23.12.2006, 27.12.2006, and 30.12.2006 (Exh.P/8 to Exh.P/10), with a view to enabling the Surveyors to scrutinize and determine the actual loss covered under the policy.

28. These material facts stand duly corroborated from the evidence of DW-1, namely Abid Hussain of M/s. Nanjee & Co. (Pvt.) Ltd., Karachi, and DW-2, namely Nadeemuddin Farooqui, Vice President of the appellant company, who during the course of their cross-examination admitted that each and every document demanded by the joint Surveyors had been furnished by Respondents No.1 to 3, as acknowledged by the Surveyors on the respective covering letters exhibited as Exh.P/5-a to Exh.P/7-a, Exh.P/8 to Exh.P/10, and Exh.P/14 to Exh.P/20. They further admitted that the said documents were also referred to in Exh.D/2 as Annexures 22 to 46 contained in Volume No.1 at pages 42 to 68. Furthermore, both the witnesses admitted that all documents furnished by Respondents No.1 to 3 to the joint Surveyors had been brought on record by the defendant Insurance Company along with its written statement comprising eight volumes.

29. Respondents No.1 to 3 further asserted that the authorized representatives of the Surveyors remained present at the subject godown immediately after the fire incident dated 21.09.2006 and supervised the site until the fire was completely extinguished. It was further claimed that the entire salvage stock was shifted under the direct supervision of the said Surveyors. In this regard, DW-1, being the representative of the Surveyors, admitted during cross-examination as under: "It is correct to suggest that at the time of incident I was deputed by the company to remain present at the site."

30. In the meanwhile, Respondent No.4 instituted Constitution Petition No.D-1861/2006 before this Court, wherein vide order dated 10.01.2007 (Exh.P/11), the Nazir of this Court was appointed for the purpose of supervising the transfer of the entire salvage goods from the subject godown to the godown of M/s. Pakistan Chemical & Dyes Merchants Association (PCDMA). Thereafter, the Nazir of this Court, through notice dated 17.01.2007 (Exh.P/13), directed Respondents No.1 to 3 to appear before him on 22.01.2007 for taking delivery of the salvage goods from PCDMA in compliance with the Court's order. Likewise, PCDMA vide its letter dated 18.01.2007 (Exh.P/1) informed all

affected parties, including Respondents No.1 to 3, regarding delivery of the salvage stock through the Nazir of this Court on 22.01.2007.

31. Upon receipt of the salvage stock from PCDMA in the presence of Mr. Jawed, the authorized representative of the Surveyors, Respondents No.1 to 3 submitted their final claim dated 15.03.2007 (Exh.P/18) in the sum of Rs.84,686,737/-, along with complete details of the total stock allegedly destroyed in the fire incident as well as particulars of the salvage stock recovered pursuant to the orders passed in Constitution Petition No.D-1861/2006. The said claim was accompanied by gate passes issued by Defendant No.4 and weightment slips issued by Honest Weigh Bridge Site. In this regard, DW-1 admitted during cross-examination as under: "It is correct to suggest that as per Annexures P/18 to P/20, the claims of Respondents No.1 to 3 were reduced from Rs.100 million to Rs.84,686,737/- after adjustment of the value of salvage and partially damaged goods determined by the said Association in compliance with the Court order."

32. However, despite submission of the aforesaid material, no meaningful progress was made in processing the claim. Consequently, Respondents No.1 to 3, through letters dated 14.04.2007 and 28.04.2007 (Exh.P/19 and Exh.P/20 at pages 643 and 649), requested the Surveyors to finalize and assess the claim at the earliest, pointing out that considerable time had already elapsed. The Surveyors, vide their joint letter dated 07.05.2007 (Exh.P/21 at page 651), acknowledged and confirmed the computation of allowances referred to in the respondents' letter dated 28.04.2007.

33. Nevertheless, the Surveyors again, through paragraph 11-B of their joint letter dated 08.06.2007 (Exh.B/22 at page 653), demanded documents which, according to Respondents No.1 to 3, had already been furnished earlier, in addition to several other irrelevant documents. The record further reflects that the Surveyors thereafter proceeded to scrutinize the business records of the preceding two to three years of the respondents. These material facts were also confirmed by DW-1 during cross-

examination, wherein he admitted that;- “It is correct to suggest that the relevant documents of the insured goods are necessary to assess the losses and previous record is not necessary.”...“It is correct to suggest that neither the Insurance Act, 2000 nor the Insurance Rules, 2002 provide for inspection of previous business record of the customer for assessment of losses arising out of a particular incident.”

34. Owing to the inordinate delay caused by the Surveyors, Respondents No.1 to 3 addressed letter dated 15.06.2007 (Exh.P/23-a) to the President/CEO of the appellant company, bringing to his notice the alleged un-business like attitude and conduct of the Surveyors. The record further reflects that Respondents No.1 to 3 made every possible effort to secure settlement of their insurance claim from the appellant; however, vide letter dated 26.06.2007, the appellant raised fresh objections and averments, which were duly responded to by Respondents No.1 to 3. In this context, Rule 22(4) of the Insurance Rules, 2002 provides as under:

“22 (4);- Surveys and reports of insurance surveyors “Every survey conducted by, and report given by, an insurance surveyor shall be conducted and given with due diligence and skill, and in good faith and the report shall be finalized as early possible but within the period of ninety days”.

35. In the present case, the record manifestly reflects that the matter remained under active consideration of the Surveyors for a considerable length of time and no final decision with regard to the claim was ever communicated within a reasonable period. The conduct of the appellant and its Surveyors, in continuously demanding documents and prolonging the assessment process, clearly demonstrates that the claim remained pending adjudication and was never conclusively repudiated within the alleged period of limitation. In such circumstances, the cause of action remained subsisting and continuing in nature and, therefore, the Suit cannot be held to be barred by limitation. The learned Tribunal has rightly appreciated this aspect of the matter and we do not find any legal infirmity or misreading of evidence in

the said finding. Reliance in this regard may be placed upon the case of Jubilee General Insurance Co. Ltd., Karachi vs. Ravi Steel Company, Lahore, wherein the Hon'ble Supreme Court of Pakistan was pleased to hold as under:

“....9.It is true that limitation to file Insurance Claim arising under the Insurance Policy before the Insurance Tribunal is not provided for under the Ordinance, 2000, however three years period is provided for under Article 86(b) of the Limitation Act, 1908 against ‘the occurrence causing the loss’ on the policy of insurance “when the sum insured is payable after proof of the loss has been given to or received by the insure”.

36. The next and most crucial aspect pertains to proof of the claim. The appellant has contended that Respondents No.1 to 3 failed to establish the existence of the goods as well as the extent of the alleged loss. However, such contention is not borne out from the material available on record. The respondents produced extensive documentary evidence, including the insurance policy, claim forms, correspondence exchanged between the parties, fire brigade report, inventory details, and other supporting documents. More importantly, the witnesses produced by the appellant itself, including the Surveyors, admitted during cross-examination that the policy had been issued after due inspection of the premises, that the goods were in fact stored in the godown, that the relevant documents had been received from Respondents No.1 to 3, and that the Surveyors had remained present at the site and supervised the rescue and salvage operations. It was further admitted that all documents supplied by Respondents No.1 to 3 had been brought on record by the appellant itself along with its written statement.

37. The role of Surveyors in matters of this nature is to assess the loss fairly, independently, and honestly within the parameters prescribed by law. However, in the present case, it is evident that the Surveyors failed to finalize their report within the prescribed period of ninety days and instead prolonged the matter for approximately eighteen months. The correspondence placed on

record clearly demonstrates that the Surveyors repeatedly demanded documents which had either already been supplied or were wholly irrelevant for the purpose of assessment of the loss, including previous business records, tax documents, and unrelated financial data. Such conduct unmistakably reflects an attempt to delay or avoid liability rather than to fairly and objectively assess the claim of the insured.

38. In the present case, the occurrence of the fire incident, existence of the goods, and submission of the insurance claim stand duly established through documentary evidence as well as the admissions made by the appellant's own witnesses. Moreover, the verification process conducted under the supervision of the Nazir of this Court and M/s.Pakistan Chemical & Dyes Merchants Association (PCDMA) lends further credibility and authenticity to the claim of Respondents No.1 to 3.

39. It is by now a well-settled principle of law that contracts of insurance are founded upon the doctrine of utmost good faith and, once the insured has complied with the terms and conditions of the policy and established the occurrence of the insured event along with prima facie proof of loss, the Insurer cannot be permitted to evade or defeat its liability on mere hyper-technical grounds. The very foundation of all commercial transactions, particularly contracts of insurance, rests upon mutual trust and confidence between the contracting parties. If such contractual obligations are allowed to be frustrated on technicalities devoid of substance, the sanctity and enforceability of commercial contracts would stand seriously undermined.

40. Insurance companies, being institutions dealing with indemnification of losses suffered by insured persons, are expected not only to adopt a fair, reasonable, and beneficial approach in their dealings, but also to act with utmost good faith while processing and settling genuine claims of the insured. They ought not to resort to frivolous, untenable, or technical objections merely with a view to repudiate or defeat legitimate claims, as appears to have been attempted in the present case.

41. The learned Tribunal, after exhaustive and detailed appraisal of the oral as well as documentary evidence, has rightly concluded that the delay in settlement of the claim was attributable solely to the appellant and its Surveyors and that Respondents No.1 to 3 were legally entitled to the claimed amount. The award of liquidated damages under Section 118 of the Insurance Ordinance, 2000 also appears to be fully justified in view of the inordinate and unexplained delay occasioned in settlement of the insurance claim.

42. We have independently examined the impugned Judgment in the light of the objections raised by the appellant and find that the learned Tribunal has dealt with all material aspects of the case, including the evidence brought on record, legal objections raised by the parties, and the applicable provisions of law, in a proper, judicious, and well-reasoned manner. No instance of misreading or non-reading of evidence has been pointed out which may warrant interference by this Court in exercise of appellate jurisdiction.

43. The case law relied upon by the learned counsel for the appellant is clearly distinguishable on facts and circumstances and, therefore, does not advance the case of the appellant nor is the same applicable to the controversy involved in the present matter.

44. In view of the foregoing discussion and for the reasons recorded hereinabove, we are of the considered opinion that the impugned Judgment and Decree do not suffer from any legal infirmity, jurisdictional defect, or material irregularity warranting interference by this Court. Consequently, the instant appeal, being devoid of merit, is hereby **dismissed**, while maintaining the Judgment and Decree passed by the learned Insurance Tribunal along with all consequential benefits arising therefrom.

JUDGE

JUDGE