

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Munib Akhtar
Mr. Justice Zulfiqar Ahmad Khan

Constitution Petition No.D-2261 of 2015

[M/s. Jubilee Life Insurance Co. Ltd v/s. Federation of Pakistan through Secretary Law, Ministry of Law & Justice Division and others]

Constitution Petition No.D-2369 of 2016

[M/s. Jubilee Life Insurance Co. Ltd v/s. Federation of Pakistan through Secretary Law, Ministry of Law & Justice Division and others]

Constitution Petition No.D-3149 of 2016

[M/s. Jubilee Life Insurance Co. Ltd v/s. Federation of Pakistan through Secretary Law, Ministry of Law & Justice Division and others]

Constitution Petition No.D-3150 of 2016

[M/s. Jubilee Life Insurance Co. Ltd v/s. Federation of Pakistan through Secretary Law, Ministry of Law & Justice Division and others]

Date of Hearing : 24.08.2017

Petitioner : M/s. Jubilee Life Insurance Co. Ltd, through Sibtain Muhmud, Advocate

Respondent No.1 : Federation of Pakistan, through Mr. Asim Mansoor Khan, Deputy .A.G.

Respondent No.3 : Mst. Hajira Altaf, Respondent in C.P No.D-2261/2016, through Mr. Munir-ur-Rehman, Advocate

Respondent No.3 : Mst. Maryam Basit Respondent in C.P No.D-2369/2016, through Raja Sikandar Khan Yasir, Advocate

JUDGMENT

Zulfiqar Ahmad Khan, J. :- This judgment will dispose of the instant bunch of constitutional petitions filed by M/s Jubilee Life Insurance Co. Limited (“Insurance Company”) against orders passed by Federal Insurance Ombudsman (“the Ombudsman”) on applications made to it by widows and daughter of certain insured individuals in C.P No.D-2261/2015, 3149/2016 and 3150/2016, whereas in C.P No.D-2369/2016 the Ombudsman passed the impugned order on a request made by the policy holder herself.

Notwithstanding the nature of the complaint made to the Ombudsman, the question of law involved in all these four petitions is the same, i.e., *whether the individuals should have made (as they in fact did) an application for redressal of their grievances to the Ombudsman appointed under section 127 of the Insurance Ordinance, 2000 ("Ordinance") or they should have approached the Insurance Tribunal set up under section 121 of the said Ordinance?* The Insurance Company (as noted, the sole petitioner in all these four cases) has sought declarations against the orders passed by the Ombudsman, that they be held illegal, non-sustainable in law and made without jurisdiction.

2. As stated above for the three petitions clubbed in the first paragraph, the widows/daughter of the insured deceased wrote to the Ombudsman alleging that after the death of the insured, the Insurance Company had either refused to pay the claim or has only paid only a portion thereof. Learned counsel for the petitioner chose to treat C.P No.D-2261/2015 as the leading case, and we therefore briefly state the facts of the said petition in order to set the question of law to be addressed in an appropriate factual context. There, the respondent No.3 (widow of deceased insured Muhammad Altaf) filed a complaint to the Ombudsman against the Insured Company stating that her late husband had obtained a life insurance policy effective 13.1.2012 in a sum of Rs.500,000/- on the payment of annual premium of Rs.51,765/- but after the death of her husband (aged 49) on 12.9.2013, the Insurance Company refused to pay the claim on the ground that the deceased was suffering from Chronic Liver Disease (CLD) for the last four and half years, alleging that the ailment was not disclosed by him at the time of purchase of the insurance policy. Similar ground of mis-declaration about pre-insurance ailment is also raised by the Insurance Company in the case of C.P No.D-3149/2016, where the Insurance Company stated that the deceased was a heart patient, and in the case of C.P No.D-3150/2016 the Insurance Company has also alleged that the deceased was a known patient of Diabetes-Mellitus prior to the date of purchase of the insurance policy. Thus, on these alleged grounds of breach of utmost good faith, the Insurance Company refused to pay the claimed sums.

3. Learned counsel for the Insurance Company argued that non-disclosure of these ailments was a breach of the requirement mandated by section 75 of the Ordinance which requires that every contract of insurance be founded on utmost good faith. He submitted that the said acts of withholding information about the previous ailments fell under section 79 of

the Ordinance which casts a duty of disclosure under the contract of insurance. When counsel's attention was brought towards section 80 of the Ordinance which provides a blanket protection against such assertions after the lapse of two years from the date of the policy, learned counsel submitted that in the case of C.P No. 2261/2015 there was only a period of 20 months between the date of the policy and expiry of the insured, whereas in the case of C.P No. D-3149/2016 the said period was three years and in C.P No.D-3150/2016 the policy holder died in a fatal accident within a week of purchasing the policy. Learned counsel by referring to various documents pleaded that the insured knew about their previous ailments and hiding those from the Insurance Company was a misrepresentation as well as a fraudulent act, therefore the claims being barred under section 79 had been rightly refused by it. With regard to forum shopping, learned counsel emphasized that the remedy before the Ombudsman is only in cases where 'maladministration' is alleged. As there was no such allegation of maladministration, per counsel, the respondents should have approached the Insurance Tribunal for the redressal of their grievances, resultantly per counsel, the orders passed by the Ombudsman are non-sustainable in law and had been made without jurisdiction. In support of his contentions, he made placed reliance on the cases reported as *M. R. Transport Company v. National General Insurance Company Ltd.* 2001 CLC 1618, *Pakistan International Airlines Corporation v. Air Master (Pvt) Ltd.* And another PLD 2004 Karachi 77, *Shafaatullah Qureshi v. Federation of Pakistan* PLD 2001 SC 142 and *Muhammad Aslam Khan v. Government of Pakistan and others* PLD 1993 Karachi 41. He in particular also relied upon an unreported judgment passed in WP No. 21910 of 2009 by a learned Single Bench of the Hon'ble Lahore High Court.

4. Learned counsel for the respondents supported the orders passed by the Ombudsman and submitted that if the Insurance Company wished to challenge these orders, the appropriate remedy was to file a representation before the President of Pakistan, thus alleging that the instant petitions filed under Article 199 ought to be rejected for want of jurisdiction. Learned DAG also supported the contentions of learned counsel for the respondents and submitted that the office of the Ombudsman is not a "court", and thus the acts of the Ombudsman are not barred under Section 122(3) of the Ordinance.

5. Be that as it may, the factual aspect of the controversy, whether the insured had knowledge of their ailments before the date of purchase of respective insurance policies cannot be adjudicated by this Court hearing the petitions under Article 199, and therefore the only legal point before us, as pointed out in the opening part of this judgment, is whether the act of the claimants of taking their grievances to the Ombudsman rather than the Insurance Tribunal was legally sustainable or not. To answer the said question it would be relevant to consider full text of the relevant sections of the Ordinance which deal with powers of the Tribunal and the Ombudsman respectively.

6. Section 122 which describes powers of the Tribunal, and Section 127 which details the jurisdiction, functions and powers of the Ombudsman are reproduced in the following:-

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

- 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).
- 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),
- 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
- 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. [Emphasis supplied]

127. Jurisdiction, functions and powers of Insurance Ombudsman.- The Insurance Ombudsman may on a complaint by any aggrieved person undertake any investigation into any allegation of mal-administration on the part of any insurance company Provided that the Insurance Ombudsman shall not have any jurisdiction to investigate or inquire into any matters which –

- (a) are within the jurisdiction of the Office of the Wafaqi Mohtasib under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. 1 of 1983) ; or
- (b) are sub-judice before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him.

(2) For the purposes of this section “mal-administration” includes –

- (a) a decision, process, recommendation, act of omission or commission which:

(i) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or

(ii) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or

(iii) is based on irrelevant grounds; or

(iv) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and

(b) corruption, nepotism, neglect, inattention, inordinate delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

7. A plain reading of these parallel provisions reveals that under section 122, the Insurance Tribunal is empowered to hear claims filed by a policy holder against an insurance company in respect of or arising out of a policy of insurance, whereas under section 127 the Ombudsman is competent to decide matters agitated through complaints of any aggrieved person on any allegation of maladministration on the part of any insurance company. Sub-section (2) of section 122 elaborates the meaning of maladministration to include any decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations; or is a departure from established practice or procedure; or is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory. As can be seen, to approach the Tribunal under section 122 the applicant has to be a policy holder having a claim against the insurance company, whereas before the Ombudsman any aggrieved person can make a complaint alleging an arbitrary, unreasonable or unjust decision of the insurance company which falls within the meaning of maladministration. As can be seen in the cases of C.P No. D-2261/2015, 3149/2016 and 3150/2016 the actual policy holder had died and his legal heirs/claimants had a grievance against the Insurance Company, therefore, the appropriate remedy available to them as described by section 127 was to have their grievance redressed by the Ombudsman

alleging that the Insurance Company had committed maladministration within the meaning of the section in adjudicating their claims by unjustly and arbitrarily refusing to settle them. This view finds support from a number of judgments, in particular, *Pakistan Packages Private Limited vs. Adamjee Insurance Company Ltd* 2014 CLD 913 where an insurance company having refused to pay full claim to the insured, the High Court was pleased to come to the conclusion that *there was no other way but for the insurance company to act in accordance with the decision of the Insurance Ombudsman*. Further assistance in this regard can also be taken from *Shafiq Bibi vs. State Life Insurance Company* 2015 CLD 1185 where a dispute as to the payment of the claim led the claimant to file a complaint before the Ombudsman who gave conclusive findings and the findings of the Ombudsman were not brushed aside. In *Muhammad Imran vs. Chief Executive Office* 2011 CLD 1170, where an appeal against the order passed by the Ombudsman was preferred before the Securities and Exchange Commission of Pakistan, in circumstances relevant to the case at hand (i.e., where the insurance company alleged that the Insured had not disclosed previous ailment), the appellate forum did not cast any shadow on the legitimacy of the orders passed by the Ombudsman. Also in *East West Life Insurance Company Ltd vs. Mst. Tehmina Bashir* 2013 CLD 1742, the appellate forum upheld the order passed by the Ombudsman on a complaint that the insurance company had cheated the claimant and deprived her of substantial sums of money.

8. Now coming to the cases referred by learned counsel for the petitioner, in our view they are distinguishable for the reasons as set out below:

[a] 2001 CLC 1618 - In our view, the said case has no relevance for the matter at hand as the above cited case relates to Section 47 of the Insurance Act, 1938 governing the disputes between the

insured and insurer. The said Act having been repealed by the present Ordinance, hence the instant case has lost its relevancy.

[b] PLD 2004 Karachi 77 - This case pertains to a Constitution petition filed against the orders of the Wafaqi Mohatsib where review of the latter's order was sought before the High Court. A Divisional Bench of this Court held that to invoke the jurisdiction of Wafaqi Mohatsib under the Establishment of Office of Wafaqi Mohatsib (Ombudsman) Order, 1983 the essential ingredient of maladministration needed to be present. However, the said decision is not of any relevance for the cases at hand since maladministration has been sufficiently defined under Section 127(2) of the Ordinance to include unjust and arbitrary decisions of the insurance company.

[c] PLD 2001 SC 142 and PLD 1993 Karachi 41 - These cases also pertain to the office of Wafaqi Mohatsib created under the Office of Wafaqi Mohatsib (Ombudsman) Order 1983, and turning on their own facts are, with respect, of no direct relevance to the controversy at hand where orders have been passed by the Ombudsman.

[d] WP No. 21910 of 2009, decided by the Lahore High Court - This is the only case which is relevant and supports the contentions of learned counsel for the Petitioner that the appropriate remedy for the claimants was to approach the Insurance Tribunal instead of Insurance Ombudsman. We have carefully considered this decision. With respect we are not persuaded that the correct has been taken by the learned Single Bench. We

incline to the views expressed herein above.

9. We therefore for the above reasons do not see any illegality in the respondents approaching the Ombudsman for the redressal of their grievances through the mechanism provided under Section 127 of the Ordinance.

10. Before parting with the instant judgment, it's worth pointing out that the appropriate remedy of challenging orders of Ombudsman, according to Section 130(2) of the Ordinance is the file an appeal before the Security and Exchange Commission of Pakistan within thirty days. The procedure is governed by the Securities and Exchange Commission (Insurance Rules), 2002. Evidently the appellate remedy provided by law was not adopted by the Petitioner. Since an alternate remedy, perfectly adequate, was available to the Insurance Company, which was not availed for any justifiable reason the petitions are even otherwise not maintainable. They are liable to be dismissed on this (separate and independent) ground also.

11. It is for the above reasons the instant petitions are dismissed with no orders as to costs.

Judge

Judge