

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1476 of 2019
[M. Latif Farooqi v. PIA Corporation Ltd]

DATE	ORDER WITH SIGNATURE OF JUDGE
For Plaintiff	Mr. Muhammad Ali Lakhani Advocate
For Defendant	Mr. Agha Zafar Ahmed, Advocate
Date of hearing	<u>22.02.2022</u>

-0-0-0-

ORDER

Muhammad Shafi Siddiqui J.- The facts, for the purpose of deciding the controversy in the present lis are that the plaintiff was appointed by the defendant as Cadet Pilot on 29.1.1978 and he served for about four decades before he faced forced retirement on 12.6.2017. He was declared medically unfit by Pakistan Civil Aviation Authority and was retired from active service on the same day as per record not disputed.

1. The instant suit seeks claim of insurance policy procured by the defendant. For the purposes of present claim, the plaintiff has relied upon an Administrative Order 17 of 2001 designed as Cockpit Crew Service Rules. Mr. Lakhani, learned counsel for the plaintiff for the purposes of insurance compensation has relied upon Chapter IX of this Administrative Order which reads as under:

“The Corporation will pay compensation to every Cockpit Crew for death, total or partial disability as a result of accident, whether such accident occurred on duty or off duty for an amount, equal to thirty six months` salary and all allowances, including guaranteed flying allowance, with full benefits. All claims arising out of this clause shall be settled in accordance with the terms and conditions of Aviation Personal Accident (APA) Insurance policy which will be taken out by and at the expense of the Corporation.”

2. I have heard learned counsels and perused the materials available on record.

3. Mr. Agha, learned counsel for the defendant has consented only to the disposal of the suit as being short cause and being dependent on the

interpretation of the Administrative Order, in particular Chapter IX that concerns with the compensation and insurance claim as claimed by the plaintiff. The issue that could set the controversy at rest is as under:-

Whether the plaintiff is entitled for an insurance claim/compensation, in terms of the Administrative Order 17 of 2001, commonly called as Cockpit Crew Service Rules and / or in terms of any insurance policy existing at the time of plaintiff's retirement which claim was stated by actions of defendant?

4. Mr. Lakhani has relied upon the minute-1 of Human Resource Department of Pakistan International Airlines which is not disputed by Mr. Agha. This letter, in the shape of minute-1 has summarized the controversy as narrow as possible. It provides that the plaintiff joined the corporation on 29.1.1978 as Cadet Pilot and operated his first flight on 30.11.1979. He held executive positions during his tenure of four decades and was lastly promoted as Captain on Boing 777. This letter provides that the plaintiff was permanently declared unfit for flying duties by Civil Aviation Medical Board w.e.f. 12.6.2017 [Twelfth June Two Thousand Seventeenth] on medical grounds being uncontrolled diabetic mellitus [on insulin]. He thus retired w.e.f. aforesaid date i.e. 12.6.2017. As per working consensus on the basis of written understanding he was then asked to submit his option whether to accept ground job or otherwise somewhere in August, 2017 which the plaintiff promptly responded on 15.8.2017 that he is not willing to accept the same and that his final settlement be accorded.

5. In terms of the written understanding, the plaintiff's insurance claim should have been forwarded to the Insurance Department with available record, immediately after 12.6.2017 however, they took about six months when the Manager Insurance and Terminal Benefit for payment of loss of license insurance was appraised of such fact of the plaintiff's medical inability. The reference to insurance company was made through AGM claims on 27.6.2018 i.e. after more than a year of expiry of policy and plaintiff being declared unfit. The plaintiff was then informed that the insurance company rejected claim of the plaintiff as insurance policy was expired and his case was forwarded to relevant insurance company belatedly.

6. This demonstrates sheer negligence, incompetence of unqualified & unskilled staff. Payment for loss of license insurance according to working agreement, is dealt by Clause 10.5.2 which is available at page 135. Relevant clause of the working agreement is reproduced as under:-

“The payment of the Loss of License Insurance amount should be made not later than ninety (90) days of such declaration of permanent medical unfitness by the airline. Any amount towards compensation receivable from the insurance company shall be directly received by the airline. It is clarified that in case the insurance company does not pay within 90 days, a Committee shall be constituted comprising of the following:-

- *Director Flight Operations*
- *Chief Financial Officer*
- *President PALPA or his nominee*

The said Committee will decide whether the compensation will be paid by PIAC and thereafter get the amount reimbursed from the insurance company or to negotiate with the insurance company to finalize and receive the compensation.”

7. The letter of 16.11.2018 [Minute-1] suggests that the meeting of the said committee may be convened as soon as possible to decide the outstanding issue of the plaintiff. Mr. Agha has no cavil to these facts that even this understanding was not finalized since 16.11.2018, however, he submits that this is without prejudice to the understanding of written working agreement's status. He further submits that the meeting has not been held as yet and it would be premature for him to comment as to whether the committee would accede to the request of the plaintiff that concerns with the insurance claim. Mr. Agha, however, submitted that in any case it is for the committee to decide and the discretion vests with them, if committee chooses to convene a meeting or would prefer a judicial decision in this regard. Mr. Lakhani's concern is that since for last almost more than three years the meeting is not held it has rendered the proceedings thereunder as fruitless.

8. As far as statistics are concerned, the insurance policy expired on 30.6.2017 whereas the plaintiff was declared medically unfit on 12.6.2018 i.e. eighteen (18) days before expiry of insurance policy and perhaps the defendant neither sent the option of plaintiff to work prior to the expiry of the policy nor sent the matter for the claim under the insurance policy while it was active nor

within the required time. Management acted unprofessionally and the defendant deserves no leniency.

9. It is difficult to find reasons as to why the management neglected after plaintiff got medically unfit while the insurance policy was breathing its last. The management/Human Resource Department of PIA woke up in December, 2017 and the record was sent to the Manager of the Insurance and Terminal Benefit belatedly for the payment of loss and license insurance to the plaintiff. Insurance company itself was informed after a year of expiry of the policy and about unfitness of the plaintiff. The claim of the plaintiff for his medical inability was for a period when the insurance policy was existing. PIA in an independent proceeding should determine the liability of those who contributed to the present situation and this should be independent of the following.

10. I, therefore, without commenting on merit, direct the defendant, since the committee has already been constituted in terms of the letter dated 16.11.2018 [minute-1] on the basis of the designation of the members of the committee, that they shall convene a meeting specifically for plaintiff's claim, within eight weeks of this order and decide the claim of the plaintiff strictly under the law. Failure to comply shall be treated a contempt of court against all or defaulting members of the committee.

The suit is also decreed in the above terms.

J U D G E

Karachi;

Dated: 25.02.2022

Mush/ps