

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.390 of 2001

[Capt. Tariq Mehmood Malik vs. PALPA Pilots Occupational Disability, Fund Trust]

Dates of hearing : 16.10.2020, 15.12.2020,
22.12.2020 & 23.12.2020.

Plaintiff
[Capt. Tariq Mehmood Malik] : Through M/s. Muhammad Ali
Lakhani and Mujtaba Sohail Raja,
Advocates for Plaintiff.

Defendant
[PALPA Pilots Occupational
Disability, Fund Trust] : Through Mr. Ishrat Zahid Alavi,
Advocate.

Case law relied upon by Plaintiff's Counsel

1. **P L D 2014 Supreme Court page-389,**
[*Suo Motu Case No.11 of 2011: In the matter of*];
2. **2019 M L D page-1347,**
[*Muhammad Uneeb Ahmed versus Federation of Pakistan through Secretary,
Ministry of Science and Technology, Islamabad and others*] – **Uneeb Ahmed
Case;** and
3. **Decision by Delhi High Court in**
*Sujan Mohinder Charitable Trust versus Mohinder Kaur and others, on 1
February, 2019.*

Case law relied upon by Counsel for Defendants No.4 and 5

1. **2001 S C M R page-1161**
[*Mst. Attiyya Bibi Khan and others versus Federation of Pakistan through
Secretary of Education (Ministry of Education), Civil Secretariat, Islamabad
and others*]; and
2. **2011 C L D page-350**
[*American Life Insurance Company (Pakistan) Limited versus Master Agha
Jan Ahmed and another*].

Law under discussion:

- (1) The Trust Act, 2018.
- (2) The Civil Aviation Rules, 1994
(the “**Rules 1994**”)
- (3) Palpa-Pilots’ Occupational
Disability Fund Trust (“**PODF
Trust Bye-Laws**”)
- (4) The Qanoon-e-Shahadat Order,
1984 [*the Evidence Law*].
- (5) Civil Procedure Code, 1908
(“**CPC**”)

JUDGMENT

Muhammad Faisal Kamal Alam, J.:- This suit is filed against Defendant, *inter alia*, for payment of benefits for loss of license and damages, with the following Prayer Clause_

“In view of the above facts, circumstances and submissions it is most respectfully prayed that a Decree for recovery of Rs.3.0 Million as benefits for loss of license along with interest at bank rate calculating since 02.11.1998 and Rs.2.0 Million as damages may kindly be passed in favour of the Plaintiff and against the Defendant, declaring the decision of the Defendant dated 20.04.1999 illegal, void ab-initio, having, no effect upon the right of the Plaintiff.

(i) *Declared that the byelaw 25 (v) of the Pilots Occupational Disability Fund (PODF) Trust and is discriminatory, ultra vires, void, illegal and as such it is nullity in the eyes of law and of no legal consequences.*

(ii) *Costs of the suit may also be granted.”*

2. Upon issuance of summons, Written Statement was filed and claim of Plaintiff was contested.

3. On 24.12.2001, following Issues were framed and on 25.09.2012, Issue 1(A) was added_

“1. Whether the suit is maintainable?

1-A. Whether the byelaw No.25(v) of the PODF Trust Byelaws is ultra vires the power conferred under clause 18 of the Trust Deed being in conflict with the object of the Trust and also discriminating and violates Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1979?

2. Whether the suit attracts clauses 25(v), 17(a), 19, 21 and 57 of the bye laws of PODF TRUST, if so, to what extent and to what effect?

3. *Whether the suit is bad for non-joinder of necessary parties?*
4. *Whether the Plaintiff received the insurance claim after suffering disability, if so, what is the effect?*
5. *Whether the Plaintiff received the amount in full and final settlement from the Defendant?*
6. *What amount, if any, is payable by the Plaintiff to the Defendant?*
7. *What should the Decree be?”*

4. Both Plaintiff and Defendant led the evidence. Plaintiff examined himself as P.W.-1, and was cross-examined, *whereas*, on behalf of Defendant, Captain Umer Ishaq testified.

5. Relevant facts as averred in the plaint are, that Plaintiff has been flying as a Pilot with Pakistan International Airlines Corporation (“PIAC”) for more than twenty one years, till he was declared permanently unfit by the Medical Board of Civil Aviation Authority (“CAA”) on 02.11.1998.

6. The Defendant is a registered Trust constituted for the welfare of its member(s) pilots and Plaintiff claims to be one of its founding members, who was paying his contribution to Defendant regularly.

7. After his disablement, Plaintiff got his insurance claim for loss of licence – Airline Transport Pilot License (“ATPL”) for an amount of US Dollar 87,000 from the International Federation of Airlines Pilots Association, as one of its members. *Similarly*, PIAC also paid an amount of Rs.1.5 Million to the Plaintiff, but when he applied to Defendant for payment in respect of loss of license, in terms of clause 17(a) of the Bye-Laws, it was rejected, although Defendant in one of its earlier correspondences of 18.09.1998, (produced in the evidence by Plaintiff as

P.W.-1/11) agreed that coverage for loss of licence was Rupees Three Million.

8. It is the stance of Plaintiff that due to conflicting opinions of Doctors, compensation claim of Plaintiff for Loss of pilot licence was wrongly rejected by Defendant in terms of Clause 25(v) of the Bye-Laws, which is discriminatory in nature and can be applied in a colourable manner for depriving any pilot of his legitimate dues. Plaintiff is entitled for equal treatment as given to the other members of Defendant – Trust and should be paid the amount of Rupees Three Million, besides compensation for causing mental torture.

9. Defendant has raised preliminary objections about the maintainability of this suit, *inter alia*, as Plaintiff did not avail the remedy of Appeal to Director General – CAA (Civil Aviation Authority) under the CAA Rules, besides stating that Plaintiff has received adequate compensation from Defendant and PIAC.

10. Arguments heard and record perused.

11. My findings on the above Issues are as follows:

FINDINGS

ISSUE NO.1	:	As under.
ISSUE NO.1-A	:	In Negative.
ISSUES NO.2	:	In Negative.
ISSUES NO.3	:	Redundant.
ISSUES NO.4	:	In Affirmative.
ISSUES NO.5	:	In Affirmative.
ISSUES NO.6	:	In Negative.
ISSUES NO.7	:	As under.

REASONS

12. Since Bye-Law No.25(v) of the PODF Trust has also been challenged and the controversy primarily revolves around it, it would be advantageous to reproduce the same together with clause (vi) of Bye-Law 25, herein under_

“25. **EXCEPTION TO COVERAGE UNDER THE FUND.**

(v) *Physical and/or psychotic, psycho-neurotic or epileptic conditions as contained in the medical report referred to in clause 7, which may cause loss of licence.*

(vi) *A member, however, may be covered on all other eventualities except the aforementioned physical and/or psychotic, psycho-neurotic or epileptic conditions. If required, the member concerned must submit medical proof or submit to a medical examination in order to qualify under this clause subject to the provisions of clause 19 and clause 21 of these Bye-Laws.”*

ISSUES NO.1 and 1-A:

13. Since both these Issues are interlinked, therefore, are taken up together.

14. It is appreciated that both Plaintiff and Defendant led the straight forward evidence. The undisputed fact is that Civil Aviation Medical Board, Karachi, vide its decision of 02.11.1998 (produced by the Plaintiff as Exhibit P.W.-1/2) declared the Plaintiff permanently unfit for ATPL, due to affective dipolar disorders, which opinion was superseded by the Medical Board on the same date, by determining that Plaintiff was permanently unfit for ATPL, **due to affective bipolar psychotic disorder.**

15. For assessing claim of Plaintiff, Defendant requested the Plaintiff to appear for medical assessment on 25.02.1999 at 11.00 a.m., before Professor Dr. Syed Haroon Ahmed. This was communicated to Plaintiff by Defendant vide its correspondence of 22.02.1999, produced in the evidence

(by Plaintiff) as Exhibit P.W.-1/13. The Medical Report signed by Dr. Imtiazul Haq of 'Psycho – Social Center', dated 13.03.1999, Exhibit P.W.-1/14 is perused. It states that Plaintiff was sent for re-evaluation on the **request of Defendant** and lastly he was seen by Professor S. Haroon Ahmed in April 1997. The conclusion mentioned in this medical opinion is, that grounding of Plaintiff was justified on the basis of evaluation conducted at that time. It is further stated that on the assessment (when the said medical report was sent) no overt mood disorder or any psychotic disorder was evident. However, it was further stated that "*The Bipolar Mood Disorder has a natural tendency of remission and relapses.*", which means bipolar disorder symptoms can reappear.

16. Mr. Muhammad Ali Lakhani, Advocate, has emphasized in his arguments that the decision of Defendant, declining the claim of Plaintiff was wrong, *inter alia*, on the grounds; *firstly*, the Exhibit P.W.-1/11, dated 18.09.1998, is a correspondence of Defendant itself, in which it is accepted that since Plaintiff was declared temporarily unfit prior to 30.06.1998, therefore, his coverage for loss of licence would remain at Rupees Three Million; *secondly*, the subsequent opinion of same Dr. Imtiazul Haq states that Psycho Neurotic Condition does not exhibit in current diagnostic system and needs explanation. Plaintiff's counsel has also referred to earlier Report of 06.08.1997, by one Dr. Syed A. M. Kazmi (Exhibit P.W.-1/17) that at the relevant time, Plaintiff was not suffering from any mental disorder.

17. The first argument about the alleged acknowledgement of liability of Rupees Three Million by Defendant in their correspondence of 18.09.1998, is not acceptable, for the simple reason, because admittedly at the relevant time, Plaintiff was not declared permanently unfit by the Medical Board of CAA, that Plaintiff was suffering from affective bipolar psychotic disorder,

which was determined by the Medical Board on 2-11-1998, subsequent to the above date of correspondence. **Secondly**, the second opinion of Dr. Imtiazul Haq carries hardly any significance in view of his earlier opinion – Exhibit P.W.-1/14, in which he has clarified that bipolar mood disorder has a natural tendency of remission and relapses, which also means, that it is not necessary for this type of mental illness that it should become a constant / permanent feature, but depressive symptoms can reappear in a person. In addition to this, if the Plaintiff is so emphatically relying on the medical reports / opinions of Doctors, then at least he should have examined one of them as an expert as envisaged in the Evidence Law. Similarly, the medical opinion of Dr. Kazmi has no relevance as it is of 1997, *whereas, admittedly, Plaintiff was declared* permanently unfit on medical grounds by the Medical Board of CAA by their decision of 02.11.1998, against which no Appeal was preferred by Plaintiff. Although it is stated in his (Plaintiff) cross-examination that he could not prefer the Appeal due to the fact that he was in a state of shock, because his brother and his wife were murdered on the night between 10-11 April, 1997, but, with respect, this is not a plausible justification for not challenging the decision of CAA Medical Board, in terms of Rules 1994 (*supra*), because, the decision of Medical Board was given on 02.11.1998, **whereas**, the incident in Plaintiff's family as referred by him took place almost eighteen months prior in time.

18. Learned Advocate for Plaintiff to fortify his arguments, has referred to the subsequent letter of 28-3-2002, [that is, after more than three years from the date of CAA Medical Board decision], under the signature of Professor Dr. Haroon Rasheed Chaudhry, produced by Plaintiff as Exhibit P.W.-1/23 along with the test reports, which were addressed to CAA, wherein, it is stated that Plaintiff during past five years has not had any

episode or any symptom of the stated pathology. The test report under the caption 'Integrated Analysis' states that Plaintiff was an intellectually average person and currently (at the relevant time) free of emotional distress or turmoil. This last Report, which was given after three years of earlier decision of Medical Board, would not have any bearing on the claim of Plaintiff, due to the fact that when at the relevant time, Plaintiff was declared medically unfit for flying, his medical condition was not contradicted by any other authentic medical opinion; *conversely*, the Exhibit P.W.-1/14, which is an opinion of Dr. Imtiazul Haq, justified his grounding on the basis of evaluation done at the relevant time. Therefore, when the Defendant communicated their Decision through correspondence dated 20-4-1999 [exhibit PW 1/16], declining the request of Plaintiff, the illness of Plaintiff was covered under sub-clause (v) of Clause 25; thus, it cannot be said that Defendant acted illegally in the case of Plaintiff.

19. The Trust Deed has been produced by Plaintiff in evidence as Exhibit P.W.-1/6, which is perused. Clause 5 defines the object of the Trust, *inter alia*, to promote and aid the welfare of members (Pilots). Clause 3 states that payment of definite amounts would be made to members, who suffered personal injury or illness resulting in their inability to act in the capacity for which they hold a pilots' licence, subject to the conditions and limitations set forth in the Rules and Regulations of the Funds. Bye-Law 25 of the PODF Trust prescribed those conditions and limitation by excluding coverage payable to members due to loss of pilots' licence.

20. The case law cited by Plaintiff's counsel is considered to appreciate his contention, particularly about the Clause 25 of the above Bye Laws. The reported judgment of National Police Foundation (*supra*) is distinguishable, because in the said Judgment, Honourable Supreme Court

took notice of a land scam that was highlighted in media, in respect of lands belonging to National Police Foundation. Numerous plots were sold by the Management of National Police Foundation to those who were not entitled for the same. It was held, *inter alia*, that National Police Foundation is a charitable organization established under Section 2 of Charitable Endowments Act, 1890, for the relief of the poor, education, medical relief and the advancement of any other object of general public utility. In this context, it was held that the aims and objects of the Foundation should have been framed in accordance with the substantive law and framing of rules in conflict with or derogating from the substantive provision of law or statute, under which the rules are framed, are normally declared invalid. Since it was found that Committee of Administration of the National Police Foundation framed rules according to their own choice, in conflict with the scope of the Charitable Endowments Act, 1890, it is held, that no rule can be made which is inconsistent with the parent statute.

Delhi High Court judgment is also distinguishable, because it has been held that sale of immovable property was not within the powers of the trustees and is violative of one of the express clauses of trust deed. In the reported case, it was proven that the sale transaction of immovable property was illegal and hence in that background it was held that newly framed rules and regulations of the trust were repugnant to the original trust deed. Similarly, reported decision of learned Lahore High Court in Uneeb Ahmed Case (*ibid*), does not lend any support to the Plaintiff, because in the present *Lis*, Defendant Trust has not framed any bye-law, which is inconsistent with the main object of the Trust Deed – Exhibit P.W.-1/6. The rule laid down in this Uneeb Ahmed Case (*ibid*) that rule making authority cannot enhance the scope of delegated legislative power given by the parent statute, although is an established legal principle, but in the present case, Plaintiff's counsel has failed to point out any illegality on the part of

present Defendant (PALPA Pilots' Occupational Disability, Fund Trust) that while declining the claim of Plaintiff, it exercised power beyond the prescribed limit, or the above Bye-Law 25(v) is illegal to any of the provisions of the Trust Act or inconsistent or in conflict with the aims and objects of the Trust Deed.

21. Plaintiff has not led any evidence in support of his claim that he was discriminated against by Defendant-Trust. He has not given names of other pilots, who were declared medically unfit on the basis of same illness, but were paid their full coverage by Defendant, or to them Bye-Law 25(v) was not made applicable by Defendant. In absence of such evidence, claim of Plaintiff has no substance.

22. The arguments of Plaintiff's counsel that the above Clause (v) of Bye-law 25 is discriminatory and violative of the Constitution of the Islamic Republic of Pakistan, 1973, in view of the evidence led and case law discussed, does not have any substance.

23. In view of the above discussion and finding, it is not necessary to discuss the judgments cited by the Defendant's counsel.

24. The above Clause 25(v) is not *ultra vires* the power conferred under Clause 18 of the Trust Deed or in conflict with its object. Issue No.1(A) is decided in Negative and against Plaintiff.

25. With regard to Issue No.1 about maintainability of this suit, it is necessary to clarify that when there is no inherent legal defect in a claim or a *Lis* and if it is not barred by any law or conditions mentioned in Order VII Rule 11 of CPC, then maintainability of a suit can be decided by giving an affirmative finding, because maintainability of a suit / *Lis* is different from

entitlement to relief as claimed in a case. A suit can be held maintainable but after conclusion of evidence, Court may arrive at a conclusion that a party is or is not entitled to any of the reliefs claimed. Consequently, facts of present *Lis* persuade me to hold that the present *Lis* is maintainable.

ISSUES NO.2 AND 3:

26. Clause (a) of Bye-Law 17 deals with loss of licence, which provides as under_

“(a) Loss of Licence.

- (i) Upon Loss of Licence on medical grounds according to the decision of CAA Medical Board and subsequently by the committee appointed by the Trustees as per clause 21, the member shall be entitled to receive full one hundred percent benefit amounting to Pak Rs. 3.0 million (Pakistan Rupees three million only), or any such amount as approved by the Board of Trustees and the Annual General Meeting/Special General Meeting from time to time.”

27. Clause (ii) makes a provision for restoration of licence, if subsequently a member is declared medically fit, which restoration would be subject to certain conditions as provided in the said clause; Clause (iii) states that from fifty seven birthday onwards, there will be a reduction in the rate of benefits, till a member / pilot reaches superannuation. Bye-Law 19 provides for other benefits for those who are separated from the services of PIAC prior to attainment of sixty years and the member shall be entitled to the total amount standing to his credit according to formula mentioned in the said Bye-Law; *whereas*, Bye-Law 21 requires that in deciding and evaluating the veracity and merit of the claim pertaining to permanent disability on medical ground as declared by CAA Medical Board, Special Committee of Defendant shall be formed, if so required by the Trustees and whose decision shall be final, irrevocable and binding on all parties concerned. It further provides that Defendant shall not be bound by the findings of PIAC or any other entity as to the veracity and merit of a claim,

which will be evaluated by the Defendant itself. Bye-Law 57 provides, *inter alia*, for an arbitration, in case any dispute or difference has arisen between member or his legal representative and the Trustees of Defendant with regard to the Bye-Laws or any matter relating to or arising out of the same.

28. Plaintiff's counsel reiterates that the Bye-Law 17 about payment of compensation of Rupees Three Million is applicable to Plaintiff's case and it is to be read with Exhibit P.W.-1/11 (as referred above), which is a letter of 18.09.1998 from Defendant to Plaintiff, stating that coverage for loss of licence will remain at Rupees Three Million. This plea of Plaintiff has already been rejected in the foregoing paragraphs.

29. Similarly, Bye-Laws 19 and 21 do not support the case of Plaintiff, because after he was grounded on medical grounds, his employer, viz. PIAC offered him a ground job and admittedly, even till the filing of his Affidavit-in-Evidence during evidence proceeding, he was in employment; *secondly*, Bye-Law 21 is not mandatory for Defendant, that it has to constitute Special Committee, but the undisputed evidence shows that Defendant referred Plaintiff to other Doctors for an independent assessment, as already discussed above, particularly, the report of Dr. Imtiazul Haq, Exhibit P.W.-1/14, is on record, *inter alia*, concurring with the opinion of CAA Medical Board. Bye-Law 57 relating to the Arbitration has become infructuous when the present *Lis* was filed and evidence concluded.

Consequently, the above mentioned Bye-Laws are not attracted to the facts of present case and hence Issue No.2 is answered in negative, *whereas*, Issue No.3 for non-joinder of necessary parties, in view of the above discussion, has now become redundant.

ISSUES NO.4 AND 5:

30. In his cross-examination, Plaintiff has admitted that he was declared by the Medical Board permanently unfit due to ‘affective bipolar psychotic disorder’ and no Appeal was preferred against the said decision. He has also admitted that although he has received full and final settlement of claim from Defendant, but he did not encash the cheque and returned the same to the Defendant, because he did not agree with the settlement amount. Exhibit P.W.-1/16 (produced by Plaintiff himself) is a correspondence dated 20.04.1998 from Defendant to Plaintiff, in which above referred Bye-Law 25(v) was discussed while stating that Defendant in its Board meeting has decided that the loss of licence is not covered. With this letter a cheque was enclosed as full and final settlement. *Secondly*, copy of the cheque along with acknowledgement by Plaintiff has been exhibited as P.W.-1/9. This cheque was for Rs.1.5 Million (Rupees Fifteen Lacs only) given to Plaintiff by PIAC as compensation towards loss of Licence. The other significant factor of the present claim is, that admittedly Plaintiff got a settlement of US\$ 87,000 towards loss of flying licence from British Aviation Insurance Group. A Document / Acceptance Form has been exhibited as P.W.-1/10, dated 27.01.1999. In addition to this, although his erstwhile employer – PIAC vide its correspondence of 06.11.1998, Exhibit P.W.-1/5, retired the Plaintiff on the basis of medical report of CAA, but paid the applicable retirement dues. Subsequently, which is an undisputed fact, PIAC hired the services of Plaintiff as ground staff [PIA Flight Operations Manager, as mentioned in the Exhibit PW 1/24, medical report].

From the above, claim of Plaintiff has been disproved that he suffer any loss (financial or otherwise) or mental anguish on account of any decision or acts on the part of Defendant. Plaintiff was adequately compensated monetarily by his erstwhile employer - PIAC, International

Association as well as Defendant, coupled with the fact that he was re-employed by PIAC. Consequently, not encashing the cheque given by Defendant will not improve the case of Plaintiff, who is not entitled for any further amount in view of Bye-Law 25(v). Both Issues are answered in affirmative that Plaintiff received his insurance and other compensation.

ISSUES 6 and 7:

31. In view of the above discussion, Issue No.6 is answered in negative that no further amount is required to be payable by Defendant to Plaintiff and his claim is rejected.

With regard to Issue No.7, since the above referred cheque was not encashed by Plaintiff, therefore, Defendant will revalidate or issue a fresh cheque of same amount to Plaintiff. However, the suit is dismissed with regard to prayer clause as mentioned in the plaint.

32. Parties to bear their respective costs.

Judge

Karachi,
Dated: 02.08.2021.

Riaz / P.S.