

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui
& Jawad Akbar Sarwana JJ

High Court Appeal No.150 of 2021

Tariq Mehmood Malik s/o Malik Muhammad Hussain

v.

PALPA Pilots' Occupational Disability Fund

Appellant: Tariq Mehmood Malik s/o Malik Muhammad Hussain, through its duly authorised representative, Mr Haroon Abdullah, through Mr Muhammad Ali Lakhani, Advocate

Respondent: PALPA Pilot's Occupational Disability Fund through its Administrator through Mr Ishrat Zahid Alvi, Advocate

Date of hearing: 25.10.2023

Date of decision: 22.01.2024

J U D G M E N T

Jawad A. Sarwana, J.: The Appellant/Plaintiff ("Tariq Mehmood Malik" / "TMM") has filed this High Court Appeal against the Judgment dated 02.08.2021 and Decree dated 04.08.2021 passed in Civil Suit No.390/2001 whereby the learned Single Judge dismissed TMM's suit filed against the PALPA Pilots' Occupational Disability Fund ("PALPA PODF").

2. The brief facts as available in the appeal file, which the learned Single Judge has discussed in detail in the impugned Judgment in Suit No.390/2001, are that on 02.11.1998, TMM, was declared permanently unfit by the Medical Board of CAA due to "*Affective Bipolar Psychotic Disorder*". TMM did not challenge the decision of the CAA Medical Board in terms of the Civil Aviation Rules, 1994.

After his disablement under the medical certification, as part of his insurance claim, the International Federation of Airlines Pilots Association disbursed US\$87,000 to TMM for the loss of his Airline Transport Pilot License (“ATPL”). Further, Pakistan International Airlines (“PIACL”), his former employer, also paid him his retirement dues of PKRs.1,500,000 as well as subsequently hired his (TMM’s) services as Ground Staff (PIACL Flight Operations Manager). However, when TMM applied for the benefit of loss of license to PALPA’s PODF under Bye-Law 17 of the PALPA PILOTS’ OCCUPATIONAL DISABILITY FUND BYE-LAWS, for the entire one hundred per cent benefit of the loss of license amounting to PKRs.3.0 million, the latter rejected TMM’s claim. PALPA’s PODF Trust Fund opined that TMM’s claim was covered by the exception clause under Bye-Law 25(v) and that he was not entitled to the claim for the loss of license. Yet, while declining TMM’s claim, PODF as “a special gesture” attached a cheque of PKRs.1.5 million as full and final settlement of all dues in their reply to TMM’s application. TMM did not encash the said cheque. He claimed the entire 100% of PKRs.3.0 million and filed Suit No.390/2001 against PALPA PODF with the following prayer clause as of 29.03.2001:

“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 favor 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.

Costs of the suit may also be granted.”

3. On 02.04.2011, TMM filed an Amended Plaintiff with the following additional / amended prayers:

“(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.”

4. After recording of evidence and hearing the parties, the learned Single Judge dismissed TMM’s suit as per the impugned Judgment and Decree.

5. The learned Counsel for TMM has essentially raised two grounds in his appeal against the impugned Judgment and Decree dated 02.08.2021 and 04.08.2021, respectively. Firstly, he argued that Bye-Law 25(v) was contrary to the provisions of the PODF Trust Deed, and, therefore, the same was ultra vires of Article 18 of the Trust Deed. Secondly, he urged that the learned Single Judge disregarded the medical reports of TMM, which corroborated his submissions that TMM was not suffering from any medical conditions specified in Bye-Law 25 as exceptions to coverage under the fund.

6. We have heard the learned Counsels, reviewed the record as available in the Appeal and read the Impugned Judgment dated 02.08.2021.

7. As TMMs’ appeal involves the interpretation of Articles 5 and 18 and Bye-Laws 17(a), 21 and 25 of PALPA’s PODF Trust Fund, the same are reproduced herein for ease of reference.

“Article 5. Objects of the Trust

- (i) To constitute and administer the PALPA PILOTS OCCUPATIONAL DISABILITY FUND (PODF).
- (ii) To promote and aid the welfare of the members.
- (iii) To provide payment of definite amounts to its members who suffer personal injury or illness resulting in their inability to act in the capacity for which they hold a Pilot’s license issued by Civil Aviation

Authority of Pakistan, subject to the conditions and limitations set forth in the rules and regulations of the Fund.

- (iv) To promote and advance the aims and objects of the Fund.”

“Article 18. Rules of the Fund

- (i) The Rules and Regulations of the Fund appended hereto shall govern the constitution and administration of the Fund.
- (ii) The Trustees may from time to time and at any time alter, vary, modify, remake, rescind or add to any of the Rules.

Provided, however, that no such alterations, variation, modification, remaking, rescission or addition of or to the Rules shall be inconsistent with this Trust Deed or shall affect the liability or responsibility of the Trustees or rights of any member with respect of any moneys or properties belonging to the Fund.

- (iii) The power contained in this Rule shall not be exercised without the approval of the 75% majority of the Trustees or their consent in writing by the same majority. Every change thus affected in the Rules shall be notified to all the members in writing.”

“Bye-Law 17. BENEFITS

- (a) Loss of License.
 - (i) Upon Loss of License 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 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.

- (ii) After claiming Loss of License benefit as above if a member is declared medically fit and his License is restored, the member may apply for the membership of the Fund. However, it will be absolutely at the discretion of the Trustees to accept such an application. While accepting such application the Trustees shall have the right to impose certain restrictions for example enhanced contribution, limited or reduced benefits, additional exceptions to the cover.
- (iii) From the fifty seventh (57) birthday onwards of the member the total benefits of Loss of Licence will be reduced at the rate of 7% each year till superannuation.”

“Bye-Law 25. EXCEPTION TO COVERAGE UNDER THE FUND

The Fund does not cover incapacity as aforesaid or loss of said licence and/or validity hereinbefore referred to resulting from the following:

- (i) . . .
. . .
- (v) Physical and/or psychotic, psycho-neurotic or epileptic conditions as contained in the medical report referred to in clause 17, which may cause loss of licence.”

“Bye-Law 21. AWARDING OF CLAIMS

In deciding and evaluating the veracity and merit of the claim pertaining to permanent disability on medical grounds as declared by the CAA Medical Board, a special committee comprising the Chairman of the Board of Trustees, a licensed physician/surgeon appointed by the Trustees, and a licensed physician/surgeon appointed by the member claimant shall be formed, if so

required by the Trustees. The decision of this special committee shall be final, irrevocable and binding on all parties concerned.

The Trustees shall not be bound by the findings of PIAC or any other entity as to the veracity and merit of a claim, and reserves its right to evaluate any such claim as provided herein above.”

8. TMM’s Counsel argued that the learned Single Judge failed to appreciate that the Bye-Laws cannot trump the provisions of the PODF Trust Deed. However, in paragraph “v” of the appeal, he claimed that “[t]his aspect has not been very well attended to by way of the impugned Judgment.” It was not understood what Counsel meant by “has not been very well attended”, as it was an admission on his part that the learned Single Judge had positively addressed the proposition advanced by TMM’s Counsel. TMM’s argument was neither that the learned Single Judge did not respond to his (TMM’s) arguments nor that the learned Single Judge’s reasoning/response was missing from the impugned Judgment. It appeared that TMM’s Counsel was not inclined to accept the learned Single Judge’s reasoning as it was not to his (TMM’s) satisfaction. This was a challenging ground of appeal on the part of TMM and his Counsel. TMM’s Counsel had to show error in the learned Single Judge’s logic and reasoning in holding that Bye-Law 17 was not contrary to Article 5 of PALPA’s PODF Trust Fund Deed, which clearly states that the “Objects” of the Trust Fund are subject to the conditions and limitations outlined in the rules and regulations of the Fund. Yet TMM’s Counsel could not demonstrate how the learned Single Judge response “has not been very well attended to by way of the impugned Judgment.” On our part, the learned Single Judge has well-addressed and well-attended in the impugned Judgment Counsel’s aforesaid contention regarding the illegality of the limitation provisions of the Bye-Laws, such as, Bye-Law 25, in the context of the Articles 5 and 18 of the Trust Fund. The learned Single Judge has discussed this aspect of the matter in detail in paragraphs 19, 20, 21, 22, 23 and 24 of the

impugned Judgment, and we agree with the same. Notwithstanding the foregoing, we add and supplement the learned Single Judge's reasoning (which we endorse) with additional reasons set out herein.

9. First, it cannot be argued categorically that the scope of the Trust Deed cannot be regulated by the conditions and limitations set out in the Bye-Laws. If this were the case, the Fund would not have used the words and phrases "subject to the conditions and limitations set forth in the rules and regulations of the fund" in the "Objects clause." In order to completely clear the pathway for future claims to the PODF, the Fund could have avoided introducing any kind of qualification in the "Objects Clause" of the Fund, i.e. the very objects of the Fund would be regulated and subjected to limitations. It appears that the Fund envisaged that the provision of benefits would be subject to certain conditions and limitations but, for practical reasons, did not set these out in the Trust Deed itself.

10. Secondly, there is no promise made to members of the Trust that the Trust will take a no-question-ask approach to any and all claims made to it. This is why the article pertaining to the "Objects of the Trust" mentions that the payment of definite amounts to its members is qualified, i.e. "subject to the conditions and limitations outlined in the rules and regulations of the Fund." In the present case, the reference to rules and regulations of the Fund means the Bye-Laws of the PODF. The PODF Trust does not assume that all claims will be entertained and none will be declined. Instead the Objects Clause itself signals that there will be regulations and limitations, such as exceptions to certain claims. Thus, TMM's assertion that Bye-Law 25(v) is contrary to Articles 5 and 18 is not persuasive and is rejected.

11. Thirdly, Article 18 of the Trust deals with the contours of the rules of the Fund. The said article states that the Trustees may alter, vary, modify, remake, rescind, or add to any of the Rules from time to time at any time. Article 18(ii) also contains a proviso that no such alterations, variations, modifications, remaking, rescission or

additions shall be inconsistent with the Trust Deed. Yet neither Article 18 nor the proviso in Article 18(ii) mentions the words “conditions” and “limitations” in the context of the rules and regulations of the Fund. There is an apparent presumption that the rules and regulations (read: Bye-Laws) will provide limitations, such as Bye-Law 25(v) and hence the words “regulation” and “limitation” find no mention in Article 18 of the Trust Deed. Therefore, once again, the PODF Trust Deed is conscious that the Fund will require regulation, including scrutiny of claims, evaluation, exceptions, etc. and deliberately avoided mentioning any cross-reference to any “conditions” and “limitations” in the Trust Deed which may act as a fetter or restrict the Objects of the Fund. Therefore, it is challenging to accept TMM’s proposition that Bye-Law 25, which imposes a limit to the kind of claims that the PODF Trust will entertain, is contrary to Articles 5 and 18 of the PODF.

12. Further, the Trust Deed does not contain express articles describing the benefits proposed to be extended to its members/beneficiaries. By the same token, it also does not expressly mention any specific conditions and limitations, etc. to exclude certain claims. The subject matter has been left/delegated to the Bye-Laws under Article 5. Therefore, it cannot be accepted that the Bye-Law 25 is in derogation of Articles 5 and 18 of the Trust Deed.

13. Finally, the PODF Bye-Laws, which are in force, were framed by the Trustees and approved by the members/beneficiaries. The limitation clauses, such as Bye-Law 25, were duly approved. Therefore, TMM cannot challenge its vires and legality when all the members have accepted the limitation (along with the exception clause such as Bye-Law 25). The Bye-Laws are applicable to all the members/beneficiaries, and no exception can be made for TMM.

14. We now come to the second limb of TMM’s argument in the appeal that the learned Single Judge disregarded the medical reports of TMM, which corroborated his submissions that TMM was not suffering from any of the medical conditions specified in Bye-Law 25

as exceptions to coverage under the Fund. This plea is in the alternative as TMM's Counsel contended that TMM had no medical condition at all, i.e. "*Affective Bipolar Psychotic Disorder*." The learned Single Judge has carried out an in-depth analysis of the evidence in the Judgment. Several points emerge from this analysis which regrettably reduces TMM's contention to a cypher. First, when the CAA Medical Board declared TMM unfit due to "*Affective Bipolar Psychotic Disorder*," he (TMM) did not prefer any appeal against the same. Secondly, TMM's case was also referred to a doctor on the panel of the PODF Trust, namely Dr. Habib Undre, to clarify if TMM's condition would fall under the PODF Bye-Law 25(v). Dr. Undre clearly stated in the affirmative that "*Affective Bipolar Psychotic Disorder*" falls under the clause according to which PODF does not cover loss of license. The documents relied upon by TMM were prior to the CAA Medical Board letter dated 02.11.1998 determining that TMM was permanently unfit for ATPA license due to "*Affective Bipolar Psychotic Disorder*." Further, the evaluations privately obtained by TMM after the assessment of the CAA Medical Board did not help TMM's cause and/or were rejected for reasons by the Trustees of the PODF Trust. Finally, the learned Single Judge rightly noted that TMM opposed the finding of the CAA Medical Board, yet produced no expert evidence through professional medical practitioners to dislodge the findings of the CAA Medical Board. No Medical Doctor stepped into the witness box at all. TMM elected to take the path less travelled to challenge the CAA Medical Reports when such challenge was limited to attempting to identifying inconsistencies in the several medical reports which were not apparent on the face of the record and dealt by the learned Single Judge as well as have not convinced us either. In a nutshell, we do not find TMM's contentions on this score to carry weight which are rejected.

15. We are of the confirmed opinion that the learned Single Judge has not fallen into any error while passing the impugned Judgment which requires interference.

16. In view of the above, we hold that the impugned Judgment and Decree is proper and based on facts and law. It does not suffer from any illegality that calls for interference. Accordingly, this Appeal is dismissed and the impugned Judgment and Decree is hereby confirmed.

17. The parties are left to bear their own costs.

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Announced by us.

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