# THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. D-1486 of 2025
[Tata Textile Mills v. Sindh Labour Appellate Authority & Others]

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**Before:**
**JUSTICE ADNAN IQBAL CHAUDHRY**
**JUSTICE RIAZAT ALI SAHAR**

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| Counsel for Petitioners: | Mr. Mujtaba Ahmed Bajwa, Advocate |
| Counsels/Representatives for Respondents: | Mr. Ali Akbar Memon, Advocate for Respondent No.3.<br><br>Ms. Shamim Mughal, Assistant Attorney General for Pakistan.<br><br>Mr. Muhammad Ismail Bhutto, Additional Advocate General, Sindh. |
| Date of Hearing: | 22.04.2026 |

## JUDGMENT

***RIAZAT ALI SAHAR, J*: -** Through this consolidated judgment, we intend to adjudicate upon the above-captioned Constitutional Petitions, which arise out of common set of facts, involve identical questions of law, and impugn the same orders passed by the learned Sindh Labour Appellate Tribunal, Karachi dated 03.07.2025 and the Commissioner Workers' Compensation & Authority under the Payment of Wages Act, Hyderabad dated 08.04.2025. Both petitions, having been filed by the same petitioner against the same respondents and revolving around overlapping controversies, *inter alia* relating to jurisdiction over a trans-provincial establishment, maintainability of appeals, and the constitutional validity of statutory pre-deposit requirements, are being disposed of together in order to avoid conflicting findings having the same prayer clauses as under:

> *"Declare that requirement to deposit amount prior to entertaining appeal is unconstitutional;*
> *Set aside the impugned orders dated 03.07.2025 and order dated 08.04.2025;*

*Declare that the entrustment and exercise of judicial function and authority by Respondent No. 2 is in violation of Article 175 of the Constitution;*
*Declare that clog (through requirement of depositing decretal amount) on right of appeal under Section 36 (Proviso) of the Sindh Worker's Compensation Act, 2015 as well as under Section 30 of the Workmen Compensation Act, 1923 is ultra vires the Constitution;*
*Declare that order dated 08.04.2025 passed by Respondent No. 2 and order dated 03.07.2025 passed by Respondent No. 1 are without lawful authority and consequently order dismissal of application of Respondent No. 3 filed before Respondent No. 2;*
*Declare that for trans-provincial entities such as the petitioner, it is regime of Federal Law which is applicable;*
*Grant such other relief as deemed just and proper."*

**2.** Briefly stated, the petitioner, a public limited company engaged in the manufacture of textile products and having establishment/factory at Kotri, employed Respondent No.3 as a cotton shifter during the course of its business operations. It is the case of the respondent-workman that he contracted tuberculosis during service and was subsequently treated at SESSI Hospital, whereafter he was declared permanently disabled by a Medical Board constituted at the Services Hospital on the petitioner's request. On the basis of such disability, Respondent No.3 instituted two separate claims before the Commissioner for Workers Compensation, Hyderabad, seeking (i) compensation of Rs. 500,000/- under the Sindh Workers' Compensation Act, 2015 **[SWCA]**, and (ii) payment of Rs.500,000/- on account of group insurance under Standing Order 12 of the Sindh Terms of Employment (Standing Orders) Act, 2015. Along with his claims, Respondent No.3 moved an application to condone the delay of 3 months and 22 days. The petitioner company contested the claims by filing detailed objections, whereafter evidence of both sides was recorded and the matter was heard at length. The learned Commissioner, vide common order dated 08.04.2025, condoned the delay in the claims and allowed both claims and awarded Rs.500,000/- each under the heads of compensation and group insurance. Feeling aggrieved, the petitioner preferred appeals before the Sindh Labour Appellate Tribunal, Karachi, which were numbered as Appeals No.102 and 103 of 2025; however, the learned

Tribunal, vide impugned common order dated 03.07.2025, dismissed the appeals. It was held by the Tribunal *inter alia* that section 36 of the SWCA does not provide an appeal from an order requiring deposit of group insurance proceeds, and that the appeal against compensation was also incompetent on account of non-compliance of the statutory requirement of pre-deposit contained in section 36 of the SWCA. Consequently, the petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, calling in question the legality and propriety of the aforesaid orders.

**3.** Before proceeding further, it is to be noted that tuberculosis is classified as an 'occupational disease' in Schedule-III to the Sindh Workers Compensation Act, 2015 **[SWCA]**. Section 3(2) of the SWCA deems such disease as an 'injury by accident' if contracted while in a related employment for a continuous period of not less than 6 months, and in such circumstances it is further deemed that the disease was contracted out of and in the course of employment and it is for the employer to prove otherwise. As per section 3(1): "If personal injury is caused to a worker by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter". There are certain exceptions to that liability, none of which are relevant for present purposes. The question whether said disease was contracted by Respondent No.3 in the course of employment with the petitioner, was a question of fact decided against the petitioner concurrently by the *fora* below. Before us, that point is not agitated further by the petitioner due to the scope of constitutional jurisdiction.

**4.** As regards the claim for group insurance proceeds, that was made by Respondent No.3 pursuant to clause (4) of Standing Order 12 to the Sindh Terms of Employment (Standing Orders) Act, 2015. Clause (5) of Standing Order 12 provides that such claim "shall be settled in the same manner as is provided for the determination and recovery of compensation under the Workmen's Compensation Act, 1923." The Act of 1923 was substituted in Sindh by the SWCA.

**5.** Mr. Mujtaba Ahmed Bajwa, learned counsel for the petitioners, contended that the impugned orders are without lawful authority, suffering from misreading and non-reading of evidence, and are *coram non judice*. He argued that the petitioner is a trans-provincial establishment, thus the matter fell within the domain of the National Industrial Relations Commission **[NIRC]** under Federal law i.e. the Industrial Relations Act, 2012 **[IRA]**, and Provincial authorities, including the Commissioner Workers' Compensation and the Sindh Labour Appellate Tribunal, lacked jurisdiction. Without prejudice to that he further submitted that once the respondent-workman was awarded compensation under the SWCA, he was not entitled to claim group insurance which was so excluded by Standing Order 12 itself, as such double benefit is not permissible. Learned counsel argued that the claims were barred by limitation but the Commissioner condoned the delay without noticing section 10 of the SWCA. He further assailed the appellate order by submitting that the Tribunal erred in declaring the appeal non-maintainable regarding group insurance, while dismissing the compensation appeal for non-deposit under Section 36 of the SWCA, which was argued to be an unconstitutional restriction on the right of appeal.[1]

**6.** The learned Additional Advocate General, appearing on behalf of Respondents 2 and 4, filed para-wise comments and adopted the arguments of Respondent No. 3.

**7.** At the outset, Counsel for Respondent No. 3 contended that Respondent No.3 was in the employment of the petitioner company and during such employment was diagnosed with tuberculosis and subsequently declared permanently disabled by a Medical Board. He, however, vehemently opposed the petitions and supported the impugned orders by contending that the provisions of Section 36 of the SWCA clearly provide a statutory right of appeal against specified orders of the Commissioner, subject to the mandatory condition of deposit of the awarded amount, and the said requirement cannot be termed as unconstitutional or illegal in any manner. Learned Law Officer submitted that the petitioner has failed to demonstrate any infirmity in the *vires* of the said provision,

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[1] *Through his contentions, learned counsel for the petitioner placed reliance upon the judgments reported as PLD 2025 SC 440, PLD 2006 SC 602, PLD 1996 Lahore 672, an unreported judgment, , 2018 SCMR 802, 2015 PLC 1, PLD 2019 Lahore 17, PLJ 2020 Lahore 325, 2023 PLC 163, and 2019 PLC 240.*

rather the condition of pre-deposit is a valid legislative requirement and fully operative. It was further contended that the objection of the petitioner regarding lack of jurisdiction on account of being a trans-provincial establishment is misconceived, as the provisions of the SWCA are applicable to all establishments operating within the territorial limits of the Province of Sindh, including trans-provincial entities. In support of his submission, reliance was placed upon judgments of this Court passed in C.P. No. S-398 of 2021 (decided on 18.04.2022) and C.P. No. S-82 of 2023 (decided on 08.05.2023), wherein similar objections were repelled and it was held that the Commissioner Workers' Compensation has lawful jurisdiction to adjudicate such matters, while jurisdiction of the NIRC is confined to unfair labour practices and industrial disputes under the IRA. Learned Counsel for Respondent No.3 further argued that there is no legal bar preventing a worker from availing multiple statutory benefits under different labour laws, and the respondent was lawfully entitled to receive compensation under the SWCA and group insurance under Standing Order 12. He submitted that the petitioner has failed to point out any provision of law which prohibits such entitlement. Likewise, the objection of limitation was stated to be either misconceived or unsupported by the record. Learned Law Officer submitted that the impugned orders are well-reasoned, based on proper appreciation of evidence and law, and do not call for interference in constitutional jurisdiction, as no case of illegality, jurisdictional defect or perversity has been made out by the petitioner.

**8.** Heard and record perused. The controversy in the present *lis* essentially revolves around the following core questions: **(i)** whether the petitioner was a trans-provincial establishment under the IRA and thus beyond the purview of Provincial labour statutes; **(ii)** whether delay in the claims was condoned by the Commissioner contrary to section 10 of the SWCA; **(iii)** whether the condition of pre-deposit in Section 36 of the SWCA constitutes an unconstitutional clog on the right of appeal; **(iv)** whether section 36 does not provide an appeal from an order requiring deposit of group insurance proceeds; and **(v)** whether compensation awarded to Respondent No.3 under the SWCA ousted a claim for group insurance proceeds made under Standing Order 12.

**9.** At the very outset, submission of the petitioner's counsel was that since the petitioner also had a factory at Muzaffargarh, Punjab, it was a "**trans-provincial establishment",** consequently the dispute fell within the jurisdiction of the NIRC under Federal law i.e. the IRA and not under Provincial labour legislation. Reliance was placed on the case of *Sui Southern Gas Company Ltd. v. Federation of Pakistan* (2018 SCMR 802). However, the question whether an establishment is trans-provincial, is a question of fact. It may well be that a provincial establishment subsequently becomes a trans-provincial establishment, or *vice versa*. In the instant case, the contention that it was a trans-provincial establishment was never made by the petitioner before the Commissioner, rather it was made for the first time before the Tribunal in appeal after the Commissioner had ruled against the petitioner. Even then, the documents relied upon in that regard before the Tribunal were gas bills issued at Muzaffargarh in the year 2025, whereas the subject claims pertained to the year 2024. The petitioner did not produce any certificate issued to a workers' union of its establishment under the IRA which could conclusively establish that it was a trans-provincial establishment at the relevant time.

**10.** Nevertheless, in our view, the argument of trans-provincial establishment was essentially an objection to the territorial jurisdiction of the *fora* acting under the SWCA. It is then settled law that an objection to territorial jurisdiction, even of a quasi-judicial authority, must be taken at the first instance, failing which it cannot be urged before the appellate or revisional forum to annul the impugned decision. Reliance is placed on the cases of *Abdul Qayyum v. Khurshid Jahan* (1984 SCMR 712) and *Commissioner of Income Tax, Rawalpindi v. Abdul Karim Transport Co. Ltd.* (PLD 1985 SC 271). Therefore, even if the petitioner was a trans-provincial establishment, it did not take such objection at the outset before the Commissioner, rather it submitted to the jurisdiction of the Commissioner. Resultantly, such objection was not available to the petitioner before the Tribunal.

**11.** The Respondent No.3 accepted that his claims, filed on 21.04.2024, were with a delay of 3 months and 22 days, hence the application to condone delay. Such application was allowed by the Commissioner accepting the explanation that Respondent No.3 had been following up his compensation with the petitioner's officers from time to time, who procrastinated on the pretext that group insurance proceeds had yet to be received from the Insurance Company. The objection of learned counsel for the petitioner was that limitation for the claims had to be examined under section 10 of the SWCA, which reflected that the delay in the claims was more than three years, and this aspect was not noticed by the Commissioner.

**12.** The limitation for a claim under the SWCA and the power of the Commissioner to condone delay is provided in section 10(1) as under:

> "10. (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within three years of the occurrence of the accident or, in case of death, within three years from the date of death:
>
> Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the worker was continuously absent from work in consequence of the disablement caused by the disease:
>
> Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim – if
> (a) ……
> (b) …..
>
> Provided, further, that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause."

Thus, limitation for a claim for compensation is three years commencing from the 'occurrence of the accident'. However, as per the first proviso, where the accident is an occupational disease, the period of three years "shall be deemed to have occurred on the first of the days during which the worker was continuously absent from work in consequence of the disablement caused by the disease." The third proviso vests a discretion in the Commissioner to entertain a claim even if made after the stipulated period of three years. Per learned counsel for the petitioner, the period of three years under the first proviso commenced on 24.09.2017 when Respondent No.3 first proceeded on leave. On the other hand, Respondent No.3 counted limitation from 30.12.2020, when the Special Medical

Board certified that he was permanently incapacitated for further service due to tuberculosis.

**13.** The question as to what were “the first of the days” during which Respondent No.3 was “continuously” absent from work “in consequence of the disablement”, was again a question of fact. Though learned counsel for petitioner submitted that the relevant date was 24.09.2017, the petitioner’s own letter dated 30.06.2020 whereby it issued charge-sheet to Respondent No.3, counted the Respondent’s continuous absence from work from 25.02.2020. Be that as it may, the fact of the matter remains that in its written statement before the Commissioner and in its memo of appeal before the Tribunal, the petitioner did not dispute that the delay was anything more than 3 months and 22 days. The petitioner cannot improve its case at this stage. Therefore, the discretion exercised by the Commissioner to condone delay in the claims under the third proviso to section 10(1) of the SWCA, does not warrant interference.

**14.** Coming to the objection regarding the condition of pre-deposit to an appeal under Section 36 of the SWCA, learned counsel for the petitioner relied upon ***PLD 2025 SC 440 (Senior Joint Director SBP v. Federation of Pakistan)*** to contend that an onerous condition attached to the right of appeal may amount to denial of such right. There can be no cavil with the proposition that an unreasonable or disproportionate condition may offend Article 10-A of the Constitution; however, **each case must be examined in its own statutory context**. Thus, a balance has to be struck between legislative intent and access to justice. In order to appreciate the true nature of a pre-condition attached to a statutory right of appeal, it is instructive to note that such conditions are neither novel nor alien to the legal framework, and are, in fact, deeply embedded across various branches of law. Such condition is a recognized and legitimate means of regulating appellate jurisdiction. The mere existence of such a condition does not, by itself, render a provision unconstitutional; rather, it is only when such condition becomes so onerous as to practically extinguish the right of appeal that constitutional intervention may be warranted. Quite to the contrary, the impugned requirement, in its practical operation, safeguards the rights of workers. The amount of awarded compensation, once deposited with the Commissioner, can be kept intact by way of an order under section 37 of the Act; in the event the employer succeeds, the same is liable to be refunded, whereas, if the respondent-employee ultimately succeeds, the compensation stands readily available for disbursement without further delay or obstruction. The requirement, therefore, operates as a measure of protection rather than penalization. In the present analysis, the petitioner has failed to demonstrate that the said condition is so excessive, disproportionate, or oppressive as to cause any undue prejudice to the employer or to render the statutory remedy illusory.

**15.** The case of ***PLD 2025 SC 440 (Senior Joint Director SBP v. Federation of Pakistan)*** is clearly distinguishable from the facts and circumstances of the present case. In essence, it has been contended that a pre-condition, particularly one of financial deposit, is unlawful on the premise that the august Supreme Court has held such a condition to be curtailing the right of appeal. The citation referred to above pertains to pre-deposit of the amount of penalty imposed by the Foreign Exchange Adjudication Board. There is a clear distinction between a penalty and awarded compensation; therefore, the principle laid down therein is distinguishable and not applicable to the facts of the present case. The impugned provision under consideration in the cited authority was Section 23-C (4) of the Foreign Exchange Regulation Act, 1947, which is reproduced hereunder for reference:

> "(4) No appeal shall be admitted for hearing unless the appellant deposits in cash with the Appellate Board the **amount of penalty** or, at the discretion of the Appellate Board, furnishes security equal in value to such amount of penalty."

In contrast, the proviso to Section 36 of the Sindh Workers' Compensation Act, 2015 provides:

> "Provided also that no appeal by **an employer** under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against."
>
> **[Emphasis Added]**

A plain and meaningful comparison of the two provisions demonstrates a fundamental distinction in both their object and effect. The provision examined by the august Supreme Court pertained to a penal liability under a regulatory statute, where the requirement of deposit operated as a pre-condition in the nature of securing a penalty imposed by the State, thereby potentially placing an onerous restriction upon the right of appeal. Conversely, the proviso to Section 36 of the SWCA is embedded within a beneficial and welfare-oriented legislation, and the requirement of deposit is not punitive in character but protective in nature.

The pre-deposit mandated upon the employer is, in essence, a mechanism to safeguard the statutory entitlement of an injured worker or the dependents of a deceased worker, ensuring that the awarded compensation, often representing the sole financial relief available to such vulnerable persons, is secured during the pendency of appellate proceedings.

Thus, the requirement operates as a balancing tool between the employer's right to challenge the order and the employee's right to timely and effective compensation, which lies at the heart of the legislative intent. Far from being an onerous or arbitrary restriction, it constitutes a reasonable condition designed to prevent frustration of the award and to secure social justice and therefore stands on an entirely different footing from the provision considered in the cited judgment.

**16.** In view of the findings recorded hereinabove regarding the validity and mandatory nature of the requirement of pre-deposit in section 36 of the SWCA, no exception can be taken to a dismissal of an appeal for non-compliance. In any case, the impugned judgment of the Tribunal reflects that the petitioner's appeal was also dismissed on the merits.

**17.** We now advert to the claim of Respondent No.3 for proceeds of group insurance. Learned counsel for the petitioner is correct that both the Commissioner and the Tribunal did not decide the petitioner's objection to such claim and failed to notice the underlying provision of Standing Order 12 to the Sindh Terms of Employment (Standing Orders) Act, 2015. That provision reads:

> "12. (1) In every industrial establishment and commercial establishment, in which twenty or more workers are employed, the employer shall have all the permanent workers employed by him insured against natural death and disability and death and injury arising out of contingencies not covered by the Workmen's' Compensation Act, 1923 (Act No.VIII of 1923) or the Provincial

> Employees' Social Security Ordinance, 1965 (W.P.Ord.No.X of 1965).
>
> (2) The employer shall in all cases be responsible for the payment of the amount of premium and for all administrative arrangements whether carried out by himself or through an insurance company.
>
> (3) The amount for which each worker shall be insured shall not be less than the amount of compensation specified in Schedule IV to the Workmen's' Compensation Act, 1923(Act No.VIII of 1923).
>
> (4) Where the employer fails to have a permanent worker employed by him insured in the manner laid down in clauses (1), (2) and (3) and such worker suffers death or injury arising out of contingencies mentioned in clause (1), the employer shall pay, in the case of death, to the heirs of such worker, or in the case of injury, to the worker, such sum of money as would have been payable by the insurance company had such worker been insured.
>
> (5) All claims of a worker or his heirs for recovery of money under clause (4) shall be settled in the same manner as is provided for the determination and recovery of compensation under the Workmen's' Compensation Act, 1923 (Act No.VIII of 1923)."

**18.** The scheme for claiming insurance proceeds under Standing Order 12 appears to be as follows. The SWCA (which repealed the Workmen's Compensation Act, 1923), caters for death or disability resulting from injury caused to a worker by accident arising out of and in the course of employment, including an occupational disease contracted in the course of employment. It does not cater for death or disability that occurs naturally or an injury suffered outside the course of employment. For this reason, Standing Order 12 requires employees to insure workers against **<u>natural</u>** death and disability, and death and injury arising out of contingencies **<u>not</u>** covered by the SWCA. It follows that where the nature of death, disability or injury suffered by a worker is not covered under the SWCA, only then can the worker or his heirs fall back on Standing Order 12 and make a claim for the amount insured. Clause (4) of Standing Order 12 further provides that if the employer has failed to obtain such insurance, then the claim lies against the employer for the amount that should have been insured, which claim, as per clause (5), is recoverable under the machinery provisions of the SWCA.

**19.** In the instant case, the disability suffered by Respondent No.3 was a contingency duly covered by the SWCA. Therefore, learned counsel for the petitioner is correct that the claim by Respondent No.3 for proceeds of group insurance under Standing Order 12 was not maintainable. Here, it may be kept in mind that insurance cover required by Standing Order 12 is separate from any additional insurance cover that the employer may obtain for its exposure to compensation as contemplated under section 18 of the SWCA.

**20.** Though the Tribunal has held that section 36 of the SWCA does not provide an appeal from an order directing deposit of group insurance proceeds, a constitution petition to challenge such order is nonetheless maintainable. Since we have concluded that the claim of Respondent No.3 for group insurance proceeds was not maintainable over and above the claim for compensation, we do not examine the question whether an order directing deposit of group insurance proceeds is appealable under section 36 of the SWCA.

**21.** For the foregoing reasons, these petitions are determined as follows:

(i) C.P. No. D-1486/2025, emanating from the claim of compensation under the Sindh Workers Compensation Act, 2015, is dismissed. The petitioner's failure to deposit the adjudged compensation with the Commissioner as required by said Act has prejudiced Respondent No.3. Therefore, in exercise of inherent jurisdiction under Article 199 of the Constitution, we impose a cost of Rs. 200,000/- on the petitioner payable to Respondent No.3, which shall be recoverable by the Commissioner under section 38 of the Act along with the compensation adjudged;

(ii) C.P. No. D-1487/2025, emanating from the claim of group insurance proceeds under Standing Order 12 of the Sindh Terms of Employment (Standing Orders) Act, 2015, is allowed. Orders dated 08.04.2025 and 03.07.2025 passed respectively by the Commissioner for Workers' Compensation and the Sindh Labor Appellate Tribunal, to the extent of directing the petitioner to deposit group insurance proceeds, are set-aide, and the claim filed by Respondent No.3 in that regard is dismissed.

**JUDGE**

**JUDGE**

*Approved for reporting*