JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : W.P. NO.2553-2020

The Managing Director/Chief Executive Officer M/s The United Insurance Company of Pakistan Limited, Lahore

Vs.

The President of the Islamic Republic of Pakistan through Director (Legal), President's Secretariat (Public), Islamabad etc.

Petitioner by	**:**	**Mr. Ali Ibrahim, Advocate**
Respondents by	**:**	**Mr. M. Irfan Zafar Hashmi, Advocate for respondent No.3.** **Mr. Azmat Bashir Tarar, Assistant Attorney General**
Date of hearing	**:**	**17.04.2024**

AAMER FAROOQ C.J. Respondent No.3 insured her outlet situated at Nishat Linen, Talagang Road, Chakwal with the insurance company (the petitioner) vide Fire Policy dated 20.06.2018 for the period 20.06.2018 to 20.06.2019 under certain terms and conditions. On 10.11.2018, at about 7:00 a.m, there took place a burglary at respondent No.3's outlet and FIR was registered in this behalf. The petitioner was intimated about the incident on 12.11.2018 and on the same day, M/s Muhammad Akram and Company was appointed as a Surveyor. It is pertinent to note that referred Surveyor was duly authorized by Securities and Exchange Commission of Pakistan. The Surveyor conducted survey on 14.11.2018 and requested respondent No.3 to submit a list of nine documents; out of which, five documents were filed belatedly on 13.12.2018. On 20.03.2019, the Surveyor issued final 'Loss Survey Report', in which, incident was confirmed but the presence of the security guard was not. It was observed in the report that under the terms of the insurance policy, Chowkidar has to be present 24 hours, but he was not; and there is no proof to the contrary. The claim of respondent No.3 was for the sum of Rs.4,673,780/- against loss of unstitched suits out of total value of stock valuing Rs.27,914,803/-. The Surveyor noted that figures are on the higher side and need to be revisited, to which, the claim was revisited in the

sum of Rs.2,294,780/- against total stock of Rs.13,968,256/-. As per policy, 20% excess on the whole sum insured, was turned down and the loss was tabulated at Rs.1,642,833/-. Keeping in view the referred position, respondent No.3 preferred a complaint before respondent No.2, in which, the petitioner objected to the assumption of jurisdiction, but the same was turned down and it was decided on merits on 26.11.2019. The petitioner preferred representation before respondent No.1 which was turned down on 28.07.2020, hence the petition.

2. Learned counsel for the petitioner *inter alia* contended that there were disputed questions of fact hence respondent No.2 had no jurisdiction in the matter. It was contended that assumption of jurisdiction by respondent No.2 could have only been made, if there was mal-administration, however, respondent No.3, could not prove that such was the case. It was contended that in the facts and circumstances, the matter pertained to Insurance Tribunal, as disputed questions of facts were involved and reference was made to section 122 of the Insurance Ordinance, 2000. Learned counsel also drew attention of the Court towards section 127 ibid to argue that no mal-administration is made out in the facts and circumstances. Reference was made to cases reported as M/s Capital Insurance Co. Ltd. Vs. Securities and Exchange Commission of Pakistan and 4 others (2013 CLD 1075), judgment of Lahore High Court in case titled Atlas Insurance Limited Vs. Federal Insurance etc. (W.P. No.23312 of 2014), Shafaatullah Qureshi Vs. Federation of Pakistan (PLD 2001 Supreme Court 142) and Regional Manager, Adamjee Insurance Company Ltd. Vs. Presiding Officer, District Consumer Court, Lahore and 3 others (2012 CLD 846). It was also contended that nature of dispute was such that it could only be decided through a judicial power and Ombudsman, as such, could not have done so. Reference was made to case reported as Judicial Review of Public Actions by Justice Fazal Karim P.128 (PLD 1975 SC 49), Mehram Ali etc. Vs. Federation of Pakistan etc. (PLD 1998 SC 1445), Dr. Zahid Javed Vs. Dr. Tahir Riaz Chaudhry etc. (PLD 2016 SC 637), Habib Bank Limited Vs. Federation of Pakistan etc. (2022 CLD 769) and Shafaat Ullah Qureshi Vs. Federation of Pakistan (PLD 2011 SC 142). It was contended that even on

merits, no case as such, is made out because as per the policy, Surveyor worked out the claim and matter was resolved.

3. On the other hand, learned counsel for respondent No.3 objected the position and submitted that in the facts and circumstances, respondent Nos.1 & 2 had jurisdiction in the matter inasmuch as there was mal-administration in the facts and circumstances as per report, as report of Surveyor was delayed.

4. Submissions made by the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The background, leading to filing of instant petition, has already been mentioned hereinabove.

6. The root of the controversy, as raised by the petitioner, is whether in the facts and circumstances, respondent No.2 had jurisdiction in the matter, as there was no mal-administration.

7. In the Insurance Ordinance, 2000 (the Ordinance), three different mechanisms have been provided for resolving the claims/disputes between insurer and the insurance company. Firstly, with respect to small claims, a mechanism is provided for constitution of a committee to conciliate and mediate the matters. The referred small dispute resolution committees are provided in section 117 of the Ordinance and their jurisdiction is regulated by the rules framed in this behalf; the second forum, for resolution of the dispute, is the Insurance Tribunal constituted under section 121 ibid and its powers and procedures are contained in sections 122 & 123 of the Ordinance. The Tribunal resolves the disputed question of fact between the insurer and the insurance company. Under section 125 of the Ordinance, Office of Insurance Ombudsman is constituted. This forum provides for deciding the claims of the insurer where there is mal-administration. Jurisdiction of respondent No.2 is contained in section 127 of the Ordinance, which provides that the Insurance Ombudsman may, on the complaint of an aggrieved person, undertake any investigation into any allegation of mal-administration on the part of any insurance company. The definition of mal-administration is inclusive and is

provided in subsection (2) of section 127 ibid. The referred subsection reads as follows:-

'***127. Jurisdiction, functions and powers of Insurance Ombudsman.-***

(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, favoritism, 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".

The mal-administration includes any decision, or recommendation which is contrary to law, rules or regulations or is departure from established practice and procedure; or unreasonable, unjust, biased, oppressive, or discriminatory; or is based on irrelevant grounds; or involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favoritism, nepotism and administrative excesses; and corruption, nepotism, neglect, inattention, inordinate delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

8. The sole claim, on the basis of which, respondent No.3 approached respondent No.2, was delay in providing survey report, which according to the parties, was actually provided. It is not the case of respondent No.3 that refusal, on part of petitioner to honor the claim, was based in violation of rules and regulations, however, the survey report was disputed and excess claim was made. In one such case, where such was the position, the Division Bench of Lahore High Court in case reported as M/s Capital Insurance Co. Ltd. Vs.

Securities and Exchange Commission of Pakistan and 4 others (2013 CLD 1075), observed where the dispute between the parties is factual which could only be resolved after recording the evidence, jurisdiction vests with the Insurance Tribunal. Similar views were expressed by Lahore High Court in case titled Atlas Insurance Limited Vs. Federal Insurance etc. (W.P. No.23312 of 2014), wherein it was observed as follows:-

> "*7. It is clear from reading of the judgment above that this Court was swayed by the fact that the Surveyor had admitted the claim of the insured either partially or completely and despite such report by the surveyor the insurance company had not made over the claim so held to be due by the surveyor. This was at the heart of the precedent referred to above. Also this fact distinguishes the judgment rendered in W.P. No.18372 of 2016 from the fats of instant case. Quite clearly, in the present petition, the Surveyor held the claim of the respondent No.2 to be not due and Alas was, therefore, not obliged to reimburse the claim under the insurance policy to the respondent No.2. In these facts and circumstances, it did not give rise to maladministration within the contemplation of section 125 of the Ordinance. Sub-section (2) defines the various instances of maladministration which would set into motion the jurisdiction of the Federal Insurance Ombudsman to consider upon the determination of any complaint by an aggrieved person. The surveyor rejected the insurance claim filed by the respondent No.2 and the respondent No.2 aggrieved of the report filed by the surveyor had the option to apply to the SECP in terms of rule 2 of the Rules, 2002 for the appointment of another surveyor or could have filed proceedings before the Insurance Tribunal constituted under section 121 of the Ordinance. Juxtaposing section 121 with section 125, it becomes clear that though the two forums, one of the Insurance Tribunal and the other of the Federal Insurance Ombudsman run parallel to each other, unequivocally they do not run into each other and the jurisdiction of these two forums is quite distinct and apart from each other. In case, there is a dispute regarding the insurance claim, the proper forum for its determination is the Insurance Tribunal which has in the exercise of its civil jurisdiction, all the powers vested in a civil court. It will exercise jurisdiction in respect of a claim filed by a policy holder against an insurance company. This is stated in section 122(a) of the Ordinance. By subsection (3) of section 122, exclusive jurisdiction has been conferred on Insurance Tribunal to exercise and it has been provided that no court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Tribunal extends under the Ordinance. The periphery of powers of an Insurance Ombudsman the quite clearly limited to the determination of a complaint if the*

allegations of maladministration are clearly made out. The precise scope of the term 'maladministration' has been given in subsection (2) of section 127 and the Insurance Ombudsman cannot travel beyond the power conferred upon it by that subsection. Maladministration would include any decision or act of omission or commission which is contrary to law, rules or is a departure from established practice or procedure. Maladministration also includes a decision which is perverse, arbitrary or unreasonable or oppressive or is based on irrelevant grounds. None of the ingredients which constitute maladministration are found in the instant matter. Atlas proceeded strictly in terms of the Ordinance by appointing a surveyor. The surveyor did not approve the claim under the insurance policy. Thus a dispute arose and the refusal by Atlas to reimburse the claim under the insurance policy was neither mala fide nor was it contrary to any law or rule. It was also not perverse or arbitrary. It would be a fallacy to say that despite the clear report by the surveyor, Atlas ought to have proceeded to pay the claim filed by the respondent No.2. The observations made by this Court in Messrs Capital Insurance Co. Ltd. Vs. Securities and Exchange Commission of Pakistan and 4 others (2013 CLD 1075) are apt and pertinent. It was held that:-

> *27. The other aspect of the case is that preamble of Ordinance 2000 will show that it regulates the business of Insurance Industry to ensure the protection of interest of policy holders and for matter connected therewith and incidental thereto. Thus the jurisdiction of Insurance Ombudsman is restricted to the Insurance Business only. The dispute between the parties is factual which could only be resolved after recording the evidence, hence, the respondent No.2 wrongly assumed the jurisdiction on the respondent No.4 complaint".*

9. In case reported as Mst. Parveen Akhtar Vs. Subash Chandar and others (2016 MLD 1596), this Court observed that disputed questions of fact cannot be resolved without recording evidence. In case reported as United Bank Limited through Manager Vs. Banking Mohtasib Pakistan and another (2006 CLD 1226), again in the matter pertaining to Banking Mohtasib, Lahore High Court observed that question of award of damages needs to be decided by the civil court after recording evidence. In case reported as Shafaat Ullah Qureshi Vs. Federation of Pakistan (PLD 2001 Supreme Court 142), the Supreme Court observed with respect to the Establishment of Office of Wafaqi Mohtasib

(Ombudsman) Order No.01 of 1983 that no where it is stated that Ombudsman/Mohtasib is to serve as a court or judicial tribunal. Had so being the intention of the Legislature, the same would have been specifically mentioned therein. It was also observed that by implication, status of Court cannot be conferred upon the office of Wafaqi Mohtasib. He cannot deliver a binding judgment which is a condition precedent for being a Court. It was also alluded that Office of Mohtasib has been created for redressal of the grievances of the citizens but is neither a Court nor Judicial Tribunal within the scope of Article 175 of the Constitution. Similar observations are contained the treatise on Judicial Review by Justice Fazal Karim that judicial power is the power to decide cases and controversies. Power to decide, when it involves the application of the Constitution or a law, necessarily includes the power to declare what the law is and the power to construe it. Reference is made to case reported as Judicial Review of Public Actions by Justice Fazal Karim P.128 (PLD 1975 SC 49). In another celebrated judgment titled Mehram Ali etc. Vs. Federation of Pakistan etc. (PLD 1998 SC 1445), the Supreme Court observed that a distinction has to be drawn between the courts of law which form part of judicial system of the country on the one hand and the courts which are to resolve problems which arise in the course of administration of the government of the country. It was observed that the test is whether the authority under review is required to perform the act in question as a court in the proper sense of the word and whether the authority under review was performing the act judicial as a court in the exercise of the judicial power of the State, as distinguished from executive (administrative) or legislative power of the State. It was concluded that unless a body exercising judicial functions can be demonstrated to be part of this judicial system, it is not, in my judgment, a court in law.

10. In view of above facts and law, it can safely be concluded that controversy between the petitioner and respondent No.3 involves disputed questions of fact, which require recording of evidence inasmuch as the delay in providing the report of Surveyor was made good and same was provided, but it is about the payment of insurance amount, that is in dispute. The

petitioner refutes the claim of respondent No.3, thus the matter can only be resolved by way of recoding evidence. In such facts and circumstances, respondent No.2 had no jurisdiction in the matter and the appropriate forum was the Insurance Tribunal constituted under section 125 of the Ordinance.

11. For what has been stated above, the impugned orders dated 26.11.2019 & 28.07.2020 are set aside; consequently, complaint filed by respondent No.3 stands dismissed.

(CHIEF JUSTICE)

Announced in Open Court on 31.05.2024

(CHIEF JUSTICE)

Approved for reporting

Zawar