JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A No. 116 of 2023

Noor Ellahi

Versus

The United Insurance Company of Pakistan and another

Appellant By	:	Mr. Moazzam Ali Sheikh, Advocate
Respondents By	:	Mr. Arif Majeed, Advocate for Respondent No.1.
		Mr. Imran Ali Khan, Advocate for Respondent No.2.
Date of Hearing	:	30.04.2025

MUHAMMAD ASIF, J. Through the instant appeal, the Appellant impugns the Judgment & Decree dated 25.10.2022, passed by learned Additional District Judge-X, West-Islamabad, whereby the suit filed by the Appellant for recovery of insurance claim amounting to Rs. 10,15,200/- was dismissed.

2. Learned counsel for the Appellant contended that the Impugned Judgment & Decree dated 25.10.2022, is against the law and facts of the case; that the learned trial Court has failed to properly appreciate the evidence and material placed on record by the Appellant and is also contrary to the relevant laws; that the learned trial court has not applied its judicial mind while passing the impugned judgment and decree, as the principles of justice are always observed by the courts for the cause of justice; that the learned trial court below has not appreciated the legal/factual arguments advanced by the appellant and subsequently decided the matter by ignoring all aspects of the case and passed the impugned judgment & decree on surmises and conjectures; that the impugned judgment and decree is result of

misreading and non reading of the evidence produced by the Appellant during the course of trial; that the impugned Judgment & Decree dated 25.10.2022, has caused grave injustice to the Appellant and lastly, prayed for acceptance of instant appeal by setting aside the Impugned Judgment & Decree dated 25.10.2022, passed by learned trial court.

3. Conversely, learned counsels for the Respondents, repelled the contentions raised by the learned counsel for the Appellant by stating that there is no illegality or irregularity in the impugned Judgment & Decree dated 25.10.2022, as the same was passed in accordance with law, therefore, instant appeal is liable to be dismissed.

4. I have heard the learned counsel for the parties and gone through the record with their able assistance.

5. As per available record, the Appellant applied for the "Drive Auto Financing Facility" through United Bank Limited ("**UBL**") in the year 2008, through which an amount of Rs.1,015,200/- was sanctioned by the UBL bank as financing amount, in result of which, the Appellant purchased a motor vehicle Toyota Corrola XLI after depositing the down payment as an equity amount. The subject vehicle was insured with Respondent No.1/Defendant No.1 under the prevailing terms and condition of the insurance policy. According to such insurance policy, the Respondent No.1/Defendant No.1 was under obligation to compensate the Appellant, in case of theft or other mishap with the subject vehicle. On 29.11.2011, the subject vehicle was stolen and in this regard an FIR no. 910/11, dated 16.12.2011, under section 381-A PPC was registered at Police Station R.A Bazar, Rawalpindi on 16.12.2011. Whereafter, the Appellant filed a claim before Respondent No.1/Defendant No.1, which was declined by the Respondent No.1/Defendant No.1, vide letter dated 21.04.2012 with

the observation that "the insured vehicle running on rent is not covered in insurance, hence the claim is a no loss".

6. Perusal of Para No.5 of the plaint of the Appellant reveals that the subject vehicle was parked and stolen from outside the house of the Appellant, the matter was reported to the concerned police station, whereupon an FIR No. 910/11 of P.S R.A Bazar, Rawalpindi (Mark-A), got registered. Contrarily, perusal of the FIR (Mark-A) transpires that the said FIR was registered on the compliant of one Muhammad Imtiaz and said vehicle was stolen parked outside the house of the Complainant (Muhammad Imtiaz). For instance, Para no.5 is reproduced here in below:-

> ***"That to the great disappointment of the plaintiff his said vehicle was stolen when the plaintiff parked the same outside of his house. The plaintiff reported the matter to the concerned police whereupon FIR No.910 dated 16.12.2011 U/S 381-A PPC was registered in P.S R.A Bazar, Rawalpindi. Copy of FIR is attached herewith."***

Contrary to his pleading, the Appellant took different stance while recoding his examination-in-chief as PW-1 that the subject vehicle was stolen from the outside the house of his friend namely Muhammad Imtiaz, upon whose application an FIR (Mark-A) was registered.

7. It is needless to say that contesting parties while recording their evidence are required to lead their evidence in accordance with their pleadings and no evidence can be produced or looked into in support of a plea which has not been taken in the pleadings by the party. The court shall ignore and exclude the evidence led beyond pleadings from consideration. In case, where some material facts are not mentioned in

the pleading due to any reason, then such party is always at liberty to first seek amendment in pleadings before leading evidence. In this regard, the reliance is placed upon the case of *Muhammad Naeem Khan v. Muqadas Khan (decd) through L.Rs. and another* **(PLD 2022 Supreme Court 99)** and *Sardar Muhammad Naeem Khan v. Returning Officer, PP-12 and others* **(2015 SCMR 1698)**.

8. Record further depicts that the Appellant led the evidence by appearing as sole witness as PW-1 and no other witness in support of his version was produced by the Appellant before the trial court. It was alleged and also a stance of the Respondent No.1/Defendant No.1 that subject vehicle was given to one Muhammad Imtiaz on rent, who is also Complainant of the FIR No.910/11 of P.S R.A Bazar, Rawalpindi and also a friend of the Appellant as per contents of said FIR and the oral evidence of the Appellant as PW-1. In these circumstances, it was Muhammad Imtiaz who could testify the particular fact/point whether the subject vehicle was given to him on rental basis or not? but the Appellant remained fail to produce such a material witness before the trial court. It is a settled principle of law that one who alleges something must prove the same through reliable, inspiring and trustworthy evidence. In this regard, Articles 117 & 119 of Qanun-e-Shahadat Order, 1984 are very clear. Same are reproduced as follows:

> ***117. Burden of proof.– (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.***
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> ***119. Burden of proof as to particular fact.– The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is***

provided by any law that the proof of that fact shall lie on any particular person.

9. In view of the foregoing, no illegality, irregularity, mis-reading or non-reading of evidence has been found in the Impugned order. Therefore, the findings recorded by learned trail court in the impugned Judgment & Decree dated 25.10.2022, is in accordance with law. Consequently, the instant Regular First Appeal is **dismissed.**

(MUHAMMAD ASIF)
JUDGE

Announced in an open Court on_____

JUDGE

//Kamran//