JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

F.A.O. No.34 of 2015

AMJAD HUSSAIN ABBASI.

Vs.

CHIEF EXECUTIVE, TRUST FOR VOLUNTARY ORGANIZATIONS, ISLAMABAD AND ANOTHER.

APPELLANT BY: Mr. Ali Murad Baloch, Advocate.

RESPONDENTS BY: Mr. M. Adrees Mirza, Advocate.

DATE OF HEARING: 12.01.2022.

SAMAN RAFAT IMTIAZ; J: Instant First Appeal has been filed against Order dated 26.03.2015 (**"Impugned Order"**), whereby the learned Civil Judge, West-Islamabad while accepting the application u/o VII, Rule 10 & 11, C.P.C., filed by Defendant No.2 (Respondent No.2 in this appeal) returned the Appellant's/Plaintiff's plaint.

2. The facts giving rise to the instant Appeal are that the Appellant/Plaintiff was employed with the Respondent/Defendant No.1 as driver, vide appointment letter dated 24-09-1999. He filed Suit for Declaration, Recovery of Damages and Permanent Injunction alleging that as employee of Respondent/Defendant No.1, he was entitled for medical insurance as part of his employment benefits. The Respondent/Defendant No.1 provided such medical insurance through Respondent/Defendant No. 2, vide medical card that was valid till June 30, 2013. However, he remained employed with the Respondent/Defendant No. 1 till 30.11.2012.

3. The Appellant/Plaintiff claimed that he met with an accident on 30.11.2012 after which he got medical treatment at Al-Shifa

International Hospital but when the said Hospital contacted Respondent/Defendant No. 2, they were informed that Respondent/Defendant No. 1 had withdrawn Appellant/Plaintiff's Policy. The Appellant/Plaintiff, therefore, prayed for a declaration in his suit that he was entitled for medical insurance as employee of Respondent/Defendant No. 1 till 30.11.2012. He also claimed recovery of damages of Rs. 5,000,000/- from the Respondents/Defendants on account of health loss, financial loss, mental torture, loss of education of his children, loss of future service income and pain as well as his insult in Al-Shifa International Hospital and further sought decree for permanent injunction restraining the Respondents/Defendants from taking back appellant's/plaintiff's insurance card as well as withdrawal of the medical facility.

4. The Respondents/Defendants filed written statements, whereafter out of the divergent pleadings of the parties necessary issues were framed by the learned Trial Court and in the light of the objection raised by Respondent No.2/Defendant No.2 a specific issue (issue No. 7) regarding the jurisdiction of the learned Trial Court to entertain the suit was also framed.

5. On 10.09.2014, Respondent No.2/Defendant No.2 also filed application u/o VII Rules 10 & 11 CPC contending therein that the learned Trial Court had no jurisdiction to entertain the suit as the matter related to insurance cover in which regard only the Tribunal established u/s 122(3) of the Insurance Ordinance, 2000 ("***Ordinance of 2000***") is competent to proceed; Appellant/Plaintiff has no direct or indirect relation with Respondent No.2/Defendant No.2 and, as such, the Appellant/Plaintiff has no *locus standi* to file the suit and no cause of action has accrued to the Appellant/Plaintiff against Respondent No.2/Defendant No.2. The learned Trial Court, after hearing the learned counsel for the parties accepted the application u/o VII Rule 10 & 11

CPC filed by the Respondent No.2/Defendant No.2 and returned the plaint to the appellant/plaintiff, hence this appeal.

6. The learned counsel for the Appellant/Plaintiff argued that the Appellant/Plaintiff's claim is against Respondent No.1/Defendant No. 1, not Respondent No.2/Defendant No.2 and as such the latter had no right to file the application u/o VII Rules 10 & 11 C.P.C., therefore the Impugned Order is liable to be set aside. Whereas, the learned counsel for the Respondent No.2/Defendant No.2 contended that since the Appellant/Plaintiff has claimed damages from Respondent No.2/Defendant No.2 as well, the matter falls within the exclusive jurisdiction of the Tribunal constituted under the Ordinance of 2000. Further, that at the time of the accident of the Appellant/Plaintiff, there was no policy contract in existence, therefore, the Appellant/Plaintiff had no right to file the suit against the Respondent No.2/Defendant No.2.

7. This Court finds the arguments submitted by both the learnedcounsel to be self-contradictory. On one hand, the plaint filed by the Appellant/Plaintiff contains a prayer for damages against both the defendants impleaded therein and on the other hand the learned counsel has submitted that the claim is only against Respondent No.1/Defendant No.1 and not Respondent No.2/Defendant No.2. Similarly, on one hand, the Respondent No.2/Defendant No.2 has stated in his application u/o VII Rules 10 & 11 C.P.C., that there is no direct relation between the Appellant/Plaintiff and the Respondent No.2/Defendant No.2 while on the other hand, he seeks return of plaint on the ground that only the Insurance Tribunal is competent to proceed with the matter as it involves insurance coverage. The learned counsel for the Respondent No.2/Defendant No.2 has relied upon the cases of "***Abdul Qayoom Vs. State Life Insurance Corporation of Pakistan through Chairman and 3 others 2011 CLD 1157, Haji Muhammad Hanif Vs. State Life Insurance Corporation of Pakistan through Chairman 2007 CLD***

490 & Messrs East-West Insurance Company Ltd. through Chairman and another Vs. Messrs Muhammad Shafi & Company through Managing Partner and 2 others 2009 CLD 960"in support of his arguments.

8. Be that as it may, in order to resolve the controversy at hand, it is imperative to examine the relevant provisions of the Ordinance of 2000. Indeed, the Tribunal constituted under the Ordinance of 2000 has been given exclusive jurisdiction in respect of any matter to which the jurisdiction of the Tribunal extends under the Ordinance in terms of sub-section (3) of Section 122 of the Ordinance, which is reproduced herein below:

> "(3) 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 this Ordinance, including a decision as to the territorial limits and the execution of a decree, order or judgment passed by a Tribunal:
>
> Provided that for the purposes of this section a Small Claims Settlement Committee established under section 117 shall not be deemed to be a Court."

9. Whereas, by virtue of sub-section 1(a) of Section 122 of the Ordinance reproduced herein below, the jurisdiction of the Tribunal extends over claims filed by policy holders against an insurance company in respect of or arising out of a policy of insurance:

> "(1) A Tribunal shall:
>
> (a) in the exercise of its civil jurisdiction, have in respect of a **claim filed by a policy holder against an insurance company in respect of, or arising out of a policy of insurance**, all the powers vested in a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908)" [Emphasis added].

10. Therefore, the Tribunal has exclusive jurisdiction over claims filed by policy holders against an insurance company in respect of or arising out of a policy of insurance and no Court other than the Tribunal shall have or exercise any jurisdiction in respect of such claims.

11. The learned Trial Court has passed the Impugned Order simply in view of para 11 of the Plaint, whereby the Appellant/Plaintiff has alleged

that both defendants were responsible for providing medical treatment to the plaintiff but that both defendants failed to provide the same to the Appellant/Plaintiff. As such, the learned Trial Court concluded that the matter is based on an insurance policy which falls within the exclusive domain of the Tribunal constituted under the Ordinance.

12. No doubt the Appellant/Plaintiff has impleaded the Respondent No.2/Defendant No. 2 in the suit and has claimed damages and permanent injunction against both defendants. But the determining factors for purposes of jurisdiction of the Tribunal under the Ordinance are whether or not (a) it is a claim filed by a policy holder; (b) in respect of or arising out of a policy of insurance.

13. The case of the Appellant/Plaintiff is that as an employee of the Respondent No.1/Defendant No. 1, he was entitled to medical insurance coverage to be provided by Respondent No.1/Defendant No. 1 till November 30, 2012. He has alleged that the medical insurance of the Appellant/Plaintiff provided by the Respondent No.1/Defendant No. 1 through Respondent No.1/Defendant No. 2 stood withdrawn by the Respondent No.1/ Defendant No. 1 on the date of the alleged cause of action and that he suffered damages as a result thereof.

14. The crux of the issue, therefore, is whether withdrawal of the Appellant/Plaintiff's insurance coverage by the Respondent No.1/Defendant No.1 on November 30, 2012 was justified. As such, it is essentially a dispute between employer and employee regarding entitlement to medical insurance under the terms of employment and not a claim against the insurance company in respect of or arising out of an insurance policy. Therefore, the matter does not fall within the jurisdiction of the Tribunal as per sub-section 1(a) of Section 122 of the Ordinance read with Section 3 thereof and it is the Civil Court that has the jurisdiction to entertain the suit of the Appellant/Plaintiff. As such, the Plaint was not liable to be returned.

15. The case law relied upon by the learned counsel for the Respondent No.2/Defendant No. 2 is distinguishable as in all three of such cases the claims fell within the jurisdiction as per Section 122 of the Ordinance.

16. For all the foregoing reasons, this appeal is **allowed** and Impugned Order is set aside and the matter is remanded back to the learned Trial Court for decision afresh on merits.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on _____.

JUDGE