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Judgment Sheet

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

R.F.A No.16370/2019

State Life Insurance Corporation of Pakistan, etc.

Versus

Mst. Undlus Begum

J U D G M E N T

Dates of Hearing	**16.06.2023, 09.10.2023, 12.10.2023 and 19.10.2023**
Appellants By:	Mr. Ibrar Ahmed, Advocate alongwith Barrister Hassan Attique, Manager/ Legal Officer and Tariq Altaf Tipu, Deputy Manager Legal, State Life Insurance Corporation of Pakistan.
Respondent By:	Mr. Liaqat Ali Butt, Advocate.
Amicus Curiae.	Mr. Hussain Tahir Zaidi, Advocate

Anwaar Hussain J: This appeal under Section 96 of the Code of Civil Procedure, 1908 ("**the CPC**") is directed against the judgment and decree dated 30.01.2019 passed by the learned Additional District Judge, Lahore, whereby the suit instituted by Mst. Undlas Begum widow of Muhammad Riaz Sheikh ("**the respondent**") was decreed and she was held entitled to the recovery of insurance coverage of Rs.600,000/-, under the self-subscribed group insurance scheme, alongwith interest @ 5% higher than the then bank rate from the death of husband of the respondent till realization, with cost in accordance with Section 47-B of the Insurance Act, 1938 ("**Insurance Act**").

FACTUAL BACKGROUND:

2. Husband of the respondent was employee of the State Life Insurance Corporation of Pakistan ("**the appellant**") and retired as Deputy Manager on 02.05.1997. Thereafter, he was engaged as Sales

Manager by the appellant, on 04.05.1997. The appellant had already entered into a State Life Group Insurance Memorandum of Understanding dated 01.10.1995 ("**MOU**") with the State Life Field Workers Federation of Pakistan, to be effective from 01.07.1994, and as per the terms of the MOU, a voluntary self-subscribed additional group insurance scheme was introduced for the benefit of the Sales Managers, the Sales Officers and the Sales Representatives. In terms of the MOU, the Sales Representatives were eligible for coverage provided they had completed at least Rs.15,000/- (Rs.10,000 after amendment) First Year Premium (FYP) during the previous calendar year. The Sales Officers and the Sales Managers were to be automatically included in the scheme. All eligible persons over the age of 60 years were required to submit medical evidence of good health for inclusion in the scheme. *Per* the terms of the MOU, the Sales Managers, like the husband of the respondent, were provided a group insurance coverage of Rs.600,000/-.

3. Husband of the respondent died on 24.04.2002. The respondent filed the claim for providing group insurance coverage of Rs.600,000/-, in terms of the MOU, however, on 16.03.2009, the said claim was rejected/repudiated by the appellant, on the ground that deceased husband of the respondent did not procure required quota of business and, hence, his coverage was discontinued by the appellant. On 23.08.2010, the respondent filed an application before the Insurance Tribunal ("**the Tribunal**") established under the Insurance Ordinance, 2000 ("**the Ordinance**"). The appellant objected to the jurisdiction of the Tribunal and the matter remained pending. In the meanwhile, in some other insurance matters involving issue related to the jurisdiction of the Tribunal in respect of claims arising under the Insurance Act, after pronouncement of the judgment by a learned Full Bench of this Court reported as "*Mst. Robina Bibi v. State Life Insurance and others*" (**2013 CLD 477**), plaint of the respondent's

suit was returned by the Tribunal, in terms of Order VII, Rule 10 of the CPC, *vide* order dated 10.06.2013, on the ground that claims arising out of the insurance policies issued prior to the commencement of the Ordinance are to be heard by the Ordinary Courts, under the Insurance Act, and not by the Tribunal established under the Ordinance. It is pertinent to observe that the parties before the learned Full Bench of this Court approached the Hon'ble Supreme Court of Pakistan and the appeals were dismissed on 04.02.2014 through a judgment cited as "*Mst. Naseem Begum and others v. State Life Insurance Corporation of Pakistan and others*" (**2014 SCMR 655**). However, while the appeal(s) of other claimants were pending before the Hon'ble Supreme Court in case of *Mst. Naseem supra*, the respondent also preferred Insurance Appeal bearing No.704/2013 ("**the appeal**"), before this Court, against order dated 10.06.2013, passed by the Tribunal, returning her plaint. The appeal remained pending for approximately three and half years and when it was taken up by a learned Division Bench of this Court, *vide* order dated 07.11.2016, the appeal was disposed of as withdrawn, permitting the respondent to approach the relevant Court for redressal of her grievance and the time period spent before this Court in terms of pendency of the appeal was condoned. Thereafter, a fresh suit was instituted, by the respondent, under the Insurance Act alongwith an application under Sections 14 and 19 of the Limitation Act, 1908 ("**Limitation Act**"), which was decreed through the impugned judgment.

ARGUMENTS:

4. Mr. Ibrar Ahmed, learned counsel for the appellant submits since the case of the respondent was to be dealt with under the Insurance Act, therefore, once husband of the respondent died on 24.04.2002, the limitation period envisaged under Article 86(a) of the Limitation Act expired on 23.04.2005 and hence, the claim was barred

by time, having been filed in the Tribunal on 23.08.2010. Adds that instead of waiting for the repudiation/rejection letter, the respondent should have filed the claim before the relevant forum i.e., (ordinary Courts under the Insurance Act) within three years after the death of the insured. Elaborating his objection, places reliance on case reported as "*Messrs Pak Suzuki Motors Company Limited through Manager v. Faisal Jameel Butt and another*" **(PLD 2023 Supreme Court 482)** to contend that the entire exercise of filing a claim with the appellant followed by the institution of case in the Court must be completed within 03 years' time, envisaged under Article 86(a) of the Limitation Act. Further contends that even if the time limitation is to be reckoned from the date of repudiation of the claim by the appellant, the suit was time barred as the repudiation letter is dated 16.03.2009 and the respondent filed the case with the Tribunal on 23.08.2010 that was a wrong forum and hence, her plaint was rightly retuned and when the appeal of the respondent was disposed of as withdrawn, the period spent before this Court in the said appeal was specifically excluded by the learned Division Bench and not the time period spent before the Tribunal, therefore, the Trial Court erred in decreeing the time barred claim of the respondent while applying doctrine of merger in the terms that the order of Tribunal, dated 10.06.2013 returning the plaint of the respondent merged into the order of withdrawal of the appeal. Further contends that even otherwise, instead of presenting the same plaint/suit in the proper Court, fresh suit was filed by the respondent that was patently time barred and also negates provision of Order XXIII, CPC. Adds that the application for condonation/exclusion of the said time period was filed by the respondent but the decision was deferred by the Trial Court, *vide* order dated 24.07.2017, observing that the same can only be decided after recording of evidence, however, no specific finding in this regard has been rendered and, hence, question of limitation has not been touched upon and the impugned findings are liable to be set aside.

5. Further contends that the time limitation once commenced cannot be stopped and even if this Court intends to decide the limitation issue in the present proceedings, the time spent before the wrong forum, on the basis of wrong advice of a counsel, cannot be excluded and places reliance on the cases reported as "*Water and Power Development Authority v. Aurangzeb*" (**1998 SCMR 1354**); "*Abdul Majeed and another v. Ghulam Haider and others*" (**2001 SCMR 1254**); "*Furqan Habib and others v. Government of Pakistan and others*" (**2006 SCMR 460**) and "*Syed Athar Hussain Shah v. Haji Muhammad Riaz and another*" (**2022 SCMR 778**).

6. As regards the merits of the case, learned counsel for the appellant submits that except for PW-1, no supporting witness has appeared to substantiate the claim of the respondent as to whether the deceased husband of the respondent fulfilled the threshold criteria entitling the deceased for the group insurance. Further adds that had the impugned decree been passed to the extent of the amount claimed i.e., Rs.600,000/- only, the appellant would not have challenged the same but since compound interest has been awarded, for the period that was spent by the respondent herself before wrong forums till the date of realization, therefore, the present appeal has been preferred. Adds that such finding could not have been rendered as it is settled principle of law that in cases granting the compound interest or un-liquidated damages, specific issue is to be framed; evidence is to be led; and on the strength of the same only a just decision can be passed and in this regard places reliance on the case reported as "*Askari General Insurance Company Limited through President/Chief Executive Officer v. Islam Lubricants (Pvt.) Limited through Director and 2 others*" (**2022 CLD 425**).

7. Conversely, Mr. Liaqat Ali Butt, learned counsel for the respondent submits that the crucial date is not the date of death of husband of the respondent but the date when the claim was repudiated

i.e., 16.03.2009. Adds that the respondent approached the Tribunal within time and, hence, she cannot be non-suited, merely, because of pendency of the proceedings before the Tribunal followed by proceedings before the learned Division Bench of this Court inasmuch as the respondent acted in good faith, since by that time, the Ordinance had been promulgated whereby the Insurance Act had been repealed and there was genuine confusion as to the appropriate forum and Trial Court has correctly applied doctrine of merger to condone the delay. Places reliance on the case reported as "*State Life Insurance Corporation of Pakistan through Chairman/Zonal Head/Attorney and others v. Mst. Razia Begum through Legal Heirs/Representative*" **(2022 CLD 1026)**. In respect of grant of the compound interest, learned counsel submits that since the appellant has wrongfully withheld the claim, therefore, the Trial Court was justified in granting the compound interest.

8. Mr. Hussain Tahir Zaidi, Advocate, learned *Amicus Curiae* submits that the question of limitation needs to be examined while keeping in view the conduct of the insurer inasmuch the jurisprudence developed on the subject revolves around the same and the Courts have always mindfully considered this aspect and places reliance on cases reported as "*Muhammad Asif and others v. State Life Insurance Corporation of Pakistan through Chairman and another*" (**2018 CLD 239**); "*Jubilee General Insurance Co. Ltd., Karachi v. Ravi Steel Company, Lahore*" (**PLD 2020 SC 324**) and "*State Life Insurance Corporation and others v. Mst. Syeda Muzhara Fatima"* **(2021 CLD 479)**. Adds that where the insurance company itself delayed the repudiation of the claim and period of three years envisaged under Article 86(a) of the Limitation Act elapsed, the claim of the insured person was held not to be time barred. Places reliance on case reported as *State Life Insurance Corporation of Pakistan through Chairman/Zonal Head/Attorney and others supra*.

9. Arguments heard. Record perused.

POINTS OF DETERMINATION:

i. Whether the limitation period in terms of Article 86(a) of the Limitation Act, is to commence from the date of death of the insured or from the rejection letter?

ii. Whether the case of the respondent was time barred?

iii. If the answer to second question is in affirmative, whether doctrine of merger can be applied by implication to condone the limitation, occasioned on account of time spent before the wrong forum keeping in view the fact that limitation is not a mere technicality?

iv. Whether this Court can condone the delay in present proceedings?

v. Whether the interest awarded on the claim of the respondent is void under the law?

OPINION OF THE COURT:

10. Before addressing the points of determination formulated hereinabove, it is to be kept in sight that the Limitation Act is a substantive law and has definite consequences on the rights and obligations of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case as also the nature of the matter. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable rather unjustifiable to take away that right on the mere asking of the applicant, particularly, when the delay is directly a result of negligence, default or inaction of that party. If a party has been thoroughly negligent in implementing its rights and availing its remedies before the right forum, it will be equally unfair

to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

11. At the same time, one cannot lose sight of the fact that the contracts of insurance are based on principle of *uberrimae fidei*, (of the utmost good faith) that had been developed over centuries by the common law and was regarded as fundamental to the insurance law. While Section 75 of the Ordinance has codified this principle, the same has been held applicable under the Insurance Act, *albeit*, without an equivalent or *pari materia* provision in the latter enactment. Case reported as *"State Life Insurance Corporation of Pakistan v. Atta Ur Rehman"* **(2021 SCMR 1347)** is referred in this regard.

12. Having observed so in relation to the object of Limitation Act as also the nature of an insurance contract, I would advert to the first point of determination as to whether the claim of the respondent was time barred. The relevant provision of law is Article 86(a) of Part VI of the First Schedule of the Limitation Act, which reads as under:

Description of suit	**Period of limitation**	**Time from which period begins to run**
(a) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers	Three years	The date of the death of the deceased

It is pertinent to note that neither under the Insurance Act nor under the Ordinance, any time frame has been envisaged for the insurer to accept or reject the claim of the insured and it has been a common practice for the insurers to reject the claim close to or even after the period of limitation provided under Article 86(a) of the Limitation Act. In the present case, the claim was repudiated seven years after the death of the husband of the respondent. Argument of learned counsel for the appellant that a claimant must approach the relevant forum

within three years from the date when claim arises without waiting for the repudiation while placing reliance on case of *Pak Suzuki Motors Company supra* is misconceived inasmuch as the said case was related to the limitation period provided under the Punjab Consumer Protection Act, 2005 that is a special statute and not under the Limitation Act. Even otherwise, the contracts forming subject matter of the consumer protection laws are purely commercial in nature and not based on the doctrine of good faith (*uberrimae fidei*) as discussed hereinabove. Moreover, in said case, the Hon'ble Supreme Court held that the limitation period in consumer protection claims related to goods (defective) is more significant inasmuch as due to potential depreciation of the product in question and delay in the filing of the claim can lead to challenges in establishing the condition of the product at the time of purchase and linking any defects to the consumer's use whereas in insurance claims, more particularly one before this Court, unless a claimant is aware of reasons for rejection/repudiation of his/her claim, filing of the suit under the law becomes meaningless. Therefore, mere fact that the appellant took seven years to reject the claim of the respondent based on simple service record of the deceased that was in the custody of the appellant belies logic as to what caused the delay for the appellant to reach the conclusion that the respondent's claim is not payable and hence, the appellant cannot set up the defence on ground of limitation. Case of *Jubilee General Insurance Co. Ltd., Karachi supra* is referred in which the claim was barred by two months under Article 86(b) of the Limitation Act which is *pari materia* but applicable in cases of loss, however, the Supreme Court of Pakistan while referring to the principle of equitable estoppel decided that the plea of limitation cannot be raised in the light of the conduct of insurer. Similarly, in case of *Muhammad Asif and others supra* as also case reported as "*State Life Insurance Corporation and others v. Mst. Syeda Muzhara Fatima*" (**2021 CLD 479**), the Courts have put the principle of

promoting the justice and equity at the forefront while deciding the matter in favour of the claimants. Hence, this Court is of the opinion that in the circumstances of the present case, the appellant cannot rely on the plea of limitation.

13. Examining the question of limitation from date of initiation of the claim before the Tribunal on 23.08.2010 apparently, the claimant was before the wrong forum, hence, the plaint was returned under Order VII Rule 10, CPC, on 10.06.2013 after decision of the learned Full Bench of this Court dated 15.02.2013. An appeal was preferred before the learned Division Bench of this Court and the matter remained pending whereas simultaneously, the judgment of the learned Full Bench dated 15.02.2013 was also assailed in appeal before the Hon'ble Supreme Court in which leave was granted on 23.06.2013 and finally, on 04.02.2014, the decision of the learned Full Bench was upheld through judgment cited as *Mst. Naseem Begum and others supra*. Thereafter, the appeal preferred by the respondent was withdrawn on 07.11.2016 in the following terms:

> "Learned counsel for the appellant would like to withdraw the instant appeal in order to seek remedy before the Court of competent jurisdiction. He, however, submits that a direction may be issued that if the ***appellant files the case before the Court of competent jurisdiction the same will be decided within a period of two months and further that while dealing with the question of limitation the time spent before this Court will be excluded from the period of limitation. Order accordingly***. Disposed of."
>
> ***(Emphasis supplied)***

The respondent filed a fresh suit on 19.12.2016 along with application under Section 14 read with Section 19 of the Limitation Act for condonation of delay and the said application was disposed of in the terms that the same was to be taken up at a later stage. However, when the final judgment was passed by the Trial Court, the issue was decided in favour of the respondent on the basis that this Court, *vide*

order dated 07.11.2016, held that time spent before this Court was condoned.

14. This Court is cognizant of the fact as well as legal position that since the learned Division Bench of this Court had no jurisdiction to entertain the matter on account of which the appeal had been withdrawn, therefore, in terms of *dicta* laid down in case cited as "*Sahabzadi MAHARUNISA and another v. Mst. GHULAM SUGHRAN and another"* (**PLD 2016 SC 358**), doctrine of merger cannot be applied. To this extent argument of learned counsel for the appellant has some force that the Trial Court erred in relying on case of *Sahabzadi MAHARUNISA and another supra*, however, it is also pertinent to note that the present case has peculiar facts and circumstances and principle of equitable estoppel, as discussed above, is applicable in relation to plea of limitation, in cases emanating from the insurance law. Moreover, the appellant never assailed the order dated 07.11.2016 passed by the learned Division Bench of this Court and hence, the same remained binding upon the Trial Court while deciding the present matter. The appellant, therefore, cannot object to the relief extended by the learned Division Bench of this Court by excluding the time spent before the said learned Bench inasmuch as it is settled principle of law that even a void order is required to be challenged by the aggrieved party. I am fortified by the law laid down by the Hon'ble Supreme Court in case reported as "*Kiramat Khan v. IG, Frontier Corps and others"* (**2023 SCMR 866)** wherein it has been held as under:

> "6. ..... ***this Court has repeatedly held that limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law***. This principle has consistently been upheld, affirmed and reaffirmed by this Court and is now a settled law on the subject. Reference in this regard may be made to Parvez Musharraf v. Nadeem Ahmed (Advocate) (PLD 2014

> SC 585) where a 14-member Bench of this Court approved the said Rule. Reference in this regard may also be made to Muhammad Sharif v. MCB Bank Limited (2021 SCMR 1158) and Wajdad v. Provincial Government (2020 SCMR 2046)."

(***Emphasis supplied***)

Therefore, this Court is of the opinion that in peculiar facts and circumstances of the case, the Trial Court was justified in relying upon the order dated 07.11.2016 passed by the learned Division Bench of this Court in allowing the condonation of delay. As far as the contention of the learned counsel for the appellant that the learned Division Bench only condoned the time spent before the said Bench and the time spent before the Tribunal still remains unaccounted for, the same also fails to hold water as it would be anomalous that the time spent before appellate forum i.e., learned Division Bench of this Court is excluded and condoned as the appellant did not challenge order dated 07.11.2016 but the time spent before the Tribunal, the order whereof was challenged in appeal before the learned Division Bench of this Court, cannot be excluded and condoned by the Trial Court, particularly, when the learned Division Bench of this Court allowed the withdrawal of the appeal enabling the respondent to approach the competent forum in view of the legal position explicated by the learned Full Bench of this Court and upheld by the Hon'ble Supreme Court.

15. The matter can be examined from another angle. This Court, in the interest of justice, is obligated to take into account the nature of the claim, the inordinate delay caused by the appellant in repudiating the claim of the respondent, applicability of principle of equitable estoppel in insurance matters, and the ambiguity that revolved around the jurisdiction of the ordinary Courts and/or the Tribunal, in terms of the provisions of the Insurance Act and the Ordinance, in respect of claims arising under the former statute to opine whether the delay, can

be condoned by this Court, at the appellate stage, in the present proceedings. In this regard, this Court is cognizant of the fact that the condonation of delay is a matter of concession and cannot be claimed as a matter of absolute right. It is the existence of sufficient cause for not filing the proceeding in time before the proper forum that must be justified to the satisfaction of the Court to exercise its power of granting or refusing to grant the condonation of delay/extension of time. If the condition is not satisfied, there is no room for the applicability of the power to condone the delay. Thus, where no cause has, at all, been shown that is, where no explanation has been given for filing the proceeding out of time, there arises no opportunity of considering the sufficiency or otherwise of the reasons for that fact, and there cannot be any room for the exercise of the discretion given under the law. If the condition is satisfied, then the Court gets a discretionary power to grant or refuse the prayer for extension of time. What is sufficient cause, being a question of discretion, depends upon the facts and circumstances of a particular case. It is also worth mentioning that in terms of Section 107, CPC, this Court in appellate proceedings has the power to condone the delay, in view of the peculiar facts of a particular case and keeping in view *bona fides* of the claimant with reference to the delay occurred in filing the claim.

16. Keeping in view the above discussion in respect of discretionary power of the Courts to condone delay, this Court is of the opinion that the learned *Amicus Curiae* rightly pointed out that in insurance matters, the conduct of the insurer to induce the claimant to wait for the decision and then refusal/repudiation of the claim at a belated stage provides the defence of equitable estoppel in respect of enforcement of Article 86(a) of the Limitation Act against the claimant, which has always been considered as pivotal in deciding the defence of limitation. Therefore, this Court ventures to analyse whether in the instant case, there is/was sufficient cause to condone the delay.

17. The respondent approached the appellant for the payment of the claim which was kept pending for more than 07 years and as observed hereinabove, it belies logic as to what caused the delay for the appellant to reach the conclusion that the respondent's claim is not payable when the claim of the respondent was based on simple service record of the deceased that was in the custody of the appellant and factum of death was also reported in time. Once the claim was repudiated, the respondent acted in most *bona fide* manner and approached the Tribunal by filing the claim in time. The Tribunal was not the appropriate forum, however, time spent pursuing the claim and/or appeal before a wrong forum, in good faith and with due diligence in the opinion of this Court constitutes sufficient cause for condonation of delay. I am fortified by the law laid down in case reported as *"Khushi Muhammad through L.Rs. and Others Versus Mst. Fazal Bibi and Others"* (**PLD 2016 Supreme Court 872**), wherein the Hon'ble Supreme Court held as under:

> "37……However, sufficient cause is a term wide enough to encompass within it the principles enshrined in Section 14 of the Act or indeed independent thereto. Time spent pursuing an appeal before a wrong forum, in good faith and with due diligence ought in our view to constitute sufficient cause for condonation of delay. But the act of approaching a wrong forum must be accounted for: It should be established that due to some honest, bona fide and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum."
>
> ***(Emphasis supplied)***

Bona fide of the respondent and her counsel in pursuing the case before wrong forum gets traction by the fact that besides the respondent, there were other litigants and/or their counsel, on account of honest, *bona fide* and genuine ambiguity in the law or in fact, were led astray in terms of approaching the wrong forum (i.e., the Tribunal instead of District Court). Even this Court had to form a Full Bench to

clear the mist surrounding the jurisdiction of Tribunal under the Ordinance and repeal of the Insurance Act and the ambiguity in relation to the jurisdiction of the relevant forum to be the Tribunal or the District Court, in respect of the claims relating to insurance policies issued prior to the promulgation of Ordinance was finally resolved by the Hon'ble Supreme Court in case of *Mst. Naseem Begum and others supra* when the judgment of the learned Full Bench of this Court was upheld. Therefore, the circumstances of the present case did involve and presented the difficulty in ascertaining correct forum having jurisdiction to hear the claim and/or the appeal arising therefrom. Moreover, the learned Full Bench of this Court in case of *Mst. Robina Bibi supra* held that the question of limitation fades away in the light of the fundamental jurisdictional question that was decided in the terms that the Tribunal had no jurisdiction to entertain the claims. Furthermore, in the said case, it has been also held as under:

> (iv) Claims arising out of insurance policies prior to the commencement of the Ordinance may apply to the court of competent jurisdiction under the repealed Act, ***subject to the provisions of Limitation Act, 1908, which will be considered by the respective court on its merits in accordance with law.***
>
> **(*Emphasis supplied*)**

Additionally, principle of equitable estoppel enunciated and applied by the Hon'ble Supreme Court of Pakistan in insurance matter also comes in aid of the respondent in relation to the condonation of delay at the appellate stage keeping in view the object and nature of the contract of insurance. Therefore, for the purpose of the present case, even if the application of the respondent under Section 14 read with Section 19 of the Limitation Act was not decided at the time of conclusion of the trial, for the foregoing reasons, the time spent by the respondent in the wrong forums is hereby condoned. Similarly, argument of learned counsel for the appellant that instead of filing the

plaint returned by the learned Tribunal, fresh suit was filed and hence, the same was fatal is also misconceived inasmuch as once a plaint is returned under Order VII, Rule 10, CPC, a litigant has option to either file the same before the proper forum or institute new suit. Cases reported as "*Abdul Shakoor and others v. Mst. Hawabai and others*" **(1982 SCMR 867)** and "*Messrs Pakistan Agro Forestry Corporation Ltd. v. T.C. PAF Pakistan (Pvt.) Ltd. and others*" **(PLD 2003 Karachi 284)** are referred in this regard. Case law relied upon by learned counsel for the appellant has been considered but found not applicable on account of distinguishable facts.

18. Having examined the issues pertaining to limitation and before addressing the legal question as to whether the Trial Court was justified in granting the compound interest, it will be appropriate to advert to the merits of the case. In this regard, learned counsel for the appellant stressed that the respondent failed to substantiate as to whether her deceased husband fulfilled the threshold criteria entitling him for the group insurance. The argument is misconceived inasmuch as, admittedly, the scheme under the MOU was a voluntary self-subscribed additional group insurance scheme introduced for the benefit of the Sales Managers, the Sales Officers and the Sales Representatives and as per terms of the MOU, the Sales Manager and the Sales Officers were to be automatically included in the scheme whereas only the Sales Representatives were made eligible provided they had completed at least Rs.15,000/- (Rs.10,000 after amendment) First Year Premium (FYP) during the previous calendar year. It is amply clear that this requirement to complete FYP was not applicable to the Sales Manager (like the husband of the respondent) or the Sales Officers, hence, rejection of the claim on this ground by the appellant is totally misconceived and flawed. For facility of reference, MOU dated 01.10.1995 is reproduced hereunder:

"**Amendment to Memorandum of Understanding.**

BETWEEN

STATE LIFE FIELD WORKERS FEDERATION OF PAKISTAN,

having its office at Karachi, hereinafter referred to as The Federation.

AND

STATE LIFE INSURANCE CORPORATION OF PAKISTAN,

having its Principal Office at State Life Building No.9, Dr. Ziauddin Ahmed Road, Karachi, hereinafter referred to as State Life.

The parties hereto have agreed to amend the Memorandum of Understanding dated August 94 as follows:

1. With effect from 01/10/95, the minimum eligibility requirement for a Sales Representative to participate in the scheme would be FYP of Rs.10,000 in the last preceding year.

   Benefit Schedule given in clause d of the Memorandum shall be amended as follows:

   (d) Sum Assured per person would be:

Sales Managers.	Rs.600,000
Sales Officers.	Rs.300,000
Sales Representatives.	
FYP over Rs.25,000.	***Rs.150,000***
FYP Rs.15,000 to Rs.24,999	Rs.100,000
FYP Rs.10,000 to Rs.14,999	Rs.60,000

2. With effect from 01/07/94, sub-clause g (1) of the memorandum shall be amended as follows:

   After the words “If his licence is terminated.” the following shall be added:

   “Failure to apply for the renewal of lapsed licence within prescribed time will not be treated as termination of licence.”

3. Except as stated above, in all other respects the terms and conditions of the Memorandum of Understanding shall remain the same.

   The parties to this understanding have put their hands the first day of October 1995.

President *General Manager (G&P)*”

(Emphasis supplied)

In view of the above, on merits of the case, this Court is of the opinion that case of the respondent was based on service record of her deceased husband and the appellant was its custodian. Once the reemployment of the deceased husband of the respondent on 04.05.1997 is admitted, and he continued to work till his death on 24.02.2002, his case was fully covered under the MOU and it was for the appellant to prove as to whether any notice was given to the deceased husband of the respondent stating that the deceased did not qualify for his coverage in terms of the MOU. Admittedly, no such notice has been brought on the record before the Trial Court or even before this Court in the appellate proceedings. Therefore, this Court is of the opinion that the claim of the respondent was wrongly rejected/repudiated.

19. This brings me to the final point of determination as to whether the Trial Court was justified in awarding compound interest in terms of Section 47-B of the Insurance Act. There is no cavil to the preposition that the compound interest cannot be awarded under Section 47-B of the Insurance Act as the same is no more on the statute books after decision in case reported as "*Dr. Mahmood-ur-Rahman Faisal and others v. Secretary, Ministry of Law, Justice and Parliamentary Affairs, Government of Pakistan, Islamabad and others*" **(PLD 1992 FSC 1)** that has been upheld by the Supreme Court of Pakistan in case reported as "*Dr. M. Aslam Khaki v. Syed Muhammad Hashim and 2 others*" **(PLD 2000 SC 225)** which aspect has escaped notice of the Trial Court and hence, merits interference.

20. At this juncture, it is imperative to observe that justice must be done to both the parties equally, only then the ends of justice can be achieved, therefore, this Court is of the opinion that wrongful repudiation of the claim of the respondent by the appellant, after considerable and unexplained delay cannot be countenanced. In this regard, suffice to mention that an insurance contract aims to help the

insured or his legal heirs to bounce back from certain unforeseen disasters such as death and when an insurance company attempts to renege on its obligations, it acts in bad faith that, *inter alia*, includes unreasonable delay in processing a claim and more importantly, the delay in intimating the rejection/repudiation that results into limitation issue for the insured (including his heirs). The legal as well as the equitable obligations to act in good faith towards each other is squarely applicable to the insurer who is required to act in an honest and upright manner to fulfil its promise. Rejection/repudiation of insurance claims on flimsy and baseless grounds offends the principles of equity and justice, hence, the insurer must be estopped from taking undue advantage by retaining the sums that are due and payable to the claimant like the respondent. On merits, the claim of the respondent was genuine and should have been allowed well in time. Denying and repudiating the claim with an inordinate delay in itself exhibits lack of *bona fide* on part of the appellant. Conversely, the respondent is striving hard, in good faith, to recover the same. In cases like the one in hand, where the insurer has delayed in paying the claim and finally rejected the same without just cause, the insurer cannot raise objection as to the limitation as held by the Hon'ble Supreme Court and even if such insurer finally pays up the claim, it can still be held liable for not doing so "promptly" and "within a reasonable time". Therefore, while the award of compound interest @ 5% to the respondent on the claim of Rs. 600,000/- till adjudication of the case is not sustainable in the light of *dicta* laid down in case of *Dr. Mahmood-ur-Rahman supra*, which has been upheld by the Hon'ble Supreme Court, this Court is of the opinion that the respondent is entitled to the compensatory costs in addition to her original insurance coverage/claim, to avoid injustice and balance the equities while keeping in view all the relevant circumstances that, *inter alia*, includes factors like the rate of inflation, rate of return on investment with passage of time, and the totality of circumstances.

21. In view of the above discussion, the impugned judgment and decree to the extent of claim of the respondent amounting to Rs.600,000/- is upheld along with compensatory costs of Rs.1,000,000/. Findings to the extent of award of the compound interest on the claim are set aside. Decree sheet be accordingly modified.

22. **Disposed of** in above terms.

23. Before parting with this judgment, the valuable assistance rendered by Mr. Hussain Tahir Zaidi, Advocate/learned *Amicus Curiae* is acknowledged, with thanks.

(Anwaar Hussain)
Judge

Approved for reporting

Judge

Announced in open Court on 22.12.2023.

Judge

S. Zahid