

*Judgment sheet*

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present**

**Mr. Justice Muhammad Jaffer Raza**

**II<sup>nd</sup> Appeal No. 186 of 2023**

Yasir Ali ..... Appellant.

Versus

Jinnah Postgraduate Medical Centre & others..... Respondents.

**II<sup>nd</sup> Appeal No. 187 of 2023**

Yasir Ali ..... Appellant.

Versus

Jinnah Postgraduate Medical Centre & others..... Respondents.

Mr. Farrukh Usman, Advocate for the Appellant a/w  
M/s. Aamir Maqsood and Khalid Mustafa Advocates.

Syed Khurram, Advocate for Respondent No.1.

Mr. Usman Tufail Shaikh, Advocate for the Respondent No.2 a/w  
Ms. Binish Najeeb Advocate.

Ms. Deeba Ali Jafri, A.A.G.

Ms. Rabia Khalid, Assistant Attorney General.

Dates of hearing : 06.03.2025, 18.03.2025, 29.04.2025, 16.05.2025,  
27.05.2025, 22.09.2025 & 06.10.2025.

Date of announcement : 24.10.2025.

**J U D G M E N T**

**MUHAMMAD JAFFER RAZA – J:** The instant judgment shall adjudicate both the above noted Second Appeals which were tagged vide order dated 23.01.2025. The instant Appeals have been filed impugning the judgments and decrees dated 31.05.2023 (**‘Impugned Judgments’**) passed by the learned X-Additional District Judge Karachi South (**‘Appellate Court’**) in Civil Appeals Nos.92/2022 and 98/2022 (**‘Appeals’**). The above-mentioned Civil Appeals emanated from the



judgment and decree of the learned X-Senior Civil Judge Karachi (**Trial Court**) dated 22.03.2022 and 29.03.2022 respectively passed in Civil Suits No.1644/2016 (**First Civil Suit**) and 1645/2016 (**Second Civil Suit**).

2. Brief facts of the case, giving rise to the instant Civil Appeals, are that the Appellant preferred the First Civil Suit for recovery of Rs.13,120,000/- and the Second Civil Suit for recovery of Rs.9,520,000/- under the Fatal Accidents Act, 1855 (**Act**) in respect of the death of his father Ali Asghar and mother Mst. Rasheeda Jan (**deceased**), who died on 19.09.2016 as a result of an outer boundary wall collapsing on them, adjacent to the gate of the Respondent No.1/Hospital. Both the Civil Suits were decreed separately vide judgments and decrees dated 22.03.2022 and 29.03.2022 respectively.

3. Being aggrieved with the above judgment and decree passed in the First Civil Suit following tabulated Civil Appeals were filed: -

Sr. No.	Civil Appeal No.	Parties Name
1	93/2022	Jinnah Postgraduate Medical Centre v/s Yasir Ali & others
2	98/2022	Karachi Cantonment Board & another v/s Yasir Ali & others
3	101/2022	Yasir Ali v/s Jinnah Postgraduate Medical Centre & others

4. The above noted Civil Appeals were decided vide Impugned Judgment and Decree, whereby all the above noted Civil Appeals were allowed, and the matter was remanded back to the learned Trial Court for deciding the same after impleading the Pakistan Works Department (**PWD**) and “Ministry of Building Government of Pakistan”.

5. Likewise, being aggrieved with the judgment and decree passed in the Second Civil Suit following tabulated Civil Appeals were filed: -

Sr. No.	Civil Appeal No.	Parties Name
1	92/2022	Jinnah Postgraduate Medical Centre v/s Yasir Ali & others
2	99/2022	Karachi Cantonment Board & another v/s Yasir Ali & others
3	100/2022	Yasir Ali v/s Jinnah Postgraduate Medical Centre & others



6. The result of the tabulated Civil Appeals was no different to the ones mentioned earlier. Hence, the learned counsel appearing for the Appellants has impugned the conflicting findings of the Courts below vide the instant Second Appeals. It is pertinent to note that no other Respondent has preferred a second appeal against the Impugned Judgment and Decree of the learned Appellate Court.

7. It is contended by the learned counsel appearing for the Appellant that the learned Trial Court after appreciating the evidence of the respective parties rightly decreed both the Civil Suits. However, he has submitted that the learned Trial Court has only erred in respect of granting the relief against Defendants 1 and 2 (Respondents 1 and 2) and not jointly and severally against all the Respondents. He has further argued that under the scheme of the Act, the only burden of the Plaintiff is to prove the factum of the accident and thereafter the burden is shifted upon the Defendant to prove that the accident was not a result of their acts and omissions. He has further contended that once the accident is admitted, the presumption of negligence surfaces. In this regard learned counsel relied upon the cases of Punjab Road Transport Corporation<sup>1</sup>, Sakina<sup>2</sup>, and Shaukat Ali v/s KESC<sup>3</sup>.

8. Learned counsel further contended that this is a case of composite negligence by virtue of which all or any of Respondents responsible for the accident are jointly or severally liable for their acts and omissions, in an action for damages. In this regard he relied upon the judgments in the cases of Ghulam Yaseen<sup>4</sup>, National Logistic Cell<sup>5</sup>, Irfan Khan<sup>6</sup> and Sher Muhammad<sup>7</sup>. He has further argued that the Respondents herein were unable to discharge their burden in the Civil Suits and under the doctrine of composite negligence the learned Trial Court ought to have decreed the Civil Suits jointly and severally against all the Respondents. He has further argued that the Impugned Judgment of the learned Appellate Court is erroneous and liable to be set aside in the instant appeals. In conclusion he has prayed that the instant appeals may be allowed by setting aside

<sup>1</sup> Punjab Road Transport Corporation versus Zahid Afzal reported at **2006 SCMR 207**.

<sup>2</sup> Sakina versus National Logistic Cell reported at **1995 MLD 633 [Sindh]**.

<sup>3</sup> Shaukat Ali versus KESC reported at **2001 MLD 1845 [Sindh]**.

<sup>4</sup> Ghulam Yaseen and others v/s Hussainullah and another (**Civil Suit No.197/2019**).

<sup>5</sup> National Logistic Cell versus Irfan Khan and others reported at **2015 SCMR 1406**.

<sup>6</sup> Irfan Khan versus Islamic Republic of Pakistan reported at **2005 MLD 1409**.

<sup>7</sup> Sher Muhammad v/s Din Muhammad reported at **2003 YLR 3099**.



the Impugned Judgment and Decree and the Civil Suits may be decreed against all the Respondents jointly and severally.

9. Conversely, learned counsels appearing for the Respondent No.2/Karachi Cantonment Board has stated that the Respondent being represented by him is not responsible for the alleged accident as the responsibility of the noted Respondent is restricted to providing municipal services in the cantonment area<sup>8</sup>. He has further argued that under the Cantonments Act, 1924 (**Act 1924'**) the jurisdiction of the Respondent is only to maintain the footpath/pavement on which the deceased were present. He has further contended that the said jurisdiction/responsibility does not extend to the maintenance of a government building. He has averred that Government buildings are not within the purview of the Respondent being represented by him. He has further contended that initial burden was on the Appellant to establish the factum of the accident, and in that respect no postmortem was done. He has in the same vein argued that the Appellant has wrongly filed the Civil Suits against the Respondents and prayed for the dismissal of the instant appeals.

10. Learned counsel appearing for Respondent No.1/JPMC stated that the Respondent being represented by him only provides health care services and the said Respondent is government owned, and it is the responsibility of the government to maintain the structure of the buildings. He has also contended that the deceased persons are the authors of their own misfortune as they willingly placed themselves adjacent to the wall which collapsed and the accident occurred only due to the acts and omissions of the deceased. He lastly contended that the Respondent being represented by him, is by no stretch of the imagination, responsible for the noted accident.

11. Learned Additional Advocate General and Assistant Attorney General have jointly contended that the instant appeals are liable to be dismissed as no one is responsible for the said accident, which according to them occurred due to

---

<sup>8</sup> The learned Appellate Court made no determination on the noted contention of the said Respondent and as noted above, no second appeal was filed by the Respondents. The scope of adjudication will therefore be restricted to the adjudication made by the learned Appellate Court.



negligence of the deceased persons. They therefore prayed for the instant appeals to be dismissed.

12. I have heard all the learned counsels and perused the record with their able assistance. Order 41, Rule 31 C.P.C. mandates an appellate court to determine points for determination, the decision on those points, and the reasons for the decision. The said principle was also expounded in the case of Meer Gul<sup>9</sup>. Considering the limited scope of the Impugned Judgement and Decree the following points for determination are framed: -

1. **Whether parties identified in Paragraph 13 of the Impugned Judgement are necessary parties, without which the Civil Suits ought not to have been adjudicated by the Trial Court?**
2. **Whether it was necessary for the Trial Court to frame the issues identified in Paragraph 14 of the Impugned Judgment?**
3. **Whether the burden of proof was discharged by the Appellant?**
4. **Whether the Impugned Judgment and Decree suffer from infirmity and are liable to be set aside?**

13. My findings, with reasons on the above points for determination are as follows: -

#### **POINT NO.1.**

14. Perusal of paragraph No. 13 of the Impugned Judgement reveals that the learned Appellate Court rendered a finding that “PWD” and “Ministry of Buildings Government of Pakistan” are necessary parties, without which the learned Trial court ought not to have decreed the Civil Suits filed by the Appellants.

15. It is a trite proposition of law that a suit ought not to be defeated for want of party<sup>10</sup>, more specifically in cases involving fatal accidents<sup>11</sup>. The finding rendered by the learned Appellate Court is erroneous as the Appellant had already

<sup>9</sup> Meer Gul vs. Raja Zafar Mehmood through legal heirs and others reported at **2024 SCMR 1496**.

<sup>10</sup> Mst. Jannat Bibi Versus Saras Khan reported at **2011 SCMR 1460**.

<sup>11</sup> Mst. Rabia Begum and 7 others Versus Abdul Latif and 2 others reported at **1987 CLC 412**. Syed Ghaffar Hussain and 3 others Versus The commander (commanding officer). Headquarters national Logistic cell, Karachi and 3 others reported at **1987 CLC 412**.



impleaded both the federal and provincial governments through their respective ministries. In addition to the above, the hospital was also impleaded as a party alongwith the relevant municipal authority. Allowing the appeal and remanding the matter back to the trial court, only to implead PWD and its relevant ministry as a party would defeat the ends of justice and elongate the misery of the Appellant, who is even otherwise aggrieved due to the death of his parents.

16. Further, the learned Appellate Court whilst rendering the noted finding failed to take into consideration the doctrine of “composite negligence” and needlessly saddled the Appellant with the responsibility to implead parties, who were otherwise not necessary, and establish liability against each Respondent. The said doctrine has been elaborated by the Hon’ble Supreme Court of Pakistan in the case of National Logistic Cell<sup>12</sup> in the following words: -

*“By composite negligence, it means where the wrong, damage or injury is caused by two or more persons, in such cases each of the wrongdoer is jointly and severally liable to make good the loss to the claimant who suffered at the hands of such tortfeasors. It is the prerogative of the plaintiff to proceed against any or all such wrongdoers. It is not the Plaintiff who is saddled with responsibility to establish separate liability against each of the tortfeasor nor is it considered the responsibility of the court to ordinarily determine liability of each tortfeasor separately, proportionally and or independently in absence of any such issue at trial.”*

17. In light of what has been noted above, it is held that the learned Appellate Court erred in its findings in paragraph number 13 of the Impugned Judgment and in this regard the same are liable to be set aside.

## **POINT NO:2.**

18. The instant point of determination pertains to the finding of the learned Appellate Court in paragraph number 14 of the Impugned Judgment. The learned Appellate Court opined that the learned Trial Court incorrectly framed issues in

---

<sup>12</sup> National Logistic Cell versus Irfan Khan and others reported at **2015 SCMR 1406**.

The doctrine was also discussed in the following judgments: -

Irfan Khan and 2 others Versus Islamic Republic of Pakistan, through Secretary, Ministry of Planning and 3 others reported at **2005 MLD 1409**.

Sher Muhammad and others Versus Din Muhammad and others reported at **2003 YLR 3099**.

Mazhar Ali through Attorney Versus Messers Park Avenue Owners/Occupants Welfare Association through President and 3 others reported at **2020 M L D 257**.



the Civil Suits. The learned Appellate Court further opined on the issues the learned Trial Court ought to have framed for effective adjudication. With respect, it is held that the learned Appellate Court erred in its finding as the issues identified by the learned Appellate Court were covered in Issue No.2<sup>13</sup>. The noted issue was wide enough to encompass the evidence the respective parties ought to have led. None of the counsels appearing for the Respondents invited my attention or demonstrated any effort undertaken by them to seek amendment of issues before the learned Trial Court.

### **POINT NO.3.**

19. The scheme coined under the Act is distinctive and only places on the Plaintiff, the burden of proving the factum of accident. Upon establishing the factum of accident, the burden then shifts to the Defendant under the scheme of the Act to establish that the fatality was not due to its acts and omissions<sup>14</sup>. The factum of accident, as evident from the record, was not disputed by any contesting party. The record reflects that the witnesses appearing on behalf of the Respondents<sup>15</sup>, whilst recording evidence, categorically admitted to the factum of accident, more particularly Respondent No.1. The burden placed by the learned Appellate Court on the Appellant was disproportionately high and beyond the legally permissible burden under the Act. Therefore, the burden on the Appellant, which even initially was light, was entirely lifted from him due to the noted admissions. In this regard also it is held that the Impugned Judgment is erroneous and liable to be set aside.

### **POINT NO.4.**

20. The learned counsel for the Appellant has successfully made out a case for

---

<sup>13</sup> Whether the death of Rasheeda Jan was caused due to negligence of the defendants?

<sup>14</sup> Abdul Rasheed Khanzada & another versus Federation of Pakistan & others. **Suit no. 1126 of 2011.** Authored by me.

<sup>15</sup> Dr. Muhammad Suleman witness for Respondent No.1 and Babar son of Bashir Masih witness for Respondent No.2. The learned Trial Court on page 12 and 13 of the judgment has correctly recorded the noted admissions and the same are not reproduced here for the sake of brevity.



interference. For the foregoing reasons instant appeals are allowed. The Impugned Judgment and Decree are set aside and the Civil Suits filed by the Appellant are decreed to the tune of the judgment and decree of the learned Trial Court against **all** the Respondents, jointly and severally. Office to prepare decree accordingly.

J U D G E

Nadeem Qureshi “PA”