

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.314 of 2005

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Fahim Ahmed Siddiqui

Syed Sami Ahmad & another.....Appellants

Vs.

Pakistan Steel Mills Corporation Limited.....Respondent

Dates of hearing : 19.08.2019, 27.08.2019,
27.11.2019 and 23.12.2019.

Mr. Shahenshah Husain, Advocate for the
appellants.

Mr. Sibtain Mahmud, Advocate for the respondent.

J U D G M E N T

IRFAN SAADAT KHAN, J. This High Court Appeal has been filed impugning the judgment and decree dated 26.08.2005 passed by the learned Single Judge in Suit No.317 of 1985. The following issues, proposed by the plaintiffs, in the suit were adopted vide order dated 26.01.1986:

1. *Was analysis of gas contents of three boilers and checking of the bottom of the boilers after declaration of 'Free Zone' duties required to be performed by late Sayed Wali Ahmed?*
2. *Was the death of Sayed Wali Ahmed due to the negligence of defendants in providing and enforcing adequate measures for rendering the boilers inaccessible?*
3. *Was there undue delay in giving proper emergency first aid treatment to Sayed Wali Ahmed by the defendants which caused or contributed additionally in the death of Sayed Wali Ahmed?*
4. *Are plaintiffs entitled to compensation in the sum of Rs.76,88,563.20 from defendants due to the death of their son Sayed Wali Ahmed?*
5. *To what reliefs are plaintiffs entitled?*

2. The learned Single Judge through the impugned order decided all the above issues in 'Negative' i.e. against the plaintiffs and in favour of the defendant.

3. Briefly stated, the facts of the case are that the deceased, namely, Sayed Wali Ahmed (**hereinafter referred to as "deceased"**) died on 03.06.1984 in the respondent's premises. It was the claim in the suit that since the deceased expired due to the negligence on the part of the defendant (respondent) hence the plaintiffs (appellants) were entitled for damages and compensation for a sum of Rs.76,88,563/-, under Fatal Accident Act, 1855 (**hereinafter referred to as "the Act"**). The matter proceeded before the learned Single Judge who, after recording the evidences and examining the witnesses, came to the conclusion that the defendant (respondent) could not be held responsible for the act of

negligence due to the accident, which resulted in untimely death of the deceased and thus the plaintiffs (appellants) were not entitled for the compensation or damages claimed by them in the suit. It is against this judgment that the present appeal has been filed.

4. Mr. Shahenshah Husain Advocate has appeared on behalf of the appellants and stated that the deceased was a young Engineer of 23 years of age and was unmarried and the appellants are the only beneficiaries who are entitled to be compensated under the Act. According to him, the deceased qualified as B.E. in Chemical Engineering and secured 5th position and was also selected by the University of Petroleum and Minerals, Saudi Arabia, as Research Assistant to pursue his M.S. Degree. He stated that the deceased was selected as Assistant Executive Engineer in the respondent Corporation on 27.09.1983 and was attached with a Soviet Engineer, namely, Sidrin Sacha to work in the Coke Oven and Bi-Products Complex (COBP). He also stated that on the date of incident the deceased was performing his duty and since there were no proper precautionary measures adopted at the boiler, the deceased along with Soviet Engineer were trapped in the poisonous gas of the boiler and ultimately expired. As per the learned counsel no guard was deployed near the boiler and even after the accident no proper medical first aid was provided to them and that there was no ambulance available at the site. He stated that from the evidences of the witnesses also it is clear that the area was not declared as hazardous zone to prevent the accident. He stated that

all the precautionary measures were adopted by the deceased and the Soviet Engineer before entering the boiler but since they were not cautioned, they suffered with the fatal accident. He stated that all these facts were brought to the knowledge of the learned Single Judge but the same were not considered and hence the impugned judgment and the decree may be set-aside and this appeal may be allowed by granting due compensation to the appellants. In support of his above contentions the learned counsel has placed reliance on the following decisions:

1. *Messrs Hayat Services (Pakistan) Ltd. Vs. Kandan (1989 CLC 2153)*
2. *Mst. Kamina and another Vs. Al-Amin Goods Transport Agency through L.Rs and 2 others (1992 SCMR 1715)*
3. *Pakistan Steel Mills Corporation Limited and another Vs. Malik Abdul Habib and another (1993 SCMR 848)*

5. Mr. Sibtain Mahmud Advocate has appeared on behalf of the respondent and stated that no doubt an accident took place due to which deceased had expired but for that the respondent was not responsible. He stated that the boiler was emitting poisonous gas and was shut down about which the deceased had full knowledge being a qualified chemical Engineer. He stated that the deceased before entering the said boiler did not take proper care and caution hence the respondent could not be held responsible for the same. He stated that through an elaborate and exhaustive judgment the learned Single Judge has thrashed out each and every aspect of the

matter and has discussed the evidences and the cross-examinations of the witnesses and thereafter has rightly come to the conclusion that the respondent was not at fault and could not be held responsible for the incident and thus could not be required to compensate the plaintiffs (appellants). He, while elaborating his viewpoint, invited our attention to various portions of the judgment and certain portions of depositions of witnesses to prove that for the incident the respondent could not be held responsible. He stated that complete instructions on safety have already been published by the respondent in 1981, as per which complete mechanism has been given for individual protection, in execution of gas dangerous work, which perhaps has been ignored by the deceased and thereafter he met with an accident of which, according to him, the respondent was not responsible. He invited our attention to various clauses of those instructions also. He further submitted that the parameters as enshrined under Section 1 of the Act are not attracted in the instant case hence the learned Single Judge was quite justified in dismissing the suit filed by the plaintiffs. In the end, he submitted that the decisions relied upon by the learned counsel for the appellants are not attracted in the instant matter. He, in support of his contentions, has relied upon the following decisions:

1. *Mst. Bashiran etc. Vs. Pakistan through General Manager, P.W.R. etc. (PLD 1976 SC 748)*
2. *Pakistan Steel Mills Corporation Limited and another Vs. Mali Abdul Habib and another (1993 SCMR 848)*
(also relied upon by Mr. Shahenshah Husain)

6. Mr. Shahenshah Husain, in his rebuttal, has stated that from the cross-examination of the witnesses it is not proved that the deceased has not taken due care and caution while entering the dangerous area and moreover the area was not assigned to be a dangerous or hazardous zone by the respondent. He lastly stated that the deposition of witnesses appearing for the respondent Corporation are not worth consideration as they are the employees of the Corporation and were bound to support their institution.

7. We have heard both the learned counsel at considerable length and have also perused the record and the various decisions relied upon by them.

8. Perusal of the record reveals that the deceased died on 3rd June 1984 due to poisonous gas. It is the main contention of the learned counsel for the appellants that since no proper precautionary measures were adopted by the respondents due to which the death occurred and, thus, the respondent may be required to pay the amount of compensation, which has been denied by the respondent. It has vehemently been denied by the respondent that analyzing the gas contents in the boiler was not among the duties assigned to the deceased, as it was the function of COBP laboratory. It has further been noted that the Boiler No.3, where incident occurred, has already been declared as a hazardous zone by the respective department and it was clearly identified that nobody

would go to that area, until and unless the same is declared as a free zone by the respective department.

9. It has also come on the record that the deceased and the Soviet Engineer got down in the boiler without taking proper care and caution and without adopting the safety measures, as clearly mentioned under Clause 7 of the Safety Instructions and Manual. It has further been noted that the gas hazardous zone was not given clearance by the Gas Rescue Department and for inspection purposes permission from the Work Supervisor was necessary, which apparently seems to be lacking in the instant case by the deceased and the Soviet Engineer, who apparently without following the necessary Precautions, Rules and Regulations entered into the boiler, which ultimately resulted in their death. It has further been noted that a few days from the death of the deceased he has also undertaken a safety course but what prompted him and the Soviet Engineer to enter into the Boiler No.3 without adopting necessary precautions had remained an unsolved mystery. The respondent has clearly filed a specimen duly mentioning that for entering a hazardous zone a form has to be filled as without this Work Order entering into hazardous zone was totally prohibited, which form clearly denotes that the Boiler No.3 area was categorically marked as a hazardous zone.

10. It is also an undeniable fact that the appellants were not present at the time of incident but came to know about the same

when they were informed on telephone. It is also noted that after the death of the deceased a high powered board of enquiry was setup, which investigated into the matter and thereafter came to the conclusion that the Soviet Engineer and the deceased have not died due to the negligence on the part of respondent as they have entered into the hazardous zone in total disregard of the safety instructions and adopting the precautions, which should have been followed by them in this behalf. It is further noted that since the area has been marked as hazardous zone, hence it was not deemed appropriate to still post a guard over there since the persons/staff working there were fully conscious about how to deal in such type of matters and what safety measures were required to be adopted upon happening of any eventuality. Similar is the case with the deceased as he was a qualified engineer and had also undertaken a precautionary course a few days prior to his death and he must have been fully conversant with the safety measures, which were to be adopted in this regard.

11. It may further be noted that the respondents have categorically stated that the deceased had no business to enter into the boiler on his own, which was in total disregard to the established procedure required before entering into a boiler or an area declared as hazardous zone. It is further noted that timely medical-aid was given to the deceased but before receiving such medical-aid, it is apparent from the medical reports that he had already expired. It is further noted that two ambulances were available in the clinic but since both of them were busy in shifting

some patients therefore the deceased was taken in a private car to the clinic where doctors examined his body and declared him as dead.

12. It may further be noted that in the vicinity of the boiler there was a room duly equipped with first-aid equipments, though, the same was locked but its lock was broken and first-aid was provided to the deceased. In the enquiry report the board comprising of four persons had categorically observed that the accident took place due to the fact that the Soviet Engineer and the deceased entered into the boiler, under hazardous condition, in total disregard of the safety operating instructions, which were very much in their knowledge. It is further noted that the appellants also made a complaint to the Wafaqi Mohtasib (Federal Ombudsman), who vide his order dated 7.1.1984 directed the appellants to approach a proper forum having competent jurisdiction for redressal of their grievance. It is further noted that in front of each boiler control room complete instructions were displayed.

13. It is noted that the Boiler No.3 started emitting gas on 2nd June 1984 and thereafter was closed down and all the windows/shutters were opened for the release of gas. It was clearly mentioned that until and unless the said boiler is declared as free zone nobody should enter the same, however, what prompted the Soviet Engineer and the deceased to enter the same could not be explained. It was categorically been mentioned in the report of the

respondent-department that the said boiler would be inspected on 4th June 1984 but what instigated the Soviet Engineer and the deceased to enter into the boiler on 3rd June 1984 could not be sorted out except noting that these persons entered into the boiler without taking proper care and caution and adopting safety measures and precautions prescribed in this behalf. It is further noted from page 330 of the paper book that all the regulations and safety instructions, which were enforced at that time, duly mentioned under Rule 7 of the Regulation in the affidavit-in-evidence of Mohsin Ali Khan, the Deputy Manager/Incharge of Respondent-Department were in the knowledge of these persons, who do not seem to have complied with these instructions before entering the Boiler No.3.

14. We have noted that the learned Single Judge has categorically mentioned and reproduced all the relevant reports in his judgment and thereafter has rightly come to the conclusion that no negligence on the part of the respondent has been found. We have also noted from the reports, etc., that the area where incident had occurred has categorically been marked as hazardous zone, which entrance required due care and caution and the same perhaps seems to be lacking in the instant matter on the part of the deceased. We have further noted that Boiler No.3 was completely shut down due to the technical fault and was let to cool down and all its windows/main holes were opened and it was clearly marked that it will be inspected on 4.6.1984, whereas the incident took

place on 3.6.1984. It is noted that clear instructions were given to the staff not to enter the boiler until and unless it is declared as free zone and the said instructions were known to every staff member, including the Soviet Engineer and the deceased.

15. We have further noted that it is the Incharge of CDQP Department who grants permission for entering into the premises of CDQP comprising of boilers and the Soviet Engineer and the deceased have not taken the said permission from the Incharge before entering into the Boiler No.3, who were supposed to comply with these instructions being experts of their field. Hence, from whatever stated above, we have come to the conclusion that no negligence on the part of respondent has been found and, thus, under the given circumstances the appellants are not entitled for the compensation, as prayed for by them, and was rightly disallowed by the learned Single Judge. The decisions relied upon by the learned counsel for the appellants appear to be distinguishable from the facts obtaining in the instant matter as in these judgments it was categorically found out that there was negligence on the part of the other side and, hence, compensation was awarded to the legal-heirs of deceased but in the instant case we have not found negligence on the part of the respondent, hence, these decisions, in our view, are of no help to the appellants.

16. We, therefore, under the circumstances do not find any merit in this appeal and dismiss the same. Needless to state that the

compensation as available to other employees of the respondent corporation would, however, be available to the legal-heirs of the deceased, though, not accepted by them when offered by the respondent corporation.

Judge

Judge

Karachi:

Dated: .01.2020.

Tahseen/PA