

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

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C. P. No. D-2712 of 2021

Mst. Almas Bano.....Petitioner

Versus

Pakistan International Airlines Corp & others.....Respondents

C. P. No. D-3303 of 2021

Mst. Huma Naim Baig & others.....Petitioners

Versus

Federation of Pakistan & others.....Respondents

Jibran Nasir and Farrukh Usman, Advocates, for the Petitioners in CP No. D-2712/21 and CP No. D-3303/21 respectively.

Hassan Mandviwala, Advocate, for Pakistan International Airlines Corporation, Rajesh Kumar, Advocate, for Civil Aviation Authority, and Furqan Ali, Advocate, for National Insurance, and Company Limited, Khaleeqe Ahmed, DAG, for the Federation of Pakistan, in both Petitions.

Date of hearing : 05.04.2022

ORDER

YOUSUF ALI SAYEED, J. - The Petitions pertain to certain claims for compensation in relation to an ill-fated domestic flight of Pakistan International Airlines (“PIA”), designated as Flight No. PK 8303 (the “Flight”), which took to the air on 22.05.2020 from Allama Iqbal International Airport, Lahore, only to crash later that day in a residential area in the vicinity of the Jinnah International Airport, Karachi, while attempting a second approach after a failed landing, resulting in the loss of 89 passengers and 8 crew members.

2. The subject of compensation in the event of air accidents is dealt with under the Carriage by Air Act, 2012 (the “**2012 Act**”), with the Fifth Schedule thereof addressing the matter of domestic flights and the rights of domestic passengers, as per Section 5, which stipulates as much in the following terms:

“5. Application of Act to carriage by air which is not international.— (1) The rules contained in the fifth Schedule shall apply to all, carriage by air, not being international carriage by air as defined in the First, Second, or as the case may be, Fourth Schedule.

(2) Notwithstanding anything contained in the Fatal Accidents Act, 1855 (XIII of 1855), or any other law for the time being in force, the rules contained in the Fifth Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Sixth Schedule shall determine the person by whom and for whose benefit and the manner in which such liability may be enforced.

(3) The Federal Government, shall every three years, if not earlier, review all limits of liability provided for carriage by air, not being international carriage, in rules 21 and 22 of the fifth Schedule, any subsequent notifications thereto or any other law, and shall in the official gazette, accordingly notify the reviewed amounts of all such limits of liability.”

3. Rules 17(1) and 21(1) of the Fifth Schedule deal with the matter of liability and compensation in the case of death or injury of a passenger, providing that:

“17. Death and injury of passengers — damage to baggage —

“(1) The carrier is liable for damage sustained in case of death or bodily injured of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any the operations of embarking or disembarking”

“21. Compensation in case of death or injury of passengers:

“(1) For damages arising under paragraph 1 of Rule 17 not exceeding PKR 5,000,000 for each passenger, the carrier shall not be able to exclude or limit its liability.

(2) The carrier shall not be liable for damages arising under paragraph 1 of Rule 17 to the extent that they exceed for each passenger Rs.50,00,000/- if it is proved that:-

- a. such damage was not due to the gross negligence, intent to cause damage, willful misconduct or omission of the carrier or its servants or agents; or
- b. such damage was solely due to the gross negligence, intent to cause damage, willful misconduct or omission of a third party.”

4. Furthermore, Rule 25 militates against the validity of a contractual provision tending to relieve a carrier of liability or lower the specified limits of compensation in as much as it provides that:

“25. Invalidity of contractual provisions.--- Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Schedule shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Schedule.”

5. As it transpires, the Flight was apparently insured through the National Insurance Company Limited, and it is said that an announcement was initially made by PIA that compensation in the sum of Rs.5 million would be paid to the families of each of the passengers on board the Flight who fell victim to the crash, with a letter being communicated on that note to the legal heirs of all deceased passengers. However, it was subsequently declared that such amount was being enhanced to Rs.10 million, and an addendum to the earlier letter was sent to the legal heirs, with a notice on the subject also being published as a news item in the daily newspaper “Dawn” on 05.08.2020. However, the offer was apparently made subject to execution of a Release and Discharge Document (“**RDA**”) envisaging that such payment would constitute a full and final settlement in the matter.

6. The Petitioners, professing to be the relatives and legal heirs of some of the passengers on board the Flight who fell victim to its crash, have invoked the Constitutional jurisdiction of this Court seeking payment of the offered compensation amount while simultaneously impugning a condition of the RDA. Towards that end, it has identically been prayed *inter alia* in both Petitions that this Court be pleased to:

- “i. Declare that act of withholding and denying the disbursement of the announced amount of 10 Millions by the Respondents to the Petitioners upon presentation of succession certificate and relevant orders in this regard, is unjust, unfair, unwarranted in law, malafide and void ab initio and in flagrant violation of the Court order;
- ii. Direct the Respondents to immediately release the payment of Rs.10 Million to the Petitioners/common affectees entitled to receive Rs.10 Million as per announcement of the respondents;
- iii. Declare that the act of Respondents to compel the Petitioners as a precondition for the release of Rs.10 Million in their favor by executing the Release and Discharge Agreement (RDA), is unconstitutional, illegal, malafide and is of no legal effect;
- iv. ...”

7. No document has been placed on record to show that such an offer was made to any of the Petitioners personally, with the Petitions being bereft of any correspondence addressed by PIA to the Petitioners on the subject, and even the copies of the RDA filed in the Petitions relate to the legal heirs of a victim of the crash unrelated to the Petitioners. Instead, in CP. No. D-3303/21, copies of a letter dated 02.07.2020 and addendum dated 21.08.2020 addressed by the Dy. General Manager Legal Services of PIA to another unconnected party have been annexed to show the progression in the quantum of compensation offered in the matter. Those letters read as follows:

The Letter dated 02.07.2020

“Dear Madam,

We regret for seeking your attention at this difficult time, but it is important that we draw your kind attention to the Announcement dated 26.06.2020 appeared in daily Pakistan Observer in English, Daily Express and Daily Khabrain Karachi in Urdu, whereby your kind attention was drawn to the payment of compensation as per the applicable law to the bereaved legal heirs of the passengers of the above flight. This payment will be exclusive of the interim/Advance payment made earlier in respect of each passenger in PKR one million only.

While it is appreciated that now is a difficult time and that the issue of compensation may not currently be upper most in your mind, it is our endeavor that the payment of compensation to the legal heirs of the deceased passengers is completed as soon as possible in accordance with the applicable law. In order to enable us to finalize this duty, it is necessary that the legal heirs obtain a succession certificate in order to resolve the issue of inheritance and guardianship certificate (if applicable).

Please complete the legal requirement in respect of succession certificate and guardianship certificate in respect of property of minors (if required) as it is a requirement for finalizing of the claim and payment of compensation under the law.

In addition to above, we would also request you to fill up the attached questionnaire and send the same to the below address and append the documents as required in the questionnaire.

In case you require any further information or assistance in completing the formalities of obtaining Succession and Guardianship Certificate, Please feel free to contact us for advice and assistance.

Our thoughts and prayers are with you, and may Allah the Almighty rest the departed soul in eternal peace.

Yours sincerely,

Asim Rauf
Dy. General Manager Legal Services”

The Addendum dated 21.08.2020

“Dear Madam,

This refers to our earlier letter dated 02.07.2020 on the above subject (copy attached). In addition to whatever narrated in the above said letter was intend to notify for your kind consumption that the amount of compensation has been enhanced to PKR 10 million to be paid in respect of each deceased passenger.

In order to enable us to finalize this duty, it is necessary that the legal heirs obtain a succession certificate in order to resolve the issue of inheritance and guardianship certificate (if applicable).

Please complete the legal requirement in respect of succession certificate and guardianship certificate (if required) as it is a requirement for finalizing of the claim and payment of compensation under the law.

In addition to above, we would also request you to fill up the questionnaire sent to you through aforementioned letter and send the same to the below address and append the documents as required in the questionnaire.

In case you require any further information or assistance in completing the formalities of obtaining Succession and Guardianship Certificate, Please feel free to contact us for advice and assistance.

Our thoughts and prayers are with you, and may Allah the Almighty rest the departed soul in eternal peace.

Yours sincerely,

Asim Rauf
Dy. General Manager Legal Services”

8. With reference to the cited provisions of the 2012 Act and the aforementioned correspondence emanating from PIA, learned counsel for the respective Petitioners argued that while the compensation amount under the 2012 Act was presently set at Rs. 5 million, the sum payable in the matter of the Flight had been enhanced by PIA to Rs.10 million. It was said this had been done across the board in the case of all affectees of the Flight, on account of their financial circumstances and the fact that the lower limit of compensation prescribed under Rule 21(1) had remained unchanged at Rs.5 million over a protracted period, albeit periodic review thereof being envisaged as per Section 5 (3). Hence, it was on that score that PIA had persuaded its insurer for enhancement of compensation to the extent of the greater sum. It was argued that the compensation payable thus stood enhanced to Rs.10 million and as each of the Petitioners had acted in good faith so as to otherwise comply with the requirements prescribed by PIA in that regard, including obtaining a Succession Certificate, promissory estoppel would operate in their favour so as to preclude PIA from resiling from its offer of the higher

sum or making the same contingent upon execution of the RDA. It was contended that payment of the enhanced sum had thus become the duty of the Respondents and it was against the 2012 Act and principles of equity, fairness and natural justice to shut the door to further claims by making release of the compensation amount contingent upon execution of the RDA, which offended Rule 25 and Section 28 of the Contract Act, hence ought to be declared void on that score.

9. Attention was invited to what was identified by counsel as being the offending passage of the RDA, reading as follows:

“It is agreed and understood by the Releasors that this Release and Discharge incorporates a full and final and inclusive settlement of any and all claims, damages, losses costs and expenses of whatsoever nature and howsoever arising. including any unknown, unforeseen, unanticipated or unsuspected as well as those disclosed and known to exist out of or in connection with the death of the Deceased and in respect of any loss, damage or destruction of the Deceased's checked and unchecked baggage and personal effects, which in any way arise out of or are connected to the Accident.

For the total and sole consideration of the Settlement Sum, the Releasors agree to waive, release and renounce all claims, actions and remedies of whatsoever nature and shall not assert any claim or commence or pursue any action or remedy or proceedings, and covenant not to assert any claim (including any claim for punitive damages) or commence or pursue or participate in any action, or proceedings of any nature before any forum wherever in the world against any individual or entity. whether public or private who could be involve directly or indirectly in the process of the Accident or had any connection with the circumstances thereof or with the Aircraft at any time, including without limitation

- i. PIAC
- ii. The Government of the Islamic Republic of Pakistan
- iii. Civil Aviation Authority of Pakistan constituted under the Civil Aviation Authority Ordinance 1982
- iv. Airport Security Force incorporated under the Airport Security Force Act 1975.
- v. Any and all manufacturers and/or designers of the Airframe or Engine No. 1 or Engine No. 2 or any proportion component or systems thereof including without limitation Airbus S.A.S. EADS N.V., Airbus Group NV, Messier-Bugatti-Dowty, Safran Landing Systems UK Ltd, BF Goodrich Aerospace, SICMA Aero Seat Services, Inc., Dreissen Aerospace Group NV, Rockwell Collins UK Limited, Rockwell Collins Inc., Honeywell Avionics

Systems Limited, Honeywell International Inc., Allied Signal Inc., Thales Avionics Ltd, Thales Avionics Lcd SAS, Thales Avionics Inc., Teledyne Limited. Teledyne Controls LLC, CFM International Ltd, CFM Group International Ltd, General Electric Co and Safran Aircraft Engines SAS.

vi. Any service, maintenance provider or repairer, owner or lessor at any time of the Aircraft or any proportional component or system thereof including but not limited to CAT34, SES and Aergo.

vii. Any airport or aviation authority and/or any air traffic authorities including but not limited to the owners of and the providers of air traffic control facilities at Jinnah International Airport and any provider of navigational or meteorological maps or data in any form,

and in respect of each of (i) to (vii) inclusive above, their respective partners, shareholders, direct or indirect parent, affiliated or subsidiary companies or any company within their group, sub-contractors, representatives, directors, officers, employees and agents and their predecessors, successors and assigns and all of their respective insurers, co-insurers, reinsurers, including but not limited to Pakistan National Insurance Corporation and Pakistan Reinsurance Company Limited, brokers and representatives (legal or otherwise) of all of the aforementioned persons, entities, bodies or governmental departments (hereinafter together "the **Releasees**") however arising whether known or unknown or arising on or before the date hereof in respect of:

(a) The death of the Deceased, and

(b) the loss, damage or destruction of the property of the Deceased as a result of the Accident or any property for which the Deceased was responsible at the time of the Accident; and

(c) carriage of the Deceased on board the Aircraft; and

(d) any other matter or thing including costs and expenses incurred including legal costs for and in relation to any legal action or proceedings in connection with the foregoing."

10. Conversely, learned counsel for PIA argued that the Petitions were not maintainable and did not disclose any violation of fundamental rights. Whilst it was not denied that a voluntary offer of Rs.10 million had been to the legal heirs of each of the deceased passengers, it was argued that there was no automatic entitlement to such compensation and the offer was without prejudice to the rights of PIA and subject to the condition that the payment constituted full and final settlement. It was submitted that the payment of compensation was conditional and subject to completion of certain formalities, including signing of the RDA. It was

argued that PIA was entitled to impose such a condition as part of its offer and a number of bereaved families had already received their compensation after execution of the RDA. However, there was no coercion in the matter and if the Petitioners were not inclined to accept the offer in accordance with its terms, they could pursue their independent claims as per law. Nonetheless, it was not open to them to claim payment of the offered amount of Rs. 10 Million while at the same time refusing to execute the RDA. It was also submitted that a post carriage contract such as the RDA was even otherwise beyond the remit of Rule 25.

11. We have heard the arguments advanced at the bar and examined the matter in light of the relevant provisions of the 2012 Act as well as the material placed on record in relation to the offer of compensation subject to the RDA.

12. At the very outset, it merits consideration that the Petitioners are admittedly not striving for the quantum of compensation prescribed in terms of the 2012 Act, but are seeking to secure payment of a greater sum apparently offered by PIA of its own accord, on the condition that payment thereof would constitute full and final settlement. The fact that the level of compensation prescribed in terms of the 2012 Act has not been periodically revised in the manner and timeframe envisaged thereunder or even the aspect that the greater sum has been offered by way of compensation in recognition of that oversight, does not mean that a statutory right or entitlement to that sum arises in favour of the Petitioners and their claim does not assume statutory force. As such, what is being sought through the Petitions is not the performance of a statutory obligation, but enforcement of a mere offer or what is at best an inchoate agreement, where the terms may stand settled but a binding agreement is yet to be formalized through valid acceptance, that too, while seeking to vary the very terms of the offer so as to avoid execution of the RDA, intended to provide a discharge from further liability, as is apparently a condition precedent in the matter.

13. As to the contention that even in the absence of a statutory basis, a writ would nonetheless lie to enforce the claim on the basis of promissory estoppel, it merits consideration that the classic exposition of the doctrine in English law conceives the same to be “a shield and not a sword”¹, in as much it does not afford a basis to found a cause of action, however, in our jurisprudence the scope of the doctrine has been expanded within the realm of public administrative law in the case of Fecto Belarus Tractors Limited Vs. Pakistan through Ministry of Finance Economic Affairs, 2001 PTD 1829, wherein the Honourable Supreme Court held as under:-

“The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defense. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action.”

14. Be that as it may, in the case of Messrs M.Y Electronics industries (Pvt.) Ltd through Manager and others v. Government of Pakistan through Secretary Finance, Islamabad and others 1998 PTD 2728, while discussing the doctrine it had been observed by the Apex Court that:-

¹ Central London Property Ltd v High Trees House Ltd [1947] KB 130, and Combe v Combe [1951] 2 KB 215.

“The doctrine of promissory estoppel is founded on equity. It arises when a person acting on the representation by the Government or a person competent to represent on behalf of the Government, changes his position to his detriment, takes a decisive step, enters into a binding contract or incur a liability. In such case, the Government will not be allowed to withdraw from its promise or representation. However, a general promise without any time limitation cannot bind the Government for all times to come. The enforcement of doctrine of promissory estoppel against the Government or a Government functionary competent to represent on behalf of the Government is however, subject to the following limitations as held by this court in the case of Army Welfare Sugar Mills Ltd. V. Federation of Pakistan (1992 SCMR 1652):-

“(i) The doctrine of promissory estoppel cannot be invoked against the Legislature or the laws framed by it because the Legislature cannot make a representation;

(ii) promissory estoppel cannot be invoked for directing the doing of the thing which was against the law when the representation was made or the promise held out;

(iii) no emergency or authority can be held bound by a promise or representation not lawfully extended or given;

(iv) the doctrine of promissory estoppel will no apply where no steps have been taken consequent to the representation or inducement so as to irrevocably commit the property or the reputation of the party invoking it; and

(v) the party which has indulged in fraud or collusion for obtaining some benefits under the representation cannot be rewarded by the enforcement of the promise.”

15. In the matter at hand, the conditions necessary for founding a cause on the doctrine of promissory estoppel are conspicuously absent as there has been no irrevocable commitment of property or detrimental change of position on the part of the Petitioners in reliance of a representation made, and the mere obtainment of a Succession Certificate does not qualify as such a step or otherwise suffice for that purpose.

16. Furthermore, it falls to be considered that none of the Petitioners have as yet executed the RDA, hence a determination as to the scope of Section 28 of the Contract Act or Rule 25 and the legality and effect of that document, whether in terms of those provisions or otherwise, is neither necessitated nor appropriate at this stage and would properly be a matter to be determined if and when such a document as may be executed by any of the Petitioners is cited by way of defense in any proceeding as may initiated by the executant for asserting a further claim.

17. In view of the foregoing, the Petitions fail and stand dismissed accordingly.

JUDGE

CHIEF JUSTICE

Karachi
Dated _____