

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.858 of 2008

[Mst. Bashira Bibiv.....Federation of Pakistan & others]

Date of Hearing : 10.11.2021

Plaintiffs through : Mr. Farrukh Usman, Advocate.
Ms. Shanzeh Junaid, Advocate.

Defendants through : Mr. Ghulam Mohiuddin, Assistant
Attorney General. a/w Lt. Cdr. M.
Hussain and Lt. Arshad from Pakistan
Navi are also present.

J U D G M E N T

Zulfiqar Ahmad Khan, J:- The Plaintiff has filed the present action at law against the Defendants, *inter alia*, for recovery of Rs.1,25,00,000/- towards damages, under the Fatal Accident Act, 1855, claiming the following relief--

“The Plaintiff, therefore, prays for the Judgments and decree as under:-

(a) A decree in the sum of Rs.1,25,00,000/- against the defendants to pay the said sum of damages/compensation to the plaintiff or any other amount this Honourable Court may deem fit in the circumstances of the case.

(b) Profit/markup at the rate of 21% per annum on the amount claimed in Clause (a) above from the date of the filing of the suit till the date of realization of the decretal amount which the plaintiff would have earned had the defendants paid the said amount.

(c) Cost of the suit may be awarded to the plaintiff”

2. Present plaintiff is widow of the deceased Jafar Shah who died allegedly owing to the rash and negligent driving of the defendant No.3 who is an employee of defendant No.2, as claimed.

3. In response to the summons issued by this Court, Written Statement on behalf of defendants was filed. Defendants denied any liability towards the incident. According to them, deceased Jafar Shah died owing to his own negligence and the Truck No.5522 PN being driven by the defendant No.3 at the relevant time, was moving at the speed of 25 k.m. per hour and that the defendant No.3 was driving the said truck carefully. The crux of the written statement filed by the defendants is that the said truck was in fit and proper condition, whereas, the deceased was trying to overtake the said truck from the wrong side due to which he fell down and died.

4. Perusal of record shows that on 12.04.2010 the issues filed by the plaintiff were adopted as court issues, which are as under:-

“1. Whether the death of the deceased namely Jafar Shah caused on account of negligence of the defendant No.3 during the course of employment of defendant No. 1 & 2 on 06th May, 2008, if so, its effect?

2. Whether the defendants are liable jointly and severally to pay compensation to the plaintiff and other legal heirs, if so, to what extent?

3. What should be the decree?”

5. The crux of the arguments of the learned counsel for the plaintiff is that in fatal accident matters, a plaintiff has to only prove the factum of accidental death, which the plaintiff had proved without any iota of doubt that the deceased died under the wheels of truck driven by the defendant No.3 who is an employee of the defendant No.1 & 2, thereafter, the burden shifts on to the defendants to disprove the causation. He also stated that deceased was the sole bread earner of the bereaved family who died due to the negligent driving of the defendant No.3 and while loss of human life

cannot be measured in terms of coins, still appropriate compensation is right of the legal heirs. While concluding his submissions, he prayed for the grant of the suit at hand.

6. Learned Assistant Attorney General stated that the alleged vehicle was examined after the incident and the same was found in a fit and proper condition, and the deceased himself was negligent while riding his motorcycle. He stated that it is the duty of the plaintiff to prove the negligent act of the defendants first, being the first and foremost aspect of a fatal accident. While concluding his submissions, he contended that the truck was plying on normal speed but the negligent act of the deceased resulted in his death, therefore, claim of the plaintiff be dismissed.

7. Heard the arguments and perused the record with the valuable assistance of learned counsel for the parties.

8. **Issue No.1.** The present suit has been filed on 06.06.2008, that is, within the period of limitation of one year as prescribed by the governing statute (The Fatal Accident Act, 1855), therefore, at least in terms of the above statute, the present claim is not time-barred. To maintain an action under the said Act, 1855, one has to prove that:-

(i) the deceased person was injured by the wrongful act, neglect or default of the defendant;

(ii) deceased died in consequence of such injury;

(iii) at the time the deceased died, plaintiff had a right to recover damages; and

(iv) the beneficiaries have suffered pecuniary loss from the death of deceased.

9. Law requires that all of the above ingredients have to be proved, and failure in any one of these becomes fatal to the cause of action. So as to validate and substantiate her claim, the plaintiff produced one witness namely Syed Shabbir Hussain (son of deceased) being her attorney to depose on her behalf. During the course of examination-in-chief, the witness *inter alia* produced the following documents:-

(a) Roznamcha entry of police station dated 06.05.2008 as Exh. P-1/1 alongwith translation as Exh. P-1/2.

(b) Certificate of cause of death of deceased as Exh.P1/3.

(c) Post Mortem Report dated 06.05.2008 as Exh. P-1/4.

10. P.W.-1 Syed Shabbir Hussain through his testimony/affidavit-in-evidence, introduced on record the factum of incident and produced Exh. P1/4 (available at page 35 of evidence file) being the Report of Port Mortem conducted by the Medico Legal Officer, having examined the deceased, the MLO formed an opinion as to the cause of death. According to him, the deceased died due to “cardio respiratory failure due to acute head injury”. Exh. P-1/3 is a Certificate of Cause of Death of deceased and in that certificate too, the MLO established that cause of the death of the deceased was because of cardio respiratory failure attributable to acute head injury. The defendants have not disputed the following aspect of the case pleaded by the plaintiff:-

- The ownership of the offending vehicle was admitted.
- The employment of the driver with the Pakistan Navy is also admitted.
- It is also not disputed that the defendant No.3 was driving the vehicle on the date of accident during the course of employment of the defendant No.1 & 2.

- It is also admitted that accident took place within the area of Jackson Police Station involving the defendants' vehicle and their driver.
- It is also not disputed that there was a collision between motorcycle and the six wheeler vehicle of the defendants.
- It is also not disputed that the motorcyclist (i.e. the deceased) received fatal injuries in the said accident.
- It is also not denied that the Jackson Police booked the driver for the rash and negligent driving and registered an FIR on the complaint of brother of the deceased.
- It is also admitted that defendants conducted a departmental inquiry to investigate about the accident.
- It is also admitted that the deceased was **crushed under the wheels of the defendants and dragged about 10 ft.**
- It is also an admitted fact that the defendants' truck stopped after traveling a distance of about 20 ft after the collision."

11. Under the Highway Code, the driver of a vehicle is required to keep a reasonable distance from the vehicle going in the front. The general rule is that driver of heavy vehicles particularly on busy roads must take extra care and not to act in a rash manner, endangering lives of others. The slightest carelessness of a driver of a heavy vehicle could not only disturb the traffic, but also result in serious consequences leading to even fatal accidents. It is not the high speed, but rash and negligent driving even at slow speed, that could constitute an act of negligence on the part of a driver, in my humble view.

12. Learned Assistant Attorney General pointed out that it has not been introduced on record that the defendant No.3 was driving the truck in a rash or negligent manner and that the P.W.1 namely Syed Shabbir Hussain Shah being son of the deceased also admitted that he

was not present at the time of incident. To answer the said contention of the learned Assistant Attorney General, in my view under these circumstances, the principle of “*res ipsa loquitur*” would be applicable which means that “things speak for themselves”. The said maxim applies as the real cause of death was solely within the knowledge of the defendants and deceased, definitely not known to the present plaintiff¹. The “res” speaks because the facts stand unexplained, and, therefore, the natural and reasonable, not conjectural, inference from the facts shows that what has happened was reasonably attributable to some act of negligence on the part of defendants having failed to perform the duty of care as clearly no loss is caused to the defendants, it is the husband of the plaintiff who was crushed under the wheels and dragged for about ten feet.

13. It is also a matter of record that soon after the incident, an FIR bearing No.145/2008 under Section 320 PPC was lodged and the defendant No.2 also undertook an enquiry against the defendant No.3 but in both i.e. FIR as well as departmental inquiry, the defendant No.3 was exonerated from the charge. It is well-established that exoneration of defendant No.3 from the charge in a criminal case is not of any relevance while determining civil liability of the defendant. The Hon’ble Supreme Court in case the Deputy Inspector-General of Police, Lahore v. Anis-ur-Rehman Khan (PLD 1985 SC 134) relied upon the following excerpt from M. Monir’s Commentary on the Evidence Act:-

“A judgment of acquittal in a criminal case only decides that the accused had been charged and to this extent only and no more, it is to be taken, as

¹Razia Khatoon v. Province of NWFP & others (2002 MLD 539), Muhammad Yaseen v. Medicare Clinic Ltd., (1988 CLC 139) and Punjab Road Transport Corporation Lahore v. J.V. Gardner and 2 others (1998 CLC 199).

correct and conclusive in a subsequent civil suit between the parties, the opinion and conclusions expressed in the judgment being otherwise irrelevant and inadmissible in such proceedings.”

14. Furthermore findings, if any, given by the Disciplinary Committee are not binding on this Court either in view of the settled rules of evidence as in criminal cases, prosecution is to prove beyond reasonable doubt the guilt of the accused, whereas, in civil proceedings, the matter is decided on the basis of preponderance of probability. The standards of appraisal of evidence in criminal and civil cases are different, therefore, the findings of a criminal court/disciplinary committee is not binding on this Court, besides the fact that while exercising civil jurisdiction, this Court cannot sit in an appeal on the decision of the Court which has decided the criminal case. Ref: **Mst. Zainab Bibi Versus Mst. Bilqees Bibi (PLD 1981 S.C. 56)** and **Karachi Transport Corporation Versus Muhammad Hanif (2009 SCMR 1005)**.

15. Apart from above, in the case of **Mazhar Ali v. Avenue Owners/Occupants Welfare Association (2020 MLD 257)** it was held that per application of the maxim "res ipsa loquitur" (things speak for themselves), if an accident resulting in death of a person itself was not disputed by defendant, then onus to prove that such person died not because of negligence or wrongful act of the defendant, was on defendant and not on plaintiff. Defendant, if took the plea that death of deceased was caused by his/her own negligence, then defendant had to produce evidence that the machine / equipment causing such death, was in perfect order and had no defect, but that it was negligence of deceased resulting in

his/her death. To disprove the causation of death, onus was on defendant and for calculation of quantum of damages in case of fatal workplace accident, factors such as deceased being an educated person and his / her employment (and salary) were to be considered. In **Rahim Ali Palari v. Government Of Sindh through Secretary, Ministry of Transport (2020 MLD 1393)** it was held that if an accident resulting in death of a person had not been disputed by the defendant then onus to prove that a person died not because of negligence or wrongful act of defendant would be on the latter and not on the plaintiff. Failure to examine driver of the vehicle involved in an accident would create an adverse presumption against the defendant. Drivers of heavy vehicle were required to take extra care while driving on the roads to prevent any incident. Court held that principle of vicarious liability was applicable and all the defendants were jointly and severally liable to compensate the plaintiffs. Plaintiffs had been deprived of the association and company of one of their family members. Negligent conduct of defendants to forestall such incident in future should be made more expensive in terms of actual damages. The said suit was decreed in the sum of Rs. 8,190,000/- as damages with Rs. 1,000,000/- towards loss of consortium with 10% markup per annum from the date of institution of suit till realization of the amount. In the case **Dr. Naheed Fatima v. Pakistan International Air Corporation (PIAC) (2019 MLD 606)** Plaintiffs sought recovery of damages from Airline company on allegations of wilful misconduct, carelessness and negligence. Onus to prove, non-existence of liability, specially caused on account of accident not having been denied, in presence of language of R. 20 of

Sched. II of Carriage by Air (International Convention) Act, 1966 and Art. 122 of Qanun-e-Shahadat, 1984, concept of no-fault liability rested with Airline, Court held that under Carriage by Air (International Convention) Act, 1966, claimant only had to bring up his/their case and onus of proof in that regard rested with Airline to disprove same. Suit was decreed accordingly. In **Mst. Muqaddas v. Karachi Electric Supply Corporation Ltd (2018 MLD 1054)** Plaintiffs being legal heirs of the deceased filed suit for recovery of compensation against the Electric Company. Issues in question were whether the suit was not maintainable; whether no cause of action had accrued to the plaintiffs to file the suit and whether the plaintiffs had alternate remedy under S.33 of the Electricity Act, 1910 to get redressal of their grievances. Court held that the burden of proof of said issues, was on the defendant company. Defendant, having not advanced any arguments on the issues, same were answered against it. Evidence on record had proved that deceased had died due to electrocution, and there was also a clear evidence that monthly salary of deceased was Rs.9,945 as he was Head Constable in Police Department. Documents produced on record had confirmed that the cause of death of the deceased was due to electricity current in the electric Pole. Plaintiffs, in circumstances, were entitled for the relief they had claimed as compensation for the death of the deceased. Defendant company, in cross-examination, had not even disputed the calculation given in the plaint as well as in the affidavit-in-evidence on oath and conceded that the figures of quantum of damage given in the affidavit, were proper calculation. Quantum of compensation was determined keeping in view life span

of the deceased, future benefit with the charge in salary etc. Plaintiffs, were widow of the deceased, his mother, one son and four daughters. Court held that the preamble of the Fatal Accidents Act, 1855 had explained that purpose of the said Act that was to provide compensation to the families for loss occasioned by the death of a person caused by actionable wrong. Suit was thus decreed with cost and the defendant was directed to deposit, decretal amount with Nazir of the court within 30 days. In **Mohammad Sarwar v. Government Of Sindh (2018 PLD 360)** deceased died in the custody of police officials. Contention of the police was that deceased died due to cardiac arrest. None of the police officials entered the witness box to defend the claim against them. Written statement filed by the police officials had lost its evidentiary value as contents whereof were never proved in the evidence. Deceased died while he was in the custody of police officials, plaintiff was to prove the factum of incident only, Court held that burden would shift on the police officials to disprove the causation if they wanted to succeed in the claim against the plaintiff and the acquittal of (private) defendants in the criminal case did not have any adverse bearing on the lis. Police official were thus liable to compensate the plaintiff by applying the rule of vicarious liability. Suit was accordingly decreed against the defendants jointly and severally in circumstances. In **Mst. Anila Jalees v. Driver Shakurullah (2018 MLD 1299)** husband of plaintiff died due to rash and negligent driving of the driver of vehicle and suit was filed against the driver and owner of the vehicle. Defendants failed to appear in witness box to plead and justify their stance and to rebut claim and contention of plaintiff, except cross-examining

plaintiff's witnesses. Averments in plaint as well as evidence led on behalf of plaintiff had gone un-rebutted. Plaintiff, in circumstances, was entitled for compensation as per calculations proved on record, Court held. Suit was thus decreed in these circumstances. In **Muhammad Razi v. Karachi Electric Supply Corporation (2017 PLD 634)** son of plaintiffs died in road accident due to alleged rash and negligent driving of defendant. Deceased died at the age of 20 years. High Court took the age of deceased for compensation/damages as 'seventy years'. Deceased was a skilled computer embroidery designer and was earning Rs.15,000 per month i.e. Rs.500 per day, High Court accepted such earning as the same matched with quantum of minimum wage. Defendants were jointly and severally held liable for the tort in question and were liable to pay such amount to plaintiffs. In **Haq Nawaz v. Malik Muhammad Sher (2017 CLCN 152)** defendant was owner of the vehicle which met an accident. Defendant and driver of the vehicle were bound to pay damages, Court held. In **Shama Norin v. Karachi Transport Corporation (2017 YLRN 451)** it was held that normally onus would lie on the person who had asserted the fact, but in matters relating fatal accident where the defendants either denied negligence or had taken specific plea of not causing accident, then burden would shift upon the defendants to prove their stand. Speed of vehicle was not an important factor while gauging the negligence of a heavy vehicle, Court held Defendants had not discharged the burden rested upon their shoulders except by mere denial or disputing the claim. Defendants had not produced evidence and inference would be against them. Defendants were thus jointly and severally liable for

the tort in question. As the deceased died at the age of 37 years old, suit was decreed to the extent of Rs. 36,30,000/- in the circumstances. In **Hina Ghori v. National Logistic Cell (2016 YLR 1797)** it was held that mere speed alone could not result into accident, but negligence of the holder of steering wheel would. Court observed that nothing was on record to establish the mental fitness of driver neither anything was brought on record to establish fitness of the vehicle nor any document was produced to substantiate the skills, experience and carefulness of the driver which were material aspects of the case. Adverse inference would be drawn against the defendants who had withheld the best evidence. Court observed that a middle class family would require earning of Rs. 20,000/- per month at least and as age of deceased was 35 years, his lifespan was taken as 70 years. High Court also observed that procedural changes should be made in the relevant law including compulsory insurance for third party particularly for heavy transport and public transport. In the case of **Islamic Republic Of Pakistan through Secretary Ministry of Defence v. Numair Ahmed (2015 MLD 1401)** Court held that death of the deceased in the accident had not been denied by the defendants, thus burden of proof in fatal accident cases would immediately shift from the plaintiff to the defendant where he had expounded his own version of accident. Occurrence of accident in which two persons had lost their lives was admitted by the defendants in their written statement. Court held that duty of the driver of a heavy vehicle had to be construed proportionately higher than the person who was either pedestrian walking on the road or a cyclist or motorcyclist going on his own side. Court applied the

maxim of "Res Ipsa Loquitur" in the case. Court also observed that the plaintiffs had discharged their initial burden of proving the happening of the fatal accident causing death of the deceased by the vehicle at the relevant time. Court directed that no hard and fast rule could be laid down nor a definite formula could be applied to assess the damages under the Fatal Accidents Act, 1855 and a guesswork is to be undertaken with regard to expectancy of life of the deceased who had died in an accident and the resultant pecuniary loss suffered by his legal heirs. In **National Logistic Cell v. Irfan Khan (2015 SCMR 1406)** deceased and three other persons were killed in a road accident caused by the rash and negligent driving of the defendant, who was driving a trailer owned by a Government organization. Legal heirs of deceased/plaintiffs filed suit for compensation under the Fatal Accidents Act, 1855, against the driver, the Government organization, and the City District Government Authority. Suit was decided in favour of plaintiffs as the Court found that death of the deceased was caused by the composite negligence and wrongful act of all the defendants and held that the defendants were jointly and severally liable to the plaintiffs in the sum of Rs.27,097,43.62, including compensation of Rs.300,000 for each of deceased's minor children, with profit/mark-up at the rate of 15% per annum from the date of judgment till recovery of the amount with costs. A Division Bench of High Court/Appellate Court maintained the judgment and decree, but reduced the compensation to minor children from Rs.300,000 to Rs.100,000 each.

16. For the reasons stated above and being influenced by the judgments detained henceforth, I am of the view that the present

case falls within the purview of the Fatal Accident Act, 1855 and more particularly in Section 1 thereof wherein it is specifically mentioned that for wrongful actions, a claim under the above statute lies. Since factum of death of Plaintiff's husband is now an admitted fact, therefore, and liability of such a gross wrongful act falls on the Defendants, therefore, the present claim is maintainable under the above Fatal Accidents Act of 1855 and the **Issue No.1 is answered in affirmation.**

17. **Issue No.2** germane to the vicarious liability of the defendants and quantum of compensation/damages. It is well exposition of law that employer is always vicariously liable for acts of its employees performed in the course of duties. The Apex Court in the case of **Karachi Transport Corporation Versus Muhammad Hanif (2009 SCMR 1005)** in an unequivocal term held the similar rule. The pleadings of Plaintiff about deceased's life expectancy, running of business, monthly earnings and other credentials have neither been questioned nor rebutted in the evidence. It has been specifically stated on oath by the Plaintiff in paragraph-5 of the plaint that the deceased's husband was keeping a good health and his entire family have a reasonable life span of 75 years. It was further deposed that the deceased was earning 25000 to Rs. 30,000/-, at that relevant time, that is, in the year 2008. In these circumstances, a sum of Rs.1,25,00,000/- has been claimed by Plaintiff towards damages and compensation. The claim of Plaintiff with regard to the quantum of damages is also unchallenged. To assess the quantum, number of decisions have been relied upon by Plaintiff's counsel, but all of them do not require a discussion here, except the decision of Hon'ble

Supreme Court handed down in **Punjab Road Transport Corporation v. Zahid Afzal & others (2006 SCMR 207)** and a decision of a learned Division Bench of this Court in **Ehteshamuddin Qureshi Versus Pakistan Steel Mills (2004 MLD 361)**, wherein, *inter alia*, not only the earlier principle in such cases has been reiterated, but the same has also been further expounded and summarized. It would be advantageous to reproduce herein below the relevant paragraphs of the above Supreme Court Judgment:

“10. The superior Courts laid down following principles to be kept in view while awarding damages in case a person has died on account of accident due to the negligence of the driver of the petitioner’s vehicle, which causes death of the victim:

(i) the position of each dependent of the deceased should be considered separately;

(ii) the damages are not to be given as solatium but should be calculated with reference to a reasonable expectation pecuniary benefit, from the continuance of the life of the deceased. Damages claimed by dependents for their own pain and suffering or for the loss occasioned to them due to the death of the deceased which is not referable to the expectation of any such pecuniary benefit is outside the scope of the Act;

(iii) the deceased need not be earning or the dependents need not be actually deprived of benefit. Reasonable expectation of such earning or benefit is enough;

(iv) the pecuniary loss due to the death should stem not from a mere speculative possibility of pecuniary benefit from the continuance of the life of the deceased but only from a reasonable possibility of such benefits;

(v) where the actual extent of such pecuniary loss cannot be ascertained accurately, the sum may be an estimate or partly a conjecture;

(vi) in assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages should be considered;

(vii) the pecuniary loss of each dependent should be ascertained by balancing on the one hand the loss to him of future pecuniary benefits and on the other any pecuniary advantage which from whatever source comes to him by reason of death.

11. The Constitution of a country is a kind of social contract which binds people, society and a State. The terms of the contract foster feelings of interdependence of belonging to an entity and of adherence to law. An honest commitment to the goals set out in the Constitution ensures promotion of nationhood and stability of the system. In view of Article 4 read with Article 5(2) of the Constitution, it is the duty of each and every organ of the State and people of Pakistan to work within the framework of Constitution and law as law laid down by this Court in the following judgments:--

(1) Ch. Zahoor Elahi’s case PLD 1975 SC 383 and (2) Zahid Rafique’s case PLD 1995 SC 530.

12. Our Constitution contains Chapter I relating "Fundamental Rights" in which life of human being is given due importance. It requires everyone to work for the welfare of the people of Pakistan but a person who is violating the law and Constitution works against the welfare of the people that is why it is high time to promote the law of tort so that the people must understand that we cannot live as a nation without performing our duties within the framework of law. As in the present admittedly the driver had driven the bus in violation of the mandatory provisions of Motor Vehicle Ordinance, 1965 and rules framed thereunder thus, causing fatal injuries to the innocent citizens."

17. Taking into the account the evidence led by Plaintiff, particularly with regard to his specific Statement about life expectancy of the deceased who was just a 52 years old man, the nature of business being the business of "dates" and simultaneously indulging in business of import/export of "dates" in Lea Market, Karachi, together with the deposition of Plaintiff's witness about longevity in her family, it is not difficult to conclude and hold that life expectancy of 75 years in Plaintiff's family has been established. The deceased, considering these factors, may also have lived for another 23 years approximately, therefore, the claim of awarding damages of rupees 1,25,00,000/- is justifiable and hence granted.

18. Apart from above, perusal of record and proceedings of the case at hand insinuates that on 04.10.2021 representative of the defendant No.2 i.e. Pakistan Navy brought a proposal that they are ready to give a sum of Rs.153,000/- to the bereaved family. It is with regret to mention here that the incident took place in the year 2008 and the proposal was moved by the defendants in the year 2021 which is after a lapse of approximately 13 years. It is well established principle that loss of human life cannot be measured in terms of coins, however, the Fatal Accident Act, 1855 was enacted to provide compensation to the bereaved families for loss occasioned by the death of a person caused by actionable wrong. According to the

preamble of the Act, 1855, the said law was enacted to provide compensation to families for loss occasioned by the death of a person caused by actionable wrongs since no action or suit was then maintainable in any court against a person who by his wrongful act, neglect or default, may have caused the death of another person, and it was considered expedient that the wrong-doer in such case be made answerable through damages for the injury so caused by him. In view of the above rationale and deliberation, the **issue No.2 is answered in affirmation.**

19. The upshot of the above is that suit of the Plaintiff is decreed against the Defendants jointly and severally and the Defendants are liable to pay a sum of Rs.1,25,00,000/- to Plaintiff together with 10% (percent) markup from the date of institution of the suit till realization of the amounts. Office to prepare a decree accordingly.

Karachi
Dated:30.11.2022

JUDGE