



Superhighway which hit pickup bearing registration No.LS-9970 near Bridge Poultry Farm, resulting in the death of the deceased and causing serious injuries to the driver of the Suzuki, namely, Tanveer Ali. The driver of the said bus subsequently was arrested and thereafter FIR bearing No.319 of 1990 dated 25.01.1990 was registered at Gadap P.S. Thereafter Suit bearing No.421 of 1991 was filed, wherein, after completing the legal formalities, which included issuance of summons, calling written statements etc. from the defendants of the suit, as many as eight issues were framed on 03.11.1991 and thereafter the learned Single Judge in the instant suit decided issue No.1 in 'Negative' and rest of the issues from 2 to 7 in 'Affirmative' and decreed the suit in favour of the plaintiffs by observing that they are entitled for damages in the sum of Rs.8,190,000/-. The learned Single Judge further awarded Rs.1,000,000/- towards loss of consortium with a total amount of decree at Rs.9.1 Million with 10% markup per annum from the date of institution of suit till realization of the amount. It is against this judgment passed by the learned Single Judge that the present HCA has been filed.

3. Mr. Zeeshan Adhi, AAG has appeared on behalf of the appellant and stated that the learned Single Judge has travelled beyond the pleadings by awarding a sum of Rs.9.1 Million as opposed to the claim of Rs.5 Million. He stated that the order of the learned Single Judge is liable to be set aside as he has granted the relief which is

beyond the pleadings. To support this argument, the learned AAG has relied upon the following decisions:

- i) Sardar Muhammad Naseem Khan Vs. Returning Officer, PP-12 and others (2015 SCMR 1698)*
- ii) Binyameen and 3 others Vs. Chaudhry Hakim and another (1996 SCMR 336)*

4. Learned AAG further stated that the learned Single Judge was also not justified in awarding the interest from the date of institution of the suit rather than from the date of the decree which, according to him, is not in accordance with law and in support thereof has placed reliance on the following decisions:

- i) Government of Pakistan Vs. Arif and others (2001 SCMR 785)*
- ii) Pakistan Railway Vs. Abdul Haqique and others (1991 SCMR 657)*

5. Learned AAG further stated that the learned Single Judge has also not taken into consideration that the negligence, if any, was contributory and not a composite or single or isolated negligence. He stated that apart from the driver of the bus the driver of the Suzuki van was also at fault as it was the driver of the Suzuki who brought the Suzuki on the highway in a rash and negligent manner with the result that it collided with the bus, which ultimately resulted in death of the deceased. He, therefore, stated that simply holding the driver of the bus accountable and responsible was not justified as it was the driver of the Suzuki also who was equally responsible for this fatal, which resulted in death of the deceased and in his view the incident was

contributory and not composite or isolated. In support thereof the learned AAG has placed reliance on the following decisions:

- i) *Mst. Feroza Wajid Vs. Government of Sindh and others (2006 MLD 786)*
- ii) *National Logistic Cell Vs. Irfan Khan and others (2015 SCMR 1406)*

6. Learned AAG next stated that the learned Single Judge was not justified in not deducting the personal expenses of the deceased from the damages awarded. He stated that no doubt compensation is awarded on the basis of life expectancy of the deceased but in his view the personal expenses should also be deducted from the amount of damages and, according to him, since the award was defective on this aspect, hence the same is liable to be set aside for recalculating the amount of compensation awarded to the deceased. In support thereof he has placed reliance on the decision in the case of *Mst. Abida Bashir and 4 others Vs. Messrs Blue Lines Airconditioned Luxury Coach Services, Karachi and 6 others (PLD 1996 Karachi 153)*.

7. The learned AAG next stated that the learned Single Judge was not justified in calculating the damages on the basis of a projected income of Rs.15000/-, whereas according to him in the year 1991 the minimum wage was Rs.480/- hence, according to him, the learned Single Judge ought to have calculated the amount of compensation at that rate and not at Rs.15000/-, as done by the learned Single Judge.

8. M/s. Nasir Maqsood and Farrukh Usman, Advocates have appeared on behalf of the private Respondents and stated that it is a

sorry state of affairs that even after passage of 32 years the Respondents have not received a single penny and are suffering badly. They stated that it has been held in a number of decisions given by the Hon'ble Supreme Court of Pakistan that matters pertaining to fatal accident have to be settled within shortest possible time. In support of this contention the learned counsel have placed reliance on the following decision reported as:-

- i). *The Punjab Road Transport Board and another Vs. Mst. Naziran Bibi and another (PLD 1983 SC 340)*
- ii). *Annual Survey of Indian Law Volume (XVI)-1980*
- iii) *Punjab Road Transport Corporation Vs. Zahida Afzal and others (2006 SCMR 207)*
- iv) *Karachi Transport Corporation Vs. Latif-ur-Rehman and others (1993 SCMR 1149).*

9. While arguing the case on merits learned counsel stated that this is a case of composite negligence where the driver of the bus while driving in a rash and negligent manner hit Suzuki van which resulted in the death of the deceased. They stated that in view of the facts and circumstances of the case the Respondents are fully entitled to be compensated on account of the negligence caused by the driver and have placed reliance on the following decisions:-

- i) *Mir Hassan Vs. Master Hammad through is next friend and another (2009 MLD 1443)*
- ii) *Islamic Republic of Pakistan through Secretary, Ministry of Railways and others Vs. Abdul Wahid and others (2011 SCMR 1836)*
- iii) *Javed Iqbal Vs. Province of West Pakistan and others (1992 CLC 2369)*

- iv) *Federation of Pakistan through Secretary Railways and another Vs. Hafiza Malika Khatoon Begum and others (1996 SCMR 406)*
- v) *Muhammad Noor Alam Vs. Zair Hussain and 3 others (1988 MLD 1122)*
- vi) *Rajasthan State Road Transport Corporation Vs. Jhami Bai Kanhiyalal and others (AIR 1987 (Rajasthan) 68)*
- vii) *Muhammad Younus Khan 3 others Vs. Karachi Road Transport Corporation and another (1984 CLC 2830)*

10. Learned counsel also invited our attention to a decision of the Indian High Court and stated that the Court has taken staunch attitude in case of delay in compensation or the time wasted in litigations in *Re: Khazani Vs. Sobaran Singh and others (1986 ACC 288)*.

11. Replying to the objections raised by the learned counsel appearing for the Department that markup if any was to be given from the date of decree instead of date of institution, they stated that a Full Bench of the Hon'ble Supreme Court in the case reported as 2012 CLC 6 held by a majority view that interest/markup was to be given from the date of filing the suit till recovery of the entire amount and not from the date of the decree. Learned counsel have also placed reliance on the following decisions:-

- i) *Pakistan Railways through its General Manager Vs. Javed Iqbal (1995 SCMR 446)*
- ii). *Islamic Republic of Pakistan through Secretary, Ministry of Railways and others Vs. Abdul Wahid and others (2011 SCMR 1836)*
- iii) *Rukhsana Parveen and 4 others Vs. Islamic Republic of Pakistan through Secretary, Ministry of Railways, Islamabad and 3 others (2003 MLD 572)*

- iv) *Islamic Republic of Pakistan through Secretary, Ministry of Railways, Islamabad and 3 others Vs. Rukhsana Parveen and 4 others (2005 MLD 335)*
- v) *Raja Muhammad Sadiq and 9 others Vs. WAPDA through Chairman, WAPDA House, Lahore and 3 others (PLD 2003 SC 290)*

12. Learned counsel stated that it was always open for the Court to grant the relief as deemed necessary as no Court is subservient to the prayer clause but looking to the facts and circumstances of the case relief could be molded, enhanced or reduced, as deemed necessary by the Court. They stated that a relief, if not specifically prayed, can be granted when it is not inconsistent with the case of a party. They stated that the Court is fully empowered under the law to grant the relief which it deems fit and necessary looking to the peculiar facts and circumstances of the case in accordance with law. In this regard learned counsel has placed reliance on the following decisions.

- i) *Mst. Salma Abbasi and another Vs. Ahmed Suleman and 2 others (1981 CLC 462)*
- ii) *Muhammad Yakoob Vs. Muhammad Ishaque (1980 CLC 2056)*
- iii) *Javaid Iqbal Vs. Abdul Aziz and another (PLD 2006 SC 66)*
- iv) *Pakistan Railways through its General Manager Vs. Javed Iqbal (1995 SCMR 446)*
- v) *Abdul Majeed Khan Vs. Tawseen Abdul Haleem and others (2012 CLD 6)*
- vi) *Islamic Republic of Pakistan through Secretary, Ministry of Railways and others Vs. Abdul Wahid and others (2011 SCMR 1836)*

- vii) *Muhammad Sarwar Vs. Government of Sindh through Secretary and others (PLD 2018 Sindh 360) (approved in HCA 369 of 2017)*
- viii) *Samar Gul Vs. Central Government and others (PLD 1986 SC 35)*
- ix) *Master Abdul Basit and another Vs. Dr. Saeeda Anwar and another (PLD 2011 Karachi 117)*
- x) *Sufi Muhammad Ishaque Vs. The Metropolitan Corporation, Lahore through Mayor (PLD 1996 SC 737)*
- xi) *Chairman, Railway Board, Pakistan Western Railways, Lahore and another Vs. Naseer Ahmed and 3 others (PLD 1988 Lah. 652)*
- xii) *Shamsul Hassan and 6 others Vs. Karachi Transport Corporation through Managing Director and 2 others (2001 CLC 942)*
- xiii) *Muhammad Athar Hussain and another Vs. Trustees of the Port of Karachi through Chairman, Karachi Port Trust Head Office Building, Eduljee Dinshaw Road, Karachi (1988 CLC 633)*
- xiv) *Trustees of Port of Karachi Vs. Athar Hussain and another (2003 CLC 215)*
- xv) *Mst. Irfana Vs. Federal Government of Pakistan through Secretary, Ministry of Defence, Islamabad and 3 others (2001 CLC 928)*
- xvi) *Islamic Republic of Pakistan through Ministry of Defence and others Vs. Numair Ahmed and 2 others (2015 MLD 1401)*
- xvii) *Karachi Transport Corporation and another Vs. Latif-ur-Rehman and 6 others (1991 MLD 1471).*

13. Learned counsel also laid emphasis on Adl & Ehsan. The learned counsel also stated that so far as the damages are concerned though there is no yardstick for calculating the same but in fatal accident cases the compensation is always calculated by looking at the life expectancy of the deceased and the amount which would have been earned by the deceased, in case he remain alive. Learned counsel



stated that in view of these facts the learned Single Judge was quite justified in granting compensation, as mentioned in para-23 of the order.

14. Learned counsel next stated that the claim of the learned counsel appearing for the appellant that personal expenses are to be deducted is also not correct as the mechanism of calculating is given under the law and hence the submission of the learned counsel appearing for the Department for deduction of the personal expenses is incorrect and has to be ignored. In the end, the learned counsel stated that the order passed by the learned Single Judge is in accordance with law and the same may be upheld and the Respondents may be directed to pay the amount of compensation, as worked out in the order vide para-23, without any delay and this HCA may be dismissed by imposing heavy cost on the appellant.

15. While giving the rebuttal, the learned AAG stated that the decisions relied upon by the learned counsel appearing for the respondents are quite distinguishable. He stated that though he has sympathy with the victim and his family however submits that the amount of compensation awarded by the learned Single Judge since was not proper therefore the same needs to be drastically revised and the order of the learned Single Judge in his view may be set aside on the basis of the facts mentioned by him.

16. We have heard all the learned counsel at considerable length and have also perused the record and the decisions relied upon by them.

17. The argument of learned AAG could be summarized as under:

*i) That since there was a contributory negligence hence the damages have to be reduced.*

*ii) That the relief given was beyond the pleadings hence the order of the learned Single Judge needs to be set aside.*

*iii) That the markup/interest has to be given from the date of decree and not from the date of institution of the suit.*

*iv) That while calculating the compensation personal expenses have to be deducted and the projected monthly income of the deceased worked out by the learned Single Judge was quite excessive.*

18. We will take up each issue separately. So far as there was a contributory negligence is concerned, suffice is to observe that the employer is always considered to be a part of the composite negligence caused by its employee and either the driver or any other employee working with any organization if causes negligence due to which accident occurs then in such like circumstances the employer is also held accountable in respect of the negligence caused by its that employee and in case the said employee is found guilty of causing damage in any manner, the employer always is under the obligation to compensate the unfortunate family in a speedy manner without prolonging the matter so as to release the agony of the grieved family. Therefore, we disagree with the contention raised by the learned AAG that in the instant matter the negligence was a contributory negligence, whereas in our view the negligence was a composite

negligence. It is also a settled proposition of law that the approach of the Courts in granting compensation should, in our view, be to a certain extent liberal rather than pedantic, as no amount or money could fill in the gap or vacuum created in the case of a death of a person being faced by the family. We are also mindful of the fact that no yardstick or actual quantification of the amount of the loss/compensation could be worked out and it is always on the basis of some estimate or guess work that the amount of compensation is worked out based on the formula of life expectancy. In such like matters the responsibility of the government is to compensate the grieved family not only in a timely manner but also to avoid unnecessary/frivolous litigation so that the grieved family may be compensated in a timely manner. We agree with Mr. Nasir Maqsood that this is really a sorry state of affairs that in the present matter even after passage of more than 32 years not a single penny has been given to a grieved family and once onus/charge with regard to an accident is proved by the claimant then in such like cases it is incumbent upon the government, in case the person causing the accident belongs to their organization, to compensate the aggrieved family promptly without wasting much time. The amount of compensation given cannot be a solatium of the loss with which the family had passed but to a certain extent give them some lease to continue their life along with their pain and suffering and get some pecuniary benefit from the compensation so that the grieved family could live a simple life without knocking the doors of others for any monetary help. In the case of Abdul Wahid, quoted supra, the Supreme Court of Pakistan

did not absolve the Railway from the negligence caused by its employee on the ground of contributory negligence and observed that Railway was liable to pay the compensation and damages as employer in such circumstance is vicariously liable for the acts or omissions and negligence of its employee. Hence on this aspect we do not agree with the learned AAG that the negligence is a contributory negligence. Moreover the decision relied upon by the learned AAG is found to be totally distinguishable from the facts obtaining in the instant matter.

19. Apropos the aspect of granting relief beyond the pleadings is concerned that when the respondents/plaintiffs in the suit claimed the compensation to the extent of Rs.5 Million only, the learned Single Judge was not justified in awarding the compensation to the extent of Rs.8.1 Million and Rs.1 Million towards loss of consortium .It is a settled principle of law that it is always open to the Courts to mold the relief as and when required in respect of that particular case. No Court, in our view, is subservient to the prayer clause made in a matter and by looing to the facts and circumstances of that matter can enhance or reduce the claim, as the circumstances of that matter warrants. In the instant matter also, through a detailed and comprehensive order, the learned Single Judge came to the conclusion that this is a fit case of negligence on the part of the appellant and thereafter worked out the amount of compensation in Para 19 of his order, keeping in view the various judgments cited before him. Moreover it could not be said that the learned Single Judge, while granting the amount of compensation, has not considered the wage

limit of that period, whereas the learned Single Judge has categorically relied upon the notifications, as per Sindh Minimum Wages Act, issued by the Labour and Human Resources Department and thereafter worked out the compensation. It is also noted that though the learned Single Judge was of the view that the amount of wage is Rs.16,200/- but kept the figure of the compensation at a lower amount of Rs.15000/- and thereafter worked out the compensation for a period of more than 26 years. It may also be noted that as per Order VII Rule 7 of the CPC it is always open to the Court to grant a relief as it may think “just and proper” and in our view the power of the Court in this regard could neither be curtailed nor diminished as the Courts, in our view, are not under the legal obligation or have such a narrow approach to limit their powers to the extent of the relief claimed. The Courts, in our view, are fully empowered to either enhance or reduce the relief claimed by any person subject to the circumstances of each case. However one thing which should be kept in view that the relief granted should not be inconsistent with the case of the party. However in the instant matter the relief granted is worked out on the basis of a formula described by the Act hence, in our view, by no stretch of imagination could be considered to be inconsistent. Moreover, to foster the justice the powers of the Court can neither be curtailed nor controlled in respect of the procedural laws. Thus on this aspect also we do not agree with the contention of the learned AAG. The decisions relied upon by him are thus found to be totally distinguishable from the facts obtaining in the instant matter. We, therefore reject this argument of the learned AAG as well.

20. So far as the issue that what should be the date of grant of interest on the compensation is concerned, we are of the view that this issue has already been laid at rest by the Supreme Court of Pakistan (noted above) in its various judgments that compensation has to be awarded from the date of institution of the suit and not from the date of the decree.

21. So far as working out the personal expenses is concerned, it has already been observed above that there is no yardstick of calculating the markup and the same is always to be done as a rule of thumb, as no accurate breakup in respect of the amount of compensation /damages claimed could either be worked out or calculated but it is always guess work, which is based upon keeping in view a number of factors which include the age of the deceased, the amount earned by him at the time of his death, his life expectancy, number of persons of whom he was the bread earner etc. and this working is always a guess work based on the facts of each case. In the instant matter also the deceased was only 26 years of age at the time of his death and it was assumed that had he not died he would have lived upto 72 years and thereafter keeping in view these factors compensation was worked out. As noted earlier, it is always a guess work and no yardstick or fixed formula can be fixed in respect of the amount of compensation and the only factor which the Court is required to do is to determine a fair compensation, if it is found that the other party was negligent in causing death of a person and the most important factor which is to be

kept in mind is with regard to timely grant of compensation awarded to the grieved family.

22. In view of the above discussion, we do not find any legal infirmity or illegality/irregularity in the order passed by the learned Single Judge, which is hereby upheld and consequently the instant HCA, along with all the listed/pending applications, stands dismissed. The appellants are directed to compensate the respondents along with the markup/interest etc. from the date of institution of the suit till its final payment within a period of two months' time from the date of this order.

JUDGE

JUDGE

Karachi:

Dated:                     .03.2023.

*(Tahseen, PA)*