

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

### **CRIMINAL APPEAL NO.142/2018**

Appellant : Imdadullah.

Respondent : The state.

### **CRIMINAL APPEAL NO.165/2018**

Appellant : Muhammad Hanif.

Respondent : The state.

Date of hearing : 29<sup>th</sup> September, 20<sup>th</sup> October and 5<sup>th</sup> November, 2020.

Date of announcement: 31<sup>st</sup> March, 2021.

### **Appearance :**

Mr. Mehmood A. Qureshi advocate for appellant in Appeal No.142/2018.

Mr. Fareed Ahmed Dayo advocate for appellant in Appeal No.165/2018.

Mr. Faheem Hussain Panhwar, Deputy Prosecutor General for the State.

Mr. Irfan Ahmed Memon, Deputy Attorney General.

Mr. Pervez Ahmed Mastoi, Assistant Advocate General.

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

**SALAHUDDIN PANHWAR, J.** Appellants through their respective appeal have challenged common judgment dated 29.01.2018 passed by learned III<sup>rd</sup> Additional Sessions Judge, Malir, Karachi, in Sessions Case No.187/2015 arising out of FIR No.4/2015 u/s 320/323/337-G/427/114 PPC, PS Memon Goth, Karachi, whereby appellant/accused Muhammad Hanif was sentenced to suffer R.I. for five years under section 320 PPC and to pay Diyat

to all L.Rs. of 64 deceased persons, with benefit of section 382-B Cr.P.C. and appellant/accused Imdadullah was sentenced to pay Diyat to all L.Rs. of deceased persons, under section 322/114 PPC.

2. Concise facts of the case are that an accident took place between Al-Shoaib Coach bearing registration No.JB-1158 and Oil Tanker bearing registration No.LWC-3516 while over taking, due to such accident the coach caught the fire; passengers inside the Coach were burnt dead without having opportunity to come out of the coach; fire brigade was immediately called that arrived late; instruction to reach at the place of incident were passed to police station of Memon Goth; when SHO of that police station reached at the place of accident he found dead bodies of passengers burnt in the Coach hence such FIR was lodged against the coach driver and the driver of the oil tanker. After the investigation, I.O submitted charge sheet before the court of concerned Judicial Magistrate wherein accused Muhammad Hanif (driver of oil tanker) was shown in custody and accused Imdadullah (owner of the coach), Attaullah (driver of coach) and Mehnaz (owner of oil tanker) were shown absconders.

3. In order to substantiate their accusation prosecution side examined 13 witnesses namely PW-1 Dur Muhammad Kalhoro at exhibit 5, PW-2 Shah Nawaz Rahujo exhibit 6, PW-3 ASI Rab Nawaz at exhibit 7, PW-4 Mst Inayata at exhibit 8, PW-5 ASI Muhammad Qasim Jamot at exhibit 9 who produced memo of arrest of accused Muhammad Hanif at Ex.09/A, PW-6 ASI Abdul Razzak Khokhar at Ex.10 who produced memo of site inspection at Ex.10/A, PW-7 SIP Abdul Aziz Chandio at Ex.11, he produced copy of FIR at Ex.11/A, letters addressed to MLO at Ex.11/B-1 to Ex.11/B-63 respectively, memos of inspection of dead bodies at Ex.11/C-1 to Ex.11/C-63

respectively, inquest reports under sections 174 Cr.P.C at Ex.11/D-1 to Ex.11/D-63 respectively and certificates of cause of death at Ex.11/E-1 to Ex.11/E-63 respectively, PW-08 SIP Chan Muhammad at Ex.13, PW-09 SIP Rafique Ahmed Junejo at Ex.14, PW-10 Dr. Nasreen Qamar at Ex.15, she produced autopsy reports of five dead bodies at Ex.15/A to 15/E respectively, PW-11 Dr. Shahadat Ali Khan at Ex.16, PW-12 Dr. Muhammad Aijazullah Haq at Ex.17, he produced autopsy reports of ten dead bodies at Ex.17/A to Ex.17/J respectively, PW-13 SIP Zulfiqar Ali at Ex.18, he produced *roznamcha* entry No.9 at Ex.18/A, memo of place of incident and collecting samples at Ex.18/B, clearance certificates of Bomb Disposal Unit at Ex.18/C & Ex.18/D, vehicle accident report form at Ex.18/E, *roznamcha* entry No.47 at Ex.18/F, PCSIR Laboratory Test Report at Ex.18/G, letter addressed to Edhi Home at Ex.18/H, lists of taking samples of deceased legal heirs at Ex.18/I, DNA Report alongwith list of names as per DNA Report at Ex.18/J & Ex.18/K, *Superdigi-nama* of dead bodies to their legal heirs at Ex.18/L-1 to Ex.18/L-62 and postmortem reports of dead bodies at Ex.19/M-1 to Ex.19/M-47 respectively. The learned ADPP for State give up PW PC Saeed vide his statement at Ex.12. Whereas accused persons were examined under section 342 Cr.P.C, the accused denied all the incriminating circumstances and pleaded their innocence. Neither they gave evidence on oath under section 340(2) Cr.P.C. in disproof of the charge against them nor they produced any witness in defence and closed their side vide their statement at exhibit-11.

4. The learned trial court framed and answered the issues as under:-

S.NO.	ISSUES	FINDINGS
I	Whether 64 Passengers (deceased) died unnatural death after sustaining/burning injures at the hands of driver accused?	Yes
II	Whether the accused Muhammad Hanif having no proper and valid driving licence was driving the Oil Tanker in rash and negligence manner came before the Al-Shoaib Coach and hit it and fire exploded in the said coach and 64 passengers were burnt and died at the spot?	Yes
III	Whether accused Imdadullah owner of the coach/bus was given the said coach to his absconding accused Atta Muhammad @ Atif for driving the said coach who had no driving license and he did hit the oil tanker by driving rash and negligent manner?	Yes
IV	What offence, if any is committed by the accused or any one of them?	As under.

5. I have carefully heard respective parties and have also gone through the available record. The perusal of the *impugned* judgment of conviction has compelled me to reiterate the basic *principles* of **Criminal Administration of Justice** which, *normally*, can't be ignored while deciding a 'criminal charge'.

- i) The basic principle of criminal law is that it is the burden of the prosecution to prove its case against the accused beyond reasonable doubt. This burden remains throughout and does not shift to the accused, who is only burdened to prove a defence plea, if he takes one;

(Reference is made to case of Abdul Majeed v. State 2011 SCMR 941)

- ii) no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one;

(Reference is made to case of Azeem Khan & another v. Mujahid Khan & Ors - 2016 SCMR 274).

The principle No.(i) is the foundation of the **Criminal Administration of Justice** because a single slightest reasonable doubt is always sufficient for earning an *acquittal* therefore, the Criminal Court (s) have been put on caution by principle No.(ii) that it is not the '**emotions**' on basis whereof the *guilt* or *innocence* is to be decided but the evidence *alone* which, too, must be in the manner as dictated by the law and procedure, as detailed in the said case of Azeem Khan & others that:-

“32. It is also a well embedded principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. **In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In the event the justice would be casualty.**”

6. Having said so, now I would revert to the merits of the case. Since, the perusal of the available record, *prima facie*, makes it clear that charge (s) against both convicts were entirely different therefore same needs to be discussed independently. I would *first* take up the case of convict / appellant Imdadullah who was sent up to face the trial only on allegation that he is the owner of the **coach** which collided with **oil tanker**. At this juncture, it is conducive to refer the relevant portion of the *impugned* judgment which describes the reason for conviction of appellant Imdadullah. Same reads as:-

“(17) There is also no dispute that at the alleged time of incident **accused Muhammad Hanif was driver of the said Oil Tanker. It is, therefore, evident that at the relevant time of incident accused Imdadullah, who is the owner/belonging of the said coach in question who had deputed for driving his coach to absconding accused Atta Muhammad who has no driving license and prima facie participated in the incident in said manner.** The responsibility

regarding the present incident squarely lies on the owner of the coach and owner of oil Tanker Menhaz son of Muhammad Ishaque and driver, namely, Atta Muhammad who was driving the said coach. The owners of the vehicles could be blamed and held responsible for the act committed by the driver Atta Muhammad of his vehicle. The incident of accident was the risk of the driver Atta Muhammad who has no driving license while allowing him the owner/belonging of the said coach/bus, namely Imdadullah and they are both responsible for the whole act of the incident committed by them. In *2005 P. Cr. LJ 1648*, wherein the Superior Court laid down that "*Qatl-Bis-Sabab*" by person who is not holding "*License*" or "*effective license*", the "*owner*" or "*person*" incharge of the vehicle would also be charged for the offence under section 114 of Pakistan Penal Code (P.P.C.) alongwith such person."

Perusal of the above, *prima facie*, shows that conviction to appellant Imdadullah has *solely* been recorded because the learned trial Court believed that appellant Imdadullah was the '**owner**' of the '**coach**' and that he (appellant) handed over the coach to a person, having no driving license. I have to insist here that the Court must believe in those fact (s) *only* which have been proved / established by the prosecution in the manner as dictated by law which should never be less than '*beyond reasonable doubts*' or those facts which are, *otherwise*, '**admitted**'. In the instant matter, the appellant Imdadullah has never admitted his ownership regarding the coach in question which is not only evident from cross-examinations but also answer to the question, posed to him during his examination under section 342 Cr.PC. The relevant question along with answer thereof is reproduced hereunder:-

"Q.No.1. It is alleged that on 11.01.2015 you being owner of the Al-Shoib Coach bearing registration No.Jb-1158 deputed the absconder accused Atta Muhammad @ Atif, who was driving the bus without license in rash and negligent manner and hit the same with Oil Tanker bearing registration No.LWC-3561, resultantly in said coach fire exploded and 64 passengers were burnt at spot and such coach also burnt. What you have to say?

Ans. It is incorrect to suggest that I am owner of the said coach. It is also not true that I provided the coach to the driver who had no licence for driving."

7. Thus, in such a situation the prosecution was always burdened to *prima facie* establish the ownership of the appellant *first* and then he (appellant) handed over the vehicle to a person, having no driving license. This was to be done *first* in the course of investigation by the investigating officer and such material was to be exhibited during trial. To see whether this was *ever* done or otherwise? it would be conducive to refer the evidence of the Investigating Officer, detailed in the *impugned* judgment itself which reads as:-

**“Pw-13, S.I.P. Zulfiqar Ali who is the investigating officer of this case.** He has testified that on 12-01-2015 he was posted as SIO at PS Memon Goth. On the that day he received investigation of this crime through copy of FIR, 64 Postmortem Reports of the dead bodies of the persons, death certificates and proceedings under section 174,Cr.P.C as well as one sealed parcel of sample for DNA Report. On the same day, he had left PS for inspection of place of incident vide entry No.09 of 1610 hours, which he produced at Ex.18/A and deposed that it is same and correct. He inspected the same on the pointation of SHO, namely, Jan Muhammad Ahemdani and prepared such memo of site inspection. He seen the said memo at Ex.10/A and deposed that and bears his signature. On 13-01-2015, he again visited the place of incident and collected the samples from the burnt coach and Oil Tanker for sending to chemical examination, where he prepared such seizing memo in presence of police officials. Which he produced the memo at Ex.18/B and deposed that it bears his signature. On the same day, he called Bomb Disposal Squad and Motor Vehicle inspector at the place of incident, where Bomb Disposal Squad inspected the burnt vehicles and duly issued clearance certificates, which he produced at Ex.18/C and Ex.18/D and deposed that these are same and correct. The Motor Vehicle inspector also inspected burnt vehicles and issued MVI Report of the both vehicles, which he produced at Ex.18/E and deposed that it is same and correct. On 14-01-2015, S.H.O. received information that Oil Tanker driver Muhammad Hanif is available in the office of Jag T.V. On receiving such information, they proceeded along-with police officials on the Government police mobile to the Jag T.V Station. He arrested the accused Muhammad Hanif from the premises of the Jag T.V Station and prepared such memo of arrest in presence of witnesses. He seen the said memo at Ex.9/A and deposed that it bears his signature. Thereafter they took accused and returned back at PS, where he made such roznamcha entry No.47, which he produced at Ex.18/F and deposed that it is same and correct. He interrogated the accused and produced before the court of concerned Judicial Magistrate for taking Police remand. During course of investigation, he collected testing report from PCSIR Laboratory Complex Karachi. He produced the said Test Report at

Ex.18/G and deposed that it is same and correct. He sent the samples of the dead bodies for DNA Test along-with list of 62 dead bodies. He produced letter at Ex.18/H and list at Ex.18/I and deposed that these bears his signatures. Then he collected the report of DNA. He produced copy of DNA report along-with list of names as per DNA Report at Ex.18/J and Ex.18/K respectively and deposed that these are same and correct. After collecting the DNA report he handed over the dead bodies of the deceased to their relatives under superdeginama. He produced the said superdeginama at Ex.18/L-1 to Ex.18/L-62 these bears his signatures. He also received postmortem reports of deceased persons, which he produced at Ex.19/M-1 to Ex.19/M-47 and deposed that these are same and correct. He also recorded the statements of relatives of the deceased and PWs. He also recorded statement of one injured lady Mst. Inayata. During investigation, he collected the record of owner of Al-Shoaib Coach from the bus stop, which reveals the name of owner of bus of Al-Shoaib as Badaruddin @ Imdadullah. He had purchased the coach on installments basis from one Pervaiz Baloch. He also conducted inquiry about the owner of the Oil Tanker, his name was known to be Minhas. Accused Muhammad Hanif produced his driving license before him. It was verified about its genuineness. He also collected the postmortem reports of the dead bodies. During investigation, he made efforts for arrest of driver of Al-Shoaib Coach, namely, Altaf Muhammad, but could not succeed. After completion of investigation of the case, he submitted charge sheet against arrested accused Muhammad Hanif and absconding accused. He identified both the present accused and the case property. In his cross-examination, this witness deposed that on 12-01-2015, he had received papers of present case for conducting the investigation. He admitted that he had made entry for receiving the case papers in the roznamcha entry book and he has produced the same. S.H.O. of PS was also with him when he left PS for place of incident in Government mobile. He voluntarily stated that other police officials were also with him. He cannot state the number of police mobile in which they left PS. 30/35 minutes were consumed at place of incident. There is Nestle Company on eastern side of the road while southern and northern side there is a straight road, but he does not remember what the western side of place of incident is. He admitted that he has not arrested the accused at spot. He had recorded statements of two PWs under section 161, Cr.P.C at spot when he visited the place of incident, while other PWs got recorded their statements on different dates. He admitted that he has mentioned in his chief examination that Tanker was loaded of Ghee. He admitted that while in FIR, author of FIR has mentioned about the Oil Tanker. He deposed that the distance between PS and place of incident would be about 15/16 KMs. **He admitted that at the time of incident, he was not present at spot.** He has recorded the statements of remaining alive passengers during the investigation, but he does not remember the date of recording their statements. He deposed that the members of the bus staff had confirmed the name of owner of Al-Shoaib Coach as a Badaruddin @ Imdadullah. He admitted that he did not record the statements of both persons who disclosed him the name of owner of coach nor he made them witness in the case. He denied that he did not verify the documents of the coach from the concerned department. He denied that accused Imdadullah was starter of the bus stop. He denied that he is not owner of the coach Al-Shoaib. **He admitted that he has not produced any ownership documents of the effected coach Al-Shoaib in the Court,**



**which shows the accused Imdadullah is the owner of said coach.** He admitted that he has not mentioned the entry numbers in the statements of PWs. He denied that accused Imdadullah is not owner of said coach and they have implicated him unnecessary. When Court asked, he stated that the driver of said coach is still absconder. He is resident of District Shikarpur. During the course of cross-examination, this witness denied the material questions in negative and the defence failed to dislodge and shake the evidence of this witness. It is well-settled principle of Law that if suggestion after all is the suggestion and cannot take the place of proof unless admitted. The defence has no reason and Justification to differ the suggestion having been denied, the accused did able to substantiate the same, **the defence failed to shatter and shake the evidence of this witness and could not bring any doubt to the investigation proceedings by showing a single dent and no particular question with regard to the driving the Oil Tanker by the accused Hanif at the relevant time without driving licence.** Whatever questions put to this witness which were/are **immaterial and irrelevant** to what he deposed in the case, as such, accused could not disprove the testimony of this witness investigating officer of this case.”

8. I am surprised that the learned trial court not only believed the appellant Imdadullah as ‘owner of the coach’ but also convicted him on such belief when the investigating officer (in referred portion) himself had stated / admitted:

**“that he collected the record of owner of Al-Shoaib Coach from the bus stop, which reveals the name of owner of bus of Al-Shoaib as Badaruddin @ Imdadullah. He had purchased the coach on installments basis from one Pervaiz Baloch.”**

**“that the members of the bus staff had confirmed the name of owner of Al-Shoaib Coach as a Badaruddin @ Imdadullah. He admitted that he did not record the statements of both persons who disclosed him the name of owner of coach nor he made them witness in the case. He denied that he did not verify the documents of the coach from the concerned department”**

**“that he has not produced any ownership documents of the effected coach Al-Shoaib in the Court, which shows the accused Imdadullah is the owner of said coach.”**

The words of the investigating officer to the effect that appellant Imdadullah purchased the Coach on installments were never worth believing unless such ‘document’ is produced on record and proved in the manner as required by

law because such '*agreement*', if any. This was never appreciated by the learned trial Court while convicting the appellant. Be that as it may, the referral of staffs' disclosure to such effect (ownership) was also not to be considered because things are to be believed *only* on direct evidences, therefore, such claim of the investigating officer was also not of any significance when he (I.O) *himself* admitted that he (I.O) did not record the statements of such staff nor made them as '**witnesses**'. This was also not appreciated by learned trial court while convicting the appellant. Above all, when the Investigating Officer *himself* had admitted that '**he has not produced any ownership document to show that appellant Imdadullah is owner of said coach**' then the learned trial court was never left with any option but to disbelieve such **charge / allegation**. Such approach of the learned trial Court, being completely in against to settled principles of law of appreciation, can't be approved.

The above discussion is sufficient to *safely* conclude that conviction to extent of the appellant Imdadullah is illegal hence the same is set aside.

9            Now, I would turn to the case of other appellant namely Muhammad Hanif, the driver of **Oil Tanker** which collided with the Coach resulted in unfortunate incident. Here, it is worth reminding that in the instant case the allegation was of '**colliding of two vehicles with each other**' and driver (s) of both vehicles were arrayed as '**accused**' thereby meaning that as per prosecution both driver (s) were guilty of '*rash & negligent driving*'. At this juncture, it is material to add that an accident, even if happened by a vehicle, *ipso facto*, shall never be sufficient to hold the driver guilty of the offence under section 320 PPC but before insisting the

conviction on such charge the prosecution shall be required to prove that driver was driving the vehicle in '*rash*' and '*negligent*' manner. The quantum of '*speeding*' alone is never sufficient in satisfying the ingredients of this section or that of section 279 PPC because of availability of modern technology providing good breaking system. The prosecution, thus, was / is always burdened to prove that when the accident took place the condition of traffic or road was such so as to slow the speed but the driver didn't; or that driver acted in contravention of traffic rules or omitted in giving due care to attending circumstances thereby was guilty of '*negligence*'. In the case of Ravi Kapur v. State of Rajasthan (2013 SCMR 480), it is observed as:-

'11. 'Negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

12. The Court has to adopt another parameter, i.e 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others."

10. Accordingly, it is *safe* to conclude that prosecution was / is always duty bound to prove charge by proving attending circumstances of relevant time of incident so as to show that driver did not show reasonable care while driving the vehicle thereby endangering the lives or properties.

Such duty becomes double when the charge is of collusion between two vehicles because one of them is likely to come forward with plea of driving *properly*, as was / is in the instant case because the appellant in response to questions, posed to him, responded as:-

**“Ans. It is not fact that due to my mistake such accident was taken place”**

**“Ans. I am innocent, such accident took place due to mistake of the coach driver. I pray for justice. I further say that owner of oil tanker is Haji Umer R/o District Sahiwal Punjab.”**

11. Therefore, it was not only obligatory upon the prosecution to prove that it was the negligence of the appellant Muhammad Hanif which caused accident but the trial Court was also required to appreciate such fact while thrashing the evidences, so brought by prosecution on record.

12. The careful examination of the available material, *prima facie*, shows that none of the private witnesses claimed to be in a position to examine the manner of driving of the ‘Oil Tanker’ nor a single word has been stated by these witnesses that the appellant Muhammad Hanif was driving the ‘Oil Tanker’ in rash and negligent manner. Let’s have referral of relevant portion (s) of evidences of private witnesses which are:-

**“Pw-1, Dur Muhammad testified that on 10.01.2015, he was passenger of the Al-Shoaib Coach and was going towards Shikarpur. He abroad in the said bus from Quaidabad and was going towards link road Notational Highway to Superhighway and said bus reached near Memon Goth and met with the accident with Tanker which was coming from opposite side. It was 12:20 A.M when bus was collided with Tanker. In the meantime, fire exploded in the bus due to accident took place between the vehicles. The 50/60 passengers were available in the said bus. He himself jumped from the bus after broken the glasses of the window of the bus and saved his life. He became unconscious. ... Driver of the said coach is not available in the court. .. He stated that the accused persons present in the court were not seen by him at the time of incident...”**

**Pw-2, Shah Nawaz has testified that on 10.01.2015, he was passenger of the Al-Shoaib Coach and was going towards Khairpur-Mirus. He**

ascended in the said bus from Gulshan-e-Hadeed Bus stop along with his friends. Coach left its stop at 11:30 said coach was going on link road National Highway to Superhighway, bus reached near Kathore where one Tanker was coming from opposite side of the said Road, both Tanker and bus were hit to each other. Due to that said bus set on a fire. He tried to save his life. Inside the bus he heard noise that Glass of window was broken and he come in outside from the bus. He jumped from the said window outside the bus and safe his life. ... In his cross-examination, this witness admitted to state that he has not mentioned that he purchased the ticket from the accused Imdadullah.

**Pw-4, Mst: Inayata** has deposed on 10.01.2015, this incident was took place. **She had ascended in the Bus Al-Shoaib from Quaidabad Bus Stop for Shikarpur.** During the way said bus bumped with the Oil Tanker at about 1:00 a.m. due to such incident the Oil Tanker set on a fire and resulting passenger of the Bus made hue and cry some of the passenger had broken the glasses of door/window of the bus. Then after she along with her two younger sons jumped from the Bus through window of the bus and made safe herself, her kids. ..She stated that she was sitting on the rear seat of the bus and was awaking. The inside lights of the Bus was off.”

13. All three private witnesses were seated inside the Coach and evidently did not utter a single word that **‘Oil Tanker’** was coming from the wrong side or that it (Oil Tanker) was being driven in rash and negligent manner, therefore, evidences of these *private* witnesses *legally* was not sufficient to prove the charge of *rash and negligent driving* by the appellant Muhammad (driver of Oil Tanker). Here, it is also worth adding that none of the **official witnesses**, including the Investigating Officer, stated that the **‘Oil Tanker’** was coming from wrong side or that it (Oil Tanker) was being driven in rash and negligent manner. The prosecution *did* prepare memo of site which, in such like cases, must specify any violation of *traffic rules* such as **‘taking wrong side’** but perusal of site inspection of the instant case does not specify any such thing and even the evidence of Investigating Officer, so detailed in impugned judgment, shows that there was anything on part of the appellant Muhammad Hanif (driver of Oil Tanker) which was sufficient

to hold him guilty of '*negligence & rashness*'. The same is reproduced hereunder:-

**"Pw-13, S.I.P. Zulfiqar Ali** who is the investigating officer of this case. He has testified that on 12-01-2015 he was posted as SIO at PS Memon Goth. On the that day he received investigation of this crime through copy of FIR, 64 Postmortem Reports of the dead bodies of the persons, death certificates and proceedings under section 174,Cr.P.C as well as one sealed parcel of sample for DNA Report. On the same day, he had left PS for inspection of place of incident vide entry No.09 of 1610 hours, which he produced at Ex.18/A and deposed that it is same and correct. **He inspected the same on the pointation of SHO, namely, Jan Muhammad Ahemdani and prepared such memo of site inspection.** He seen the said memo at Ex.10/A and deposed that and bears his signature. On 13-01-2015, he again visited the place of incident and collected the samples from the burnt coach and Oil Tanker for sending to chemical examination, where he prepared such seizing memo in presence of police officials. Which he produced the memo at Ex.18/B and deposed that it bears his signature. On the same day, he called Bomb Disposal Squad and Motor Vehicle inspector at the place of incident, where Bomb Disposal Squad inspected the burnt vehicles and duly issued clearance certificates, which he produced at Ex.18/C and Ex.18/D and deposed that these are same and correct. The Motor Vehicle inspector also inspected burnt vehicles and issued MVI Report of the both vehicles, which he produced at Ex.18/E and deposed that it is same and correct. On 14-01-2015, S.H.O. received information that Oil Tanker driver Muhammad Hanif is available in the office of Jag T.V. On receiving such information, they proceeded along-with police officials on the Government police mobile to the Jag T.V Station. He arrested the accused Muhammad Hanif from the premises of the Jag T.V Station and prepared such memo of arrest in presence of witnesses. He seen the said memo at Ex.9/A and deposed that it bears his signature. Thereafter they took accused and returned back at PS, where he made such roznamcha entry No.47, which he produced at Ex.18/F and deposed that it is same and correct. He interrogated the accused and produced before the court of concerned Judicial Magistrate for taking Police remand. During course of investigation, he collected testing report from PCSIR Laboratory Complex Karachi. He produced the said Test Report at Ex.18/G and deposed that it is same and correct. He sent the samples of the dead bodies for DNA Test along-with list of 62 dead bodies. He produced letter at Ex.18/H and list at Ex.18/I and deposed that these bears his signatures. Then he collected the report of DNA. He produced copy of DNA report along-with list of names as per DNA Report at Ex.18/J and Ex.18/K respectively and deposed that these are same and correct. After collecting the DNA report he handed over the dead bodies of the deceased to their relatives under superdeginama. He produced the said superdeginama at Ex.18/L-1 to Ex.18/L-62 these bears his signatures. He also received postmortem reports of deceased persons, which he produced at Ex.19/M-1 to Ex.19/M-47 and deposed that these are same and correct. He also recorded the statements of relatives of the deceased and PWs. He also recorded statement of one injured lady Mst. Inayata. During investigation, he collected the record of owner of Al-

Shoaib Coach from the bus stop, which reveals the name of owner of bus of Al-Shoaib as Badaruddin @ Imdadullah. He had purchased the coach on installments basis from one Pervaiz Baloch. He also conducted inquiry about the owner of the Oil Tanker, his name was known to be Minhas. **Accused Muhammad Hanif produced his driving license before him. It was verified about its genuineness.** He also collected the postmortem reports of the dead bodies. **During investigation, he made efforts for arrest of driver of Al-Shoaib Coach, namely, Altaf Muhammad, but could not succeed. After completion of investigation of the case, he submitted charge sheet against arrested accused Muhammad Hanif and absconding accused. He identified both the present accused and the case property.** In his cross-examination, this witness deposed that on 12-01-2015, he had received papers of present case for conducting the investigation. He admitted that he had made entry for receiving the case papers in the roznamcha entry book and he has produced the same. S.H.O. of PS was also with him when he left PS for place of incident in Government mobile. He voluntarily stated that other police officials were also with him. He cannot state the number of police mobile in which they left PS. 30/35 minutes were consumed at place of incident. **There is Nestle Company on eastern side of the road while southern and northern side there is a straight road, but he does not remember what the western side of place of incident is.** He admitted that he has not arrested the accused at spot. He had recorded statements of two PWs under section 161, Cr.P.C at spot when he visited the place of incident, while other PWs got recorded their statements on different dates. He admitted that he has mentioned in his chief examination that Tanker was loaded of Ghee. He admitted that while in FIR, author of FIR has mentioned about the Oil Tanker. He deposed that the distance between PS and place of incident would be about 15/16 KMs. He admitted that at the time of incident, he was not present at spot. He has recorded the statements of remaining alive passengers during the investigation, but he does not remember the date of recording their statements. He deposed that the members of the bus staff had confirmed the name of owner of Al-Shoaib Coach as a Badaruddin @ Imdadullah. He admitted that he did not record the statements of both persons who disclosed him the name of owner of coach nor he made them witness in the case. He denied that he did not verify the documents of the coach from the concerned department. He denied that accused Imdadullah was starter of the bus stop. He denied that he is not owner of the coach Al-Shoaib. He admitted that he has not produced any ownership documents of the effected coach Al-Shoaib in the Court, which shows the accused Imdadullah is the owner of said coach. He admitted that he has not mentioned the entry numbers in the statements of PWs. He denied that accused Imdadullah is not owner of said coach and they have implicated him unnecessary. When Court asked, he stated that the driver of said coach is still absconder. He is resident of District Shikarpur...”

14. I am of the considered view that mere admission of one as *driver* of vehicle, met with accident, is never sufficient to convict him unless and until the required ingredients of '*negligence*' are established, as was / is

settled principle of law. In the case of Khair Muhammad Shah v. The State (2018 PCrLJ 914) same is reaffirmed as:-

“11. The prosecution is duty bound to establish that appellant was driving the offending vehicle in a rash and negligent manner. The prosecution must prove rash and negligent driving by leading independent and cogent evidence. The rash and negligent driving must be exhibited and proved on record. It seems that the learned trial Court, while convicting the appellant, has drawn wrong conclusion from the statement of complainant regarding the payment of burial expenditures and forgiving the appellant in the name of Almighty Allah, because it is well settled principle of law that while trying a criminal case, it is the duty of the Court to appraise the evidence strictly according to the legal requirements described by law without being swayed away emotionally for any other extraneous reasons which fall outside the pale of legal jurisdiction of appraisal evidence.”

15. This, however, shall not be the case where the ‘*driver*’ has no legal ‘*license*’ because driving without *license* itself is an offence and, *prima facie*, shows absence of ‘*due care*’ at least. In the instant matter the appellant Muhammad Hanif, while admitting himself as driver of Oil Tanker, had produced the *license* but learned trial court without appreciating the evidence of the Investigating Officer to the effect that “*Accused Muhammad Hanif produced his driving license before him. It was verified about its genuineness*” wrongly held as:-

“(16) **There** is no dispute that accident took place between Al-Shoaib Coach bearing registration No. JB-1158 which was driving the accused Atta Muhammad who has no valid driving license and **accused Muhammad Hanif was driving without valid and proper driving license in rash and negligent manner of his Oil Tanker bearing registration No.LWC-3516 while over taking**, due to the said incident fire exploded in the Al-Shoaib Coach wherein more than 64 passengers were sitting/travelling therein who were lost their precious lives with fire explosion in the said coach after the accident due to such unlawful act.”

I am surprised that there was no allegation that accident happened because of act of ‘**over-taking**’ by the Oil tanker rather all witnesses had stated that



'Oil Tanker' was coming from opposite site, therefore, said conclusion was completely erroneous and against the available material, hence can't earn an 'affirmation' to it.

16. In consequence to what has been discussed above, I am of the clear view that conviction (s), so recorded by the learned trial court, to both the appellants, are not tenable in law hence are hereby set-aside. The appeal (s) are accepted and the appellants are acquitted of the charge (s). They shall be released *forthwith* if are not required in any other case crime.

17. While parting, I am compelled to say that '*District Regional Transport Authority (ies)* and *Traffic police* are directly responsible to make the road (s) safe for journey only but assuring the already available rules and law (s) for '**commercial vehicles**' which, include but not limited to:-

- i) driving of such vehicle (s) only by fit and lawful license holder (s);
- ii) fitness of commercial vehicle (s) before their departure from initial point to its destination;
- iii) display of ownership of such vehicle (s) and its authorization to the person, driving the vehicle;

as was hammered by Hon'ble Mr. Justice Rahmat Hussain Jafferri (as he then was judge of this Court) in case of Atta Muhammad v. The State (2005 PCr.LJ 1648) that:-

"18. In order to curb the offence of accident by a person who is not holding licence or an effective license, the owner or person incharge of the vehicle should be charged along with driver of the vehicle so as to fulfill the requirement of law, implement the wisdom of the law-makers in making the provision in the shape of section 11 of the Ordinance, 1965, and to save loss of lives of the citizens, therefore, the trial Court may examine the case of joining the owner or person incharge of the Bus bearing No.JA-7070 as a co-accused in this case

on the application of prosecution or its own motion after giving him notice and providing him an opportunity of hearing and then may pass any appropriate order under the law.”

“22. Before parting with the order I would like to draw the attention of the Driving Licensing Authority under the Ordinance, 1965, that they should examine the cases of driving license issued to persons of above 50 years of age, who are driving transport vehicles to ascertain whether the provisions of section 4(2)(a) to (c) have been complied with or not. In order to make the road safe and save the precious lives of the citizens, various required tests and a report of blood sample of the drivers be obtained, who are driving passengers or goods vehicles, to ascertain whether they are addicts to any narcotic substance or drugs, therefore, a copy of the order be sent to the Central Police Office, Karachi, for issuing directions to all concerned for strict compliance of the above provisions of law.”

18. Accordingly, it is hereby directed that Provincial Regional Transport Authority, I.G.P. Sindh and Additional I.G. Traffic Sindh shall ensure that above directives stand complied with and no ‘**commercial vehicle**’ comes onto road without satisfaction of *fitness* of driver and commercial vehicle. Accordingly MIT-II shall circulate this judgment to all criminal courts while highlighting paragraph No.17 for guidance.

19. Since, I am conscious that strict adherence to above would *surely* bring fruit but the same can’t eliminate chances of ‘**road accidents**’ therefore, it is time to seek report in respect of direction (s), issued by this Court in the case *Hina Ghori & others v. NLC & Ors* (2016 YLR 1797) that:-

“20. While parting, I feel it quite necessary to add that the machines are undeniable needs of the people but these (machines) are always to be used after making a mechanism or procedure so as to put the controller of such machines on extraordinary care. The needs of the time did allow use of the heavy and giant vehicles to be used for transportation or to be used as a public transport and since the tic-tac (time) has become the most important factor in human life, therefore, 'speed' is appreciated by the customers. Thus, heavy vehicles, used for transportation or as public transport have become killing machines, plying on roads under legal authority i.e. license/permits. The ratio of road accident matters is increasing day by day hence the time has come which requires immediate steps to be taken which could burden the owners or drivers of such vehicles with more responsibility. The world has acknowledged the need of third party insurance with an object to ensure immediate

compensation to the family of victims of road accidents. Those who earn or get benefits should bear a little expenses for getting third party insurance as this will be an immediate relief during the way the victims complete the procedure through process of law is time taking one and even some time results into breathing out one, following the same. Besides, there are number of judgments of honourable Apex Court whereby pains of the victim families were discussed with a view for certain steps by the Government to frame some mechanism which could not only ensure extensive care and caution by owners/drivers of such vehicles but also an immediate relief/compensation because it is always the responsibility of the Legislature to bring changes into existing law as and when time or situation so demands because the law is a living organ. The time and ratio of the judgment of honourable Apex Court has made me to say that procedural changes should be made in relevant laws, including Motorcycle Vehicle Ordinance/Rules, keeping in view the:--

- i) strict and compulsory insurance for third party particularly for heavy transport vehicle and public transport as has been acknowledged and done in foreign countries;
- ii) mechanism to ensure immediate payment of such insurance amount to the victims or family of victims of road accidents;
- iii) special procedure to deal with Fatal Accident matters expeditiously;
- iv) other appropriate measures so as to lessen the grief of victims or heirs of victims of fatal Accident so also making owners or beneficiaries of such vehicles more responsible and caring."

20. The copy of the judgment be provided to the learned Attorney General for Pakistan, learned Advocate General Sindh, Federal Secretary Law and Secretary Law Sindh, to submit report whether required changes are made in the relevant law or otherwise. If not, reasons thereof.

**J U D G E**