IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.44 of 2009

Appellants	:	Messrs. Gulf Air & other through Khawaja Shoaib Mansoor, Advocate
Respondents	:	Major (R) Abdul Rauf Khan S/o Muhammad Yasin Khan & others through M/s. Ali Azad Salim & Shamim Bano, Advocates
Date of Hearing	:	12.11.2026
Date of Judgment:		___.11.2026

J U D G M E N T

Amjad Ali Sahito, J.— Through the instant High Court Appeal, the appellants have called in question the judgment dated 22.12.2008 and decree dated 06.01.2009, passed by the learned Single Judge of this Court in Suit No.777 of 2005, whereby the suit instituted by the respondents/plaintiffs for recovery of damages and compensation was decreed to the extent of US$1 million in favour of each plaintiff, with a direction for payment within three months and markup at the rate of 14% per annum thereafter.

2. The controversy arising in the present appeal principally concerns the liability of an international air carrier arising from denial of boarding on a scheduled connecting flight, subsequent rerouting and delayed arrival at the agreed destination. It also involves the question whether such liability is governed by the Carriage by Air (International Convention) Act, 1966, read with the Warsaw Convention as amended at The Hague, 1955, and whether the compensation awarded by the learned Single Judge is legally sustainable.

Brief facts:

3. The facts, in brief, are that the respondents/plaintiffs purchased return air tickets for travelling from Karachi to Jeddah through Gulf Air for performing Umrah during the holy month of Ramadan. On 04.11.2004, they travelled from Karachi to Abu Dhabi by Flight No.GF-751, where they were scheduled to board connecting Flight No.GF-2032 for Jeddah. According to the respondents, notwithstanding confirmed reservations and boarding cards issued at Karachi, they were denied boarding at Abu Dhabi and were instead rerouted through Bahrain, ultimately reaching Jeddah on 05.11.2004. They alleged that the disruption caused inconvenience, humiliation, mental agony and deprivation of the opportunity to offer Jumat-ul-Wida prayers at the Holy Mosque. They also complained of inconvenience and delay during their return journey. Consequently, they instituted Suit No.777 of 2005, claiming damages amounting to US$100 million. The appellants contested the claim, maintaining that the alteration of the route was necessitated by non-availability of seats and was permissible under the conditions of carriage. Upon conclusion of the trial, the learned Single Judge decreed the suit to the extent indicated above, giving rise to the present appeal.

Submissions of learned counsel:

4. Learned counsel for the appellants contended that the respondents were transported to their agreed destination, though through an alternative route necessitated by operational circumstances. He submitted that Condition No.9 appearing on the ticket jacket expressly permitted alteration of schedules, aircraft and stopping places and did not guarantee any particular time of arrival. According to learned counsel, no separate agreement existed requiring transportation by a particular connecting flight, and the appellants had acted within the contractual terms. He further submitted that the learned Single Judge failed to properly appreciate the contractual conditions and the applicable law governing international carriage by air. It was particularly urged that the award of US$1 million to each plaintiff was wholly disproportionate to the alleged inconvenience

and unsupported by evidence establishing damage of such magnitude. He accordingly prayed that the impugned judgment and decree be set aside.

5. Conversely, learned counsel for the respondents supported the impugned judgment and submitted that the respondents possessed confirmed reservations and boarding cards for their onward journey to Jeddah but were wrongfully denied boarding at Abu Dhabi. It was contended that the conduct of the airline staff constituted a breach of the contract of carriage, resulting in serious inconvenience, humiliation and mental suffering, particularly considering the religious purpose of the journey. Learned counsel further submitted that the appellants had participated in the trial and led evidence without specifically seeking determination of the applicability of the Convention and, therefore, could not be permitted to reopen the controversy at the appellate stage. It was maintained that the learned Single Judge had properly appreciated the evidence and that no interference with the impugned judgment was warranted.

6. On 12.11.2026, during the course of hearing, we inquired from the learned counsel for the parties whether there was any possibility of an amicable settlement of the dispute. In response, learned counsel for both parties submitted that they would seek instructions from their respective clients in this regard. Thereafter, the matter was heard and reserved for judgment. However, before pronouncement of the judgment, learned counsel for the appellants filed a statement, which is taken on record, wherein it has been stated that the appellant has once again considered the possibility of an amicable settlement of the matter with the respondents and, without admitting any of the allegations levelled by the respondents or acknowledging any liability, and without prejudice to its rights and contentions, purely on humanitarian grounds, has expressed its willingness to offer an amount of **USD 3,620.27** to be distributed amongst all the legal heirs of late Abdul Rauf Khan and a further amount of **USD 3,620.27** to respondent No.2, Mst. Mah Jabeen, widow of late Abdul Rauf Khan, towards full and final settlement of all

claims asserted against the appellants. It has further been stated that, subject to the directions of this Court, the appellant is willing to deposit the aforesaid amounts with the Nazir of this Court.

7. In view of the aforesaid development, learned counsel for the respondents was called upon to state his client's position regarding the settlement offer. However, he submitted that the respondents did not wish to pursue the matter on the basis of the proposed settlement and requested that the appeal be decided on its own merits, in accordance with law.

8. We have heard learned counsel for the parties and examined the impugned judgment, the evidence led by the parties and the relevant statutory provisions.

Points for determination:

9. The following questions arise for consideration:

(i) Whether the respondents' claim falls within the statutory framework governing international carriage by air and, in particular, whether the disruption and delayed completion of their journey attract Rule 19 of the First Schedule to the Carriage by Air (International Convention) Act, 1966;

(ii) Whether the appellants established any defence available under the applicable statutory provisions or contractual conditions;

(iii) Whether either of the exceptions to the limitation of liability prescribed under Rule 22(1) is attracted; and

(iv) Whether the compensation awarded by the learned Single Judge is sustainable under the applicable law and the evidence available on record.

Applicable statutory framework:

10. The incident giving rise to the present proceedings occurred on 04.11.2004. The applicable statutory framework is, therefore, the Carriage by Air (International Convention) Act, 1966, which gave force of law in Pakistan to the Warsaw Convention as amended at The Hague, 1955, in relation to international carriage falling within its scope. The subsequent Carriage by Air Act, 2012, does not retrospectively determine the substantive rights and liabilities arising from the incident in question.

11. Rule 1 of the First Schedule defines international carriage with reference to the agreed places of departure and destination and the circumstances specified therein. In the present case, the respondents purchased tickets for travelling from Karachi to Jeddah and returning to Karachi through an international airline, with agreed connecting points outside Pakistan. The contractual documents and the evidence of both parties establish that the transaction concerned international carriage by air. The subsequent alteration of the route through Bahrain did not change the character of the original contractual arrangement.

12. Rule 19 provides for the liability of a carrier for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Rule 20, however, affords a defence where the carrier establishes that it and its servants or agents took all necessary measures to avoid the damage or that it was impossible to take such measures. Rule 22 prescribes limitations upon liability, subject to the qualifications contained in the Convention, while Rule 24 provides that an action for damages arising from an occurrence covered by Rule 19, however founded, remains subject to the conditions and limitations prescribed by the Convention.

13. The limitation prescribed under Rule 22(1) is subject to two material qualifications. Firstly, the carrier and passenger may, by special contract, agree upon a higher limit of liability. Secondly, Rule 25 provides that the limitation shall not apply where the damage resulted from an act or omission of the carrier, its servants or agents, committed with intent to cause damage or recklessly and with knowledge that damage would probably result. Where the act or omission is attributable to a servant or agent, it must further be established that such person was acting within the scope of employment. These requirements are distinct from ordinary negligence or breach of contract. The mere fact that boarding was wrongfully denied or that a passenger suffered delay does not, without more, establish the aggravated conduct contemplated by Rule 25.

14. The aforesaid provisions demonstrate that the Convention constitutes the governing substantive framework for determining liability arising from occurrences falling within its scope. The Code of Civil Procedure, 1908, continues to regulate the conduct of proceedings, whereas the general principles of contractual liability may operate only to the extent that they are not inconsistent with or excluded by the special enactment. A claim falling within Rule 19 cannot escape the statutory conditions and limitations merely by being described as one for breach of contract, negligence, inconvenience or mental agony.

15. In *Dr. Professor Haroon Ahmed v. M/s. British Airways and others* (PLD 2004 Karachi 439), this Court examined the liability of an international air carrier arising from wrongful denial of boarding despite confirmed reservations. The distinction between a claim arising from an occurrence governed by the Convention and an independent breach of contractual obligation is material in determining the applicable legal framework. The nature of the alleged wrong must, therefore, be examined with reference to the contractual relationship and the circumstances in which the carrier failed to perform its obligation, rather than merely upon the description assigned to the claim by the passenger.

16. The facts of the present case are materially distinguishable. The respondents were not permanently refused transportation, nor was the contract of carriage abandoned. They were transported from Karachi to Abu Dhabi and, upon being denied boarding on the scheduled connecting flight, were rerouted through Bahrain and ultimately reached Jeddah on the following day. The grievance, therefore, substantially concerns interruption and delayed completion of the contracted international carriage. In these circumstances, Rule 19 is attracted, and the legal consequences of the delay must be examined in accordance with the Convention. The principle recognized in *Haroon Ahmed* cannot be construed as permitting the statutory conditions and limitations to be disregarded in every case involving denial of boarding.

Appreciation of evidence:

17. Turning to the evidence, PW-1, Major (Retd.) Abdul Rauf Khan, produced his affidavit-in-evidence, air tickets, travelling documents and other relevant material. During cross-examination, he admitted that the tickets had been purchased through a travel agent at Karachi and that he had read the terms and conditions appearing on the tickets. He maintained that boarding cards for the connecting flight to Jeddah had been issued at Karachi but that the respondents were subsequently denied boarding at Abu Dhabi and transported through Bahrain. He further stated that they reached Jeddah on 05.11.2004 and consequently missed the opportunity to offer Jumat-ul-Wida prayers at the Holy Mosque.

18. The appellants examined DW-1, Khalid Mahmood, District Reservation and Ticketing Manager, who maintained that the respondents' journey was governed by the contractual conditions appearing on the ticket jacket, particularly Condition No.9. According to his evidence, the carrier was required to use its best efforts to transport passengers with reasonable dispatch, while retaining the contractual right to alter schedules, aircraft and stopping places in circumstances contemplated by the contract. He further stated that the scheduled connecting flight did not have sufficient seats and that the respondents, along with other passengers, were transported through an alternative arrangement.

19. Significantly, DW-1 admitted during cross-examination that he had not personally witnessed the incident at Abu Dhabi and that his affidavit was based upon information obtained from the company's records. He also acknowledged that no documents had been annexed to his affidavit, although he stated that certain documents had been separately filed. Thus, while the evidence explains the position adopted by the appellants, it does not establish through contemporaneous operational records the precise circumstances necessitating denial of boarding or the measures taken to avoid the resulting delay.

20. The evidence of both parties nevertheless establishes that the respondents were not accommodated on their originally scheduled connecting flight and that their arrival at Jeddah was delayed because of rerouting through Bahrain. The contractual provision permitting alteration of schedules and routes cannot be construed as conferring an unrestricted right upon the carrier to disregard its statutory obligations. Equally, the issuance of boarding cards does not necessarily amount to an unconditional guarantee that transportation would occur on the originally scheduled flight irrespective of circumstances. The contractual conditions must be read consistently with the governing statutory provisions.

21. In our view, the appellants have not established the defence contemplated by Rule 20. The explanation that sufficient seats were unavailable, without satisfactory evidence of the circumstances giving rise to that situation and the measures taken to prevent or minimize the resulting damage, does not discharge the statutory burden. The fact that alternative transportation was ultimately arranged is relevant, but it does not, by itself, establish that all necessary measures had been taken to avoid the delay. The appellants' liability for such damage as is legally recoverable on account of the delay, therefore, cannot be excluded merely by reliance upon Condition No.9 of the ticket jacket.

Whether the statutory limitation stands displaced:

22. The next question is whether either of the exceptions to the limitation of liability under Rule 22(1) has been established. As regards the first exception, no special agreement providing for a higher limit of liability has been proved. On the contrary, DW-1 maintained that no separate or additional contract had been entered into between the parties. The respondents have not produced any contractual document establishing that the appellants agreed to assume liability beyond the limit prescribed by the Convention. The first exception is, therefore, not attracted.

23. As regards Rule 25, PW-1 alleged that an airline employee threatened to send the respondents back to Pakistan if they protested against the denial of boarding. DW-1 denied the allegation but admittedly had no personal knowledge of the incident. Even if the respondents' version concerning the conduct of the airline staff is accepted, the statutory exception cannot be invoked merely upon proof of discourteous behavior, wrongful denial of boarding or consequential inconvenience. It must further be established that the damage resulted from an act or omission committed with intent to cause damage or recklessly and with knowledge that damage would probably result.

24. The evidence does not sufficiently establish the requisite intent or conscious recklessness contemplated by Rule 25. The respondents were admittedly rerouted through Bahrain and subsequently transported to Jeddah. Although these arrangements do not absolve the appellants of liability for the delay, they are relevant in assessing whether the conduct established on record satisfies the aggravated statutory standard. In the absence of satisfactory proof of the ingredients prescribed by Rule 25, the limitation under Rule 22(1) remains applicable.

25. It must, however, be emphasized that the statutory limitation is a ceiling upon liability and not a measure of damages. Even where the limitation is displaced under Rule 25, the claimant remains obliged to establish damage legally recoverable under the applicable law. Conversely, where the limitation remains applicable, the Court cannot award the maximum prescribed amount merely because liability for delay has been established.

Assessment of damages:

26. The learned Single Judge awarded US$1 million to each plaintiff. The respondents' claim principally rested upon mental agony, humiliation, inconvenience and deprivation of the opportunity to offer Jumat-ul-Wida prayers at the Holy Mosque. The religious purpose of their journey and the disappointment occasioned by the disruption are relevant circumstances in

appreciating the inconvenience suffered. Nevertheless, the assessment of damages must rest upon legally recognized principles and the evidence supporting the nature and extent of the loss. The subjective significance of the inconvenience, however considerable, cannot independently justify an award of such magnitude.

27. Rule 19 imposes liability for damage occasioned by delay; it does not provide for an automatic monetary award upon every instance of delayed arrival. The claimant must establish not only the occurrence of delay but also damage legally recoverable under the applicable framework and its causal connection with the delay. The nature of recoverable damage is consequently a question distinct from the existence of the carrier's liability and from the statutory limitation prescribed under Rule 22.

28. In the present case, the respondents claimed amounts under the heads of special damages, including expenditure on tickets, accommodation and travelling. However, the evidence does not satisfactorily establish that the expenditure claimed represented additional financial loss occasioned by the delay, as distinguished from ordinary expenses incurred in undertaking the journey, which was ultimately completed. No definite amount of additional expenditure, loss of earnings or other pecuniary damage attributable to the disruption has been established through the evidence.

29. The remaining claim substantially concerns mental agony, humiliation, inconvenience and loss of an opportunity to participate in a religious observance. These matters were described by PW-1 in his testimony. The evidence establishes that the respondents were required to undertake an unanticipated journey through Bahrain, experienced disruption of their travel arrangements and reached Jeddah later than originally scheduled. Their grievance cannot, therefore, be dismissed as wholly unfounded. Nevertheless, compensation for the inconvenience and distress complained of must be distinguished from an award of damages for an independently established financial loss. The absence of proof of special

damages does not, by itself, determine whether any general damages are recoverable; that question depends upon the applicable substantive law and the nature of the injury established.

30. The correspondence concerning an apology and an offer of compensation by the appellant airline is also relevant to the circumstances of the disruption. Although such correspondence cannot, without examining its terms, be treated as an admission of liability for the substantial damages claimed, it forms part of the material bearing upon the inconvenience occasioned by the altered journey. In any event, the amount demanded by the respondents or offered by the airline cannot substitute for an independent judicial assessment of legally recoverable damages.

31. Having regard to the evidence, we find that the learned Single Judge was justified in examining the inconvenience and distress occasioned by the disruption, but the compensation of US$1 million to each plaintiff is manifestly excessive and cannot be sustained upon the material available on record. The respondents were ultimately transported to their agreed destination, and no substantial pecuniary loss attributable to the delay has been proved. At the same time, the interruption of the journey, the unanticipated rerouting and the delayed arrival are established circumstances which require consideration in determining such compensation as may be permissible under the applicable law. The assessment must remain proportionate to the injury proved and subject to the statutory conditions and limitations governing liability.

Whether the matter requires remand under Order XLI Rule 25 CPC:

32. We have also considered the question whether the omission to frame a specific issue concerning the applicability of the Carriage by Air (International Convention) Act, 1966, requires a reference to the learned Single Judge under Order XLI Rule 25 CPC. In this regard, guidance may appropriately be obtained from the principles laid down by the Honourable Supreme Court of Pakistan in *Jan Muhammad and others v. Mst. Sakina Bibi and*

others (PLD 2017 SC 158). The distinction between a pure question of law and a question requiring a factual foundation is material. Where the determination of a legal question depends upon facts which have not been established, further evidence may become necessary. However, where the relevant facts are already available on the record and the controversy can be resolved by applying the appropriate legal provisions to those facts, a remand is not an inevitable consequence of the omission to frame a specific issue.

33. In the present case, the existence of the contract of carriage, the agreed international journey, the issuance of boarding cards, the scheduled connecting flight, the denial of boarding, the subsequent rerouting through Bahrain and the delayed arrival at Jeddah are matters which have already been brought on record through the pleadings and evidence of the parties. The appellants themselves examined their witness to explain the circumstances of the altered journey and relied upon the contractual conditions appearing on the ticket jacket. The respondents, likewise, produced their travelling documents and gave evidence concerning the disruption and consequential inconvenience. Thus, the parties had sufficient notice of and opportunity to address the factual circumstances forming the basis of the present controversy.

34. It is true that the learned Single Judge did not specifically frame an issue concerning the applicability of the aforesaid special enactment. Nevertheless, the omission to frame an issue, by itself, does not render the entire proceedings defective or necessitate a further trial. The object of framing issues is to identify the real controversy between the parties and enable them to produce evidence in support of their respective positions. Where the parties have already understood the controversy and led evidence upon the relevant facts, the appellate Court is competent to determine the legal consequences arising therefrom.

35. Order XLI Rule 24 CPC expressly empowers the appellate Court to finally determine a matter where the evidence upon the

record is sufficient to enable it to pronounce judgment, notwithstanding that the Court from whose decree the appeal is preferred proceeded upon a ground different from that upon which the appellate Court proceeds. The provision is intended to enable the appellate Court to finally adjudicate the controversy rather than remit the matter merely on account of an omission which can effectively be addressed by applying the correct law to the evidence already available.

36. Conversely, Order XLI Rule 25 CPC contemplates a reference to the Court of first instance where an issue essential to the right decision of the suit has been omitted and requires trial and determination upon the factual foundation. The exercise of such power is discretionary and must be guided by the necessity of further factual adjudication. It is not intended to provide an additional opportunity to the parties to fill gaps in evidence or to reopen a trial which has already concluded, particularly where the existing record is sufficient for a just decision.

37. Applying the aforesaid principles to the facts of the present case, we are of the considered view that no further evidence is necessary for determining the applicability and legal effect of the Carriage by Air (International Convention) Act, 1966. The original journey, the agreed destination, the connecting flights, the denial of boarding and the consequential delay are established facts. Whether those facts attract Rule 19 and whether the appellants have established the statutory defence under Rule 20 or the exception contemplated by Rule 25 are matters which can be determined by examining the evidence already recorded. Similarly, the quantum of compensation can be assessed on the basis of the nature of injury and loss established through the evidence. No material has been identified which would justify reopening the trial for recording further oral or documentary evidence.

38. We are also mindful that the suit was instituted in the year 2005, the impugned judgment was delivered in 2008 and the present appeal has remained pending since 2009. In these

circumstances, directing the parties to undergo another round of proceedings before the learned Trial Court, followed by a further hearing of the appeal, would not serve any useful purpose when the controversy can be finally resolved on the existing record. The appellate jurisdiction is intended not only to correct errors in the judgment under appeal but also to bring the litigation to a lawful and effective conclusion wherever the record permits.

39. Accordingly, we find that the present case is appropriately governed by Order XLI Rule 24 CPC. The omission to frame a specific issue concerning the applicability of the Convention does not warrant a reference under Order XLI Rule 25 CPC, as the relevant factual foundation is already available on record and the parties have had adequate opportunity to lead evidence. We, therefore, decline to remit the matter to the learned Trial Court and proceed to finally determine the appeal on its merits.

Conclusion:

40. For the foregoing reasons, we hold that the respondents' claim, arising from the interruption and delayed completion of their international journey, is governed by the Carriage by Air (International Convention) Act, 1966, read with the Warsaw Convention as amended at The Hague, 1955. The appellants have failed to establish the defence contemplated by Rule 20 or the circumstances necessary to displace the limitation of liability under Rule 22(1) read with Rule 25. The respondents have established inconvenience and distress occasioned by the disruption of their journey; however, the award of US$1 million to each plaintiff is manifestly excessive and unsupported by the evidence available on record.

41. For the foregoing reasons, the instant High Court Appeal is partly **allowed.** The impugned judgment dated 22.12.2008 and decree dated 06.01.2009 are modified to the extent that the compensation awarded at USD 1,000,000/- to each plaintiff is reduced to USD 5,000/- (Five Thousand US Dollars only) per plaintiff/respondent, which, in the facts and circumstances of the case, is considered to be reasonable compensation for the

inconvenience and distress established on the record, subject to the applicable statutory framework. The remaining findings of the learned Single Judge, to the extent they are consistent with the observations and conclusions recorded herein, are maintained. The decree shall stand modified accordingly.

42. Before parting with the judgment, we deem it appropriate to observe that, during the pendency of the appeal, the appellants had expressed their willingness, purely on humanitarian grounds and without prejudice to their rights and contentions or admission of any liability, to offer USD 3,620.27/- for distribution amongst the legal heirs of late Abdul Rauf Khan and a further amount of USD 3,620.27/- to respondent No.2, Mst. Mah Jabeen, widow of late Abdul Rauf Khan, towards full and final settlement of their claims. The said offer was subsequently conveyed to this Court through a statement filed by learned counsel for the appellants, which was taken on record. However, when the learned counsel for the respondents was called upon to state their position, he declined to accept the proposed settlement and requested that the appeal be decided on its merits in accordance with law. Consequently, the aforesaid offer has not been taken into consideration in determining the merits of the appeal, which have been adjudicated independently on the basis of the material available on record and the applicable law.

43. The appeal is accordingly disposed of in the above terms. There shall be no order as to costs.

JUDGE

JUDGE