IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

High Court Appeal No.323 of 2022

Appellant	:	Pakistan National Shipping Corporation through Mr. Mohsin Ali, Advocate
Respondents	:	Muhammad Siddique Panhwar and others through Mr. Farrukh Usman, Advocate appearing for Respondents No.1 & 2
Date of Hearing	:	22.10.2026
Date of Judgment:		___.10.2026

J U D G M E N T

Amjad Ali Sahito, J-. Through this High Court Appeal, the appellant, Pakistan National Shipping Corporation, has challenged the judgment dated 30.03.2022 and the decree dated 30.08.2022 passed by the learned Single Judge of this Court in Suit No.1548 of 1999, whereby the suit instituted by the respondents for recovery of compensation and damages arising out of the death of their son, Tausif Panhwar, was decreed jointly and severally against the defendants for an amount of Rs.10,000,000/-, together with markup at the rate of 14% per annum from the date of institution of the suit until payment, along with costs.

2. The relevant facts, as emerging from the record, are that the respondents, being the parents of the deceased, instituted the suit seeking compensation for the loss occasioned by his death while serving as a Deck Cadet aboard the vessel M.V. Ayubia, operated by the appellant. According to the respondents, during the course of his employment, the deceased was directed by the Master/Captain of the vessel to inspect an engine switch situated at a height, although the assigned task was not part of his

ordinary duties and he had not been provided with the requisite safety equipment, including a helmet. While performing the assigned task, he fell into Hatch No.4 and sustained serious injuries to his head, spine and limbs.

3. The respondents further alleged that, following the accident, the deceased was not provided with appropriate and timely medical treatment. According to them, although the vessel was initially diverted to Goa, India, the deceased was subsequently transported to London without first receiving the requisite treatment at the nearest suitable medical facility. During this period, his condition deteriorated, and he was eventually admitted to Queen's Hospital, London, where he died on 12.02.1999. The respondents attributed the accident, the delay in arranging appropriate medical treatment, and the manner in which the deceased was transported and attended to, to the negligence of the appellant and its officials.

4. The appellant contested the suit, inter alia, on the grounds that the claim was barred by the special statutory regime governing compensation payable to seafarers and by the provisions of the Workmen's Compensation Act, 1923. It maintained that the deceased had received the requisite medical attention, that the decisions concerning the diversion of the vessel and his subsequent transportation were taken in accordance with the circumstances prevailing at the relevant time, and that his own conduct contributed to the accident. The appellant further asserted that an amount of Rs.350,000/- had already been paid to the respondents as death compensation under the applicable rules and the National Maritime Board Agreement, thereby discharging its liability.

5. On the basis of the pleadings, the learned Single Judge framed the following issues:

i. Whether the plaintiffs were entitled to a decree for Rs.10,000,000/- with markup by way of compensation?

ii. Whether the suit was maintainable in law?

iii. Whether the plaintiffs had received Rs.350,000/- as death compensation in respect of the death of the deceased on 30.10.1998 during the course of his employment with defendant No.2?

iv. Whether defendant No.2 had provided medical treatment to the deceased?

v. Whether the plaintiffs were entitled to the relief prayed for?

vi. What should the decree be?

Upon appraisal of the evidence and the submissions advanced by the parties, the learned Single Judge decided the question of maintainability in favour of the respondents, held that the payment of Rs.350,000/- did not adequately compensate them for the loss suffered, and decreed the suit as stated above. Aggrieved by the judgment and decree, the appellant has preferred the present appeal.

6. Learned counsel for the appellant contended that the impugned judgment and decree are contrary to law and the evidence available on record. It was argued that the deceased, being a seafarer employed by a statutory corporation, was governed by a special statutory regime and that the respondents could not maintain an ordinary civil suit for compensation arising out of his death. It was further submitted that the respondents had already received death compensation under the applicable rules and the National Maritime Board Agreement, and that the award of additional damages was, therefore, unwarranted. Learned counsel also questioned the findings concerning negligence, the provision of medical treatment, and the assessment of damages, contending that the evidence had not been properly appreciated. Accordingly, it was prayed that the appeal be allowed and the impugned judgment and decree be set aside. In support of these submissions, reliance was placed upon *Muhammad Iqbal and others v. Nasrullah* (2023 SCMR 273), *State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others* (2017 SCMR 999),

and *Dur Muhammad and others v. Abdul Sattar* (PLD 2003 Supreme Court 828).

7. Conversely, learned counsel for the respondents supported the impugned judgment and decree, submitting that the learned Single Judge had correctly appreciated the evidence and rightly concluded that the death of the deceased resulted from the negligence of the appellant and its failure to ensure adequate care and medical treatment. It was contended that the appellant had failed to identify any statutory provision barring the respondents' independent claim for damages. The payment of Rs.350,000/-, according to learned counsel, could not extinguish their right to seek compensation for the loss arising from the death of their son, particularly where the claim was founded upon the alleged negligence of the appellant and its officials. Dismissal of the appeal was, therefore, sought. Reliance was placed upon *Nathey Khan v. Government of West Pakistan (now Punjab)* (1980 SCMR 485) and *Karachi Transport Corporation v. Shaukat Ali Khan and 2 others* (1988 MLD 582).

8. We have heard learned counsel for the parties and examined the available record with their assistance.

9. The controversy requiring determination is whether the appellant has demonstrated any material error of law or fact in the findings recorded by the learned Single Judge so as to warrant appellate interference. The principal questions concern the maintainability of the suit in view of the statutory provisions governing compensation for seafarers and workmen, the legal effect of the payment of Rs.350,000/-, the evidence concerning negligence and medical treatment, and the quantum of compensation awarded to the respondents.

Maintainability of the Suit:

10. The appellant's principal objection is that the respondents' claim was barred by the Merchant Shipping Act, 1923, the Workmen's Compensation Act, 1923, and section 2-A of the Federal Service Tribunal Act, 1973, on the premise that the

deceased, being employed by a statutory corporation, was a civil servant. It was further contended that, having received the dues payable upon the death of the deceased, including the amount of Rs.350,000/- under the National Maritime Board Agreement, the respondents had no surviving cause of action against the appellant.

11. In examining this objection, it is necessary to distinguish a claim for statutory compensation from an independent action for damages founded upon negligence. Section 19 of the Workmen's Compensation Act, 1923, provides the mechanism for determining questions arising in proceedings under that enactment and, under subsection (2), excludes the jurisdiction of the Civil Court in respect of matters required to be determined by the Commissioner or the enforcement of liabilities incurred under the Act. The material portion of section 19 reads as follows:

> *"19. Reference to Commissioners. (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.*
>
> *(2) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act."*

12. The scope of the aforesaid statutory bar was authoritatively considered by a four-member Bench of the Honourable Supreme Court of Pakistan in *Nathey Khan v. Government of West Pakistan* (1980 SCMR 485). The Supreme Court held that the exclusion of the jurisdiction of Civil Courts under section 19(2) is confined to claims arising under the Workmen's Compensation Act, 1923, and does not extend to an independent suit for damages in tort. The Court observed that the cause of action under the Act is distinct from that arising in tort, as the former provides for statutory compensation subject to the prescribed limits, whereas the latter requires proof of negligence and permits the Court to

assess damages in accordance with the loss established. The Supreme Court explained the distinction in the following terms:

> *"On the other hand, a workman can succeed in a claim for tort against his employer only if he can prove that he was injured on account of the negligence of his employer. And, if he can prove that he was injured on account of his employer's negligence the compensation to be awarded to him is fixed by the Court and is not subject to any limit."*

13. The principle emerging from this judgment is that the jurisdiction of the Commissioner under the Workmen's Compensation Act is confined to the relief contemplated by that enactment. The Commissioner is not empowered, by virtue of section 19, to adjudicate an independent claim for damages founded upon the employer's negligence. Accordingly, the availability of a statutory remedy does not, by itself, extinguish an otherwise maintainable action in tort.

14. The same distinction was recognized by a Division Bench of this Court in *Karachi Transport Corporation v. Shaukat Ali Khan* (1988 MLD 582), wherein the heirs of a deceased person had received compensation under section 67 of the Motor Vehicles Ordinance, 1965. The Court rejected the contention that receipt of such compensation precluded an independent action under the Fatal Accidents Act, 1855, observing that the two remedies were distinct in nature. Reference was also made to *National Construction Company (Pak) Ltd. v. Mst. Bhaghari*, in which the payment of compensation under the Workmen's Compensation Act was held not to bar a subsequent suit for damages under the Fatal Accidents Act. Likewise, in *Mst. Zafar Bano v. Messrs IFFCO Pakistan (Pvt.) Ltd.* (2017 YLR Note 303), this Court held that a claim for damages founded upon composite negligence was distinct from the employer's statutory liability under the Workmen's Compensation Act. The mere pendency of proceedings before the Commissioner, therefore, did not justify rejection of the plaint under section 19(2).

15. The principle is further supported by *Pakistan Steel Mills Corporation Ltd. v. Malik Abdul Habib* (1993 SCMR 848), wherein the Honourable Supreme Court upheld a decree passed in favour

of the parents of a deceased employee under the Fatal Accidents Act, 1855, notwithstanding the employer's action in forwarding an accident report to the Commissioner for Workmen's Compensation. In the present case, no proceedings under the Workmen's Compensation Act have been shown to have been initiated. The appellant has, therefore, failed to establish that the respondents' independent claim for damages was required to be adjudicated exclusively under that enactment.

16. The appellant's reliance upon the maxim that a special law prevails over a general law does not advance its case. That principle becomes relevant where two enactments govern the same subject matter and their provisions are in conflict. The Workmen's Compensation Act, 1923, provides a statutory remedy for compensation arising out of employment-related injury or death, whereas the Fatal Accidents Act, 1855, provides a remedy in respect of death caused by a wrongful act, neglect or default. As explained in *Nathey Khan* (supra), the causes of action and the legal foundations of the two remedies are distinct. Similarly, the National Maritime Board Agreement or any applicable service arrangement cannot, merely by prescribing a particular amount of compensation, be treated as excluding the jurisdiction of the Civil Court over an otherwise maintainable claim in tort. No specific provision of the Merchant Shipping Act, 1923, has been identified by the appellant that expressly bars the present suit for damages on the pleaded ground of negligence.

17. We have also considered the objection founded upon section 2-A of the Federal Service Tribunal Act, 1973. Although the appellant has relied upon the statutory status attributed to employees of certain corporations, learned counsel has not identified any provision of the said enactment that excludes the jurisdiction of the Civil Court over the respondents' claim for damages arising from the alleged negligence of the appellant and its officials. The respondents' claim, as pleaded, is founded upon the circumstances of the accident, the alleged failure to provide appropriate safety equipment, and the subsequent medical

treatment of the deceased. The appellant has not demonstrated how the provision relied upon necessarily bars adjudication of that independent cause of action.

18. It is also material that the appellant neither produced a copy of the National Maritime Board Agreement with its written statement nor placed it on record during evidence. In the absence of the agreement and a demonstrated statutory provision having the effect asserted by the appellant, the contention that the respondents' claim stood extinguished cannot be accepted. In these circumstances, we find no sufficient legal basis to interfere with the finding of the learned Single Judge that the suit was maintainable.

Effect of the Payment of Rs.350,000/-:

19. The next question concerns the payment of Rs.350,000/- allegedly received by the respondents as death compensation. The appellant maintains that the payment discharged its liability and precluded any further claim arising from the death of the deceased. The respondents, on the other hand, contend that the amount represented compensation payable under the applicable arrangement and did not satisfy their independent claim for damages arising from the alleged negligence of the appellant. The distinction between statutory compensation and damages in tort is material to the determination of this issue. Compensation payable under the Workmen's Compensation Act, 1923, or under an applicable service arrangement may constitute a statutory or contractual benefit payable upon death or injury arising in the course of employment, without requiring proof of negligence. An action under the Fatal Accidents Act, 1855, on the other hand, rests upon proof that the death resulted from the wrongful act, neglect or default of the defendant. The nature and extent of liability in the latter case must be determined in accordance with the evidence and the applicable principles governing damages.

20. As held in *Nathey Khan* (supra), the existence of a statutory compensation mechanism does not, in itself, extinguish an independent cause of action in tort. Equally, receipt of a

particular amount does not establish, without examination of the governing arrangement and the circumstances of payment, that the recipient has accepted it in full and final satisfaction of every claim arising from the death.

21. In the present case, the learned Single Judge considered the receipt acknowledging payment of Rs.350,000/- and the appellant's plea that the amount discharged its liability. However, the appellant has not established that the payment was made in full and final settlement of the respondents' independent claim for damages or that any applicable and binding provision rendered that amount the exclusive measure of its liability. Accordingly, the mere fact that the respondents received Rs.350,000/- cannot, in the circumstances of this case, constitute a complete defence to their claim. We find no sufficient ground to disturb the conclusion reached by the learned Single Judge on this aspect.

Negligence and Medical Treatment:

22. We now turn to the findings concerning the accident and the medical treatment provided to the deceased. The respondents' case was that the deceased had been directed to perform a task outside his ordinary duties without the requisite safety equipment and that, after sustaining serious injuries, he was not provided with appropriate and timely medical treatment. They further alleged that the deceased contracted Hepatitis B and C and AIDS following a blood transfusion at Goa, where adequate medical facilities and equipment were allegedly unavailable, and that his subsequent transportation to London was undertaken too late to avert the consequences. The learned Single Judge considered the evidence produced by the parties, including the testimony of the witnesses examined on behalf of the respondents and that of the appellant's witness, Captain Zahid Hussain. The medical record and the circumstances surrounding the deceased's transportation from Goa to London and his subsequent treatment at different hospitals were also taken into consideration.

Quantum of Compensation:

23. As regards the quantum of compensation, the respondents pleaded that the deceased was approximately twenty-one years of age, had completed his maritime studies and training, and was serving as a Deck Cadet with prospects of advancement in his profession. They relied upon his education, earning capacity, anticipated career progression, and the financial loss occasioned to them by his death. The learned Single Judge considered these circumstances while determining the compensation payable and ultimately awarded Rs.10,000,000/-, together with markup at the rate of 14% per annum from the date of institution of the suit until payment. The assessment of damages in a claim of this nature must be founded upon the evidence available on record and the applicable principles of law. The Court is required to consider the relevant circumstances, including the age and earning capacity of the deceased, his employment and prospects, and the pecuniary loss suffered by the dependants. The award must be fair and reasonable in the circumstances of the case and cannot rest upon conjecture alone.

24. The approach to compensation in fatal accident cases was considered by a Division Bench of this Court in *Province of Sindh v. Rahim Ali Palari* (2024 MLD 968), wherein the Court emphasised that the assessment of compensation should not be unduly restrictive or pedantic, having regard to the irreparable loss suffered by the bereaved family. The Court observed that, once the responsibility for an accident is established, the concerned public authority must ensure that the aggrieved family is compensated without unnecessary delay or avoidable litigation. The judgment further recognised that monetary compensation cannot fully replace the loss occasioned by death, although it may provide some measure of relief to the bereaved family. The aforesaid principles underscore the importance of determining fair compensation on the basis of the circumstances and evidence of each case. They do not dispense with the requirement of establishing liability or assessing damages in accordance with law.

25. Further, the material question is whether the appellant has identified any substantial error in the appreciation of the evidence that would justify interference with the findings recorded by the learned Single Judge. The record, as discussed in the impugned judgment, contains material relating to the circumstances of the accident, the seriousness of the injuries, the medical facilities available, and the measures taken following the incident. The learned Single Judge assessed this material and recorded findings concerning the provision of medical treatment and the responsibility attributable to the appellant. An appellate Court does not ordinarily interfere with findings of fact merely because another view of the evidence may be possible. Such interference is warranted where the findings are shown to be perverse, based upon material misreading or non-reading of evidence, or otherwise contrary to law.

26. The respondents' case must be assessed in light of the duty of care owed to an employee performing assigned duties and the obligation to establish the negligence upon which the claim for damages is founded. In the present case, the appellant has not identified any decisive piece of evidence that was ignored by the learned Single Judge or any material admission that necessarily displaces the findings recorded in the impugned judgment. Having examined the grounds urged in the appeal, we are not persuaded that the findings concerning the circumstances of the accident and the subsequent medical treatment suffer from any material infirmity warranting appellate interference.

27. We have also considered the authorities relied upon by learned counsel for the appellant. Having examined the submissions advanced and the circumstances in which those authorities were cited, we find that they do not establish any legal prohibition against the respondents' independent claim for damages or demonstrate any material error in the findings recorded by the learned Single Judge. The principles governing the maintainability of an action in tort, as explained in *Nathey Khan* (supra), remain directly relevant to the principal objection raised in this appeal. The appellant has failed to establish any

material misreading or non-reading of evidence, jurisdictional defect, or error of law that would justify setting aside or modifying the impugned judgment and decree.

28. For the foregoing reasons, we are of the considered view that the appellant has failed to make out a case for interference with the impugned judgment and decree. Consequently, **High Court Appeal No.323 of 2022 is dismissed.** The judgment dated 30.03.2022 and decree dated 30.08.2022 passed by the learned Single Judge of this Court in Suit No.1548 of 1999 are **maintained.**

JUDGE

JUDGE

KAMRAN/PS