IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No. 41 of 2017
[Adamjee Insurance Company Ltd. V. Dewan Zubair Farooqui & another]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

1.For orders on Nazir Reports dt. 14.2.21, 22.1.22 & 24.1.22
2.For orders on office objection a/w reply at A
3.For hg of CMA No.2175/21
4.For hg of main case
5.For hg of CMA No.163/17

09.04.2025.

Mr. Khilji Bilal Aziz, advocate for Appellant.
M/s. Hanif Faisal Alam, Abdul Qadir Mirza and
Abdul Qadeer Naich, advocates for respondents.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: This High Court Appeal impugns a judgment and decree, passed by learned single Judge, exercising Original jurisdiction in Suit No. 363 of 1992 for recovery of Rs.20 million in terms of Insurance Policy No.05/P/044/000135/02/91. In the suit, three issues were framed and re-casted on 09.09.2001, which read as under:-

i. Whether the incident, which occurred on 3.4.91 leading to death of Adnan and Furqan Farooqi, was an incident of kidnapping or attempt to kidnap?

ii. Whether the plaintiffs are entitled for the relief claimed?

iii. What should the decree be?

2. In support of claim, plaintiffs examined at least six witnesses including Incharge CPLC Reporting Cell at Exh.10. On the other hand, from appellant side, one Khalid Hameed, Assistant Manager was examined. Learned single Judge after hearing the parties has accepted the claim of the respondents and decreed the suit with costs. Hence this appeal.

3. Learned counsel for appellant has argued that in the entire judgment, the evidence has not been appreciated, the policy was to cover the incident of kidnapping only, whereas this was a case of snatching, which the respondents have attempted to make look as a case of kidnapping. Even the evidence led by the respondents does not conclusively establish the incident to be an attempt to kidnap the respondents.

4. Learned counsel for respondents have supported the impugned judgment. However, to our question whether the evidence has been appreciated by the learned single Judge in the impugned judgment, they have conceded that it has been not. Yet, according to them, this Court being the Appellate Court can always reappraise the evidence and record its own findings.

5. We have heard the parties. As per record, when respondents were travelling in a car on 08.04.1991, two persons in civilian clothes, who turned out to be Police Constables later on, chased them on a motorcycle and after a while stopped them by overtaking. The respondents apprehending some mis-happening tried to reverse the car, upon which the two culprits shot upon them. As a result, one person sitting inside the car was murdered and one got injured. This incident was widely reported in media and FIR was also registered against the culprits, who were later on nabbed by the police and convicted by a criminal Court in the trial for an offence, among other, under section 302 PPC.

6. The two persons who were inside the car at the time of incident when examined as plaintiffs have stated in the evidence that at the first instance the culprits tried to kidnap or snatch the vehicle. When we

asked learned counsel for the respondents as to how from such assertion it can be conclusively ascertained that it was a case of kidnapping when the witnesses themselves are not sure about it, he has referred to the report of CPLC filed in the trial, which according to him conclusively proves that the culprits had intention to kidnap the respondents but due to mis-happening i.e. murder of one person and injuries to another, gathering of the people at the spot, and arrival of the police, they fled away.

7. Be that as it may, we have seen that even CPLC report heavily relied by counsel of the respondents as a proof has not been discussed by learned single Judge in the impugned judgment, nor evidence of the plaintiffs, who were present inside the vehicle at the time of incident, and their witnesses. It is a trite law that to support the findings, the Court is required to give reasons in the impugned judgment leading it to such a conclusion. The learned single Judge although has concluded that the case of attempting to kidnap the plaintiffs has been proved but has not discussed the evidence a bit in the impugned judgment. Merely by reproducing the definition of "kidnap" from Merriam Webster Dictionary, he has concluded that the plaintiffs/respondents have been able to discharge their burden and prove the case of kidnapping. We find that these findings are simply based on extraneous consideration and are not a result of appraisal of the evidence led by the parties.

8. We agree with the respondents' counsel that the Appellate Court can give findings either in line with the finding of the trial Court or against it but when no evidence has been discussed and referred by the trial Court and findings are based on presumptuous consideration of the facts adduced in the case, it becomes a well-nigh impossible for the

Appellate Court to substitute and record its own findings; because the criterion to appreciate impugned findings in the light of evidence simply does not exist in such a situation. Therefore, it would be in the interest of justice to first refer the matter back to the trial Court to appreciate the evidence and base its findings by discussing evidence in its true context, instead of rushing to give findings which may either vary or fall in line with the impugned findings. Therefore, we have decided to remand the case to the trial Court for final arguments of the parties and the judgment within a period of three months from today.

The appeal is accordingly disposed of in above terms along with pending application.

JUDGE

JUDGE

HANIF