

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
IInd Appeal No.116 of 2016

Date	Order with Signature of Judge
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M/s. Standard Chartered Bank Pakistan Ltd and others *Appellants*

Versus

Mrs. Farzeen Agha *Respondents*

Date of hearing :08.04.2025

Date of announcement of Judgment :22.04.2025

M/s. Muhammad Khalid Hayat & Muhammad Arshad, Advocates
for the Appellants.

Mr. Iftikhar Javed Qazi, Advocate for the Respondent and Agha
Haris Khan Advocate

JUDGEMENT

MUHAMMAD JAFFER RAZA, J; - Instant IInd Appeal has been preferred against the Judgment and Decree dated 24.09.2016 passed in Civil Appeal No.196/2013 by the 1st Additional District Judge, Karachi East. Facts of the case are summarized as follows: -

2. The Respondent filed Civil Suit bearing No.444/2005 with the following prayer/s: -

“It is therefore, respectfully prayed that this Hon’ble Court may be pleased to pass a judgment and decree in favour of plaintiff and against the defendants, jointly as well as severally, thereby directing the defendants No.1, 2 & 3 (the defendants Bank, and its manager & its customer relation officer), to pay a sum of Rs.03 Millions to the plaintiff by way of damages/compensation on account of wrongful acts and omissions fully described in the memo of the Plaint.

Grant cost of the suit.

Grant any other relief this Hon’ble Court may deem fit and proper under the circumstances of the case.”

3. Thereafter, learned trial Court was pleased to pass Judgment and Decree in favour of the Respondent No.1 on 27.08.2013, whereby, said suit was Decreed in

favour of the plaintiff to the tune of Rs.3,000,000/-. Thereafter, the Appellant filed Civil Appeal No.196/2013 and the same was dismissed vide Impugned Judgment and Decree dated 24.09.2016.

4. Learned counsel for the Appellants has argued that both the Courts below have erred in their findings and the suit was Decreed as prayed. Learned counsel has further argued that the damages granted to the Respondent are excessive and exorbitant and there was a failure on part of the Respondent to prove damages, as the burden of the same rests squarely on the said Respondent. Learned counsel has further stated that the learned Courts below have failed to appreciate that the medical certificate dated 18.02.2005 was prior to the date of incident and therefore, no damages could have been awarded for mental shock and agony. Learned counsel has stated that even though there was a mistake on part of the Appellants, however, the same was not grave enough for the Courts below to award damages in the sum as mentioned above. Lastly, he seeks for setting aside the Impugned Judgment(s) and Decree(s) of the Courts below and dismissal of the above-mentioned suit. In support of his contention, learned counsel for the Appellants have placed reliance in the following judgments: -

- *Malik Gul Muhammad Awan vs. Federation of Pakistn through Secretary Ministry of Finance and others*¹
- *Abdul Majeed Khan vs. Tawseen Abdul Haleem and others*²
- *Azizullah Sheikh and another vs. Standard Chartered Bank Ltd*³

5. Conversely, learned counsel for the Respondent has argued that the mistake has already been admitted by the Appellants, therefore, damages are a natural consequence of the said admission. He has further argued that no cross examination was conducted by the Appellant and therefore, in that respect the averments made in the plaint and affidavit-in-evidence stood unrebutted, hence admitted. It was further averred that the Appellants were given several

¹ 2013 SCMR 507

² PLD 2012 Supreme Court 80

³ 2009 SCMR 276

opportunities to cross examine the Respondent, however, the Appellants miserably failed in the same. He has lastly argued that there are concurrent findings of the Courts below and the same cannot be interfered in the IInd Appeal unless there are exceptional circumstances.

6. I have heard the learned counsel for the parties and perused the record with their assistance. The points of determination as mandated under Order 41 Rule 31 and enunciated by the Honourable Supreme Court in the case of **Meer Gul vs. Raja Zafar Mehmood through legal heirs and others**⁴ are set out below: -

- i. What is the effect of the failure of the Appellant to cross examine the Respondent?
- ii. Whether damages were lawfully awarded by the courts below?
- iii. Whether the learned trial Court and the Appellant Court have erred while passing the Impugned Judgment(s) and Decree(s) which could warrants interference of this Court?

POINT NO.1

7. It is evident from the bare perusal of the record that the Appellant failed to cross examine the Respondent despite being given repeated opportunities. Moreover, the pleadings reflect that the Appellant admitted committing the said mistake, however, argued that the damages granted were disproportionate to the mistake as the same was rectified within a short span of time.

8. A similar situation arose in the case of **Muhammad Salahuddin Versus Federation of Pakistan through Secretary Production and Industries and 2 others**⁵ and it was held as under: -

“More so, specific assertion of Plaintiff about suffering mental agony was not challenged in the cross-examination, meaning, it is accepted. In Sufis case [ibid] the scope of damages vis- -vis mental agony has been discussed and the conclusion is that there can be no yardstick or definite principle for

⁴ 2024 SCMR 1496

⁵ 2023 M L D 846

assessing damages in such cases, which are meant to compensate a party who suffers an injury. The determination criteria should be such that it satisfies the conscience of the Court, depending on the facts and circumstances of the case.”

9. It is also a settled principle of law that failure to cross examine a witness, it may be inferred that the truth of such statement is accepted. Reliance in this regard can be placed on the case of **Mst. Nur Jehan Begum through Legal Representatives versus Syed Mujtaba Ali Naqvi**⁶ wherein it was held as under:-

“The principle enunciated in the commentaries and rulings is that where on a material part of his evidence a witness is not crossexamined it may be inferred that the truth of such statement has been accepted. Statement of a witness which is material to the controversy of the case particularly when it states his case and the same is not challenged by the other side directly or indirectly, then such unchallenged statement should be given full credit and usually accepted as true unless displaced by reliable, cogent and clear evidence.”

10. In the given set of facts, it is held that the failure of the Appellant to cross examine the Respondent is fatal to his case. The averments of the Respondent in the witness box stand unrebutted, hence proved. In this regard it is further held that there is no infirmity with the Impugned Judgements.

POINT NO.2

11. In respect of the Appellants’ claim that the damages awarded were not proportionate to the mistake, it is held that grant of damages is the discretion of the trial Court and the said discretion ought to be exercised in the light of evidence advanced by the respective parties. It is a settled principle of law that in case of general damages the same are to be assessed following the “rule of thumb”. No yardstick and definitive principle for assessing damages can be given and the same depends on the facts and circumstances of each case. Reliance in this regard can be placed on the case of **Malik Gul Muhammad Awan** (supra) where the Honourable Supreme Court held as under: -

⁶ 1991 S C MR 2300

“It is by now a well established principle that the person claiming special damages has to prove each item of loss with reference to the evidence brought on record and for general damages as claimed by the petitioner relating to mental torture, agony, defamation and financial loss, those are to be assessed following the Rule of Thumb and the said exercise falls in the discretionary jurisdiction of the court which has to decide it in the facts and circumstances of each case.”

12. A similar view was taken by the Honourable Supreme Court in the case of

Abdul Majeed Khan v. Tawseen Abdul Haleem⁷ wherein it was held as under:-

“The term general damages' refers to the special character, condition or circumstances which accrue from the immediate, direct and approximate result of the wrong complained of. Similarly, the term 'special damages' is defined as the actual but not necessarily the result of injury complained of. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition. It is settled that in an action for personal injuries, the general damages are governed by the rule of thumb whereas the special damages are required to be specifically pleaded and proved.”

13. It is clear from the pleadings that the Respondent did not seek special damages and hence there was no burden on the said Respondent to plead and prove the damages specifically. In light of the dicta of the Honourable Supreme Court reproduced above, I do not see the quantum of damages awarded by the Courts below excessive or exorbitant especially in light of the finding given in point No.1.

POINT NO.3

14. The scope of Section 100 CPC is limited as was prescribed in the case of

Faqir Syed Anwar Ud Din Versus Syed Raza Haider and others⁸. Relevant

excerpts of the said judgment are reproduced below: -

“The defendants had assailed the concurrent findings of two courts by filing a regular second appeal before the High Court under section 100 of the C.P.C. It is settled law that concurrent findings are not interfered with under section 100 of the C.P.C. unless the lower courts have misread the evidence on record, or may have ignored a material piece of evidence on record through perverse appreciation of evidence. It is also settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the C.P.C.

⁷ 2012 PLC (C.S.) 571

⁸ P L D 2025 Supreme Court 31

The High Court had rightly dismissed the regular second appeals filed by the defendants on the touchstone of the aforementioned principles.”

15. In light of the dictum above, I see no case for interference in the Judgment and Decree passed by the Courts below, specifically in light of the fact that the mistake on the part of Appellants is admitted. It has already been held in determination of Point No.2, that the failure of the Appellants to cross examine the Respondent in this regard is fatal. Instant IInd Appeal being devoid of merits is hereby dismissed with no order as to cost.

Judge

Nadeem