IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 456 of 1988

Muhammad Wajid Khan

Versus

M/s. Attock Cement Factory Pakistan and others

Date of hearing	:	26.02.2016
Plaintiff	:	Through M/s. Farrukh Usman and Aamir Maqsood, Advocates for the Plaintiff.
Defendant No.1	:	Through Mr. A. Nafees Osmani, Advocate for the Defendant No.1.

JUDGMENT

***Muhammad Faisal Kamal Alam, J*:** The undisputed facts of the case are that the Plaintiff was employed with Defendant No.4 (M/s. Progressive Engineers and Fabricators) as Project Engineer on a salary of Rs.3,500/- (Rupees Three Thousand Five Hundred Only) per month. The said Defendant No.4 was the Sub-Contractor of Defendant No.3 (M/s. M. Iftikhar & Co.) (M.I.C.), which admittedly was a Sub-Contractor of Defendant No.2 (Uzin Export Import)-the main Contractor, which on a turnkey basis was constructing a Cement Factory of Defendant No.1 (Attock Cement Pakistan Limited).

1. That while on duty at Lasbella Project Site of Defendant No.1, that is, on 24.11.1984, Plaintiff fell off the Mechanical Erection of Bucket Elevator, (G.O.2 site), from a height of around 17 (seventeen) Meters approximately at around 2:00 PM. The Plaintiff received serious injuries and remained under treatment of different Doctors at different Hospitals.

2. The main grievance of Plaintiff that compelled him to file the instant proceeding was that the Defendants did not provide adequate safety measures at the site. It has been specifically pleaded that scaffolding, safety platform and the other necessary protections and appliances were neither in place nor provided at the site in order to avoid such an incident. Secondly, when the Plaintiff addressed detailed legal notices to all the above 04 (four) Defendants, only Defendant No.1 (Attock Cement Pakistan Limited) and Defendant No.4 (M/s. Progressive Engineers and Fabricators) the employer of Plaintiff though responded, but, despite the fact that the incident itself was not denied, yet they refused to compensate the Plaintiff for the injuries he sustained and the amount he spent on his treatment from time to time, which was a heavy expenditure on Plaintiff's pocket at that relevant. Following reliefs have been claimed by the Plaintiff as contained in the last amended plaint:-

"

a) *Surgery and operation charges dated 24.11.1984……Rs.30,000/-*

and Anaesthesia charges, and cost of plates and screws……Rs.4,700/-

b) *Hospitalization, medicines, mis. Expenses etc……Rs.25,000/-*

c) *Surgery for removal of plates from Homrusoplat plus L-forearm oplus (Lower Arm) on 16.10.1987……Rs.12,500/-*

Surgery, Anaesthesia, Hospitalization, Medicines, and dressing expenses including X-ray, Lab

d-1 *Future essential Anticipated major surgical operation for removal of plates from (upper Arm) likely in March, 1988……Rs.12,500/-*

d-2 Future essential Anticipated Major surgical operation to correct radial Nerve Damaged likely in September, 1988……..…....Rs.70,000/-

e) Besides above, Mr. Muhammad Wajid Khan from defendants jointly and severally arrears of pay dues form 1st October, 1984 to November, 1987 upto the filing of this suit. Being physically disabled to perform the duty of an engineer of which the applicant is qualified……Rs.13,300/-

f) Future Salary from December, 1987 till finalization of the claim @ Rs.3,500/- per month this being a High Court matter minimum period for that purpose is calculated for at least two years basis…….Rs.84,000/-

f-1 Damages for shock, mental agony and permanent disability due to accident coupled with damages for loss of future earning &bright career of plaintiff……Rs.47,00,000/-

g) Thus the total amount of damages comes to Rs.50,71,700/- (Rupees Fifty Lac, Seventy One Thousand and Seven Hundred Only) for which a decree a may be passed in favour of the plaintiff as against the defendants No.1 to 4 who all are legally liable to pay to the Plaintiff jointly and severally.

That therefore the plaintiff respectfully prays that this Honourable Court will be pleased to grant judgment and decree for a sum of Rs.50,71,700/- (Rupees Fifty Lac, Seventy One Thousands and Seven Hundred Only) against the defendants jointly and severally with cost of this suit and any other relief that this Honourable Court be pleased to grant."

3. After filing of the suit, notices were issued to all the Defendants, but, eventually through publication the service was effected. Only

Defendants No.1, 2 and 3 filed their Written Statements and contested the suit. Subsequently, by the orders dated 05.03.1989 and 20.09.2004 the Plaint was amended and the Defendant No.3 also filed its amended Written Statement but despite clear instructions as mentioned in the order dated 20.09.2004, the Defendants No.1 and 2 did not opt to amend their pleadings. By the order dated 12.11.1989, the Defendant No.4 (M/s. Progressive Engineers and Fabricators) was directed to be proceeded exparte.

4. From the pleadings of the parties, though issues were earlier framed but after amendments in the pleadings the following issues were settled by the Court on 22.05.2006.

"i) Whether the suit as framed and filed is maintainable in law?

ii) Whether the suit is bad for misjoinder and non-joinder of the necessary parties?

iii) Whether the suit is barred by law of limitation?

iv) Whether the defendant No.3 is the Agent of defendant No.1, if so what is its effect?

v) Whether the provisions for safe working conditions to the laborers and for insurance covers were the responsibility and liability of the defendant No.3, if so what is its effect?

vi) Whether the defendant No.3 is liable for the alleged injuries to the plaintiff during the employment of the defendant No.4 allegedly working at Lasbella Project of the defendant No.1 on 24.11.1984?

vii) Whether plaintiff has estopped the enhanced the quantum of damages upto the existing cause of action per facts shown in the plaint?

viii) Whether the plaintiff can change the fundamental character of the injury, alleged to have been caused to

him, which fact is existing at the time of the filing of the suit or it will be deemed to have been amended under Order 2 Rule 2 CPC?

ix) Whether the additional claim of damages as mentioned in sub paras of Para No.23 of the amended plaint, as per order dated 2.9.2004 is untenable and barred by law?

x) What should the decree be?"

5. The Plaintiff examined himself as PW-1 and placed on record number of documents in support of his claim, which he filed with the Plaint as well. However, none of the Defendants opted to participate in the evidence proceedings and by the orders dated 17.01.2013 and 14.02.2013, the side of the Defendants to lead evidence was closed.

6. That the instant cause came up for final arguments, when the Defendant No.1 again appeared in the matter through its newly appointed counsel Mr. A. Nafees Osmani, who filed an interlocutory Application being CMA No.3124 of 2016 under Order IX Rule VII of CPC, inter alia, seeking that the above mentioned orders be set-aside and the Defendant No.1 be given another opportunity to lead evidence. This Application, however, after hearing both the counsel, was dismissed by the order dated 26.02.2016, where after, Mr. A. Nafees Osmani, learned counsel now representing the Defendant No.1 argued the matter primarily on point of law, besides pointing out contradictions in the pleadings of Plaintiff.

7. Findings on the issues are as follows:

ISSUES NO.**i, ii** and **iii**	:	Affirmative, Negative and Negative respectively.
ISSUES NO.**iv**, **v** and **vi**	:	As under, Affirmative and Affirmative respectively.
ISSUES NO.**vii**, **viii** and **ix**:		As under, as under and Negative respectively.

ISSUE NO.x. Suit is decreed.

REASONS

ISSUES NO.i, ii and iii.

8. Since these issues are interlinked, hence, they have to be decided by a common finding. Mr. A. Nafees Osmani, learned counsel representing the Defendant No.1 has vehemently argued that the instant case of the Plaintiff is hopelessly time barred as admittedly the injury occurred on 24.11.1984, whereas, the suit was filed on 17.11.1987, that is, almost after three years, though the same should have been filed within one year from the date of incident.

9. To augment his arguments, learned counsel placed reliance on Articles 22 and 24 of the Limitation Act, 1908, where under, to seek compensation for an injury one year limitation is prescribed for seeking the remedy. Mr. A. Nafees Osmani, learned counsel for Defendant No.1 has cited the following decisions in support of his arguments_

(i) 2006 MLD [Karachi] Page-1657
[Mst. Perveen Akhter Versus Consulate-General of U.S.A. at Karachi and others].

(ii) AIR 1924 Bombay Page-290
[Abdulla Mahomed Jabli Versus Abdulla Mahomed Zulaikhi]

(iii) PLD 1970 Lahore Page-298
[Abdul Majid Butt Versus United Chemicals Ltd].

(iv) PLD 1968 Karachi Page-376
[Kayumarz Versus Messrs Mohammadi Tramway Company Karachi and others].

(v) 1980 SCMR Page-485
[Nathey Khan Versus Government of West Pakistan (Now Punjab)].

(vi) 2007 CLC Page-1821

[Muhammad Anwar Versus Pak Arab Refinery Limited through Managing Director].

10. The above argument was controverted by M/s. Farrukh Usman and Aamir Maqsood, learned counsel representing the Plaintiff. The main submission from the Plaintiff's side is that it is not a single incident of 24.11.1984 only, for which the suit is filed, but the grievances of Plaintiff including mental anguish and financial losses continued upto 15.10.1987, that is, when the Plaintiff was again operated upon for removal of M.S. Plates from left lower arm.

11. To substantiate his arguments, the Plaintiff has referred the undisputed medical record produced in evidence, including, the Discharge Card of A.O. Clinic (Nazimabad), Karachi (Exhibit P/7), in original, which, inter alia, mentions the fact that the Plaintiff was operated upon for removal of Metal A.O. Plate and Screws and treatment for Radius and Ulna; the large bones of the forearm. The Radius is part of two Joints-the elbow and the wrist, whereas, Ulna runs parallel to the Radius. He was operated upon Dr. S.M.A Shah. The second line of argument from the Plaintiff's side is that the latter through his counsel addressed detailed legal notices dated 27.01.1985 to all the above 04 (four) Defendants but only two, viz. Defendants No.1 and 4 responded vide their replies dated 20.02.1985 and 05.02.1985, respectively. All these correspondences have been produced by the Plaintiff in evidence and has been exhibited as Exh P/8/1 to Exh P/8/3, Exh P/9, Exh P/10/1 and Exh P/10/2. It was next contended on behalf of Plaintiff that in all these correspondence(s) as well as in the pleadings of adversaries, the factum of very incident in which the Plaintiff got injured, has never been disputed, but the main plea of Defendants in their defence is about shifting of liability on each other, though with the ulterior motive for

frustrating the present proceeding. Mr. Farrukh Usman, learned counsel for Plaintiff has further argued that it is a case of composite negligence and cited a recent Judgment of the Hon'ble Supreme Court reported in 2015 SCMR Page-1406-National Logistic Cell Versus Irfan Khan and others, which for the reference sake be referred to as the **NLC** case. It is further strenuously argued that the law laid down in the above (**NLC**) case is fully attracted to the present case.

12. The above cited case law relied upon by Mr. A. Nafees Osmani, the learned counsel representing the Defendant No.1, has been considered and précis of which is that for filing an action for damages and compensation, the limitation prescribed in Article 22 of the Limitation Act, 1908, is one year. However, these cited decisions are distinguishable as far as the present case is concerned, inter alia, as facts of the present case are peculiar in nature and quite distinctive from the facts of the above cited cases relied upon by learned counsel for Defendant No.1. In this regard, the Judgment of Natehy Khan Versus Government of West Pakistan-1980 SCMR Page-485 (ibid), is of relevance, particularly with regard to a question of law that a remedy available to a person under the Workmen Compensation Act, 1923, is not a bar for seeking a remedy under an Ordinary Civil Jurisdiction by filing a suit. However, the case law cited above in respect of limitation of one year, is distinguishable, as far as present cause is concerned for the reasons that in the above Natehy Khan's case, the Appellant was partly compensated by his employer-Pakistan Western Railway under the Workmen Compensation Act, 1923, and the said Appellant even after his disability, was allowed to work for one year on compensationate ground, where after, he was retired in due course. As against this, in the present case the service of Plaintiff was terminated by his employer-Defendant No.4, <u>immediately</u> after the incident / accident, which is an admitted fact

and is mentioned in the aforementioned reply dated 05.02.1985 of Defendant No.4 (Exh: P/10/1, Page-81 of the evidence file). Since then the Plaintiff is running from pillar to post for redressal of his grievance but without any success. The qualification and occurrence of the incident have not been disputed by any of the Defendants either in their reply to the legal notice, which has been mentioned hereinabove nor in their respective pleadings, therefore, this is a case where a liability for the tortious conduct is of a continuous nature and so is the cause of action which still subsists. Consequently, taking into account the undisputed fact that lastly the Plaintiff was operated upon on 15.10.1987 (as mentioned hereinabove) and the present suit was filed on 17.11.1987, therefore, in my considered opinion the present suit is not a time-barred claim and is maintainable. Additionally, peculiar facts, circumstances and undisputed evidence of this case justifies that a well-entrenched principle that if there is a right, there should be a remedy, should be applied here. Hence, Issue No.**(i)** is answered in Affirmative, Issue No.**(iii)** is answered in Negative, whereas, with regard to Issue No.**(ii)**, the recent Judgment of the Hon'ble Supreme Court in **NLC** case (ibid) is a complete answer, wherein, Mr. Justice Mushir Alam, speaking for the Supreme Court has held, that, "***It is the prerogative of the Plaintiff to proceed against any or all such tortfeasors about whom the Plaintiff has specifically pleaded the act of negligence***".

13. To the facts and circumstances of the present case, Article 115 of the Limitation Act, 1908, is applicable, where under, a period of three years is provided for bringing an action for breach of any contract. The case record itself proves that Plaintiff and Defendant No.4 had contractual relationship as employee and employer, respectively. Similarly, there was a contractual relationship amongst the Defendants

inter se also, a detail of which will be discussed in the following paragraphs, therefore, Issue No.**(ii)** is also answered in Negative.

Issue No. iv, v and vi.

14. It has been vehemently argued on behalf of Plaintiff that the present case falls within the purview of composite negligence and regardless of the fact that whether the Defendant No.3 was an Agent of Defendant No.1 or not, all Defendants being tortfeasors are liable to compensate the Plaintiff jointly and severally. In support of his submissions, the Plaintiff's counsel placed reliance on a Supreme Court decision reported in 1974 SCMR Page-269. This decision is in respect of joint liability of an employer as well as contractor at whose premises the husband of Applicant (Widow) was working and had meet with a fatal accident. This Judgment has specifically expounded Section 12 of the Workmen's Compensation Act, (VIII of 1923), but, I am afraid it does not support the Plaintiff's case, as the present proceeding has not been filed under some statutory provision of above referred statute, but, by invoking ordinary civil jurisdiction. On the other hand, the counsel for Defendant No.1 has vehemently controverted this stance of Plaintiff and submitted that there is no direct relationship either between the Defendants No.1 and 3 or the Plaintiff and Defendant No.1, therefore, in fact the present grievance of Plaintiff is the matter between his former employer-the said Defendant No.4 and Plaintiff. Even though the Defendant No.3 did not participate in the evidence, yet its pleadings / written Statement can be looked into for the limited purposes of ascertaining this question. More so, it is not disputed by any of the parties that the Defendant No.3 was a Sub-Contractor of Defendant No.2, which was the main Contractor of Defendant No.1 for constructing its Cement Factory Project on turn-key basis. In Paragraph 8 of the

Written Statement of Defendant No.3 a reference has been made to certain clauses of an Agreement entered into between the said Defendants No.3 and 4 (the then employer of Plaintiff), where under, inter alia, it was the responsibility of the said Defendant No.4 to provide insurance coverage for all its staff working at the project site of Defendant No.1. It has not come in evidence nor pleaded by any of the Defendants that Plaintiff did get any amount towards the head of insurance coverage. Secondly, the other undisputed fact is that under an Agreement between the Defendants No.1 and 2, latter was authorized to Sub-Contract different components of work to other Sub-Contractors, which was done and, that is how, the Defendants No.3 and 4 became the Sub-Contractors of Defendant No.2. Thirdly, for the present Issues too, the above mentioned National Logistic Cell (**NLC**) case handed down by the Hon'ble apex Court provides the guidance. In the present case independent relationship of Plaintiff with each of the Defendant is not required to be proved, but, the injury itself, which Plaintiff had sustained admittedly during his employment with Defendant No.4, which was the Sub-Contractor of Defendant No.3; the latter was Sub-Contractor of Defendant No.2-the main Contractor of Defendant No.1, at whose premises the Plaintiff sustained injuries. Conclusion is that this is a case of composite negligence.

15. Fourthly, the Plaintiff in his evidence has produced as Exhibit P/11, a copy of the Contract relating to the Project of Defendant No.1, entered into between the latter and Defendant No.2 (Uzin Import Export) and Defendant No.3 (M. Iftikhar and Co. Ltd.) (M.I.C.) as Sub-Contractors, which shows a direct nexus of relationship between the said Defendant No.3 and Defendant No.1. It is the same Contract, a copy of which is filed with Written Statement of Defendant No.2 (Uzin Export Import) as Annexure "**D/2**" and this fact is mentioned in paragraph-13 of said Written

Statement. Hence, this Contract document-Exh. P/11 is an authentic one. In terms of Article 24 of this Contract, the said Defendant No.3 was responsible for maintaining ***adequate welfare and safety measures and amenities for his workmen and the workmen of nominated of sub-Contractors employed in connection with this sub- Contract,*** whereas, under Article 27, it was the liability of said Defendant No.3, inter alia, to compensate employees of the nominated Sub-Contractors, which in fact the Defendant No.4 was. Therefore, keeping in view this typical nature of tripartite relationship amongst Defendants No.1, 2 and 3, all the two Issues No.**(v)** and **(vi)** are answered in Affirmative, whereas, Issue No.**(iv)** is answered accordingly by following the principle laid down in National Logistic Cell (**NLC**) case (ibid).

Issues No.vii, viii and ix.

16. The Plaintiff's counsel argued that since the Defendants despite opportunities did not participate in the evidence and never examined themselves on oath, therefore, their pleadings are to be discarded, to elaborate this, he cited reported cases reported in SBLR 2006 Sindh Page-231 and 1991 SCMR Page-2126; gist of the above two Judgments is not different from what has been argued in this behalf by the Plaintiff's counsel, however, it is also a settled principle that Plaintiff has to bring his case home on its own merits rather than relying on the weakness of Defendants.

17. Mr. Farrukh Usman, learned counsel for Plaintiff has cited Judgment of this Court reported in PLD 1997 Karachi Page-566 (Abdul Qadir Versus S. K. Abbas Hussain and two others), and made a statement at bar that this Judgment was never over-turned in Appeal, as the same got executed long time back. It has been authored by Mr.

Justice Rana Bhagwandas, (as his lordship then was) and while handing down this Judgment, the learned Judge has taken into account the decisions from foreign jurisdiction as well. This decision all the more has to be given due weightage because the learned Judge was subsequently elevated to Hon'ble Supreme Court and has held by the Hon'ble Apex Court in Agriculture Workers' Union case-1997 SCMR Page-66, that if cases decided by Judges of High Court who subsequently are elevated to the Hon'ble Supreme Court, their decisions are entitled to the highest consideration and respect. The relevant paragraph 18 of the Supreme Court Judgment is as follows:-

> "*18. We may incidentally mention here that the decision in A.F. Ferguson & Co. was rendered by a Division Bench of High Court of Sindh which consisted of Dorab Patel and Muhammad Haleem, JJ. (as their Lordships then were). Employees' Union Jamia Karachi's case was also decided by another Bench of Sindh High Court consisting of Zaffar Hussain Mirza (as he then was) and Saleem Akhtar, JJ. While the case of K.G. Old was decided by Shafiur Rehman J. (as he then was) Sitting single in the Lahore High Court. A;; the learned Judgtes who decided the abovementioned three cases were subsequently elevated to this Court and one of them (Saleem Akhtar, J.) is still a Judge of this Court. AS this Court neither approved nor disapproved specifically the views expressed in A.F. Ferguson & Co.,. Employees' Union of Jamia Karachi and K.G. Old they are entitled to the highest considerations and respect as and when these cases come up for consideration before this Court."*

18. In the above referred Abdul Qadir's case the latter got seriously injured in a road accident and after undergoing medical treatment, brought an action against the Defendants for damages and compensation, inter alia, for injuries, shock, physical pain and mental agony and special damages on different counts in the sum of Rs.1.5 Million. The learned Judge while decreeing the suit, laid down: (**a**) conscious of the Court should be satisfied that the damages awarded would, if not completely,

satisfactorily compensate the aggrieved party, (**b**) even though previously Jurists and Judges were reluctant to grant claim for damages for mental shock and torture, but now it is well-settled that a person who suffers mental torture and nervous shock is entitled to recover damages (**c**) compensation can be granted where wrong has done to a party and the damage flows from that wrong and (**d**) liability arises where there is a duty to take care and failure has taken place, which has caused damages. A famous case from English jurisdiction was also referred Hinz v. Berry (1970) QB 40, in which, Lord Denning observed that:

> **"It has been settled that damages can be given for nervous shock caused by the sight of an accident, at any rate to a close relative. Damages are, however, recoverable for nervous shock or to put in medical terms, for any recognizable psychiatric illness caused by the break of duty by the defendant"**

19. Now turning to the present case, where the question would be that whether the acts of Defendants actually fall within the duty of care as explained herein above. A simple answer to this would be in Affirmative, inter alia, even in Regulation 180 of the Karachi Building and Town Planning Regulations, 1979, which was holding the field at that relevant time, it has been specifically mentioned that appropriate safety measures had to be taken in respect of a building, including suitable and sufficient scaffold, working platforms, etc. In sub-paragraph 5 of the said Regulations it is enjoined that the employer, which in the present case is Defendant No.1, should take express steps to satisfy himself that the scaffold or part thereof is stable. This very assertion of Plaintiff has gone un-rebutted that no scaffolding was in place at the project site when the unfortunate incident occurred in which plaintiff got seriously injured, therefore, I have no hesitation to hold that Defendants and particularly Defendant No.1 have even failed to comply with the basic safety measures as provided in the above Regulations, which

otherwise, are to be strictly adhered to, as the same were framed in the public interest and cast a public duty on all those who were required to follow the same.

20. In so far as the claim of the Plaintiff under the heads "**a**", "**b**" and "**c**", the same can be awarded to him as he has produced undisputed documentary evidence about his claim about his hospitalization, surgery and overall medical treatment. Similarly, the claim mentioned under the sub-paragraphs "d-1" and "d-2" pertaining to anticipated surgical operation, which was to be done in or around March, 1988, cannot be accepted, as even in his amended Memo of Plaint, filed on 27th September, 2004, there is no mentioning of the fact that the purported anticipated surgery was in fact done, nor, any new invoice / medical bills were produced in support of the claim under this head. Similarly, the claim with regard to legal dues / arrears of Plaintiff from Defendant No.4 is an admitted position, as also acknowledged by said Defendant No.4 in its above reply of 05.02.1985 (Exh: P/10/1, Page 81 of the evidence file), which till date has not been paid to Plaintiff. An overall conduct of Defendant No.4 as employer of Plaintiff is preposterous. The Defendant No.4 instead of extending help to Plaintiff being a dutiful employee had took a harsh decision to terminate his services and, therefore, in the circumstances the claim of Rs.13,300/- (Rupees Thirteen Thousand and Three Hundred Only) and Rs.84,000/- (Rupees Eight Four Thousand Only) against the Defendant No.4 are also awarded to Plaintiff. Now adverting to the major claim of Rs.4.7 Million (Rupees Four Million Seven Hundred Thousand Only), as damages. The same has been mentioned in paragraph 23-A of the Plaint and paragraph 23 of Affidavit in Evidence. To substantiate his claim of permanent disability the Plaintiff has produced a Certificate, which has been exhibited in evidence as Exh P/5 (Page 35 of the evidence file) issued by Dr. S.M.A.

Shah, who otherwise was a well-known figure amongst orthopedic surgeons. Last line of this Certificate mentions the fact that the disability is of permanent nature.

21. In the above referred Abdul Qadir's case (PLD 1997 Karachi, Page-566), a Medical Certificate issued by an orthopedic surgeon was accepted as a piece of admissible and credible evidence because the same was never challenged / called in question. Considering the degree of injury received by Plaintiff and number of documents of different hospitals, in which the latter (Plaintiff) remained under treatment including A.O. Clinic, Nazimabad, Karachi, the above certificate-Exhibit P/5 is of relevance being an admissible and credible piece of evidence. It is also a matter of common knowledge that project engineers are not only confined to desk work, but unlike executives of other professions, a project engineer has to be at the site and primarily is responsible for executing the task as assigned by an Architect and Structural Engineer. Job of a project engineer thus involves not only application of mental faculties but physical work also. It is also a matter of common knowledge that any business entity involved in construction activity would not prefer a project engineer with such a physical disability, which if not has crippled a person completely, but at least rendered the Plaintiff handicapped. The other aspect of the case is that Plaintiff due to all these factors have under gone immense mental torment.

22. However, matter does not end here. Court has to take into account the overall behavior and conduct of all the Defendants. It is now a matter of record that even at such a huge project site where a Cement Factory of the Defendant No.1 worth multimillion-rupees (at that relevant time) was being built, there was no proper arrangement of medical facility; to say the least, no Ambulance(s) was available and Plaintiff was taken to

hospital in a Suzuki Van. Secondly, it is expected from a large organizations like Defendant No.1, that realizing its social corporate responsibility, it should have shared a portion of compensation at that relevant time, for instance, sharing the burden of hospitalization and expenditure incurred by Plaintiff towards his medical treatment (at least). Defendant No.2 also remained totally indifferent about the matter, though the said Defendant No.2 was also under its contractual obligation and was required to provide safe and secure working conditions at the project site. A specific assertion of Plaintiff in which he remained consistent is about non-availability of proper working environment, which includes, health and safety measures. Plaintiff's specific assertion in respect of causation of the incident was never disproved by the Defendants and remained un-rebutted throughout. He in his pleadings as well as in evidence has specifically mentioned that non-provision of even scaffolding, safety platform and other necessary protections, caused the unfortunate incident. It was the joint responsibility and obligation of all Defendants, and as observed hereinabove, falls within the purview of composite negligence as expounded by the Hon'ble Supreme Court in the above referred decision of National Logistic Cell (**NLC**). Even if Defendants have led the evidence to falsify the claim of Plaintiff, still onus would be on them to show that the bucket Elevator and other necessary safety provisions were in place and the above incident did not occur due to negligence of Defendants, but of Plaintiff himself. However, as far as present set of facts and evidence is concerned, the principle of '*Res Ipsa Loquitur'* (things speak for themselves) is applicable, unless successfully controverted by the Defendants. The overall conduct of Defendants is disturbing, rather appalling. In this regard, a guidance can be taken from a decision handed down in Pakistan Steel Mills Corporation Versus Malik Abdul Habib case, reported in

1993 SCMR Page-848, wherein, it is held "***Now if defendants in the suit took plea that accident had occurred on account of negligence of deceased himself then it was their duty to produce evidence to show that elevator was in perfect order and there was no defect in it and deceased feel down on account of his own negligence.***" [Paragraph-11]. In the light of the above discussion, instead of awarding Rs.4.7 Million (Rupees Four Million Seven Hundred Thousand Only) as claimed, it would be fair and reasonable to award Rs.30,00,000/- (Rupees Three Million Only) by applying the yard stick mentioned in the decision of Abdul Qadir case (ibid). From the description of Defendants No.2 and 4 it appears that they are not a corporate entity and to frustrate the satisfaction of Decree, these Defendants No.2 and 4 may resort to different tactics, including changing its description and nomenclature. In these circumstances, it is clarified that owners of Defendants No.2 and 4, their agents, successors-in-interest or any person(s) claiming through or under them shall also be liable.

Hence Issues No.(**vii)** and (**viii)** are answered accordingly, whereas, Issue No.(**ix)** is answered in Negative and in favour of Plaintiff.

ISSUE NO.X.

23. The upshot of the above is that decreetal amount is apportioned as follows: -

(a). Defendants are liable to pay jointly and severally an amount of Rs.30,00,000/- (Rupees Three Million Only) towards damages.

(b) Defendants are also liable to pay jointly and severally an amount of Rs.72,200/- (Rupees Seventy Two Thousand Two Hundred Only) towards hospitalization and medical treatment of Plaintiff.

(c). The Defendant No.4 only, or any person(s) claiming through or under it, is liable to pay a sum of Rs.13,300/- (Rupees Thirteen Thousand Three Hundred Only) and Rs.84,000/- (Rupees Eighty Four Thousand Only) towards legal dues of Plaintiff.

(d). All the above amounts shall be payable with 10% mark-up from the date of institution of the suit till realization of the amount.

24. There is no order as to costs.

Dated 11.03.2016 JUDGE

M.Javaid.pa