

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1528 of 2009

Mst. Anila Jalees & others-----Plaintiffs.

Versus

Driver Shakirullah & another-----Defendants.

Date of hearing: 01.11.2017

Date of Judgment 01.11.2017

Plaintiffs: Through Mr. Dhani Buksh and Ms. Huma Farooq, Advocates.

Defendant: Nemo.

J U D G M E N T

Muhammad Junaid Ghaffar, J. This is a Suit for compensation under the Fatal Accident Act, 1855, wherein, the following relief(s) are sought:-

- a) To pass a Judgment and Decree in favour of the Plaintiff against the Defendants of Rs.31,50,000/- (Rupees Thirty One Lac & Fifty Thousands Only), in the meaning of Fatal Accident Act 1855.
- b) Profit @ 6% per annum on the amount claimed in clause 09 above from the date of the filing of this suit, till the date of realization on the decretal amount, which the plaintiff would have earned and the defendants will pay the said amount.
- c) To grant any other relief, which this Hon'ble Court any deem fit and proper in the circumstances of the case in favour of the plaintiff.
- d) Cost of the suit.

2. Briefly, the stated facts are that the husband of the Plaintiff deceased Farooq Aijaz Khan S/o Muhammad Rafiq Khan who was working as a Typist outside the old D.C. Office Main Qaidabad Chowk, P.S Shah Latif Town, Malir, Karachi died in an accident on 14.05.2009 at 0900 hours caused by a Mini Coach/Mazda No.PE-5962 owned by Defendant No.2 and being driven by Defendant

No.1 through rash and negligent driving. The dead body was shifted to Jinnah Hospital and Police lodged FIR No.178/2009 against Defendant No.1 and challan was filed in the Court of District & Sessions Judge Malir Karachi in Sessions Case No.320/2009, which as per disclosure in the plaint is still pending. It is the case of the plaintiff that since deceased expired due to negligent driving on the part of defendants, therefore, adequate compensation is to be awarded. The deceased at the time of his death around 63 years and according to the Statement in the plaint the deceased was earning Rs.45,000/- approximately per month. In such circumstances, a claim of Rs.31,50,000/- with 6% markup per annum has been set up in Para-9 of the Plaint.

3. Summons were issued whereafter Defendants No.1 & 2 filed their written statement and on 23.08.2010 the following Issues were settled:-

- i. **Whether the death of Farooq Ejaz Khan was caused due to rash and negligent driving of defendant No.1 in the course of employment of defendant No.2 on 14.5.2009 while driving Mazda Registration No.5962, if so, its effect?**
- ii. **Whether the defendants are jointly and severally liable to compensate the loss of life of late Farooq Ejaz Khan, if so, what amount to his legal heirs?**
- iii. **What should the judgment and decree be?**

4. Evidence was recorded through Commission, however, record reflects that though the plaintiff's witnesses were cross-examined, but thereafter nobody turned up on behalf of Defendant to lead their evidence except filing of Affidavit in Evidence and even before the Court none affected appearance and their side was closed and thereafter matter was listed for final arguments.

5. Learned Counsel for the Plaintiff has read out the relevant paragraphs of the plaint and has referred to the evidence led on behalf of the Plaintiff and submit that the entire claim of the plaintiff has gone unchallenged. Whereas, Medical Report clearly reflects that the accident caused the death of the deceased and therefore, the Plaintiff in law is entitled for compensation.

6. I have heard the learned Counsel and perused the record. My findings on the Issues are as under:-

ISSUE NO.1. Whether the death of Farooq Ejaz Khan was caused due to rash and negligent driving of defendant No.1 in the course of employment of defendant No.2 on 14.5.2009 while driving Mazda Registration No.5962, if so, its effect?

7. This is a case of claim under the Fatal Accidents Act, and the moot issue is that whether any accident did occur as contended or not. Though written Statement was filed but the Defendants have chosen not to contest this matter, at least in respect of leading any evidence in their support, whereas, apparently the FIR has been lodged and Medical Report has also been placed on record. The Plaintiff Razia Farooq filed her Affidavit-in-Evidence and examined herself as P.W-1 and produced documents, which were exhibited as Ex. "A" to "Q". Plaintiff also examined Huma Farooq as P.W-2, Khurram Mehmood as P.W-3, Ghulam Mustafa as P.W-4 and Syed Asghar Ali Shah as P.W-5. The Defendants have filed their Affidavits-in-evidence as well as their written statement but they did not turn up to lead the evidence. It has been admitted that the accident as reported did occur, but it was not their fault but of the deceased as he was careless in crossing the road. However, they never came in the witness box for cross-examination to substantiate their stance that the deceased was negligent in crossing the road and therefore, the accident occurred. Since both the Defendants have not come in the witness box, therefore, this Court cannot accept such plea taken by them in their defence, whereas, the Plaintiff has led its evidence through at least five witnesses, in which there are eye-witnesses as well. In view of such position Issue No.1 is answered in the affirmative.

ISSUE No.2: Whether the defendants are jointly and severally liable to compensate the loss of life of late Farooq Ejaz Khan, if so, what amount to his legal heirs?

8. The defendants have failed to appear in the witness box to plead and justify their stance and to rebut the claim and contention of the plaintiff, except cross-examining the plaintiff's

witnesses, therefore, the averments in the plaint as well as the evidence led on behalf of the plaintiff has gone un-rebutted. Ordinarily, the Court would have no hesitation in passing a decree as prayed; however, at the same time it is of utmost importance to observe that in such matters the responsibility of the Court is more onerous while adjudicating an ex-parte matter against a defendant and while decreeing or deciding any Suit in such circumstances, the Court must go through the record and the evidence led on behalf of the plaintiff so as to safeguard the interest of the person who for some reason has not been able to defend himself and to do justice in accordance with law.

9. It appears that in this matter the amount of compensation has been calculated on the basis of expected remaining life of deceased for 7 years by assuming that he would have lived up to the age of 70 years. Though, there are judicial pronouncements to this effect (See *Islamic Republic of Pakistan v. Abdul Wahid & Others- 2001 SCMR 1836*) however, it is an admitted position that deceased was self-employed, whereas, ordinarily the retirement age is 60 years in Government departments. However, in private sector there are no certain terms settled and one can work as long as he is fit enough to do so. Therefore, insofar as remaining expected earnings of deceased is concerned, the same is to be calculated on the basis of 70 years of age.

10. The claim regarding earnings of the deceased at the rate of 45,000/- rupees per month and the evidence so led has not been shaken in the cross examination, whereas, as observed the defendants have failed to lead any evidence in their support. The compensation claimed in the plaint / evidence has been calculated on the basis of 30 working days in a month. However, I am of the view that considering the normal working circumstances, at least four weekly holidays must be excluded and the compensation in this head can only be awarded for 7 years spreading over 2184 days. Again on the average there are at least 20 days Gazetted Holidays which are to be excluded as well as the deceased was working on daily basis being self-employed. This brings the total number of days to 2044. The following is the working of

compensation which is to be awarded in this matter by answering Issue No.2 in the affirmative to the following extent.

(i)	Average life span in Pakistan in view of preponderance of Judicial announcements	70 years
(ii)	Loss of pecuniary benefits to plaintiff and other legal heirs (70-63) = 7 years	7 years (Total work days available=2044 days)
(iii)	Aggregate loss of pecuniary benefits for 2044 days @ Rs 1500/day	30,66,000/-
(iv)	Less personal expenses 1/6 th	511,000/-
	Total Compensation	25,55,000/-

ISSUE No3: What should the judgment and decree be?"

11. In view of hereinabove discussion, the plaintiff is entitled for compensation as above. Accordingly the Suit of the plaintiff is decreed in the amount of Rs. 25,55,000/- with mark up at the rate of 6% per annum from the date of filing of this Suit till realization. Office is directed to prepare decree accordingly.

J U D G E