

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1401 of 1999

Mst. Nasara Hamid and others ----- Plaintiffs

Versus

Muhammad Arif ----- Defendant

Date of hearing: 27.09.2016.

Date of judgment 27-09-2016.

Plaintiff None present for plaintiff.

Defendants None present for defendant.

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 plaintiffs have prayed as follows:-

- "A) That the suit of the plaintiffs for a sum of Rs. 38,40,000/- (Rupees thirty eight lac forty thousand only) be decreed against the defendant and in favour of the plaintiffs.**
- B) Interest on Judgment @ 14% per month from the date of suit till realization of the amount be allowed.**
- C) Cost of the suit be granted.**
- D) Such further and other reliefs as this Hon'ble Court may deem fit under the circumstances of the case."**

2. Briefly stated the facts are that the deceased husband of plaintiff No. 1 late Safdar Ali Qazi and father of plaintiffs No. 2 to 5 died in a road accident while driving his own taxi bearing Registration No. JL-7056 on

1.4.1999 at about 7:40 A.M. when defendant being owner of Bus Registration No. PRQ-7879 hit the taxi at the crossing of Habib Ebrahim Rehmatullah Road and Tipu Sultan Road, Karachi, as a result of which Safdar Ali Qazi along with two other passengers in the taxi succumbed to death spontaneously at the spot and an FIR bearing No. 56/1999 was also registered at Tipu Sultan Police Station, Karachi in this regard. It is further stated that plaintiff used to work in KDA Pipe Factory and was employed at a sum of Rs. 3890/- per month, whereas, to support his family he is also plying a taxi and was earning approximately Rs. 6000/- per month. It is further stated that the plaintiff would have remained alive up to the age of 70 years or so and therefore, calculating his monthly income and yearly bonus the expected income of the deceased was Rs. 10,000/- per month and therefore, an amount of Rs. 38,40,000/- is being claimed as compensation for the remaining expected life of 32 years.

3. Pursuant to issuance of summons written statement was filed on behalf of defendant wherein, the contention of the plaintiff has been denied whereafter on 8.10.2001 following issues were framed by the Court:-

- “1) Whether the plaintiff is entitled for compensation of Rs. 38,40,000/- as claimed or part thereof.
- 2) What should the decree be?”

4. It further appears that on 21.10.2005 plaintiff No. 1's evidence was recorded, whereas, none has affected appearance on behalf of defendant and she was not cross-examined and the defendant side was also closed and since then the matter is coming up for final arguments and again today no one has affected appearance either on behalf of the plaintiffs or

the defendant. Since this is an old matter and is pending from 1999, the same is being decided on the basis of record available before the Court.

Issue No.1:

Whether the plaintiff is entitled for compensation of Rs. 38,40,000/- as claimed or part thereof.

5. Perusal of evidence of plaintiff No.1 reflects that she has appeared in the witness box and has produced certain documents including FIR No. 56/1999 as Ex. 5/1, driving license of late husband as Ex. 5/2, six photographs of taxi after the accident as Ex. 5/3 to Ex. 5/8, original newspaper daily "INSAF TIME" dated 2.4.1999 in which the accident was reported as Ex. 5/9, copy of legal notice dated 21.7.1999 as Ex. 5/10, postal receipt No. 1476 as Ex. 5/11. She has further stated that her late husband was getting a salary of Rs. 4000/- per month from KDA and was earning about Rs. 200/- to Rs. 300/- per day from driving taxi after office hours. It is further stated by her in the evidence that the defendant had also approached brothers of her late husband for settlement but it could not materialize. She has further stated that her deceased husband would have remained in the employment of KDA up to the age of 60 years and would have continued his employment privately up to the age of 70 years. On the basis of these assertions she prayed for a decree in this matter.

6. Since the defendant has failed to cross-examine and to lead any evidence in this matter, 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.

7. It appears that in this matter the amount of compensation has been calculated on the basis of expected remaining life of deceased for 32 years by assuming that the plaintiff 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 employed in KDA and his retirement age was 60 years. Therefore, insofar as his remaining expected earnings from his employment is concerned, the same can only be calculated up to the age of 60 years. However, the same is to be calculated on the basis of 70 years in respect of other earnings from private sources.

8. Whereas, insofar as his earnings from driving a taxi is concerned, again the contention of plaintiff No.1 that her husband was earning Rs. 200/- to 300/- per day has gone unchallenged. 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 32 years spreading over 11680 days. The following is the working of compensation which is to be awarded in this matter by answering Issue No.1 in the affirmative to the following extent.

(A)		
(i)	Expected length of Service in KDA	60 years
(ii)	Loss of pecuniary benefits to plaintiff and other legal heirs (60 – 38) =	22 years (264 months)
(iii)	Aggregate loss of pecuniary benefits for 22 years = 264 x 3840/- months	1013760/-
(iv)	Less personal expenses 1/6 th	168960/-
		844,800/-
(B)		
(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 (70–38) = 32 years	32 years (384 months) or 11680 days
(iii)	Aggregate loss of pecuniary benefits for 11680 days @ Rs 250/day	29,20,000/-
(iv)	Less personal expenses 1/6 th	486,666/-
		24,33,334/-
(A) + (B)	Total Compensation	Rs: 32,78,134/-

Issue No.2

What should the decree be?"

9. 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. 32,78,134/- 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

ARSHAD/