

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.1040 of 2007**

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Date	Order with Signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff No.1 : Mst. Muqaddas  
Plaintiff No.2 : Mst. Naseem Akhter,  
Plaintiff No.3 : Mater Muhammad Asad Nisar,  
Plaintiff No.4 : Baby Kanwal,  
Plaintiff No.5 : Baby Liaba,  
Plaintiff No.6 : Baby Alishpa,  
Plaintiff No.7 : Baby Amna, (None present).

Defendant : Karachi Electric Supply Corporation Limited,  
through Mr. Ghulam Muhammad Dars,  
Advocate.

Date of hearing : 21.11.2017

Decided on : 19.01.2018

**JUDGMENT**

**NAZAR AKBAR, J.** Plaintiffs being legal heirs of the deceased Nisar Ahmed, (hereinafter referred to as ‘ the deceased’) aged 36 years who died on account of electrocution by coming into contact with energized pole erected by KESC, now K-Electric THE DEFENDANT, at Nishter Road, Near Noor-e-Subhani Masjid, Jamshed Town, Karachi. The deceased was Head Constable in Traffic Police and on **17.8.2006** he was posted at Soldier Bazar Traffic Section Zone II, Karachi. There was heavy rainfall in the City on the said date and rainy water was deposited on the roads by 3 to 4 feet and all the vehicles were going on roads slowly, including Nishter Road, Jamshed Town Karachi. The deceased was unaware of prevailing danger, pushing the vehicles to park them on one side to keep the road clear for flow of traffic. While doing so, he got slipped and in order to maintain his balance, suddenly he

caught hold of a nearby electric pole which was erected, installed by the defendant for transmission of electricity in the area i.e. near Noor-e-Subhani Masjid. As soon as he came into contact with the said energized pole, he started shouting loudly and then fell down speechless on the very spot in the rainy water alongside the pole. The neighboring residents / other people on the road, immediately informed the nearest complaint Centre of the defendant as well as concerned police station and requested to take immediate necessary action to save the life by switching off the main electric lines. In the meantime the neighboring residents / road people managed to isolate the victim from energized pole and stagnant water with the help of the wooden planks. The deceased was immediately evacuated to Civil Hospital Karachi, for medical aid. The MLO who attended the victim announced that he has already died on account of heavy electric current; accordingly the dead body was handed over to the relatives of the deceased.

2. It is further averred in the plaint that the defendant, a statutory Corporation, is responsible for supply of electricity throughout Karachi City. Besides, the defendant is also responsible for constructions, installation and maintenance to look-after the network of overhead Wires, Cables, Poles and other electricity installation pertaining to transmission and distribution of energy in city including the said electric pole. The defendant is required to ensure by virtue of electricity laws and relevant rules that no live part of its installation and network be exposed as to be capable of being touched by any person not intending to have access to them. The way in which the tragic incident took place resulting in death of Nisar Ahmed is directly attributable to the

gross negligence, wrongful act and malfeasance on the part of the defendant as it was caused owing to the complete failure and carelessness of the defendant to attend the live/energized electric pole which was erected at the said road by them. The defendant demonstrated gross negligence and breach of their duties of maintenance of said offending electric pole. Besides, the defendant failed/omitted to provide due safety measures for protecting the members of public including the deceased against the danger/peril involved in their business operation.

3. The deceased was only 36 years of age, having robust health and used to take much care of his family and he was expected to survive upto the age of 70 years in view of life span in his family pedigree, advancement in medical facilities and good climate of the area from where he belonged. Keeping in view the ages of the plaintiffs and their relation with deceased at the time of accident as well as earning capacity of the deceased, plaintiff have been deprived of their caretaker/supporter and present and expected pecuniary benefits to the extent of **Rs.10,802,220/-**. At the time of his death, the deceased was an employee of Sindh Government in Police Department and lastly posted in Traffic Police as a Head Constable. He was drawing a Salary of **Rs.9,945/-** per month. The deceased name was under consideration for departmental promotions. It was expected that the income of the deceased could have been increased through promotions and yearly increasing policy, Government of Sindh, as such an increment at the rate of 20% per annum can be safely assumed; plaintiffs have been deprived of their caretaker/ supporter and deserted for all purposes hence claimed Rs.10,802,220/-. The aforesaid amount of claim had been shown and justified with the help of statement of

claim which will be treated as actual loss of pecuniary benefits suffered by the plaintiffs is shown hereinbelow:-

**QUANTUM OF DAMAGES**

A	Average life span in Pakistan in view of preponderance of judicial pronouncement.	70 years
B	Age of the deceased	36
C	Loss of pecuniary benefits to the beneficiaries i.e 70 years to find out the years of prospective contribution (70 -36)	34
D	Gross income on the basis of monthly salary was drawn at the time of death to the tune of Rs.9945/- per month. The said income would continue for about one year (1 x 12 x 9945/-)	119,340/-
E	Thereafter first five years the gross salary of deceased was expected to be increased as per policy of Sindh Government. The same is safely be assumed to the tune of Rs.10,148/- per month i.e. till the age of 42 years. (5 x 12 x 10,148/-)	608,880/-
F	The second five years will safely be assumed as a service promotion of deceased on merits and his gross salary will safely be assumed being a Rank of ASI i.e to the tune of Rs.11,000/- per month till the age of 47 years. (5x12x11000/-)	660,000/-
G	The Third five years will also be assumed as a service promotion of deceased on seniority basis and his salary will be assumed as a Rank of SIP i.e to the tune of 12,000/- only till the age of 52 years (5x12x12000/-)	720,000/-
H	The remaining 08 years' service of deceased Nisar Ahmed will safely be assume das a cadre of inspector or D.S.P and expected that he might have got a gross salary to the tune of Rs.14,000/- only per month i.e till the age of 60 years. (6x12x14000/-)	1,344,000
I	The deceased would be entitled for service benefits i.e <b>Biannual Fund and retirement allowance</b> . The loss of same is safely be assumed to the tune of Rs.500,000/- only.	500,000/-
J	The deceased had also planned that after the retirement of service, he will joined the service of Private Security Company and it is expected that he would be appointed in the Private Security Company as a operational manager and the monthly salary of operational manager will safely be assumed to the tune of Rs.15,000/- per	1,800,000/-

	month i.e. till the age of 70 years (10 x 12 x 15,000)	
K	Total pecuniary loss (from column No.D to J) suffered by the plaintiffs and other beneficiaries to the tune of Rs.5,752,220/-	5,752,220/-
L	Added <b>20% increment chances</b> on the aggregate pecuniary loss of overall years (5,752,220 + 1,150,444)	1,150,444/-
M	The gross loss of pecuniary benefits may be obtained by adding <b>aggregate loss and chances of increment i.e. column No.K and L</b> (5,752,220 x 20% = 1,150,444)	6,902,664/-
N	LESS: personal expenses at <b>1/6<sup>th</sup></b> (6,902,664 :- 6 = 1,150,444)	1,150,444/-
O	<b>NET LOSS OF PECUNIARY BENEFITS (6,902,664 - 1,150,444)</b>	<b>5,572,220/-</b>

**FURTHER ADDED:**

P	Rs.500,000/- to the each children for the loss of education, comfort, position in society and loss of better marital prospects and deprivation which they would have enjoyed if the father had lived and maintained the income (500,000 x 5 = 2,500,000/-)	2,500,000/-
Q	Rs.1,000,000/- for the widow (the plaintiff No.1) under the head of consortium for the loss of association of the deceased in question by spouse/widow.	1,000,000/-
R	The plaintiff No.2 being mother also deprived of her caretaker and support who would have supported her in her old age at the time of distress in addition to pecuniary benefits and as such due to loss of the support of young son at this stage of life, the mother had been deserted for all purposes and for which loss the mother claims of Rs.500,000/-	5,00,000/-
S	Punitive and exemplary damages	1,000,000/-
T	Funeral expenses.	50,000/-
	<b>GRAND TOTAL LOSS OF PECUNIARY BENEFITS: (O &amp; T)</b>	<b>10,802,220/-</b>

4. The plaintiffs have prayed for the following relief:-

- a) *A decree in the sum of Rs.10,802,220/- (Rupees One Crore Eight Lac Two Thousand & Twenty Two Only) against the defendant jointly and severally to pay the said sum of damages / compensation to the plaintiffs & beneficiaries or other amount this Hon'ble Court may deem fit in circumstances of the case.*
- b) *Profit / mark up at the rate of 21% per annum on the amount claimed in Clause (a) above from the date of the filing of the suit till the date of realization of the decretal*

*amount which the plaintiffs would have earned had the defendant paid the said amount.*

- c) *Cost of the suit may be awarded to the plaintiffs.*
- d) *Any other relief or reliefs that this Hon'ble Court may deem just and proper under the circumstances of the case be granted.*

5. In written statement the defendant objected to the maintainability of the suit as well as denied cause of action against them. It is also averred that plaintiffs have failed to avail alternate remedy available to the plaintiffs under **Section 33** of the Electricity Act, 1910 and plaintiffs have filed suit with mala-fide intention and ulterior motives to make illegal gains. The defendant has no concern with the incident causing death of the deceased and denied all the claim of the plaintiffs.

6. The Court by order dated 13.10.2008 framed following issues.

- i. *Whether the suit is not maintainable?*
- ii. *Whether no cause of action has accrued to the plaintiff to file the present suit.*
- iii. *Whether the plaintiff has alternate remedy under Section 33 of the Electricity Act, 1910 to get redressal of his grievances?*
- iv. *Whether the deceased Nisar Ahmed died on 17.8.2006 due to electric shock owing to negligence, default and wrongful act of the defendant, if so, its effect?*
- v. *Whether the deceased Nisar Ahmed was earning Rs.9,945/- per month on account of monthly salary from Sindh Police Department?*
- vi. *To what extent, if any, the plaintiffs are entitled for the reliefs?*
- vii. *What should the order be?*

7. On 10.12.2012 Mr. Dilawar Hussain, Advocate was appointed Commissioner for recording evidence of the parties.

Plaintiff Mst. Muqadas filed her affidavit-in-evidence as Ex.P/1, Medical Legal Section Certificate of cause of death as Ex.P/1/1, Copy of handing over the dead body of the deceased as Ex.P-1/2, Copy of Inquiry report issued by P.S Jamshed Quarters as Ex.P-1/3, Copy of Roznamcha dated 17.8.2006 entry in P.S Jamshed Quarters as Ex.P-1/4, Copy of receipt of Edhi Foundation dated 18.8.006 as Ex.P-1/5, Copy of the Obituary issued by the S.S.P Traffic Zone, Karachi as Ex.P-1/6, Newspaper clippings of Umat, Naya Akhbar, Express, Janbaz, Awam & Roznama Karachi as Ex.P-1/7, Copy of CNIC of Nisar Ahmed as Ex.P-1/8, Copy of service card of deceased as Ex.P-1/9, Copy of CNIC of plaintiff No.1 Mst. Muqadas and her mother as Ex.P-1/10 & P-1/11, Pictures of deceased and his children as Ex.P-1/12, Copy of salary certificate of deceased as Ex.P-1/13, copy of the department Martyrdom Report dated 22.8.2006 as Ex.P-1/14 and School Leaving & Birth Certificate of children as Ex.P-1/15. One Abdul Jabbar an independent witness also filed affidavit-in-evidence as Ex.PW/2, who has no relation with the plaintiffs and was present at the time of incident. He supported the claim of the plaintiffs. The defendant produced one Mr. Javed Iqbal their legal contractor as witness.

8. I have heard learned counsel for the defendant and perused the record. The plaintiff's counsel has never attended the Court after **10.12.2012**. My findings on the above issues with reasons are as follows:-

**Issues No.1, 2 & 3**

The burden of proof of issues No.1, 2 & 3 was on the defendant. The plaintiffs have filed a suit for compensation under Fatal Accident Act, 1855 on account of death of Nisar Ahmed and

**Section 33** of Electricity Act, 2010 is no bar on filing the suit in hand. Learned counsel for the defendant has not advanced any arguments on these issues. Therefore, all the three issues are answered against the defendant.

**Issues No.4 & 5**

The burden of proof of these issues was on the plaintiff and the evidence has come on the record that victim Nisar Ahmed has died on **11.8.2006** due to electrocution and there is also a clear evidence that the monthly salary of deceased Nisar Ahmed in August 2006 was **Rs.9945/-** as he was Head Constable in Sindh Police Department. In this context the following irrefutable documentary evidence is quite relevant.

- a) Medical Legal Certificate of cause of death as Ex.P-1/1.
- b) Police Inquiry report about cause of death as Ex.P-1/3.
- c) Roznamcha entry in Jamshed Quarters as Ex.P-1/4.
- d) Newspaper clipping of Umat, Naya Akhbar, Express, Janbaz, Awan & Roznama Karachi Ex.P-1/7.

All these documents confirm that the cause of death of Nisar Ahmed was due to electricity current in the electric pole at Nishtar Road, near Noor-e-Subhani Masjid, Jamshed Town, Karachi, and the said electric pole was touched by the deceased when he was performing his duty as Head Constable in traffic police at the relevant time. He has been pushing one car to avoid traffic conjunction on the Nishtar Road, on account of heavy rain. It is not denied that deceased lost his life due to the fact that he had tried to grab the pole when he could not keep his balance in the rain water. Nor it is disputed that the said electric pole was not energized at that point of time. The defendant counsel in their cross-examination has not been able to contradict the facts that (i)



deceased has died due to electrocution by touching energized pole; and (ii) it was not fault of the K-electric. Electricity pole was energized though generally electricity supply is not supposed to be in pole, therefore, it was clear cut case of contributory negligence of the defendant for not having taken care of the possible electrocution due to rain in any of the poles carrying electric wires. The counsel for the defendant has attempted to argue that K-Electric has issued public warning to protect them from possible accident during the rain. He has referred to the public warning produced in evidence by the witness of the defendant as Ex.D-8, which are different newspaper cutting. However, when confronted with Ex.D-8 he conceded that all these newspaper cuttings on which he was relying were published sometime in **March 2007** or around, therefore, even for the sake of arguments, if there was an attempt to control the damage, it is not relevant in the given facts of the case in hand. The unfortunate accident causing death of Nisar Ahmed took place in **August 2006**. Even otherwise by issuing such warning in newspapers the K-Electric is not absolved of its responsibility to ensure that electric poles on public place should not be energized. Common man is not supposed to read newspaper and be warned against the possible electrocution in the case he touches an electric pole. The deceased has been performing his professional duty and helping the motorist to keep the traffic flow in heavy rush on account of rain and he was not expected to know it beforehand that particular electric pole was energized. Nor it was even expected to be energized at the relevant time; therefore, this defense is misconceived. As far as the issue of earning of Rs.9945/- per month by the deceased is concerned, the plaintiff has produced salary certificate as Ex.P-1/13 showing that

the gross salary of the deceased in August 2006 was **Rs.9945/-** and it has not been disputed by the counsel for the defendant in their cross-examination, therefore, issues No.4 & 5 are answered in the affirmative.

**Issue No.6**

The consequences of the above discussion and decision on issues No.4 & 5 is that the plaintiffs are entitled for the relief they have claimed as compensation for the death of Nisar Ahmed since the plaintiffs being immediate family of deceased have been directly affected by his accidental death. The plaintiffs have given well calculated figures to claim quantum of damages amounting to Rs.10,802,220/- and the counsel of K-Electric in the cross-examination has not even disputed the calculation given both in the plaint as well as in the affidavit-in-evidence on oath. In fact the counsel for the defendant has conceded that the figures of quantum of damages given in the affidavit are proper calculation in terms of the dates and time for claiming various increase in the financial loss so to have been suffered by the plaintiffs. He has, however, contested that the further added claim of damages on account of loss of education, comfort and position in the society by the children amounting to Rs.25,00,000/- and loss suffered by the widow amounting to Rs.10,00,000/- and mother's claim for having been deprived of caretaker amounting to Rs.5,00,000/- coupled with exemplary damage of Rs.10,00,000/- and Rs.50,000/- towards funeral expenses are unjustified and exorbitant.

I have examined the claim of compensation detailed at typed page 7 & 8 of the affidavit-in-evidence. The pecuniary loss of salary benefits with the change in the salary slab from the age of 36 years to the age of 70 years including 10 years' salary after the

retirement age in private sector have been calculated as **Rs.57,52,220/-**. However, figure of **Rs.500,000/-** on account of “Biannual Fund” and “retirement allowances” is not based on any criteria. Nor the biannual fund has been defined by reference to any service rules. The retirement benefit must have been given to the family in the name of family pension and therefore, in absence of counsel for the plaintiff to explain and justify the same, I do not find any reasonable justification to include this amount of **Rs.500,000/-** in the possible pecuniary losses and therefore, the pecuniary losses in my humble view comes to **Rs.52,52,220/-**. Then plaintiff has added **20%** increment chances on the aggregate pecuniary loss. The government has never increased anything beyond 10% per annum increase in the salary and other service benefits therefore, it cannot be more than 10% to the total pecuniary loss. The pecuniary loss is equivalent to **Rs.52,52,220/-** and its 10% chances of increments comes to **Rs.5,25,222/-**. Thus aggregate pecuniary loss suffered by the plaintiff comes to **Rs.57,77,442/-**. The expenses of deceased during the 34 years of expected life span have been deducted by the plaintiffs themselves as **1/6<sup>th</sup>** to the total loss of pecuniary benefit. Therefore, on dividing the value of total loss i.e. Rs.57,77,442 by 6 (six), the personal expenses would come to **Rs.962907/-**. (57,77,442 / 6 = 962907). Therefore, pecuniary total loss comes to **Rs.48,14,535/-**. As far as further added loss claimed by the plaintiffs in the name of losses and deprivation of father, husband and caretaker of mother as well as punitive damages and funeral expenses are concern, the amount claimed by the plaintiff does not appear to be justified. The plaintiffs’ counsel is absent to explain the figures suggested in the plaint as added loss. Be that as it may, by now out of seven

plaintiffs only three are minors, they are plaintiffs No.5, 6 & 7 namely Baby Liaba, Baby Alishba and Baby Amna, and obviously being minor their deprivation on account of loss of their father continues even after 11 years long litigation and it is not necessary that with the decree it ends here. Therefore, I hold that three plaintiffs who are minor on the day of announcement of the judgment are entitled to additional compensation and by application of the Rule of Thumb to the tune of **Rs.300,000/-** each. It means **Rs.9,00,000/-** have to be added to the pecuniary loss for 34 years in terms of salary and other incomes already determined above. Thus the plaintiffs are entitled to a consolidated decree to the tune of **Rs.57,14,535/-** as compensation for the loss occasioned by the death of Nisar Ahmed, a bread earner for them.

The plaintiffs are widow of the deceased, his mother, one son and four daughters. The preamble of the Fatal Accidents Act, 1855 explains that the purpose of the Act is to provide compensation to the families for loss occasioned by the death of a person caused by actionable wrong. In my humble view the decretal amount cannot be handed over to just one member of the family of the victim. The possibility of dispute in the families subsequent to the death of its one member, particularly bread earner, cannot be ruled out. The plaintiffs themselves have impliedly followed Sharia Law when they have calculated expenses of the deceased equivalent to 1/6<sup>th</sup> of their total pecuniary loss and reduced their claim of compensation to that extent. Therefore, each one of the plaintiffs will be entitled to his/her share in the pecuniary loss amounting to **Rs.48,14,535/-** in accordance with the Shariah in terms of the personal law of the deceased and the last three plaintiffs in addition to their share in terms of Shariah Law from the aforesaid

total pecuniary loss will be given additional **Rs.300,000/-** each. The total decretal amount that comes to **Rs.57,14,535/-** is to be deposited by the defendant with the Nazir of this Court within 30 days from the date of decree.

**Issue No.7**

In view of the above discussion, the suit with **cost** is decreed and the defendant is directed to deposit with the Nazir of this Court within 30 days an amount of **Rs.57,14,535/-** as compensation to the family (plaintiffs) of the deceased Nisar Ahmed. The time consumed in disposal of the suit cannot be attributed to the defendants alone. The plaintiffs were not even pursuing this case vigilantly and their counsel has remained absent for more than 5 years. Therefore, **10%** markup on the decretal amount shall be payable from the 30<sup>th</sup> day of this judgment till realization. The decretal amount once deposited by the defendant within 30 days or even before and / or on order in execution proceedings the Nazir shall distribute the decretal amount amongst the plaintiffs and the amount of the minors shall be retained by the Nazir and same shall be invested in profit bearing Government scheme till the time of their attaining age of majority and they approach the Nazir for its disbursement.

**J U D G E**

Karachi  
Dated:19.01.2018

*SM*