

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 12 of 2008

National Logistics Cell (NLC) and another v. Muhammad Iqbal and others

Date of hearing: **21-02-2022**

Date of decision: **21-02-2022**

Mr. Nisar Ahmed Bhanbhro, Advocate for the Applicants.
Nemo for Respondents.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicants have impugned judgment / decree dated 14-02-2008 and 20-02-2008, respectively, passed by the Additional District Judge-III, Khairpur in Civil Appeal No.71 of 2006, whereby while dismissing the Appeal of the Applicants, judgment / decree dated 09-06-2006 and 16-06-2006, respectively, passed by the Senior Civil Judge-I, Khairpur in F.C. Suit No.26 of 2004 has been maintained, through which the Respondents' Suit was decreed.

2. Heard learned Counsel for the Applicants and perused the record, whereas, despite being served and engaging Counsel, no one has turned up on behalf of the Respondents to assist the Court.

3. The Suit was filed by the Respondents under the Fatal Accidents Act, 1855 claiming compensation and damages against the Applicants with the following prayer:

- a) *That this Hon'ble court may be pleased to pass decree of damages worth Rs.2980000/- (Twenty nine lacs eighty thousands rupees) in favour of the plaintiffs against defendants and direct them to pay the same with 20% markup from date of incident or as determined by this Hon'ble court.*
- b) *To award costs of this suit.*
- c) *To award any other relief this Hon'ble court deems fit and proper.*

4. The Suit was contested by the Applicants, and the learned Trial Court vide its judgment dated 09-06-2006 was pleased to decree the Suit. The Appeal filed by the Applicants has also failed.

5. Perusal of the judgment passed by the learned Trial Court reflects that the learned Trial Court, even after coming to a definite conclusion that insofar as the deceased and the injured were concerned, they were negligent in riding the motorcycle, has decreed the Suit. The relevant finding of the learned Trial Court is as under:

*“In this case let us see who is the responsible of this fatal accident and who is responsible to pay the compensation to the legal heirs of the deceased and at what rate. In this regard I would like to submit that as it is evident from the evidence of plaintiff side that deceased **Altaf Hussain** was having no driving license even he was not mature driver of motorcycle but legal practice of driving Motorcycle is to get one person more except the driver of the motorcycle which means two persons can move on the motorcycle but in the present case the deceased **Altaf Hussain** was driving the motorcycle with another two persons which also abundantly negligence on the part of the deceased **Altaf Hussain**. More over the defendants side evidence is shaken and witness of the official defendants namely Hawaldar Muhammad Mairaj also not real witness of the incident and he is cross examination admitted the negligency on the party of driver Shah Muhammad. Moreover he admitted the other accident happened from the hands of driver Shah Muhammad before of this accident and in result of his negligency the NLC department discharged him from his services on the very day of incident such material established the negligency on the part of driver Shah Muhammad of NLC department. More over the vehicle which was plying by the driver Shah Muhammad was belonging to NLC department and even from the vehicle the deceased **Altaf Hussain** lost his life in young in age and also vicarious responsibility comes to all defendants.”*

Perusal of the aforesaid paragraph reflects that the Trial Court has, in clear terms, observed that the deceased was riding the motorcycle without a driving license; whereas, three persons including the deceased were riding the said motorcycle. The Trial Court has further observed that it is abundantly clear that negligence was on the part of the deceased Altaf Hussain. At the same time, by decreeing the Suit, the Trail Court has taken into consideration the evidence of the Applicants, and primarily, reliance has been placed on the witness Hawaldar Muhammad Mairaj, who was not an eye witness of the incident, and therefore, any reliance on his evidence as to the negligence of the driver cannot be considered as proper and valid. Insofar as the driver is concerned, he, in his evidence, has denied any negligence on his part and has narrated the facts that it was an accident for which he was not entirely responsible.

6. The Applicants' Counsel has placed reliance on the case reported as Abdul Sattar Khan, etc. v. Muhammad Anwar, etc. (2001 CLJ 540), wherein somewhat similar facts were involved inasmuch as the deceased was riding a motorcycle without a license; whereas, the injured were not examined. The relevant finding of the learned Judge is as under:

“The two plaintiffs have filed affidavits-in-evidence. The averments contained in the plaint have been re-affirmed in the affidavits-in-evidence. In a case of compensation under the Fatal Accidents Act, it is to be seen if the death was caused due to negligence on the part of defendants. The plaintiffs admittedly were not present at the time of incident nor had witnessed the occurrence. The deceased at the time of incident was admittedly driving Motorcycle with two other persons sitting as pillion riders. The capacity of a Motorcycle is normally limited to carrying two persons including the driver. The very fact that third person was also riding the Motorcycle shows that the deceased had scant regard for law and was himself guilty of violating the capacity of the Motorcycle. Moreover, the very fact that three persons were riding the Motorcycle is suggestive of negligence on the part of the deceased Shakil Khan and his companions. It is inferable that the Motorcycle which was being driven by the deceased went out of control and the deceased himself lost balance leading to the accident. Driving a Motorcycle with three persons riding it, particularly on a Highway, can always be fatal and the deceased had rather asked for the trouble himself. A person who does not respect the law cannot seek aid of the law. In view of the admitted position that three persons were riding the ill-fated Motorcycle, the burden to prove that the Motorcycle did not lose balance, lay primarily on the Motorcyclist. The tanker driver or the owner thereof cannot be burdened with liability to prove absence of negligence alleged against them. The plaintiffs have not led any evidence muchless reliable evidence to show that the death of Shakil Khan was caused due to negligence of defendant No.3. The plaintiffs, despite absence of any rebuttal have failed to produce material as may burden the defendants with liability to pay compensation. The injured companions of the deceased Shakil Khan have also not been produced for evidence. The non-production of the eye-witnesses to the incident raises an adverse presumption against the plaintiff's claim. In the circumstances, I am not convinced to believe that the incident leading to death of Shakil Khan was result of negligence on the part of defendant No. 3.”

7. In this case also, there is contributory negligence on the part of the Respondents, and when the entire evidence is looked into, it appears that the Courts below have arrived at a wrong conclusion by decreeing the Suit of the Respondents. Once it has come on record that there was negligence on the part of the deceased, and not only this, the law was also being violated by them, whereas, the injured were not examined, therefore, they were not entitled for compensation under the Fatal Accidents Act, *ibid.*

8. In view of hereinabove facts and circumstances of this case, and notwithstanding the concurrent findings of the two Courts below, which are an outcome of misreading and non-reading of the evidence, therefore requires interference by this Court while exercising its revisional jurisdiction, in view of the dicta laid down by the Hon'ble Supreme Court in the case of, ***Nazim-Ud-Din v Sheikh Zia-Ul-Qamar (2016 SCMR 24)***, ***Islam-Ud-Din v Mst. Noor Jahan (2016 SCMR 986)***, ***Nabi Baksh v. Fazal Hussain (2008 SCMR 1454)***, ***Ghulam Muhammad v Ghulam Ali (2004 SCMR 1001)***, & ***Muhammad Akhtar v Mst. Manna (2001 SCMR 1700)***; hence, this Revision Application merits consideration and is therefore **allowed**. The judgment of the Trial Court as well as the Appellate Court dated 09-06-2006 and 14-02-2008 respectively are hereby set aside and the Suit of the Respondents stands dismissed.

Abdul Basit

J U D G E