

ORDER SHEET
THE HIGH COURT OF SINDH, AT KARACHI

Misc. Appeal No.44 of 2021

Pakistan International Airlines Corporation Ltd.

Versus

The Court of District Judge Karachi (East)

Date	Order with signature(s) of Judge(s)
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1. For orders on office objection a/w reply as at "A"
2. For hearing of CMA 2893/21
3. For hearing of main case

Dated: 03.06.2021

Mr. Mehmood Mandiwalla along with Mr. Hasan Mandiwalla for appellant.

Mr. Farrukh Usman along with Mr. Aamir Maqsood for respondent No.2.

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Brief facts of the present litigation are that a petition seeking issuance of a certificate under Rule 6 of 6th Schedule of the Act IV of 2012 (hereinafter called as Carriage By Air Act, 2012) read with Section 372 of Succession Act, 1925 was filed. The impugned order dated 05.05.2021 reveals that in fact succession application was granted on 13.01.2021 whereafter on 12.02.2021 Nazir was directed to collect the amount from the concerned department of PIA and release share to the legal heirs of the deceased.

The appellant has challenged the order dated 05.05.2021 and contended that the District Judge who was only exercising powers under the provisions of Carriage By Air Act, 2012, cannot direct the Nazir of this Court to collect the amount from the concerned department of PIA and release it to the legal heirs of the deceased as it was an independent proceedings, had it been initiated.

Notices of this appeal were issued to the respondents and respondent No.2 being one of the legal heirs put an appearance and files para-wise comments and her counsel has argued the case as the legal question is involved.

I have heard the learned counsel for parties and perused material available on record.

Rule 1 of Sixth Schedule of ibid Act 2012 relates to liability of the carrier in the event of death of a passenger. It provides that the liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death. Rule 2 of Sixth Schedule of ibid Act 2012 provides that an action to enforce the liability of carrier may be brought by the representative of the passenger or by any person for whose benefit the liability is under the aforesaid rule enforceable but only one action shall be brought in Pakistan in respect to death of any one passenger and every such action by whosoever brought, shall be for the benefit of all such persons so entitled as aforesaid. Underlining is for emphasis that benefit was provided to those who sustained damages by reason of such death.

Now in order to exercise such action Rule 6 provides that any person competent to bring an action under Rule 2 may apply to the District Judge or the High Court, as the case may be, having jurisdiction to issue a succession certificate (for the purposes of ibid act to pursue remedy) following death of the passenger for the grant of certificate to the effect that only persons named therein are the members of the passenger's family for whose benefit the liability is enforceable under Rule 1.

Precisely the gist of law and the succession application provides that the litigation commenced for issuance of a certificate in terms of Rule 1, 2 and 6 of Sixth Schedule of the ibid Act 2012. It enabled one of the legal heirs of the deceased to pursue the proceedings on behalf of all legal heirs who sustained damages to claim compensation from the airline.

PIA's aeroplane met an accident last year on 22.05.2020. PIA/appellant however awarded compensation to the unfortunate victim's family members who sustained damages. The compensation

awarded was never an asset left by the deceased and hence a Succession Certificate with regard to this compensation could not have been granted by the succession Court. The *ibid* rules only enabled a legal heir to pursue on behalf of legal heirs to claim compensation which proceedings could have been taken to its logical end before a Court having jurisdiction in this regard. However, there is neither a fixed compensation nor it could be as the damages and compensation could be different and it may vary from person to person. The voluntary compensation, which is being claimed by the respondent as statutory compensation, was thus offered which was made subject matter of succession application. The District Judge could have exercised its jurisdiction only to the extent of grant of certificate strictly in terms of *ibid* Rules of Sixth Schedule and not beyond. The District Judge could not have exercised powers under section 372 of Succession Act and asked the Nazir of its Court to recover amount from PIA and to distribute it to all legal heirs as there was no independent proceedings initiated by any of the legal heirs before a Court of competent jurisdiction. On issuance of certificate under *ibid* rules, Court becomes *functus officio* and the orders of District Judge could only be read and deemed in consonance with rules 1, 2 and 6 of the Sixth Schedule *ibid*.

Respondent No.2 approached District Judge/ respondent No.1 for issuance of requisite succession certificate. The District Judge/ Respondent No.1 however in terms of order impugned in these proceedings treated such compensation as an asset left by the deceased/victim and by considering it as part of succession application and has taken action in terms of the impugned order, which action is being challenged by the appellant/PIA in these proceedings. I disapprove the observation of the District Judge to the extent whereby recovery process was initiated.

Without prejudice to above, and to cut the controversy short, appellant is even at this stage willing to release the amount provided

the legal heir may sign a memorandum/ agreement. The only impediment thus for releasing the amount was perhaps an agreement that was asked to be signed by all legal heirs of the deceased/respondent No.2. The legal heirs/respondent No.2 have some reservation as they feel that their rights available to them under the law, shall be curtailed or restricted on signing such agreement. However, in my view signing of such agreement or any term thereof which embarked upon "legal rights" of a person cannot withstand rigors of provisions of Contract Act including but not limited to Section 28 *ibid*, as no contract could extinguish the legal rights. Proposed agreement is available on record as final draft and nothing could be added or subtracted from it. Hence they may sign the agreement without prejudice to their legal rights available to them under the law, in case they do so, it shall be treated as such.

The balance amount of Rs.10 Million as has been deposited by the appellant with the Nazir of this Court on 01.06.2021, be released to the legal heirs of the deceased/victim in terms of their respective shares and entitlement, as agreed, subject to signing of the agreement, draft of which is available at page 35 of the file. The rights and privileges available to respondent No.2 under the law shall remain alive, if permissible under the law and shall not be affected by the subject agreement.

In case respondent No.2/legal heirs of victim opts to avail such compensation amount in terms of above offer, they may show their willingness before Nazir of this Court with whom money is lying and Nazir may issue notice to the appellant for execution of agreement/ document, before such amount could be released on proper verification and identification.

Miscellaneous Appeal stands disposed of along with listed applications in the above terms.

J U D G E