

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.215 of 2015

[Muhammad Rafiq vs. Habib Bank Limited]

Dates of hearing : 21.10.2020, 22.10.2020,
27.10.2020, 03.11.2020,
15.12.2020 and 21.12.2020.

Plaintiff
[Muhammad Rafiq] : Through Mr. Faraz Faheem
Siddiqui, Advocate.

Defendant
[Habib Bank Limited] : Through Mr. S.M. Amir Khan,
Advocate.

- Law under discussion:**
- (1) The Qanoon-e-Shahadat Order, 1984.
[the Evidence Law].
 - (2) Financial Institution (Recovery of Finances) Ordinance, 2001-***Banking Law.***
 - (3) The Code of Civil Procedure, 1908
[CPC].
 - (4) Limitation Act, 1908.
[Limitation Law].
 - (5) Tort Law.

JUDGMENT

Muhammad Faisal Kamal Alam, J: This action at law has been filed by Plaintiff against Defendant-Bank in respect of, *inter alia*, malicious prosecution, claiming damages. Following is the Prayer Clause_

“a. ***To declare that the Plaintiff is entitled for the sum of Rs.13,31,53,640/- on account of Damages caused to the Plaintiff on account of malicious***

proceedings initiated by the Defendant and for freezing of account of the Plaintiff duly maintained with Defendant and completely ruining the business of the Plaintiff due to unnecessary litigation filed by the Defendant and direct the Defendant to pay the above said amount to the Plaintiff;

- b. Cost of the suit;*
- c. Any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case."*

2. Upon issuance of summons, Written Statement was filed and claim of Plaintiff was contested. On 30.05.2016, following Issues were framed_

- "1. Whether the suit as framed and filed is competent / maintainable under the law?*
- 2. Whether the Plaintiff has suffered any losses as claimed in the suit? If yes, to what extent and on what account?*
- 3. Whether the damages as claimed by the Plaintiff are remote and indirect in term of Section 73 of the Contract Act? If yes, its effect?*
- 4. Whether the Defendant is liable to pay any amount to the Plaintiff? If yes, quantum of the amount?*
- 5. What should the decree be?"*

3. It is argued by Mr. Faraz Faheem Siddiqui, Advocate, on behalf of Plaintiff, that latter has suffered immense losses due to negligent act of Defendant-Bank, which has earlier filed a Banking Suit No.3786 of 2000 primarily against sole proprietorship of Plaintiff, viz. M/s. International &

Company, which is even not defaulter at the relevant time. The Judgment passed by the learned Banking Court when was challenged in High Court Appeal was not only set-aside by consent but further direction was given to the Banking Court to consider the breakup of accounts filed by present Plaintiff and decide the matter afresh. It is contended by referring to various documents, which are part of the record, that learned Division Bench of this Court in Ist Appeal No.25 of 2010 has also nominated a Commissioner vide order dated 07.12.2010 and by consent appointed Mr. Qaiser Mufti and Associates (*Cost and Management Accountants*), for determining the transactions between present Plaintiff and Defendant, particularly that what amount was repaid by present Plaintiff towards finance facility. Further contended that after a positive finding by the aforementioned Commission, the Banking Court changed its decision in favour of Plaintiff, which is produced in the evidence by present Plaintiff. It is stated that in the intervening period, Plaintiff could not operate its accounts and suffered huge business losses so also of reputation as he could not timely completed the orders of different buyers including foreign buyers. The Plaintiff was also fallen ill and Medical Report has been produced in the evidence.

4. Following Judgments are relied upon by the Plaintiff's Advocate in support of his arguments_

- i. **NLR 1993 SCJ page-462**
[*Muhammad Yousuf vs. Syed Ghayyur Hussain Shah, etc*]
- ii. **2009 CLD page-665**
[*M.A. Kareem Iqbal vs. Habib Bank Limited*]
- iii. **2006 CLD page-255**
[*United Bank Limited and another vs. Mian Ahmad Hassan*]

5. Mr. S. M. Amir Khan, Advocate for Defendant, while disputing the arguments of Plaintiff's counsel, has stated that no loss or damage was or has been caused to Plaintiff by Defendant, even if the earlier Judgment dated 24.12.2009 of Banking Court had wrongly calculated the markup, because same was remedied in the above referred Ist Appeal preferred by present Plaintiff and subsequently by the learned Banking Court itself while deciding the matter afresh and according to the Judgment and Decree of Banking Court dated 03.05.2011, the liability of the present Plaintiff reduced from Rs.19,67,076.62/- (as decreed earlier) to Rs.306,338/- (*rupees three hundred six thousand three hundred thirty-eight only*), together with costs of fund as specified by State Bank of Pakistan. It is contended that present suit is clearly affected by Article 23 of the Limitation Act, 1908, because present claim is a time barred one, as one year is prescribed for filing the claim of the nature; that Plaintiff is not entitled for any damages because he is unable to prove any business loss and thus has failed to discharge the onus. Following Judgments are cited by learned counsel for Defendants_

- i. **PLD 1998 Karachi page-250**
[Nasir Raza Jafery vs. Messrs Macter Pharmaceutical (Pvt.) Ltd. through Managing Director and 4 others]
]
- ii. **PLJ 1998 Karachi page-622**
[Nasir Raza Jafery vs. M/s. Macter Pharmaceutical (Pvt.) Ltd and 4 others]
- iii. **2012 CLD page-170 [Sindh]**
[Habib Bank Limited and others vs. Rafiq Ahmed and others]
- iv. **2000 CLC page-90 [Karachi]**
[Mst. Zubeda vs. M. Abdul Sattar and another]
- v. **2013 CLD page-1085 (Islamabad)**
[Warid Telecom (Pvt.) Ltd. and others vs. Pakistan Telecommunication Authority, Islamabad]

vi. **PLD 2013 Supreme Court page-174**
[Malik Iqbal Ahmad Langrial vs. Jamshed Alam and others]

vii. **2013 CLC page-258 [Lahore]**
[Khalil Ahmed vs. Additional District Judge and others]

Following case law is on rejection of plaint, under Order 7, Rule 11 of Civil Procedure Code.

- i. **2015 SCMR page-380**
[United Bank Limited and others vs. Noor-un-Nisa and others]
- ii. **2015 CLC page-1290 [Islamabad]**
[Akram Rashid vs. Hamid Ali Khan]
- iii. **2016 SCMR page-910**
[Agha Syed Mushtaque Ali Shah vs. Mst. Bibi Gul Jan and others].
- iv. **2016 SCMR page-201**
[Muhammad Bux Kumbhar vs. Habib Bank Limited and others]
- v. **2010 YLR page-3211**
[Muhammad Walayat vs. Member Judicial Board of Revenue Punjab]
- vi. **2012 CLC page-1165 [Balochistan]**
[Secretary Board of Revenue, Government of Balochistan, Quetta and 2 others vs. Qadir Bakhsh and 6 others]

6. Arguments heard and record perused.

7. On one of the dates of hearing, Defendant's counsel was also assisted by Syed Muhammad Ali, Senior Manager, Remedial Assets of Defendant-Bank. On 03.11.2020, the said Officer produced a document under the heading "State Bank of Pakistan, Consumer Protection Department, Consumer Credit Information Report" and stated that it bears the name of Plaintiff and it was pointed out by the Officer that since remarks box does not have any adverse observation, therefore, it means that the Plaintiff has settled his liability.

8. Summary of the case law relied upon by the Plaintiff is that_
 - i. in a suit for malicious prosecution, time will start to run not from the issuance of summon / earlier proceeding but when the earlier litigation is finally decided in favour of a plaintiff;
 - ii. the decision of learned Trial Court awarding damages to plaintiff was maintained by the learned Lahore High Court on the ground that when the said plaintiff never stood as guarantor in respect of a loan facility given by appellant Bank then it has been correctly held that the Banking Suit filed against the said plaintiff / respondent was filed maliciously;
 - iii. that in a Muslim Society, no one should be prosecuted on a false complaint, which was determined by the Courts; it is held by the Hon'ble Supreme Court that for such cases Article 120 of the Limitation Law will be applicable, which provides six years period from the date of accrual of cause of action.
9. Précis of the case law relied upon by the Defendant's Advocate is that_
 - i. the question of limitation is to be considered by the Court, irrespective of the fact that whether such plea was raised or not under Section 3 of the Limitation Law;
 - ii. unsuccessful criminal or bankruptcy / liquidation proceeding without a probable cause can be termed as malicious prosecution against a person claiming damages, for which period of

limitation is described in Article 23 of the Limitation Law, that is, one year from the date when a plaintiff was / is acquitted or the prosecution is otherwise terminated;

- iii. in **Nasir Raza** case (*ibid*), this Court rejected the plaint in terms of Articles 23 and 25 of the Limitation Law, because the proceeding against plaintiff (*of the reported case*) was quashed on 07.05.1992 and the suit was filed on 06.11.1995, after lapse of more than three years; held, that a person seeking equitable relief should also show his *bona fide* first;
- iv. compassion and hardship can only be considered when there is room in the relevant law to do so; it is settled law that compassion which can be said to have the shade, overtone and nexus to the rules of equity cannot be given precedence and overriding effect over the clear mandate of law. [PLD 2013 Supreme Court 174]

10. Crux of the case law cited by Defendant's counsel on the applicability of Order VII Rule 11 of CPC, is, that where in earlier round of litigation, the title of one of the parties has been proved, then subsequent suit filed after 18 years was time barred, the Appellate Court should not have remanded the same, allowing the respondents (of the reported case) to enjoy the fruits of their own manipulations and frauds. A bank employee was paid all his dues and property documents were returned to him which were earlier in custody of the bank in connection with the equitable mortgage; suit for damages was filed after three years; application of respondent bank (of the reported case) under Order VII Rule 11 of CPC,

was allowed, plaint was rejected and the same was maintained up to the Apex Court. Where a suit is patently time barred, there is no requirement to record evidence and the plaint can be rejected by the Court under Order VII Rule 11 of CPC.

11. Findings on the Issues are as follows:

F I N D I N G S

ISSUE NO.1.	Affirmative
ISSUE NO.2.	Negative
ISSUE NO.3.	Negative
ISSUE NO.4.	Affirmative
ISSUE NO.5.	Suit is decreed for a sum of Rupees One Million payable by Defendant to Plaintiff with ten percent markup from the date of filing of present suit till realization of the amount.

R E A S O N S

ISSUE NO.1.

12. The first Issue relating to maintainability of this suit is decided first. This Issue will also address the point of limitation, as vehemently argued by the learned counsel for Defendant.

13. The undisputed documentary evidence is considered. Admittedly, the initial Judgment and Decree [**First Decree**] passed by the learned Banking Court was for an amount of Rs.1,967,076.62 (*rupees one million nine hundred sixty-seven thousand seventy-six and sixty two paisa only*) was against the present Plaintiff, which when challenged through First

Appeal No.25 of 2010, the learned Division Bench by consent had nominated a Chartered Accountant Firm (as referred above) as Commissioner. Earlier decision of Banking Court, First Appeal and the consent order dated 07.12.2010 have been exhibited by Plaintiff as PW-12, PW-13 and PW-16. The scope of Commission was also described in the order of 07.12.2010. The Commissioner's Report has been exhibited as **PW-17** (*at page-253 of the Evidence File*).

14. The conclusion of the Commissioner's Report is that Bank was unable to justify a debit entry of Rs.8,00,000/- (*rupees eight hundred thousand only*). Subsequently, the First Appeal No. 25 of 2010 was disposed of by this Court vide order dated 22.02.2011, Exhibit PW/18; consequently, the impugned Judgment and Decree [**First Decree**] was set aside and the case was remanded to the Banking Court for a fresh decision. The subsequent Judgment dated 03.05.2011 and Decree dated 19.05.2011 [**the Second Decree**] has taken into the account the Report submitted by the Chartered Accountant Firm and the learned Banking Court came to the conclusion that only a sum of Rs.306,338/- (*rupees three hundred six thousand three hundred thirty-eight only*) was payable by present Plaintiff to Defendant and the same was the decretal amount together with costs of fund as specified by the State Bank of Pakistan. It is necessary to observe that the Banking Court has also directed the present Defendant to pay the cost of Rs.50,000/- (*rupees fifty thousand only*) to the afore referred Commissioner.

It is also necessary to mention, so also it is a matter of record, that the witness of Defendant Bank [Syed Muhammad Ali] has admitted that in pursuance of the First Decree, Defendant filed an Execution Application. It

means that mortgaged property of the Plaintiff would have been also sold, had he not taken steps by filing the afore referred First Appeal, wherein, stay was granted on 13.05.2010, *inter alia*, by treating the mortgaged property as security in said Appeal.

Neither party (*present Plaintiff and Defendant*) challenged the Second Decree. The glaring error committed by the Defendant in computing the liability of present Plaintiff, which was later overruled through judicial orders, should have been rectified by the Defendant longtime back, but it was not done. Admittedly, the first Judgment in the Banking Suit No.3786 of 2000 was given by the Banking Court on 24.12.2009, decreeing the suit for a sum of Rs.1,967,076.62/- against present Plaintiff along with costs of fund, markup and costs of suit, which was over turned by the subsequent Judgment of 03.05.2011. Due to wrongful acts of present Defendant Bank, Plaintiff was continuously dragged into litigation for eleven years and whether the Plaintiff is entitled for damages as claimed, or not, will be decided in the following paragraphs after appraisal of evidence, but as far as maintainability of this suit is concerned particularly from the perspective of the Limitation Law, as argued by Defendant's counsel, I am of the view that the Judgment cited by the Plaintiff's Advocate, handed down by Hon'ble Supreme Court in the **Yousuf case (*ibid*)** is applicable, in which Article 120 of the Limitation Law was invoked for a case of malicious prosecution, based on a false complaint. Hence, in terms of Article 120, six (06) years period is mentioned for bringing an action. If the time is calculated from the last decision of the Banking Court dated 03.05.2011, in which liability of

Plaintiff was considerably reduced, then the present suit, which is filed on 03.02.2015, is within time.

15. To the above undisputed facts, the subsequent result can be positively presumed as envisaged in Article 129 of the Qanoon-e-Shahadat Order, 1984, *inter alia*, stating that—

“the Court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business,”.

Hence, in the present case common course of natural events [as mentioned in the above provision] is that when the present Plaintiff was burdened with a huge liability of nearly Two Million, it was followed by other action of the Defendant Bank against Plaintiff including sending his case to the State Bank of Pakistan for an adverse credit Report, which itself is a stigma for any business and in terms of Section 23 of the Limitation Law, the cause of action continued and did not stop; **secondly**, Defendant Bank has breached its fiduciary duty towards Plaintiff as customer of Defendant, by filing a **Lis** based on a false claim and manipulated entries, besides, violating Sections 9 and 10 of the Banking Law. These illegalities was / is a continuous wrong; thus even for the sake of arguments, if Article 23 is invoked as argued by the Defendant's counsel, even then the present **Lis** is within time and maintainable, in view of Section 23 (*ibid*). **Thirdly**, present **Lis** is not only for malicious prosecution but for damages, *inter alia*, causing mental agony to Plaintiff.

16. It is also pertinent to mention here, that the Defendant should have been acted as a Professional Banker and once the gross errors of calculation

and entries were highlighted during the proceeding before the Commission, the Senior Management of Defendant should have resolved the matter with Plaintiff, who was Defendant's customer at the relevant time. The proceeding before the Commission, which is also part of the evidence being an undisputed record, also points out towards the unprofessional attitude adopted by the representatives of the Defendant Bank.

In view of the above discussion, case law cited by the learned Advocate for Defendant is distinguishable, particularly, relating to rejection of plaint under Order 7, Rule 11 of CPC.

Hence, Issue No.1 is answered in affirmative, and present Lis is held to be maintainable.

ISSUES NO.2 AND 3.

17. Issues No.2 and 3 are interlinked and hence decided together.
18. Following reported Judgments provide guidance in respect of tortious liability and are relevant for deciding these Issues_
 - i) **2013 SCMR page-507**
[Malik Gul Muhammad Awan vs. Federation of Pakistan through Secretary M/o. Finance and others]
 - ii) **2012 CLD page-6**
*[Abdul Majeed Khan vs. Tawaseen Abdul Haleem and others]-
Abdul Majeed case.*
 - iii) **PLD 1996 Supreme Court 737**
[Sufi Muhammad Ishaque vs. The Metropolitan Corporation, Lahore through Mayor].-Sufi case.
 - iv) **2017 YLR 1551 [Sindh]**
[Premier Insurance Company of Pakistan Ltd. And another Versus Karachi Shipyard and Engineering Works Ltd. And others]-Premier case.

19. Before evaluating the evidence of both Plaintiff and Defendant in support of and against award of damages, it is necessary to state that broadly, damages are of two kinds; general and special. Special damages are awarded only when a party successfully proves actual losses suffered by him / her. This is where Section 73 of the Contract Act becomes applicable, which prohibits “.....compensation for any remote and indirect loss or damage sustained by reason of the breach.”; whereas, for general damages the Superior Courts have held in number of decisions, **Abdul Majeed** case [*supra*] 2012 CLD page-6 Supreme Court of Pakistan, being one of the leading cases, that if circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal rights exists. Similarly, in the case of **Sufi (ibid)** [PLD 1996 Supreme Court 737], the damages vis-à-vis mental agony has been discussed and the conclusion is that there can be no yardstick or definite principle for assessing damages in such cases, which are meant to compensate a party who suffers an injury. The determining criteria should be such that it **satisfies the conscience of the Court, depending on the facts** and circumstances of the case.

20. Basically there are three parts of claim of Plaintiff. The first part about the litigation initiated by Defendant has already been discussed above. The second part or category of claim is the business losses that Plaintiff is claiming to have suffered due to the acts and omissions of Defendants, *inter alia*, in the shape of cancellation of orders by customers of Plaintiff and the third part is that his health also deteriorated in this entire saga. Plaintiff has produced number of documents relating to orders he received from his foreign buyers. He

has produced LC documents and different notices of claim, which the Plaintiff has written to Defendant as Exhibits 'PW-20 to P-31' and documents marked as 'X-3' to 'X-6' (*various letters of claims sent by Plaintiff to Defendant*). All the Exhibits are examined carefully. They all relate to the period before passing of first decree. None of these documents show or corroborate the claim of Plaintiff, that due to decretal amount and litigation initiated by Defendant, business orders were cancelled or Plaintiff was exposed to third party claims from his buyers. Since claim of Plaintiff in this regard falls within the category of special damages, as he has quantified the losses by claiming rupees one hundred and thirty million (approximately), therefore, the onus is on Plaintiff to prove the same, because special damages cannot be awarded in absence of positive evidence. Taking into the account of testimonies of Plaintiff and Defendant so also the documents produced in support thereof, I am of the considered view that Plaintiff has failed to prove his claim for grant of special damages of Rs.128,153,640/- as mentioned in his plaint and Affidavit-in-Evidence / examination-in-chief excluding the claim of mental agony and hypertension, which is discussed in the following paragraphs.

21. Adverting to the last category of claim of mental anguish and hypertension, regarding which, the Plaintiff has requested to award damages of Rupees Five Million. The three Medical Reports are produced in the evidence by Plaintiff's witness, viz. Exhibits PW-32, PW-33 and PW-34 are of 09.02.2005, 14.11.2005 and 02.12.2005. The first Exhibit is the opinion of Dr. Obaid-ur-Rehman. Since the Doctor was never examined

as a witness, who is author of this opinion, hence, this Exhibit losses its evidential value. The other two Exhibits were not specifically challenged in the cross examination of Plaintiff. These two Exhibits are the Reports of Karachi Institute of Heart Diseases and the Conclusion drawn in it was that during his stress test, the Plaintiff suffered angina. But at the same time it did not justify to award damages of Rupees Five Million (as claimed), which again falls within the category of special damages. In this regard testimony of Plaintiff is not that convincing which discharges the onus of proof, thus the amount as claimed towards health deterioration cannot be awarded. Hence, Issues No.2 and 3 are answered in negative.

ISSUE NO.4

22. In view of the well-known Judgments handed down by Hon'ble Supreme Court in **Sufi** and **Abdul Majeed** cases (*supra*), the undisputed facts as discussed in the foregoing paragraphs, however, justify, that Plaintiff be given general damages. No doubt his two immovable properties, viz. C-146, Sector 44-A, Korangi No.6, Karachi and A-566, K No.6 Karachi were mortgaged with Defendant and as already discussed above would have been sold in satisfaction of the first decree, had the Plaintiff not taken remedial steps in a diligent manner. Although the First Decree was overruled by the Second decree, but, after intervention of this Court in the above First Appeal. Defendant Bank is saddled with an obligation to ensure that whenever it initiates a litigation against a customer, the proper accounts are filed in the Banking Court, so that a customer is not made to suffer at the hands of a bank, as has been witnessed in the present case. It is also necessary because the present

scheme of Banking Law, in order to fulfill its objective, is such, that unless a strong case for leave to defend is made out by a customer, usually a judgment and decree follows in favour of a bank. In the present case it is a proven fact that Plaintiff Bank did not file true and fair accounts before the learned Banking Court, which resulted in first Judgment and Decree, given on 24.12.2009 for a sum of Rs.19,67,076.62/- **whereas**, the suit was instituted in the year 2000, whereafter, the Second Decree was passed on 3-05-2011. For eleven years Plaintiff was entangled in a litigation. Although his claim towards mental anguish is not accepted, but, it is also not denied that he suffered adverse health condition [angina] during the same period. If Plaintiff above medical reports are excluded from consideration, even then this factor cannot be ignored that a litigation of the nature where assets of Plaintiff was also at stake, was itself is a continuous cause of mental anguish and torture. To the facts of present case well known rules of "foreseeability", 'causation" and "but for" test are also applicable here, which was discussed in the Premier case [*supra*], because Defendant can easily foresee that if due to negligence of Defendant, an incorrect Statement of Account is filed, then Plaintiff is saddled with an enhanced liability, which otherwise he was not liable to pay, **but, would and actually** had suffered due to the same, which could have been avoided, had Defendant followed the provisions of Banking Law, as already discussed in the foregoing paragraphs. It may be necessary to reproduce relevant paragraphs of the above reported decision in Premier case, herein under_

“33. *The Honourable Supreme Court in the above NLC judgment has explained the term negligence, to mean, "(1) want of attention to what ought to be done or looked after; carelessness with regard to one's duty or business; lack of necessary or ordinary care in doing something; (2) an*

instance of inattention or carelessness; a negligent act; omission, or feature; and (3) a careless indifference, as in appearance or costume, or in literary or artistic style; in later use esp; with suggestion of an agreeable absence of artificiality or restraint" and in Black's Law Dictionary (Ninth Edition), it is defined as "failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly or wilfully disregardful of others' rights."

35. *Facts of the present case and the conclusion drawn from the oral and documentary evidence is that the acts of both defendants resulted in the fire incident, though degree of negligent act(s) vary, as already discussed in the foregoing paragraphs.*

36. *Précis of foreign case law on these concepts of "foreseeability", "causation" and "but for" is that if any reasonable person by applying his ordinary prudence can foresee a loss that can arise from his act(s) then he owes a duty of care to others [claimant] and is liable for the negligent act that has caused damage to the other person (claimant). Similarly, causation is the linkage between the negligent act [breach of duty of care] that has resulted in causing injury and the "but for" test if simply put means, that the injury would not have occurred without the defendant's negligence.*

37. *It would be advantageous to produce relevant portions from a judgment of Canadian Supreme Court having title **Clements v. Clements [2012] 2 R.C.S.***

[8] The test for showing causation is the "but for" test. The plaintiff must show on a balance of probabilities that "but for" the defendant's negligent act, the injury would not have occurred. Inherent in the phrase "but for" is the requirement that the defendant's negligence was necessary to bring about the injury- in other words that the injury would not have occurred without the defendant's negligence. This is a factual inquiry. If the plaintiff does not establish this on a balance of probabilities, having regard to all the evidence, her action against the defendant fails.

[9] The "but for" causation test must be applied in a robust common sense fashion. There is no need for scientific evidence of the precise contribution the defendant's negligence made to the injury. See Wilsher v. Essex Area Health Authority, [1988] A.C. 1074 (H.L), at p.1090, per Lord Bridge; Snell v. Farrel, [1990] 2 SCR 311.

[10] A common sense inference of "but for" causation from proof of negligence usually flows without difficulty. Evidence connecting the breach of duty to the injury suffered may permit the judge, depending on the circumstances, to infer that the defendant's negligence probably caused the loss. See Snell and Athey v. Leonati, [1996] 3 SCR 458. See also the discussion on this issue by the Australian courts: Betts v. Whittingslowe (1945), 71 C.L.R. 637 (H.C), at p.649; Bennett v. Minister of Community Welfare (1992), 176 C.L.R. 408 (H.C.), at pp 415-16; Flounders v. Millar, [2007] NSWCA 238, 49 M.V.R. 53; Roads and Traffic Authority v. Royal, [2008] HCA 19, 245 A.L.R. 653, at paras. 137-44.

[12] In some cases, an injury-the loss for which the plaintiff claims compensation-may flow from a number of different negligent acts committed by different actors, each of which is a necessary or "but for" cause of the injury. In such cases, the defendants are said to be jointly and severally liable. The

judge or jury then apportions liability according to the degree of fault of each defendant pursuant to contributory negligence legislation."

38. *Similarly, the Rule of foreseeability has been explained by Lord Denning M.R. in the following words:--*

"It is not necessary that the precise concatenation of circumstances should be envisaged. If the consequence was one which was within the general range which any reasonable person might foresee (and was not of an entirely different kind which no one would anticipate) then it is within the rule that a person who has been guilty of negligence is liable for the consequences."

The logical conclusion of all these undisputed facts is that at least plaintiff is entitled for general damages for a sum of Rupees One Million. Hence, Issue No.4 is answered in affirmative.

ISSUE NO.5.

23. The conclusion of the above is that Plaintiff is not entitled for special damages. Hence, present suit is decreed for a sum of Rupees One Million payable by Defendant to Plaintiff with ten percent markup from the date of filing of present suit till realization of the amount.

24. Parties to bear their respective costs.

JUDGE

Karachi
Dated: .07.2021.
 M.Javaid.PA.