

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.1395/2005

PRESENT:

MR. JUSTICE SALAHUDDIN PANHWAR

Plaintiffs : Hina Ghori and others,
through M/s. Farrukh Usman and Aamir Maqsood,
advocates.

Defendants : National Logistic Cell and others,
through Mr. Muhammad Sarfaraz Sulehry, advocate
for defendant No.1.

Date of hearing: 30.04.2015.

Date of Judgment: _____.2015.

JUDGMENT

SALAHUDDIN PANHWAR.- Succinctly, facts as set out in the
plaint are that plaintiff No.1 is widow, plaintiffs No.2 and 3 are minor
daughter and son of deceased Abdul Haque Ghori, who, at the age of 35
years, died in traffic accident on 22.08.2005 within the area and territorial
jurisdiction of Jackson Police Station leaving behind him plaintiffs and Noor
Jahan Begum aged 65 years, as mother. The plaintiff No.1 filed instant suit
under Fatal Accident Act 1855 for benefit and interest for herself and next of
friend for other plaintiffs as well for deceased's mother while deceased's
father had already died. The defendant No.1 is owner of Trailer
No.881903/858193 which was responsible for causing accident and resulted
into death of deceased on 22.08.2005. The defendant No.3 was
driver/servant/employee of defendants No.1 and 2 being joint owners of
said NLC trailer. The defendant No.3 while driving the said NLC trailer in a
rash, negligent and careless manner on M.A. Jinnah Road on his way from

Tower towards Keamari, reached turning (Morr) Nagina Centre and opposite KPT Quarters at about 1630 hours where wrongfully dashed the motorcycle bearing No.KCI-7794 in an excessively high speed. In consequence thereof motorcyclist Syed Farhan Ali and pillion rider Abdul Haque Ghorl, coming from KPT Hospital side for going towards Tower via M.A. Jinnah Road, fell down and were dragged for quite a considerable distance as an impact of collision and got severe traumatic injuries. Abdul Haque Ghorl succumbed to the fatal injuries caused to him on the spot while Syed Farhan Ali received severe traumatic rush injuries on his right leg; motorcycle was also badly damaged, while dead body of deceased Abdul Haque was evacuated to Civil Hospital for legal formalities; post mortem was conducted at Civil Hospital, death certificate was issued, dead body was handed over to relatives; Jackson Police booked defendant No.3 for offence of rash and negligent driving resulting into death of deceased and severe injuries to Syed Farhan Ali (FIR No.333/2005 u/s 320/337-G/427 PPC); police carried out investigation, arrested accused, impounded said trailer, but later driver and trailer were released; death of deceased wholly attributable to negligence, default and wrongful act of defendant No.3 during course of employment of defendants No.1 and 2 thus defendants No.1 and 2 are vicariously liable to pay compensation to plaintiffs and other legal heirs for wrongful act of their servant as well as for having employed such negligent and inexperienced driver; besides defendant NO.1 under control and management of defendant No.2 also failed to properly maintain said NLC trailer in proper and working mechanical condition to avoid danger to others; NLC authorities which run big fleet of vehicles failed to comply with mandatory provisions of law with insurance coverage to third party risk in case of accidents and injuries as required u/s 125 of Motor

Vehicles Act 1939 adopted/saved by section 122 and Fourteenth Schedule of Motor Vehicles Ordinance 1965; the defendants are jointly and severally liable to pay compensation to plaintiffs; the deceased aged 35 years could have survived upto 70 years in view of long life span in his family pedigree and could have earned and supported financially all his dependents thus plaintiffs have been deprived of present and expected pecuniary benefits to the extent of Rs.150,10,000/- as deceased was qualified businessman with masters degree in Islamic Studies engaged in supply/sell of tiles/ceramics with business title as M/s. Ghori Tiles being its sole proprietor and was earning Rs.25,000 per month at age of around 40 years; due to death of deceased, his daughter would be deprived of better proposals for marriage, jahez, lack of finance to his family, hence plaintiffs further claim Rs.10,00,000/- each for loss of chances for better prospects of future and better marital chances; deceased widow has been deprived of association of her husband at the climax of youth haunted by loneliness thus she claims Rs.10,00,000/- under head of "consortium"; mother has been deprived of her caretaker and supporter at old age thus claims Rs.5,00,000/-, plaintiffs claimed as follows:-

STATEMENT OF CLAIM		
i.	Average life span in Pakistan in view of preponderance of judicial pronouncements	70 years
ii.	Age of deceased	35 years
iii.	Loss of pecuniary benefits to plaintiffs and other legal heirs for (70-35)	35 years
iv.	Deceased was earning Rs.25000/-PM on average for plaintiffs	
v.	The annual income on the basis of above monthly income (25,000 x 12)	Rs.300,000/-
vi.	Aggregate loss of pecuniary benefits for 35 years (300,000 x 35)	Rs.105,00,000/-
	ADD	

vii.	20% increment chances on aggregate income of overall years (105,00,000÷5)	21,00,000/-
viii.	The gross loss of pecuniary benefits may be obtained by adding aggregate loss and chances of increment (105,00,000+21,00,000)	Rs.126,00,000/-
	LESS	
ix.	Personal expenses at 1/6 th (126,00,000÷6)	Rs.21,00,000/-
x.	Net loss of pecuniary benefits (126,00,000-21,00,000)	Rs.105,00,000/-
	Further Add:	
a	Rs.10,00,000/- to plaintiff No.2 and 3 for expected loss of education, comfort, position in society and loss of better marital prospect and deprivation which they would have enjoyed if the father had lived and maintained the income	Rs.20,00,000/-
b	Damages under head of Consortium for loss of association of deceased by spouse/widow	Rs.10,00,000/-
c	To mother for compensating loss and deprivation which she will experience in shape of distress in future life without young son who could have supporter to her	Rs.5,00,000/-
d	Punitive and exemplary damages	Rs.10,00,000/-
e	Funeral expenses	Rs.10,000/-
		Rs.45,10,000/-
xii	Total loss of pecuniary benefits (105,00,000+45,10,000)	Rs.150,10,000/-

Plaintiffs asserted that cause of action arose to them on 22.08.2005 when deceased died consequent to fatal injuries caused to him within the jurisdiction of this Court and still continues. Plaintiff prayed for decree in the sum of Rs.150,10,000/- against defendants jointly and severally on account of damages/compensation and profit at 15% per annum on the claimed amount from date of filing of suit till realization and cost of suit.

2. Defendant No.1 in Written Statement contended that defendant No.1 is controlled by Pakistan Army exclusively; it asserted that incident took place on 22.08.2005 when motorcyclist hit the trailer near rear wheel; driver Majid Ali Khan and driver No.2 Mir Zaman heard some bang

noise, Majid looked from mirror and saw a motorcycle at the rear of the trailer; driver stopped the trailer and both of them got down and saw a motorcycle had hit the rear wheel on the left side of trailer and both the occupants of the motorcycle were lying injured on the ground; it was denied that death of deceased was caused by the trailer. It was further asserted that in fact the trailer speed was less than ten KM per hour, there was lot of traffic and it was impossible to drive trailer at more than the speed of 5-8 KM per hour; defendant No.1 denied that trailer was being driven rashly and negligently; NLC is not liable for any act of negligence; it was denied that motorcycle hit the trailer or is responsible for death of deceased or that motorcycle was dragged with trailer; police officer present at scene was fully aware that motorcycle joined the road from wrong side and was out of control and case should have been registered against the motorcyclist Farhan Ali; defendant No.3 was released by police soon after investigation as he was not guilty of offence as alleged; death of deceased was not caused by defendant No.3 but due to rash riding of motorcycle; deceased died of cardiac arrest and had problem with his respiratory system, even his father had died of cardiac arrest; it is denied that deceased could have lived upto 70 years as with heart ailment at such an early age expectation of longer life is reduced to great extent; further, asserted that in present climate and amenities available deceased at the most could have lived upto 50 years; it is denied that plaintiffs have been deprived of present and expected pecuniary benefits to the extent of Rs.150,10,000/- which is highly exaggerated, exorbitant and inflated. It was denied that deceased was qualified businessman having masters degree in Islamic studies could be assumed better in Islamic teachings but it has no nexus with business. It was denied that deceased was proprietor of M/s. Ghori Tiles or that he was earning Rs.25,000/- per month

or that he was promising businessman who would have earned Rs.50,000/- at age of 40. It is stated that had the trailer hit the motorcycle from front, both riders of motorcycle would have been crushed under the wheel and head of deceased, who were not observing safety precautions and were not wearing helmets, would not have hit the rear wheel. It was denied that other plaintiffs are entitled to Rs.10,00,000 each. It was asserted that no cause of action accrued to plaintiffs against defendant No.1 as deceased had died of his own negligence and that of the motorcycle rider. Defendant No.1 prayed for dismissal of suit against it and denied that plaintiffs are entitled for decree in the sum of Rs.150,00,000/- against the defendants in any manner, or that defendants are liable to pay any damages or compensation or profit thereon as claimed, defendant No.1 claimed cost to be awarded to it as suit was filed malafide.

3. On 19.04.2010 following issues were framed :-

- 1) Whether the death of the deceased namely Abdul Haque Ghori aged 35 years was caused on account of negligence of the defendant No.3 during the course of employment of defendants No.1 and 2 on 22nd March 2005, if so, its effect or due to contributory negligence of motorcycle driver Farhan Ali?
- 2) Whether the death of the deceased was caused due to family hereditary heart disease "cardiac arrest"?
- 3) Whether the defendants are liable jointly and severally to pay compensation to the plaintiff and other legal heirs. If so, to what extent?
- 4) What should the decree be?

4. Plaintiffs and defendant No.1 produced their respective witnesses for examination before the Commissioner where plaintiff No.1/PW-1 Mst. Hina Ghouri examined herself and produced documents as Exh. P-5/1 to P-5/11, PW-2 Syed Farhan Ali Shah was examined and

produced documents as Exh. P-6/1, while defendant No.1 examined DW-1 Mir Zaman who produced documents as Exh. D-1/1 to D-1/4.

5. Learned counsel for plaintiff, *inter alia*, contends that sufficient evidence has been brought on record by the plaintiffs to substantiate the *onus probandi* according to issues; deceased was having age of 35 years and due to untoward incident committed by driver of trailer by negligent driving; act of incident is not denied; it is settled proposition of law that in cases of law of torts when accident is not disputed burden lies upon defendants, who have not failed to discharge the same; deceased left behind a widow, mother aged about 65 years and two sons; he was the only male family member; plea of defendant that this was the fault of deceased is not sufficient as injured witness also deposed against the defendants and his evidence is not shaken in cross-examination as well as same is credible and trustworthy. In support of his arguments he relied upon case laws reported as Islamic Republic of Pakistan through Secretary, Ministry of Defence, Islamabad & others v. Mst. Farzana Shabbir & others (2010 MLD 54), National Logistics Cell v. Abdul Qayyum Khan (2009 MLD 948), Punjab Road Transport Corporation v. Zahid Afzal & others (2006 SCMR 207), Mushtari v. Islamic Republic of Pakistan through Secretary, Ministry of Planning and Development, Islamabad and 2 others (2006 MLD 19), Haji Abdul Razaque v. Pakistan (2005 MLD 114), Unreported judgment in H.C.A. No.67/2000 (Karachi Water & Sewerage Board v. Mirza Qasim Baig), Ehteshamuddin Qureshi v. Pakistan Steel Mills Corporation (2004 MLD 361), Aijaz and others v. KTC (2004 MLD 491), Mst. Sabira Khatoon and others v. Muhammad Akram Siddiqui and others (2003 MLD 39), Shamim Akhtar v. Muhammad Arif Baloch (2001 YLR 821 [P.825]B), Shaukat Ali v. KESC (2001 MLD 1845 [P.1849]B,C,D), Mst. Nusrat Irfan v. Federal Government of

Pakistan (2001 CLC 928 [931]B,C), Bibi Khaida v. Govt. of Sindh (2000 CLC 381 [P.385]), Ashiq Masih v. Abbot Laboratories Pakistan LTD (2001 CLC 913 [P.916]A,B,C), Roshan Bai v. Pakistan Steel Mills Corporation (2000 CLC 111 [P.115]), Anisur Rehman v. Govt. of Sindh (1997 CLC 615 [P.619]), Mst. Sakina v. National Logistic Cell (1995 MLD 633 [P.636]), Pakistan Steel Mills Corporation v. Malik Abdul Habib (1993 SCMR 848 [P.855]), Kazi Arifuddin v. Govt. of Sindh (PLD 1991 Karachi 291 [P.295]), Hayat Services (Pakistan) Ltd. v. KANDAN (1989 CLC 2153 [P.2156]), Spin Gul v. Ikramul Haq (1987 MLD 2402 [P.2404]), Abdul Haque v. Pakistan Railways Telecommunication Department (1987 MLD 898), Mrs. Nimmi Francis v. Muhammad Saeed Qureshi (1982 CLC 1703 [P.1707]), Mst. Zebunnisa v. Sindh Road Transport Corporation (1982 CLC 1228 (PP.1230]A&B), Mrs. Gul Bano v. Muhammad Ramzan (1982 CLC 1120 [P.1122]A).

6. Conversely, learned counsel for defendant No.1 argued that plaintiffs have to prove their case; deceased by his own mistake fell on the rear side of tyres of trailer hence in any manner this could not be termed as negligent act of defendant No.1 hence instant suit is not maintainable and liable to be dismissed.

FINDINGS:

Issue No.1	In affirmative.
Issue No.2	In negative.
Issue No.3	In affirmative.
Issue No.4	Suit is decreed for an amount of Rs.20,160,000/-

ISSUE NOS.1 & 2:

7. Both these issues are strongly interlinked with each other and cannot be discussed separately for simple reason that answer of one will be

the ultimate answer to other. Before going into further merits of the case, it would be appropriate to gauge as to upon which of the parties the burden lies. In the instant matter, happening of the unfortunate incident, costing life of deceased Abdul Haque Ghouri in road accident is not disputed. The plaintiffs have claimed that accident was the result of negligent and rash driving of the defendants, while the defendants have come forward with a specific stand that it was result of negligence of motorcyclist i.e injured Syed Farhan Ali. Such stand of the defendants, having admitted the death of the deceased in result of accident, results in shifting the burden upon the defendants. In the case of *Anisur Rehman v. Govt. of Sindh* (1997 CLC 615) and *Mst. Sakina v. National Logistic Cell* (1995 MLD 633) it was held that:

“The defendants having given a different version of the accident were burdened with to discharge the same and to.....”

In another case of *Pakistan Steel Mills Corporation Ltd. and another v. Malik Abdul Habib and another* (1993 SCMR 848), it was held that:

“If defendant in the suit for damages took the plea that accident had occurred on account of negligence of deceased himself it was his duty to produce evidence to show that machine was in perfect order and there was no defect in the same and deceased died on account of his own negligence”

(underlining is provided for emphases).

8. Thus, in view of above legal proposition, it is now safe to say that burden to prove would rest upon the defendants in accident matters if the defendants take a specific plea in respect of the manner of accident while not denying the happening thereof but by putting whole negligence on part of the victims of the accident who may be plaintiffs or may be heirs of such victims.

9. Reverting to merits of the case, the record shows that the defendants examined only one Mir Zaman who *per record* is neither one of the defendants nor he (Mir Zaman) produced any power of attorney to show that he has been authorized by the defendants to depose on their behalf. Worth to add here that the written statement was filed by one Lt. Col. Musaddaq Hashmi, *as defendant No.1*. Thus, it can safely be said that the defendants did not come into witness box to discharge the burden which they themselves had taken in respect of the incident. However, perusal of examination of Mir Zaman shows that he was examined as a witness of the incident while claiming him (Mir Zaman) as eye-witness of the incident. The said DW claimed himself to be sitting with driver of the Trailer No.BA-881903 and status of his evidence can well be examined with his statement on Oath, produced by him during his examination O/1. Material part thereof is:

"I, CD-33564 Mir Zaman.....the speed of vehicle would be about 10 K.M per hour. In Kemari area there came voice (sound) from back side upon which driver saw in the mirror (Back view mirror) and saw a motorcycle. He stopped vehicle. We both alighted and saw both two persons were injured. Meanwhile people gathered there. Suddenly police also reached there who took driver Majid Ali to Jackson police station and injured were taken to hospital."

This shows that driver was not fully conscious about what was going on at his back and was driving the trailer, a huge vehicle although a driver is always required to be fully conscious with his back by proper use of back-view mirror (side mirror) particularly when he is driver of a huge and big vehicle because the single or slightest move of the steering results into change upto the last part of such huge vehicle, therefore, the admission of DW Mir Zaman that time to look into the side-view/back-view mirror came only when the sound came from back is sufficient to show the vigilance of

the driver of such giant vehicle. Let me make it clear that the word '*negligent*' is not synonym to '*rash*' therefore, in accident cases the plea of slow-speed is not sufficient to dislodge the cases of road accident rather it always rests on the point of *negligence*. I have no reluctance in saying that mere speed alone cannot necessarily result into accident but it is always the negligence of the holder of the steering which *normally* results into accidents. The negligence and carelessness can well be available even when the vehicle is being reversed or being plied at very low speed which, if results into any damage (accident) shall open the guilty to legal consequences. This is the reason because of which the relevant laws, dealing with motor vehicles, do permit driving with high speed from place to place but at *no place* allows driving of the vehicle with '*negligence*' even at very low speed. Having said so, I am not persuaded in accepting the plea of the defendants that since the speed of the vehicle was slow hence instant suit is not maintainable.

10. Now, I would revert to examine another stand of the defendants, raised for escaping the consequences of this suit i.e going of motorcycle in rear tyres of the trailer. If this plea is accepted it would amount giving a license to all such giant vehicles to drive at the road only taking care of first wheels which *on any legal logic* can be approved or stamped. In accident matters the difference of giant vehicles and small one like car e.t.c should always to be kept in view because it is not front wheels or side of vehicle which alone could cause accident by slightest wrong and negligent move of steering but it is the impact of such move of steering which *undeniably* varies from vehicle to vehicle. Be that as it may, the defendants have specifically claimed that the driver of the vehicle i.e defendant No.3 was tried departmentally and an inquiry in that regard was conducted by the

defendants but no proof thereof has been produced by the defendants during trial. If the innocence of defendant no.3 was proved/found during such inquiry then such report must have been produced but since no such report has been produced/exhibited hence the presumption *within meaning of Article 129(g) of Qanun-e-Shahadat Order, 1984* would be nothing but that had it been produced/exhibited it would have not supported the plea of the defendants. Further, the admission of the DW to the effect that:

"I do not know what was the result of inquiry held by the said officer (i.e the colonel). The colonel had not recorded my statement".

11. Non-recording of the statement of a person, who came forward as person sitting by the delinquent driver, is sufficient to show that even his such claimed presence was not believed by the Inquiry Officer who was conducting the inquiry against delinquent driver else he (DW) would have been the most relevant person to speak about manner of driving by the delinquent driver (defendant No.3). Let it be as it may, the record shows that the defendants though came forward with a plea that deceased had died due to *cardiac arrest* but not a single document/proof in this regard has been produced by the defendants particularly when the defendants have never denied the death of the deceased in the accident with their vehicle. The defendants neither examined the driver (defendant no.3) nor examined the person who *even per claim of defendants* had conducted inquiry into the matter of negligence or otherwise of such a driver. Thus, it can safely be said that the defendants have not produced any single document in proof of their specific stand of negligence on part of the motorcyclist. Further, though the defendants claimed specific negligence on part of the motorcyclist and even claimed that the matter should have been lodged against the motorcyclist but it is also a matter of record that at *no material time* any such effort was made

by the defendants hence it is safe to say that the defendants *even* did not try to follow their own stand rather let the criminal proceedings and even proceeding of instant suit to take their respective legal consequences. Further, it is not the speed or manner of the driving alone but fitness of the vehicle and mental/physical condition of the driver are also important aspects for appreciating while examining the cases of the road accidents. A vehicle *even* if is in its best condition yet a prudent mind shall not allow a physically or mentally infirm person (unless physical infirmity in opinion of authority does not come in way of such person) to bring a vehicle on road as it shall undeniably be a deliberate action/omission to put lives of public or their (public) property at risk. Same would be the position with an *unfit* vehicle which should not be allowed to bring on road even by a qualified driver because the person was qualified to control a *fit* vehicle but not an *unfit* one. Nothing has been brought on record by the defendants' side to establish the mental fitness of the driver (defendant no.3) at relevant time, nor anything has been brought to establish fitness of the vehicle though these questions must have been examined by the Enquiry Officer, who admittedly conducted such inquiry, as is evident from admission of the single DW to the effect that:

"Voluntary states that he was not driver of the vehicle. He was the cleaner....NLC held inquiry in the respect of the accident subject matter of this suit."

12. Further, the defendants have never denied the fact :-

- i) *handing over of the trailer to defendant no.3;*
- ii) *status of such giant vehicle to be their property;*
- iii) *such giant vehicle was plying on road, having considerable traffic flow;*

yet they *even* did not produce the documents to substantiate the skills, experience and carefulness of driver of their own vehicle which *otherwise* were material aspects particularly when the defendants never denied the fact of letting the defendant no.3 to run their such giant vehicle which *in no way* could be believed or said to be an intelligent decision in absence of proof of the skills, experience of the defendant no.3 and measures which had prompted the defendant nos.1 and 2 in letting defendant no.3 to ply such giant vehicles on roads. This goes to lead an *undeniable* legally permitted presumption that defendants failed to prove the very stand which they themselves had taken on their shoulder while acknowledging (not denying) the following facts:-

- i) *happening of accident with their trailer;*
- ii) *death of one person;*

and denying/ disputing the following :-

- i) *manner of accident;*
- ii) *manner of death of deceased;*

Thus, it cannot be said that the defendants discharged the burden rested upon their shoulders except by mere denial or disputing the claim of other side. The deliberate failure or omission to produce inquiry report and examination of the Enquiry Officer shall result in drawing adverse inference against the defendants because *otherwise* the document and witness were of such importance that same could have helped the defendants in proving their specifically taken stands which are:-

- i) *their vehicle was perfect/fit;*
- ii) *was being driven properly;*
- iii) *accident was result of negligence of motorcyclist;*

13. Against such evidence, the plaintiffs examined plaintiff No.1 Mst. Hina Ghouri who produced death certificate, post mortem report and FIR recorded regarding the accident in question which are sufficient to establish that death of the deceased was not the result of cardiac arrest but it occurred due to injuries, received in result of the accident. The plaintiff Mst.Hina Ghouri has never claimed herself to be the eye-witness of the incident hence her evidence could well be taken to extent of cause of death of the deceased as a result of injuries, received by him in accident. However, the plaintiffs' side also examined the eye witness of the incident i.e Syed Farhan Shah who *though* was cross examined considerably yet he stuck well with the facts regarding death as a result of negligent manner of the defendant no.3. The plaintiffs' side also brought on record the FIR, sketch so prepared in respect of the accident in question with a claim that it (accident) was result of the negligence of the defendant no.3. This claim *even* was believed by the police as defendant no.3 was shown as accused in the FIR; was taken to police station who later was got released by some army official so it appears from admission of the DW-1 even i.e:

"The police arrested the driver of the vehicle and the vehicle. Police had not recorded my statement.... we were left by the police on the same day. A colonel had come to the police with whom we were allowed to go".

14. In view of above discussion, I answer the issue No.1 as '*affirmative*' while the issue No.2 as '*negative*'.

ISSUE NO.3.

15. The burden to prove this issue was upon the plaintiffs. In this regard the plaintiffs claimed the defendant No.1 was an attached department of the defendant No.2 while the status of the defendant No.3 was claimed

and asserted by the plaintiffs as driver/employee of the defendant Nos.1 and 2. The defendants *nowhere* denied such assertion/claim of the plaintiffs in their pleading (written statement) rather came forward with specific claim, as is evident from para-1 of the written statement which reads as:-

“That the defendant No.1 was established to meet the need of the country to convey all sort of goods, food grain and other things in other part of country expeditiously and stop disruption which could be caused by any exigencies, war or otherwise. The N.L.C is being controlled and run by Pakistan Army exclusively and is under its entire control.”

16. It is the defendant No.1 who is ultimate beneficiary of establishment of the N.L.C. There can be no denial to the fact that the trailers are given by the defendant No.1 against money (hire amount) hence brings fruit for the defendant No.1. The defendant No.1, being the controlling and beneficiary, cannot claim any exception of its own negligence even coming on surface through its servant/driver because the contract is made with the defendant no.1 and not with the driver of the trailer hence it would be the defendant No.1 who would be ultimate responsible for any loss/damage, if occurs, during the way. The defendant No.1, during trial, came with plea that the defendant No.3 has deserted but this stand even would not help the defendant No.1 to escape the liabilities which fall upon it being the authority/ owner of the trailer in question so also employer of the defendant No.3. Thus, considering the discussion on the issue Nos.1 and 2 followed by above explained legal position, I am of the clear view that the defendant No.1 and 2 are jointly liable. Since the defendant No.2 is the ultimate controlling authority of the defendant No.1 hence it (Government) shall continue with the responsibility to ensure discharge of liabilities by defendant nos.1 and 2. Now, the question which requires to be determined is that to what extent the plaintiffs are entitled for compensation. Before

addressing this aspect of this issue, I would like to acknowledge the fact that no amount of money can be a substitute for a husband of his wife; for a mother/father of her/his child; for a child of his parents. The blood-relations are always regarded and honoured because the same creates and flows love, affection, honour and respect which completes a body with soul. A father knits the future of his child so does the husband knits the future for his wife and children. Such dreams are the fuels which make one to make further efforts/movements. A sudden death of such a relation not only brings the life of a person to an end but also fades the dreams of all dependants of such a person. This is so that compensations are always meant to lessen the grief but have never been stamped as a substitute.

17. Reverting to the issue, I would say that the plaintiffs specifically pleaded that deceased was a healthy person; was earning an amount of Rs.25,000/- per month from his marble shop. The plaintiffs had not produced anything to establish the ownership of the deceased of M/s Ghouri Tiles however, what is not disputed is the fact that deceased was the only bread earner of a family consisting on a wife, mother and two minor children. Even if for sake of arguments, it is believed that deceased was not the owner of M/s Ghouri Tiles yet in Karachi like city an ordinary and middle class family does require earning of Rs.20,000/- at least. Therefore, it would be appropriate, just and fair to take Rs.20,000/- as per month average income of the deceased. Since the plaintiffs to substantiate the average life in the family produced the death certificate of the father of the deceased which showed aged of father of deceased as **'75 years'**. The plaintiffs also produced CNIC of mother of deceased which also show her age more than **'60 years'**. Since the defendants produced nothing on record to disprove the factum of **'monthly average income of deceased'** and that of **'average age in family'**.

Be as it may, I would like to refer the operative part of the judgment of honourable Supreme Court, reported as ISLAMIC REPUBLIC OF PAKISTAN v. ABDUL WAHID and others (2011 SCMR 1836) which reads as:

“.....Besides, the above we would like to add here, that when a person has surmounted his teenage, and the early youth and enters into his practical life by joining an employment or a business etc., it can be legitimately expected that he shall complete his inning by attaining the age of his normal retirement from such practical life, meaning thereby, that he shall remain engaged in some gainful activity, obviously till the time he in the ordinary course, is mentally and physically fit and capable. Such an age on the touchstone of ‘reasonable standard’ can be termed to be somewhat around sixty five to seventy years; to support the above age limit there is preponderance of judicial view in our jurisdiction, that it should be seventy years; some of the judgments in this behalf are Hassan Jehan v. Islamic Republic of Pakistan

18. The deceased died at the age of 35 years hence has surmounted his teenage and has joined the practical life. Therefore, following the above principle, I would also take the age of the deceased for compensation/damage as ‘seventy years’. Accordingly, the compensation/damage is awarded as:

Loss of pecuniary benefits to plaintiffs/LRs of deceased

35 x 12 x 20,000/- : (Eighty four lacs) Rs.84,00,000/-

ADD

20% increase chances on the aggregate income of overall years

Thus total amount comes to : Rs.10,080,000/-

LESS:

Personal expenses at 1/6th i.e : Rs.16,80,000/-

Net loss of pecuniary benefits: Rs.84,00,000/-

Total Rs.20,160,000/-

19. As regard other damages, claimed by the plaintiffs, it would suffice to say that the plaintiffs brought nothing on record to substantiate the

same. Further to add that compensation cannot equate any loss but pecuniary loss does cover the expected losses of the plaintiffs including their education e.t.c as the same would have been taken care of by deceased from his earning if he had been alive.

20. While parting, I feel it quite necessary to add that the machines are undeniable needs of the people but these (machines) are always to be used after making a mechanism or procedure so as to put the controller of such machines on extra ordinary care. The needs of the time did allow use of the heavy and giant vehicles to be used for transportation or to be used as a public transport and since the tic-tac (time) has become the most important factor in human life therefore, '**speed**' is appreciated by the customers. Thus, heavy vehicles, used for transportation or as public transport have become killing machines, plying on roads under legal authority i.e license/permits. The ratio of road accident matters is increasing day by day hence the time has come which requires immediate steps to be taken which could burden the owners or drivers of such vehicles with more responsibility. The world has acknowledged the need of third party insurance with an object to ensure immediate compensation to the family of victims of road accidents. Those who earn or get benefits should bear a little expenses for getting third party insurance as this will be an immediate relief during the way the victims complete the procedure through process of law is time taking one and even some time results into breathing out one, following the same. Besides, there are number of judgments of honourable Apex Court whereby pains of the victim families were discussed with a view for certain steps by the Government to frame some mechanism which could not only ensure extensive care and caution by owners/drivers of such vehicles but also an immediate relief/compensation because it is always the responsibility of the

Legislature to bring changes into existing law as and when time or situation so demands because the law is a living organ. The time and ratio of the judgment of honourable Apex Court has made me to say that procedural changes should be made in relevant laws, including Motorcycle Vehicle Ordinance/Rules, keeping in view the :

- i) *strict and compulsory insurance for third party particularly for heavy transport vehicle and public transport as has been acknowledged and done in foreign countries;*
- ii) *mechanism to ensure immediate payment of such insurance amount to the victims or family of victims of road accidents;*
- iii) *special procedure to deal with Fatal Accident matter (s) expeditiously;*
- iv) *other appropriate measures so as to lessen the grief of victims or heirs of victims of fatal Accident so also making owners or beneficiaries of such vehicles more responsible and caring;*

21. Accordingly, instant suit is disposed of. Let decree shall be prepared.

Let the copy of this judgment be sent to learned Deputy Attorney General and Additional A.G. for communication to the concerned quarters.

Imran/PA

J U D G E