

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**M. A. NO.44 AND 47 OF 2021**

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Date

Order with signature of Judge  
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**01.11.2021**

Mr. Hassan Mandviwala advocate

Mr. Farrukh Usman advocate

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Instant MAs No.46 and 47 of 2021 are allowed in terms of order dated 03.06.2021. However counsel for respondent contends that agreement which is to be signed by the respondent has no evidential value and that will come in their way if they file any suit for damages. At this juncture learned counsel for applicant refers page 3 of order dated 03.06.2021 in M.A. No.44/2021 which is that :-

“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 alongwith applications in the above terms.”

And further contends that this paragraph is very categorical which gives right that parties may contest their lis if they intend to do so before appropriate forum.

At this juncture learned counsel for respondent contends that there is opinion by the Ministry of Law which speaks that agreement shall not be prerequisite condition while receiving compensation under the principle of strict liability.

Needless to mention that paragraph as referred to above, is categorical and terms and conditions can be agitated before competent civil court if any party intends to avail the remedy under the law of torts and that court shall be competent to adjudicate the issue including that of agreement signed under protest and its legality as well as maintainability. PIA shall release the amount as per their policy. Needless to mention that any amount received under protest will not close the right of that party to invoke the right of damages under the law of Torts.

**J U D G E**