

# IN THE HIGH COURT OF SINDH AT KARACHI

**Suit No. 1355 of 2009**  
[Nabeel Iftikhar v. Haji Masood and others]

Date of hearing : 25.08.2021  
Plaintiff : Through Ms. Afsheen Fatima,  
Advocate  
Defendants : *Nemo*

## **JUDGMENT**

**Zulfiqar Ahmad Khan, J:-** The plaintiff (Computer Programmer in Attack Systems Company situated at Shahra-e-Faisal), has filed the instant suit for recovery of damages to the tune of Rs.5,000,000/- against the Defendants and profit at the rate of 21% per annum on the amount claimed and other relief this Court may deem just and proper.

2. The facts leading to the filing of the instant suit are that the plaintiff a young man of thirty years age having a wife and a minor child, on 23.05.2008 at about 5:30 p.m. was returning from work on his motorcycle bearing No.KAA-5958 alongwith a friend sitting on the pillion seat on the main I.I. Chundrigar Road, Karachi from Habib Bank Plaza towards Shaheen Complex, and as he reached in front of Saima Trade Tower located at main I.I. Chundrigar Road, all of sudden a heavy iron pole erected on the road side of the pedestrian footpath having laser lights to aluminate the said Tower for glorifying its “beauty” in the dark suddenly collapsed and directly fell on the plaintiff’s head. Though the plaintiff was wearing helmet, however the impact and weight of the pole and the heavy lights affixed thereon was so strong that it pierced through his helmet and fractured skull of the plaintiff including damaging his right eye predominantly. His pillion riding friend slipped away and coincidentally survived. The event was witnessed by the passersby including the shopkeepers in the vicinity, who helped the plaintiff to come out from under the iron pole and when his helmet was removed by these people,

the plaintiff's head was seen bleeding profusely with crushed injuries on his face and skull. Face of the plaintiff was smeared and wrapped in blood. While nobody from Saima Trade Tower came forward to help or to provide any emergency medical assistance to him though the incident was brought by the pedestrians to the notice of security personnel guarding the said building, eventually the plaintiff was brought by the pedestrians and his pillion rider friend to Jinnah Hospital in a precarious condition, where the Medico-Legal Officer examined him and after making preliminary entries suggested surgical treatment of the plaintiff without any loss of time. Since excessive blood had already been lost by the time the plaintiff was transported to the hospital, the doctors were extremely skeptical about his survival even. The plaintiff was immediately taken into Operation Theater, where the plaintiff's colleague and family members also reached. During the operation, a portion of the plaintiff's forehead was taken out to stabilize his condition, as the plaintiff's position was not improving in the said hospital, family and friend took him to Aga Khan Hospital on 25.05.2008. During the preliminary examination at Aga Khan Hospital, the doctors found that plaintiff's left eye had been ruptured on account of the heavy impact beyond repair, resultantly the plaintiff lost all vision from that eye permanently. On account of the said incident, doctors advised that his left eye be removed from the cage as it was posing serious danger to his skull and brain, which was accordingly done.

**3.** Soon after he was able to stand on his two feet, the plaintiff attempted to seek compensation and cost of treatment from the Defendants, who are owners and operators of the said Tower; having reached the Mohtasib, as well as, lodged an FIR against the administration and owners of the said Tower, however, being unable to gain any favour, he instituted the present suit.

**4.** Learned counsel for the plaintiff submits that upon filing the instant suit summons were issued by the office against defendant Nos.1 to 5 on

18.03.2010, whereafter written statement was filed by defendant Nos.1, 3, 4 and 5 henceforth the matter was put before this Court on 30.05.2011 for *ex parte* orders against defendant No.2, who was served through Bailiff, however, he chose to stay away. On the said date, this Court ordered that the summons be repeated to the said defendant. As despite filing of written statement, none affected appearance on behalf of the defendants this Court through its order dated 16.05.2016 framed the following issues:-

1. Whether suit is maintainable under the law?
2. Whether the plaintiff had suffered traumatic injuries as alleged, on account of negligence, wrongful act, misfeasance, malfeasance, nonfeasance and lack of foresight and care on the part of the defendants jointly and severally, if so, its effect?
3. Whether the defendants are liable to compensate the plaintiff jointly and severally, if so, to what extent?
4. Whether the plaintiff is entitled for any relief claim?
5. What should the decree be?

5. Mr. Dilawar Hussain, Advocate was appointed as Commissioner to record the evidence through this Court's order dated 27.01.2017, however the Commissioner through his report dated 26.10.2017 informed the Court that after filing the affidavit-in-evidence and taking examination-in-chief of the plaintiff, no one turned up on behalf of the Defendants and in those circumstances it was ordered that the matter be fixed in the Court for evidence and intimation notices were issued to the defendants directly. In the absence of any of the defendants appearing before this Court, through its order dated 10.01.2018, defendants' side was closed. The matter was ordered to be fixed for arguments and the matter came up today for arguments accordingly, where the learned counsel by referring to the evidence stated that the plaintiff himself appeared in the witness box and produced the following documents:-

1. Certified copy of the downloaded computer print of GEO News webpage date of incident reflecting the incident, marked as Ex.P/1.
2. Copy of discharge summary of Jinnah Hospital, marked as Ex.P/2.
3. Certified copy of discharge summary of Aga Khan University Hospital, marked as Ex.P/3.
4. Certified copy of the radiology report dated 26-05-2007, marked as Ex.P/4.

5. Certified copy of radiology report dated 31-05-2008, marked as Ex.P/5.
6. Certified copy of the Family Medical Encounter dated 06-06-2008, marked as Ex.P/6.
7. Certified copy of the request for inpatient/outpatient consultation dated 06-06-2008, marked as Ex.P/7.
8. Certified copy of the admission dated 25-05-2008, marked as Ex.P/8.
9. Certified copy of the application addressed to the S.H.O Aram Bagh Police Station to lodging the report, marked as Ex.P/9.
10. Certified copy of the reminder to SHO Aram Bagh Police Station dated 15-06-2008, marked as Ex.P/10.
11. Certified copy of the Superintendent of Police Saddar Town, Capital City Police Karachi for non-registration of FIR dated 04-07-2008, marked as Ex.P/11.
12. Certified copy to the Superintendent Police of Sindh Karachi for lodging report dated 20-06-2008, marked as Ex.P/12.
13. Certified copy of the O.P.D slip dated 03-06-2008, marked as Annexure-I.
14. Certified copy of SHO Aram Bagh Police Station Karachi dated 26-07-2008, marked as Ex.P/13.
15. Certified copy of the statement u/s 154 dated 26-07-2008, marked as Ex.P/14.
16. Certified copy of the Final Medico-legal report of JPMC dated 29-07-2008, marked as Ex.P/15.
17. Certified copy of the Director Office of Provincial Ombudsman (Mohtasib) Sindh dated 24-10-2008, marked as Ex.P/16.
18. Certified copy of the Additional Medical Superintendent Police JPMC for non-registration of FIR dated 18-11-2008, marked as Ex.P/17.
19. Certified copy of the Director Office of Provincial Ombudsman (Mohtasib) Sindh dated 12-11-2008, marked as Ex.P/18.
20. Certified copy of the Director Office of Provincial Ombudsman (Mohtasib) Sindh regional office Karachi East dated 11-01-2009 for Medical-legal Officer final report reference case No.POS/1599/08, marked Ex.P/19.
21. Certified copy of the Provincial Ombudsman (Mohtasib) Sindh dated 19-01-2009, marked as Ex.P/20.
22. Certified copy of the Provincial Ombudsmand (Mohtasib) Sindh dated 10-02-2009, marked Ex.P/21.
23. Certified copy of the Provincial Ombudsman (Mohtasib) Sindh dated 18-02-2009 for Medico-legal Officer report, marked as Ex.P/22.
24. Certified copy of the Provincial Ombudsman (Mohtasib) Sindh for Medico-legal Officer final report dated 23-02-2009, marked as Ex.P/23.
25. Certified copy of the clipping of the News dated 21-06-2008, marked as Ex.P/24.

- 26. Certified copy of the FIR No.551/2009 dated 23-05-2008, marked as Ex.P/25.
- 27. Certified copy of the translation of FIR No.551/2009 dated 23-05-2008, marked as Ex.P/25.
- 28. Certified copy of the translation of FIR No.551/2009 dated 23-05-2008, marked as Ex.P/27.
- 29. Certified copies of the snaps of Mr. Nabeel, marked as Ex.P/28, Ex.P/29, Ex.P/30 and Ex.P/31.
- 30. Certified copies of the place of incident, marked as Ex.P/32, Ex.P/33 and Ex.P/34.
- 31. Certified copy of the similar pole of accident, marked Ex.P/35.
- 32. Certified copy of the pole which takes accident, marked as Ex.P/36.
- 33. Certified copies of the charge slip of Aga Khan University Hospital Karachi, marked as Ex.P/37 to Ex.P39.
- 34. Certified copy of the several pole which taken accident, marked as Ex.P/40.

6. The above documents were admitted in evidence alongwith the affidavit-in-evidence of the plaintiff. Under paragraph 17 whereof a statement of the claim titled "General Damages Assessed for Non-Pecuniary Losses" to the tune of Rs.47 million, was made, which is reproduced hereunder:-

1.	Damages for permanent disabilities and consequent hardships and disadvantages that the Plaintiff suffered and shall suffer for the rest of his life (the Plaintiff was aged 30 years at the time of accident).	Rs.5 million
2.	Damages for loss of amenities by the Plaintiff on account of traumatic injuries.	Rs.5 million
3.	Damages for shortening of expectancy of life.	Rs.1 million
4.	Damages for abnormal looking face due to damages/depressed forehead and empty left eye cage with deformity of serious nature.	Rs.5 million
5.	Damages for injuries, shock, extreme physical pain and mental agony suffered by the Plaintiff (past and prospective).	Rs.5 million
6.	Damages on account restricted movement by the Plaintiff	Rs.3 million
7.	Damages on account of being dependent upon others on account of infirmity and need for permanent attendant/nurse for looking after the Plaintiff.	Rs.3 million
8.	Damages for not enjoying comfortable, pleasant and happy life (past and prospective) on account of permanent infirmities due to traumatic injuries.	Rs.3 million

9.	Past, future and prospective loss of earning owing to traumatic injuries.	Rs.14 million
10.	Damages for loss emotional distress, psychological trauma, nervous breakdown and nervous shock.	Rs.2 million
11.	Aggravated, exemplary and punitive damages.	Rs.1 million

7. “Special Damages for Non-Pecuniary Losses” to the tune of Rs.50 million are also claimed which produced in the following:-

1.	Past and prospective medical expenses as the Plaintiff has undergone major surgical operations and in future further expenses on medical expenses and allied care i.e. physiotherapy etc. will be required.	Rs.1 million
2.	Past and prospective expenses on transportation.	Rs.2 million

8. Mother of the plaintiff also appeared in the witness box. As the defendants did not contest the suit and remained *ex parte*, the learned counsel appearing for the plaintiff stated that the facts and evidence adduced by the plaintiff remained uncontroverted and unchallenged. Both the witnesses have supported each other and that, compelling evidence has been brought before the Court to show that the said incident took place on 27.05.2008, causing permanent damage to the plaintiff's right eye, which incident also caused serious damage to his eyesight and disfigured his looks. Learned counsel by placing reliance on **PLD 1969 SC 565** [*Re: Sri Manmatha Nath Kuri v. Moulvi Muhammad Mokhlesur Rehman and another*] stated that per dictum laid down by the Apex Court in the aforesaid case, determination of the quantum of damages claimed in such cases ought to be liberal, rather niggard, considering that law values life and limbs on a generous scale, per learned counsel, the Court should not attach much weight to the technicalities and consider the damage to the plaintiff's livelihood, disfiguration of face, removal of eye, breaking of frontal bone which are irreparable, affecting permanent loss to his future earnings and position in the society. Counsel contended that the plaintiff is sole bread earner of the family, which went into serious debts to

meet the hospital expense and allied rehabilitating costs. The deprivation cost to the children of the plaintiff and hardship faced by his wife is beyond any calculation, per learned counsel.

9. With regard to the damages arising out of non-pecuniary losses following turned out to be uncontroverted facts:-

- (i) That the plaintiff had been deprived of the vision in the left eye for the whole life to come as the eye ball in that eye had been damaged beyond repair and the vision cannot be restored and regained in any manner whatsoever. This obviously appears to be a permanent disability and traumatic handicap to the plaintiff.
- (ii) That the plaintiff in view of such handicap had been badly dependent upon others and as such he feels trouble in moving around alone particularly in night. The plaintiff avoids any visit or moving out of the home after sun set as he had to face extreme difficulty in truly appreciating and viewing the objects on the left side. The plaintiff used to keep motorcycle and used to ride on that but after such accident he is unable to use and drive the motorcycle as he does feel like uncomfortable and unsafe while driving the same with one eye as whole left side gets blank and invisible and therefore enhances the risk of accident and therefore the plaintiff had abandoned the idea of using motorcycle nor he can drive the car as he would not be issued the driving license. Therefore, he had to use public transport like private taxi or car for moving around which had added the cost of living and almost a sum of Rs. 8,000/- to Rs.10,000/- per month is being spent on average on transpiration.
- (iii) That the plaintiff had suffered loss of amenities on account of traumatic injuries and in consequent impact thereof. The plaintiff had suffered and would be undergoing enormous pain, nervous shock, mental anguish and both physical and mental torture on account of actionable wrong of the defendants owing the past and prospective impact of the above said traumatic injuries. The injuries as mentioned above had further deprived him from enjoying certain amenities of life which he was enjoying and would have enjoyed, had he not been subjected to and fallen pray to the careless act of the defendants and received those injuries. The plaintiff had absolutely restricted his movement in view of the injuries caused to him particularly loss of vision in the left and eye and deshapped facial area which had also affected his personality. This lack of movement has also resulted in loss of social contacts and his social life had been completely spoiled. The plaintiff also had become unable to concentrate on education and properly look after his son. Prior to the incident, the plaintiff used to have the busy full fledged social life with constant social engagements and family interactions but after the said accident he had to abandon all such socialization. The plaintiff feel himself deprived, handicapped and inferior with the others which is obvious in view of his apparent permanent disability of the vision and evident badly looking shape of the eye cage and as such he has developed an acute inferiority complex, disappointment and irritation of acute nature. Thus in short the plaintiff had been absolutely deprived from enjoying all the probable amenities which he could have enjoyed involving the active use of eye sight and body. Besides, he had become absolutely disable to eat and swallow solid food and even hot drinks causes him irritation due to head and jaw injury which prevents him from taking him favourite foods which is also great setback. The plaintiff had to undergo such trauma as whenever he eats solid he had to enhance the pain in the head due to pressing of teeth/jaws. There are other related loss of amenities and all of such cannot be comprehended

and enumerated but can be obviously assessed, assumed, estimated and analyzed. This loss of amenities and other related and ancillary loses in this regard will develop sense of disappointment and deprivation which will be further aggravated when the plaintiff would see his friends and colleagues to enjoy the said amenities. This feeling of not enjoying the amenities will badly affect his personality and the same would be damaged enormously and had been drastically damaged.

- (iv) That the plaintiff had been depending upon others since more or less last one year and he will also continue to remain dependent upon others almost for all practical purposes as he had remained since accident. The plaintiff indeed will need great deal of attention and care in view of traumatic loss of partial vision. The plaintiff had been and will not be able to enjoy the sound sleep due to impact of head injuries which results in frequent attacks of vertigo and acute head ache due to deep injuries on the skull.
- (v) The plaintiff had undergone couple of operations, quite a good number of surgical treatment, bone & skin grafting in the forehead and was given many injections alongwith surgical treatment and there is likelihood to have more such surgical treatment in ensuing future. This frequent past treatment as well as expected medication and surgery had caused/will cause the plaintiff to suffer extreme pain, mental anguish and shock and as such the plaintiff had been rendered and appeared to be a dying man with dull prospects of life and had almost lost all charms and happiness in the life on account of infirmities resulted on account of above said traumatic injuries since last year which would continue to prevail in the future as there is no likelihood of its healing/restoration owing to the grievous nature of injuries.
- (vi) That on account of the grievous injuries, the expectancy of life of the plaintiff had also been shortened as there is no scope of improvement of his present condition and for more or less last one year, only slight and nominal changes have occurred and as such he has developed trouble in the second eye also due to sympathetic damage which is usually caused to the other eye after the loss of vision in one eye. The plaintiff sometimes had been subjected to fun due to his loss of vision and ugly looking shape with mental non-alignment. This aspect will further make him the target of humiliation, distress and ridicule and he would become preposterous figure in the eyes of others.
- (vii) In addition to that, due to impact of injuries and its region of the treatment, the considerable region of the forehead had been badly disfigured and arouse aversion in the eyes of on lookers and as such only due to humiliation and adverse treatment of on lookers, the plaintiff prefers to stay at home and confine himself in four walls of the room which is badly affecting his personality and causing him to be irritated. Besides, the abnormal looking big scars and deshapped/disfigured forehead/face and ugly looking eye cage which arouses aversion on the on lookers lead to the development of feeling of depression and inferiority in the plaintiff for which he also claims damages.
- (viii) That the plaintiff at the time of accident was aged 30 years and was enjoying very robust health was living with his family with peaceful, happy and full-fledged domestic life with all its ancillary pleasure. The plaintiff used to have great attachment and love for his family and used to go with them on trips and enjoy but on account of traumatic injuries and permanent disability the plaintiff had been prevented from enjoying the boon of practical and successful life. The plaintiff had been deprived of all the glamour and charm of life.
- (ix) That the said injuries had badly affected the Plaintiff and his chances of future and better career had been badly impaired and due to loss of such prospects he is undergoing extreme shock,



emotional stress and psychological trauma which is irreparable in nature and cannot be compensated in terms of money but still aggravated and punitive damages may give some consolation of nominal nature.

- (x) That the Plaintiff had to remain confined to the hospital for the medical and surgical treatment for more than a week where he had to spend the long period of painful treatment, lying in bed, having his eyes bandaged and countless use of medicines and injections (from which he abhors). These traumatic experience without any fault of his own had really caused to suspend his movement and enjoyment of comfortable life and liberty and other fundamental rights as guaranteed for which the Plaintiff is also entitled to recover damages from the defendants for their actionable wrong.
- (xi) That due to loss of vision in the right eye had only ability to look straight in one eye in a field of about small degrees. He could read only few letters in this way but not line of prints constantly as he used to do earlier. He could watch television but not fast moving objects and after some span of watching he losses to power to appreciate the correct pictures but could not more than make out the shapes. The injury faced by the plaintiff in the eye was tremendous cosmetics disability. The Plaintiff had been temperamentally frustrated by his prevailing handicapped conditions and his memory and power of concentration had been badly impaired.
- (xii) That the most distressing feature for the Plaintiff had been that the Plaintiff had always been haunted and terrified by the fear that he might go totally blind. This fear was not without foundation as the right eye had developed sympathetic ophthalmic, which is potentially dangerous. This had left a marked adverse change in his personality and he is no longer his dynamic self and he felt that he had to nothing to live for.
- (xiii) That the main disability of the Plaintiff which had surfaced after the accident was insomnia. The Plaintiff was unable to sleep in a bed and obtained such sleep as he could while sitting in a chair. He then only slept for short period. This insomnia was not susceptible to treatment by drugs and was a continuing affliction. However, the Plaintiff's body seemed to have accustomed itself to the reduction in the ration of sleep but had affected his efficiency and presence of mind. At occasions he went for 48 hours without any sleep. Another continuing affliction was the pain in the left eye socket which is attributable to the said accident.
- (xiv) The persisting disabilities suffered by the Plaintiff are of four kinds (i) Appearance: His scars and nasal and eye cage and frontal forehead deformity can be observed by anyone who looks at him (2) Blurred and Double vision: This had also proved to be a major disability in his recreational and social activities. Besides, the Plaintiff used to have great love with the tennis game and he only used to spare time for such game but due to loss of vision in left eye, he had been advised not play such game and he himself feels inability to go ahead with that game. Thus it also caused great deprivations when he finds his friends enjoying such sports. He seemed to have been debarred from opting any game using the active involvement of eyes and as such this visual defect had almost made him crippled. (3) Nasal obstruction: The partial nasal obstruction is due to septal deviation and contributed to acute head ache and further compounded by vertigo. (4) Psychoneurotic Symptoms: These include his headaches and all those factors affecting the nerves due to pressing of forehead and damage to eye socket and cage.
- (xv) That the Plaintiff is also entitled to for damages on account of the probable terrible consequences which would follow if he would lose the sight of the remaining eye and this factor is also one of the most important factor to be considered in the case like the present one. It

not improbable to assume and believe that if by chance he loses the remaining eye he might become stone blind and might be prevented from earning his living or greatly hindered in doing so and loses much of the pleasures of life.

- (xvi) That the Plaintiff as a consequence of damage to left eye ball and the cage had undergone also destruction of the respective tear ducts. Therefore, he suffers from frequent watering of the eye and that has the effect being very unpleasant constantly having to wipe the eye.

10. With regards to the Special Damages for Pecuniary Losses, following also remained uncontroverted:-

- a. That the plaintiff had undergone treatment at JPMC and subsequently he was shifted to Aga Khan Hospital where he was hospitalized and remained there for more than one week .and thereafter he was treated as outdoor patient. The plaintiff remained hospitalized at the said hospital as indoor patient for about more or less about 10 days where he was surgically and medically treated and he was operated for forehead and its refashioning. The plaintiff had also undergone several check-ups, ultrasound tests, blood, urine and other lab reports, surgeries and operation of major nature and related treatment from different places. The plaintiff had to and will further in purchase wheel-chair, armpits, crutches, urine bowl and trolley for eating and there is very likelihood that he would keep up getting the same treatment in future. There is possibility that in future the plaintiff will continue to have further medical and surgical treatment including major operation for quite a good time which will cause him to incur heavy monetary expenditures. The plaintiff had been advised by the physicians to go abroad for better treatment available over there but on account of financial paucity he is constraint to ignore the same. The plaintiff had to purchase medicines and undergo other medical and surgical treatments and as such the present and prospective medical expenses comes more or less to the tune of Rs.1 million.
- b. That for the last more or less, the plaintiff had been hiring private car, taxi or ambulance for going outside for treatment which he had been usually engaging for his medical visits and other ancillary work and as such one trip to the hospital cost him Rs.400/- merely on transportation charges and in future also this expenses will continue to accrue.
- c. That at the time of this accident, the plaintiff was aged 30 years and he used to have sound health and as such his life expectancy could be assessed at the age of 70 years in view of his sound health, advance medical treatment, promotion in scientific research and long life span in family pedigree of the plaintiff. The plaintiff was very energetic, vigorous and promising fellow with absolute confidence in himself. The plaintiff was a skilled and perfect hand in the Software Development for which had obtained special training and education. He at the time of the accident was employed with OraTech Systems (Pvt) Ltd as Applications Consultant and was getting a sum of Rs.35,000/- from the Job. But in view of the loss of vision in the left eye and due to its side effect and on account of impact of other injuries, the Plaintiff had become unable to carry on the work with same zeal, efficiency and in the same vigorous manner as he used to do prior to the accident. The plaintiff had been young, talented and attractive fellow and seemed to have a wonderful future ahead of him. But due to traumatic impact of injuries arising out of the accident due to lack of care on the part of defendants, the plaintiff had been robbed of all better prospect of earning as his value in the labour market had been badly damaged due to his inability to see from one eye and mono-vision. Besides the plaintiff himself feels

handicap and finds it difficult to carry on the same work with same dedication and concentration as he gets frequent attack of head ache and vertigo and sometimes double vision in the remaining eye with blurred appearance. Thus the plaintiff would have further specialized in the software development techniques and would have got more skills and experience in such area with the passage of time and would have got frequent promotions in his job and earning for which he planned before hand but due to the accident he would not be able to materialize his plan and had become and handicap fellow with dull prospects and thus he had suffered a loss of Rs.50,000/- per month on average on account of lost earning for which he is entitled to recover from the defendant. He had thus suffered enormous pecuniary loss in past and in future also he has been deprived of prospects of earning and accordingly the chances of further advancement and promotion had also been darkened.

11. As stated in the foregoing, the evidence brought on record remained unchallenged and uncontroverted. Accordingly, preponderance of evidence brought before this Court dictates that the plaintiff had suffered traumatic injuries as alleged, on account of negligence, wrongful act, misfeasance, malfeasance, nonfeasance and lack of care on the part of the defendants jointly and severally, the defendants are liable to compensate the plaintiff and the plaintiff is entitled for the relief claimed by keeping the dictum laid down in the *Sri Manmatha case (supra)*. The suit is accordingly decreed as prayed. However, the markup claimed is restricted to 10% per annum from the date of filing of the suit till satisfaction of the decree. Let a decree be prepared.

**Judge**

Karachi,  
Dated: \_\_06.2022

Barkat Ali, PA