

# IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.699 of 2008

[Mst. Azka Asif .....v.....Karachi Metropolitan Corporation & others]

Date of Hearing : 20.09.2021  
Plaintiffs through : Mr. Farrukh Usman, Advocate.  
Defendants through : Mr. Afzal Saeed Khan, Law Officer of defendant No.2. a/w Ali Masroor Memon, Assistant (Legal Branch), KMC.

## J U D G M E N T

**Zulfiqar Ahmad Khan, J:-** The Plaintiff has moved to this Court for recovery of Rs.1,31,20,000/- under the provisions of Fatal Accident Act, 1855, against the defendants.

2. The crux of the *lis* at hand is that the plaintiff is widow of deceased Syed Asif Ali who was an employee of defendant No.2 and died in the line of duty as he was called by the defendants on rain emergency duty on 23.06.2007 and on the fateful day the deceased Syed Asif Ali was on the call of duty whilst all of sudden the name signage of the office of defendant No.2 fell down on him on account of which he died. The claim of the plaintiff is that the defendants were under obligation to look after, maintain and take care of structure and fixtures of the said signboard but they failed in discharging these duties and owing to such carelessness of the defendants, the deceased husband of the plaintiff died, therefore, the plaintiff filed this suit making the following prayers:-

“(a). A decree in the sum of Rs.1,31,20,000 against the defendants to pay the said sum of damages/compensation to the plaintiff or any other amount this Honourable Court may deem fit in circumstances of the case.

(b). Profit/mark up at the rate of 21% per annum on the amount claimed in Clause (a) above from the date of the filing of the suit till the date of realization of the decretal amount which the plaintiff would have earned had the defendants paid the said amount.

(c). Cost of the suit may be awarded to the plaintiff.

(d). Any other relief or reliefs that this Honourable Court may deem just and proper under the circumstances of the case be granted.”

3. In response to the summons issued by this Court, Written Statement on behalf of defendant No.2 was filed. Defendant No.2 denied any liability towards the incident. According to them, the death of the deceased husband of the plaintiff was due to natural calamity and soon after the death of the deceased, the plaintiff was paid a sum of Rs.400,000/- through cheque No.CA-F8219172 dated 27.10.2008, however, they denied the allegation of carelessness at their end.

4. Perusal of record shows that on 25.09.2018 the issues were framed by this Court which are as under:-

“1. Whether the death of the deceased namely Syed Asif Ali aged 41 years was caused on account of negligence of the defendants on 23<sup>rd</sup> June, 2007, if so, its effect?

2. Whether the defendants are liable jointly and severally to pay compensation to the plaintiff and other legal heirs, if so, to what extent?

3. Whether the claim of the plaintiff is liable to be adjusted by amounts received from the defendants with regard to the claim of fatal accident? If so, to what quantum?

4.What should be the decree?”

5. It is considered pertinent to record that the original plaintiff namely Azka Asif wife of deceased employee of the defendant No.2 also died during the course of pendency of the instant *lis*, however, the legal heirs have been arrayed as plaintiffs and such amended title was also filed by the learned counsel for the plaintiff.

6. The crux of the arguments of the learned counsel for the plaintiff is that in fatal accident matters, a plaintiff has to only prove the factum of accidental death, which the plaintiff had proved without any iota of doubt that the deceased died owing to the negligent attitude of the defendants as they are duty bound to keep proper maintenance and upkeep of their own signboard which they have failed to do so, therefore, the deceased undoubtedly died due to the negligence of the defendants, hence the burden shifts on to the defendants to disprove such a causation. He also stated that deceased was the sole bread earner of the bereaved family (who died due to the negligent acts of the defendants) and while loss of human life cannot be measured in terms of coins, still appropriate compensation is statutory right of the legal heirs. While concluding his submissions, he prayed for the grant of the suit at hand.

7. Learned law officer of the defendant No.2 introduced on record that humanity is helpless before the nature as the storms, winds and other calamities are attributable to nature, therefore, the humanity is helpless and that on the fateful day, the deceased died due to an act of nature, therefore, the defendant No.2 cannot be held liable. He further contended that an amount of Rs.400,000/- has already

been paid to the plaintiff in terms of compensation, therefore, the *lis* at hand is liable to be dismissed.

8. Heard the arguments and perused the record with the valuable assistance of learned counsel for the parties.

9. **Issue No.1.** The present suit has been filed on 05.05.2008, that is, within the period of limitation of one year as prescribed by the governing statute (The Fatal Accident Act, 1855), therefore, at least in terms of the above statute, the present claim is not time-barred. To maintain an action under the said Act, 1855, one has to prove that:-

(i) the deceased person was injured by the wrongful act, neglect or default of the defendant;

(ii) deceased died in consequence of such injury;

(iii) at the time the deceased died, plaintiff had a right to recover damages; and

(iv) the beneficiaries have suffered pecuniary loss from the death of deceased.

10. Law requires that all of the above ingredients have to be proved, and failure in any one of these becomes fatal to the cause of action. So as to validate and substantiate her claim, the plaintiff produced one witness namely Jawed Manzoor Siddiqui. During the course of examination-in-chief, the witness *inter alia* produced the following documents:-

- Death Certificate of Azka Asif as Exh. P/2.
- Death Certificate of deceased Syed Asif Ali as Exh. P/3.
- Newspaper clipping of daily Ash Shark dated 30.06.2007 as Exh.P/4.

- Roznamcha Entry No. 1910 of police station dated 06.07.2007 as Exh. P/5.
- Photographs of place of incident as Exh. P/6/1 to P-6/5.
- Heirship Certificate as Exh. P/7.
- Certificate issued by Assistant Director, Labour Government of Sindh as Exh. P/8.
- Heirship Certificate dated 29.07.2008 as Exh. P/9.
- Death Certificate of AKDH as Exh. P/10.
- Nikahnama as Exh. P/11.
- Last Pay Certificate of deceased issued by TMA Gulberg Town as Exh. P/12.
- Service Certificate dated 17.01.2008 issued by TMA Gulberg Town as Exh. P/13.
- Certificate issued in favour of deceased for doing a part time job as Exh. P/14.
- Passport as Exh. P/15.
- Birth Certificates of deceased children as Exh. P/16 & 17.
- Photographs of deceased family as Exh. P-18/1 to P/18/2.
- CNIC of deceased as well as plaintiff as Exh. P-19 & P-20.

11. Mr. Tanvir Sagheer appeared as a witness of the defendant No.2. During his examination-in-chief, he produced the all necessary documents in defence of defendant No.2. He produced copy of cheque of Rs.400,000/- as Exh. D/3, service book of deceased alongwith leave encashment as Exh. O/1 to O/3 respectively.

12. Scanning of the record and proceedings unequivocally speaks about the unnatural death of the deceased. It has not been introduced on record by the defendant No.2 either in the evidence file or in the main file that they used to take proper care on regular

basis of the signboard installed at the main entrance of the office of the defendant No.2. It is nothing but an apathy of the department concerned/defendant No.2 that a bulky signboard/hoarding board was affixed at the main entrance which according to the defendants fell down owing to windy condition and cannot be considered a negligent act on the part of the defendant No.2. But the truth is that factum of the alleged incident has neither been denied nor disputed, therefore, after admission of the incident a heavy onus is upon the defendant No.2 to prove that the said incident was not caused to its negligence which the defendants have failed to discharge, however, in fatal accident case, it is settled principle that once the accident is admitted, the presumption of negligence arises and more so when the defendants given his own version of accident, which is different from version of plaintiff, the defendant takes upon himself the burden to prove the manner of accident pleaded by them. The defendant in such situation has to show that he had been cautious enough to take care of the deceased/ victim of the incident.

13. The defendant No.2 failed to file any document to deny the factum of the death of the deceased. There are overwhelming evidence on record such as news clipping (Exh. P/4 available at page 43 of the evidence file) police roznamcha/police daily diary (Exh.P/5 available at page 45 of the evidence file) and photographs of the offensive signboard and place of incident (Exh. P/6/1 to Exh. P/6/5 available between pages 47 to 51 of the evidence file) suggesting that the factum of unnatural death of the deceased was a result of a fall of an iron signboard which resulted in the death of the deceased which was not properly maintained by the defendant No.2. The all

above facts when combined together leave no room in a prudent mind except to hold that the deceased died leaving suckling babies due to gross negligence of the defendant No.2.

14. During the course of arguments, learned counsel for the defendant No.2 articulated that on the fateful day many people died because there were high velocity winds. To meet with the said contention of the learned representative of the defendant No.2, I may say that rains, winds and storms are common features in every part of the country and heavy rain fall followed by violent snow storms may be acts of God, but resulting damage could be avoided by human care and forethought which the defendant No.2 has miserably failed and that the said act constitutes negligence and a negligent act on the part of the defendant No.2. **In the like situation, my lord Mr. Justice Sabihuddin Ahmed (as he then was) in the case of Nisar Ahmed v. Hospital Supply Corporation Ltd & others (1999 MLD 13)** examined an act of God. It would be conducive to reproduce the relevant excerpt of the precedent which is delineated hereunder:-

*17. I had requested Mr. Nasir Maqsood to assist me on the question that assuming the version of the accident being given out by the defendant No.2 as correct, were the defendants still liable to adduce further evidence of absence of negligence. It may be recalled that the defendant No.2 had stated that the accident occurred because of rain owing to which when he applied the brakes the jeep slipped and collided with a bus. Learned counsel after meticulous research drew my attention to several standard textbooks and reported cases having a bearing on the question. In law of Tort by A.J. Pannelt (6th Edition, page 260). It is stated **"Act of God is a defence of very limited application comprising a heavy onus on the defendants. There are dicta in a number of cases to the effect that heavy rain fall and violent snow storm were not acts of God i.e. the result damage could have been avoided by human care and forethought."** In *P.K. Kalasami Nadar v. K. Ponnuswami Mudaliar and others* (AIR 1962 Madras 44) it was held that an act of God will be extraordinary occurrence due natural causes*

which is not the result of any human intervention and which could not be avoided by any amount of foresight or care". In *Greenock Corporation v. Glasgow and South Western Railway* (1917 AC 556).it was held:--

**“Assuming an act of God such as flood of wholly unprecedented, the damage in such a case result not from the act of God, but from the act of man in that if he failed to provide a channel sufficient to meet the contingency of the act of God. But for the act of man there would have been no damage from act of God.”**

Learned counsel also referred to *Charlesworth on Negligence* (6th Edition, page 454) **where reference is made to several cases from England and Canada, where heavy rain fall, or snow storms have not been treated as acts of God and parties not taken reasonable fore-cautions have been held liable for negligence.**

**18. Against the above legal position it seems quite clear that the burden was on the defendant to prove absence of negligence.** In the first place they failed to produce material evidence. The other occupants of the vehicle were Tariq Jawed Siyal, who is, admittedly, an employee of the defendant No. 1 and his wife. Neither of them was called as a witness. Secondly, the mere existence of rain fall could not release the defendant from liability. Rain fall occurs very often in Punjab and a driver is expected to drive slowly and cautiously to prevent an accident. According to the defendant No.2, he was driving at a speed of 60 to 65 km. per hour. There is no evidence to indicate that, by driving at such speed, he had taken reasonable precaution to prevent an accident.

*[underline added for emphasis]*

15. Apart from above, the principle of “*res ipsa loquitur*” would be applicable which means that “things speak for themselves”. The said maxim applies as the real cause of death was solely within the knowledge of the defendants and deceased, definitely not known to the present plaintiff<sup>1</sup>. The “res” speaks because the facts stand unexplained, and, therefore, the natural and reasonable, not conjectural, inference from the facts shows that what has happened was reasonably attributable to some act of negligence on the part of

<sup>1</sup>Razia Khatoon v. Province of NWFP & others (2002 MLD 539), Muhammad Yaseen v. Medicare Clinic Ltd., (1988 CLC 139) and Punjab Road Transport Corporation Lahore v. J.V. Gardner and 2 others (1998 CLC 199).



defendants having failed to perform the duty of care as clearly no loss is caused to the defendants, it is the husband of the plaintiff who was crushed under the bulky signboard installed at the main entrance of the town office of the defendant No.2 which fell down due to heavy winds, rather on account of negligence of the defendant No.2, as no other such entrance signage boards of any other entity in the neighborhood was reported to have fatally fallen.

16. In **Rahim Ali Palari v. Government Of Sindh through Secretary, Ministry of Transport (2020 MLD 1393)** it was held that if an accident resulting in death of a person had not been disputed by the defendant then onus to prove that a person died not because of negligence or wrongful act of defendant would be on the latter and not on the plaintiff. In this case, Court held that principle of vicarious liability was applicable and all the defendants were jointly and severally liable to compensate the plaintiffs. The said suit was thus decreed in the sum of Rs. 8,190,000/- as damages with Rs. 1,000,000/- towards loss of consortium with 10% markup per annum from the date of institution of suit till realization of the amount. In **Mst. Muqaddas v. Karachi Electric Supply Corporation Ltd (2018 MLD 1054)** plaintiffs being legal heirs of the deceased filed suit for recovery of compensation against the Electric Company. Issues in question were whether the suit was maintainable; whether any cause of action had accrued to the plaintiffs to file the suit and whether the plaintiffs had alternate remedy under S.33 of the Electricity Act, 1910 to get redressal of their grievances. Court held that the burden of proof of said issues, was on the defendant company. Defendant, having not advanced any arguments on the issues, same were

answered against it. Evidence on record had proved that deceased had died due to electrocution, and there was also a clear evidence that monthly salary of deceased was Rs.9,945 as he was Head Constable in Police Department. Documents produced on record had confirmed that the cause of death of the deceased was due to electric current in the Pole. Plaintiffs, in circumstances, were entitled for the relief they had claimed as compensation for the death of the deceased. Quantum of compensation was determined by the Court keeping in view life span of the deceased and future benefit with the change in salary etc. Plaintiffs, were widow of the deceased, his mother, one son and four daughters and Court held that the preamble of the Fatal Accidents Act, 1855 had explained that purpose of the said Act that was to provide compensation to the families for loss occasioned by the death of a person caused by actionable wrong. Suit was thus decreed with cost and the defendant was directed to deposit, decretal amount with Nazir of the court within 30 days. In **Shama Norin v. Karachi Transport Corporation (2017 YLRN 451)** it was held that normally onus would lie on the person who had asserted the fact, but in matters relating fatal accident where the defendants had taken specific plea of not causing accident, then burden would still shift upon the defendants to prove their stand. As the deceased died at the age of 37 years old, suit was decreed to the extent of Rs. 36,30,000/-. In the case of **Islamic Republic Of Pakistan through Secretary Ministry of Defence v. Numair Ahmed (2015 MLD 1401)** Court held that death of the deceased in the accident had not been denied by the defendants, thus burden of proof in fatal accident cases would immediately shift

from the plaintiff to the defendant where he had expounded his own version of accident. Occurrence of accident in which two persons had lost their lives was admitted by the defendants in their written statement. Court applied the maxim of "Res Ipsa Loquitur" in the case and also observed that the plaintiffs had discharged their initial burden of proving the happening of the fatal accident causing death of the deceased by the vehicle at the relevant time. Court directed that no hard and fast rule could be laid down nor a definite formula could be applied to assess the damages under the Fatal Accidents Act, 1855 and a guesswork is to be undertaken with regard to expectancy of life of the deceased who had died in an accident and the resultant pecuniary loss suffered by his legal heirs.

17. For the reasons stated above and being influenced by the judgments detailed henceforth, I am of the view that the present case falls within the purview of the Fatal Accident Act, 1855 and more particularly in Section 1 thereof wherein it is specifically mentioned that for wrongful actions, a claim under the above statute lies. Since factum of death of Plaintiff's husband is now an admitted fact, therefore, and liability of such a gross wrongful act falls on the Defendants, therefore, the present claim is maintainable under the above Fatal Accidents Act of 1855 and the **Issue No.1 is answered in affirmation.**

18. **Issue No.2** germane to the vicarious liability of the defendants and quantum of compensation/damages. The defendants are government departments, whereas, defendant No.2 is working under the control of defendant No.2, therefore, all defendants are

vicariously liable towards the negligent acts of the defendant No.2. The pleadings of Plaintiff about deceased's life expectancy, doing a government job being Associate Engineer (BPS-11) as well as doing a part time job, monthly earnings and other credentials have neither been questioned nor rebutted in the evidence. It has been specifically stated on oath by the Plaintiff that the deceased's husband was keeping a good health and his entire family have a reasonable life span of more than 70 years. It was further deposed that the deceased was earning a sum of 25,000 as his monthly salary from defendant No.2 as well as earning a sum of Rs.12,500/- as a part time job in Commodity Inspector Services Co. Pvt. Ltd. a certificate of which was also produced as Exh.P/14 (available in evidence file at page 67), at that relevant time, that is, in the year 2007. In these circumstances, a sum of Rs.1,31,20,000/- has been claimed by Plaintiff towards damages and compensation. A minute perusal of the Record and Proceedings it further unfurls that the plaintiff has illumined her claim by filing statement of claim, thus, it would be worth to reproduce the said statement of claim which reads as under:

Sr. #		
i.	Average life span in Pakistan in view of preponderance of judicial pronouncement.	70 years
ii.	Loss of pecuniary benefits for (70-41) as the deceased was aged 41 years.	29 years
iii.	The deceased Asif was earning a sum of Rs.25000/- per month on average as stated hereinabove	
iv.	Loss of pecuniary benefits for one year (25000 x 12)	Rs.3,00,000/-
v.	Aggregate loss of pecuniary benefits for 29 years (Rs. 3,00,000 x 29)	87,00,000/-
vi.	20% on account of chances of increment on the aggregate	17,40,000/-

	income over all years (87,00,000 / 5)	
vii.	Gross loss of pecuniary benefits for 29 years due to accidental death of deceased (87,00,000 + 17,40,000)	Rs.1,04,40,000/-
viii.	1/6 <sup>th</sup> on account of personal expenses. (1044000 / 6)	17,40,000/-
ix.	Net loss of pecuniary benefits for 29 years (1044000 - 1740000)	Rs.87,00,000
x.	(a). The damages in favour of children for loss of better prospects of career/future owing to untimely death of their father.  (b). Damages in favour of the plaintiff for loss of association and loneliness under the head of "Consortium".  (c). Funeral expenses.	Rs.20,00,000/-  Rs.20,00,000/-  Rs.20,000/-
	Total	Rs.1,31,20,000/-

19. The claim of Plaintiff with regard to the quantum of damages also remained unchallenged. To assess the quantum, number of decisions have been relied upon by Plaintiff's counsel, but all of them do not require a discussion here, except the decision of Hon'ble Supreme Court handed down in **Punjab Road Transport Corporation v. Zahid Afzal & others (2006 SCMR 207)** and a decision of a learned Division Bench of this Court in **Ehteshamuddin Qureshi Versus Pakistan Steel Mills (2004 MLD 361)**, wherein, *inter alia*, not only the earlier principle in such cases has been reiterated, but the same has also been further expounded and summarized. It would be advantageous to reproduce herein below the relevant paragraphs of the above Supreme Court Judgment:

"10. The superior Courts laid down following principles to be kept in view while awarding damages in case a person has died on

account of accident due to the negligence of the driver of the petitioner's vehicle, which causes death of the victim:

(i) the position of each dependent of the deceased should be considered separately;

(ii) the damages are not to be given as solatium but should be calculated with reference to a reasonable expectation pecuniary benefit, from the continuance of the life of the deceased. Damages claimed by dependents for their own pain and suffering or for the loss occasioned to them due to the death of the deceased which is not referable to the expectation of any such pecuniary benefit is outside the scope of the Act;

(iii) the deceased need not be earning or the dependents need not be actually deprived of benefit. Reasonable expectation of such earning or benefit is enough;

(iv) the pecuniary loss due to the death should stem not from a mere speculative possibility of pecuniary benefit from the continuance of the life of the deceased but only from a reasonable possibility of such benefits;

(v) where the actual extent of such pecuniary loss cannot be ascertained accurately, the sum may be an estimate or partly a conjecture;

(vi) in assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages should be considered;

(vii) the pecuniary loss of each dependent should be ascertained by balancing on the one hand the loss to him of future pecuniary benefits and on the other any pecuniary advantage which from whatever source comes to him by reason of death.

11. The Constitution of a country is a kind of social contract which binds people, society and a State. The terms of the contract foster feelings of interdependence of belonging to an entity and of adherence to law. An honest commitment to the goals set out in the Constitution ensures promotion of nationhood and stability of the system. In view of Article 4 read with Article 5(2) of the Constitution, it is the duty of each and every organ of the State and people of Pakistan to work within the framework of Constitution and law as law laid down by this Court in the following judgments:--

(1) Ch. Zahoor Elahi's case PLD 1975 SC 383 and (2) Zahid Rafique's case PLD 1995 SC 530.

12. Our Constitution contains Chapter I relating "Fundamental Rights" in which life of human being is given due importance. It requires everyone to work for the welfare of the people of Pakistan but a person who is violating the law and Constitution works against the welfare of the people that is why it is high time to promote the law of tort so that the people must understand that we cannot live as a nation without performing our duties within the framework of law. As in the present admittedly the driver had driven the bus in violation of the mandatory provisions of Motor Vehicle Ordinance, 1965 and rules framed thereunder thus, causing fatal injuries to the innocent citizens."

20. Taking into the account the evidence led by Plaintiff, particularly with regard to his specific statement about life expectancy of the deceased, the nature of government job as an Associate Engineer (BPS-11) and simultaneously doing a part time job

to meet the ends, together with the deposition of Plaintiff's witness about longevity in family, it is not difficult to conclude and hold that life expectancy of more than 70 years in Plaintiff's family has been established. The deceased, considering these factors, may also have lived for another 30 years approximately, therefore, the claim of awarding damages of rupees 1,31,20,000/- is justifiable and hence granted, therefore, **issue No.2 is answered in affirmation.**

21. **Issue No.3.** It is claimed by the defendant No.2 that a sum of Rs.400,000/- in shape of compensation had already been handed over to the bereaved family which amount be adjusted with regards claim under Fatal Accident. It is well established principle that loss of human life cannot be measured in terms of coins, however, the Fatal Accident Act, 1855 was enacted to provide compensation to the bereaved families for loss occasioned by the death of a person caused by actionable wrong. According to the preamble of the Act, 1855, the said law was enacted to provide compensation to families for loss occasioned by the death of a person caused by actionable wrongs since no action or suit was then maintainable in any court against a person who by his wrongful act, neglect or default, may have caused the death of another person, and it was considered expedient that the wrong-doer in such case be made answerable through damages for the injury so caused by him. In view of the above rationale and deliberation, the **issue No.3 is answered in negation.**

22. **Issue No.4.** The upshot of the above is that suit of the Plaintiff is decreed against the Defendants jointly and severally and the Defendants are liable to pay a sum of Rs.1,31,20,000/- to Plaintiff

together with 6% (percent) markup from the date of institution of the suit till realization of the amounts. Office to prepare a decree accordingly.

Karachi  
Dated:30.01.2023

JUDGE

Aadil Arab