

## IN THE HIGH COURT OF SINDH AT KARACHI

### Suit No. 1008 of 2007

[Wasim Iqbal *versus* M/s. Karwan-e-Islami International and others]

Date of hearing : 01.04.2022 and 22.04.2022.

Plaintiff : Wasim Iqbal, through Mr. Ch. Muhammad Iqbal, Advocate.

Defendants No.1,2&3: Nemo.

Defendants No.4 : Federal Government of Pakistan, through Mr. Jameel Ahmed Shah, Assistant Attorney General.

### JUDGMENT

**Muhammad Faisal Kamal Alam, J:** - This Suit is filed, primarily, seeking compensation for the breach of commitment (as averred) by the private Defendants. Plaintiff contains the following reliefs\_

- “1. That the Plaintiff be granted a Decree for Rs.20,000/- with 18% Markup till its realization which was paid vide Receipt No.RA-004068 dated 02-09-2006 as advance part payment out of Rs.82,000/- total Umrah Package offered and Umrah Visa Stamping was undertaken.
2. That a decree for Rs.50,00,000/- as damages for causing mental agony, torture, injuries to the religious feeling of the plaintiff, sufferance of respect, reputation, and goodwill among the relatives friends, fellow advocates, clients, fellow

*followers of the faith of the Plaintiff and general public for mis-representation, false and mis-statement made, fraud and cheating committed with the Plaintiff, knowing well in advance regarding the restriction imposed upon Pakistani Umrah Zaireens during the month of Ramazan under the age of 40 years, and refusing to re-deliver the Original Passport, NIC and Photographs of the plaintiff making him suffer his ambition to go to UK for his Ph.D in Law, incurring expenses time and energy for obtaining Pay Order for Rs.62,000/ in favour of the Defendant No.1 and getting it cancelled for redeposit in his Account upon payment of bank charges, and mental agony, torture on account of pressure and threats of dire consequences of damage to reputation and respect among the general public.*

3. *That all the licenses /registrations and permission granted to the Defendant No.1 under any law by the Defendant No.4 or any Department /Authority /functionary working under the Department or independently be cancelled / withdrawn and the securities and deposits for such License /permission and Registration be forfeited in the larger interest of muslim citizens of Pakistan on account of the mis-deed, violations, fraud and cheating committed by them as explained in the body of the Complaint and the Defendant No.1 be blacklisted for all times, with information to all the Embassies of Pakistan, world over, and specially the Kingdom of Saudi Arabia through their Embassy at Islamabad and Consulate offices throughout Pakistan.*

4. *Costs of these Proceedings alongwith special costs under Section 35A CPC.*

5. *Any other and further relief(s) this Honourable Court may deem fit and proper under the circumstances of the case.”*

2. Relevant facts as stated in the plaint are that Plaintiff was persuaded by the Advertisement of Defendant No.1, being a registered Hajj / Umrah and Ziarat Operators, registered with the Defendant No.4 – Ministry of Tourist Department (Government of Pakistan), visited the Office of the Defendant No.1, met Defendant No.2, and fulfilled formalities for performing Umrah during the Holy Month of Ramazan. Defendants in due course had ensured the Plaintiff that his Passport for endorsement of Umrah Visa and other documents will be received back from the Saudi Embassy and his Ticket for Karachi to Jeddah Sector has been confirmed for 26.09.2006, hence, Plaintiff was called upon to deposit the balance Pay Order of Rs.62,000/- (*rupees sixty two thousand only*). The total Umrah Package at the relevant time was for Rs.82,000/- (*rupees eighty two thousand only*) out of which Rs.20,000/- (*rupees twenty thousand only*) was paid by Plaintiff earlier to private Defendants in their Office along with his original Passport.

3. Despite passage of time when Passport of Plaintiff along with Umrah Visa was not returned, the Plaintiff enquired from the Defendants who kept the Plaintiff on false hopes. Eventually, Plaintiff was informed that his Visa was refused on account of restriction imposed on issuance of Visa to the persons below the age of 40 years, who are traveling alone and not accompanied by family members; as at the relevant time Plaintiff was 28 years old. It later transpired that this Policy for Umrah Visa was already in the knowledge of private Defendants, as officially communicated to

them by the Government of Pakistan, but the private Defendants in order to exact maximum amounts, through deceptive manner, never disclosed this to Plaintiff and all other applicants.

4. Time and again Plaintiff reminded the Defendants for return of his original documents, including the Passport along with deposit money, but the Defendants avoided to return the same. Legal Notices were exchanged between Plaintiff and Defendants. Averred that on one occasion Defendant No.2 (Mohammed Ahmed Qadri, the Chief Executive of the Defendant No.1) had insulted the Plaintiff and threatened him of dire consequences. Instead of settling the dispute amicably, private Defendants resorted to highhandedness and leveled false allegations against Plaintiff in social circles, in order to damage the reputation and to coerce him to withdraw from his claim.

5. Private Defendants No.1 and 2 in their joint Written Statement has disputed the contention of plaint, while questioning the maintainability of present *Lis*. The averment of plaint with regard to large scale media campaign about Defendant No.1 being a trust worthy Tour Operator/Organization has not been disputed. Defendants have stated that they are operating under proper permission/License from the Government of Pakistan and each year sent thousands of pilgrims for Umrah and Hajj, while categorically disputing the claim of Plaintiff, that Defendants No. 1 and 2 is doing an illegal business of lottery by inviting applications from public at large and charging Rs.500/- (*rupees five hundred only*) per Application. However, it is not denied in paragraph-5 of the Written Statement, that Plaintiff had paid Rs.20,000/- (*rupees twenty thousand only*) towards Booking, for processing his request to perform Umrah during the Holy month of Ramzanul Mubarak. It is stated that Plaintiff was informed that as per Umrah Policy (at the relevant time) individuals below 40 years

of age were not allowed, but on insistence of Plaintiff, his case was processed.

However, in Paragraph-6 of the Written Statement, it is not disputed that Plaintiff has offered an Umrah Package of Rs.82,000/- (*rupees eighty two thousand*). Defendants have refuted, as alleged, that Plaintiff was informed about his Air Ticket from Karachi Jeddah Karachi for 26.09.2006, because at the relevant time Umrah Visa for Plaintiff was not issued/approved. It has been claimed in the Written Statement, that through Mohammed Aslam, Ghulam Mustafa and Akbar Ali, Plaintiff was approached on 30.11.2006 and on behalf of Defendant No.2, an unconditional apology was tendered, besides Plaintiff was handed over a cheque bearing No.397942051 dated 29.11.2006 for Rs.20,000/- (*rupees twenty thousand only*), which was earlier paid by him as part payment towards Umrah Package, and original Passport and Photographs were also returned, through the common friend Mr. Muhammad Ali. It is averred that the Letter dated 14.12.2006, in fact was a written apology by Defendants No.1 and 2, sent with honest intention, as it was decided in the joint meeting held on 30.11. 2006, wherein, the cheque of Rs.20,000/- (*rupees twenty thousand only*) and other documents were also handed over to Plaintiff.

6. From the divergent pleadings of the Parties, by consent, following Issues were settled by the Court, vide Order dated 25.10.2010\_

1. ***Whether suit is maintainable under the law?***
2. ***Whether the plaintiff is entitled for a decree for realization of Rs.20,000/- with 80% mark-up from the defendant?***
3. ***Whether the plaintiff is entitled to a decree against the defendant for damages? If yes, to what extent?***

4. *Whether license of defendant is liable to be cancelled in accordance with law and the securities are liable to be forfeited?*

5. *Whether the defendants have floated lotteries in violation of law?*

6. *What should the decree be?*

7. It is a matter of record that only Plaintiff led the evidence and despite providing ample opportunities, private Defendants did not come forward to lead the evidence. By the Order dated 04.09.2013, upon continuous absence of Defendants in the evidence proceeding, the side of Defendants No.1 and 2 to lead the evidence was closed.

8. It is also necessary to refer the Order of 22.04.2022, wherein, *inter alia*, learned counsel for Plaintiff made a Statement that Plaintiff is only seeking relief of damages against private Defendants, thus, the official Defendant No.4—Ministry of Tourism Department, **Government of Pakistan, was deleted from the array of Defendants.**

9. On behalf of Plaintiff, Rab Nawaz Sarghana has testified. In his Affidavit-in-Evidence/Examination-in-chief, he has reiterated the stance mentioned in the plaint. Special Power of Attorney to depose in the matter is produced as Exhibit-P/1.

10. In his cross-examination, the witness has not denied that afore-named Muhammad Ali is the common friend of Plaintiff and Defendant No.2, while acknowledging that Plaintiff approached the Defendants No.1 and 2 through Mr. Mohammed Ali. He has denied that Plaintiff was informed by private Defendants about the Umrah Policy, that a person under age of 40 years, without the family, is not allowed to go for the Umrah. He has admitted that the above balance amount of Rs.62,000/- (*rupees sixty two thousand only*) was not paid to Defendants. He has denied the suggestion that case of Plaintiff for Umrah Visa was sent as a special

case. The witness has admitted that Plaintiff's representatives were sent to the Airline for Tickets and PNR was issued by the Airline. He has denied the suggestion and could not be further contradicted in his cross-examination, that on demand of Defendant No.1, Pay Order of Rs.62,000/- (*rupees sixty two thousand only*) was prepared by Plaintiff. He has denied the suggestion that Defendant No.1 did not assure the Plaintiff for obtaining the Umrah Visa; but, it is not denied that the above named three persons, namely, Mohammed Aslam, Mustafa and Akbar Ali, came to the Office of Plaintiff and tendered unconditional apology and handed over a cheque of Rs.20,000/- (*rupees twenty thousand only*) dated 29.11.2006, which was accepted subject to the tendering of written apology, which was tendered vide Correspondence of 14.12.2006 (Exhibit P/12). However, it is an undisputed fact mentioned in the pleadings of both Plaintiff and Defendants No.1 and 2, that the said Cheque was never encashed.

The Witness has further stated that a Passport and CNIC were returned to Plaintiff through above named Muhammad Ali in presence of Kamran and Haseeb after filing of the present Suit; he has denied the suggestion categorically, that Legal Notices were sent to Defendant No.1 merely to cause harassment and blackmail. He has denied the suggestion that Plaintiff approached the Defendant No.1 to pay a sum of rupees one million; voluntary stated that private Defendants approached the Plaintiff and his father for settling the matter.

11. Evaluation of evidence leads to the conclusion that balance amount of Rs.62,000/- (*rupees sixty two thousand only*) was never paid by Plaintiff to Defendants; however, Passport and other documents were returned to Plaintiff by Defendants after filing of the present *Lis*, which should have been returned to Plaintiff when Umrah Visa of Plaintiff was refused. Although the private Defendants did send a written apology through their

Correspondence of 14.12.2006, produced in the evidence is **Exhibit-P/12**, but, before that, considerable time was spent when the Plaintiff first visited the Office of private Defendants, on 02.09.2006, paid the initial amount of Rs.20,000/- (*rupees thousand only*), subsequently when he was informed about his Visa rejection after around four weeks; followed by the Legal Notices, which all caused the mental agony to Plaintiff. **Secondly**, on the material assertion of Plaintiff in the evidence, that he was also threatened by Defendant No.2, was not subjected to cross- examination, which means that this part of testimony went unrebutted; for a professional person, all these factors are humiliating, besides a cause of mental distress. **Thirdly**, the stance of private Defendants is also belied by the undisputed documentary evidence, particularly, Reply dated 24.01.2007 of Defendant No.1, to the earlier Legal Notices of Plaintiff, produced in the evidence as Exhibit-P/14, by Plaintiff's witness. It is mentioned in Paragraph-3 of the above Reply (*Page-101 of the Evidence File*), that case of Plaintiff was processed for Visa as a special case, coupled with the fact, that upon persistent enquiry by Plaintiff, he was informed that his Seat was reserved for 26.09.2006 in Saudi Airlines.

12. In view of the above the Issue wise determination is as follows\_

**ISSUE NO.1**

13. It is answered in affirmative, that present Suit is maintainable.

**ISSUES NO.2 AND 3.**

Since both these Issues are inter-connected, thus they are decided together.

The Defendants No.1 and 2 claiming to be well known and reputable Tour Operators, for Hajj and Umrah, is required to know the Policies of the Governments at the relevant time, in order to avoid inconvenience to



genuine Applicants. If there was a Policy of Government, that an individual below the age of forty years, cannot perform the Umrah, without being accompanied by his family, then Defendants No.1 and 2, in the **first place** should have refused to accept the documents, passport and initial payment from Plaintiff, but they did not, rather, they have accepted the documents and through their conduct, made the Plaintiff believe that he would be travelling to perform Umrah.

14. An individual or entity engaged in the business of Tour Operators and that too, for Hajj, Umrah and Ziaraat, is expected to demonstrate higher standard of business ethics, without compromising their principles for commercial consideration.

Plaintiff has claimed a sum of rupees five million as damages, which are in fact special damages. It is a settled rule that special damages cannot be awarded, unless Plaintiff has led a convincing and positive evidence in support of his claim, which in the present case has not been done. The Superior Courts have held in number of decisions, *Abdul Majeed Khan versus Tawseen Abdul Haleem-2012 CLD {Supreme Court of Pakistan}* **page 6**, being one of the leading cases, that if circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal rights exists. Similarly, in the case of *Sufi Muhammad Ishaque versus The Metropolitan Corporation, Lahore-PLD 1996 Supreme Court 737*, the damages vis-à-vis mental agony has been discussed and the conclusion is that there can be no yardstick or definite principle for assessing damages in such cases, which are meant to compensate a party who suffers an injury. The determination criteria should be such that it satisfies the conscience of the Court, depending on the facts and circumstances of the case.

15. Looking at the undisputed facts of the case, general damages can be awarded by the Court, besides, refund/return of initial amount of rupees twenty thousand, but without any mark-up, as admittedly, the Cheque was handed over to Plaintiff, but, was not encashed; thus, in these circumstances, Plaintiff is not entitled for any mark-up, which would have been awarded, if the said Cheque was forfeited by the Defendants No.1 and 2.

16. The upshot of the above discussion is, that Plaintiff is entitled for general damages. In the circumstances Defendants No.1 and 2, jointly and severally, are liable to pay a sum of Rs.300,000/- (rupees three hundred thousand only) to Plaintiff within two months from the date of this Judgment, where after, 10% (percent) mark-up will be charged till the amount is realised. Defendants No.1 and 2 are also liable to return the amount of rupees twenty thousand through a Pay Order or a Cross Cheque. Hence, the Issues No.2 and 3 are answered accordingly.

#### **ISSUES NO.4 AND 5.**

17. The evidence led, leads to the conclusion that it was not proved that Defendants No.1 and 2 were engaged in an illegal activity of lottery, thus, reply to Issue No.5 is in negative, so also, that of Issue No.4.

#### **ISSUE NO.6**

18. The Suit is partly decreed to the extent of monetary claim, as mentioned in the foregoing paragraphs.

19. Parties to bear their respective costs.

**JUDGE**

**Karachi.**

**Dated: 14.09.2022**

*Jamil Ahmed, P.A.*