

IN THE HIGH COURT OF SINDH AT KARACHI

HCA NO.272 of 2022

Date	Order with signatures of Judge(s)
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PRESENT:**Mr. Justice Irfan Saadat Khan****Mr. Justice Arshad Hussain Khan**

Muhammad Anwar

Vs.

Pakistan through Secretary, Ministry of Finance and others

Appellant	In person
Respondent-1	Through Mr. Khaleeq Ahmed, DAG
Respondent-Deptt.	Through Syed Ahsan Ali Shah, Advocate.
Date of Hearing:	20.02.2023
Date of Decision	02.03.2023

JUDGMENT

Arshad Hussain Khan, J: The Appellant through present High Court Appeal has challenged the judgment and decree dated 09.06.2022 and 16.06.2022 respectively only to the extent of quantification of amount of compensation, passed by learned Single Bench of this Court in Suit No. 212 of 1984, whereby the suit of the Appellant/Plaintiff for recovery of damages was decreed.

2. Briefly the facts leading to filing of the present appeal are that the Appellant/Plaintiff, inter alia, is engaged in the business of ship breaking and in this connection he purchased a scrap ship. However, when this vessel arrived at Gadani beach for its breaking it struck against the rock and capsized and started sinking. The appellant initially refused to take the delivery of the said vessel, however, subsequently under the compelling circumstances, he took the delivery and thereafter paid custom duties and sales tax under protest and started the salvage and scarping of the ship. The Income Tax Department was informed about losses suffered by the appellant. It was alleged that 2100 metric tons of scrap remained under the water, however, the Income Tax Appellate

Tribunal refused to accept the same as a loss in the books of the plaintiff. Whilst this dispute with Income Tax Department was going on, the I.T.O issued letter to the Custom Department wherein the Custom Department was instructed to stop the appellant from cutting, scrapping, removing and lifting the scrap from the capsized ship. It is also alleged that due to the said actions of the Income Tax and Custom Departments the appellant suffered losses upon which the respondents were served with legal notice and thereafter the Suit No.212/1984 was filed on the original side of this Court for recovery of damages against the Respondents. Upon notice of the case, Respondents filed their written statements wherein they denied the allegations and sought dismissal of the suit. Out of the pleadings of the parties issues were framed by the court and after trial, the judgment was passed and the suit of the Appellant / Plaintiff was decreed in the following terms:-

- “(i) The Defendants are jointly and severally liable to pay damages to the tune of Rs.15,00,000/- [Rupees Fifteen Hundred Thousands] to the Plaintiff.
- (ii) The above mentioned decretal amount shall carry a component of 10% [ten percent] mark-up from the date of filing of the suit till satisfaction of the decree.
- (iii) Considering the peculiar facts of the case, the Plaintiff is also awarded costs of the proceeding.”

The Appellant/Plaintiff after being aggrieved by the said judgment and decree has preferred instant Appeal only to the extent of quantum of damages awarded to him.

3. Upon notice of the present appeal, objections / comments on behalf of Respondents 3, 4, and 5 have been filed wherein it has specifically been stated that the Appellant has claimed undue damages for which Income Tax Department is not responsible and the Appellant has exaggerated the losses. The Custom Department has attached the Ship due to non payment of custom duty and income tax thereon. The possession of the Ship was not with the Income Tax Department, hence the damages cannot be claimed against the Income Tax Department. The shortage of salvage cannot be claimed from Income Tax Department as it has never remained in possession of the said ship.

4. During the course of the arguments, the Appellant appearing in person while reiterating the contents of the Memo of Appeal has contended that he claims damages of Rs.98,50,430/- in the suit caused by the Respondent-Income Tax Department / Customs Department by malafide and illegal acts of stoppage of business of the Appellant without any show cause notice and also with intention to cause losses to the Appellant. He has further contended that learned Single Judge while passing the impugned judgement has not considered the quantum of loss as per the Nazir's Report dated 18.10.2007 and 29.05.2010, which disclosed shortage of 1547.690 M.Tons as such the impugned judgment is required to be modified and loss of 1547.690 M.Tons be granted to him.

5. Conversely, learned DAG, as well as learned counsel appearing on behalf of the Respondents / Departments while reiterating the contents of comments / objections filed on behalf of the Respondents, have vehemently opposed the present appeal and have submitted that the Appellant has failed to adduce any evidence to substantiate his claim with regard to the damages as such the impugned judgment does not call for any interference in the present proceedings.

6. We have heard learned D.A.G. and the learned counsel appearing for the Departments as well as perused the material available on the record.

7. Since the scope of this appeal is very limited as the appellant has challenged the impugned judgment only to the extent of quantum of the damages awarded to him, as such, without dilating upon other aspects of the case we will confine ourselves only to grievance raised in this appeal. Precisely, the case of the Appellant is that learned Single Judge while awarding the compensation did not consider the Nazir's Reports dated 18.10.2007 and 29.05.2010 and as such caused serious error and through instant appeal he seeks modification / enhancement of the compensation in view of the aforesaid Nazir's Report.

8. Before going into any further discussion, it would be appropriate to reproduce the concluding paras of the aforesaid Nazir's Report herein below :-

Nazir's Report dated 18.10.2007:

“ 13. In view of the above mentioned account it is clear that the contractor Mir Akbar Abbasi has deposited an amount of

Rs.14,40,000/- instead of Rs.19,58,080/- as cost of scrap in suit No.212 of 1984 and deposited a sum of Rs.6,89,730.00 as supervision charges in HCA No.104 of 2006 as well as security charges in the sum of Rs.75,000/-. Thus in view of the above order passed in High Court Appeal that in case respondent No.1 has any grievance about excess payment to the appellant he may move separate application for this purposes. Therefore, deficit amount of Rs.5,18,080/- is to be deposited by the said contractor in suit No.212 of 1984 as cost of scrap. For recovery of the said amount notice is being issued to the said contractor.”

Nazir’s Report dated 18.10.2007:

“5. PARA-II. The contractor has further deposited the title deed of properties bearing No.323-A, New Truck Stand Hawks Bay Road, Karachi, and Plot No.1393, Mujahid Colony, Nazimabad, Karachi, as security equivalent to Rs.1,750,000/- as the value of the scrap was requested to be enhanced from Rs.8,000/- M.Tons to Rs.15,000/- M.Tons, which application CMA No.1631/2006 is still pending and is to be decided by Hon’ble Single Judge. As per order dated 18.05.2006, passed in HCA No.104 of 2006.”

9. Perusal of the aforesaid Nazir’s reports, shows firstly; that the said reports pertain to the contractors who had under taken the process of salvaging /scraping the ship and their obligations with regard to payment were mentioned, secondly; the Nazir has not referred to any loss caused to the present Appellant. However, mere mentioning any shortage of quantity of salvage/scrap in the said reports does not *ipso facto* entitles the appellant for damages, unless he proves the same through tangible and convincing evidence, which in the present case is seriously lacking. Moreover, it is well settled principle of law that the Commissioner’s Report cannot be substituted as evidence, which otherwise is required to be produced by a party. Reliance in this regard can be placed on the case of Abdul Rashid v. Mahmood Ali Khan [1994 SCMR 2163]. In the present case the record does not show that the appellant has examined Nazir of this Court in support of his stance in the case or produced the above Nazir’s reports in his evidence. In the circumstances, the plea of the appellant that the amount of compensation could have been awarded to him on the basis of the Nazir’s reports appears to be misconceived, hence untenable in law.

10. Insofar as the damages are concerned, the Appellant / Plaintiff has to prove his case through evidence. From perusal of the impugned judgment, it appears that learned Single Judge while dealing with the issue of damages has given his findings, which is self-explanatory, for the sake of convenience it read as follows :-

“18. The only issue now remains is the relief of damages (issue No.5) as claimed by the Plaintiff. There is no hard and fast rule to calculate the quantum of compensation, as well as there is also no yardstick to measure the sufferings. The Plaintiff has claimed damages on account of huge present and future economic loss and on account of undergoing irreversible phase of perpetual mental torture and loss of reputation. It is fact that Mental shock, agony and torture imply a state of mind. Such state of mind can be proved only by a positive assertion of one who experiences the same. (PLD 2021 Sindh 01 & 1996 CLC 627). Plaintiff claimed that owing to the illegal act of the defendants jointly and severally he suffered mental shock and agony but he could not produce any medical record to bolster / strengthen the said contention but on the other hand, in the memo of plaint he introduced on record that owing acts of the defendants whereby they directed the plaintiff to stop the work of breaking / cutting the vessel which he was legally entitled to perform, he suffered a lot and detailed out the same in para-17 of the plaint. Quantum of damages would have been different if Plaintiff had produced medical record in support of his claim of damages on account of mental torture, but at the same time, it would be unjust if no damages are granted against officials Defendants, when their illegal acts tainted with mala fide and aggravated by their ex facie maladministration, has been proved as well as it is a celebrated principle of law that excessive use of lawful power is itself unlawful. No doubt, due to impugned action, the Plaintiff has been prevented at least to a certain degree, from use and enjoyment of the vessel which he imported.

“19. In these circumstances, a reasonable compensation for Plaintiff would be Rs.15,00,000/- (Rupees Fifteen Hundred Thousands Only), which should be payable by the Defendants jointly and severally, considering the principle of vicarious liability. Through various judicial pronouncements, it is now a settled legal position that where government functionaries are guilty of committing illegality of such a degree, then they have to compensate the person wronged, in instant case, the Plaintiff.

The issue No.5 is answered in the above terms.”

11. The Appellant has failed to controvert the above findings of the learned Single Judge through evidence available on the record. In the circumstances, we do not find any merit in the Appeal, which is accordingly dismissed.

JUDGE

JUDGE