**ORDER SHEET**
IN THE HIGH COURT OF SINDH KARACHI

**Suit No. 11 of 2010**

| **DATE** | **ORDER WITH SIGNATURE OF JUDGES** |
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1. For hearing of CMA No.388/2025 (U/O VII Rule 11 CPC).
2. For final disposal.

**18.02.2025**

Mr. Aamir Maqsood, Advocate for the plaintiff.
Mr. Altaf Hussain, Advocate for the defendant.

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1. This is an application moved on behalf of defendant No.2 under Order VII Rule 11 CPC, primarily on the ground that defendant No.2 is the owner of the vehicle and hence vicariously not liable for the accident which resulted in the death of deceased Muhammad Riaz **('Victim')**. Learned counsel has invited my attention to the FIR No.363/2009 available at page 37 of the file, which only implicated the driver i.e. defendant No.3 Gul Ahmed. Learned counsel further contended that a criminal case 1029/2009 was registered and more specifically pointed out paragraph No.15 of the judgment dated 15.04.2017 in which accused person has been acquitted on the ground that the prosecution was unable to prove its case beyond reasonable shadow of doubt. Learned counsel contended that since the driver of the vehicle has been acquitted there is no vicarious liability upon the defendant No.2 for the acts committed by the driver of the vehicle. He further states that the matter has been concluded and the case against him as referred to in the plaint is not maintainable and the plaint is liable to be rejected under Order VII Rule 11 CPC. He further contends that the defendant No.2 has been arrayed as a defendant in this case only because he has filed an application for return of his vehicle in the above-mentioned criminal case. Lastly, he relied upon the cases of *Perveen Akhter*

*versus Consulate General of USA at Karachi*[1] and *Moinuddin Versus Karachi Transport Corporation and another*.[2]

Learned counsel for the plaintiff in reply states that the application is misconceived as both civil and criminal proceedings arising out of the same incident which ought to have been proceeded separately.

I have heard both the learned counsel for the parties and hold as follows:

2. Both the matters i.e. civil and criminal cases emanate from the same cause i.e. the accident due to the alleged rash and negligent driving. It is settled law that a burden to prove in criminal is beyond all reasonable doubt and the standard of proof required in civil proceedings (more particularly in a case under the Fatal Accidents Act) is drastically different and lower. Reference in this regard can be made to a recently pronounced judgement of the Honorable Supreme Court of Pakistan in the case of *Salman Ashraf Versus Additional District Judge, Lahore etc*[3]where it was held in paragraph No. 14 as follows: -

> *"14. Needless to mention that the standard of proof required in civil and criminal proceedings is different. In the former, a mere preponderance of probability is sufficient to decide the disputed fact but in the latter, the guilt of the accused must be proved beyond any reasonable doubt. There are, therefore, chances of giving divergent judgments by the civil and criminal courts on the facts that give rise to both civil and criminal liabilities."*

In other words, it is entirely possible for a civil case to succeed on the same facts, grounds and evidence and for a criminal case to fail because of the different standard of proof required. For the purposes of an analogy, it is legally conceivable for the Plaintiff to be granted damages under the Defamation

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[1] 2006 MLD 1657 (Karachi)
[2] 1987 CLC 1554 (Karachi)
[3] Civil Petition No. 2000-L of 2020

Ordinance 2002 and for the same plaintiff to fail as a complainant in a criminal motion on the same facts under Sections 499 and 500 PPC. This is even more apt in the cases involving fatal accidents due to the scheme coined under the Fatal Accidents Act 1855 **(Act)**. The scheme, as has been held by me in the case of *Ghulam Yaseen and others versus Hussainullah*[4], is inimitable. It was held in Paragraph No.5 as under: -

> *"5. The burden of proof in a case of fatal accident is unlike the burden which a Plaintiff ought to discharge under an ordinary civil suit and drastically different than the burden the complainant is expected to discharge in criminal proceedings. Considering the fact that the criminal proceedings in relation to the same proceedings are pending, no further deliberation on the same is warranted. Generally, in a suit for damages the burden is upon the Plaintiff to prove negligence. In cases of fatal accident this may cause hardship to the Plaintiff who in any event is bereaved. To add this additional burden to prove negligence would therefore be unconscionable and unwarranted. The honorable superior courts have over the years adjudicated that the maxim of "res ipsa loquitur" (thing speaks for itself) is applicable in cases of fatal accidents. In other words, in such a case once the Plaintiff establishes the factum of accident the burden to show the absence of negligence shifts upon the Defendant. Moreover, the Defendants in such circumstances have the onus to disprove and break the chain of causation between the accident and the ultimate death."* (Emphasis added)

In reference to the application at hand it has been specifically contended by the learned counsel for the Defendant No.2 that the said Defendant is not vicariously liable for the acts of the driver. In this regard guidance has been sought from the Judgement of the Hon'ble Supreme Court of Pakistan elaborating the doctrine of "composite negligence" in the case of *National Logistic Cell versus Irfan Khan and others*[5] . The Honourable court at Paragraph No.19 of the judgment noted as follows: -

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[4] Civil Suit Number 197/2019
[5] 2015 SCMR 1406

> *"By composite negligence, it means where the wrong, damage or injury is caused by two or more persons, in such cases each of the wrongdoer is jointly and severally liable to make good the loss to the claimant who suffered at the hands of such tortfeasors. It is the prerogative of the plaintiff to proceed against any or all such wrongdoers. It is not the Plaintiff who is saddled with responsibility to establish separate liability against each of the tortfeasor nor is it considered the responsibility of the court to ordinarily determine liability of each tortfeasor separately, proportionally and or independently in absence of any such issue at trial."*

To further elaborate the issue at hand reliance may be placed on the case of *Pakistan Railways versus Abdul Haqique*[6] in which it was held that the words *"the party who would have been liable"* in Section 1 of the Act hold great significance. To elaborate this point the Honorable court further held in Paragraph No.4 of the judgement: -

> *"It is well established that a master is liable for any tort committed by his servant while acting in the course of his employment. The master would, therefore appear to be "a party who would be liable" within the meaning of the section. There is nothing in the text of the Act that would militate against enforcement of vicarious liability against the master for the rash and negligent act on the part of his servant."*

3. Whilst adjudicating the application at hand it is important to be mindful of the fact that the application has been filed for rejection of plaint and any observation made hereinabove may prejudice the case of the Defendant. Therefore, it is held that the liability of the Defendant No.2, if any, may be determined at the time of final adjudication of the case. The said Defendant has been unable to make out a case for rejection of plaint under Order 7 Rule 11 CPC as his liability, if any, is yet to be determined after recording of evidence in the instant case.

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[6] 1991 SCMR 657

4. The reliance of the learned counsel on the judgements cited above are misconceived for the following reasons: -

In the case of *Perveen Akhtar* (supra) the Hon'ble court delineated on the law of limitation regarding claims under the Act and held the obvious, that the plaint could only be rejected based on the averments in the plaint. In the case of *Moinuddin* (supra) it was held that the owner of the vehicle could not be held vicariously liable if it was shown that the driver had used the vehicle which caused the accident without the knowledge and permission of the owner. Both these judgments cited by the learned counsel do not advance his cause under the application, more particularly due to the fact that no evidence has been lead in the case.

In light of what has been held above the application is without merit and is dismissed with no order as to cost.

JUDGE

Nadeem Qureshi "PA"