IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.21 of 2000
&
High Court Appeal No.22 of 2000

Before:
Mr. Justice Nadeem Akhtar &
Mr. Justice Muhammad Iqbal Kalhoro

High Court Appeal No.21 of 2000:

Islamic Republic of Pakistan
through Secretary Ministry of Defence
at Islamabad & two others.....Appellants.

Vs.

Numair Ahmed & two others……Respondents.

High Court Appeal No.22 of 2000:

Federation of Pakistan
through Secretary Ministry of Defence
at Islamabad and two others……Appellants.

Vs.

Mst. Nusrat Irfana……....Respondent.

Appellants in both appeals through Mr. Muhammad Aslam Butt, Deputy Attorney General for Pakistan (DAG).

Respondents in both appeals through M/s. Farrukh Usman and Aamir Maqsood, advocates.

Date of Hearing: 28.11.2014.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- By this consolidated judgment, we intend disposing of the captioned appeals preferred against the judgments and decrees dated 10.12.1999 in two suits No.632/ 1991, and No.647/1991 instituted separately by the respondents in both appeals

for recovery of Rs.29,40,000/- and Rs.35,20,000/- respectively under Fatal Accidents Act, 1855, against the appellants

2. The facts of both the suits in nutshell are that the respondents in HCA No.21 of 2000 (Suit No.632 of 1991) were minor children of deceased Hakim Muhammad Abdul Sami, whereas the respondent in HCA No.22 of 2000 (Suit No.647 of 1991) was the widow of deceased Muhammad Shafiq. On 07.08.1999 at about 10:35 am, both the deceased named above, going on the motorcycle bearing No.KAL-3516 Honda 70-CD, were on the bridge near Habib Public School, Moulvi Tamizuddin Khan Road, Karachi, when the appellant No.3 namely Muhammad Irshad, while driving the trailer having registration No.9145-9146, in a rash and negligent manner dashed the motorcycle from the wrong side with excessively high speed and with sheer recklessness as a result whereof both the deceased died and the motorcycle also got damaged. A criminal case under Section 304 PPC with PS TPX Karachi was lodged against the appellant No.3. The death of both the deceased was due to negligence, actionable wrong and wrongful act of the appellant No.3, and at the time of their death the deceased were having sound and good health. Deceased Hakim Muhammad Abdul Sami was aged about 50 years and deceased Muhammad Shafiq who was also having a sound and good health was employed in Hamdard Laboratories working as Deputy Director there.

3. The appellants in both the suits filed their written statements denying the allegations leveled against them and raising the question over the maintainability of the suits on the ground of non-joinder of necessary parties. It is further stated that the trailer was the property of Government of Pakistan and the appellant Muhammad Irshad working in Pakistan Navy was an employee of Government of Pakistan. He was a

qualified driver having the experience of 20 years in driving heavy vehicles. The incident occurred owning to rash and negligent driving with high speed by deceased Muhammad Shafiq, who dashed his motorcycle in the rear side of the said trailer. The matter was investigated by the naval police at the spot during course of which they had recorded the statements of several witnesses who pointed out to the gross negligence committed by the deceased Muhammad Shafiq while driving the motorcycle in a high speed.

4. The divergent points which weighed with the trial Court for disposal of both the suits have been recorded in the shape of following issues:

1. *Whether the Government of Pakistan is a necessary party to the suit?*

2. *Whether the plaintiff has impleaded all the legal heirs of deceased Muhammed Shafiq? If otherwise to what effect?*

3. *Whether the accident in question occurred due to any mistake of defendant No.4 or any other defendant?*

4. *Whether the plaintiff is entitled to any of the reliefs claimed against the defendants?*

5. *What should the decree be?*

5. The parties led their evidence to discharge their respective burden to prove the above issues. At the culmination of the trials, the suits were decreed by the learned single Judge of this Court vide impugned judgments and decrees whereby an amount of Rs.16, 80,000/- was awarded to the respondents in Suit No.632 of 1991 (appeal No.21 of 2000) and Rs.26, 28,000/- were granted to the respondent in Suit No.647 of 1991 (appeal No.22/2000). The appellants, however, being dissatisfied with the same have filed the two separate appeals as stated above.

6. Learned DAG argued the case on behalf of the appellants in both the appeals. The main thrust in his contentions was that the learned single Judge did not take into account the circumstances the accident had taken place under, which pointed out to the negligence of the deceased Muhammad Shafiq, as he was driving the motorcycle rashly with a high speed. His next contention was that the estimation done by the trial Court, while awarding compensation, does not conform with the evidence adduced by the parties in support of their respective claims, therefore, the same was patently illegal. He further contended that the learned single Judge had failed to appreciate the evidence in its true perspective and decreed the suits in the absence of any material favouring the respondents' case. Learned DAG lastly submitted for setting aside the impugned judgments and decrees.

7. Conversely, Mr. Farrukh Usman advocate, who appeared on behalf of the respondents, supported the judgments and decrees passed by the learned single Judge of this Court. He further contended that no illegality was committed by the learned trial Court in decreeing both the suits and the compensation awarded to the legal heirs of the deceased, who were done to death because of the negligent driving of the appellant Muhammad Irshad, was in accordance with the evidence produced by the respondents in favour of their claim. He lastly submitted for dismissal of the appeals.

8. Heard and perused the record.

9. With the assistance of the learned counsel for the parties, we scanned the evidence minutely. Learned DAG was not able to point out to any discrepancy available in the evidence of the respondents disentitling them to taste the fruit of the decrees which, as disclosed by

the learned counsel, already stood satisfied. They have in their evidence supported the averments made by them in the plaints. Although, the witnesses of the respondents have been extensively cross-examined by the appellants but no circumstances have come on the record fatally destroying their case for recovery of compensation as prayed by them. Occurrence of the incident was not denied by the appellants in their written statement nor did the learned DAG try to question the death of the deceased in the said accident in his arguments. However, he laid emphasis on the information that it was the deceased Muhammad Shafiq who was to blame for the accident as he was negligently driving the motorcycle with high speed at the relevant time.

10. Like in all cases, the initial burden to prove the circumstances in the fatal accident cases which identify the carelessness on the part of defendant (driver) lies on the plaintiff, however once the accident is admitted by the defendant to have happened, the general presumption of negligence in driving the vehicle at the relevant time gets stronger against him. The burden of proof in fatal accident cases immediately shifts from the plaintiff to the defendant where he, in order to plead innocence, expounds his own version of the accident. In the case in hand, the occurrence of the accident in which two persons lost their lives has been admitted by the appellants in their written statement, but it is the manner and the way the accident has been described by the respondents to have happened has been objected to by them. The stance taken by the appellants in their written statement was that the deceased Muhammad Shafiq was driving the motorcycle rashly and negligently and while driving so he dashed the motorcycle in the rear side of the trailer which caused his instant death and injuries to another deceased Abdul Sami who subsequently died in the hospital during treatment. Their witness

namely Muhammad Ashiq, quite surprisingly, in his affidavit-in-evidence has given a different version of the accident by stating that deceased Muhammad Shafiq was driving the motorcycle and deceased Muhammad Sami Siddiqui was sitting behind him, *who were at the left side of the road in a high speed and while trying to over-take the said trailer from the wrong side* (emphasis supplied), he hit the trailer which resulted in the said accident. The other witnesses, namely Muhammad Rahim, Muhammad Irshad (driver), Muhammad Ibrahim and Mujeebur Rehman, examined by the appellants in their support have maintained the above version of the accident in their deposition which admittedly does not match with the plea taken by the appellants in their written statement as there is no mention in it of an attempt by the deceased to overtake the trailer negligently in high speed. Fundamentally this account of the incident does not commensurate with the plea taken by the appellants in the written statement in that deceased Muhammad Shafiq there is alleged to have hit his motorcycle in the rear side of the trailer, which contradicts the premise of any attempt by him to overtake the trailer from the wrong side as in that eventuality he would have hit the front side of the trailer and not the back side. Such evidence though, being beyond the pleadings, is not worthy of credence but it shows in any case the disorientation and skepticism in the approach adopted by the appellants to defend the case of negligent driving against them. The appellants' witness namely Mujeebur Rehman in his deposition has stated *"vehicles were not moving at a fast speed"* and *"the manner in which the incident occurred was that when the motorcycle touched the trailer it lost its balance and toppled over and the pillion driver both fall on the pavement and trailer ran over them"*. Such disclosure has in fact rendered a blow to the theory of Muhammad Shafiq driving Motor cycle

negligently with high speed and his effort to overtake the trailer. Besides, such detail of the incident belies the stance taken by the appellants in their written statements. The death of the deceased on the pavement, which is situated at the extreme side of the road, speaks of the fact that the appellant Muhammad Irshad (driver) had veered off the road and run over the deceased. In the cases, like in hand, the duty of the driver driving the heavy vehicle has to be construed proportionately higher than the person who is either pedestrian walking on the road or a cyclist or motorcyclist going on his own side. He is, by the nature of his duty (being driver of the heavy vehicle), required to be extra vigilant in driving the heavy vehicle, so that his even inadvertent inattentiveness, which may be a slight one, should not result in an unfortunate accident, like the one in the present case. The responsibility of the driver of the heavy vehicle to drive the vehicle with due care and diligence is heavier than the obligation of a cyclist or a motorcyclist. The evidence of the appellants' own witnesses sufficiently establishes that the deceased at the nick of time were going on motorcycle and were at the left side of the road, which by the dint of the prevalent rules in this country was the right side for them to drive on.

11. In a case involving a fatal accident the maxim of "*res ipsa loquitur"* is always considered to be applicable which means "things speak for themselves". The said rule provides a drive-away from the basic principle of the law, which entails the plaintiff to prove his case as asserted by him in his pleadings. The maxim leads to an inference in favour of the plaintiff on the basis of nature and the manner an accident occurs and the loss suffered at the scene, which by itself would sufficiently bring out negligence of the defendant (driver) and his responsibility more than any other cause for the accident. The simple

fact of the accident causing loss of lives could be construed, prima facie, an evidence of negligence on the part of the defendant (driver) as against the pedestrian or a cyclist or motorcyclist. The Hon'ble Supreme Court in a decision given in the case of Pakistan Steel Mills Corporation Limited and another Vs. Malik Abdul Habib and another (1993 SCMR 848) in Para No.13 has dilated upon the above said maxim which being relevant is reproduced herewith:

> *"In connection with the doctrine of res ipsa loquitur our attention has been drawn to the case of Qazi Arifuddin and another v. Government of Sindh through Secretary, Ministry of Health and others PLD 1991 Kar. 291 in which it is held by a learned Single Judge of High Court of Sindh that in suit for damages in accident cases normally the rule is that it is for the plaintiff to prove negligence. In some cases this principle may cause hardship to plaintiffs because it may be that true cause of accident lies solely within the knowledge of defendants who caused it. This hardship is however, avoided to a considerable extent by the maxim res ipsa loquitur. This maxim means that an accident may by its nature be more consistent with its being caused by negligence for which the defendants are responsible than by any other cause and in such a case mere fact of the accident is prima facie evidence of such negligence. We agree and approve the explanation given by the High Court of res ipsa loquitur. In the present case we are satisfied that the maxim has been applied by two forums in the High Court correctly and appropriately.*

12. In the case in hand all that was required by the respondents was to prove that the death of the deceased occurred due to an accident involving the trailer which was being driven by the appellant Muhammad Irshad, who was an employee of appellant No.2. Thereafter the nature and mode of the accident needed examination to determine that the accident had not occurred because of the negligence or rashness of the driver while driving the said trailer. The evidence which has been discussed above sufficiently establishes that the respondents were able to discharge their initial burden of proving the happening of the fatal accident causing death to the deceased by the appellant Muhammad Irshad's driving the trailer at the unfortunate time.

13. As regards the contention of the learned DAG that in estimating the decretal amount, a proper calculation, keeping in view the evidence on record, was not done by the learned single Judge, is without any force inasmuch as no hard and fast rule can be laid down nor a definite formula can be applied to assess the damages as contemplated under Section 1 of Fatal Accident Act, 1855. Simply guesswork has to be had with regard to expectancy of life of the deceased who dies in an accident and the resultant pecuniary loss suffered by his legal heirs. No infirmity or illegality besides non-appreciation of evidence was specifically pointed out by the learned DAG to conform to his contention in relation to the estimation made by the learned single Judge of this Court in granting the decretal amount to the respondents. We are, therefore, of the view that the instant appeals have no force on merits. The same are dismissed accordingly with no order as to costs.

Aforementioned are the reasons of our short order dated 28.11.2014.

JUDGE

JUDGE