

**IN THE HIGH COURT OF SINDH AT
KARACHI**

Suit No. 74 of 1991

Mohammad Sarwar

Versus

Government of Sindh and others

Dates of hearing : 14.04.2017 and 25.05.2017

Date of Decision : 23.06.2017

Plaintiffs : Through M/s. Farrukh Usman and Aamir
Maqsood, Advocates for the Plaintiffs.

Defendants : Syed Aal-e-Maqbool Rizvi, Additional
Advocate General along with Inspector Mian
Raza, DSP (Legal) and SIP Muhammad Anwar
P.S. Saddar, Karachi.

Ms. Naheed Akhter, State Counsel.

**Case law cited by the Plaintiff's counsel
Relating to onus to proof, quantum of damages and vicarious liability.**

1. 2010 MLD Page-54

[Islamic Republic of Pakistan through Secretary, Ministry of Defence,
Islamabad and others Versus Mst. Farzana Shabbir and others].

2. 2009 MLD Page-948

[National Logistics Cell Versus Abdul Qayyum Khan].

3. 2006 SCMR Page-207

[Punjab Road Transport Corporation Versus Zahid Afzal and
others].

4. 2006 MLD Page-19

[Mushtari Versus Islamic Republic of Pakistan through Secretary,
Ministry of Planning and Development, Islamabad and 2 others].

5. 2005 MLD Page-114

[Haji Abdul Razaque Versus Pakistan].

6. Un-reported Judgment in

High Court Appeal No.67 of 2000

[Karachi Water and Sewerage Board Versus

Mirza Qasim Baig].

7. **2004 MLD Page-361**
[Ehteshamuddin Qureshi Versus Pakistan Steel Mills Corporation].
8. **2004 MLD Page-491**
[Aijaz and others Versus Karachi Transport Corporation].
9. **2003 MLD Page-39**
[Mst. Sabira Khatoon and others Versus Muhammad Akram Siddiqui and others].
10. **2001 YLR Page-821 [P. 825]B**
[Shamim Akhtar Versus Muhammad Arif Baloch].
11. **2001 MLD Page-1845 [P. 1849]B,C,D**
[Shaukat Ali Versus KESC].
12. **2001 CLC Page-928 [P. 931]B&C**
[Mst. Nusrat Irfana Versus Federal Government of Pakistan].
13. **2001 CLC Page-913 [P. 916] A,B,C**
[Ashiq Masih Versus Abbot Laboratories Pakistan Ltd].
14. **2000 CLC Page-111 [P.115]**
[Roshan Bai Versus Pakistan Steel Mills Corporation].
15. **2000 CLC Page-381 [P.385].**
[Bibi Khaida Versus Government of Sindh].
16. **1997 CLC Page-615 [P.619].**
[Anisur Rehman Versus Government Govt. of Sindh].
17. **1995 MLD Page-633 [P.636]A**
[Mst. Sakina Versus National Logistic Cell].
18. **1993 SCMR Page-848 [P.855]A**
[Pakistan Steel Mills Corporation Versus Malik Abdul Habib].
19. **PLD 1991 Karachi Page-291 [P.295]A**
[Kazi Arifuddin Versus Government of Pakistan].
20. **1989 CLC Page-2153 [P.2156]A**
[Hayat Services (Pakistan) Ltd. Versus Kandan].
21. **1987 MLD Page-2402 [P.2404] Para-4**
[Spin Gul Versus Ikramul Haq].
22. **1987 MLD Page-898 [P.899]**
[Abdul Haque Versus Pakistan Railways Telecommunication Department].
23. **1982 CLC Page-1703 [P.1707]**
[Mrs. Nimmi Francis Versus Muhammad Saeed Qureshi].
24. **1982 CLC Page-1228 [PP.1230]A&B**
[Mst. Zebunnisa Versus Sindh Road Transport Corporation].

- 25. 1982 CLC Page-1120 [P.1122]A**
[Mrs. Gul Bano Versus Muhammad Ramzan].
- 26. Unreported decision of Hon'ble Supreme Court**
in Civil Petition No.69-K/94
[Anwar Ahmed Khan Versus The State and another].

**Foreign Judgments in which
reasonable compensation was awarded to victims/Petitioners.**

- 27. AIR 2000 Supreme Court Page-988**
[Chairman Railway Board Versus Chandrima Das].
- 28. AIR 1997 Supreme Court Page-610**
[D.K. Basu Versus State of W.B.]
- 29. AIR 1995 Supreme Court Page-1949**
[Inder Singh Versus State of Punjab].
- 30. AIR 1992 Supreme Court Page-1689**
[Bhagwan Sindh Versus State of Punjab]
- 31. AIR 1990 Supreme Court Page-709**
[Gauri Shanker Sarma Versus State of U.P].
- 32. AIR 1990 Supreme Court Page-513**
[Saheli a Women's Resources Centre Versus Commr, of Police
Delhi].
- 33. (1985) 1 Supreme Court Cases Page-552**
[State of Uttar Pradesh Versus Ram Sagar Yadav and others].
- 34. [Sunil Batra Versus Delhi Administration [December 20, 1979)].**
- 35. [Prem Shankar Shukla Versus Delhi Administration [April 29,
1980].**
- 36. AIR 1980 Supreme Court Page-1087**
[R.R. Engineering Co. Versus Zila Parishad, Bareilly].

Research material.

State Lawlessness and the Constitution
A Study of Lock-up Deaths [Muhammad Ghouse]

Case law relied upon by Defendants' counsel

- Other Precedents:**
- (1). **PLD 2010 Supreme Court Page-1612**
[Mir Shakeelur Rehman and others
Versus Yahya Bakhtiar and others].
 - (2). **1996 MLD (Karachi) Page-803**
[A. Majid Sama Versus The Asbestos
Cement Industries, Ltd. and another].

(3). **PLD 1981 Supreme Court Page-56**
[Mst. Zainab Bibi and others Versus
Mst. Bilqis Bibi and others].

(4). **PLD 1992 Supreme Court page 595**
{Hakim Khan and 3 others versus
Government of Pakistan}

- Law under discussion:
- (1). The Constitution of the Islamic Republic of Pakistan, 1973.
 - (2). The Fatal Accident Act, 1855.
 - (3). The Police Act, 1861.
 - (4). The Code of Civil Procedure, 1908

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Plaintiff has filed the present action at law against the Defendants, *inter alia*, for recovery of Rs.50,00,000/- (Rupees Five Million Only) towards damages, under the Fatal Accident Act, 1855, claiming the following relief _

“The Plaintiff, therefore, prays for the Judgments as decree as under: -

- a). *A decree in the sum of Rs.50,00,000/- against the Defendants who are liable jointly and severally to pay the said sum to the Plaintiff on account of Damages / Compensation.*
- b). *Interest at the rate of 15% per annum on the amount claimed in clause (a) above from the date of the filing of the suit till realization of the decretal amount be awarded.*
- c). *Cost of the suit may be awarded to the Plaintiff.*
- d). *Any other relief or reliefs that this Hon’ble Court may deem just and proper under the circumstances of the case be granted.”*

2. Present Plaintiff is father of the deceased-Muhammad Shakeel who died while in the custody of Defendants, as claimed.

3. In response to the summons issued by this Court, Written Statement on behalf of Defendant No.5 was filed by the Advocate General Office, where after, a Statement was filed by the learned Assistant Advocate General that Written Statement filed by Defendant No.5 is also adopted by Defendants No.1 to 4 (*Government of Sindh, Inspector General of Police, Deputy Inspector General of Police and Crime Investigation Agency*) respectively. The other Defendants failed to file their pleadings (written statement).

4. On 22.12.1991, the following issues, earlier filed by the Plaintiff were adopted as Court issues, as these were covering the entire controversy in question_

- “1. Whether the deceased Ch. Muhammad Shakeel died a natural death or his death was caused on account of wrongful act, of assault and torture in CIA Centre as by Defendants No.7 to 14 on 26.04.1990 while in custody of Defendant Nos. 7 to 14?”***
- 2. Whether the Defendants are liable to pay the damages / compensation to the Plaintiff and another legal heir jointly and severally? If so, to what extent?***
- 3. Whether the Plaintiff is entitled to cost and interest / profit, as claimed?***
- 4. What other relief or reliefs this Hon’ble Court may deem fit?”***

5. Evidence was only led by Plaintiff’s side, and the Report of Commissioner as well as record of the evidence proceeding shows that despite providing ample opportunities to Defendants, they remained absent; consequently Defendants were debarred from leading evidence, vide order dated 12.03.2013. In this regard, the Commissioner’s Report dated 05.03.2012 is of significance, which is available in the Court file,

wherefrom, a cavalier attitude of Defendants towards instant proceeding is apparent.

6. Findings on the above Issues are as under:-

ISSUES NO.1 TO 4 : AS UNDER.

ISSUE NO.1

7. Issue No.1 is pivotal. Though the Defendants did not lead any evidence in support of their stance mentioned in the Written Statement of Defendant No.5 (the then senior SSP CIA Centre; Samiullah Merwat), but, still the Court must see that whether the Plaint discloses a cause of action and since this case has been filed under a special statute, viz. Fatal Accident Act, 1855, if the claim is within time.

8. Present claim is in respect of a custodial death (as alleged) of deceased Muhammad Shakeel, the son of Plaintiff, and per Plaint he died at CIA Centre on 25.04.1990. In the Written Statement, the factum of death in custody of Defendants is not questioned but its causation. Stance of Defendants as put forth is that said deceased Muhammad Shakeel died on 26.04.1990 due to cardiac arrest when the Defendants were taking him to Hospital for treatment. The present suit has been filed on 31.12.1990, that is, within the period of limitation of one year as prescribed by the above statute, therefore, at least in terms of the above statute (The Fatal Accidents Act) the present claim is not a time barred one. However, the arguments of learned Additional Advocate General that the present case falls within the ambit of Section 42 of the Police Act, 1861, will be considered in the later part of this Judgment. In the said Section 42, the time prescribed for initiating such an action is three months.

9. Defendants denied that the said deceased was tortured, whereas, the stance of Plaintiff is that he was brutally beaten up and tortured to death by the Officials of CIA, that is, Defendants No.4 to 14.

10. It is a matter of record that none of the Defendants entered the witness box to defend the claim against them and hence the Written Statement filed by the official Defendants loses its evidentiary value as contents whereof were never proved in the evidence.

10-A. The learned Additional Advocate General has filed a Statement dated 25.05.2017 informing the Court that Defendant No.7 (Choudhary Muhammad Latif) has passed away, whereas, the Defendant No.10 (Malik Riaz) and Defendant No.12 (Shakeel) have been murdered. Together with his Statement, copies of Death Certificate and FIR have also been enclosed confirming the fact that Defendant No.7 (Choudhary Muhammad Latif) and Defendant No.10 (Malik Riaz) are now deceased, but there is no document with regard to Defendant No.12 (Shakeel). However, the Statement at Bar of learned Additional Advocate General in this regard is accepted.

11. Adverting to the evidence led by Plaintiff, who himself appeared in the witness box as PW-1 and on oath reiterated his averments of Plaint and to support his claim, has produced number of documents out of which the following documents are either public documents or judicial, having statutory recognition and thus have its own evidentiary weightage;

“1. Exhibit P/20; it is a Post Mortem Report dated 26.04.1990 prepared by Dr. Khalid Ansari the then Medico Lego Officer [MLO] of Jinnah Post Graduate Centre Karachi (JPMC).

1. A covering letter dated 29.9.1991 (Exhibit P-23/E) under which the Judicial Enquiry Report was brought on the case file of this cause.

2. *Criminal Complaint No.419 of 1990 (Exhibit P/24-B) and its record and proceedings together with the order dated 08.12.1991 passed by the then learned IInd Additional District and Sessions Judge, South Karachi as Exhibit P-24/F.*
3. *Exhibit P/25 a Certificate issued by Regional Directorate of Apprenticeship Training, Government of Sindh, Pakistan certifying that the deceased has successfully completed his Technical Education.*
4. *Exhibit P/26 another Certificate from Pakistan Steel Fabricating Company Limited, evidencing the fact that the deceased has successfully completed two years training of machinist.”*

12. Plaintiff's witness (PW-1) on oath has specifically stated the date and place of death of deceased. He deposed that on 25.04.1990 the official Defendants No.7 to 14 picked up the deceased from Jodia Bazar, Khori Garden, brought to him at CIA Centre and subjected him (the deceased) to brutal torture, which caused his death. To cover up their heinous illegal act a bogus FIR was lodged, wherein, the deceased was nominated for carrying an unlicensed weapon. On the other hand, the stance of official Defendants as mentioned in their Written Statement is that the deceased died his natural death because of his old asthmatic illness which led to the cardiac arrest. Thus, factum of death of the deceased Muhammad Shakeel while he was in the custody of CIA officials–Defendants No.4 to 14 has not been denied, but only its cause.

13. The conduct of CIA officials/Defendants No. 4 to 14 should also be taken into the account. From the evidence, available on record, which is unrebutted and unchallenged and the documents mentioned in the preceding paragraphs, it is not difficult to ascertain that

officials/Defendants throughout made attempts to cover-up their criminal act by fabricating evidence, preparing false inquest reports and deposing falsely before the concerned authorities. The finding of Judicial Inquiry is of prime significance. It has also been recommended in the above Judicial Enquiry that Sub-Inspector Fakhruddin, who was a duty officer at Saddar Police Station on the date of the incident, should be proceeded against in a departmental action for preparing two Inquest Reports; both contradicted each other. In the first Inquest Report prepared under Section 174 of Cr. PC (Criminal Procedure Code, 1898) the said Fakhruddin attempted to give a clean chit to his colleagues (present Defendants), by not mentioning the injuries sustained by the deceased and cause of death was shown as natural. Later, on the protest of the deceased family members, a fresh or second Inquest Report was prepared under the supervision of the then A.C.M. Karachi (South), and the same Fakhruddin [above named SIP], mentioned/reported the injuries on the body of the deceased, in the relevant column of this second inquest report. Both these reports were produced before and exhibited by the Enquiry Officer.

14. In the said Judicial Enquiry, the then Medico Legal Officer (MLO) Dr. Khalid Ansari, who performed the autopsy on the body of the deceased, was also thoroughly examined. It is necessary to reproduce the relevant portion of the Enquiry Report concerning the above named MLO, herein below_

“The witness Dr. Khalil Ansari says that in his opinion for which this judicial enquiry was ordered to be conducted the evidence of Dr. Khalil Ansari was the most important. He has deposed that on 26.04.90 at about

0425 hours he was working as M.L.O at Jinnah Hospital and performed the post mortem examination on the body of deceased Mohammad Shakeel.

15. On external examination he found the following injuries on the person of the deceased_

1. *There was contusions on back at Gluteal region blueish in colour 2 x1 inches.*
2. *There was abrasion on right side elbow 1X-1/2.*
3. *There was contusion at both right and left feet 1X 1" at sole which was bluish in colour.*
4. *There was abrasion on back of neck 1/2 X 1/2.*
5. *There were also abrasions on right and left knee each about 3/4 X 1/2".*

16. On internal examination he found the following conditions:

HEAD *On opening the sculp skull bone were found intact.....*

THORAS *On opening thoracio cavity bony-cage found normal right and left lungs were found congested.*

HEART *Both chamber contained blood and was sent for the expert opinion to the Histopathological laboratory to get report expert opinion from the pathologist.*

ABDOMEN *On opening abdominal cavity stomach contained very small quantity of semi-digested food. Intestine was loaded with its contents, spleen, liver kidneys were found likely congested urinary nlider contained very small quantity of urine.*

The viseras have been sent for chemical examiners expert opinion.

17. In his opinion the cause of death could not be ascertained without the report of chemical Examiner's and Pathologist.

18. He also found the following conditions of the body of the deceased.

On external examination of column No.6 the body of male aging about 24 years wearing one greenish Shalwar and Kamiz and one ajrak. The body was fresh average height and good physic. The condition of clothes were old and use. Rigor mortis started developing. There was no sign of decomposition seen. Post mortem lividity was present at back and was not fixed, eyes were semi-opened congested, pupils were fixed and dilated, mouth was semi-opened, tongue was inside the lips nails were cynosed, there was nothing oozing from mouth, nose and ear. The time between death and post mortem is about 2 to 4 hours."

19. It is specifically mentioned in the said Enquiry Report that Chemical Examiner's Report was also produced and the witness was cross-examined by the counsel of present Defendants.

20. The contents of the Judicial Enquiry Report corroborates the version of PW-1, who has testified about the factum of death of his deceased son in the following words (paragraphs 8 and 9 of the Affidavit in evidence):

"8. That I say that the post-mortem was also conducted and later on chemical examination and pathological reports were also taken which also corroborated the factum of the death of the deceased on account of injuries by torture and beating mentioned in preceding paras in addition to internal injuries caused to the deceased in CIA Centre by the Defendants No.7 to 14 jointly during the course of employment of Defendants No.1 to 6.

9. *That I say that after coming across the Inquest Report prepared in presence of Magistrate of Jethannand. SIP, Fakhruddin of Saddar Police Station prepared final revised Inquest Report containing all the signs of injuries in respective columns leading to death of the deceased which were silent in last reports prepared under the pressure of Defendant No.7 in the first inquest Report.”*

21. Examination of the Judicial Enquiry Report also reveals the modus operandi of Defendants (at least) at that relevant time. *Inter alia*, it has been mentioned in the above document (Judicial Inquiry Report) that even one of the mashirs, namely, Mushtaq was a stock witness of Defendant No.7 (Inspector Choudhary Mohammad Latif), who was the main culprit in this entire case. The Inquiry Officer in an unequivocal term has determined that the cause of death of deceased was due to cardiac arrest from vasovagal shock. It is not out of place to mention that the above Judicial Enquiry Report has not been challenged by Defendants at any forum. The above-named term ‘vasovagal’ in medico-legal parlance means that ***when a person is fainted or his body over reacts due to certain factors, such as the sight of blood or extreme emotional distress***. One of the causes as explained medically is ‘stress directly related to trauma’.

22. Record and proceedings of the afore-mentioned Private Complaint No.419 of 1990 has also been produced in the evidence and statement of one of the witnesses under Section 200 (Criminal Procedure Code), which has been exhibited as P-24/B is worth considering. The witness name is Khalid Hussain, who was also one of the under-trial prisoners at the CIA Centre. He testified that he was in the CIA Centre when the deceased was brought there. He specifically mentioned the date as 25.04.1990 and the time 6:00 PM, when deceased Muhammad Shakeel was hanged with a rod from the roof and his hands were tied up and he was beaten up by Defendants by ‘Chittar’-Stick.

23. After referring to and reading the afore mentioned deposition of Plaintiff and documents/exhibits in support thereof, M/s. Farrukh Usman and Amir Maqsood, Advocates, while representing the Plaintiff, has relied upon number of reported decisions and research material, which are mentioned in the title of this cause; primarily the Plaintiff's side has placed the reliance on three categories of case law; the one relates to discharging the burden of proof in such fatal accident cases; second one pertains to the criteria for ascertaining the quantum of damages and the third one is about the rule of vicarious liability. The other set of case law comprises of foreign judgments in which reasonable compensation was awarded in favour of Petitioners/victims.

24. Crux of the judicial precedents cited by the Plaintiff's counsel on the subject is that the Plaintiff is to prove the factum of incident only and then the burden shifts on to Defendants to disprove the causation if they want to succeed in the claim against the Plaintiffs. The afore-cited decision of *Punjab Road Transport Corporation case* (2006 SCMR Page-207) is on all fours with present *lis*, as the Plaintiff has not only proved the factum of custodial death of his deceased son, when he was in custody of Defendants, but the latter (Defendants) have failed to disprove the causation, that the death did not occur due to acts of Defendants.

25. The learned Additional Advocate General strenuously controverts the submissions of Plaintiff's counsel and argues that present incident of custodial death does not fall within the basic ingredients of the aforesaid Act of 1855. Secondly, the limitation for bringing such an action is three months as envisaged by Section 42 of the Police Act, 1861 and thus the present claim is time barred. His third segment of argument is that present Defendants were also accused in the afore-referred Criminal Complaint No.419 of 1990, but subsequently have been acquitted by the Order dated

13.08.1990, therefore, present suit should also meet the same fate. To fortify his arguments, the learned Additional Advocate General has produced under his Statement dated 25.5.2017 a certified copy of the above decision (order) given in the Criminal Complaint No.419 of 1990.

26. The above stance on behalf of the Defendants is given due consideration. Contents of the Plaint have been examined and after conclusion of the evidence I am of the view that the present case does fall within the purview of the Fatal Accident Act, 1855 and more particularly Section 1, in which, inter alia, it is specifically mentioned that for wrongful actions a claim under the above statute lies. Since factum of custodial death of Plaintiff's son is now an admitted fact, therefore, it is indeed a gross wrongful act committed by the Defendants No.6 to 14, therefore, the present claim is maintainable under the above Fatal Accidents Act of 1855. This finding automatically answers the second objection of the Defendants about the limitation, since instant action at law falls within the ambit of Act 1855, therefore, the time prescribed therein of one year shall be applicable and the present claim is within time. It follows that limitation of three months as mentioned in Section 42 of the Police Act, 1861, is not applicable at all. With regard to the acquittal of Defendants in the above Criminal Case; the findings given therein are not binding on this Court, in view of a settled rule of evidence applicable in Criminal and Civil Cases. In a Criminal Case, the prosecution is to prove beyond reasonable doubt the guilt of the accused, but, in a civil proceeding of the nature, the matter can be decided on the basis of preponderance of probability. The dicta of the afore-mentioned reported Judgments of Hon'ble Supreme Court handed down in the cases of *Mst. Zainab Bibi Versus Mst. Bilqees Bibi* and in particular Karachi Transport Corporation Versus Muhammad Hanif are applicable to the issues at hand.

A reported decision of Hon'ble Supreme Court in *Karachi Transport Corporation Versus Muhammad Hanif* (2009 SCMR Page-1005) has rightly been relied upon by learned counsel for Plaintiff to cover and rebut both the objections of Defendants about vicarious liability and acquittal of Defendants in a criminal proceeding. The Hon'ble Apex Court in the above decision in an unequivocal term has held that employer is always vicariously liable for acts of its employees performed in course of duties and hence the Appeal of Karachi Transport Corporation was dismissed, which was directed to compensate the Respondents, who have filed a suit under the Fatal Accident Act. Similarly, the Hon'ble Supreme Court has also clarified by observing that since standards of appraisalment of evidence in Criminal and Civil Cases are altogether different, therefore, the findings of a Criminal Court would not be binding on Civil Court, besides the fact that while exercising civil jurisdiction this Court cannot sit in an appeal on the decision of the Court which has decided the Criminal Complaint No.419 of 1990 of present Plaintiff.

In addition to the above, the acquittal of private Defendants in the above referred Criminal Case does not have any adverse bearing on the present *lis*, for the reason that Defendants No.1, 2 and 3 would still be liable to compensate the Plaintiff by applying the rule of vicarious liability as discussed in the preceding paragraph.

However, contention of learned Additional Advocate General regarding the abatement of proceedings against the above-mentioned Defendants is correct and is in line with the settled principle of jurisprudence and a chain of judicial pronouncements based on the legal maxim; *actio personalis moritur cum persona*. The decision of Hon'ble Supreme Court in the case of *Mir Shakeel ur Rehman Versus Yahya Bakhtiar* and our Court in case of *A. Majid Sama Versus the Asbestos*

Cement Industries. Ltd. and another (supra) are of relevance; it is held, that where damages are sought for the personalized acts of Defendants then the proceeding will abate on the death of a Defendant / Defendants. Therefore, present suit proceeding stands abated against Defendant No.7 (Choudhary Muhammad Latif), Defendant No.10 (Malik Riaz) and Defendant No.12 (Shakeel). Therefore, Issue No.1 is answered that the deceased Ch. Muhammad Shakeel son of present Plaintiff did not die a natural death, but the same was caused by the wrongful acts of Defendants No.7 to 14 when the said deceased was in their custody on 25.04.1990 and expired around midnight; 26.04.1990.

ISSUES No.2 and 3.

27. Now adverting to the quantum of damages. Although pleading (Written Statement) of Defendants has been discarded as they failed to lead any evidence, but still looking at the peculiar facts of present case, the above Written Statement filed by Defendant No.5 (the then SSP CIA Centre) may be considered for assessing the defense that is set up by the Defendants. It is also pertinent to mention that no written statement was filed on behalf of Defendants No. 6 to 14. The Written Statement of Defendants has not controverted the averments of Plaintiff with regard to his death in their (Defendants) custody, but only cause of death was denied. Similarly, pleadings of Plaintiff about deceased's life expectancy, running of business, monthly earnings and other credentials have neither been questioned nor rebutted in the evidence, for the reasons mentioned above. This significant fact is further fortified when the Plaintiff led the evidence on these material factual aspects to justify his claim of damages, but was never cross-examined.

It has been specifically stated on oath by the Plaintiff that the deceased's son was keeping a good health and his entire family have a reasonable life span up to 75 years. It was further deposed that the deceased was paying Rs.6,000/- (Rupees Six Thousand) to his parents, at that

relevant time, that is, in the year 1990. It has also been specifically pleaded and subsequently testified on oath that the deceased was planning to set up a small unit for making parts through Moulding Machines, which would have increased his monthly earning upto Rs.40,000/- (Rupees Forty Thousand Only) per month. In these circumstances, a sum of Rs.50,00,000/- (Rupees Five Million Only) has been claimed by Plaintiff towards damages and compensation. The claim of Plaintiff with regard to the quantum of damages is also unchallenged, therefore, admitted by Defendants. 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 case*** and a decision of a learned Division Bench of this Court in ***Ehteshamuddin Qureshi Versus Pakistan Steel Mills (ibid)***, wherein, *inter alia*, not only the earlier principle in such cases has been reiterated, but the same has also been further expounded and summarized vis-à-vis a civilized society living under a constitutional dispensation. 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;

(ii) *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 H 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.”

(Underlining to add emphasis)

28. Taking into the account the evidence led by Plaintiff, particularly with regard to his specific Statement about life expectancy of the deceased who was just a 24 years old young man, the nature of business he was doing; running a viable General Store, simultaneously acquired Technical Education from different Institutes for setting up a small manufacturing Unit, together with the deposition of Plaintiff about longevity in his family, it is not difficult to conclude and hold that life expectancy of 75 years in Plaintiff's family has been proved. The deceased, considering these factors, may also have lived for another 50 years approximately, therefore, the claim of awarding damages of rupees five million is justifiable and hence granted.

29. It is a settled principle of law in claims relating to tortuous liabilities that master/employer would be liable for the wrongful acts of his employees/servants. The reported case of *Mukhtiar Begum Versus Karachi Transport Corporation* (supra) of the learned Division Bench of this Court provides a complete answer. This legal position is further fortified by the Hon'ble Apex Court in its above referred decision of **Karachi Transport Corporation Versus Muhammad Hanif**, wherein, it is held, *inter alia*, that an employer is always vicariously liable for acts of its employees performed in the course of duties. It is a matter of record that Defendants No.4 to 14 were performing their official duties and acts under the supervision, control and authority of Defendants No.1, 2 and 3. Hence, Defendants No.1, 2 and 3 and particularly Defendant No.1 which is a Provincial Government, are liable to compensate the Plaintiff, besides other

Defendants. Consequently, Issues No.2 and 3 are answered accordingly, that Defendants are liable to pay the damages / compensation of Rs.50,00,000/- (Rupees Five Million Only) together with 10% (percent) markup from the date of institution of the suit till realization of the amount to Plaintiff and his wife, that is, parents of the deceased, jointly and severally.

30. Similarly, another reported case of Samiullah Khan Marwat (supra) who was at that relevant time was the Senior Superintendent of CIA, is of relevance, *inter alia*, as Hon'ble Supreme Court in the above cited case maintained the order of learned Services Tribunal, upholding the dismissal of said Samiullah Merwat from service. Serious allegations against him become part of the judicial record, in the above case; which included, extortion, kidnaping and resorting to illegal confinement and torture. This reported decision in 2003 SCMR Page-1140, lends further support to the case of present Plaintiff because it relates to the same period when the present unfortunate incident of custodial death had taken place.

The Hon'ble Supreme Court in its decision given in the case of *Samiullah Khan Merwat Versus Government of Pakistan* (supra) has further clarified rather expounded the concept of administration of justice; which is not confined only to the judicial system, rather every person discharging the functions in relation to rights of people is bound to act fairly, justly and in accordance with law. Therefore, those who are at the helm of the affairs are bound rather under a constitutional obligation to address and remedy the genuine grievances of citizens of this Country and particularly for such fatal injuries.

31. Plaintiff's counsel has placed reliance upon the case law of foreign jurisdictions. Canadian Court in the case of Thomas Francis (mentioned in

the title) has awarded compensation to the said Appellant who was a prisoner inmate and was injured while doing cleaning work of the windows at the Jail premises. Though the evidence with regard to negligence of Jail Administration was not conclusive, but still the learned Appellate Court of Canada while invoking the principle of vicarious liability awarded compensation to the said prisoner inmate, *inter alia*, by holding that Prison Authorities owe a duty to the suppliant for taking reasonable care of his safety as a person in their custody and in failure to do so, Crown (Government) is liable.

Similarly, another reported case of Indian jurisdiction handed down in the case of *Chairman Railway Board Versus Chandrima Das and others* (supra), the learned Supreme Court of India has upheld the decision of Calcutta High Court, which has granted the compensation in exercise of its writ jurisdiction/power of judicial review. The Respondent (victim) was a tourist from Bangladesh when she was gang raped at Railway Station by some Railway Staff (employees).

In another case of Indian Supreme Court (reported in AIR 1990 Supreme Court Page-513) adequate compensation was granted to a victim / Petitioner whose minor son died due to tortuous act of Police Officials. It was held, *inter alia*, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer.

32. Looking at the peculiar nature of the case, highhandedness of officials who are Defendants, the conclusive evidence that has come on record and the complacent attitude of Defendants No.1, 2 and 3, I cannot restrain myself from observing that once the Defendant No.1 (Government of Sindh) and Defendants No.2 and 3 have acquired knowledge about the

unfortunate incident, particularly after findings of a duly constituted Judicial Enquiry, then being a Provincial Government and senior officials of an Islamic Welfare State, they should have compensated the family of the deceased long time back.

The importance of a Judicial Enquiry can be determined from an unreported decision of Hon'ble Apex Court given in the Civil Petition No.69-K/94 [**Anwar Ahmed Khan Versus The State and another**], a copy of which is available in the research Folder (on Police Atrocities) submitted by the learned Advocates representing the Plaintiff. The Hon'ble Supreme Court in the above case of **Anwar Ahmed Khan** has refused to grant the leave against the decision of this Court, whereby, *inter alia*, certain directions were issued to Provincial Government on the basis of the findings of a Judicial Enquiry (Report). It is not out of place to mention here that the decision of this Court passed in above case (Constitution Petition No.D-2182 of 1993) and subsequently, of the Hon'ble Supreme Court, was primarily based on the findings of the Judicial Enquiry Report in respect of a custodial death.

33. In the evidence the Plaintiff has also testified about his helplessness and traumatic experience with the Government functionaries and in order to get justice against such a brutal act, he had to run from pillar to post, but never succeeded. In my considered view, the treatment meted out to Plaintiff in all these years, might have convinced him not to pursue his above referred Criminal Complaint, which subsequently came to an end as mentioned in the preceding paragraphs. There is nothing more appalling than this; a father is prevented to pursue the case of his son's death. This is a ironic and not acceptable in a Country, which is being run under a Constitution that contains provisions of fundamental rights, which in fact are the basic human rights.

34. In Hakim Khan case reported in PLD 1992 SC Page-595 (supra) the term ‘Oolilamr’ () as mentioned in the Holy Quran, has been explained to include all the three limbs of an Islamic State, namely executive, legislature and judiciary. If a common man is bound to follow orders given by ‘Oolilamr’ in a Muslim polity then the latter (‘Oolilamr’) are also under a religious as well as constitutional obligation that their acts, deed and decision should be just, fair and reasonable and the subjects / public at large of a Muslim polity should be treated with benevolence, justice and care, while criminals and wrongdoers should not go unpunished.

In my considered view, the above principle is further fortified in Surah 38 Verse 26 (of Holy Quran). The fundamental rule is that government in a Muslim polity or State has to dispense justice. If a Government, its Ministers and High Officials after acquiring knowledge about a plight of a citizen, particularly where a valuable human life is lost and the conclusive evidence is against the government functionaries, yet fails to address grievance of a citizen, then it is not difficult to observe that the Government of the day as well as its Senior Government functionaries have failed to discharge their function in accordance with the constitutional mandate. In certain cases, depending on the facts and circumstances, a concerned elected representative of a particular constituency or area where a gruesome incident takes place and nothing is done to remedy a wrong, then it means that the elected representative has not discharged his duty / obligation towards his constituents with honesty.

Since legislation and policy matters rest with Government(s), elected/chosen representatives and Executive Branch of the State, therefore, they are saddled with a bounden duty to dispense the administrative justice in an expeditious manner. In my humble view, the term elected

representative includes, a person elected as a Councilor of a Ward right up to a Senator.

35. The Articles 2-A, 27 and the Principle of Policy in fact make our Constitution a unique and pragmatic social contract document of a Muslim Polity. The grundnorm is that rulers and those who are in the authority and at the helm of affairs is saddled with an obligation to treat their subjects/citizens with benevolence and justice, but punishing the culprits simultaneously, in order to restore the confidence of a common man in the State Institutions. This follows that a despot or tyrant cannot be a ruler of a Muslim polity or State.

36. 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.50,00,000/- (Rupees Five Million Only) to Plaintiff together with 10% (percent) markup from the date of institution of the suit till realization of the amounts.

37. In view of the peculiar nature of this case, the Plaintiff is also granted the costs of the proceeding.

Dated: 23.06.2017

M.Javaid.PA

JUDGE