

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

Civil Petition No.2580 of 2020.

(Against the judgment dated 15.9.2020 passed by the Islamabad High Court in FAO No. 113 of 2016)

Munawar Ahmed Chief Editor Daily **Petitioner(s)**
Sama and another.

Versus

Muhammad Ashraf and others

Respondent(s)

For the Petitioner(s) : Mr. Bashir Khan, ASC.

For the Respondent-1 : Mr. Afzal Malik, ASC

Date of Hearing : 05.01.2021

ORDER

Sajjad Ali Shah, J.- The petitioners being the Chief Editor and the Editor of Daily Sama respectively, seek leave of this Court to file an appeal against the judgment of the Islamabad High Court whereby the said Court while dismissing their appeal affirmed a decree directing them to pay a sum of Rupees fifteen million to the respondent as damages under the Defamation Ordinance, 2002 (hereinafter referred to as "the Ordinance").

2. Briefly, the petitioners published a news item in the newspaper Daily Sama leveling certain derogatory allegations against the respondent which gave rise to his filing of suit against the petitioners and others under Section 3(2) of "the Ordinance" claiming damages of Rs.1,50,00,000/- in order to vindicate his

honour and esteem. The detail of the damages allegedly suffered by the respondent was provided in the plaint to the following effect:-

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| “1. Injury to the body and soul by the tortuous act of defamation. | = | 5 million. |
| 2. Injury to the career, reputation, credit, to each of the defendant. | = | 5 million. |
| 3. Loss to reputation, prestige and esteem. | = | 5 million. |
| Total: | = | 15 million”. |

3. It appears that the petitioners after having been served, despite several opportunities, failed to file their defence by way of written statements, consequently, their right to file the defence was struck off on 12.1.2015 and ultimately the suit on 16.5.2015 was decreed as prayed for. The petitioners instead of challenging the judgment by way of appeal, belatedly filed an application under Order IX Rule 13 of CPC seeking setting aside of the *ex parte* judgment and decree which application, after hearing, was dismissed on 5.10.2016. The petitioners thereafter filed an appeal against the said order before the Islamabad High Court which was dismissed through the impugned judgment.

4. Learned counsel for the petitioners contends that no proper opportunity was provided to the petitioners to file their defence and further some of the defendants were not even served despite they were proceeded *ex parte*. Per counsel, even the High Court did not pay any heed to the submissions that adjudication on merits is the ultimate goal of the administration of justice.

5. On the other hand, the learned counsel for the respondent contends that petitioners were duly served. They

engaged their attorney who filed power of attorney on their behalf and despite grant of sufficient time, the petitioners failed to file their defence leaving no option for the trial Court but to proceed *ex parte* against them. Per counsel, even the decree was never challenged as the petitioners after almost 10 months of the passing of decree, filed an application under Order IX Rule 13 CPC which of course had to be dismissed on merits as well as being barred by time. It was lastly contended that the impugned judgment meets all standards of justice and, therefore, needs no interference.

6. We have heard the learned counsel for the respective parties and have perused the record. The petitioners could not make out any case for interference in the impugned judgment on account of being *ex parte* as the record reflects that they miserably failed to avail all the opportunities which were provided to them for filing of their defence and, therefore, the Courts below were justified in striking off their defence and to proceed *ex parte* in accordance with law. However, what has attracted our attention is that the Courts below, in a mechanical fashion and without applying their judicial mind to assess the quantum of damages in accordance with the evidence brought on record by the plaintiff and the principles settled by this Court, proceeded to decree the suit as prayed for. Consequently, we have asked the learned ASC for the respondent to show from the evidence that the respondent has suffered any bodily injury for which he has claimed damages in the sum of Rs.5 million and likewise to further show from the record as to what injury to his career was caused by such defamatory statement for which again a further sum of Rs.5 million has been

claimed. The learned counsel for the respondent was not able to demonstrate from the record that the plaintiff has adduced any evidence to prove special damages allegedly sustained on account of "*bodily injury*" or "*injury to his career*".

7. Special damages are defined as the actual but not necessarily the result of the injury complained of. While awarding special damages, it is to be kept in mind that the person claiming special damages has to prove each item of loss with reference to the evidence brought on record. This may also include out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Reference is made to the cases of Malik Gul Muhammad Awan v. Federation of Pakistan (2013 SCMR 507) and Abdul Majeed Khan v. Tawseen Abdul Haleem (2012 PLC(CS) 574 SC).

8. As to the submission that it was an ex-parte decree and there was no rebuttal denying the claim of the respondent and therefore it had to be decreed as prayed. The contention is totally misconceived as it has been repeatedly held by this Court that even in case where the defendants are declared *ex parte*, though the Courts are empowered to pass *ex parte* decree, but such discretionary power must be exercised judicially. In cases where the defendants are declared *ex parte*, Courts are not supposed to only pass *ex parte* decree in favour of the plaintiff by assessing his claim *in toto*, but are saddled with the duty to examine the worth/credence of each piece/item of plaintiff's claim before accepting or rejecting it. However, in the instant case the Courts have miserably failed to examine that the respondent has totally

failed to adduce any evidence, either oral or documentary, in support of his claim that he has actually sustained bodily injury or any set back to his career, therefore, the hefty special damages granted without application of judicial mind could not be sustained.

9. General damages normally pertain to mental torture and agony sustained through derogatory/defamatory statements. Since there is no yardstick to gauge such damages in monetary terms, therefore, while assessing damages on account of such inconvenience, the Courts apply a rule of thumb by exercising its inherent jurisdiction for granting general damages on a case to case basis.

10. In the instant case, the respondent, by producing un-rebutted documentary as well as oral evidence has fully proved that the publication released by the petitioners was defamatory and on account of such defamatory publication, the respondent suffered mental torture and inconvenience. However, it was not justified for the Courts to pass a decree for the amount which the plaintiff desired. It is important to note that once it is determined that a person has suffered mental shock and injury and is entitled to compensation on account of such defamatory statement, then the other important and more difficult question which arises is to weigh the quantum of damages for such loss caused to him by such wrongful act. The burden in such situation, like in all cases, is on the shoulder of the plaintiff to prove the magnitude of such suffering. But again since such suffering could not be converted or gauged in monetary terms and, therefore, the Court has to apply

rule of thumb. The other aspect which needs to be kept in mind by the Courts while awarding general damages on account of mental torture/nervous shock is that damages for such suffering are purely compensatory to vindicate the honour or esteem of the sufferer, therefore such damage should not be exemplary or punitive as the sufferer should not be allowed to make profit of his reputation.

11. The Court has not given its finding on any of the aspect involved in the instant case nor adopted any criteria to gauge the damages claimed. In such situation, the Court has failed to judicially exercise its discretion while passing the *ex parte* decree and has granted the damages in a mechanical fashion without examining the legality or worth of the respondent's claim, therefore, notwithstanding the fact that we find Respondent entitled to an *ex parte* decree but are of the considered view that such decree could not be sustained, as passed without application of mind and being violative of the basic principles of exercising judicial powers. After we had examined this aspect, counsel for the respondent interjected and submitted that since it has been established that the petitioners had published defamatory statement which at least has defamed the respondent in terms of "*the Ordinance*", therefore, instead of remanding the case to the trial Court to determine the damages by applying settled principles of law, the minimum amount of general damages as provided under Section 9 of "*the Ordinance*" be awarded with the direction to the petitioner to publish an apology as provided under the law. Section 9 of "*the Ordinance*" reads as follows:-

*"9. Remedies.- Where defamation shall be proved to have occurred, the Court may pass order directing the defendant to tender an apology, if acceptable to the plaintiff, and publish the same in similar manner and with the same prominence as the defamatory statement made and pay reasonable compensatory damages as general damages with a minimum of Rs.50,000/- (Rupees fifty thousands) [and in addition thereto, any special damage incurred that is proved by the plaintiff to the satisfaction of the Court[:]
[Provided that in case of the originator the minimum compensatory damages as general damages shall be three hundred thousand rupees.]"*

12. There is no dispute that the respondent has undeniably proved that the defamation has occurred but the Court has not independently applied its discretion though by way of rule of thumb to ascertain general damages and for this purpose we intended to remand the matter but when the respondent is ready to accept the minimum bar of general damages as provided under the law then no useful purpose would be served by remanding the case, therefore, in our opinion the proposal of the learned ASC for the respondent is very fair.

13. The respondent has proved that the petitioners being originators had published an article which of course was defamatory and has caused inconvenience and mental torture/agony to the respondent and, therefore, the respondent under the law is entitled not only to minimum damages in the sum of Rs.300,000/- but also an apology in the similar manner and with the same prominence as the defamatory statement was published in terms of Section 9 of the Ordinance. In the circumstances, instead of remanding the matter, we modify the

decree and award monetary compensation of Rs.300,000/- only to the Respondent which shall be recovered jointly and severally from the Petitioners. This petition is converted into appeal and is allowed partially in the above terms. These are the reasons of our short order of even date which reads as follows:-

"For reasons to be recorded later, this petition is converted into appeal and partly allowed. The impugned judgments are modified to the extent that the compensatory damages awarded to the respondent are reduced to Rs.300,000/- (three lac) and publication of apology under Section 9 of the Defamation Ordinance, 2002".

Judge

Judge

Judge

Islamabad

05.01.2021

A. Rehman

Approved For Reporting