

8/23

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(AFR)

**CIVIL APPEAL NO.284 OF 2017**

(Against judgment dated 18.10.2016 of the  
Islamabad High Court, Islamabad passed in  
Regular Second Appeal No.30/2015)

Pakistan Television Corporation

...Appellant

**VERSUS**

Noor Sanat Shah

...Respondent

For the Appellant: Mr. Muhammad Nazir Jawad, ASC

Mr. Ahmad Nawaz Chaudhary, AOR

For the Respondent: Malik Muhammad Qayyum, Sr. ASC

(via V.L. from Lahore)

Chaudhary Akhtar Ali, AOR

Date of Hearing: 27.09.2022 (J.R)

**JUDGMENT**

**IJAZ UL AHSAN, J.**-. Through the instant Appeal by leave of the Court, the Appellant has challenged a judgment of the Islamabad High Court dated 18.10.2016 (hereinafter referred to as the "**Impugned Judgment**") whereby the Regular Second Appeal of the Appellant was dismissed and the judgements and decrees of the lower fora were upheld.

2. Briefly stated, the facts giving rise to this *lis* are that Noor Sanat Shah (hereinafter referred to as the "**Respondent**"), was appointed in the year 1988 as a Security Guard in the Pakistan Television Corporation (hereinafter referred to as the "**Appellant**"). The Respondent was subsequently appointed as a Typist cum Junior Clerk in 1989. In the same year, the Respondent moved an application for appointment as a Security Assistant which was rejected by the Appellant on the ground that the Respondent was not an ex-Junior Commissioned Officer. The Respondent moved similar applications in the years 1991 and 2003 which met the same fate. In the year 2010, Mr. Ali Asghar Shah, also a Typist cum Junior Clerk working for the Appellant, was redesignated as a Security Assistant. After Mr. Asghar Ali Shah was redesignated, the Respondent moved another application for redesignation which was again rejected by the Appellant. After this refusal, the Respondent approached the Wafaqi Mohtasib for redressal of his grievance. The Wafaqi Mohtasib directed the Respondent to file a departmental representation. The Respondent, in compliance of the directions of the Wafaqi Mohtasib, filed a departmental appeal against the refusal to redesignate the Respondent as a Security Assistant. The matter was taken up by the grievance redressal cell of the Appellant which recommended to the competent authority that the Respondent be redesignated as a Security Assistant. However, vide order dated 11.03.2011, the recommendations of the grievance redressal cell were not accepted and redesignation of the Respondent was refused. The Respondent

thereafter filed a grievance petition before the Labour Court.

After the promulgation of the Industrial Relations Ordinance of 2011, the Respondent's grievance petition was transferred from the Labour Court to the National Industrial Relations Commission (the "NIRC"). The NIRC, vide order dated 27.07.2012, directed the Appellant to redesignate the Respondent as a Security Assistant from the date Mr. Asghar Ali Shah was redesignated. Subsequently, the Respondent filed a complaint petition before the NIRC for implementation of the order dated 27.07.2012. The said petition was disposed of on 17.09.2012 when the Appellant was redesignated as a Security Assistant *w.e.f.* 13.01.2010 vide office order dated 14.09.2012.

The Respondent filed a second petition before the NIRC when the Appellant failed to refix the Respondent's pay and make payments accordingly. This petition was disposed of vide order dated 29.04.2013. The Respondent was therefore constrained to file a third petition insofar as his seniority was concerned which was disposed of by the NIRC's order dated 12.07.2013 when the Respondent's grievance was redressed by the Appellant vide office order dated 11.07.2013. In the meantime, the NIRC's order dated 27.07.2012 was assailed by the Appellant before the Full Bench of the NIRC. The Respondent moved an application with the Registrar of the NIRC on 09.10.2012 that the appeal of the Appellant before the Full Bench had been filed beyond the period of limitation but the Appellant, in connivance with the NIRC staff, managed to manipulate the records of NIRC for it to show that the Appellant's appeal had been filed within time. A few days later,

vide office order dated 11.10.2012, the Respondent was transferred and directed to report to the Appellant's office in Quetta. The said transfer order was assailed by the Respondent and subsequently suspended by the NIRC till further orders vide the NIRC's order dated 17.10.2012. Thereafter, the Appellant also passed office order and issued letter dated 29.11.2012 & 30.11.2012 respectively directing the Respondent to present himself before a Medical Board and allow the said Board to determine the Respondent's present health status. The Respondent was once again constrained to file a grievance petition against the said office order and letter before the NIRC which was disposed of vide the NIRC's order dated 04.02.2013 when the Appellant recalled the office order and letter. The Respondent was ultimately issued an explanation letter dated 04.04.2013 as well as charge sheet dated 08.05.2013 by the Appellant. All these facts ultimately forced the Respondent to file a suit for recovery of damages against the Appellant. The said suit was decreed by the Civil Judge, 1<sup>st</sup> Class, Islamabad-West (the "**Trial Court**") vide judgement dated 23.06.2015. The judgement of the Trial Court was upheld by the Additional District Judge-VIII, Islamabad-West (the "**Appellate Court**") vide its judgement dated 11.11.2015. Both of these judgements were upheld by the Islamabad High Court in the impugned judgement which has now been assailed by the Appellant by way of this instant Appeal.

3. Leave to appeal was granted by this Court vide order dated 21.02.2017 in the following terms:

*"Leave is granted to determine whether the suit of the Respondent is maintainable and what is the nature of his right on account of which he can claim damages. In the meantime, operation of the impugned judgement is suspended."*

4. It was contended by the learned ASC for the Appellant that the suit for recovery of damages filed by the Respondent before the Trial Court was one of tortious liability. Further, that in light of a judgement of this Court passed in Syed Yaqoob Shah vs. XEN PESCO (WAPDA), Peshawar & others (PLD 2002 SC 667), a suit for damages for tortious liability could not lie against a state entity and that the suit of the Respondent was not maintainable in light of the said judgement. He prays that the judgements of the lower fora may be set aside and that the suit of the Respondent be dismissed.

5. The Learned Senior ASC for the Respondent on the other hand has argued in favour of the concurrent judgements being assailed before this Court.

6. Mr. Muhammad Waqar Rana ASC was present in Court when the instant Appeal was being argued before us. He was directed by this Court to assist the Court on the proposition as to whether or not corporations can be sued in tort for acts committed by their employees. He has filed a

written note and provided case law in compliance of our direction. The note also provides a comparative analysis of laws of different jurisdictions on how corporations are sued for tortious liability in different legal jurisdictions around the world. Reliance has also been placed on a treatise on "Tort" by Wienfield and Jolowicz which deals with a corporation's capacity to sue and be sued for tort. The said note has been of substantial help and we would like to record our appreciation for Mr. Muhammad Waqar Rana ASC for assisting this Court.

7. We have heard the learned counsel for the parties at length and gone through the record with their assistance. Before recording our findings, we would like to note that there is nothing on the record to suggest that the appeal filed by the Appellant, which was pending before the Full Bench of the NIRC, has been decided. For that reason, we must state that the observations made herein shall not in any manner whatsoever prejudice the appeal pending before the Full Bench of the NIRC (if it is still pending) and confine our judgement to the judgement impugned before us.

**UNDER WHAT LAW ARE SUITS FOR RECOVERY OF DAMAGES REGULATED IN PAKISTAN?**

8. The first question that comes to mind when a suit for recovery of damages is filed before the Civil Courts of Pakistan is under what law are such suits regulated. Chapter VI of the Contract Act of 1872 lays down the consequences of a breach of contract. The relevant provisions for claiming

ALL DOCUMENTS IN THIS CASE, MONETARY EXPENSES, IS NOT COVERED.

damages for breach of contract are Sections 73 to 75. However, the said provisions are irrelevant in the instant case since the matter at hand does not arise out of a breach of contract. Suits for damages are not defined in the Specific Relief Act of 1877 either. Instead, the grievance raised by the Respondent before the Trial Court is that if the Respondent had never approached the NIRC for redressal of his grievance, he would never have been granted the relief he sought. In seeking the said relief, the Respondent had to arrange representation and seek legal advice, all of which cost the Respondent time, effort and money. It would *prima facie* appear that it was only after the Respondent had expended the said resources in pursuit of the relief he sought that he was granted the relief in question after delaying the same for years on end. The order of the NIRC dated 27.07.2012 and all consequential reliefs granted to the Respondent still hold the field. In an effort to ensure that the order dated 27.07.2012 was implemented in letter and spirit, the Respondent had to repeatedly knock the doors of NIRC through various petitions which cost him monetary/economic loss in the shape of legal fees in addition to inconvenience, stress and anxiety. It is settled law, based on a latin maxim recognised by our jurisprudence, that *ubi jus ibi remedium* (where there is a right, there is a remedy). It postulates that where law has established a right, there should be a corresponding remedy for its breach. The right to a remedy is one such fundamental right that has historically been recognised by our legal system. However, the recovery of the said resources (in this case, monetary expenses) is not covered

or regulated by any law in Pakistan for the time-being other than awarding costs. Since the said suit is not regulated by any specific law for the time being in Pakistan, section 9 of the Civil Procedure Code, 1908 (the "CPC") would operate and vest jurisdiction in the Civil Court to adjudicate the suits for recovery of damages of the nature filed by the Respondent. For ease of reference, Section 9 of the CPC is reproduced below:-

**"S.9 COURTS TO TRY ALL CIVIL SUITS UNLESS BARRED**

*The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature except suits of which their cognisance is either expressly or impliedly barred."*

In the absence of any law which expressly excludes the jurisdiction of the Civil Court to adjudicate matters pertaining to suits for damages, the suit of the Respondent, insofar as jurisdiction is concerned, was filed before the competent forum and the Trial Court did not lack jurisdiction when it passed its judgement dated 23.06.2015.

9. The nature of the damages claimed by the Respondent on account of the Appellant's conduct fall within the ambit of a civil tort. A basic definition of tort is an act or omission that gives rise to an injury either to person or property. Without putting too fine a point on it, a tortious breach is where one party (the *tort-feasor*) breaches legally protected rights of another party (the *claimant*).

10. The next question that would need to be determined in the instant Appeal is what legally-protected right did the Respondent have that was breached by the Appellant.

**WHAT TORT WAS CAUSED BY THE APPELLANT?**

11. Torts, broadly speaking, tend to fall within four categories. They are: 1) torts of physical integrity; 2) torts of interests in property; 3) torts of use and enjoyment of land; and 4) torts of reputation. The torts of importance for the purposes of this instant Appeal are tort of interest in property. In its essence, the Respondent in his suit claimed that by virtue of litigation that had ensued between the parties, the Appellant had committed a tort of interest in property. In this case, his financial resources as well as physical integrity insofar as he was subjected to face anxiety, mental stress of having to approach various legal fora, arrange legal representation and expend his limited financial resources for enforcement of his legitimate rights. However, the main physical, perceivable and ostensible damages that the Respondent had arguably suffered was monetary/economic in nature. Can the Respondent claim redressal from such a tort? The answer to the said question is in the affirmative but in proving economic loss, the evidentiary burden of proof is on a claimant. The Respondent had, when he filed his suit, annexed copies of all the relevant litigation that he had to initiate before the NIRC as well as all legal fee certificates with his plaint. These documents and certificates were thereafter duly exhibited by the Respondent in his

examination-in-chief as PW-1 before the Trial Court. Going over the cross-examination of the Respondent conducted by the Appellant before the Trial Court, we note that the no suggestion had ever been made to the Respondent that he had frivolously instituted the suit for damages; that he had not suffered any loss due to actions of the Appellant; or that he had instituted the suit for damages as vendetta or to settle a personal grudge. In the absence of such suggestions, it would be deemed that the Appellants had admitted that the Respondent had suffered loss due to the actions of the Appellant. The said findings have also been upheld by all the courts below. The Learned ASC for the Appellant has not been able to point out any ground which may lead us to the conclusion that the Respondent had not suffered any loss due to the acts of the Appellant. In such a scenario, we find that the Respondent had indeed suffered monetary/economic loss due to the actions of the Respondent, that he had an actionable claim which he brought before the Trial Court in the form of a suit for recovery of damages, and that he was well within his rights to be compensated for such loss suffered. We also note that there was absence of any rebuttal from the Appellant in the form of documentary evidence or specific rebuttals to the contrary.

**COULD THE APPELLANT BE HELD VICARIOUSLY LIABLE FOR THE ACTS OF ITS OFFICIALS?**

12. Having arrived at the conclusion that the Respondent had indeed suffered monetary/economic loss due

to the acts/omissions of the Appellant, the next step is to determine whether or not the Appellant could be held vicariously liable for the actions of its officials.

13. Before we answer the question posited above, we would like to digress for a bit to note that initially, when the Respondent filed his suit for damages, the plaint was filed solely against the Managing Director of the Appellant. Perusal of the plaint would show that it was only after an order passed by the Additional District Judge dated 18.05.2015 that the plaint was amended to implead the Appellant Corporation through its Managing Director as a party. The effect of such an addition to the plaint was that instead of suing the Managing Director in his personal capacity for tortious breach, the Respondent had amended his plaint and sued the Appellant for the actions of its employees committed during the course of their employment. There is nothing on the record to suggest that the order dated 18.05.2015 had ever been assailed by the Appellant before the competent fora. In the absence of such challenge, the order in question attained finality and the suit of the Respondent became one where the Respondent sought damages for acts and omissions committed by employees of the Appellant by way of vicarious liability.

14. Coming back to the question posed above, it is imperative to note that vicarious liability can only arise if the employee of the organisation has committed a tort during the course of his employment. That is not at issue since we have

already arrived at the conclusion that a tort had been committed by the Appellant. The only question for determination is whether the Appellant can be held vicariously liable for the acts of its employees.

The text-book example on ascertaining whether a "master" is liable for the actions of his "servant" was elaborated by Sir John Salmond which is now referred to as the "Salmond Test".

The said criteria is as follows:-

*A master... is liable even for acts which he has not authorised, provided that they are so connected with acts which he has authorised that they may be rightly regarded as modes – although improper modes – of doing them.*

*An act will be in the course of employment under the test if it is (a) a wrongful act authorised by the [employer], or (b) a wrongful and unauthorised mode of doing some act authorised by the [employer].*

The Salmond Test was made the subject of review by the United Kingdom's House of Lords (the "**UKHL**") in the case of *Lister vs. Hesley Hall Ltd.* (**[2002] 1 AC 215**). In *Lister*, the UKHL found that actions that were so "closely connected" to what a person was employed to do opened up the employing organisation to vicarious liability and held that it would be fair and just to hold such organisations vicariously liable if the said act that ended up becoming a tort was "closely connected" to the duties normally performed by an employee during the course of his

employment. The “close connection” test was subsequently expanded by the UKHL in the case of Dubai Aluminium Co Ltd. vs. Salaam ([2003] 2 AC 366). In the said case, it was held that:-

*[21] ... Whether an act or omission was done in the ordinary course of a firm's business cannot be decided simply by considering whether the partner was authorised by his co-partners to do the very act he did. The reason for this lies in the legal policy underlying vicarious liability. The underlying legal policy is based on the recognition that carrying on a business enterprise necessarily involves risks to others. It involves the risk that others will be harmed by wrongful acts committed by the agents through whom the business is carried on. When those risks ripen into loss, it is just that the business should be responsible for compensating the person who has been wronged.*

(Underlining is ours)

In a more recent judgement rendered by the UK Supreme Court in the case of Catholic Child Welfare Society & others vs. Various Claimants & the Institute of the Brothers of the Christian Schools & others (2012 UKSC 56) it was held that:-

34. Vicarious liability is a longstanding and vitally important part of the common law of tort. A glance at the Table of Cases in Clerk & Lindsell on Torts, 20th ed (2010) shows that in the majority of modern cases the defendant is not an individual but a corporate entity. In most of them vicarious liability is likely to be the basis upon which the defendant was sued. The policy objective underlying vicarious liability is to ensure, insofar as it is fair, just and reasonable, that liability

for tortious wrong is borne by a defendant with the means to compensate the victim. Such defendants can usually be expected to insure against the risk of such liability, so that this risk is more widely spread. It is for the court to identify the policy reasons why it is fair, just and reasonable to impose vicarious liability and to lay down the criteria that must be shown to be satisfied in order to establish vicarious liability. Where the criteria are satisfied the policy reasons for imposing the liability should apply. As Lord Hobhouse pointed out in Lister at para 60 the policy reasons are not the same as the criteria. One cannot, however, consider the one without the other and the two sometimes overlap.

35. The relationship that gives rise to vicarious liability is in the vast majority of cases that of employer and employee under a contract of employment. The employer will be vicariously liable when the employee commits a tort in the course of his employment. There is no difficulty in identifying a number of policy reasons that usually make it fair, just and reasonable to impose vicarious liability on the employer when these criteria are satisfied:

- i) The employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability;
- ii) The tort will have been committed as a result of activity being taken by the employee on behalf of the employer;
- iii) The employee's activity is likely to be part of the business activity of the employer;

- iv) The employer, by employing the employee to carry on the activity will have created the risk of the tort committed by the employee;
- v) The employee will, to a greater or lesser degree, have been under the control of the employer.

36. In days gone by, when the relationship of employer and employee was correctly portrayed by the phrase "master and servant", the employer was often entitled to direct not merely what the employee should do but the manner in which he should do it. Indeed, this right was taken as the test for differentiating between a contract of employment and a contract for the services of an independent contractor. Today it is not realistic to look for a right to direct how an employee should perform his duties as a necessary element in the relationship between employer and employee. Many employees apply a skill or expertise that is not susceptible to direction by anyone else in the company that employs them. Thus the significance of control today is that the employer can direct what the employee does, not how he does it.

62. Where an employee commits a tortious act the employer will be vicariously liable if the act was done "in the course of the employment" of the employee. This plainly covers the situation where the employee does something that he is employed to do in a manner that is negligent. In that situation the necessary connection between his relationship with his employer and his tortious act will be established...

86. Starting with the Canadian authorities a common theme can be traced through most of the cases to which I have referred. Vicarious liability is imposed where a defendant, whose relationship with the abuser put it in

*a position to use the abuser to carry on its business or to further its own interests, has done so in a manner which has created or significantly enhanced the risk that the victim or victims would suffer the relevant abuse. The essential closeness of connection between the relationship between the defendant and the tortfeasor and the acts of abuse thus involves a strong causative link.*

**(Underlining is ours)**

It would therefore appear that the concept of vicarious liability for tort is not something that arises out of a law or a legal principle but is instead guided by policy reasons that are expanded and determined by courts of law in the absence of any legislation which regulates the specific tort in question.

15. The first of many considerations that the courts have to look at when deciding whether an entity/organisation is vicariously liable for breaches in tort committed by its employees is whether or not a tortious breach has actually been committed in the first place. As noted above, that is not at issue here since we have already arrived at the conclusion that the Respondent had to approach courts of law repeatedly for redressal of his legitimate grievances, and but for acts/omissions of employees of the Appellant Corporation, who were acting in the course of their employment, the Respondent could have been spared the time, effort, expense and mental agony of repeatedly approaching different legal *fora* for years on end.

16. The next consideration would be whether or not the tortious acts had been committed by an employee of an organisation during the course of his employment. It was never the case of the Appellant before any of the courts below that the Appellant had directed its employees to implement the NIRC order dated 27.07.2012 and that individual employees had flouted an express order of the Appellant to implement the said order of the NIRC. It is also not the case of the Appellant that the non-implementation of judgements/orders were done through unauthorised acts of which the Appellant had no knowledge. On the contrary, there is enough material on record to show not only that at all relevant times the relevant officers/decision makers had knowledge of the acts in question but either directly, indirectly, or by implication, authorised tortious acts or failed to act where, by law, they were required to act or tacitly encouraged, condoned or approved of such acts. The Appellant has never distanced itself from the any of its employees by claiming that the said employees had failed to implement the order dated 27.07.2012 of their own accord. In the absence of anything to the contrary, it would appear that the employees of the Appellant who had failed to implement the NIRC order dated 27.07.2012 as well as those employees who were delaying the implementation of the said order were doing so in the course of their employment with the knowledge, consent and approval of the Appellant. The Appellant could have directed the employees under its control to implement the order of the NIRC dated 27.07.2012 immediately after the said order was passed. The Appellant, instead, not only delayed,

hampered or procrastinated but also failed to implement the said order and initiated implementation actions only when the Appellant approached the NIRC through his various petitions for implementation of the order dated 27.07.2012. The consequences and responsibility for not implementing the NIRC order as expeditiously as possible must be borne by the Appellant in the absence of any express order directing its employees to implement the NIRC orders in letter and spirit as expeditiously as possible.

17. The final consideration would be whether it would be fair, just and reasonable to hold an organisation/entity vicariously liable for the actions of its employees during the course of their employment which resulted in tortious acts. The Appellant in the instant case is a state-owned television broadcaster and falls within the administrative competence of the Information and Broadcasting Division of the Government of Pakistan (Schedule II Heading 16 (13) (i) (a) read with Rule 3 (3) of the Rules of Business, 1973). However, admittedly, the Appellant is a non-statutory body having its own Service Rules as well as Memorandum & Articles of Association. Whilst it may be controlled and directed by the Government of Pakistan through the Information and Broadcasting Division, it is, for all intents and purposes, a separate corporate entity. Therefore, the Respondent was not bound to follow the requirement laid down in Section 79 of the CPC read with Article 174 of the Constitution of Pakistan since the Appellant cannot be considered a part of the Government of Pakistan for the sole

reason that the Government of Pakistan administers the Appellant. The Appellant has its own corporate personality and cannot be considered a part of the Government of Pakistan. It can therefore sue or be sued in its own name and there is no requirement for potential claimants/plaintiffs to implead the Government of Pakistan when they wish to sue the Appellant.<sup>3</sup>

It was held by a five-member bench of this Court in the case of Pakistan thr. Secretary to the Government of Pakistan, Ministry of Railways & Communications, Karachi vs. Muhammad A. Hayat (PLD 1962 SC 28) that:-

*"On the fact that in England a mandamus cannot issue to the Crown no argument can be based that it cannot issue to the Government of this country. The constitutional status of the Crown is wholly different from that of the Government of Pakistan. The Crown of England occupies a unique position. As stated in Dicey's Law of the Constitution (p. 527 of 1950 Edition), it is a fundamental rule of English Law that no action can be brought against the Crown. No process of any kind can be issued by the Courts against the Crown. Another recognised principle is that: "The Crown can do no wrong". The Crown is not responsible for its acts to any body or authority and no legal right can be said to exist in any person against the Crown. Nothing of what is stated above applies to the Government of this country. The Government is a creature of law with limited and defined powers. Its acts in relation to the citizens of the State are subject to scrutiny and control by the Courts. It is burdened with legal duties in favour of the citizen which can be enforced in a Court of law. If it acts in excess of its powers the Courts can grant"*

appropriate relief, and if it fails to perform its duties. It can be obliged to perform them. Even a Civil Court of the lowest jurisdiction can issue an Injunction to the Government to perform the duties imposed on it by law.

(Underlining is ours)

A three-member bench of this Court also held in the case of Pakistan thr. Secretary, Ministry of Rehabilitation of Pakistan vs. Muhammad Yaqoob Butt & others (PLD 1963 SC 627) that:

"It has already been explained by this Court in *Pakistan v. Muhammad A. Hayat (PLD 1962 SC 28)* that the constitutional status of the Crown of England is wholly different from that of the Government of Pakistan and an argument based on the equality of such statue may be misconceived. The Crown could not be sued in England in tort because-

(i) the King could do no wrong; and

(ii) the King could not be sued in his own Courts.

Neither of these two considerations has any application to the Government of Pakistan.

Neither of these propositions needs the support of elaborate reasoning. If the Government takes the benefit of illegally detained property it cannot be allowed to repudiate its liability and if it ratifies the act of its servant it adopts that act as its own. In fact, at least ordinarily, cases falling under the first class will be cases falling under the second class too, for, when Government takes the benefit of property it ratifies the act of its servant."

The case of Muhammad Yaqoob (supra) also goes on to reiterate that even though it was a settled principle that the "Crown could do no wrong" when it came to tortious liability, the said principle was done away with when the then-government in the United Kingdom passed the Crown Proceedings Act of 1947 whereafter even the Crown could be found vicariously liable for the acts of its servants. For that reason, the Appellant cannot claim that it cannot be sued vicariously for the actions of its employees by invoking sovereign immunity. Even otherwise, the defence of sovereign immunity and its application in Pakistan has been done away with by a five-member bench of this Court in the case of Muhammad A. Hayat (supra).

In the case of Ch. Muhammad Nawaz vs. Province of Punjab (**PLD 1975 BJ 11**), the Bagdad-ul-Jadid of the erstwhile state of Bahawalpur held that:-

*"... It was observed by Lord Denning in *Broom v. Morgan* that the master's liability for the negligence of his servants is not a vicarious liability but a liability of the master himself owing to his failure to have seen that his work was properly and carefully done. Again if a servant disobeys the orders of his master it does not necessarily mean that the servant is outside the course of his employment. The distinction is between an order which limits the scope of the employment, disobedience to which means that the servant is not in the course of his employment, and an order which limits the "method" in which the duties of his servant shall be performed, the disobedience of which does not mean that the servant is outside his employment.*

Applying this test, it would be clear that the Assistant Station Manager was acting in the course of his employment and the respondent was liable for this disobedience to the order of attaching the rail-car with 62 Dn train. ...

...

Finally the question was discussed by the Supreme Court in *Pakistan v. Muhammad Yaqoob Butt and others* and it has now been settled that the Government is liable for the tortious acts of its servants."

In the case of Nazir Ahmed vs. Islamic Republic of Pakistan thru. Secretary Establishment Division (PLD 1991 Lah 469) a Division Bench of the Lahore High Court held that:-

"After hearing the learned counsel for the parties and perusing the record, we are of the view that the judgment of the Trial Court on all the three issues is erroneous in law and is liable to be set aside. As already noted under Issue No. 3, the Trial Court held that the Government is not liable for the tortious acts of its servants/employees. However while so holding, no rule or authority was cited. The view taken by the Civil Judge runs counter to the dictum of the Supreme Court of Pakistan in *Pakistan (through the Secretary, Ministry of Rehabilitation, Government of Pakistan, Rawalpindi) v. Muhammad Yaqoob Butt and another* reported as PLD 1963 Supreme Court 627 wherein it was ruled that the principle that the "King can do no wrong" and that the King cannot be sued in his own Courts is inapplicable to Pakistan specially when the Government is acting in relation to its citizens where it can act only in accordance with the municipal law. It may also be observed that this principle is no more being accepted even by the Courts in England. A

*Division Bench of this Court in Ch. Muhammad Nawaz v. Province of West Pakistan reported as PLD 1975 Baghdad-ul-Jadid 11 has also held that Government was liable for the tortious acts of its servants. In addition to the above, it is also to be noted that according to the case of the appellant, act complained of was ratified and owned by the Government and even for that reason, it was liable for the acts of its employees. This aspect of the case was totally ignored from consideration. It is thus obvious that finding on Issue No. 3 recorded by the trial Court is erroneous, unsound and thus liable to be set aside."*

We find ourselves in agreement with the reasoning adopted and conclusions drawn in the above judgement. The case relied on by the Learned ASC for the Appellant i.e. Syed Yaqoob Shah (supra) is distinguishable on facts as well as law. The said case dealt with a service matter involving an employee of PESCO as opposed to a matter involving tortious liability of Pakistan Television Corporation in the instant Appeal. The only similarity, if any, is that the Respondent's suit for damages arose out of a service matter. However, a suit for damages lies on an entirely different footing compared to a purely service matter. No question of internal service rules or their application is before us in the instant Appeal. That is the subject matter of the appeal preferred by the Appellant against the order of the NIRC dated 27.07.2012 which is (if it has not been decided yet) statedly pending before the Full Bench of the NIRC. Moreover, in Syed Yaqoob Shah (supra), the concerned officials were held liable in their personal capacity for committing illegal acts during the course of their employment. At no stage has the

Appellant taken the ground that its employees or officials had acted illegally or incompetently, or beyond their powers in committing the acts and/or omissions that caused monetary loss etc. to the Respondent. Further, we have already held that the officials who had management, control and decision making roles in the Appellant had or should have in the ordinary course of their duties knowledge about the acts/omissions complained of and had also expressly and/or by implication authorised and condoned the same. The said case is therefore of no help to the Appellant in the instant Appeal.

It would therefore appear that there are no policy considerations in the facts, circumstances and material available on record that could lead this Court to come to the conclusion that there is no precedent for holding a state-owned corporation such as the Appellant not vicariously liable for the actions of its employees.

On the other hand, the fact that the Respondent had to repeatedly approach the NIRC for implementation of the NIRC's order dated 27.07.2012 is not conducive to an environment for good governance or adherence to the rule of law. The Appellant should have implemented the order of the NIRC in letter and spirit immediately after the said order had been passed and then awaited the judgement of the Full Bench of the NIRC against the order dated 27.07.2012 unless the appellate forum had passed any interim or final order to the contrary. Instead,

the Respondent had to repeatedly approach the NIRC through various petitions to seek implementation of the order dated 27.07.2012 in letter and spirit. The lethargy and intentional lack of interest in implementing lawful orders of a court of competent jurisdiction shown by the Appellant cannot be granted a premium by holding that, for policy reasons, it would not be fair, just and reasonable to find the Appellant vicariously liable for the tortious breaches committed by its employees when it failed to implement the NIRC order dated 27.07.2012.

Summarising our findings, we hold that:-

- 1) A tort had been committed by the Appellant against the Respondent when the Appellant failed to implement the order of the NIRC dated 27.07.2012 as well as when the Appellant forced the Respondent to repeatedly arrange legal representation for other ancillary and connected matters before the NIRC.
- 2) The tort had been committed in the course of employment by the Appellant's employees.
- 3) It is fair, just and reasonable to hold the Appellant vicariously liable for the actions of its employees in the presence of a tort committed by its employees during the course of their employment.

**ARE THE GENERAL DAMAGES AWARDED TO THE RESPONDENT APPROPRIATE IN THE INSTANT APPEAL?**

18. Another ground agitated by the Appellant before us is that even if the Respondent proved that he had suffered damages, the Trial Court did not have the jurisdiction to award

damages in the manner that it did in its judgement and decree dated 23.06.2015.

19. Insofar as actual monetary damages suffered by the Respondent are concerned, the Respondent had annexed and subsequently exhibited all the relevant documentary evidence including legal fees and certificates aggregating a sum of Rs.310,000/-. He has therefore successfully discharged the onus of proof on him. The learned ASC for the Appellant has not been able to point out any illegality, jurisdictional defect and mis-reading or non-reading of evidence in the judgements of all three courts below which upheld the judgement and decree for payment of damages to the extent of Rs.310,000/-.

20. The Trial Court also decreed a sum of Rs.2,000,000/- in favour of the Respondent for the mental agony and torture suffered by the Respondent due to the actions of the Appellant. The said amount was decreed on the ground that the Appellant had failed to rebut the statements of the Respondent (PW-1) in their cross-examination insofar as the acts of the Appellant had caused the Respondent mental torture and agony was concerned. This finding was also upheld by all the courts below. As previously noted, admitted facts need not be proved. The learned ASC for the Appellant has not been able to point out any illegality or jurisdictional defect in the judgements of all three courts below insofar as payment of general damages to the tune of Rs.2,000,000/- is concerned which, as noted above, is fully within the jurisdictional

parameters of the Civil Court, in the facts, circumstances and legal position explained above.

A case involving damages was recently adjudicated by a three-member bench of this Court in the case of Munawar Ahmed, Chief Editor Daily Sama and another vs. Muhammad Ashraf (**PLD 2021 SC 564**). The said case involved a claim in tort for breach of reputation under the Defamation Ordinance of 2002. The relevant para dealing with damages is reproduced below:-

*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 (C.S.) 574 SC)*

In the absence of any law regulating tortious breaches resulting in pure economic loss, the Civil Court as a Court of plenary jurisdiction had the power as well as jurisdiction to entertain, adjudicate and decree suits for damages. We note that the matter has been pending since 2013 and there is a decree in favour of the Respondent since 2015. The Respondent moved an application for execution of the decree on 23.06.2015. This has caused hardship and injustice to the Respondent. We

therefore find it appropriate to direct the Appellant to deposit the entire decrelal amount before the executing court within a period of two months from the date of receipt of a certified copy of this order if they have not already done so. If the Appellant fails to deposit the decrelal amount, the decree of the Trial Court will stand modified to the extent that the decrelal amount will also attract an interest at the rate of 6% per annum calculable from 23.06.2015 till full payment of the decrelal amount in favour of the Respondent by the Appellant.

22. Insofar as the impugned judgement is concerned, we find the same to be well-reasoned, legally sustainable and duly supported by the material available on the record. No misreading or non-reading of the evidence, or any other illegality or material irregularity could be pointed out by the Learned ASC justifying interfering in the findings recorded concurrently by three lower *fora*.

23. For reasons recorded above and subject to our observations noted herein, this Appeal is found to be without merit. It is accordingly dismissed. No order as to costs.

**ANNOUNCED IN OPEN COURT  
ISLAMABAD**

Khalil Sahibzada, LC/-\*

**NOT APPROVED FOR REPORTING**