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IN THE COURT OF SYED ABBAS BUKHARI
CIVIL JUDGE - II, KALAYA

Suit No.30/1 of 2023

Date of Institution11.04.2023
Date of Decision 22.12.2023

**Sadiq Rahman s/o Momeen Gul resident of Qom Feroz
Khel, Tappa Jaseel Khel Village Goen Tehsil Lower
District Orakzai. ...Plaintiff**

Versus

1. **Kazim Khan s/o Jan Akbar**
2. **Mehmood Khan s/o Doranay residents of Feroz Khel
Tappa Jaseel Khel village Toor Khawary Teshsil
Central District Orakzai.Defendants**

SUIT FOR RECOVERY OF RS-6,94,000/-

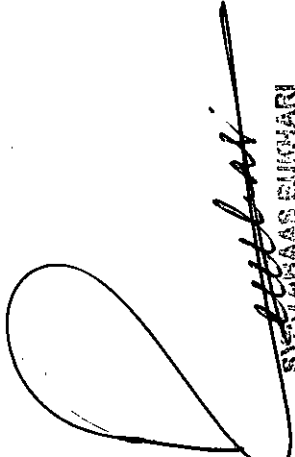
Counsels for plaintiff: Abid Ali Advocate
Counsel for defendants: Asad Ijaz Advocate

JUDGMENT

22.12.2023


Vide this judgment I intend to dispose of suit captioned above.

2. It is a suit from the plaintiff against defendants for the recovery of Rs-6,94,000/- (Six Lac and Ninety Four thousand Rupees).
3. Brief facts of the case as narrated in the plaint are that plaintiff is father of minor namely Muhammad Yasir aged


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about 06/07 years. Minor Muhammad Yasir was previously injured on 30.07.2021 by defendants through motorcycle in an accident and due to which the bone of right shoulder and right thigh of minor Muhammad Yasir was badly fractured. The minor was shifted to Kohat in the car of one Muhammad Yousaf and defendants also accompanied them. On the third day of discharge from the hospital some person belonging to Goen came to the plaintiff's house and gave him a sum of Rs-20000/- for treatment. After that till date they never turned up and rather are threatening the plaintiff. A sum of Rs-594000/- incurred upon the treatment of minor. Plaintiff also suffered severe mental shock and unrest due to the act and conduct of defendants, hence plaintiff is entitled to the recovery of Rs-594000/- as medical expenses and Rs-100000/- as compensation for mental torture from the defendants. The defendants were time and again asked to make good the loss of plaintiff but they after exercising delaying tactics finally refused to pay the money, hence the instant suit.

4. After institution of the suit the defendants were summoned, who accordingly appeared and submitted their written statement with legal and factual objections, raised therein.



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5. Out of controversies of the parties, as raised in their respective pleadings, this Court framed the following issues on 07.07.2023.

1. Whether plaintiff has got a cause of action? **OPP**
2. Whether plaintiff incurred expenses worth Rs-594000/- on medical treatment of his son namely Muhammad Yasir and thus he is entitled to recover the same from defendants? **OPP**
3. Whether plaintiff is entitled to the recovery of Rs-100000/- as damages from defendants? **OPP**
4. Whether defendants are innocent and plaintiff's son injured himself due to his own fault? **OPD**
5. Whether plaintiff is entitled to the decree as prayed for? **OPP**

Relief.

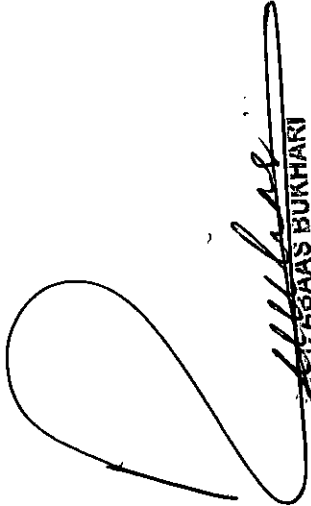
6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiff produced as many as three witnesses and thereafter closed his evidence with a note. Contrary to this the defendants produced their sole witness as DW-01 and thereafter closed their evidence with a note.
7. Thereafter arguments were heard. Learned counsel for the plaintiff opened the case and argued that plaintiff is father of minor namely Muhammad Yasir aged about 06/07 years. Minor Muhammad Yasir was previously injured on 30.07.2021 by defendants through motorcycle in an accident and due to which the bone of right shoulder and



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 Civil Judge
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right thigh of minor Muhammad Yasir was badly fractured. The minor was shifted to Kohat in the car of one Muhammad Yousaf and defendants also accompanied them. On the third day of discharge from the hospital some person belonging to Goen came to the plaintiff's house and gave him a sum of Rs-20000/- for treatment. After that till date they never turned up and rather are threatening the plaintiff. A sum of Rs-594000/- incurred upon the treatment of minor. Plaintiff also suffered severe mental shock and unrest due to the act and conduct of defendants, hence plaintiff is entitled to the recovery of Rs-594000/- as medical expenses and Rs-100000/- as compensation for mental torture from the defendants. He further adduced that the plaintiff succeeded to prove his stance through his evidence and furthermore nothing in rebuttal or contradictory is available on the record. Hence prayed that the suit in hand may kindly be decreed in favour of plaintiff and against the defendants for the relief as claimed for.

8. Contrary to this learned counsel for the defendants argued that the plaintiff had not approached this court with clean hands. He further adduced that plaintiff has filed a baseless case against the defendants as plaintiff's son was not injured by defendant no.2. He further argued that neither


 H. ABAS BUKHARI
 Civil Judge
 Tehsil Courts Muzya

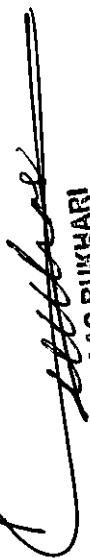
defendant no.2 has owner of any motorcycle nor he can ride the same. He further adduced that plaintiff failed to prove his case through cogent, convincing and reliable evidence while on the other hand the defendants succeeded to produce evidence in light and support of their previous stance alleged in the written statement. Hence, prayed that as plaintiff failed to prove his case, hence the suit in hand may kindly be dismissed with costs.

Now on perusal of record, available evidence and valuable assistance of both the learned counsels for the parties my issue wise findings are as under.

ISSUE NO. 2:

Whether plaintiff incurred expenses worth Rs-594000/- on medical treatment of his son namely Muhammad Yasir and thus he is entitled to recover the same from defendants? OPP

Plaintiff has previously alleged in his plaint his minor son was previously injured by defendants in a road accident and he incurred a sum of Rs-594000/- on his medical treatment. Hence he is entitled for the recovery of same from the defendants. To prove his stance plaintiff produced one Banaras Khan s/o Khuwakat Shah as PW-01, who stated on oath in light and support of the stance of plaintiff previously alleged in the plaint. During cross examination he deposed that it is correct that defendant no.1

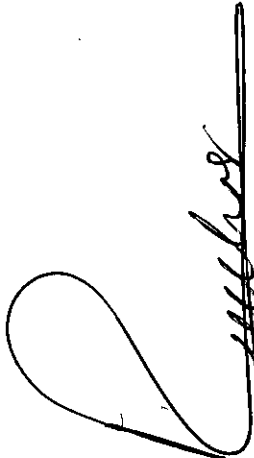

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Civil Judge (J-4)
Tehsil Court, Malaya

Kazim was present in the hospital. It is correct that Rs-500/- were paid by defendant no.02 in the hospital.

PW-02 was produced and examined as one Farid Ullah Khan s/o Lal Meen Shah but he did not deposed a single word regarding the issue in hand.

PW-03 was produced and examined as one Gul Noor Shah s/o Momeen Gul, who deposed on oath in light and support of the stance of plaintiff previously alleged in the plaint. During cross examination he deposed that when the child gained his senses, he disclosed the name of Kazim. The minor was hit from the front i.e. motorcycle came from the front side. Total medical expense incurred is more than five lac. At the time of accident another person also accompanied Kazim. He had spent more than Rs.100000/- while rest of money was spent by the father of injured.

In light of the above evidence produced by the plaintiff to prove the issue in hand, it has been noticed that PW-01 and PW-03 have fully supported the stance of plaintiff and furthermore, during cross examination of PW-03, such questions were put the witness which were otherwise an admission on the part of defendants. Furthermore, it has been proved that the minor was injured by one Kazim, defendant no.1 and it has also been proved


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 Div. Magistrate
 Tehsil Courts Kalaya

that more than Five lac Rupees incurred as medical expenses over the treatment of minor.

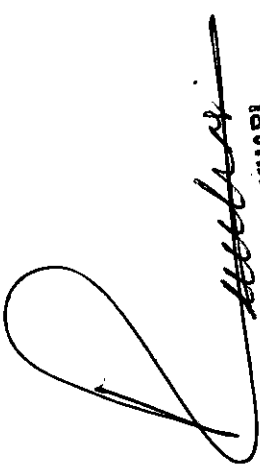
In light of my above findings as plaintiff succeeded to prove the issue in hand through cogent, convincing and confidence inspiring evidence, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against the defendants.

ISSUE NO. 3:

Whether plaintiff is entitled to the recovery of Rs-100000/- as damages from defendants? OPP

Plaintiff in his plaint has alleged that due to the act and conduct of defendants he suffered from mental torture, agony and unrest and thus he is entitled to for recovery of Rs-1,00,000/- as damages from defendants. To prove his stance plaintiff produced one Banaras Khan s/o Khuwakat Shah and Farid Ullah Khan s/o Lalmeen Shah as PW-01 and PW-02 respectively. However they failed to utter a single word regarding the issue in hand.

PW-03 was produced and examined as one Gul Noor Shah s/o Momeen Gul, who deposed on oath that plaintiff is entitled to the decree of Rs-100000/- for mental torture and discomfort. During cross examination no question was put to the witness regarding the issue in hand and thus nothing in rebuttal or contradictory has been brought on the record.


SYED ABAS BUKHARI
Civil Judge
Tehsil Courts Kalaya

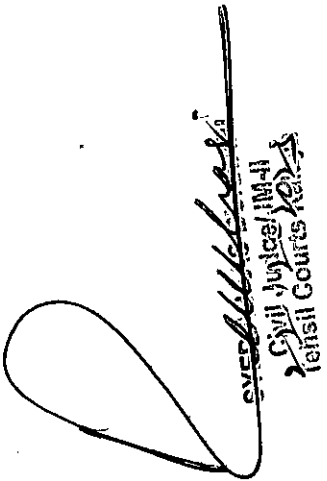
In light of the above evidence produced by the plaintiff to prove the issue in hand, it has been noticed that plaintiff has produced evidence in light of issue in hand and furthermore, during cross examination neither any question was put to the witness regarding the issue in hand nor any contradiction has been brought on the record, which amount to admission on the part of defendants.

In light of the above findings as plaintiff succeeded to prove the issue in hand through cogent, convincing and confidence inspiring evidence, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against the defendants.

ISSUE NO. 4:

Whether defendants are innocent and plaintiff's son injured himself due to his own fault? OPD

Defendants in their written statement have alleged that the allegations asserted by the plaintiff in his plaint are false and baseless. Furthermore, they are innocent and plaintiff's son has injured himself with his own fault. To prove their stance defendants produced one Mehmood Khan defendant no.02 (special attorney for defendant no.01) as DW-01, who deposed on oath in light and support of the stance of defendants previously alleged in the written statement. During cross examination he deposed that if plaintiff had instituted suit for recovery of Rs-

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15/30 thousand for fracture of leg, in circumstances the suit was maintainable and seeking recovery of more money is not appropriate.

In light of the above evidence produced by defendants it has been noticed that during cross examination DW-01 deposed that institution of suit for the recovery of more than Rs-30000/- is not fair in case of fracture of leg. Furthermore, during his examination in chief he deposed that as per custom of the locality such amount is not demanded even in murder cases. This statement of DW-01 is otherwise an admission of the fact on the part of defendants that minor Muhammad Yasir was injured by defendant no.1.

In light of what has been discussed above as defendants failed to prove the issue in hand through cogent, convincing and reliable evidence, hence accordingly the issue in hand is hereby decided in negative against the defendants and in favour of plaintiff.

ISSUE NO. 1

Whether plaintiff has got a cause of action? OPP

In wake of issue wise findings above, the plaintiff has got a cause of action, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against the defendants.

ISSUE NO.5:

Whether plaintiff is entitled to the decree as prayed for? OPP



SYED ABAAS BUKHARI
Advocate
Fetisil Courts Malaya

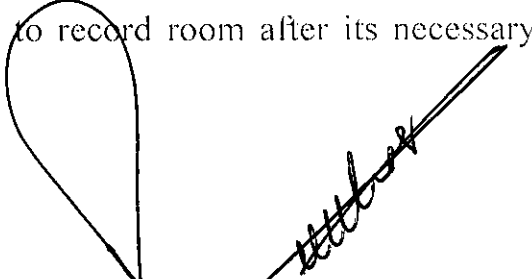
In wake of my issue wise findings above, plaintiff is entitled to the decree as prayed for, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against the defendants.

Relief:

As nutshell of my detailed discussion upon various issues, the suit of plaintiff is hereby decreed for the relief as prayed for. No order as to costs. File be consigned to record room after its necessary completion.

Announced.

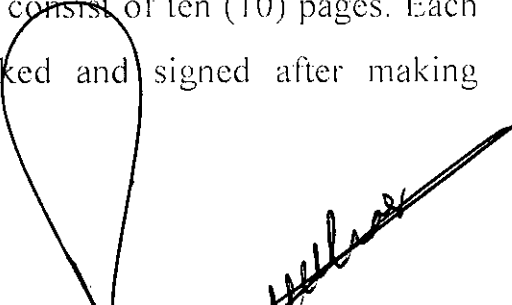
22.12.2023


Syed Abbas Bukhari
 Civil Judge-II,
 Tehsil Court Kalaya, Orakzai

C E R T I F I C A T E

Certified that this judgment consist of ten (10) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 22.12.2023


Syed Abbas Bukhari
 Civil Judge-II,
 Tehsil Court Kalaya, Orakzai