

**IN THE COURT OF SYED OBAIDULLAH SHAH,**  
**DISTRICT JUDGE, ORAKZAI (AT BABER MELA)**

CIVIL APPEAL NO. : 1/13 OF 2024  
DATE OF INSTITUTION : 10.01.2024  
DATE OF DECISION : 29.03.2024

1. KAZIM KHAN S/O JAN AKBAR
  2. MEHMOOD KHAN S/O DORANE
- BOTH R/O CASTE FERAZ KHEL, TAPA JAISAL KHEL,  
VILLAGE TOKHRA, TEHSIL CENTRAL, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

SADIQ REHMAN S/O MOMEEN GUL, CASTE FERAZ KHEL,  
TAPA JAISAL KHEL, VILLAGE GOEEN, TEHSIL LOWER,  
DISTRICT ORAKZAI


..... (RESPONDENT)

**Present** : Syed Bakhtiar Hussain Advocate, the counsel for appellants.  
: Abid Ali Advocate, the counsel for respondent.

JUDGEMENT  
29.03.2024

Impugned herein is the judgement/decree dated 22.12.2023 of the learned Civil Judge-II, Tehsil Court Kalaya vide which the suit of the respondent/plaintiff has been decreed as prayed for.

- (2). The respondent being plaintiff (hereinafter referred to as plaintiff) through a suit before the learned trial court sought recovery of Rs. 594,000/- (Five Lac and Ninety-Four Thousand) incurred upon them as medical expenses and Rs. 100,000/- (One Lac) for mental shock sustained by the plaintiff due to his son's accident and the expenses for litigating a trial, amounting in total to Rs. 694,000/- to the effect that the plaintiff is the father of a minor, named Muhammad Yasir, aged about 06/07 years who received injuries inflicted by the

  
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appellants (hereinafter referred to as defendants) through a motorcycle resulting in fractures to his shoulder and thigh bones. That during the initial visit of the defendants to inquire about the minor's well-being, they provided Rs. 20,000/- for medical treatment; however, subsequent to this gesture, they have failed to turned up and instead have resorted to threatening behaviour towards the plaintiff. The defendants were summoned who appeared before the court and submitted written statement wherein they have raised various legal and factual objections.

Pleading of the parties were culminated by the trial court into the following issues;

1. Whether plaintiff has got a cause of action?
2. Whether plaintiff incurred expenses worth Rs. 594,000/- on medical treatment of his son namely Muhammad Yasir and thus he is entitled to recover the same from defendants?
3. Whether plaintiff is entitled to the recovery of Rs. 100,000/- as damages from defendants?
4. Whether defendants are innocent and plaintiff's son injured himself due to his own fault?
5. Whether plaintiff is entitled to the decree as prayed for?
6. Relief.

Parties were given opportunity to produce evidence.

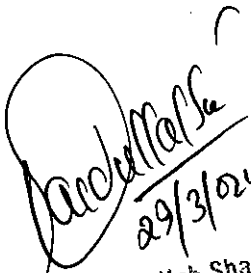
Accordingly, the plaintiff produced Banaras Khan, Farid Ullah Khan and Gul Noor Shah as PW-1 to PW-3 respectively in support of his contention. On the other hand, defendant no. 2

  
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Mehmood Khan appeared as a sole witness of the defendants as DW-1.

After conclusion of evidence of both the parties, the learned trial court heard the arguments and decreed the suit of the plaintiff. The defendants, feeling themselves aggrieved of the impugned judgement/decree, filed the instant appeal.

- (3). Arguments heard and record gone through.
- (4). Perusal of the case file reveals that the suit was filed by the plaintiff for recovery of Rs. 694,000/- liable to be paid by the defendants for causing injuries to the nephew of plaintiff in a motorcycle accident. The factum of occurrence and the injuries caused to the minor have been admitted by both parties in their statements recorded in the trial court and the factum of the presence of defendant no. 2 in the hospital evidenced by a payment of Rs. 500/- of a receipt has also been admitted on the record confirming the happening of the occurrence, but there is no eyewitness of the incident produced before the trial court to grab defendant no. 2 for causing injuries to the minor and making him liable to pay the amount spent on his treatment. Defendant No. 2 as DW-1 categorically denied the claims of plaintiff by stating that he has neither given any cash amount to the plaintiff nor defendant no. 1 has own a motorcycle. In addition, all witnesses produced by the plaintiff are relative inter se and no independent witness has been produced in this regard. Moreover, it is astonishing to note that despite the

  
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presence of the local police in the hospital, the matter has not been reported even though defendant no. 2 has intimidated the plaintiff upon his arrival to the hospital, as per statement of PW-3. If the plaintiff's assertion that the FIR was not filed due to the defendant's agreement to cover all expenses is indeed accurate, it raises a question as to why the plaintiff did not approach local authorities even after the defendant's denial to pay the same. The evidence produced by the plaintiff is not in line with the pleas of the plaintiff taken in the plaint.

With respect to the recovery of Rs. 594,000/- incurred upon the plaintiff while treating the injured, it is pertinent to mention here that no receipt/prescription or document has been produced by the plaintiff whereupon the doctor has provided his remarks regarding the expenses rather PW-3 admitted during cross-examination that the plaintiff himself has written the amount on the documents exhibited in the court for his own clarity and stated that;

"یہ کہنا درست ہے کہ مورخہ 9/8/21 کے رسید پر خرچے کی رقم 77500 مدعی نے خود لکھا ہے۔ نیز 30/8/21 پر 77600 روپے خرچ مدعی نے لکھا ہے۔ نیز 18/10/21 پر 77800 روپے خرچ مدعی نے خود لکھا ہے۔ 80500 روپے بھی مدعی نے لکھے ہیں 10/2/22 پر مدعی نے خود لکھا ہے۔ آخری پرچہ 7/6/22 مدعی نے لکھا ہے۔ از خود کہا کہ پرچے پر خرچ رقم خود کو کلنیر کرنے کے لئے مدعی نے لکھی ہے۔"

As far as recovery of Rs. 100,000/- for mental torture and amount of litigating the case is concerned, no evidence regarding mental torture allegedly suffered by the plaintiff is

brought on record in shape of any medical prescription from

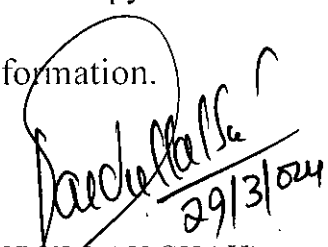
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any psychiatrist and expenses incurred by the plaintiff on the treatment of the same. No receipt or statement of the counsel regarding counsel fee is available on the case file which all clearly shows that the plaintiff failed to prove his allegation against the defendants through any direct evidence.

- (5). In these circumstances, it is held that the learned trial court has erred while rendering a judgment; hence, the impugned judgment/decreed dated 22.12.2023 of the learned trial court is set aside, suit of the plaintiff is dismissed. No order as to cost.

Judgment announced. File of this court be consigned to Record Room while record be returned. Copy of this judgment be sent to learned trial court for information.

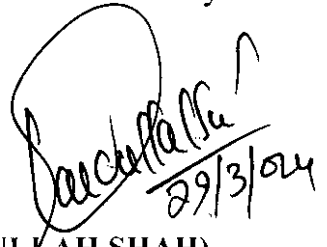
Dated: 29.03.2024

  
(SYED OBAIDULLAH SHAH)  
District Judge, Orakzai  
at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 29.03.2024

  
(SYED OBAIDULLAH SHAH)  
District Judge, Orakzai  
at Baber Mela

