

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Appeal No. 642 of 2019

In the matter of:

Shahabuddin Ahmmed

... Plaintiff-Appellant

-Versus-

National Credit & Commerce Bank Ltd and
others

...Defendants-Respondents

Mr. Md. Hamidur Rahman, Advocate

...For the appellant

Mr. M. Shakhawat Hossain, Advocate

...For the respondent no.1

Heard on 31.10.2024, 06.11.2024, 13.11.2024
Judgment on 20.11.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

At the instance of the plaintiff in Money Suit No. 34 of 2015, this appeal is directed against the judgment and decree dated 28.08.2019 passed by the learned Joint District Judge, Third Court, Dhaka decreeing the suit in-part.

The salient facts so have been figured in the plaint of the suit are:

The Plaintiff is a first-class government contractor. He has been paying income tax, VAT et cetera regularly. In the assessment year of 2008-2009, the plaintiff paid income Tax amounting to Tk. 26,44,112/-

(Twenty-six lakh forty-four thousand one hundred & twelve) and was adjudged as the top most income tax payer in Mymensingh Taxes Circle-1 under Income Tax Zone, Dhaka-2. The National Board of Revenue (shortly 'NBR') decided to give rewards to the taxpayers for the assessment year 2008-2009 in two categories, one is for the highest taxpayer and the other for the longest period taxpayer. The NBR asked Tax Circle Offices to send the names of the taxpayers who could be placed in either of those two categories. The Mymensingh Office of the Tax Circle- 1 selected four taxpayers in the category of highest taxpayers and three taxpayers who paid tax for the longest period. The name of the plaintiff was found at the top in both the categories of the income tax assessment year 2008-2009. The Deputy Commissioner of Taxes, Mymensingh Circle-1, Mymensingh, prepared a list of 4(four) income taxpayers of Mymensingh Circle-1 placing the name of the plaintiff in serial No.1 because he was the highest taxpayer for the assessment year 2008-2009 and sent the same to NBR on 17.08.2009. The plaintiff was selected for the reward by the N.B.R. and he was eagerly waiting for the reward. All of a sudden, he came to know that his name had been dropped from the list of highest Taxpayers. On 22.10.2009, he wrote to the Deputy Commissioner of Taxes, Circle-1, Mymensingh to let him know the causes of striking out his name from the top of the list but received no reply. Again the plaintiff wrote a letter to the Deputy Commissioner of Taxes, Circle-1 Mymensingh. Ultimately, the Second Secretary of NBR by a letter dated 25.05.2010 informed the plaintiff that his name was dropped from the list of rewards as his name was found in the list of bank loan defaulters. As a result, the plaintiff was not considered to be a

recipient of the reward. The plaintiff was surprised and astonished on receipt of the information because he was never a bank loan defaulter. On 10.09.2009 a Bangladesh Gazette was published wherein the name of the plaintiff was not enlisted in the column of the long-time taxpayer and the highest tax payer for the year 2008-2009 in Mymensingh Circle-1, Mymensingh.

It is further stated that the plaintiff took a loan of Taka Eight Lakh under SOD(FO) from defendant No. 4, N.C.C. Bank Ltd. Uttara Branch, Dhaka on 27.03.2006. The plaintiff repaid the loan with interest in full on 6-8-2006 and there was no outstanding due to the plaintiff. The aforesaid loan account was finally closed on 17.01.2007. Thereafter, the plaintiff applied for a loan of Tk. 1,25,00,000/- to the National Bank Ltd., Mymensingh Branch on 22/03/2010, however, the same was refused on the ground that the plaintiff is a defaulter having an outstanding of Tk.1,00,000/- (One Lakh) as bad and loss as mentioned in the CIB report as on 09.03.2010. Upon receipt of the said information from the National Bank Ltd., the plaintiff understood that the mischief was caused by the officials of defendant no.1, N.C.C. Bank. Thereafter on 20.5.2010, the plaintiff wrote a letter to defendant no. 4 to know why and on what basis his name was sent to the Bangladesh Bank in the list of Bank loan defaulters, but defendant no. 4 did not give any reply to that letter.

Subsequently, the plaintiff received a copy of a letter on 24.05.2010 through Fax from defendant No. 4 addressed to the General Manager, Credit Information Bureau, Head Office, Bangladesh Bank, Dhaka to drop out the name of the plaintiff from the CIB database. Then the plaintiff came to know that the N.C.C. Bank Ltd. caused the mischief and damage

to the plaintiff showing him as a bank loan defaulter in the list sent to Bangladesh Bank. In the said letter dated 23.05.2010, the Vice President of N.C.C. Bank Ltd. said that the Uttara Branch of N.C.C. Bank Ltd. i.e, defendant No.4 inadvertently did not drop out the account of the plaintiff from the CIB database, though the account of the plaintiff was closed. The concerned Bank i.e, defendant no. 4 falsely put in a fictitious figure of Tk. 1,00,000/- in the loan account of the plaintiff. For such an act of mischief, the plaintiff was deprived of getting the reward. For adopting such mischievous act the plaintiff's name and fame has severely been impaired and degraded his prestige and position in the society, particularly when people in general came to learn that the plaintiff did not get the reward owing to default in payment of bank loan. The reward would have enhanced the prestige and position of the plaintiff in the society as a very important person (V.I.P). For the deprivation of the reward for no fault of his own, the plaintiff was subjected to mental suffering which knew no bounds and that mental suffering is continuing. Defendant no. 1 is liable for the tortuous act of its officials and defendant nos. 1-4 are thus jointly and severally liable to pay pecuniary compensation to the plaintiff by way of damage for his wrongful loss committed by defendant nos. 1-4. The plaintiff also suffered a heavy business loss due to his failure to get Bank loan of Tk. 1,25,00,000/- from the National Bank Ltd. at the appropriate time. Thus he suffered the damages for depriving him of the reward amounting to pecuniary compensation at Tk. 3,00,00,000/-. He then issued a legal notice to the defendants demanding payment of Tk. 3,00,00,000/- as compensation for the damages caused to him by the defendants no. 1 to 4. The defendants

though received the said legal notice on 08.08.2010 but did not make any payment or give any reply to the legal notice. The plaintiff had reason to believe that the defendants would not make payment of the sum as demanded by him willingly and hence instituted the suit.

The defendant nos. 1-4 entered appearance in the suit and contested the same by filing written statement denying all the materials averments so made in the plaint contending *inter alia* that, due to technical fault inadvertently the name of the plaintiff appeared in the CIB database. However, when the matter came to the knowledge of the defendants, they took necessary steps to correct the CIB database by a writing letter to Bangladesh Bank to drop the name of the plaintiff from the CIB database immediately. So, they prayed for dismissing the suit.

Defendant no. 6, Bangladesh Bank also contested the suit by filing written statement stating *inter alia* that Bangladesh Bank has no responsibility and liability to that effect as the concerned bank since sent the list of its defaulter borrowers and then it published it in the CIB report.

The trial Court framed as many as 04(four) different issues and in course of the trial, the plaintiff examined 01(one) witness and the defendant also examined 01 (one) witness and both parties adduced documentary evidence in order to prove their respective cases.

Upon hearing the parties and on perusal of the pleadings and evidence, the learned Joint District Judge, Third Court, Dhaka then decreed the suit in-part against defendant nos. 1 to 4 on 28.08.2019 awarding Tk. 1,00,00,000/- (One crore).

Being aggrieved by and dissatisfied with the judgment and decree dated 28.08.2019 passed by the learned Joint District Judge, Third Court,

Dhaka, the plaintiff as appellant then preferred this appeal before this Court.

Defendant no. 4 also preferred appeal challenging the part decree of the trial court before this court being First Appeal no. 703 of 2019.

Mr. Md. Hamidur Rahman, the learned Advocate appearing for the appellant upon taking us to the impugned judgment and decree as well as the documents so appeared in the paper book at the very outset submits that the plaintiff was selected as the highest taxpayer in Mymensingh tax circle no. 1, Mymensingh and he was selected for state reward, but due to the fault of the defendants nos. 1-4 finally he was deprived of the said honour and reward and thus the plaintiff is entitled to adequate pecuniary compensation from the defendants but the trial Court failed to realize the quantum of financial loss suffered by the plaintiff for the fault of the defendants and arrived at a wrong decision to decree the suit in-part and as such the impugned judgment and decree is liable to be set aside.

The learned Advocate for the appellant further contends that the plaintiff has suffered irreparable loss socially, mentally, financially and physically in his business arena, but the trial Court very wrongly awarded minimum compensation even though the plaintiff is entitled to get relief in full as prayed for, but the trial court most illegally decreed the suit in part and as such the impugned judgment and decree is liable to be set aside.

Finally, he submits that the impugned judgment and decree is bad in law and thus liable to be set aside and the appeal be allowed.

However, in support of his contention, the learned counsel refers to the decision passed in the cases of *Bangladesh Beverage Industries*

Limited, represented by its Managing Director Vs. Mrs. Rawshan Aktar, reported in 4CLR(AD)(2016)411 and *Sri Manmath Nath Kuri Vs. Mvi. Md. Mokhlessur Rahman and another*, reported in 22 DLR (SC)(1970)51.

Per contra, Mr. M. Shakhawat Hossain, the learned Advocate appearing for respondent no. 1 very vehemently opposes the contention so taken by the learned Advocate for the appellant and submits that the suit itself is filed out of misconceived of law of Tort and hence it is not maintainable in its present form. The learned counsel further submits that, the plaintiff has failed to prove the compulsory four elements of negligence i.e. Duty, Breach, Causation and Harm. There is no specific claim, no breakdown and no table or head of the compensation claimed in the plaint having no scope to assess the compensation. Mr. M. Shakhawat Hossain also submits that the plaintiff is a contractor by profession and applied for a house building loan to the National Bank Ltd. not for business purposes which was ultimately rejected even though due to such refusal of granting credit facilities no business loss has been occurred.

He further contends that when the matter came to the knowledge of this defendant-respondent it took necessary steps to correct the CIB database by writing letter to Bangladesh Bank requesting it to drop the name of the plaintiff from the CIB database immediately and there is no fault or negligence made by this defendant-respondent yet the trial court without assigning any reasoning passed the erroneous judgment and partial decree for Tk. 1,00,00,000/- which is not tenable in the eye of law and as such the impugned judgment and decree is liable to be set aside.

The learned counsel further contends that a floodgate will open if the financial institution is held liable for such silly mistake for which the borrower has in a way been affected and appeal is allowed and hence he finally prays for dismissing the appeal.

We have heard the learned counsels for both the parties, perused the impugned judgment and decree, memorandum of appeal as well as other materials on record.

On going through the impugned judgment, we find that at the fag-end of the judgment, the learned judge of the trial court came to a conclusion that there has been no proper yardstick to measure the damages suffered by the plaintiff but the learned Judge ultimately came to a conclusion that the plaintiff suffered damages on account of financial loss as well as mental loss thus the plaintiff is entitled to taka 1(one) crore as compensation but in the said observation, the learned judge of the trial Court did not specify or give any breakdown on what account the plaintiff is entitled to taka 1(one) crore.

The learned counsel for the appellant very frankly submits that the decision reported in 4CLR(AD) 411 upon which the appellant gave emphasis is totally distinguishable with the facts and circumstance of the case in hand as in the cited decision, the plaintiff claimed compensation in 6 different heads amounting to taka 3,52,97,000/- in total and the Appellate Division in the said cited decision ultimately gave a lump sum compensation in 3 different heads reducing the claim amount at taka 1,71,47,008/-. So, until

and unless, in the plaint there has been a breakdown with regard to the particular damages like financial damage, mental damage, physical damage or business damage there has been no scope on the part of the trial court to assess the quantum of damage plaintiff claimed to have suffered. In the impugned judgment, the learned judge admittedly has not given any breakdown while determining taka 1 (one) crore as compensation.

Furthermore, the learned counsel for the respondent-bank very robustly opposes the operative portion of the impugned judgment submitting that though that very compensation of taka 1(one) crore has been awarded against defendant nos. 1-4 yet there have been no specifications who will be liable to pay what amount in what manner whether combinedly or separately. So in that respect, the impugned judgment is also defective one. So, we are of the considered view that according to the ratio laid down by our Appellate Division until and unless the plaint is amended by giving a breakdown followed by evidence leading to that effect the suit in its present form cannot be adjudicated and therefore the impugned judgment so passed by the trial court cannot sustain.

In view of the above, we feel it expedient to send back the case on remand to the trial court enabling the plaintiff to amend the plaint in light of the decision so passed by the Appellate Division reported in 4CLR(AD)411 along with our aforesaid observation to proceed with the suit if the plaintiff desires so.

In the result, the appeal is disposed of with the above observation.

The impugned judgment and decree dated 28.08.2019 so passed by the learned Joint District Judge, Third Court, Dhaka is thus set aside. The

suit is sent back on remand for trial and the trial court is directed to dispose of the suit within a period of 6 months from the date of receipt of the copy of this order. As observed, the parties are at liberty to adduce/produce additional evidence in support/against the amendment supposed to be made by the plaintiff in his plaint.

Let a copy of this judgment and order along with the lower court records be transmitted to the learned Joint District Judge, Third Court, Dhaka forthwith.

Md. Mozibur Rahman Miah, J.

I agree.