Before T. S. Thakur, C.J and Kanwaljit Singh Ahluwalia, J

DABWALI FIRE TRAGEDY VICTIMS ASSOCIATION,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

C.W.P. No. 13214 of 1996

9th November, 2009

Constitution of India, 1950—Art. 226—Fire tragedy—Annual Prize distribution of a school—Venue—A marriage palace—Pandal catching fire—Single exit point resulting stampede—One Man Commission finding owners of palace guilty of negligence leading to fire incident—Commission also finding management of school vicariously liable for act of negligence, omission and commission—Officials of electricity Board and Municipal Committee also found negligent in discharging of their duties—Non-observance of statutory requirements by officials of M.C.—Findings of fact recorded by Commission—Whether suffer from any error or perversity—Held, no—Commission perfectly justified in holding school and marriage palace liable for act of tort—Amount of compensation—Whether claimants entitled to seek enhancement of amounts of compensation awarded by Commission—Held, yes—Apportionment of enhanced amount among claimants held to be in same ratio as recommended by commission—Disability suffered by victims on account of burn injuries—Commission awarding compensation on a uniform basis where disability is between 1% to 10%—Whether award of uniform compensation to victims of 1% to 10% disability is just and reasonable—Held, no—Proper course to classify victims into two groups suffering 1% to 5% and 6% to 10% disability—Directions for payment of compensation issued while making modifications in amounts awarded by Commission—Claimants also held entitled to payment of interest w.e.f. date of filing of claim petition before commission.

Held, that :—

(1) The amount determined in each one of the cases referred to in the body of the judgment are hereby awarded in favour of the claimants with interest at the rate of 6% per annum with effect

from date of the filing of the claim petition before the One Man Commission.

(2) Out of the total amount payable to each one of the claimant, the State of Haryana shall pay 45% of the total amount of compensation awarded in each one of the cases dealt with by us with liberty to recover 15% each of the amount so paid from Dakshin Haryana Bijli Virtran Nigam and Municipal Committee, Dabwali. The balance 55% of the amount awarded shall be payable by respondents No. 4, 5 and 9 jointly and severally.

(3) The apportionment for the enhanced amount of compensation among the claimants shall be in the same ratio as recommended by the One Man Commission subject only to modifications and/or further directions indicated by us in the body of the judgment. We make it clear that in cases where we have directed deposit of the amount of compensation in the name of minor claimants, the same shall be disbursed to the claimants, in case they have already attained majority.

(4) The amount awarded by us together with interest shall be deposited by the respondents in the ratio in para 2 above with the Additional Civil Judge (Sr. Division) Dabwali for disbursement among the claimants within a period of 4 months from today, failing which the rate of interest awarded by us on the principal amount held payable, shall stand enhanced from 6% to 10% per annum from the date the period of 4 months expires till actual payment is made.

(5) In the event of any default by the respondents in the making of the payment, the claimants shall be free to not only institute proceedings for the breach of the direction of this Court but also approach the Additional Civil Judge (Sr. Divn.), Dabwali for effecting recovery of the amount remaining unpaid.

(6) The Additional Civil Judge (Sr. Divn.), Dabwali, shall, in any such event, initiate proceedings for recovery of the amount that remains unpaid as if the same was recoverable as fine and/or as arrears of land revenue for which purpose he shall be competent to issue certificates and instructions to the Collector(s) concerned for recovering the amount outstanding.

(7) Treatment for the burn injury sustained by the injured victims shall be provided free of cost. In case the same is not available in the State-run hospitals in Haryana, the same shall be arranged in Post Graduate Institute of Medical Education and Research, Chandigarh or at the All India Institute of Medical Sciences, New Delhi upon satisfaction by the Director, Health Services, Government of Haryana that such treatment is essential but cannot be provided in the State-run hospitals.

(Para)

Mrs. Anju Arora, Advocate and Ms. Aditi Girdhar, Advocate, *for the petitioner.*

Onkar Singh Batalvi, Advocate, Central Government Standing Counsel, *for respondent No. 1.*

H. S. Hooda, Advocate General, Haryana with Randhir Singh, Addl. A.G. Haryana, *for respondents No. 2 and 3.*

Rajive Atma Ram, Senior Advocate with Sunish Bindlish and Subhash Gupta, Advocates, *for respondents No. 4 and 5.*

Girish Agnihotri, Senior Advocate with Arvind Seth, Advocate, *for respondent No. 6.*

Mahavir Sandhu, Advocate, *for respondent No. 7.*

None, *for respondent No. 8.*

Gaurav Mohunta, Advocate, *for respondent No. 9.*

T. S. THAKUR, CHIEF JUSTICE

(1) Four hundred and forty six precious lives, mostly children and women, were lost in what turned out to be the worst fire tragedy ever in this part of the Country. Besides those who died, nearly 200 suffered burn injuries, disfiguring some of them beyond recognition. Payment of compensation to those, who survived or the next of kin of those, who did not, may never heal their wounds completely nor make any material difference in the ground realities unless all those concerned do some introspection to identify the causes for such tragedies and take corrective steps to prevent their recurrence in future. That is because human tragedies of such magnitude are more often than not caused as much by lack of care and caution as

by the all round failure of public authorities statutory or otherwise in the due and proper discharge of their functions and duties especially those concerning enforcement of safety measures.

(2) D.A.V. Centenary Public School, Mandi Dabwali was known to be a Premier Educational Institute in District Sirsa in the State of Haryana. The school was amongst six hundred and fifty other colleges and institutions under the management of D.A.V. College Managing Committee, Chitragupta Road, New Delhi. For an Annual Prize Distribution Function, the school appears to have chosen what was known as Rajiv Marriage Palace situated at Chautala Chowk Mandi, Dabwali, as the venue to which the children on the rolls of the school, their parents and teachers were invited. An invitation card sent to the invitees by the Principal of the School and the Regional Director of the D.A.V. Managing Committee announced that Shri M. P. Bidlan, I.A.S., Deputy Commissioner, Sirsa would be the Chief Guest and Shri S. N. Kamboj, S.D.M. Dabwali as the Guest of Honour. The function was to start at 11.00 A.M. on the 23rd of December, 1995. At about 1.40 P.M. or so, the pandal under which a very large number of invitees were sitting, appears to have caught fire. To the misfortune of those attending the function the fire spread much too fast to let them escape. The blaze claimed 446 lives apart from causing burn injuries to 200 others. The cause of death was fire and a resultant stampede inside the pandal for want of escape routes the single exit point proving to be too small to let everyone under the pandal run to safety.

(3) Nearly nine months after the incident when the funeral pyres and the ill fated venue had cooled, CWP No. 13214 of 1996 was filed by the petitioner-association in the interest of those affected by the tragedy claiming a number of reliefs including adequate compensation to those who had lost their near and dear ones. Several directions were issued in the said writ petition from time to time which was finally disposed of by an order dated 28th/29th January, 2003, whereby Justice T. P. Garg, a former Judge of High Court of Allahabad was appointed as a one man Commission for determining the negligence of those connected with the incident and the amount of compensation payable to the victims or their next of kin.

(4) The one man Commission, pursuant to the above directions, published notices inviting claim petitions from the general public, in response

whereto the victims association filed a total of 493 petitions, out of which 405 cases related to compensation in death cases while the remaining 88 cases pertained to burn injuries suffered by the claimants. Notices were also sent to nine respondents including Union of India, State of Haryana, D.A.V. Managing Committee, Haryana State Electricity Board, Municipal Council, Mandi Dabwali and Rajiv Marriage Palace.

(5) In their claim petitions, the claimants alleged that the D.A.V. Managing Committee and the school authorities had organized the ill fated function at a Marriage Palace without taking reasonable care and caution expected of a prudent person regarding the safety of all those attending the function. The School Authorities had thereby committed an act of negligence especially when the Marriage Palace and the Pandal under which the function was held were constructed in defiance of the building plan sanctioned by the Municipal Committee and had more than double the sanctioned electric load with loose wires crisscrossing the Pandal. Absence of fire fighting equipment and proper exits made the peace vulnerable to any mishap which did occur claiming valuable human lives. The claim petition prayed for serveral reliefs apart from payment of compensation.

(6) In the reply filed by the respondents to the claim petitions, the allegation that there was any negligence on their part or that any legal liability accrued against them were both denied. Reply filed by respondents No. 1 to 3 *inter alia* pointed out that the State Government was shocked over the tragic incident and that apart from remedial measures and providing relief to the affected instituted a fact finding enquiry into the incident. FIR No. 397 of 1995 under Section 304-A of the Indian Penal Code registered at Police Station, Dabwali was subsequently transferred to the Central Bureau of Investigation. Respondents No. 1 to 3 further pleaded that the Government had announced an *ex-gratia* payment of Rs. 1,00,000 for every death and Rs. 50,000 for every injury case which amount had been disbursed to the persons concerned. Reimbursement of medical bills to the injured was also one of the reliefs, which the State Government had conceded to the victims before the High Court. Respondents 1 to 3 alleged that the incident had taken place on account of the negligence of respondents No. 4, 5 and 9, who had organized the function and on account of their short sighted, careless and greedy approach meant to cut corners and save money in total disregard of the safety of the students, the parents and guests invited to the

function. It was also alleged that the incident had taken place on account of highly inflammable material used to erect the pandal and the inadequate number of exit points from the same. The charge-sheet filed by the C.B.I., had, according to the respondents, culminated in the conviction of Kewal Krishan, Rajinder Kumar and Devi Dayal by Special Judicial Magistrate, C.B.I., Ambala.

(7) Respondents No. 4 and 5 had also similarly denied the averments made in the claim petitions and asserted that the fault leading to the tragedy lay with respondent No. 9, who had failed to make proper arrangements and take all such steps as were essential in the circumstances. It was also asserted that no claim was maintainable against respondent No. 4 as the said respondent was not a juristic person. It was also alleged that the function was not organized by the D.A.V. Managing Committee, as such no negligence or blame for the tragedy could be attributed to the said Committee. It was further alleged that the D.A.V. organization had treated the tragedy as a natural calamity and taken several steps in the matter such as helping the victims in getting free education, medicines and even financial assistance. According to respondents No. 4 and 5, the responsibility for the safety of the students, staff and parents was that of respondent No. 9, engaged to organize the function and not the School Authorities or D.A.V. Managing Committee. Respondent No. 9 was, according to the school, expected to make arrangements for the safety of the students, staff, parents and guests invited to the function.

(8) Respondents No. 6 and 7, H.S.E.B. and Municipal Committee, Dabwali respectively also disputed their liabilities and denied that they were guilty of any negligence whatsoever. Similarly respondent No. 8, Shri M. P. Bidlan, the then D.C. Sirsa denied his liability and pleaded complete innocence in the matter.

(9) Respondent No.9—Rajiv Marriage Palace too filed a reply *inter-alia* stating that the venue had not been formally inaugurated till the time the incident occurred and it was only because the school was serving a social cause that the venue was offered to them without charging a single penny in consideration thereof. It was also alleged that the responsibility for making the necessary arrangements for seating of the guests and provisions for electricity and water etc. was that of respondents No. 4 and 5. The

allegation that they had been using more than the sanctioned load of electricity with loose wires hanging all around was also denied by them. The Pandal was, according to respondent No. 9 made of pure cotton fabric purchased from M/s Sukh Chain Singh Makhan Singh and Co. Gandhi Chowk, Abohar. All other arrangements towards electricity, water, security, eatables according to respondent No. 9 and seating etc. were to be made by the school itself.

(10) The Commission afforded the fullest opportunity to the parties to lead evidence in support of their respective cases. Consequently, as many as 1084 witnesses including 393 doctors were examined on behalf of the claimants over a period of four years. In rebuttal, the respondents examined 29 witnesses on their behalf, while the Commission examined as many as 30 witnesses on its own. It is noteworthy that as many as 2800 documents were produced, marked and exhibited during the course of inquiry proceedings. The hearing of the claim petitions filed before the Commission commenced on 29th August, 2006 and was completed on 24th December, 2007. The Commission submitted the first part of the report on 19th August, 2008 in which it determined the amount of compensation payable to the claimants in death cases. The second part of the report submitted by the Commission on 10th December, 2008 dealt with the amount of compensation payable to the victims in injury cases. The third and final part of the report submitted on 16th March, 2009 determined the negligence of the respondents and the apportionment of the liability to pay compensation among them.

(11) Dealing with the question of negligence of the respondents, the Commission recorded a clear finding to the effect that while the accommodation in the School building was admittedly insufficient for holding of a function like the one which the School was organizing, the same did not absolve the School of the responsibility to look for a suitable alternative. The Commission took the view that it was the responsibility of respondents No. 4 and 5 to see that the Marriage Palace where they were holding their Annual Function was safe and had the capacity to accommodate the large number of invitees attending the same. It was also the responsibility of the said respondents to ensure that adequate arrangements for fire fighting in the case of an emergency existed and that there were sufficient number of exits for escape in any such eventuality. The School was also expected to ensure that the Marriage Palace owner had the necessary certificates and

permissions from the Municipal Committee, Dabwali, for holding of a function like the one being organized by the School. The Commission took the view the respondents No. 4 and 5 had, in their anxiety and over enthusiasm, failed to take care and look into all these aspects of security even when the function was to be attended by a very large number of persons comprising men, women and children. The Commission observed :—

> "Under the above circumstances, it is clear that respondents No. 4 and 5, who were expected to see that the Marriage Palace where they were holding their annual function was safe and sound and it had the capacity to accommodate about 1500 persons/invitees : that there were sufficient arrangements for fire fighting equipment and water in case of emergency and there were sufficient number of exits and openings for escape and going out in case of emergency and also that the owners of the Marriage Palace had with them the completion certificate from the Municipal Committee, Dabwali, before holding any such function but in their anxiety and over-enthusiasm they did not care to look into any such thing".

(12) The Commission rejected the contention urged by respondents No. 4 and 5 that the responsibility for making arragements for the function lay entirely with respondent No. 9, the owner of the Marriage Palace, or that safety and security of the guests including the children who were participating in the function was a matter that rested with Marriage Palace or its owners. The Commission observed :

> "Although respondents No. 4 and 5 have throughout alleged that the Banquet Hall owners had to make all arrangements including sitting, electricity, lighting and tent etc. but then they have not led any evidence in support of their allegations. Their own witnesses : Smt. Neelam Wadhwa, a teacher of the school, and Shri V. K. Mittal, Principal of the School, have categorically stated that there was only one gate of entrance and exit in Rajiv Marriage Palace and the width of that gate as per their estimate was about 10 × 12 feet. Respondents No. 4 and 5 have not led any iota of evidence in support of their plea that their 'agent' respondent No. 9 was negligent in so far as the sitting, lighting,

electricity and tent arrangements were concerned. None of their witnesses has stated as to what steps were taken and what arrangements were made by the organizers of the function i.e. Respondents No. 4 and 5 to meet any emergency, or unforeseen event like the present one. Admittedly, the size of the only gate of entrance and exit to the Banquent Hall was only 10 × 12 feet. Thus, when the fire engulfed the entire **Pandal,** it was humanly impossible for the children, ladies and gents to come out speedily from out of the single gate of exit".

(13) Repelling the contentions urged on behalf of respondents No. 4 and 5 that they had paid a sum of Rs. 6,000 towards hire charges of the Marriage Palace and, therefore, had no responsibility for the safety and security of the children and other guests, the Commission observed :—

"Even if it be admitted for the sake of argument that the respondent No. 9 had to make all these arragnements for a consideration of Rs. 6,000, although as per the statement of Kewal Krishan, one of the owners of respondent No. 9 (RW19/1-DFT), they offered the Marriage Palace to the School Authorities for their publicity free of charge ; that the entire arrangement with regard to the chairs, curtains and other installations were all made by the School Authorities with which they had no concern whatsoever. He has also stated that as many as two generators were provided by the School Authorities and which were placed outside the Marriage Palace in the street. It can thus safely be concluded that even if the Rajiv Marriage Palace was hired for an amount of Rs. 6,000, but as per statement of Kewal Krishan, they had only offered the Banquet Hall while all other arrangements were to be made by the School Authorities. It is also a matter of common observation that in such functions, the sitting, lighting and such type of other arrangements are always made by the organizers themselves as per their requirement. To say now that all these arrangements like sitting, lighting, tent etc. were to be made by respondent No. 9, does not, therefore, appeal to reason. The respondent No. 9 was only an 'agent' of respondents No. 4 and 5 and whatever he did, was done during the course of his agency".

(14) While examining the liability of respondent No. 9, the owner of the Marriage Palace, the Commission recorded a finding that the owners had not applied for a completion certificate after the construction of the Marriage Palace was completed nor had they obtained any licence from the Municipal Committee for running the Marriage Palace. The Commission further recorded a finding that respondent No. 9 had not made any arrangement for a Fire-brigade and/or Ambulance in the event of an emergency arising during the function. The Commission accepted the assertion made by respondent No. 9, the owner of Marriage Palace, that the Marriage Palace was offered to respondents No. 4 and 5 free of any charge only with a view to promoting the commercial interest of the establishment. Analysing the deposition of Mr. V. K. Mittal, Principal of the School and Mr. Jagdish Deol, Upper Division Clerk, produced by respondents No. 4 and 5 as defence witnesses, the Commission came to the conclusion that payment of Rs. 6,000 to the Marriage Palace was not established as the receipt showing the said payment had not been produced. The commission observed :—

> "From the evidence of Shri V. K. Mittal, it is rather made out that there did not exist any such receipt showing the alleged payment of Rs. 6,000 to respondent No. 9. In case there would have been any such receipt, Shri V. K. Mittal or Shri Jagdish Deol, Upper Division Clerk of the Head Office of the D.A.V. College Managing Committee must have produced it but the same has been withheld from the Commission for the reasons best known to them. Shri Jagdish Deol has nowhere stated about his having received any such receipts of Rs. 6,000 from the D.A.V. School, Dabwali alongwith other record as alleged by Shri V. K. Mittal. Moreover even if there was any such receipt as has been categorically stated by Shri V. K. Mittal, there are no reasons as to why respondents No. 4 and 5 would withhold the same from the Commission".

(15) Having, thus, found the owners of Marriage Palace guilty of negligence leading to the fire incident, the Commission went on to hold that the relationship between respondents No. 4 and 5, on the one hand, and respondent No. 9, on the other, was that of Principal and Agent thereby rendering the former vicariously liable for the acts of negligence, omission

and commission of the latter. Relying upon the decisions of the Supreme Court in **Pushpabai Parshottam Udeshi and Others** *versus* **Ranjit Ginning and Pressing Co. Pvt. Ltd. and Another (1)** and **Minu B. Mehta and Another** *versus* **Balkrishana Ramchandra Nayan and Another (2)** and a Full Bench of this Court in **Pirthi Singh** *versus* **Binda Ram and Others (3)** the Commission held that regardless whether or not payment of Rs. 6,000 was proved to have been made towards user charges by respondents No. 4 and 5 to respondent No. 9 the former were vicariously liable for any act of negligence, omission and/or commission of that latter. The Commission took the view that since the function in question had been arranged by respondents No. 4 and 5 in the premises of respondent No. 9 the inference was that negligence of respondent No. 9 was in the course of Agency thereby making the Principal vicariously liable for such negligence. Relaince was also placed by the Commission upon the decision in **M. S. Grewal and Another** *versus* **Deep Chand Sood and Others (4)** and **Kooragang Investments Pvt. Ltd.** *versus* **Richardson and Wrench Ltd. (5)** to hold that the liability of respondents No. 4 and 5 could not be different from that of respondent No. 9.

(16) The Commission examined the question of negligence on the part of the Haryana Electricity Board also and on the basis of the evidence on the record, returned a specific finding to the effect that the officers of the Board were totally negligent in the discharge of their duties. The Commission held that there were two electric connections for the Marriage Palace and that although the sanctioned load was limited to 5.980 KW only, the owners of the Marriage Palace were found to be consuming 11.15 KW load, a fact that was established even in the investigation conducted by the Central Bureau of Investigation. The Commission found that the terminal plate of the three-phase meter was intentionally left unsealed by the Junior Engineer, who had released the connection in favour of the owner of the Marriage Palace. This was done to facilitate illegal abstraction of electricity by the owners without making any payment to the Board. It also recorded a finding that welding-set lying at the spot appeared to have been utilized

(1) AIR 1977 S.C. 1735
(2) AIR 1977 S.C. 1248
(3) AIR 1987 Punjab & Haryana 56
(4) 2001 S.C.C. (Criminal) 1426
(5) (1981) 3 All. E.R. 65

by the owners for the construction of steel structures of the main hall and that no meter reading was recorded in regard to both the electric connections. The bills issued by the Board Authorities were also for very petty amounts. In the opinion of the commission, had the officers/officials of the Board been vigilant and had they checked the premises, things would have been entirely different and the incident in question may not have occurred. The Commission observed :

> "From the above, the negligence of the officials of the Board respondent No. 6 is proved. It is also proved that there were two electric connections installed in the Marriage Palace. One of the Connections was Single-Phase while the other was a Three-Phase connection. Although the sanctioned load of Three-Phase connection was 5.980 KW but the owners were found consuming 11.10 KW load which was almost double the sanctioned load, which has clearly been established from the investigation of the C.B.I. as per their report Ex.P. 1347/1-DFT. It has also come in the C.B.I. Report that the meter terminal plate of the Three-Phase meter was intentionally not sealed by the J.E., who had released the connection in favour of Kewal Krishan. This was done to facilitate undue consumption of the electricity by the owners without making any payment to the Board. It has also come in the evidence that the owners had taken the electric connection in the **Pandal** by unauthorisedly extending it from Three-Phase connection. The welding-set lying there appears to have been utilized by the owners for the construction of steel structures of the main Hall. As stated above, no meter reading was taken and the bills for both the electric connections were issued for very petty amount and even then no payment of the bills was ever made by the consumers. This further shows that the whole staff of the Board was in connivance with the owners. It has also been proved that four core of cable of the length of 66 meters was used by the J.E. against the instructions of the Board for the use of 30 meters cable only. The Meter Reader, Lineman, J.E. and other supporting staff of the Board were all highly negligent and not performing their duties intentionally in connivance with

the owners of the premises, where connection was released and even the higher officers also cannot escape the liability, because they (higher officers) also failed in the performance of their duties as they never cared to inspect the site and get matters straight particularly when the consumer was not making payment of any bill for a considerable long time. Had they been vigilant and checked the premises and other record of the Board with regard to the payment *qua* the bills, the things would have been entirely different and the incident would not have perhaps occurred. In this view of the matter, the respondent No. 6 and its officials were extremely negligent in the performance of their duties and for which they are certainly liable. Since the negligence of the officials of the Board was in their public capacity as also in the discharge of their public duties during the course of employment and they being employees of the Board, the respondent No. 6 i.e. the Board is vicariously liable for their negligence". *(emphasis supplied)*

(17) The Commission, on the above reasoning, found the officials of the Board to be negligent in the discharge of their duties and the Board to be vicariously liable for such neglience. Since the Board, during the intervening period, was converted into Dakshin Haryana Bijli Vitran Nigam, the Nigam was held liable for payment of compensation to the claimants. But keeping in view the fact that the Nigam was entirely controlled by the State Government, the Commission held the State of Haryana to be liable to pay the amount in the first instance and recover the same from the Nigam subsequently.

(18) Dealing with the liability of the Municipal Committee, Dabwali, the Commission came to the conclusion that Rajiv Marriage Palace was constructed in complete violation of the sanctioned plans. No Completion Certificate was obtained by the owners and the building occupied without clearance from the Municipal Authorities. There were no fire fighting equipments nor any exit gate except one that was barely 10×12 feet wide. The onwers of the Marriage Palace had never obtained "No Objection

Certificate" from the Fire Officer nor made any arrangement for fire fighting equipment and other such essential services before putting the Marriage Palace to use. The Commission observed :–

> "As stated by Shri Ramesh Chander, Assistant Engineer of the Municipal Committee, he did not care to inspect the site after the sanction of the building plan. He did not care to see as to whether the construction is being done according to the site plan and all the constructions made by the owners are according to the sanctioned site plan and that after completion of the construction, a completion certificate has been obtained or not and whether a 'no objection certificate' from the Fire Officer has been procured or not. In this view of the matter, the Municipal Committee (respondent No. 7) was certainly negligent and so also respondents No. 4 & 5 alongwith them".

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> "This further shows that the Municipal Committee was also negligent in so far as the maintenance and upkeep of its fire station and the presence of the officials at the Fire Station is concerned. It appears that the Municipal Committee perhaps had no control or supervision on the staff of its Fire Station, so much so, that even the Fire Station Officer was found to be on "furlough" at the time when his presence was of utmost importance at the time of such an emergency".

(19) The Commission then summed up its findings regarding the negligence of the Municipal Committee and its officials, in the following words :–

> "It has also been held in this report that the officials of the Municipal Committee, who were duty bound to check the unauthorized construction in the town and the construction of the Marriage Palace according to the sanctioned plan, miserably failed in the discharge of their duties. Had the officials of the Municipal Committee taken due and timely care, the tragedy might have been minimized. It has been held above that the building of respondent No. 9 was constructed in violation of the sanctioned

plan; that no completion certificate was obtained by the owners of the building before occupying the same nor any fire fighting equipment was installed and there was only one gate of entry and exit of the size of 10' × 12'. The Fire Officer of the Municipal Committee took no pains to see that the owners of the Marriage Palace had never obtained 'No Objection Certificate' from him nor made any arrangement for keeping fire-fighting equipment in the case of emergency. Under the circumstances and as held above the Municipal Committee (respondent No. 7) and its officials were certainly negligent in the discharge of their duties".

(20) Having regard to the gravity of the culpable negligence as also the involvement of the officials of the Municipal Committee in the non-observance of statutory requirements, the Commission held the Municipal Committee to be liable to pay compensation to the extent of 5% of the whole amount and directed the said amount to be paid by the State Government on the ground that the latter was vicariously liable for the negligence of the former.

(21) The Commission then examined whether the State of Haryana was liable to share the responsibility for the tragedy that occurred at Dabwali. Answering the question in the affirmative, the Commission held that Mr. M.P. Bidlan who happened to be the Head of the District Administration and was the Chief Guest for the function organized by the School did not take any care to see that proper arrangements for security, fire fighting equipment, ambulance and other public utility services were made for those who were invited to the function. The Commission rejected the explanation offered by Mr. Bidlan that such arrangements were not necessary to be made because the function was a private function. Relying upon the deposition of Mr. Norang Dass, Tehsildar, Dabwali, who was examined as a witness by respondents No. 1 to 3, the Commission held that District Administraion was duty bound to enforce and secure the enforcement of laws relevant to various departments. It also held that the District Adminstration had to look after the security, safety and welfare of its citizens and that the Deputy Commissioner had agreed to be the Chief Guest at the function in discharge of a public duty and not in his private

capacity, which fact was admitted even by Mr. Bidlan in his own deposition. The Commission relied upon the findings recorded by the Enquiry Officer against Mr. Bidlan, according to which the charge of dereliction of duty framed against Mr. Bidlan was proved. On the basis of the material on record comprising oral and documentary evidence adduced by the parties, the Commission further held that Mr. Bidlan had left the place of incident hastily only to go to the security of a Police Station at Odhan some 28 Kms. from Dabwali and had in the process, failed to discharge his duties as the Head of the District Administration in which capacity he ought to have supervised the relief and rescue measures especially when people were crying for the same. The Commission also held that the findings recorded by the Enquiry Officer regarding the charge of dereliction of duties by Mr. Bidlan and the imposition of penalty upon him were perfectly justified. The Commission noted that the Central Administrative Tribunal, Chandigarh Bench, before whom the order of punishment imposed upon Mr. Bidlan was assailed, had upheld the order of punishment. After discussing the deposition of eight witnesses examined by Mr. Bidlan in his defence, the Commission concluded as under :–

> "From the evidence of above witnesses examined by Shri M.P. Bidlan, he had tried to prove that he remained at the scene of occurrence for quite some time after the incident, tried to break the wall with the help of a tractor-trolley, sent for Haryana Roadways buses and also tried to use the telephone facility at Police Station Sadar, Dabwali and only thereafter, he went to Police Post, Odhan. But then it will be seen that no such plea has been taken by him anywhere in his written statement. Obviously, therefore, the entire evidence led by him in support of his contention is certainly beyond the pleadings and cannot be looked into. Moreover, it appears that all this evidence has been led by Shri M.P. Bidlan in order perhaps to build up some sort of defence in his departmental enquiry or for any other reason best known to him. In any case, this evidence does not help him in any manner in view of the findings of the Enquiry Officer Shri Dharam Vir and the punishment awarded to him by the Government of India and his challenge against the same before the Central Administrative Tribunal, Chandigarh, also

met with no success. A perusal of written statement filed by Shri M.P. Bidlan shows that he has throughout accused respondents No. 4, 5 and 9 for the tragedy and has asserted that the only liability for compensation falls upon respondents No. 1, 2, 3 i.e. the Union of India, the State of Haryana and the Secretary Health and respondent No. 9 besides respondents No. 4 & 5. The only plea taken by him in the prayer clause of his written statement is that he never fled away from the place of incident and there is absolutely nothing against him as alleged by the claimants. It is thus evident that no such plea has been raised by him in his written statement that he stayed at the scene of occurrence for quite some time, asked a driver of tractor-trolly to demolish the wall, sent directions to the Haryana Roadways Workshop for sending buses, went to Police Station Sadar, Dabwali and when all these efforts failed, he went to Police Post Odhan to do the needful. The evidence led by Shri M.P. Bidlan cannot, therefore, be looked into and is of no assistance to him in the absence of any plea in any of his written statements. As per his own statement, Shri M.P. Bidlan had already put in 21 years of service at that time, firstly as a Haryana Civil Service Officer for 13 years and thereafter, an Officer of the I.A.S. for the last about 8 years. Being an officer having 21 years administrative experience, it is indeed extremely sad to see that Shri Bidlan did not rise to the occasion and instead of taking control of the entire situation created by the unfortunate fire incident, chose to run away from the site only to take breath at a distance of 28 Kms. from Dabwali at Odhan. The conduct of Shri M.P. Bidlan was indeed most reprehensible and certainly deserves censure and for which he has been rightly penalized by the Appropriate Authority. The evidence led by him does not, in any manner, absolve him of the responsibility that fell upon him on account of the fire incident. An officer of such a long administrative experience should have remained at the spot and organized the rescue operations, particularly when his Sub Divisional Officer had died in the fire incident while the Deputy Superintendent of Police had received extensive burns and there was no Senior Officer except him on the spot at that time". *(emphasis is ours)*

(22) The Commission further held that the version given by Mr. Bidlan that a large mob had gathered in front of Police Station Sadar Dabwali did not lend any support to the plea of innocence set up by him. It was, according to the Commission, all the more necessary for the Deputy Commissioner, who had long administrative experience, to stay put at Dabwali having regard to the extremely grave situation that had arisen out of the incident. The Commission held that when Mr. Bidlan left the place of occurrence, there was no responsible civil or police officer to take charge of the situation that had been created by the incident. He did not contact the local officers nor left any instructions before leaving the site although the Tehsildar, Dabwali was very much there, whose services could have been utilized by him. The Commission finally concluded as under :–

> "From the entire material on the record, it is clearly established that Shri M.P. Bidlan was certainly negligent in the discharge of his duties as Head of the District Administration and he is, therefore, liable for the negligence on his part and for his act of omission to perform his duties as Head of the District Administration being the Deputy Commissioner of the District. Since Shri Bidlan was present as Chief Guest at the function in his public capacity as also in the discharge of his public duties during the course of employment and was an employee of the State Government, only the Haryana State Government respondent No. 2 is 'vicariously' liable for his negligence".

(23) The vicarious liability of the State Government was, on account of the neglect on the part of its officer Mr. Bidlan in the discharge of his duties properly, fixed at 10% of the amount awarded to the victims and their legal representatives. The Commission observed :–

> "Having regard to the degree of negligence on the part of Shri Bidlan in the discharge of his public duties as public servant during the course of employment and being an employee of the State Government, it is held that the Haryana State Government (respondent No. 2) shall be vicariously liable for his negligence and as such it is held that it shall be liable to pay compensation to the extent of **Ten Percent** of the whole".

(24) For the purpose of award of compensation, the Commission categorized the claim petitions into following six distinct categories :–

(1) Death cases involving children between the age group of one month to ten years ;

(2) Death cases involving children between the age group of ten to fifteen years ;

(3) Death cases involving children between the age group of sixteen to twenty two years;

(4) Death cases involving housewives including working women ;

(5) Death cases involving working men; And

(6) Claims based on injuries sustained by the victims men; women and children.

Category 1 Cases :

(25) In so far as death cases involving children between the age group of one month to ten years, the Commission relying upon the decisions of the Hon'ble Supreme Court in **C.K. Subramonia Iyer and Others** *versus* **T. Kunhikuttan Nair and Others (6) New India Assurance Company Limited** *versus* **Satender and Others (7) Lata Wadhwa and Others** *versus* **State of Bihar and others (8) M.S. Grewal and Another** *versus* **Deep Chand Sood and Others (9)** awarded to the parents/next of kin of each child killed in the incident, a lump sum amount of Rs. 2,00,000 towards compensation. It is noteworthy that majority of the victims fell in this category, as out of a total of four hundred and forty six dead, 172 happened to be children in the age group of one month to ten years.

Category 2 Cases :

(26) In the case of children in the age group of 10 to 15 years, numbering in all 38, the Commission relying upon the decisions referred to earlier, awarded a sum of Rs. 4,10,000 per child killed in the incident and apportioned the same between the parents/legal representatives of the deceased.

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(6) AIR 1970 S.C. 376
(7) 2007 (1) Civil Court Cases 255 (SC)
(8) (2001) 8 S.C.C. 197
(9) 2001 S.C.C. (Criminal) 1426

Category 3 Cases :

(27) In the case of 20 children who lost their lives and fell in the age group of 16 to 22 years, the Commission awarded a sum of Rs. 5,00,000 per each child killed in the unfortunate incident and apportioned the amount of compensation suitably among those claiming the same.

Category 4 Cases :

(28) As regards 136 house wives that included 47 working women killed in the fire incident, the Commission awarded compensation that ranged between Rs. 44,000 to Rs. 10,82,000 depending upon the facts and circumstances of each case which facts have been discussed by the Commission at considerable length. The amount of award has also been apportioned by the Commission suitably among the claimants. It is noteworthy that out of 47 working women nine victums who were killed in the incident were unmarried and were working with the D.A.V. School on meager salaries offered to them. It is ironical that while while in the case of children in the age group of 16 to 22 years, the Commission awarded Rs. 5,00,000 per child killed, in the case of nine young ummarried girls, who were working in the School, the compensation awarded ranges between Rs. 44,000 to Rs. 2,30,000 only. The petitioners/claimants have made a grievance against this anamolous situation and claimed enhancement of the compensation awarded to the parents/next of kin of these nine victims by treating the victims as children in age group of 16–22 years. We shall presently examine that aspect when we came to the question of enhancement of the amount of compensation.

Category 5 Cases :

(29) In so far as working men are concerned, the Commission determined compensation payable to the legal representatives of the victims ranging between Rs. 61,200 to Rs. 16,11,000 depending upon the income which the deceased was earning and the multiplier that was applicable to the case at hand.

Category 6 Cases :

(30) In 88 cases of injured men, women and children, the Commission has adopted as method of awarding compensation based on the extent of disability that was suffered by the victims. For a better

understanding of the method adopted by the Commission, we may present the picture emerging from the recommendations of the Commission in the following tabular form :–

S. No.	No of victims comprising men, women and children who suffered disability on account of burn injuries	Extent of Disability	Amount of compensation ranging from
1	29	1% to 10%	Rs. 2,00,000 except in case of one person namely Surinder Pal Kaur *alias* Chhinder Pal Kaur who has been awarded Rs. 1,00,000.
2	8	11% to 20%	Rs.2,50,000 to Rs. 6,00,000
3	9	21% to 30%	Rs.3,50,000 to Rs. 6,00,000
4	12	31% to 40%	Rs.3,00,000 to Rs. 6,50,000
5	7	41% to 50%	Rs.3,25,000 to Rs. 6,50,000
6	4	51% to 60%	Rs.5,00,000 to Rs. 5,50,000
7	3	61% to 70%	Rs.4,00,000 to Rs. 6,50,000
8	3	71% to 80%	Rs.7,00,000 to Rs. 8,00,000
9	3	81% to 90%	Rs.8,00,000 each
10	1	91% to 99%	Rs.15,00,000
11	9	100.00%	Rs.10,00,000 to Rs. 16,00,000

(31) Learned counsel for the parties have filed their objections to the report and recommendations made by the Commission. We may briefly refer to the said objections before proceeding further.

(32) The Association and the victims have *inter alia* raised the following objections to the report :–

I The Commission committed an error in determining the amount of compensation payable in death cases involving children by following the decision of the Hon'ble Supreme Court in **Lata Wadhwa's case** *(supra) stricto senso.* The Commission overlooked the fact that the amount of compensation awarded in **Lata Wadhwa's case** *(supra)* for the children was determined on the basis of the price index then prevailing. The incident in **Lata Wadhwa's case** *(supra)* having taken place on 3rd March, 1989 could not possibly provide a sound basis for awarding compensation in a claim arising out of an accident that took place seven years later on 23rd December, 1995 without adding to the amount awarded in **Lata Wadhwa's case** *(supra)* the component of price escalation based on the National Price Index. In support of its claim for higher amount of compensation, the petitioner-Association has filed a separate calculation chart indicating the amount which the claimants would be entitled to after taking into consideration the Price Index. According to this chart, the compensation payable to the claimants for children of different age groups would be as under :–

S. No.	Age Group of Children	Amount awarded by the Commission on the basis of **Lata Wadhwa's case**	Amount claimed by the Petitioner-Association
1	One month to ten years	Rs. 2,00,000	Rs. 3,57,000
2	Ten to 15 years	Rs. 4,10,000	Rs. 7,33,684
3	15 to 22 years	Rs. 5,00,000	Rs. 8,94,736

II The petitioner-Association has also found fault with the award of compensation by the Commission in the case of housewives. According to it, the Commission committed a mistake in ignoring the very essence of the decision in **Lata Wadhwa's case** *(supra)*, where the contribution of a housewife was assessed by their Lordships at Rs. 3,000 per month. The Commission has, while accepting that contribution in the form of services rendered by the housewives to their families wrongly deducted 1/3rd towards expenses of the victim on herself. This was not, according to the petitioner-Association, permissible having regard to the fact that the Supreme Court had determined Rs. 3,000 per month to be the value of the contribution of the housewives to their families. No deduction towards personal expenses was permissible out of the said contribution nor was any made by their Lordships. The Commission, thus, fell in error in taking the multiplicand at Rs. 24,000 per annum instead of Rs. 36,000 per year. The petitioner-Association has further asserted that the value of the contribution made by the deceased housewives ought to be proportionately raised to a higher figure having regard to the increase in the price index for the period between 1989 and 1995. According to the petitioner-Association, the multiplicand, after taking into consideration the escalation in the Price Index, could be determined at Rs. 64,424 for all housewives except the elderly ones between the age group of 62 to 72 years, qua whom the multiplicand would come to Rs. 35,789 as for that category of cases the Supreme Court had determined the contribution towards family to be Rs. 20,000 per annum only which could, on the basis of price index, be taken as Rs. 35,789. It is noteworthy that in both these cases namely housewives and the elderly women, the petitioner-Association or the claimants have not found any fault with the multiplier chosen by the Commission while determining the amount of compensation.

III The conventional figure of Rs. 50,000 awarded by the Hon'ble Supreme Court in **Lata Wadhwa's case** *(supra)*, ought to be enhanced. According to the claimants, after taking into consideration the Price Index, the said amount could be fixed at Rs. 89,473 per person killed in the incident.

IV The petitioner-Association has also questioned the amount of compensation determined by the Commission *qua* nine young working girls in regard to whom the Commission has recommended different amounts of compensation ranging between Rs. 44,000 to Rs. 2,88,000 depending upon the evidence that was adduced to prove their monthly income. According to the petitioner-Association and the claimants, the award of compensation for such young victims of the tragedy could be more logically determined and awarded as in the case of children in the age group of 15—22 years. The approach adopted by the Commission in fixing a lower amount of compensation for working young girls has brought about an anomly as those who were working as the time of tragedy would leave behind lesser amount for payment to their legal representatives than those who were not. The fact that young girls were working on the date of the incident could not, it is asserted, become a disadvantage in the matter of determination of compensation. The amount in DFT Nos. 6, 55, 57, 58, 59, 60, 61, 63 and 342 would, thus, require to be enhanced suitably so as to be equivalent to the amount paid for non-working girls in the age group of 15 to 22 years.

V The petitioner-Association has also found fault with the amount of compensation determined in favour of legal representatives of deceased working women, 38 of whom had fallen victim to the tragedy. Most of them were, according to the Association, working as Teachers in the D.A.V. School. Some of them were working even in Government Schools as Teachers. The salaries received by these working women ranged between Rs. 1,800 per annum to Rs. 81,600 per annum. The petitioner-Association states that while determining the compensation payable to the legal representatives of these victims, the Commission had not taken into consideration their future prospects and proceeded to determine the amount of compensation entirely on the basis of the amount they were receiving as salaries on the date of the incident. Relying upon the decision of the Supreme Court in

Kerala State Transport Corporation *versus* **Susama Thomas (10),** the Association asserts that the Commission ought to have taken into consideration future prospects of the victims also while determining the multiplicand. Notably learned counsel did not question the correctness of the multiplier chosen by the Commission *qua* these claims also. The Association asserts that the conventional figure of Rs. 50,000 has not been awarded in the above cases which ought to be awarded taking into consideration the escalation in the price index.

It is also asserted by the petitioner-Association that apart from the amount quantified on the basis of multiplier method evolved in **Susama Thomas's case** *(supra)* the claimants were entitled to an additional amount of compensation on account of the loss of contribution which such working women made in terms of services renered by them to the family. The Association argues that while in the case of housewives, the Supreme Court has quantified the said amount of Rs. 36,000 per annum in the case of working women the said amount could be awarded over and above the amount quantified on the basis of the multiplier method as it was not disputed that working women were apart from supplementing the family income contributing in terms of services rendered to their families which could also be quantified.

VI The same line of reasoning is urged by the petitioner-Association in cases arising out of death of working men. The Association finds fault with the failure of the Commission in not taking the future prospects into consideration in the said cases. No conventional amout has been awarded to the claimants in cases involving death of working men.

VII In injury cases also, the claimants have found fault with the amount awarded in their favour and prayed for enhancement of the said amounts on several grounds.

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(10) 1994 (2) P.L.R. 1

(33) The respondents have also filed their objections to the report submitted by the One Man Commission and questioned the findings as also the extent of liability fastened upon them. The objections filed by respondents No. 4 and 5 upon whom the liability to pay has been fixed to the extent of 80% of the amount awarded by the Commission, challenge the final report of the Commission not only regarding the entitlement of some of the claimants to claim compensation but even the determination of the negligence of the parties and the apportionment of the liability arising out of the same among them. The objections assail even the quantum of compensation awarded to the claimants by the Commission. The case of these respondents is that they were not negligent in any manner and that no responsibility for the incident can be fixed upon them. According to these respondents, there was no statutory duty cast on them to take any preventive measures towards safety etc. nor was there any duty cast on them to take any other measures which, if taken, would have prevented the fire tragedy. The respondents allege that the statutory duty to provide measures, enforce compliance with the said measures regarding safety of the victims including compliance with the building bye-laws by the owners of the Marriage Palace, regulation of electric supply etc. was that of the Municipal Committee, Dabwali, and/ of Haryana State Electricity Board. It was also the duty of the Marriage Palace Owners to ensure compliance with safety measures required for safety of an visitor/guest entering such a public place. Relying upon the provisions of the Haryana Municipal Act, 1973, Haryana Municipal Building Bye-laws, 1982, Haryana Municipal (Dangerous and Offensive Trades) Bye-laws, 1982, Haryana Municipal (Formation and Wroking of Fire Brigade) Rules, 1985, Indian Electricity (Supply) Act, 1948 and Indian Electricity Rules, 1956, the respondents have tried to absolve themselves of their responsibility for the tragedy while accusing the statutory and public authorities of negligence in the performance of what, according to these respondents, were statutory duties cast upon them.

(34) In the reply to the claim for enhancement of compensation payable to the victims, respondents No. 4 and 5 have *inter-alia* alleged that the award of compensation in the case of children was on the basis of consensus arrived at between learned counsel for the parties appearing before the Commission. Compensation in the case of children was, on that basis, awarded at the rate of Rs. 2,00,000, Rs. 4,10,000 and Rs. 5,00,000

in the three age groups of children between one month to ten years, ten to 15 years, and 16 to 22 years, respectively. The respondents argued that since the award of compensation was consensual qua the claims arising out of death of children, neither the petitioner-Association nor the claimants could seek any enhancement of the same.

(35) The respondents further assert that the claim for enhancement in death cases involving housewives was also not justified and that deduction of 1/3rd of the amount in terms of the second Schedule to the Motor Vehicles Act by application of a suitable multiplier was legally correct. It is also alleged that compensation awarded was excessive. The decision in **Lata Wadhwa's case** *(supra)* is even otherwise not applicable as the same is, according to the respondents, based on a concession made before the Apex Court. It is also contended that on One Man Commission could award compensation taking the income of housewives to be Rs. 15,000 per annum keeping in view the second Schedule to the Motor Vehicles Act, 1988, and not on the assumption that the income of the deceased housewives was Rs. 3,000 per month.

(36) The claim for enhancement made in the case of working men, killed in the incident, has also been disputed by the respondents as the amount already awarded is, according to them, just and reasonable having regard to the evidence adduced on behalf by the claiments. The claim regarding future prospects is disputed b the respondents on the ground that there was no evidence to support any such claim. In the claims arising out of injury cases, the respondents have questioned the award of compensation by the Commission on the ground that the same is highly excesive and unsustainable. It is alleged that the question of taking future prospects into consideration in cases where the compensation is awarded on the basis of multiplier method does not arise.

(37) Objections to the Commission's report have been filed even by the Haryana Electricity Board, now know as Dakshin Haryana Bijli Vitran Nigam Limited. It is *inter-alia* alleged that the incident in question had occurred during a period when there was a regular power cut from 11.20 A.M. to 12.20 P.M. and that the power supply by the Board was in no way responsible for the unfortunate incident. The findings recorded by the Commission suggesting negligence on the part of the officers of the Board have also been assailed by the Nigam.

(38) The Municipal Committee, Dabwali, has also similarly filed objections and assailed the findings recorded by the commission that the Committee and its employees were also to an extent responsible for the occurrence leading to a large scale human tragedy, hence liable to be pay compensation to the claimants.

(39) State of Haryana has not filed any objections to the findings recorded by the Commission. Objections, however, have been filed to the prayer for enhancement of compensation made by the petitioner and the claimants in which it is alleged that the prayer for enhancement is not justified as the Commission has determined the amount of compensation payable to the victims in a fair and reasonable manner.

(40) We have heard learned counsel for the parties at considerable length. We have also been taken through the material on record including the depositons recorded before the Commission. The following questions, in our opinion, fall for determination :

(1) Whether the findings of fact recorded by the One Man Commission of Inquiry regarding the genesis of the fire incident and the concomitant negligence leading to 446 deaths and injuries to 200 suffer from any error or law or perversity to warrant interference from this Court ?

(2) If answer to Question No. 1 above is in the negative, was the Commission of Inquiry legally correct in holding that respondent No. 9-Rajiv Marriage Palace was an Agent of the D.A.V. School and Management Committee, respondents No. 4 and 5, so as to render the later vicariously liable for the acts of negligence committed by the former ?

(3) Is the apportionment of the responsibility and negligence for the fire tragedy in question and the liability flowing from the same fair and reasonable having regard to the acts of omission and commission and the role played by each one of those held responsible for the incident ?

(4) Are the claimants entitled to seek enhancement in the payment of compensation in the light of the consensus allegedly arrived at before the One Man Commission ?

(5) In case, answer to question No. 3 is in the affirmative, what is the extent of enhancement to which the petitioner and claimants are entitled in each category and/or claim petition filed by them before the Commission and on what basis ?

(6) To what other reliefs are the claimants entitled ?

(41) We shall deal with the above questions *ad seriatim.*

Re: Question No. 1

(42) Before we examine whether the findings of fact recorded by the Commission suffer from any error or perversity, we may briefly discuss the legal purport of what in law constitutes negligence in the realm of actionable tort. The term negligence has not been given a statutory definition. Black's Law Dictionary, however, describes negligence to mean :–

> "The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, want only, or willfully disregardful of others' rights".

(43) Judicial pronouncements have similarly described negligence to mean the breach of a duty caused by the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of a person would do or not do. One of the earliest pronouncements as to the meaning of negligence came from the House of Lords in **Donoghue** *versus* **Stevenson (11)** where Lord MACMILLAN summed up the legal purport of negligence in the following words :–

> "The law takes no cognizance of carelessness in the abstract. It concerns itself with carelessness only where there is a duty to take care and where failure in that duty has caused damage. In such circumstances carelessness assumes the legal quality of negligence and entails the consequences in law of negligence.

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(11) (1932) AC 562 (HL)

> The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care, and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty".

(44) Lord ATKIN who delivered a separate opinion in the above case summarized the legal approach to be adopted in the case of negligence thus :-

> "You must take reasonable care to avoid acts or omission which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour ? The answer seems to be, persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplations as being so affected when I am directing my mind to the acts or omissions which are called in question."

(45) The above view was affirmed by the House of Lords in **Home Office** *versus* **Dorset Yacht Co. Limted (12).** Later decisions that were delivered by English Courts and the Courts in this Country limit the "proximity principle" to persons to whom the defendant owes a duty referred to by Lord ATKIN as neighbours. At the bottom of the principle of proximity, thus, lies a relationship the nature whereof makes it reasonable to impose a liability in negligence. The relationship ought to be such as would in justice and fairness make it reasonable for the defendant to keep the plaintiff in contemplation while doing the act giving rise to the claim. The Principle of Proximity does not have anything to do with physical proximity, as for instance in **Donoghue's case** *(supra)* the manufacturer had no proximity with the consumer of the product and yet it was held that the manufacturer owed a duty to the consumer.

(46) **Clerk and Lindsell on Torts (The Common Law Library No. 3) (16th Edition) London, Sweet and Maxwell, 1989** while dealing with *"Duty of Care Situation"* states that no action lies in negligence unless there is damage. In cases of personal injuries, damage used to be understood to have been inflicted when injury was sustained by the plaintiff. The duty in negligence, therefore, is not simply a duty not to act carelessly.

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(12) (1970) 2 All England Reports 294 (HL)

it is a duty not to inflict damage carelessly. Since damage is the gist of the action, what is meant by "duty of care situation" is that it has to be shown that the Courts recognize as actionable the careless infliction of the kind of damage of which the plaintiff complains, on the type of person to which he belongs and by the type of person to which the defendant belongs.

(47) Reference may also be made to a Division Bench decision of High Court of Karnataka in **M.N. Rajan and Others** *versus* **Konnali Khaild Haji and Another, (13)** in which the Court held that in a case based on tort by negligence, it was imperative for the Court first to determine whether the defendant was under a legal duty to take care and whether there was sufficient reason of proximity between the defendant and plaintiff. In answering that question, the Court has to apply the test of foresight of a reasonable person to examine whether the injury to the plaintiff was reasonably foreseeable as a consequence of the defendant's acts of omission or comission. In **Southern Portland Cement Limited** *versus* **Cooper (14)** the court declared that in cases of tort by negligence the test applicable is the foresight of a reasonable man and not the hindsight of the Court for it is easy to become wiser after the event.

(48) There is sufficient authority for the proposition that a public school educator's relationship to his/her student is one of those relationships in which one party (the educator) owes a duty to the other party (the student). In the context of "principle of proximity", the Courts have had several occasions to pronounce whether the School owes any duty towards its students in terms of the care that need be taken for their safety. In **Virna Mirand et al.** *versus* **City of New York and Board of Education of the City of New York (15)** it was held :-

> "A teacher owes it to his or her charges to exercise such care of them as a parent of ordinary prudence would observe in comparable circumstances; duty owed derives from simple fact that school, in assuming physical custody and control over students, effectively takes place of parents and guardians".

(13) III (2004) Accident & Compensation Cases 272
(14) (1974) 1 ALL ER 87
(15) 92 Ed. Law Rep. 957

(49) In **M.S. Grewal's case** *(supra)*, one of the questions that fell for consideration before the Supreme Court was whether the School owed any duty of care towards its students on the principle of proximity of relationship. Answering the question in the affirmative, their Lordships observed :-

> "Duty of care varies from situation to situation whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the play field. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to playground near a river for fun and swim, the degree of care required stands at a much higher degree and no deviation therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for swim by reason of popular sayings will not be sufficient compliance. As a matter of fact the degree of care required to be taken specially against the minor children stands at a much higher level than adults: children need much stricter care".

(50) In **Municipal Corporation of Greater Bombay** *versus* **Laxman Iyer and Another, (16)** the Supreme Court held :

> "Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand whereby such other

(16) III (2003) Accident & Compensation Cases 551 (SC) = 2003 (4) R.C.R. 764

person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one: it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and *per se* constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act".

(51) Let us now examine in the light of the above principles whether the Commission of Inquiry had correctly held that the School had committed a breach of the duty *qua* the students, their parents and other invitees to participate in the function. The foremost aspect that would require examination is whether the Commission had properly appreciated the evidence adduced before it and correctly applied the legal tests to which we have referred in the foregoing paragraphs.

(52) Appearing for respondents No. 4 and 5, Mr. Rajive Atma Ram, strenuously argued that One Man Commission had not properly appreciated the evidence before it while recording its findings on the question of the nature and extent of negligence of each one of the respondents, their employees and agents. He made a valiant attempt to persuade us to hold that the findings were unsupported by any material and at any rate a contrary view was equally plausible on a proper re- appraisal of the material assembled before the Commission. He, in particular, laid considerable emphasis on certain aspects which, according to him, established that the School was

in no way negligent in the discharge of its duty towards the children, their parents and members of the staff invited to attend the ill fated annual function; that the School premises was not big enough to permit the holding of such a function which forced the School Authorities to take a reasonable and prudent decision to shift the function to another place; that Rajiv Marriage Palace was the only public place in Dabwali where the fateful function could be organized by the School; that the Marriage Palace comprised a steel structure used for making a permanent Pandal inside the premises thereby ensuring safety of the premises for any public function conducted in the same; that the wiring and fittings within the Pandal were permanent and had been got done by the Marriage Palace owner through a reputed Electrician; that several functions had already been held in the Marriage Palace over a period of three-four months before the incident; that nearly 1200 people were present at the venue none out of whom could foresee the possibility of fire breaking out and engulfing the entire area; that functionaries of the District Administration like the Deputy Commissioner, Tehsildar and Police Officers were also present at the spot which created a reasonable impression in the mind of everybody that the place was safe and nothing untoward could happen; that although the School had hired the Marriage Palace on payment of a sum of Rs. 6,000 yet even if the premises had been offered by the Marriage Palace owner free to the School for the sake of commercial publicity, there was an element of *quid pro quo* in the arrangement which brought about a commercial relationship between the parties distinctly different from the jural relationship of a Principal and Agent. All these circumstances, argued the learned counsel, proved that respondents No. 4 and 5 were in no way negligent in the discharge of the duty which they owed towards their invitees, guests, students and staff attending the function.

(53) Relying heavily upon the decision of the Supreme Court in **Rajkot Municipal Corporation** *versus* **Manjulaben Jayantilal Nakum and others, (17),** Mr. Atma Ram argued that the fact situation of the instant case did not satisfy the dual test of proximity of relationship between the School and the victims or the foreseeability of the incident in question. The Commission had, therefore, fallen in error in holding the School guilty of tort arising out of negligence.

(17) (1997) 9 S.C.C. 552

(54) On behalf of the petitioner/claimants, it was per contra argued that the findings recorded by the One Man Commission were based on a thorough appraisal of the evidence adduced before it and that it had given cogent reasons in support of its findings. There was, acoording to Mrs. Arora, nothing perverse about the said findings to call for interference of this Court in exercise of its extraordinary writ jurisdiction. This Court cannot, it was contended, assume the role of a Court of appeal and sit in judgment over the correctness of the findings of fact recorded by the Commission presided over by none other than a former Judge of this Court.

(55) On behalf of the State of Haryana, it was contended by Mr. H.S. Hooda, learned Advocate General, Haryana, and Mr. Randhir Singh, learned Additional Advocate General, Haryana, that the findings recorded by the One Man Commission regarding negligence on the part of the respondents leading to the fire incident had been accepted by the State of Hayana and that the State had challenged neither the said findings nor the apportinment of the liability arising out of the negligence established against them. Even otherwise, the findings recorded by the Commission, argued the learned counsel, were justified on the material placed before it and any attempt by the School to shift its responsibility or accuse the statutory and other public authorities of negligence while underplaying its own fault was unwarranted and indeed unfortunate having regard to the magnitude of the tragedy that occurred only because the School was cutting corners without caring for the safety and security of a very large number of people whom it had invited to a place wholly unsuitable for a function that was to be attended by such a large number of people.

(56) We have given our careful consideration to the submissions made by learned counsel for the parties.

(57) Claims arising out of Tort ordinarily go for trial and adjudication before the competent Civil Courts except in cases where statutory fora are created for such adjudication as is the position in claim cases arising before the Motor Accident Claims Tribunal under the Motor Vehicles Act, 1988, or the Railway Claims Tribunal established under the Railway Claims Tribunal Act, 1987. Even so, the High Courts and indeed the Apex Court exercising writ jurisdiction have, in exceptional circumstances, intervened with a view to providing immediate succour to those affected by tragedies involving

heavy loss of human lives. That is precisely what happened in **M.S, Grewal's case,** in which 14 students studying in fourth, fifth and sixth standards in Dalhousie Public School, Badhani, Pathankot, were drowned in river Beas while out on a picnic. In a writ petition filed before it, the High Court of Himachal Pradesh held the School Management liable to pay compensation at the rate of Rs. 5,00,000 each to the parents of 14 students who died in the incident with the interest at the rate of 12% per annum. In an appeal arising out of that decision, the Apex Court noted the shift in the judicial attitude from the old to new concept of providing expeditious relief in cases where the citizens' right to life and/or liberty has been affected. Making a departure from the conservative approach that damages must be left to the Civil Courts to determine, their Lordships observed :

> "Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system–affectation of the people has been taken note of rather seriously and he judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of civil courts obligation to award damages. As a matter of fact the decision in D.K. Basu, (1997) 1 SCC 416, has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of 'justice oriented approach'. Law courts will lose its efficacy if it cannot possibly respond to the need of the society–technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to out-weigh the course of justice".

(58) That is also what happened in **Lata Wadhwa's case** *(supra)* in which as many as 60 persons including 26 children, 25 women and nine men died in a fire incident in a function held to celebrate the 150th birth anniversay of Sir Jamshedji Tata at Jamshedpur. Lata Wadhwa, who had lost both her children in the said incident, filed a writ petition in the Supreme Court alleging inaction on the part of State in initiating proceedings against the officers because of whose negligence the tragedy had taken place. It was in that petition that the Supreme Court requested Mr. Y.V. Chandrachud,

former Chief Justice of India, to look into the matter and determine the compensation payable to the legal heirs of the deceased as well as compensation payable to the injured. Upon receipt of the report from Justice Chandrachud the Court directed payment of the amount of compensation to those affected by the tragedy.

(59) Even in **Association of Victims of Uphaar Tragedy and Others** *versus* **Union of India and Others, (18)** the High Court of Delhi was dealing with a case for payment of compensation to victims of what was commonly known as Uphar Fire Tragedy. The determination of the neligence and the apportionment of liability was undertaken on the basis of broad principles applicable in such situations and the reports and material that was placed before the Court. The enquiry into the fire incident was in that case ordered by the Government of National Capital Territory of Delhi and conducted by Mr. Naresh Kumar, Deputy Commissioner (South). It was meant to identify the causes and circumstances leading to the fire and examine whether the Cinema had taken the necessary safety measures. The petitioner had, upon conclusion of the said enquiry, filed a writ petition seeking adequate compensation for the victims and punitive damage against the respondents for showing callous disregard towards their obligations to protect the fundamental and indefeasible rights of the citizens under Article 21 of the Constitution by failing to provide a premises that was safe and free from hazards, that could be reasonably foreseen. The approach adopted by the Court in that case if we may say with respect was in consonance with the law declared by the Supreme Court in **D.K. Basu** *versus* **State of W.B., (19)** where their Lordships made a distinction between a claim in public law for an unconstitutional deprivation of the fundamental right to life and liberty which proceeds on the doctrine of strict liability and a claim for damages for tortious act of public servants. The Court observed :

> "The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public

(18) 104 (2003) Delhi Law Times 234 (DB)

(19) (1997) 1 S.C.C. 416

law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the *established* violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family".

(60) Having said that, we need to keep in mind is that the setting up of the One Man Commission of Inquiry for determination of the nature and the extent of negligence of the School or the public functionaries and for award of compensation to the victims does not constitute the Commission as a Civil Court nor does it constitute the High Court under whose order the Commissioner was set up as an Appellate Forum for the latter to sit in judgment over the findings of fact recorded by the Commission. The

choice of the person who was to preside over the Commission was evidently guided by the solitary consideration that he is a trained and vastly experienced judicial mind familiar with the principles of law and procedure that need to be followed for any such determination. The report submitted by a Commission of Inquiry so chosen and appointed shall, therefore, have to be respected unless there is apparent on the face of the record an error of law or perversity of the kind that cannot be countenanced. Suffice it to say that this Court cannot sit in appeal over the findings of fact recorded by the Commission or undertake an exercise in re-appraisal of evidence and substitute its own finding for that of the Commission simply because a contrary or alternative view seems equally plausible. Keeping the above broad parameters in view, let us briefly refer to the material that was placed before the Commission for its appreciation and findings recorded on the basis thereof, not because we propose to re-appraise the entire material adduced before the Commission to record our own findings but only to see whether the findings of fact recorded by the Commission are perverse in that they are unsupported by any evidence whatsoever.

(61) The incident in question took place on 23rd December, 1995. On the very following day i.e. 24th December, 1995, the then Secretary to Government of Haryana directed the Divisional Commissioner, Hisar Division, Hisar to hold a Magisterial enquiry into the facts relating to the fire incident. The first of the enquiries into the incident was, thus, conducted by the Divisional Commissioner, Hisar Division, Hisar, the report whereof was marked before the One Man Commission. In the course of the enquiry, the Divisional Commissioner had examined as many as 40 witnesses including Magistrates, Police Officials, Advocates, Doctors and the owners and employees of Rajiv Marriage Palace. Relations of the deceased persons present on the occurrence, a large number of the injured including Teachers of the D.A.V. Centenary Public School, technical experts of the Forensic Science Laboratory, Madhuban, Haryana State Electricity Board, Public Works Department, Municipal Committee and Chief Electrical Officer, Haryana, were also examined.

(62) On the basis of statements made by the experts and eye witnesses including the police officials and public men, the Divisional Commissioner recorded a clear finding to the effect that the fire incident had not occurred on account of any sabotage or the use of any explosive

substance whatsoever, as the physical or chemical clues available from the evidence and the opinion of the experts did not support any such possibility. The Commissioner then examined whether the fire could have been caused by leakage of gas cylinder or bursting of gas stove or burning of cigarettes etc. and ruled out the same also as a possible cause of the incident. He then turned to the possibility of fire having been caused because of electric wirings on account of the heat generated by the use of focus lights, mingling of supply of two generator sets at a common point and electrocution of the entire area through which P.V.C. tubes covered wires passed in the Pandal and concluded that the available material, both documentary and oral, lent support to the possibility that the fire started from a height of 12 feet on the right side of the main entrance to the Pandal on account of use of crude material in the focus light fixed at the place. The wire passing through the welding machine was found as a second possibility from which the fire could have started. The Divisional Commissioner was also of the view that the fire had started while the two generating sets placed near the Pandal were in operation. The following passage from the report submitted by the Divisional Commissioner is, in this regard, relevant :-

> "In addition to the fire breaking out from the heating of the focus light which had crude material in it, according to Dr. M.B. Rao, the other possibility quick burning of whole of the pandal along with factors like false roofing P.V.C. material, the synthetic curtains and the like, could arise from the fact that even while the power of one generating set might have stopped on the breaking out of fire in the focus light, the other generating set was still in operation (as admitted in the statement of Rajinder Kumar) and thus heating caused by the live wires multiplied with the burning of P.V.C. covering with the outbreak of fire from one side which spread through the synthetic material available in the roof, and all this could have accelerated the speed of fire as witnessed by all".

(63) The Divisional Commissioner also recorded the finding that the owners of the Marriage Palace had illegally taken a three-phase connection from the Electricity Board and the officers of the Board had made no effort to issue and recover any bill from the owners in regard to the three phase connection granted to them. The Commissioner also found fault with the

construction of an unauthorized building in violation of the building plans sanctioned by the Municipal Committee and the casual manner in which the plans were sanctioned. He also found fault with the loose terminals of the wires drawn from the three phase meter which, according to him, showed the real motive behind the criminal intention of the owners of the Marriage Palace. Strictest criminal action against the owners and disciplinary proceedings against the employees was, therefore, recommended.

(64) The enquiry by the Divisional Commissioner was followed by a charge sheet presented against the owners of the Marriage Palace by the Central Bureau of Investigation. The investigtion conducted by the Central Bureau of Investigation established that Rajiv Marriage Palace at Mandi, Dabwali was a partnership firm comprising three real brothers, named Kewal Krishan Dhameeja, Om Parkash Dhameeja and Chander Bhan Dhameeja. The palace was named after Rajiv Dhameeja, eldest son of Kewal Krishan Dhameeja. A rectangular Pandal was constructed in the Rajiv Marriage Palace covering an area measuring 100'×90'. The Pandal comprising steel super structure of G.I. Sheets on the top and partially covered on the three sides with a false ceiling supported with bamboo sticks. The lowest false ceiling wall inside the Pandal was at a height of 12 feet from the ground. The entire ceiling was made of cotton clothes in colourful designs and in chunri style. All the three sides of the Pandal were covered with thick cotton curtains tightly fitted with the bamboo support from the ground level to the height of first ceiling. The upper portions of the three sides of the Pandal were covered with P.V. Sheets. The front portion of the Pandal was covered with P.V. Sheets from inside upto the height of 12 feet. Thick cotton curtains on both sides of the gate were also fixed right from the ground level upto the height of 12 feet leaving a vacant space of 12'×12' as entrance/exit gate. Both inner and upper curtains in the front portion were tightly tied with bamboos placed in between the angle frames and steel poles. The curtains of D-China cloth were fixed in hanging order on both sides of the extrance/exit gate of the Pandal. The lighting arrangements in the Pandal were described in the charge sheet submitted by the Central Bureau of Investigation in the following words :

> "The pandal was provided with 12 electrical circuits through the switch board installed in the switch room towards eastern side of the pandal. There were 25 jhumar lights with electric bulbs

of 100 watts each hanging from the false ceiling of the pandal. Besides, two halogen lights over the stage and other two halogen lights near the entry/exit gate of the pandal were also fixed. Due to frequent power tripping in Dabwali, the owners of the Rajiv Marriage Palace (Pandal) had arranged two generator sets to ensure uninterrupted power supply at the function on 23rd December, 1995 in the Pandal. The switch board fitted in the switch room of the premises had been provided with the arrangements of power supply from H.S.E.B. as well as from the generators.

In addition, the lighting arrangements inside the pandal also include an arc light in crude form fitted with two carbon electrodes and a reflector fitted above the first ceiling near the central portion of entrance gate facing the dias. Accused Rajender Kumar and Devi Lal of M/s Chacha Bhatija Light Service were deployed for manning the electrical arrangements, operating generators etc. on the day of function i.e. on 23th December, 1995. Besides, a number of temporary/loose connections were also provided in the pandal on the date of function by Rajendra Kumar and Devi Lal by tampering with the electrical fittings inside the pandal".

(65) The charge sheet also referred to the seating arrangements inside the Pandal and suggested that as many as 725 chairs made of plastic were laid out on both sides of the central passage. The first three rows from the stage had blocked the central passage. In the front row there were sofa sets with extra chairs on both sides for V.I.Ps. and special guests. There was a narrow passage in the southern, eastern and western side of the Pandal. The placement of chairs was at the end of the Pandal from the entrance, in diagonal shape because of provision of counter for serving tea and cold drinks to the invitees.

(66) The charge sheet further indicated that the organizers of the D.A.V. Public School, Dabwali, had hired Rajiv Marriage Palace for holding its annual function for a sum of Rs. 6,000 only. A huge crowed of around 1000 invitees including children and parents had gathered at the venue. The function started around 12.00 hours on 23rd December, 1995 in which

Mr. M.P. Bidlan, Deputy Commissioner, Sirsa, was the Chief Guest. While the function was going on, around 1.45 to 1.50 P.M., a fire was noticed at the entrance/exit gate. The fire spread so fast that it engulfed the whole Pandal within no time. Consequently, more than 441 persons majority of which were innocent children died due to burn injuries. Besides more than 145 persons sustained burn injuries. Among the dead were, Mr. Som Nath Kamboj, Sub Divisional Magistrate, Dabwali, daughter of Mr. Anil Yadav, Deputy Superintendent of Police, Dabwali, and Mrs. Priti Kamra, Principal of D.A.V. School. The charge sheet placed reliance upon the report submitted by the Forensic Experts from Forensic Science Laboratory Madhuban, Haryana, the relevant portion dealing with the cause of incident may be extracted at this stage :—

> "In the middle portion leading to stage a focus light connected by copper wire was connected temporarily by the two terminals of a welding machine. The welding machine in turn was connected to the mains through switch change over box. In one of the terminals of the welding machine, the copper wires were found melted leading to bead formation. This clearly indicates that there was high voltages due to which there could have been heavy sparking at the loose terminals. Besides of this even the two fuse grips through which the focus light has been connected also had blackening resulting in the burning of copper wire. In the focus light two carbon electrodes are placed at a distance to produce spark which is transmitted on to reflector to give bright light. This process produces tremendous amount of heat which has burnt the bamboo poles as well as decorative cloth which was synthetic. The synthetic cloth caught fire instantaneously and fell down as fused mass with flames. The remaining plasitc sheets and synthetic cloth caught fire and engulfed the entire area leading to death of several people".

(67) The charge sheet also relied upon the report submitted by Mr. V.B. Gupta, Superintending Egineer, North Regional Electricity Board, New Delhi, in which the cause of fire was summed up as under :—

> "Based on the results of experiments conducted at site and discussions the most probable cause of fire appaers to be the flash/spark created at the T-Joint above the main entrance to the pandal

where a large number of loose electrical connections were made by the electrical operators for fitting the lighting equipments. The T-Joint was very close almost touching the curtains spread horizontally at 12' height above the main entrance. The spark from this T-Joint could have caused the fire in the curtain clothes. Once the cloth caught fire, the fire spread all around within few minutes bringing the whole of pandal into burning simultaneously".

(68) Relying upon the opinions given by the Central Forensic Science Laboratory Experts in the field of Ballistics, Physics and Chemistry the Central Bureau of Investigation concluded that the incident was not caused by any sabotage as no explosive substance had been detected in the residue. The fire, according to the Central Bureau of Investigation, was caused due to short circuiting. The charge sheet also concluded that Kewal Krishan Dhameeja and Chander Bhan Dhameeja, partners of M/s Rajiv Marriage Palace, were personally supervising the arrangements at the venue including the electrical fittings etc. and that the accused/owners had hurriedly provided several temporary electric connections in the Pandal employing untrained and unqualified Electricians in total disregard of the safety of human lives. The charge sheet stated :–

"During the course of investigation, it has been established that accused Kewal Krishan Dhameeja and Chander Bhan Dhameeja, Partners of M/s Rajiv Marriage Palace, were personally supervising the arrangements at the site of the function which included electrical fittings etc. The electrical fittings etc. were made by accused Rajendra Kumar and Devi Lal who had no training. Accused Rajendra Kumar and Devi Lal also provided several temporary electrical connections at the Pandal. Temporary electrical connections were also provided by them for the arc light and also for the Halwai's Oven. These connections were made by these untrained and unqualified accused persons in a haste and hurry in total disregard to the safety of the human lives. Investigation has established that accused 'Kewal Krishan Dhameeja and Chanderbhan Dhameeja, apart from personally supervising these operations had taken the electrical connection in the Pandal in an illegal and unauthorised manner and, therefore, they are also liable to be prosecuted for their acts of omission and commission which resulted in loss of 441 lives and injuries to 145 others".

(69) The Commission of Inquiry has referred to and partly relied upon the enquiry report submitted by the Divisional Commissioner and the conclusions drawn by the Central Bureau of Investigation in its charge sheet. But apart from what was gathered by the Divisional Commissioner and the Central Bureau of Investigation in their respective enquiries/investigations, the One Man Commission had before it, the depositions of a very large number of witnesses examined in the course of enquiry proceedings. The Commission, among others, relied upon the statement of Vinod Bansal, one of the claimants, according to whom, the banquet hall had around 500 to 600 chairs for guests and visitors but about 1500 persons including men, women and children had gathered at the venue on the fateful day. The witness further stated that since the number of visitors was more than the capacity of the Marriage Palace and the Pandal, the main gate was closed from inside. The witness further stated that pandal was made of curtains, synthetic cloth, polythene sheets and coconut ropes used for tying the curtains with bamboo sticks. The electrical fittings were all temporary and the joints of electrical wires were loose and naked. There were inside the Pandal nearly 15/16 Chandeliers fixed to the ceiling besides a large number of other lights. The witness goes on to state that the fire broke out at about 1.45 P.M. but an announcement was made from the stage that the fire had been brought under control and the visitors should remain clam, quiet and sitting. The fire all the same spread all around and could not be controlled and engulfed the entire Pandal within no time. According to the witness, the fire had broken out on account of short circuit of the electricity. Neither the District Administration nor the D.A.V. Management nor the Municipal Committee, the Electricity Board or the Management of Rajiv Marriage palace had made any arrangement for fire fighting in the event of an emergency.

(70) The witness further stated that as many as 442 persons had died and 200 persons suffered injuries on account of fire including the witness himself. That his wife and two children died in the incident. He also referred to the small exit gate in the dark room behind the stage out of which Mr. M. P. Bidlan, Deputy Commissioner, had made good his escape immediately on seeing the fire. The S.D.O. (Civil) and his wife had, however, died in the incident.

(71) In the cross-examination, the witness *inter alia* stated that the size of the Pandal was about 50'× 70', whereas the height of Pandal was nearly 15/16 feet. All the chairs in the Pandal were occupied by the visitors and the persons who could not get chairs were standing on all the three sides of the Pandal. The size of the banquet hall was 100'×70' and there were walls all around the banquet hall with one gate about 10/11 feet wide for entrance to the banquet hall. There was another small gate with the size of 2 feet behind the stage. The witness further stated that there was only one gate to the Pandal whereas all the sides had been covered by curtains tied with bamboo and coir ropes. The bamboos were fixed at a distance of half a foot of each other. The fire started from the exit gate of the Pandal from where he was standing at a distance of 15/20 feet. He further stated that if there was no Pandal, the total capacity of banquet hall would have been around 1000 persons.

(72) The Commission has similarly relied upon the statements of Satpal Chawla, Secretary, Municipal Committee, Dabwali, examined to prove the site plan and the documents pertaining to the Municipal Committee. So also the statement of M.R. Sachdeva, Assistant Engineer of the Haryana State Electricity Board has been relied upon to prove grant of electric connection to the Marriage Palace. The witness has stated that a three phase commercial supply connection had also been granted to the Marriage Palace owners with a sanctioned load of 5,980 KW. Details of the consumption with regard to single phase electric connection were also given by the witness. The witness also tried to suggest that the incident took place at 13.45 P.M. during which time there was a power cut for about five minutes i.e. from 13.40 P.M. to 13.45 P.M. on account of some technical fault.

(73) The Commission has similarly taken note of the depositions of Subhash Chander, Assistant in the office of the Financial Commissioner and Principal Secretary to Government Haryana, Ram Parkash, Superintendent in the office of Deputy Commissioner, Sirsa, Bahadur Singh, Deputy Superintendent in the office of the Sub-Divisional Officer (Civil), Dabwali, examined by the claimants in support of their cases apart from proving a very large number of documents relevant for the issues that fell for consideration. Also noticed by the Commission are the documents that were proved in the course of the enquiry and relied upon by the Commission for recording its findings.

(74) The Commission has also taken note of the depositions of the witnesses examined by the respondents. These include Norang Dass, Tehsildar, Dabwali, Om Parkash, Superintendent in the office of Civil Surgeon, Sirsa, and Subhash Chander, Assistant in the office of Financial Commissioner and Principal Secretary to Government of Haryana, examined on behalf of respondents No. 1 to 3. Out of these witnesses, Subhash Chander, Assistant in the office of Financial Commissioner and Principal Secretary to Government of Haryana produced before the Commission statements of 39 witnesses who were examined by Mr. K. C. Sharma, Divisional Commissioner, Hisar Division, Hisar, the then Commission of Inquiry.

(75) The statements of Chander Parkash Jain, Assistant, New India Assurance Company Limited, Lachhman Dass, Private Architect, Mrs. Neelam Wadhwa, Teacher of D.A.V. School, Mandi Dabwali, Jagdish Deol, Upper Division Clerk, D.A.V. Managing Committee, Chitragupta Road, New Delhi and V.K. Mittal, Principal of D.A.V. School, Mandi Dabwali, examined by respondents No. 4 and 5, have also been notice and discussed at great length by the Commission.

(76) While discussing the statement of V.K. Mittal, Principal of D.A.V. Centenary Public School, Mandi Dabwali, the Commission has notice that no receipt regarding payment of Rs. 6,000 to the Marriage Palace owners had been produced by the witness or any other official of the School nor was there any recital anywhere in the written statement about the alleged payment of Rs. 6,000 as hire charges to the owners of the Marriage Palace. The Commission has observed :—

> "From the evidence of this witness, it is made out that although there is no recital in the written statement about the alleged settlement or payment of Rs. 6,000 as hire charges to the owners of the Rajiv Marriage Palace but he has introduced the payment of Rs. 6,000 to them by the School Authorities although he could not produce any such receipt and has stated that there is no such receipt in the School record as it was sent to the Head Office. Shri Jagdish Deol RW6/1-DFT is an Upper Division Clerk in the Head Office of the D.A.V. College Managing Committee. He has nowhere stated about any such alleged

receipt of Rs. 6,000 having been sent by the D.A.V. School, Mandi Dabwali, to the Head Office nor has he produced any such receipt. It appears that this witness has introduced the factum of the alleged receipt on his own and the same does not find support from any documentary evidence. This witness has also introduced that the hiring charges of Rs. 6,000 also included charges for making sitting arrangements, electricity, water, security, eatables and tent etc. but then he has added that there was an oral agreement in this respect and there was no written agreement".

(77) The Commission has also noted and discussed the deposition or R.K. Sodha, Executive Engineer of the Electricity Board examined as RW9/1-DFT by respondent No. 6 and the documents marked in his deposition. The Commission has, upon a careful analysis of the deposition, observed that the witness was not able to satisfactorily explain the over-writing made in the log sheet in support of the case sought to be set up that the electric supply had tripped during the period the incident took place. The Commission observed :—

"The over-writing over the digits 42 into digits 50 to give the time as 13.50 P.M. has not only been admitted by this witness but it is also clear on the Log sheet even to the naked eye. This assumes significance in view of the fact that the fire broke out at 13.45 P.M., and the plea of the Board is that there was no electric supply at that time. But then in case the electric supply was restored at 13.42 P.M., the plea of the Board pales into insignificance. However, in case the supply was not restored at 13.42 P.M., what necessitated the Board official to manipulate the entry of the time 13.42 P.M. by over-writing the digits 42 and making it into 50. This was done in order perhaps to give the impression to the Enquiry Officers concerned and the public at large that there was no electric supply at 13.45 P.M. when the fire broke out. But in their over enthusiasm and anxiety to do so, they forgot that the digits 50 which they were manipulating by over-writing on the digits 42 may be detected at sometime and the factum of the electric supply having been restored at 13.42 P.M. may be established".

(78) The oral and documentary evidence adduced by the Municipal Committee, Dabwali, has been similarly examined by the Commission and the depositions of Ramesh Chander Kamboj, Assistant Engineer of the Improvement Trust, Mandi Dabwali, Balwant Singh, Assistant Fire Officer, Mandi Dabwali and Satpal Chawla, Secretary, Municipal Committee, Mandi Dabwali, discussed. The Commission has, on a careful analysis of their depositions, recorded a specific finding that Kartar Singh Chawla, Fire Station Officer, mandi Dabwali, was absent from duty on 23-12-1995 when the occurrence took palace. Although, attendance register produced showed him to be present the entry was belied by the statement of his own Assistant Fire Officer Balwant Singh. The evidence adduced by Mr. M.P. Bidlan, Deputy Commissioner, Sirsa, comprising eight witnesses besides himself has also been discussed and evaluated by the Commission apart from four witnesses examined by Rajiv Marriage Palace in support of its defence.

(79) On a careful and thorough appraisal of the evidence referred to above the Commission held that D.A.V. School Authorities held its Annual Prize Distribution Function at Rajiv Marriage Palace on 23rd December, 1995 ; that invitation Card marked P74/248-DFT was jointly issued by the Management, Staff and Students of D.A.V. Centenary Public School which is under the direct control of D.A.V. Managing Committee, New Delhi ; that the invitation card so far as the same pertains to D.A.V. Centenary Public School was issued through its Principal Mrs. Naresh Kamra. In so far as D.A.V. Managing Committee, New Delhi was concerned, the same was issued by its Regional Director Mr.. S.P. Rajput. The card was, thus, a joint invitation card issued by both the respondents; that D.A.V. Centenary Public School, Mandi Dabwali, was under the overall control of the Managing Committee, respondent No. 4, and its affairs are run as per the directions of the said respondent including recruitment of the staff as well as the grant of funds etc.; that the venue of ill-fated function was Rajiv Marriage Palace, Mandi Dabwali, with Mr. M.P. Bidlan, Deputy Commissioner, as the Chief Guest ; that the function was an open public function and persons other than invitees could also attend the same ; that the School had collected annual insurance premium from the students along with the annual fee ; that respondents No. 4 and 5 had nowhere claimed in the written statement that the Marriage Palace was hired for the day for a sum of Rs. 6,000; that even payment

of Rs. 6,000 towards the hiring charges of the venue was not proved to have been made ; that there was only one gate for entrance and exit to Rajiv marriage palace and the width of the gate was no more than 10'×12'; that there was only one gate for entry and exit to the Pandal ; that there were nearly 700 to 800 chairs placed inside the Pandal and the central passage inside the Pandal was blocked by the front rows of chairs and sofas; that no safety measures were taken by the School to prevent any untoward incident like fire or stampede in the course of the function ; that when the entire Pandal was engulfed in fire, it was impossible for the children and the ladies to move out of a single exit gate provided for that purpose ; that the respondents had not made any alternative arrangement for exit of visitors trapped inside the Pandal in case of emergency; and that no Fire Brigade or Ambulance or any other arrangement with regard to safety and security of the visitors especially ladies and children were made.

(80) The Commission has on the above findings of fact held that the School had failed to exercise due care expected of a reasonable and prudent person in disregard of the safety of those who were invited to attend the function including students, parents and the staff. Relying upon the decision of he Hon'ble Supreme Court in **M.S. Grewal's case** *(supra)*, the Commission declared that the School was duty bound to take proper care for the safety of the children under its charge, which care the School had failed to take in the instant case. The School was, thus, negligent in the discharge of its legal obligations. The legal injury caused thereby was an actionable tort, observed the Commission.

(81) There is, in our opinion, no infirmity leave alone, any perversity in the findings of fact recorded by the Commission. The material on record was more than sufficient for the Commission to support the findings recorded by it and the legal inferences that inexorably flow from such findings. The very fact that the School did not have enough space in its own premises to organize the Annual Function, did not absolve it of the legal obligation to act prudently and to ensure that the children, staff and the parents invited to such a function are safe wherever the same may be held. That there was no other suitable place in Dabwali where the function could be held also did not mean that the School could hold the function in a Marriage Palace which admittedly had no safety measures whatsoever to take care of any emergency.

(82) The argument that the place chosen by the School was functional and the School had no reason to believe that it would not have sufficient safety measures as required under law has not impressed us. The standard of care that may be required would vary from case to case and situation to situation. In the case of children of tender age, the care that the School Authorities were expected to take regarding their safety was much higher in comparison to the care which may be required qua adults. Children are under a disability. They need care and protection more than the grown ups. Parents who leave their children to the care of the School are entitled to rest assured that the School would act prudently while dealing with their wards and would do nothing that may in the slightest expose them to danger or compromise their safety and security. The choice of the venue for the function was, therefore, an onerous decision which the School ought to have taken having regard to all the attendant risks, hazards and imponderables that could be reasonably foreseen in a public function attended not only by the children, parents and teachers but even the general public. The School ought to have realized that holding of a function in a marriage Palace may not be the best option especially when the Marriage Palace, did not have the statutory completion certificate and was promoting its commercial interests by offering the place gratis to the School. The School ought to have known that in a function which is open to general public, a Pandal with a capacity of 500 to 600 persons spread over no more than an area measuring 100'×70', a gathering of 1200 to 1500 persons could result in stampede and expose to harm everyone participating in the function especially the children who were otherwise incapable of taking care of their safety. The school ought to have known that the availability of only one exit gate from the Marriage Palace and one from the Pandal would prove insufficient in the event of any untoward incident taking place in the course of function. The School ought to have taken care to restrict the number of invitees to what could be reasonably accommodated instead of allowing all and sundry to attend and in the process increase the chances of a stampede. The School ought to have seen that sufficient circulation space in and around the seating area was provided so that the people could quickly move out of the place in case the need so arose. Suffice it to say that a reasonably prudent School Management organizing an annual function could and indeed was duty bound to take care and ensure that no harm came to anyone who attended the function whether as an invitee or otherwise, by taking appropriate steps

to provide for safety measures like fire fighting arrangements, exit points, space for circulation, crowd control and the like. And that obligation remained unmitigated regardless whether the function was held within the School premises or at another place chosen be the Management of the School, because the children continued to be under the care of the School and so did the obligation of the School to prevent any harm coming to them. The principle of proximity creating an obligation for the School *qua* its students and invitees to the function would make the School liable for any negligence in either the choice of the venue of the function or the degree of care that ought to have been taken to prevent any harm coming to those who had come to watch and/or participate in the event. Even the test of foreseeability of the harm must be held to have been satisfied from the point of view of an ordinary and reasonably prudent person. That is because a reasonably prudent person could foresee danger to those attending a function in a palace big enough to accommodate only 500 to 600 people but stretched beyond its capacity to accommodate double that number. It could also be foreseen that there was hardly any space for circulation within the Pandal. In the event of any mishap, a stampede was inevitable in which women and children who were attending in large number would be worst sufferers as indeed they turned out to be. Loose electric connections, crude lighting arrangements and an electric load heavier than what the entire system was geared to take was a recipe for a human tragedy to occur. Absence of any fire extinguishing arrangements within the Pandal and a single exit from the Pandal hardly enough for the people to run out in the event of fire could have put any prudent person handling such an event to serious thought about the safety of those attending the function especially the small children who had been brought to the venue in large numbers. Applying the foresight of a reasonable person to the fact situation which the evidence established before the Commission, we have no hesitation in holding that the Commission was justified in declaring that the School was negligent in the matter of arranging the function and providing security qua those whom it owed the duty to take care.

(83) The decision of the Honble Supreme Court in **Rajkot Municipal Corporation** *versus* **Manjulaben Jayantilal Nakum and Others (20)** heavy reliance upon which was placed by Mr. Rajiv Atma

(20) (1997) 9 S.C.C. 552

Ram, learned senior counsel for the School, does not, in our opinion, lend any assistance to the School or its Management. On a comprehensive review of the case law on the subject, the Court in that case observed :—

> "The degree of carelessness in breach of duty would, therefore, vary from case to case and it should not unduly be extended or confined or limited or circumscribed to all situations. The attending circumstances require evaluation and application to a given set of facts in the case on hand."
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> "The negligence lies in failure to take such steps as a reasonable, prudent man would have taken in the given circumstances. What constitutes carelessness is the conduct and not the result of inadvertence. Thus, negligence in this sense is a ground for liability in tort".

(84) What is noteworthy is that the Court was, in that case, dealing with a claim arising out of the sudden fall of a tree causing death of a road user. The question was whether there was proximity of relationship between the parties, and foreseeability of danger and duty of care to be performed by the defendant to avoid the accident or to prevent danger to the person of the deceased. The Court answered all the three in negative and held that there was no proximity of relationship between the Corporation and a road user nor any foreseeability of danger where a healthy tree suddenly falls and injures a road user. Consequently there was no failure to take care. The Court observed :—

> "If the duty of maintaining constant vigil or verifying or testing the healthy condition of trees at public places with so many other functions to be performed, is cast on it, the effect would be that the authority would omit to perform statutory duty. Duty of care, therefore, must be carefully examined and the foreseeability of damage or danger to the person or property must be corelated to the public duty of care to infer that the omission/ non-feasance gives rise to actionable claim for damages against the defendant".

(85) In the light of what we have stated above, we have no hesitation in answering question No. 1 in the negative.

Re : Question No. 2 :

(86) The Commission of Inquiry has recorded a clear finding that the School had failed to adduce any evidence to establish that Rajiv Marriage Palace was hired for use on payment of a sum of Rs. 6,000 as alleged by the School. It noted the denial of that allegation by one of the owners of the Marriage Palace, according to whom use of Marriage Palace was given gratis to gain commercial publicity for the place. The Commission has held that regardless whether the place had been hired for consideration or had been taken for use gratis, the Marriage Palace was, for purposes of the function organized by the School, its agent. The Commission has, relying upon the decisions of the Apex Court in **Pushpabai Parshottam Udeshi's case** *(supra)*, **Minu B. Mehta's case** *(supra)*, and **M.S. Grewal's case** *(supra)* and a few English decisions, taken the view that the Principal is vicariously liable for the acts of his Agent performed during the course of the agency. The Commission observed that the vicarious liability of the Master does not depend upon whether the act is lawful or unlawful and that the Principal would be liable for the acts of his Agent committed in the course of the contract even though the Agent may have acted in contravention of some of the provisions of the statute or the rules thereunder.

(87) Finding fault with the conclusion arrived at by the Commission, Mr. Rajive Atma Ram, learned senior counsel appearing for respondents No. 4 and 5, strenuously argued that the School had only a commercial relation with the Marriage Palace and that the commission was in error in holding that the relationship of Master and Servant or Principal and Agent came about between the two. It was argued by Mr. Atma Ram that the School was like any other person in that position to be taken as a client/ customer of the Marriage palace who was for all intents and purposes an independent Contractor engaged to render services in connection with the function in question. In the event of any mishap taking place in the course of function resulting in any damage or loss of lives, the School was in no way responsible for any such negligence. It was contended that the School had no reason to believe that the Marriage palace was unauthorizedly built,

did not have a completion certificate or that the arrangements made by it whether for lighting or other purposes were unsafe or unsatisfactory thereby jeopardizing the safety and security of the invitees. The School was, according to Mr. Rajive Atma Ram, supremely confident that once the Management of the event was placed in professional hands, the safety and security of the guests/participants would be taken care of by them.

(88) On behalf of petitioner, it was *per contra* argued that the School had shifted the function from out of its premises for want of sufficient space and that according to the evidence on record all arrangements including the arrangements for fixing of chairs, lighting, standby generators, safety and security were that of the organizers of the function. The school was the sole organizer of the function who had cut corners to save expense and arranged an unsatisfactory and wholly insecure place for holding the function in total disregard of its legal obligations of taking care especially when children and women formed a major part of the audience qua whom special care had to be taken by the organizers. In the alternative, it was submitted that if the School had entered into any arrangement for holding the function with any other agency like the Marriage Palace on whatever terms that may have been settled between the two, it would be liable for the consequences flowing from any act of negligence on its own part as much as it would be liable for the negligence of its Contractor for that function who would, in the eyes of law, be an Agent of the School. The Commission was, therefore, justified in holding the School liable for its own negligence and also the negligence of the Marriage Palace owners.

(89) M/s H. S. Hooda, Advocate General, Haryana and Randhir Singh, Additional Advocate General, Haryana, also supported the same line of reasoning and contended that not only was the School itself negligent but even if it had engaged the services of any agent for holding that function and providing support needed for the same, negligence of any such person brought into the scheme of things had also to be treated as negligence of the School itself in the event of something going wrong. Learned counsel appearing for the Municipal Committee, Dabwali and Electricity Board pursued a similar lines of reasoning.

(90) On behalf of the Marriage Palace owners, respondent No. 9, it was contended by Mr. Mohunta that the School was the occupier

of the premises at the time of the unfortunate incident and since the control over everything relevant to the holding of the function lay in the hands of the School, it could not shift its responsibility to the Marriage Palace. Relying upon certain English decisions, Mr. Mohunta argued that although there was not comparable legislation in this Country to what in United Kingdon is called the Occupiers' Liability Act, 1957, the principles underlying the said legislation were well recognized in common law and could be attracted to analogous situations.

(91) The fateful function was organized by the School and the Management at the helm of its affairs. Any such School function, would in the ordinary course, have been conducted within the School premises because it is the School that organizes and controls the function not only as to the content of the programme but also the manner in which the same may be performed and completed. So also the School had the complete freedom not only to decide about the venue for the function but also the manner and the conditions subject to which the same shall be conducted. That the School did not have sufficient space for holding of such a big function was admitted before us. This only meant that the function had to be organized outside the School premises, but the fact remained that the function continued to be a School function regardless of the venue at which it was held. It cannot be disputed that for holding of any such function, the School would have to make necessary arrangements not only for a tent/ shamiana and the like but also arrange electricity, refreshment, tea, water etc. The School could make these arrangements of its own or employ an agency for doing so. In the present case, according to the School, it had engaged Rajiv Marriage Palace for providing the necessary support in terms of accommodation etc. required for holding for the function. The School alleges that the Marriage Palace had agreed to do the needful for a consideration of Rs. 6,000 only which fact has been disputed by the Marriage palace Owners. But even assuming that the arrangements were for a payment, the legal relationship that arose between the School on the one hand and the Marriage Palace Owners on the other hand, was that of a Principal and Agent, the purpose underlying the agency being a satisfactory conduct and conclusion of the entire programme. The function was for all intents and purposes a school function, controlled entirely by the School. The kind of sitting arrangement that was required to be made

for the guests invited to the function, the kind of lighting arrangement that was required to be made in and around the Pandal, the size of the stage that was required to be prepared for the function and the kind of decoration that was required to be made were all matters that lay entirely in the discretion of the School Authorities. It is common knowledge that not only for marriage ceremonies but also other similar functions where venues are hired, the hiring clients of the premises have a free hand in deciding as to how the available space within the premises can be utilized and what facilities, safeguards, precautions and comforts need to be provided to those attending or invited to the function. The fateful function held on 23-12-1995 was not for that matter different from any other function in which the School remained in complete control of what it wanted to be arranged and the manner in which the same had to be arranged. The participation or presence of the owners of the Marriage Palace only suggests that they were carrying out the instructions given to them by the School Authorities. At any rate even if the School had given a free hand to the Marriage Palace to organize the function, the relationship between the School and the Marriage Palace did not undergo any change and continued to be that of a Principal and Agent.

(92) The legal relationship between the School and the Marriage Palace as Principal and Agent apart, both were on the principles of common law liable to third parties as occupier of the premises which went up in flames because of their negligence to take care. In **Salmond on the Law of Torts (Tenth Edition),** the Law on the point is stated/summarised as below :—

> "In dealing with dangerous premises it is necessary to distinguish between the responsibilities of the owner and those of the occupier or possessor. Generally speaking, liability in such cases is based on occupancy or control, not on ownership. The person responsible for the condition of the premises is he who is in actual possession of them for the time being, whether he is the owner or not, for it is he who has the immediate supervision and control and the power of permitting or prohibiting the entry of other persons".

(93) In **Wheat** *versus* **E. Lacon and Co. (21)** Lord Denning declared that anyone exercising sufficient degree of control over the premises would as an occupier be under a duty of care towards those who came lawfully on the premises. The following passage is, in this connection, apposite :

> "It was simply a convenient word to denote a person who had a sufficient degree of control over premises to put him under a duty of care towards those who came lawfully on to the premises. In order to be an 'occupier' it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be occupiers. And whenever this happens, each is under a duty to use care towards persons coming lawfully on to the premises, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure but each may have a claim to contribution from the other".

(94) In the instant case while the School had the absolute right to restrict the entry to the venue of the function being organized by it and everything that would make the function go as per its requirements, the owners had not completely given up their control over the premises, and were indeed present at the time the incident occurred. The facts and circumstances brought on record in the course of the enquiry establish that the School and the Marriage Palace owners were both occupying the premises and were, therefore, under an obligation to take care for the safety of not only the students, but everyone who entered the premises on their invitation or with their permission specific or implied. As to the obligation of an occupier to take care qua his invitees a long line of English decisions have settled the legal position. We may, at this stage, briefly refer to some of these decisions.

(21) (1966) 1 All England Reports 582 (HL)

(95) In **Thomson** *versus* **Cremin and Others (22),** it was observed :

> "The duty of the invitor towards the invitee is, in my opinion, a duty personal to the former, in the sense that he does not get rid of the obligation by entrusting its performance to independent contractors. It is true that the invitor is not an insurer: he warrants however, that due care and skill to make the premises reasonably safe for the invitee have been exercised, whether by himself, his servants, or agents or by independent contractors whom he employes to perform his duty. He does not fulfill the arranty merely by leaving the work to contractors, however, reputable or generally competent. His warranty is broken if they fail to exercise the proper care and skill. This is only an instance of the general rules which was stated by **Lord Blackburn** in another connection in **Dalton** *versus* **Angus (6) (6 App. Cas. 829),** where he distinguished the case of what has been called the collateral negligence of sub-contractor from their negligence in failing to perform a duty resting on the principal himself".

(96) In **Hartwell** *versus* **Grayson Rollo and Clover Docks Limited and Others (23),** similarly it was observed :—

> "In my opinion the true view is that when a person invites another to a place where they both have business, the invitation creates a duty on the part of the invitor to take reasonable care that the place does not contain or to give warning of hidden dangers, no matter whether the place belongs to the invitor or is in his exclusive occupation. Although the rule has generally been stated with reference to owners or occupiers of premises, it is indicated by Lord Wright in the case of **Glasgow Corporation** *versus* **Muir and other** (1) that the occupation need not be exclusive. He said there : "Before dealing with the facts, I may observe that in cases of 'invitation' the duty has most commonly reference to the structural condition of the premises, but it may clearly apply to the use which the occupier (or whoever has control so far as material) of the premises permits a third party to make of

(22) (1953) 2 All England Reports 1185
(23) (1947) 1 King's Bench Division 901

the premises". Invitors, of course, do not as a rule invite other on business to premises in which the invitors have no business interest or control, but they may have an interest and control which falls short of exclusive occupation, and where they have such an interest and control and invite others to come to the spot on business they are bound, in my opinion, to warn the invitee against concealed dangers of which they know, or ought to know, even if such dangers are not created by their own positive acts".

(97) In **H & N Emanuel Ltd.** *versus* **Greater London Council and Another (24),** the Court of appeal was dealing with a case where an independent contractor was negligent resulting in the escape of fire and damage to the neighbouring building. The Court held the occupier liable and observed :

"An occupier was liable for the escape of fire caused by the negligence not only of his servant, but also of his independent contractor and anyone else who was on his land with his leave and licence; the only occasion when the occupier would not be liable for negligence was when the negligence was the negligence of a stranger, although (per Lord Denning MR) for this purpose a 'stranger' would include a person on the land with the occupier's permission who, in lighting a fire or allowing it to escape, acted contrary to anything which the occupier could anticipate that he would do ; in the present case the council were 'occupiers' of the premises because they had a sufficient degree of control over the activities of persons thereon and K's men were not 'strangers' because, although they were forbidden to burn rubbish, it was their regular practice to do so ; the council could reasonably have anticipated that the men would light a fire and ought to have taken more effective steps to prevent them".

(98) In the light of the above, we have no hesitation in holding that the One Man Commission of Inquiry was perfectly justified in holding the School and the Marriage Palace liable for the act of tort arising out of their negligence and duty to take care about the safety of all those invited to the function at Dabwali. Question No. 2 is answered accordingly.

(24) (1971) 2 All England Reports 835

Re : Question No. 3 :

(99) On behalf of School, it was argued by Mr. Rajive Atma Ram, learned senior counsel, that the Commission of Inquiry had not fairly apportioned the liability among the School and other tort-feasors. It was urged that the Commission was influenced only by the income of the School while fixing its liability at 80% of the total. The economic capacity of the School or the Managing Committee under whose control the School functions was not, according to learned senior counsel, determinative of the extent of the liability that could and ought to be fastened on the School. The liability fixed upon the Municipal Committee and the Electricity Board was unreasonably low even when the Commission has recorded a clear finding that the incident could have been avoided only if the employees of the Municipal Committee and the Electricity Board had performed their duties properly. So also the liability of the State had not been properly fixed having regard to he magnitude of the default on the part of its officers and employees. The present was, according to learned senior counsel, a fit case where the liability could be apportioned afresh having regard to the extent of negligence attributable to each one of the tort-feasors.

(100) On behalf of the State, Municipal Committee, Dabwali, and the Electricity Board, it was argued that the major part of the liability arising out of the tragedy must fall on the School and its Agent, the Marriage Palace, and had been rightly placed by the Commission on them jointly and severally. There was, according to the learned counsel, no comparison between an actual tort-feasor and tort-feasor who was being held responsible only because of its omission to take steps which could have prevented the tragedy.

(101) The Commission of Inquiry has, no doubt, fixed the liability of the School at 80% of the total amount payable to the claimants but it is wrong to say that the higher percentage of liability fixed upon the School was only because it was in a position to pay the amount recoverable from it. Apportionment of liability arising out of act of tort would vary from case to case and situation to situation. There is no cut and dried formula that can be applied while fixing liability among several tort-feasors. Broadly speaking, the liability ought to be apportioned depending upon the nature

and extent of the role played by the tort-feasors in the commission of the tort and the resultant loss to the claimants. In the opinion of the Commission, the School being the major player in the tort arising out of its negligence ought to shoulder the responsibility to the extent of 80%, while the State, the Municipal Committee and the Electricity Board would take only 10%, 5% and 5%, respectively. That ratio, in our opinion, is open to a slight correction in order to balance the equities and also to make the apportionment as nearly as possible proportionate to the extent of negligence and its effect. In the case of **Association of Victims of Uphaar Tragedy's case** *(supra)*, the fire incident had claimed as many as 59 lives and caused injuries to 203 men, women and children who had gone to Uphar Cinema to watch a Hindi Move. In a petition under Article 226 of the Constitution filed by the Association of Victims of the Tragedy, the Court had not only held the owners of the Chinema, Delhi Vidyut Board, Municipal Corporation of Delhi and Licensing Authority guilty of negligence but awarded compensation against them to the claimants. The Court had, while fixing the liability to the extent of 55% of the total upon the owners of the Cinema, held Delhi Vidyut Board, the Licensing Authority and the Municipal Corporation of Delhi, liable to the extent of 15% each. It is evident from a reading of the decision rendered by the Court that a distinction was made between the tort-fasors *inter-se*. A heavier liability was fastened on the person whose primary duty it was to take care about the safety of the Cinema goes. In the absence of any reason to the contrary we are inclined to adopt the same approach for apportionment of liability in the present case also. Consequently, while the School and its Agent namely respondent No. 9-Rajiv Marriage Palace would be jointly and severally liable to pay 55% of the total amount of compensation payable to the claimants, the remaining tort-feasors, namely the State of Haryana, Haryana State Electricity Board (now named as "Dakshin Haryana Bijli Vitran Nigam) and the Municipal Committee, Dabwali, shall be liable to pay 15% each of the total amount. We make it clear that the State Government shall, as recommended by the Commission of Inquiry, pay the amount on its own behalf and on behalf of respondents Electricity Board and Municipal Committee, Dabwali, in the first instance but shall be free to recover the same from them to the extent of the liability that we have fixed for the said two respondents.

(102) Question No. 3 is answered accordingly.

Re : Question No. 4 :

(103) It was contended by Mr. Rajiv Atma Ram, learned senior counsel, appearing on behalf of respondents No. 4 and 5, that the claimants were not entitled to make any claim for enhancement of amounts of compensation awarded in their favour. He argued that the amounts awarded by the Commission in favour of the claimants were based on consensus arrived at before the Commission by not only the claimants but by the respondents also, which could not at this stage be displaced by the claimants. He drew our attention in this regard to the following passages appearing in the report submitted by the Commission while dealing with the claims arising out of death of minor children :—

> "In fact, the learned Counsel for the parties have all unanimously agreed and submitted at the Bar that there is a consensus between them that in view of the overwhelming case law on the subject and the principle laid down in **Lata Wadhwa's case**, an amount of Rupees two lacs may be held to be 'just' compensation to be paid to the claimants in each of these 76 cases. Accordingly, accepting their submissions and also finding the same to be just and reasonable as also keeping in view the principle laid down in **Lata Wadhwa's case** *(supra)*, an amount of Rupees two lacs is hereby fixed to be payable by way of compensation to the claimant/claimants in each of these 76 cases".

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> "In fact, the learned counsel for the parties have all unanimously agreed and submitted at the Bar that there is a consensus between them that in view of the overwhelming case law on the subject and the principle laid down in **Lata Wadhwa's case**, an amount of Rupees 4.10 lacs may be held to be 'just' compensation to be paid to the claimants in each of these 38 cases. Accordingly, accepting their submissions and also finding the same to be just and reasonable as also keeping in view the principle laid down in **Lata Wadhwa's case** *(supra)*, an amount

of Rupees 4.10 lacs is hereby fixed to be payable by way of compensation to the claimant/claimants in each of these 38 cases".

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"In fact, the learned counsel for the parties have all unanimously agreed and submitted at the Bar stating that there is a consensus between them that in view of the overwhelming case law on the subject and the principle laid down both in **M. S. Grewal's case** and **Lata Wadhwa's case**, an amount of Rupees 5 lacs may be held to be the 'just' compensation to be paid to the heirs of all the 20 deceased children in the age group of 16 to 22 years. Accordingly, accepting their submissions and also finding the same to be just and reasonable, the amount of Rupees 5 lacs is hereby fixed to be payable by way of compensation to the claimant/claimants in each of these 20 cases".

(104) Per contra, Mrs. Anju Arora, learned counsel appearing for the petitioner-Association argued that the claimants gave no consent like the one referred to in the report. All that was agreed before the Commission was that the principles of payment of compensation as set out in **Lata Wadhwa's case** *(supra)* could be adopted while determining the amounts payable to the claimants where children of different age groups had been killed in the tragedy. The question as to what would be the amount of compensation on the said principles was a matter which had to be determined by the Commission and on which the claimants had made no concession. In support of that submission she placed on record affidavits sworn by her and by M/s Harpal Singh, President of Dabwali Fire Tragedy Victim Association, Sukhcharan Singh Sran, Dewan Chand Garg, Ravinder Kumar Tayal, Radhey Shyam Challana, Advocates, who appeared for the claimants before the Commission of Inquiry. All these affidavits emphatically deny making of any statement or concession on behalf of the claimants that a sum of Rs. 2,00,000 towards compensation in each one of the 172 cases arising out of death of children would suffice or was just and fair compensation. It was submitted that the alleged consensus was not evidenced by any statement recorded at any stage of the proceedings nor was the making of any such concession mentioned in the interim orders passed by the

Commission. The concession attributed to the petitioners in the final report has, according to learned counsel, come as a surprise to the petitioner-Association and deserved to be eschewed from consideration.

(105) Mr. Rajiv Atma Ram, learned senior counsel, argued that in case the parties were to be relieved of the concessions made by them even the respondents ought to have the freedom of arguing that no such concession was made on their behalf either. No affidavit on behalf of the School has, however, been filed either by any School functionary or by the Advocates appearing on its behalf before the Commission repudiating or denying the concession attributed to the School. In the totality of these circumstances, therefore, and in the absence of any material to suggest that a concession was indeed made before the Commission, we are of the opinion that no such concession was made or can stand in their way in praying for a reasonable enhancement in the amount of compensation payable to them. What holds true about the concession attributed to the petitioner-Association must, however, be equally true about the concession attributed to the School also although there is no specific denial on its part. Consequently, all that, the parties shall be deemed to have agreed to was that the amount of compensation payable to the petitioners shall be determined on the principles stated in **Lata Wadhwa's case** *(supra)*. As to what amount would become payable on the application of those principles was not, however, covered by any concession and would, therefore, remain open to be determined on a proper appreciation of the matter by this Court.

(106) Question No. 4 is accordingly answered in the affirmative.

Re : Question No. 5 :

(107) The One Man Commission of Inquiry has dealt with the claims in different categories and awarded compensation accordingly. We also propose to similarly deal with the claims by reference to each category of cases.

Category 1 Cases :

(108) In Category 1 fall cases involving children in the age group of one month to ten years. The Commission has, as noticed earlier, awarded to the parents/next of kin of each child killed in the incident a sum of

Rs. 2,00,000 by way of compensation. The Commission has, while doing so, taken support from the decisions of the Supreme Court including those delivered in **Lata Wadhwa's case** *(supra)* and **M.S. Grewal's case** *(supra)*. Before us, while the claimants prayed for enhancement of the amounts awarded by the Commission, respondent-School has sought reduction of the amount already awarded. The plea for enhancement was made by the claimants primarily on the basis that the amount of Rs. 2,00,000 awarded on the analogy of **Lata Wadhwa's case** *(supra)* ignored the escalation in the price index between 1989 when the incident in **Lata Wadhwa's case** *(supra)* occurred and 1995 when the incident relevant to these cases took place. In the intervening period, the consumer price index having risen considerably, any amount of compensation based on the decision in **Lata Wadhwa's case** *(supra)* can be accurate, fair and reasonable only if the amount is proportionately enhanced to take care of the escalation in the price index during the intervening period. Relying upon a Single Bench decision of High Court of Delhi in **Ashok Sharma and Others** *versus* **Union of India and Others (25)** it was contended that the amount of compensation awarded to claimants in Category 1 ought to be raised to Rs. 3,57,000.

(109) On behalf of respondent-School, it was, on the other hand, contended that the amount of compensation awarded by the Commission for children falling in the age group of one month to ten years was on the higher side and ought to be suitably reduced. In support of that submission, Mr. Rajive Atma Ram placed reliance upon the decision of the Supreme Court in **New India Assurance Co. Ltd. versus Satender and Others (26)**, where the Court had awarded a sum of Rs. 1,80,000 towards compensation for the death of a nine year child killed in a motor accident on 7th May, 2002. Reliance was also placed by Mr. Rajive Atma Ram upon the decision of Supreme Court in **Kaushlya Devi versus Karan Arora and Others (27)** where a sum of Rs. 1,00,000 was awarded towards compensation for a 14 years old boy killed in a road accident. In **Oriental Insurance Co. Ltd. versus Syed Ibrahim and Others (28)** relied upon

(25) II (2008) Accident & Compensation Cases 644
(26) AIR 2007 S.C. 324
(27) AIR 2007 S.C. 1912
(28) AIR 2008 S.C. 103

by Mr. Rajive Atma Ram, the amount of compensation awarded was limited to a sum of Rs. 51,500 only for the death of a seven year old child in a road accident that occurred in the year 1994. It was submitted by Mr. Rajive Atma Ram that the amount of Rs. 2,00,000 awarded by the Commission of Inquiry on the analogy of the decision of the Supreme Court in **Lata Wadhwa's case** *(supra)* was already on the higher side and did not call for any further enhancement.

(110) In **State of Haryana and Another versus Jasbir Kaur and Others (29)** their Lordships of Supreme Court were dealing with a case involving determination of compensation for loss of life. The Court observed that compensation for loss of limbs or life can hardly be weighed in golden scales and that while compensation need not be a windfall for the victim or the dependents left behind the same cannot be a pittance also. The Courts and Tribunals have a duty to weigh various factors in quantifying the amount of compensation which appears to be just. No mathematical precision can, however, be expected in such calculations. Compensation would depend upon the facts and circumstances and special features of each individual case. What is to be remembered is that compensation is just implying thereby that it can neither be whimsical nor arbitrary. It must be equitable, fair and reasonable.

(111) In **New India Assurance Co. Ltd.'s case** *(supra)*, Arijit Pasayat, J., while dealing with the question of determination of compensation in cases where children are killed, observed :

> "There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents".

(29) (2003) 7 S.C.C. 484

(112) The Court further held that in the case of children of tender age, uncertainties abound making it difficult to quantify the prospects of the future increase in their income or the chances of advancement of their career. Uncertainties in regard to their academic pursuits, achievements in career and advancement in life are so many that nothing can be assumed with reasonable certainty.

(113) Reference may also be made to the decision in **Lata Wadhwa's case** *(supra)* in which the Supreme Court was dealing with claims arising out of a similar fire incident in which a large number of children had lost their lives. The Commission of Inquiry comprising Justice Y.V. Chandrachud, former Chief Justice of India, had, in that case, awarded a sum of Rs. 50,000 towards compensation for the death of children in the age group of five to ten years. This amount was enhanced by the Supreme Court to Rs. 1,50,000 to which was added a conventional figure of Rs. 50,000 taking the total compensation to Rs. 2,00,000. While doing so, the Court observed :

> "Mr. Nariman, appearing for the TISCO on his own submitted that the compensation determined for the children of all age groups could be doubled, as in his view also, the determination made is grossly inadequate. Loss of a child to the parents is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents, being reasonably well placed officials of the Tata Iron and Steel Company and on considering the submission of Mr. Nariman, we would direct that the compensation amount for the children between the age group of 5 and 10 years should be three times. In other words, it should be Rs. 1,50,000 to which the conventional figure of Rs. 50,000 should be added and thus the total amount in each case would be Rs. 2,00,000".

(114) It was argued on behalf of School by Mr. Rajive Atma Ram that the enhancement of compensation in **Lata Wadhwa's case** *(supra)* was based on a concession made before the Apex Court and could not, therefore, be taken as a benchmark for adoption in other cases of similar nature. This may not be wholly correct, inasmuch as a reading of the passage

extracted above would show that the concession made before the Court was to the extent of awarding double the amount recommended by the One Man Commission. The Court had, however, awarded three times the said amount taking the compensation from Rs. 50,000 to Rs. 1,50,000. The conventional amount was also enhanced by the Apex Court from Rs. 25,000 to Rs. 50,000. In that view, therefore, the decision in **Lata Wadhwa's case** *(supra)* cannot be said to be based on consent alone.

(115) Even so what would be the reasonable amount of compensation for claimants in Category 1 needs to be examined. According to the claimants, the amount cannot be less than Rs. 3,57,000 per child killed in the incident. In our opinion, even if the amount of compensation is not calculated with mathematical precision based on the consumer price index as was done in case decided by the Delhi High Court, the fact that there was a considerable time gap between the incident referred to in **Lata Wadhwa's case** *(supra)* and that with which we are concerned in these cases cannot be overlooked. We are also of the opinion that the amount awarded in **Lata Wadhwa's case** *(supra)* could only be a guiding factor and not a benchmark for all times to come especially with an ever increasing price index and falling value of the rupee. That apart determination of compensation in cases involving loss of life always involves some amount of guess work and speculation. What is important is that any such guess work is moderate, and tempered by realism, prudence and experience in life. Taking into consideration the totality of these factors we are of the opinion that while the amount of compensation of Rs. 1,50,000 awarded in **Lata Wadhwa's case** *(supra)* for an incident that took place six years before the incident in question could be enhanced to Rs. 2,75,000, the conventional figure of Rs. 50,000 awarded in the said case could also be revised to Rs. 75,000 in each one of the cases that fall in Category 1 to serve the ends of justice. The amount awarded by the One Man Commission of Inquiry would accordingly stand enhanced to Rs. 3,50,000 in 172 claim petitions of children in the age group of one month to ten years. The apportionment of the enhanced amount among the claimants shall be in the ratio recommended by the Commission.

Category 2 Cases :

(116) The cases falling in this category comprised claims arising out of death of children in the age group of ten to 15 years. The One Man

Commission had, relying upon the decisions referred to above, awarded a sum of Rs. 4,10,000 in each one of these cases. The claimants, however, seek enhancement of the same based on consumer price index to Rs. 7,33,684.

(117) The Commission has, while awarding the amount mentioned above, taken support from the decision in **Lata Wadhwa's case** *(supra)* where the Court had awarded a sum of Rs. 4,10,000 for each claimant in said category. The basis of said calculation has been set out in the following passage appearing in **Lata Wadhwa's case** *(supra)* :

> "So far as the children between the age group of 10 and 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. The TISCO itself has a tradition that every employee can get one of his child employed in the company. Having regard to these facts, in their case, the contribution of Rs. 12,000 per annum appears to us to be on the lower side and in our considered opinion, the annual contribution should be Rs. 24,000 and instead of multiplier of 11, the appropriate multiplier would be 15. Therefore, the compensation, so calculated on the aforesaid basis should be worked out to Rs. 3,60,000 to which an additional sum of Rs. 50,000 has to be added, thus, making the total compensation payable at Rs. 4,10,000 for each of the claimants of the aforesaid deceased children".

(118) It is evident from a careful reading of above that their Lordships of Supreme Court had adopted the multiplier method for calculating the amount of compensation payable to the claimants. The Court had taken the contribution of the deceased children as Rs. 24,000 per annum and adopted a multiplier of 15 to work out a sum of Rs. 3,60,000 towards compensation. To that amount is added Rs. 50,000 towards conventional figure, taking the total to Rs. 4,10,000. What is significant is that one of the factors that the Court considered while awarding the compensation in this category was the fact that the TISCO had a tradition of providing employment to atleast one child of each one of its employees. There is, in the case in hand, no such assured employment to the children of the employee of respondent-School. The process of determination of compensation, therefore, remains a difficult task with all the uncertainties and other imponderables a galore.

Even so while the multiplier chosen by the Supreme Court can be adopted for application in the present case also the question is whether the amount of contribution which the Supreme Court had adopted for purposes of calculation can be enhanced and, if so, to what extent.

(119) In **Lata Wadhwa's case** *(supra)*, the contribution of the victims was on a notional basis taken at Rs. 24,000. That figure cannot remain static forever. Some escalation is inevitable having regard to all the relevant considerations, especially the time gap between the two incidents. In our opinion, an annual increase of Rs. 1,000 in the contribution ought to be reasonable. This would mean that the annual contribution of the victims in this category could be taken at Rs. 30,000. The amount of compensation would, accordingly, go to Rs. 4,50,000 by applying a multiplier of 15. To that figure should be added Rs. 75,000 towards conventional amount to take the total to Rs. 5,25,000 in each case falling in this category which amount we hereby award.

Category 3 Cases :

(120) The Commission had, taking support from the decision in **M.S. Grewal's case** *(supra)*, awarded Rs. 5,00,000 as compensation to elderly children in the age group of 16 to 22 years. The claimants have, before us, claimed a sum of Rs. 8,94,736 in each one of the cases falling in this category. The enhancement of claim rests entirely on the consumer price index escalation during the period of six years that separates the two incidents. On the analogy of what we have said in Category 2 cases, we are inclined to take the contribution of the children falling in this category at Rs. 35,000 and adopt a higher multiplier of 16 for determining the compensation payable in these cases. The total amount payable by that method comes to Rs. 5,60,000 to which we add Rs. 75,000 towards conventional figure taking the total to Rs. 6,35,000. The award made by the Commission shall, to the above extent, stand modified. The enhanced amount shall also be apportioned among the claimants in the ratio indicated by the Commission.

Category 4 Cases :

(121) In this category fall cases of 136 women, who lost their lives in the fire incident. While 93 out of the victims in this category were simple housewives, 4 were elderly ladies and 9 others were unmarried working

girls. Another 9 were employed in Government service, while 12 were employed in Non-Government service. Remaining 9 were working women doing miscellaneous work. Since each one of these groups would stand on a different footing for purposes of payment of compensation due in their cases, it would be appropriate to deal with them separately, under the following sub-categories :—

(i) Housewives ;

(ii) Elderly ladies ;

(iii) Unmarried working girls ;

(iv) Working women in Government service ;

(v) Working women in Non-Government Service ; and

(vi) Working women (miscellaneous).

(i) Housewives

(122) A total of 93 victims fall in this sub-category. The one man Commission has dealt with 85 of these cases by treating their contribution to the family to be Rs. 36,000, deducted 1/3 out of the same towards personal expenses, applied a multiplier appropriate in each one of the cases and awarded compensation accordingly. What is noteworthy is that the one man Commission has in 8 out of a total of 93 cases awarded a higher amount of compensation in comparison to other similar cases on the premise that the women in these 8 cases held high family status. Their contribution, in terms of services to the family, was on that basis assessed at a higher figure. We have not been able to persuade ourselves to accept that line of reasoning. So long as the deceased victims were housewives, the services rendered by them to the family ought to be assessed on an equal footing common to all. The social status of the victim notwithstanding, the value of the services rendered by her may not make any difference *vis-a-vis* any other housewife, who was less qualified or held a relatively modest position in the social milieu. The proper course, therefore, would be to deal with the claims relating to all 93 housewives on a common basis and to award compensation payable to them depending on the multiplier applicable in each one of these cases.

(123) As noticed in the earlier part of this order the claimants have found fault with not only the deduction made by the Commission but also claimed that a higher multiplicand ought to be chosen having regard to the rise in the consumer price index between the year 1989 and 1995.

(124) Both these submissions have considerable merit in them. In **Lata Wadhwa's case** *(supra)*, relied upon by the claimants, the contribution which a housewife makes to the family in the nature of services rendered by her was assessed at Rs. 36,000 and compensation awarded on that bases by applying a suitable multiplier. No deduction towards the personal expenses was made nor was there any occasion to do so. That is because deduction towards personal expenses would be called for only when the deceased was earning and the Court is examining as to what would eventually accrue to the benefit of the family, out of the said earning. It has no application to a case where the value of the services rendered by the housewife was itself assessed at Rs. 36,000 per annum. The Commission was, therefore, in error in deducting 1/3rd of the said amount while determining the amount of compensation payable to the claimants. A Single Bench decision of the High Court of Gujarat has in **United India Insurance Co. Ltd. versus Virambhai Ranchhodbhai Patel and others, (30)** taken a similar view and observed :—

> "6. In **Lata Wadhwa versus State of Bihar, 2001(4) RCR (Civil) 673 : 2001 ACJ 1735 : (AIR 2001 SC 3218),** the Apex Court awarded compensation to the family members of the deceased-housewives by assessing the value of their services at Rs. 3,000 per month, albeit on a concession from the TISCO. The Tribunal has valued the services rendered by the deceased to the family at only Rs. 1,500 per month and with fall in the value of money, such income could certainly be valued at Rs. 2250 per month. In fact, when such services are being valued in terms of money, the question of deducting one-third amount thereform may not arise. Hence, even if only Rs. 1500 per month is taken as the value of such services, which were being rendered by the deceaed, the same can certainly be adopted as the datum figure for determining the amount of compensation payable under the head".

(30) 2007 (4) R.C.R. (Civil) 436

(125) The second aspect relates to the choice of the multiplicand inasmuch as according to the claimants the amount of Rs. 36,000 was in **Lata Wadhawa's case** (*supra*) assessed as the contribution of a housewife in connection with an incident of the year 1989. The incident in the present case had occurred six years later. This time gap ought to be suitably provided for in terms of a suitable increase argued Mrs. Arora, appearing for the claimants.

(126) That assessment of the contribution made by a housewife in **Lata Wadhwa's case** (*supra*) must be taken with reference to the incident in that case was not and cannot be disputed. It is not as though regard less of the rise in the consumer price index, inflation and the ever decreasing purchasing power of the rupee, the value of the contribution made by a housewife would forever remain static at Rs. 36,000 per annum. The value must of necessity go up with passage of time on the common sense principle that what could be purchased for Rs. 36,000 in the year 1989, was no longer purchasable at the same price in the year 1995. As to what ought to be the escalation over the base figure of Rs. 36,000 per annum is the real question.

(127) According to the claimants, the inflation corrected value of Rs. 36,000 in the year 1989 would rise to Rs. 64,424 in the year 1995. In the case of elderly ladies in the age group of 62 to 72 years the amount of contribution assessed by the apex Court of Rs. 20,000 would rise to Rs. 35,789. This means a rise of over 75% of the base amount, which in our view may be on the higher side. The rise can in our opinion be on a uniform basis applicable to all the claimants taken at 25% of the base figure which would add to the amount of Rs. 36,000 an amount of Rs. 9000 taking the total to 45,000 per annum. In the case of elderly ladies in the age group of 62 years to 72 years the amount of contribution would stand enhanced from Rs. 20,000 to Rs. 25000 per annum. We have already noticed in the beginning of this order that the parties have not assailed before us the choice of the multiplier applied by the Commission in each one of these cases. In the result in the cases of 93 housewives who died in the fire incident the amount of compensation awarded shall stand enhanced to the extent indicated below. The conventional amount of Rs. 50,000 shall also stand enhanced

to Rs. 75,000 as determined by us in category 2 cases above. The final picture that would thus emerge shall be as under :—

Sr. No.	Case No.	Name & Age of the Deceased	Amount awarded by the Commission (In Rs.)	Multiplier Applied	Value of services rendered to the family (In Rs.)	Revised amount of compensation held payable (Rs. 45000 x Multiplier applicable) (In Rs.)	Conventional Figure (In Rs.)	Total Amount (7+8) (In Rs.)
1	2	3	4	5	6	7	8	9
1	65-DFT	Mrs. Meera Kumari, 28 years	312000	13	45000	585000	75000	660000
2	67-DFT	Mrs. Rameshwari, 30 years	408000	17	45000	765000	75000	840000
3	77-DFT	Mrs. Amarjit Kaur, 37 years	384000	16	45000	720000	75000	795000
4	79-DFT	Mrs. Kanta Bathla, 43 years	360000	15	45000	675000	75000	750000
5	82-DFT	Mrs. Kaushalya Devi, 20 years	408000	17	45000	765000	75000	840000
6	83-DFT	Mrs. Narinder Kaur, 21 years	408000	17	45000	765000	75000	840000

7	84-DFT	Mrs. Rekha Rani, 22 years	432000	18
8	85-DFT	Mrs. Vandhna Rani 22 years	120000	5
9	86-DFT	Mrs. Jasbir Kaur, 22 years	408000	17
10	87-DFT	Mrs. Saroj Devi, 25 years	408000	17
11	89-DFT	Mrs.Dimple, 24 years	120000	5
12	90-DFT	Mrs. Mishu Bala, 24 years	408000	17
13	91-DFT	Mrs. Lata Rani, 30 years	408000	17
14	92-DFT	Mrs. Neelam Rani, 25 years	408000	17
15	93-DFT	Mrs. Kailash Rani, 26 years	408000	17
16	94-DFT	Mrs.Champa Rani, 33 years	408000	17

45000	810000	75000	885000
45000	225000	75000	300000
45000	765000	75000	840000
45000	765000	75000	840000
45000	225000	75000	300000
45000	765000	75000	840000
45000	765000	75000	840000
45000	765000	75000	840000
45000	765000	75000	840000
45000	765000	75000	840000

1	2	3	4	5
17	95-DFT	Mrs. Madhu Rani, 26 years	384000	16
18	96-DFT	Mrs. Vanita *alias* Pooja Rani, 27 years	432000	18
19	97-DFT	Mrs. Harinder Kaur, 27 years	360000	15
20	98-DFT	Mrs. Madhu Bala *alias* Neena, 22 years	432000	18
21	99-DFT	Mrs. Paramjit Kaur, 27 years	432000	18
22	100-DFT	Mrs. Sunita Rani, 27 years	432000	18
23	101-DFT	Mrs. Seema Rani, 27 years	384000	16
24	102-DFT	Mrs. Surider Kaur, 28 years	432000	18
25	103-DFT	Mrs. Raj Rani, 28 years	432000	18

6	7	8	9
45000	720000	75000	795000
45000	810000	75000	885000
45000	675000	75000	750000
45000	810000	75000	885000
45000	810000	75000	885000
45000	810000	75000	885000
45000	720000	75000	795000
45000	810000	75000	885000
45000	810000	75000	885000

26	104-DFT	Mrs. Anjna Kumari, 28 years	384000	16
27	105-DFT	Mrs. Sushma Kumari Chugh, 28 years	384000	16
28	106-DFT	Mrs. Sunita, 25 years	360000	15
29	107-DFT	Mrs. Shalu, 19 years	384000	16
30	108-DFT	Mrs. Harinder Kaur, 27 years	432000	18
31	110-DFT	Mrs. Saroj Rani, 29 years	384000	16
32	111-DFT	Mrs. Suman Jain, 30 years	408000	17
33	112-DFT	Mrs. Santosh Kumari, 30 years	38400	16
34	113-DFT	Mrs. Usha Rani, 30 years	36000	15
35	114-DFT	Mrs. Shashi Bala, 30 years	432000	18

45000	720000	75000	795000
45000	720000	75000	795000
45000	675000	75000	750000
45000	720000	75000	795000
45000	810000	75000	885000
45000	720000	75000	795000
45000	765000	75000	840000
45000	720000	75000	795000
45000	675000	75000	750000
45000	810000	75000	885000

1	2	3	4	5
36	115-DFT	Mrs. Rajinder Kaur, 30 years	408000	17
37	116-DFT	Mrs. Anita Rani, 30 years	384000	16
38	117-DFT	Mrs. Kiran Gupta, 30 years	360000	15
39	118-DFT	Mrs. Kulwinder Kaur, 30 years	408000	17
40	119-DFT	Mrs. Neelam, 31 years	408000	17
41	120-DFT	Mrs. Neelam Rani, 30 years	360000	15
42	121-DFT	Mrs. Nirmla Devi, 31 years	408000	17
43	122-DFT	Mrs. Suman, 31 years	360000	15
44	123-DFT	Mrs. Nina 31 years	384000	16

6	7	8	9
45000	765000	75000	840000
45000	720000	75000	795000
45000	675000	75000	750000
45000	765000	75000	840000
45000	765000	75000	840000
45000	675000	75000	750000
45000	765000	75000	840000
45000	675000	75000	750000
45000	720000	750000	795000

45	125-DFT	Mrs. Satbir Kaur, 31 years	408000	17
46	128-DFT	Mrs. Sunita Rani, 32 years	408000	17
47	129-DFT	Mrs. Sarita Rani, *alias* Prem Lata, 32 years	408000	17
48	130-DFT	Mrs. Jaswinder Kaur, 32 years	408000	17
49	132-DFT	Mrs. Bhupinder Kaur, 33 years	360000	15
50	133-DFT	Mrs. Sangeeta Bhateja, 33 years	408000	17
51	134-DFT	Mrs. Veena Kumari, 32 years	312000	13
52	136-DFT	Mrs. Arun Bala, 34 years	408000	17
53	137-DFT	Mrs. Shardha Rani, 33 years	408000	17
54	139-DFT	Mrs. Ranjit Kaur, 35 years	312000	13
55	140-DFT	Mrs. Basant Kaur, *alias* Sant Kaur, 35 years	384000	16

45000	765000	75000	840000
45000	765000	75000	840000
45000	765000	75000	840000
45000	765000	75000	840000
45000	675000	75000	750000
45000	765000	75000	840000
45000	585000	75000	660000
45000	765000	75000	840000
45000	765000	75000	840000
45000	585000	75000	660000
45000	720000	75000	795000

1	2	3	4	5
56	141-DFT	Mrs. Krishna Devi, 35 years	384000	16
57	142-DFT	Mrs. Anita *alias* Krishna, 35 years	360000	15
58	144-DFT	Mrs. Amarjeet Kaur, 38 years	384000	16
59	145-DFT	Mrs. Sudarshan *alias* Sukhdarshan 36 years	384000	16
60	146-DFT	Mrs. Charanjit Kaur, 37 years	384000	16
61	148-DFT	Mrs. Harbans Kaur, 38 years	384000	16
62	149-DFT	Mrs. Manju Grover, 37 years	384000	16
63	150-DFT	Mrs. Neeta, 40 years	384000	16
64	151-DFT	Mrs. Raj Rani, 41 years	264000	11
65	153-DFT	Mrs. Nirmal, 43 years	312000	13

6	7	8	9
45000	720000	75000	795000
45000	675000	75000	750000
45000	720000	75000	795000
45000	720000	75000	795000
45000	720000	75000	795000
45000	720000	75000	795000
45000	720000	75000	795000
45000	720000	75000	795000
45000	495000	75000	570000
45000	585000	75000	660000

66	154-DFT	Mrs. Rameshwari, 49 years	312000	13
67	155-DFT	Mrs. Roopan Devi, 50 years	264000	11
68	156-DFT	Mrs. Veena *alias* Veera, 57 years	192000	8
69	157-DFT	Mrs. Satya Devi, 50 years	264000	11
70	161-DFT	Mrs. Kuldeep Kaur, 25 years	192000	8
71	347-DFT	Mrs. Parmjit Kaur, 28 years	384000	16
72	348-DFT	Mrs. Sunita Sachdeva, 32 years	384000	16
73	350-DFT	Mrs. Shikha Midha, 20 years	408000	17
74	352-DFT	Mrs. Jasvinder Kaur, 28 years	432000	18
75	354-DFT	Mrs. Anju Sethi, 28 years	120000	5

45000	585000	75000	660000
45000	495000	75000	570000
45000	360000	75000	435000
45000	495000	75000	570000
45000	360000	75000	435000
45000	720000	75000	795000
45000	720000	75000	795000
45000	765000	75000	840000
45000	810000	75000	885000
45000	225000	75000	300000

1	2	3	4	5
76	357-DFT	Mrs. Asha Rani, 32 years	384000	16
77	359-DFT	Mrs. Sanjana *alias* Suman Lata, 24 years	408000	17
78	360-DFT	Mrs. Gitika Rani, 25 years	408000	17
79	367-DFT	Mrs. Parveen Rani widow of Ravi Kumar, 32 years	384000	16
80	370-DFT	Mrs. Suraksha, 40 years	384000	16
81	468-DFT	Mrs. Preetpal Kaur (widow), 42 years	120000	5
82	469-DFT	Mrs. Neena Rani, 36 years	312000	13
83	470-DFT	Mrs. Santosh, 40 years	360000	15

6	7	8	9
45000	720000	75000	795000
45000	765000	75000	840000
45000	765000	75000	840000
45000	720000	75000	795000
45000	720000	75000	795000
45000	225000	75000	300000
45000	585000	75000	660000
45000	675000	75000	750000

84	473-DFT	Mrs. Chanchal, 44 years	360000	15
85	481-DFT	Mrs. Sunita, 28 years	432000	18
86	88-DFT	Mrs. Rama Chaudhar, 23 years	652800	15
87	126-DFT	Mrs. Meena Kumari, 32 years	693600	17
88	127-DFT	Mrs. Priti Midha, 32 years	693600	17
89	131-DFT	Mrs. Sanjivan Lata, 33 years	693600	17
90	143-DFT	Mrs. Sonia Rani, 26 years	612000	15
91	147-DFT	Mrs. Som Lata, 37 years	45000	11
92	348-DFT	Mrs. Anupam, 38 years	653000	16
93	493-DFT	Mrs. Kamlesh Rani, 33 years	816000	17

45000	675000	75000	750000
45000	810000	75000	885000
45000	720000	75000	795000
45000	765000	75000	840000
45000	765000	75000	840000
45000	765000	75000	840000
45000	675000	75000	750000
45000	495000	75000	570000
45000	720000	75000	795000
45000	765000	75000	840000
	Total		**71280000**

(ii) Eiderly Ladies :

Case No. 21-DFT

(128) In **Lata Wadhwa's case** (*supra*) the value of services rendered to the family by elderly ladies was assessed at Rs. 20,000 per annum. That amount can and ought to be revised to Rs. 25,000 in respect of an incident that took place six years later. Applying a multiplier of 5, which the one-man Commission has chosen in the present case the amount payable to the claimants would come to Rs. 1,25,000. To that amount we need to add Rs. 82,000, which the Commission has determined as the loss of dependency on account of pension drawn by the deceased at the time of death. Adding to these two figures the conventional amount Rs. 75,000, the total amount of compensation payable to the claimant in this case would come to Rs. 2,82,000.

Cases No. 158-DFT, 159-DFT and 353-DFT

(129) The deceased in Claim Petitions No. 158-DFT, 159-DFT and 353-DFT, namely Mrs. Lakshmi Devi aged 70 years, Mrs. Reshma Devi, aged 67 years and Mrs. Sumitra Devi aged 62 years, were simple housewives, whose contribution has been taken by the Commission to be Rs. 36,000 per annum as against Rs. 20,000 awarded in **Lata Wadhwa's case** (*supra*). Deducting 1/3rd towards their personal expenses and applying a multiplier of 5, the Commission has awarded a sum of Rs. 1,20,000 to the claimants in each one of these cases. That figure would stand enhanced even after a correct application of the norms fixed in **Lata Wadhwa's case** (*supra*). Taking the contribution of the deceased elderly ladies, mentioned above, to be Rs. 25,000 per annum and applying a multiplier of 5, the claimants in each one of these cases would be entitled to Rs. 1,25,000. To that shall be added a sum of Rs. 75,000 each towards conventional amount, taking the total amount of compensation payble to the claimants in each one of these cases to Rs. 2,00,000.

(130) The final picture regarding the amounts payable in this category, therefore, may be summed up as under :—

Sr. No.	Case No.	Name & Age of the Deceased	Amount awarded by the Commission (In Rs.)	Multiplier Applied	Value of services rendered to the family (In Rs.)	Loss Dependency (In Rs.)	Revised amount of compensation (held payable (5×6+7) (In Rs.)	Conventional Figure (In Rs.)	Total Amount (8+9) (In Rs.)
1	2	3	4	5	6	7	8	9	10
1	21-DFT	Mrs. Shanta Relan, 73 years	82000	5	25000	82000	207000	75000	282000
2	158-DFT	Mrs. Lakshmi Devi, 70 years	120000	5	25000	0	125000	75000	200000
3	159-DFT	Mrs. Reshma Devi, 67 years	120000	5	25000	0	125000	75000	200000
4	353-DFT	Mrs. Sumitra Devi, 62 years	120000	5	25000	0	125000	75000	200000
				Total					**882000**

(iii) Unmarried Working Girls

(131) Apart from the housewives and elderly ladies dealt with in the forgoing paragraphs, the deceased included 9 unmarried working girls, most of whom were at that point of time, employed in the DAV School at meager salaries. The Commission of Inquiry has, based on the salaries received by the girls, assessed and awarded compensation that varies between Rs. 44,000 to Rs. 2,88,000.

(132) It was contended on behalf of the claimants that the approach adopted by the Commission has brought about an anomalous situation inasmuch as in cases involving children in the same age group the Commission has awarded a higher amount of compensation than what is awarded in cases where the victims were in some employment or the other. Mrs. Arora, Learned Counsel for the Association argued that the anomaly could be removed by awarding to the working girls the same amount of compensation as is awarded to children in the comparable aged group. There is in our opinion merit in that contention. That young and un-married girls had taken up jobs at meager salaries need not put the victims or the claimants at a disadvantage which would be obvious if the mere fact that the young girl was working results in the assessment of a lower amount of compensation than that payable for a non-working one. The fact that the girls had taken up small time and temporary jobs in the school or elsewhere was even otherwise not a sound reason why the compensation should be determined on the basis of the income they derived from such engagements. The nature of the employment and remuneration paid for the same sufficiently indicates that the same were more in the nature of pastime for spending the time available with them usefully than an estimate or indication of their true potential in life. In the circumstances, we deem it fit to award in each one of the following cases the same amount as is determined for payment in category 3 cases.

(133) The final picture regarding the amounts payable in this category, therefore, may be summed up as under :—

Sr. No.	Case No.	Name & Age of the Deceased	Amount awarded by the Commission (in Rs.)	Revised amount of compensation held payable (in Rs.)
1	2	3	4	5
1	6-DFT	Ms. Maninder Kaur, 19 years	230400	635000
2	56-DFT	Ms. Manju Bala, 19 year	88000	635000
3	57-DFT	Ms. Meera, 21 years	288000	635000
4	58-DFT	Ms. Anju Rani, 22 years	72000	635000
5	59-DFT	Ms. Sunita Mehta, 27 Years	44000	635000
6	60-DFT	Ms. Rita, 22 years	60000	635000
7	61-DFT	Ms. Babita Wadhera, 23 years	150000	635000
8	63-DFT	Ms. Sandeep Kaur, 25 years	105600	635000
9	342-DFT	Ms. Rekha Rani, 21 years	60000	635000
		Total		**5715000**

(iv) Working Women in Government Service

(134) As already noticed above, nine out of the female victims were working women employed in Government service. The one man Commission has based on the salary drawn by these victims, determined the contribution towards their families and, awarded compensation by

adopting the multiplier method. The claimants have found fault with the end result for two precise reasons. Firstly it is contended that even when the women were working on a full time basis, they also rendered services to their respective families as is normally done by a housewife. Determination of any compensation must, therefore, take note of the said contribution also, argued the learned counsel for the claimants.

(135) The second reason advanced by the claimants for an upward revision is that the Commission had not taken into consideration the future prospects while determining the amount of compensation in these cases and other cases where women are not working in Government Departments. Relaying upon the decision of the Supreme Court in **Susamma Thomas's case** (*supra*) and **Smt. Sarla Dixit** *versus* **Balwant Yadav (31),** it was argued that future prospects must be one of the inputs for determining the multiplicand. Any award which ignores that input would not be fair and reasonable contended the learned counsel for the claimants.

(136) On behalf of the respondent-school it was per contra argued by Mr. Atma Ram, that future prospects could not be taken into consideration except in cases and situations which the Apex Court has identified in **Sarla Verma (Smt.) and Others** *versus* **Delhi Transport Corporation and Another (32).** The cases at hand do not, according to the learned counsel, fall in anyone of the situations in which future prospects could be taken into consideration. It was also argued that once compensation was awarded by applying the multiplier method there was no room for adoption of any other method nor could two methods be applied to produce results favourable to the claimants.

(137) In **Sarla Verma's case** (*supra*), relied upon by Mr. Rajive Atma Ram, the Supreme Court has on a review of its pronouncements dealing with the relevance and the necessity of adding the future prospects for determination of compensation payable in Motor Accident Claim cases declared that as a rule of thumb, an addition of 50% of actual salary income of the deceased could be added towards future prospects, in cases where the deceased had a permanent job and was below 40 years of age. The addition should however be only 30% of the actual salary income in cases

(31) 1996 (2) P.L.R. 656
(32) (2009) 6 S.C.C. 121

where the age of the deceased was between 40 to 50 years. In cases where the age of the deceased was more than 50 years no addition towards future prospects could be made. It was further held that where the deceased was self-employed or was on a fixed salary without provision for annual increments etc. the Courts will usually take only the actual income at the time of death, a departure being permissible only in rare and exceptional cases involving special circumstances. The following passage from the decision is apposite in this connection :—

> "24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.) the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

(138) It is in the light of the above pronouncements clear that the addition to the salary income of the deceased victims would depend on whether the victim held a permanent job. The extent of addition would also depend upon the age of the victims. In the case of working women in Government Service, an addition towards future prospects would be perfectly justified, on the principles laid down in **Sarla Verma's case** (*supra*).

(139) That brings us to the question whether working women were also rendering services to the family that could be evaluated in terms of money and, if so, what is the monetary value of such services. Our answer to the first part of the question is in the affirmative. Working women not only support the income of the family but are at times the main bread winners of the family. That does not, however, mean that they neglect duties towards the family that are otherwise enjoined upon them as ladies of the house. In the social and cultural milieu that we have in this Country, the very fact that a woman is employed does not necessarily mean that she does not perform any other duty towards her family. The only difference between a housewife simpliciter and a working woman is that while a housewife may be working and rendering services to the family for a greater part of the time available to her, a working woman by reason of her commitment to the job is not able to spare that much time. On an average, if we take the contribution of a housewife, in terms of services rendered to the family stretched over a period of 15 hours a day, the services rendered by a working woman may be limited to only five hours, for she would be at her work place for atleast 8 hours and travelling to and fro for atleast two hours everyday. On a rough basis one can safely assume that the value of services rendered for 5 hours would be proportionately less than the value of the services rendered by a whole time housewife. Proportionate to the time spent by the working woman the value of her services may be only 1/3rd of the value at which the services of a housewife have been assessed i.e. 45,000×1/3=Rs. 15,000 per annum. Consequently, with the death of a working female, the family not only losses in terms of the monetary supplement which she was providing but also in terms of loss of services that the family was enjoying on account of her presence. The One Man Commission has not taken this into consideration except in 64-DFT arising out of the death of Mrs. Neelam Kumari, where the Commission has taken into account not only the income being earned by her at the time of death but also added the value of services to the family at Rs. 36,000 less 1/3rd deducted by the Commission towards personal expenses. Suffice it to say that the correct approach appears to us to determine the net loss of dependency on the basis of the income of the deceased from her employment after taking into consideration the future prospects in terms of **Sarla Verma's case** (*supra*) and add to the same a sum of Rs. 15,000 per annum towards the value of services which she was rendering to the family. This could provide the

true multiplicand applicable in each one of these cases provide a uniform and non-discriminatory basis for determination of compensation payable to the claimants. The position that would, on that basis, emerge in each one of the nine cases of the working women in Government service, would be as under :—

Sr. No.	Case No.	Name & Age of the Deceased	Salary at the time of death (In Rs.)	Future prospects (In Rs.)	Annual loss of dependency (4+5–1/3rd towards personal expenses)	Value services rendered to the family @ Rs. 15,000 p.a.	Revised amount of compensation held payable (6+7× multiplier applied) (In Rs.)	Conventional Figure @Rs.75,000 p.a.	Total Amount (8+9) (In Rs.)
1	2	3	4	5	6	7	8	9	10
1	64-DFT	Mrs. Neelam Kumari, 34 years	3661	1831	43936	15000	766168	75000	841168
2	71-DFT	Mrs. Krishna Kamboj, 34 years	3159	1580	37912	15000	264560	75000	339560
3	72-DFT	Mrs. Karamjit Kaur, 35 years	5500	2750	66000	15000	1296000	75000	1371000
4	74-DFT	Mrs. Lakhvinder, 34 years	4811	2406	57736	15000	945568	75000	1020568
5	75-DFT	Mrs. Sneh Lata, 32 years	3845	1923	46144	15000	794872	75000	869872

1	2	3	4	5	6	7	8	9	10
6	78-DFT	Mrs. Neelam Kumari, 39 years	6800	3400	81600	15000	1545600	75000	1620600
7	80-DFT	Mrs. Sushil Jattana, 45 years	3337	1001	34704	15000	646152	75000	721152
8	81-DFT	Mrs. Geeta Devi, 44 years	5100	1530	53040	15000	1020600	75000	1095600
9	471-DFT	Mrs. Sunita Devi, 57 years	2843	0	22744	15000	301952	75000	376952
					Total				**8256472**

(V) Working Women in Non-Government Service

(140) Out of 12 working women in Non-Government service, all the victims except four *viz.* Mrs. Naresh *alias* Preeti Kamra, deceased, in case No. 17-DFT, Mrs. Santosh, deceased, in case No. 76-DFT, Mrs. Sarita Bansal, deceased, in case No. 135-DFT and Mrs. Nirmal Sharma deceased, in case No. 374-DFT were employed as Teachers in DAV School on payment of salary ranging from Rs. 900 to Rs. 1,500 per month. The Commission has while awarding compensation in these cases taken the contribution of the deceased as a housewife for services rendered to her family to be Rs. 3,000 per month and added to the same the salary, which the deceased was drawing from the school. From the figure thus available the Commission has deducted 1/3rd towards personal expenses, applied an appropriate multiplier and made its award accordingly. In principle we do not see any error in the method adopted by the Commission except that there should have been no deduction towards personal expenses, from out of the value of services rendered by the deceased to her family. Even though the deceased employee victims were working with the DAV School there is nothing on record to suggest that they had any security of tenure or any other benefits like Assured Career Progression or increments so as to call for award of compensation on the basis of their salary income alone. In reality, they were not only rendering services to their family but were working in the school to supplement the family income, the former being the dominant of the two engagements. In the process of determination of compensation payable for their death the proper course would be to treat them primarily as housewives and add to the value of the services rendered by them the additional amount which they were earning from the school out of their employment. We have in the foregoing part of this judgment valued the services rendered by the housewives to the family at Rs. 45,000. To that amount we need to add the annual income of the victims from the salary drawn from the school less 1/3rd deducted towards personal expenses, which would then be the multiplicand for purposes of applying a suitable

multiplier to arrive at a correct figure, to which we need to add a sum of Rs. 75,000 towards conventional figure. The position that would emerge by adoption of this process would be as under :—

Sr. No.	Case No.	Name & Age of the Deceased	Amount awarded by the Commission (In Rs.)	Annual loss of dependency after deducting 1/3rd thereof (In Rs.)	Value Services rendered to the family @ Rs.45000 p.a.	Multiplier Applied	Revised amount of compensation held payable (5+6×7) (In Rs.)	Conventional figure (In Rs.)	Total Amount (8+9) (In Rs.)
1	2	3	4	5	6	7	8	9	10
1	62-DFT	Mrs. Manju Bala, 24 years	544000	8000	45000	17	901000	75000	976000
2	66-DFT	Mrs. Mamta Midha, 26 years	609000	9840	45000	18	987120	75000	1062120
3	68-DFT	Mrs. Upma, 30 years	544000	8000	45000	17	901000	75000	976000
4	69-DFT	Mrs. Renu Bala, 32 years	468000	7200	45000	15	783000	75000	858000
5	70-DFT	Mrs. Bimla Devi. 37 years	512000	8000	45000	16	848000	75000	923000

6	324-DFT	Mrs. Anita Sharma, 33 years	524800	8800	45000	16	860800	75000	935800
7	478-DFT	Mrs. Sunita Rani, 28 years	590000	8800	45000	18	968400	75000	1043400
8	482-DFT	Mrs. Maya Devi, 35 years	576000	12000	45000	16	912000	75000	987000
						Total			**7761320**

(141) In 76-DFT the deceased, Mrs. Santosh aged about 38 years, was working as a teacher in Arya School, Dabwali at a salary of Rs. 5,716 per month. So also in 17-DFT the deceased, Mrs. Naresh *alias* Preeti Kamra, was working as Principal in DAV School, Dabwali at a salary of Rs. 4,400 per month. Mrs. Nirmal Sharma, deceased in 374-DFT, was working as Principal in Satluj School, Dabwali at a salary of Rs. 3,000 per month. Mrs. Sarita Bansal, aged about 34 years, deceased in 135-DFT, was also working as Lecturer in M.P. College, Dabwali at a salary of Rs. 5,000 per month. These four cases appear to be distinguishable from other employees referred to above inasmuch as they were holding regular and permanent jobs and drawing the salary attached to the same and were, therefore, more comparable to those holding permanent jobs in the Government. They were at the same time rendering services to their respective families, the value where of cannot be less than Rs. 15,000 per annum as held by us while dealing with the cases of Government employees. Award of compensation would, therefore, be more rational, if these regular employees holding permanent jobs in their respective establishments are placed at per with the Government employees in the matter of award of compensation. In the case of Mrs. Nirmal *alias* Preeti Kamra, the Commission has also found that she was drawing an income of Rs. 6,393 per annum from the LIC agency work that she was doing. The said amount can, therefore, be

added to her income from salary while determining the amount of compensation payable to claimants in her case. The final picture, that would emerge, can be summarised in a tabular form as under :—

Sr. No.	Case No.	Name & Age of the Deceased	Amount awarded by the Commission (In Rs.)	Annual loss of dependency (In Rs.)	Value Services rendered to the family @ Rs.15000 p.a.	Multiplier Applied	Revised amount of compensation held payable (5+6×7) (In Rs.)	Conventional figure (In Rs.)	Total Amount (8+9) (In Rs.)
1	2	3	4	5	6	7	8	9	10
1	17-DFT	Mrs. Naresh @ Preeti Kamra, 39 years	632416	57158	15000	16	1154528	75000	1229528
2	76-DFT	Mrs. Santosh, 38 years	731650	68592	15000	16	1337472	75000	1412472
3	135-DFT	Mrs. Sarita Bansal, 34 years	1088000	60000	15000	17	1275000	75000	1350000
4	374-DFT	Mrs. Nirmal Sharma	816000	36000	15000	17	867000	75000	942000
				Total					**4934000**

(vi) Working women (Miscellaneous)

(142) In this category fall nine cases in which the deceased were said to be working women doing miscellaneous work. Having regard to the nature of employment and the amount earned from the same, the Commission has treated them as housewives but added the income derived by them from their respective vocations to the multiplicand for determining the amount of compensation payable to the claimants. We shall briefly deal with each one of these cases and re-assess the amount of compensation by reference to the findings recorded by the Commission.

Case No. 14-DFT

(143) This case arose out of the death of Mrs. Asha Rani, an Anganwari Worker who was drawing a salary of Rs. 450 per month. Deducting 1/3rd out of the said amount towards personal expenses, the net contribution to the family can be taken to be Rs. 3,600 per annum. To that amount shall be added Rs. 45,000 towards value of the services rendered to the family taking the total loss of dependency to Rs. 48,600 per annum. Applying a multiplier of 17, the claimants would be entitled to a compensation of Rs. 8,26,200. Adding to that figure the conventional amount of Rs. 75,000 the total amount of compensation payable to the claimants would come to Rs. 9,01,200.

Case No. 109-DFT

(144) This case arose out of the death of Mrs. Rekha Rani, who was, according to the findings recorded by the Commission, doing tuition work and earning Rs. 36,260 per annum from the same. Deducting 1/3rd out of the said amount towards her personal expenses, her net contribution to the family would come to Rs. 24,174 per annum Adding to that amount the value of the services to the family amounting to Rs. 45,000, the multiplicand would rise to Rs. 69,174. It is noteworthy that before the Commission, the claimants had produced the Income-tax return filed by the deceased for the financial year 1994-95 which supported the claim made by them that the deceased was doing tuition work during her life time. Applying a

multiplier of 18 to that amount, the claimants would be entitled to Rs. 12,45,132. To that figure we add the conventional amount of Rs. 75,000 taking the total amount of compensation payable to the claimaints to Rs. 13,20,132.

Case No. 124-DFT

(145) Mrs. Renu Bala, deceased, in this case was said to be a Social Worker. The Commission has taken her income from Social Work at Rs. 2,100 per month. We however, see no reason to assume that a Social Worker does such work for any monetary gain. Addition of Rs. 2,100 per month to the monthly income of the deceased was, therefore, not justified. All the same, if the value of the services rendered by the deceased, who was a young lady of 31 years, is taken at Rs. 45,000 per annum and a multiplier of 17 applied to the same, the amount payable to the claimant would work out to Rs. 7,65,000. To that figure is added Rs. 75,000 towards conventional amount taking the total amount payable to the claimants to be Rs. 8,40,000, which amount we hereby award to the claimants in this case.

Case No. 138-DFT

(146) Mrs. Sushma Gupta, deceased, in this case, was aged 34 years. The Commission has awarded a sum of Rs. 6,12,000 by taking her income to be Rs. 1,500 per month from tuition/coaching work in addition to Rs. 3,000 per month towards services rendered to the family. Taking the value of services rendered to the family at Rs. 45,000 and adding the net income of Rs. 12,000 per annum after deducting 1/3rd towards her personal expenses earned by her from tuition/coaching work, the multiplicand would come to Rs. 57,000 per annum. Applying a multiplier of 17, the amount of compensation payable to the claimants in this case would come to Rs. 9,69,000. Addition of a sum of Rs. 75,000 towards conventional amount would take the total amount of compensation payable to the claimants to Rs. 10,44,000, which is hereby awarded.

Case No. 152-DFT

(147) Mrs. Kiran Pal Grover, deceased in this case was, according to the evidence adduced before the Commission, engaged in tailoring work and earned Rs. 100 to Rs. 200 per month. The Commission has taken her earning to Rs. 150 per month or Rs. 1,800 per annum and added a sum of Rs. 36,000 per annum towards the value of the services rendered by her to the family, deducted 1/3rd towards her personal expenses and determined the multiplicand at Rs. 25,200 per annum. Applying a multiplier of 15, the Commission has awarded a sum of Rs. 3,78,000 to the claimants who happen to be the husband and minor daughter of the deceased. We see no reason to interfere with the determination made by the Commission towards the income of the deceased from tailoring work. The value of the services rendered to the family shall, however, stand enhanced to Rs. 45,000 without any deduction as has been the position in all such cases. The total loss of dependency would, therefore, come to Rs. 46,200 per annum. Applying a multiplier of 15 to that figure, the claimants would be entitled to a sum of Rs. 6,93,000. Adding conventional amount of Rs. 75,000 to the same the total amount of compensation payable to the claimants would come to Rs. 7,68,000.

Case No. 160-DFT

(148) Mrs. Manju Bala, deceased, in this case was also a 31 years old housewife who was engaged in Life Insurance Corporation Agency work. The Commission has, on the basis of the material placed before it taken her income from the Agency's work to be Rs. 2,000 per month or Rs. 24,000 per annum and added to the same the value of services rendered to the family. Deducting 1/3rd of the said amount towards personal expenses, the Commission has taken the loss of dependency to be Rs. 40,000 per annum. The Commission has, accordingly, awarded Rs. 6,40,000 to the claimants. While we see no reason to interfere with the amount determined by the Commission towards the earning from the Agency work undertaken by the deceased, the deduction of 1/3rd towards personal expenses must

be confirned only to said amount. This would mean that the net loss of dependency, on account of the income from the Agency's work would come to Rs. 16,000 per annum. Adding to the said amount, the value of services rendered to the family assessed at Rs. 45,000 the loss of dependency would come to Rs. 61,000 per annum. Applying a multiplier of 16 to the said amount, the compensation works out to Rs. 9,76,000. Adding Rs. 75,000 to the said figure towards conventional amount, the total compensation payable to the claimants comes to Rs. 10,51,000.

Case No. 346-DFT

(149) In this case the deceased Mrs. Sakshi *alias* Rakesh Rani was a 25 years old housewife who used to take cooking classes at the time of her death in the fire tragedy. Her husband and son Bobby had claimed a sum of Rs. 70,00,000 as compensation before the Commission. The evidence before the Commission comprised documents showing her academic qualification and other achievements. The Commission has, on the basis of the said evidence, taken the income of the deceased at Rs. 2,100 per month and deducted 1/3rd towards her personal expenses taking the loss of dependency to be Rs. 40,800 per annum. The Commission has applied a multiplier of 18 and awarded a sum of Rs. 7,34,400. The value of the services rendered by the deceased to the family should in our opinion be taken at Rs. 45,000 per annum to which amount could be added Rs. 16,800 per annum towards income earned from cooking classes. The total loss of dependency would, therefore, come to Rs. 61,800 per annum. Applying a multiplier of 18 the amount of compensation payable to the claimants would come to Rs. 11,12,400. Addition of Rs. 75,000 towards conventional amount would take the figure to be Rs. 11,87,400.

Case No. 351-DFT

(150) In this claim petition, the deceased Mrs. Nirmla *alias* Rani was a 34 years old housewife who was imparting training for tailoring and stitching work at the time of her death in the fire tragedy. A claim of Rs. 60,00,000 was made by her husband and son Mohinder Kumar. The

evidence adduced before the Commission suggested that the deceased was a diploma holder from Industrial Training Institute in Cutting and Tailoring as per National Trade Certificate issued by the Ministry of Labour, Government of India. The Commission had, on the basis of the material placed before it, taken the income of the deceased to be Rs. 2,100 per month from her vocation and determined the total loss of dependency at Rs. 40,800 per annum. Applying a multiplier of 17, the Commission awarded a sum of Rs. 6,94,000 towards compensation and directed its apportionment between the two claimants. In our opinion, while the income earned by the deceased from her tailoring work could be taken at Rs. 1,400 per month or Rs. 16,800 per annum after deduction of 1/3rd towards her personal expenses, the value of the services rendered to the family could be assessed at Rs. 45,000. This would take the multiplicand to Rs. 61,800. Applying a multiplier of 17, the amount of compensation payable to the claimants would come to Rs. 10,50,600. Addition of Rs. 75,000 towards conventional amount would take the total to Rs. 11,25,600 which shall be apportioned between the claimants equally.

Case No. 486-DFT

(151) Deceased Mrs. Tulsi Devi, in this case was, a housewife, aged about 19 years working as a Domestic Servant at the time of her death in the fire tragedy. The Commission has taken the income of the deceased at Rs. 18,000 per annum, deducted 1/3rd from the same towards personal expenses, added the amount so determined to the value of services rendered to the family to award a sum of Rs. 6,12,000 to the claimants. Taking the value of services of the deceased at Rs. 45,000 and the net income after deduction of 1/3rd towards her personal expenses to be Rs. 12,000, the multiplicand comes to Rs. 57,000. Applying a multiplier of 17 of the said amount, the amount of compensation comes to Rs. 9,69,000 to which is added Rs. 75,000 towards conventional charges to take the total amount of compensation payable to the claimants to Rs. 10,44,000.

(152) The final picture regarding the amounts payable in this category, therefore, may be summed up as under :—

Sr. No.	Case No.	Name & Age of the Deceased	Amount awarded by the Commission (In Rs.)	Annual loss of dependency after deducting 1/3rd thereof (In Rs.)	Value Services rendered to the family @ Rs.45,000 p.a.	Multiplier Applied	Revised amount of compensation held payable (5+6×7) (In Rs.)	Conventional figure (In Rs.)	Total Amount (8+9) (In Rs.)
1	2	3	4	5	6	7	8	9	10
1	14-DFT	Mrs. Asha Rani, 32 years	469200	3600	45000	17	826200	75000	901200
2	109-DFT	Mrs. Rekha Rani, 29 years	867000	24174	45000	18	1245132	75000	1320132
3	124-DFT	Mrs. Renu Bala 31 years	693600	—	45000	17	765000	75000	840000
4	138-DFT	Mrs. Sushma Gupta, 34 years	612000	12000	45000	17	969000	75000	1044000
5	152-DFT	Mrs. Kiran Pal Grover, 41 years	378000	1200	45000	15	693000	75000	768000

6	160-DFT	Mrs. Manju Bala, 31 years	640000	16000
7	346-DFT	Mrs. Sakshi *alias* Rakesh Rani, 25 years	734400	16800
8	351-DFT	Mrs. Nirmla *alias*, Rani, 34 yeas	694000	16800
9	486-DFT	Mrs. Tulsi Devi, 19 years	612000	12000

45000	16	976000	75000	1051000
45000	18	1112400	75000	1187400
45000	17	1050600	75000	1125600
45000	17	969000	75000	1044000
	Total			**9281332**

CATEGORY 5 CASES

(153) This category comprises claims in connection with 39 adult males of different age groups who lost their lives in the fire incident. The Commission of Inquiry has relied upon the decision of the Supreme Court in **Susamma's case** (*supra*), **Lata Wadhwa's case** (*supra*) and the English decisions in **Mallett** *versus* **Mc. Monagle, (33), Davies** *versus* **Taylor, (34), Davies** *versus* **Powell Duffryn Associated Collieries Ltd. (35),** as also the decisions of the High Court of Andhra Pradesh in **Chairman, A.P. SRTC** *versus* **Shafiya Khatoon's case** (*supra*), **Bhagwan Dass** *versus* **Mohd. Aref's case** (*supra*) and **A.P. STRC** *versus* **G. Ramanalah's case** (*supra*), observed that the multiplier method for determining compensation in cases of death is legally well established and ensures not only 'just' compensation but certainty of the awards also. A departure from the method could be justified only in rare and extraordinary circumstances and very exceptional cases. The legal position as set out in the recommendations made by the Commission is, in our opinion, unexceptionable and does not call for any addition or any further discussion by us in this judgment. We may only add that the Supreme Court has in **Sarla Verma (Smt.) and others** *versus* **Delhi Transport Corporation and another, (36),** on a review of the case law on the subject, restated the legal principles governing determination of compensation in cases under the Motor Vehicles Act. The decision lucidly reiterates the approach to be adopted for determination of compensation, addition of income towards future prospects, deduction of living expenses, selection of multiplier and computation of compensation etc. We have, while dealing with the cases falling in other categories, already made a reference to the said decision in so far as the same lays down the principles governing addition of income towards future prospects. We need only add that the legal position as stated by the Supreme Court in the cases of **Susamma Thommas** (*supra*) and other cases referred to above, remains firmly established and has indeed been reiterated by their Lordships in **Sarla Verma's case** (*supra*).

(154) The Commission in category 5 cases, has awarded compensation ranging between Rs. 61,200 to Rs. 16,11,000.

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(33) 1970 A.C. 166
(34) 1974 A.C. 207
(35) (1942) A.C. (Privy Council) 601
(36) (2009) 6 S.C.C. 121

(155) We propose to take up each one of these cases for a close scrutiny *ad seriatim*.

Case No. 8-DFT

(156) In this case arising out of the death of Gurdeep Singh, the Commission has taken the income of the deceased at Rs. 3,000 and applied a multiplier of 13. The Commission found no evidence to support the claim for payment of Rs. 70,00,000 made by the mother of the deceased. What is significant, however, is that the deceased was just about 19 years old at the time of his death. He was employed as a School Van Driver with Satluj Public School. The amount being earned by him could not, therefore, be said to be the optimum of what he was capable of earning with better experience in the years to come. It is common knowledge that a driver during the relevant period could earn up to Rs. 6,000 per month depending upon his experience and good conduct. Deceased Gurdeep Singh had just started his career. A salary of Rs. 3,000 could not, therefore, be said to be a real Index of what he would have earned in times to come. Super added to this is the fact that a housewife who simply renders services to the family is taken to be contributing up to Rs. 45,000 per annum. An adult male who is bodily fit and gainfully employed as a Driver could earn more than that amount. Having regard to all these circumstance and even when the income of the deceased was on the date of the fire incident said to be Rs. 3,000 per month, we are inclined to accept his income to be Rs. 4,500 per month. Deducting 1/3rd of said amount towards personal expenses of the deceased the contribution to the family would work out to Rs. 3,000 per month or Rs. 36,000 per annum. Applying a multiplier of 13 to that figure, the amount of compensation works out to Rs. 4,68,000. We see no reason to deny conventional figure of Rs. 75,000 awarded by us in cases falling in other categories. We accordingly award the conventional amount of Rs. 75,000 to the claimants in this case, which would take the total amount payable to the claimants to Rs. 5,43,000.

Cases No. 9-DFT and 12-DFT

(157) Ravinder Kumar and Ashwani Kumar, deceased were brothers. The Commission has awarded to the claimants in both these cases a sum of Rs. 3,90,000 in each case to be apportioned equally between

the parents of the deceased. While doing so, the Commission has taken the income of the two brothers at Rs. 10,500 each, deducted 1/3rd towards personal expenses and applied a multiplier of 5.

(158) In his testimony Roshan Lal, father of the deceased victims, stated that his sons were earning Rs. 30,000 each every month which figure the Commission had disbelieved as according to it, business in a small town like Dabwali could not, in its opinion, yield that kind of return. It is true that apart from the statement of the father of the deceased, there is no other evidence to establish the true income of his sons from the business being carried on by them, even so, keeping in view the fact that both the boys were engaged in photography business, we see no reason why their income should not be taken at Rs. 12,000 per month per person, instead of Rs. 10,500 determined by the Commission. Deducting 1/3rd of the said amount towards personal expenses, the net contribution to the family would come to Rs. 8,000 per month or Rs. 96,000 per annum per person. Taking into consideration the age of the parents, the multiplier of 5 chosen by the Commission is, in our opinion, appropriate which would take the amount payable to the parents to be Rs. 4,80,000 in each case. Over and above the said figure we award Rs. 75,000 towards conventional charges taking the total amount of compensation to Rs. 5,55,000 in each one of these two cases to be apportioned equally between the parents.

Case No. 10-DFT

(159) This case arises out of the death of Balbir Singh, who was working as a Cameraman. The Commission has taken the income of the deceased at Rs. 3,000 per month against Rs. 4,000 or Rs. 5,000 per month stated to be his income according to the mother of the victim. In our opinion, the income of the deceased could have been taken to be Rs. 4,000 per month in which case the net loss of dependency to the family would come to Rs. 2,667 per month or Rs. 32,000 per annum. Applying a multiplier of 17 chosen by the Commission to the said figure the amount payable as compensation would work out to Rs. 5,44,000. Adding Rs. 75,000 towards conventional figure, the total amount payable to the claimants in this case would come to Rs. 6,19,000.

(160) Since the deceased has left behind his mother and a minor daughter, a sum of Rs. 2,00,000 out of the said amount shall be paid to the mother, while the remaining amount shall be deposited in a Fixed Deposit

Receipt till the daughter attains majority. The interest income accruing from the Fixed Deposit can, however, be withdrawn by the minor through her grand mother, the guardian periodically, to be spent on her upbringing and education etc.

Case No. 11-DFT

(161) This case arose out of the death of Ashok Gill aged 26 years who was working as a Music Teacher at the time of his death in the fire tragedy. The claimants are his widow and a minor daughter. The Commission has accepted the version given by the claimants that the deceased was earning Rs. 150 per day by teaching music to school children. The income of the deceased has been determined at Rs. 4,500 per month or Rs. 54,000 per annum. Deducting 1/3rd out of the said amount, towards his personal expenses, the Commission has determined the loss of dependency at Rs. 36,000 per annum. Keeping in view the age of the claimants, the Commission has correctly applied a multiplier of 18 and awarded Rs. 6,48,000 to the claimants. There is in our opinion no reason to interfere with the said amount except that the claimants would be entitled in addition to the amount awarded by the Commission to an amount of Rs. 75,000 towards conventional figure. The total amount thus payable to the claimants in this case would come to Rs. 7,23,000.

Case No. 13-DFT

(162) This claim arises out of the death of Bhagirath aged about 31 years on the date of incident who was working as a Constable in the Police Department. His wodow Smt. Uma Devi and minor son Baldev claimed Rs. 70,00,000 as compensation before the Commission. The Commission has, however, determined the gross salary of deceased as Rs. 3,134 per month on the basis of his certificate issued by the office of the Superintendent of Police, Sirsa. Deducting 1/3rd of the said amount, the loss of dependency to the family has been determined as Rs. 25,027 per annum. The Commission has applied a multiplier of 17 to award Rs. 4,26,224 which amount in our opinion deserves to be enhanced having regard to the fact that the deceased was holding a permanent job in the Police Department and had prospects of rising higher in the police department. Applying the principles stated by the Supreme Court in **Sarla Verma's case** (*supra*), the income of the deceased can be taken to be

Rs. 4,701 per month. Deducting 1/3rd of the said amount towards personal expenses of the deceased, the net loss of dependency can be taken as Rs. 3,134 per month or Rs. 37,608 per annum. Applying a multiplier of 17 chosen by the Commission, the compensation payable to the claimants comes to Rs. 6,39,336. Additional of Rs. 75,000 towards conventional amount to that figure would take the total amount payable to the claimants to Rs. 7,14,336.

Case No. 15-DFT

(163) This claim arises out of the death of Shri Ashok Wadhera, who was a Press Reporter running a News Agency at the time of his death in the fire tragedy. His wife and minor son and daughter made a claim for Rs. 70,00,000 before the Commission. The Commission has determined the income of the deceased to be Rs. 6,000 per month and the loss of dependency to be Rs. 4,000 per month or Rs. 48,000 per annum. Applying a multiplier of 17, the Commission has awarded Rs. 8,16,000 towards compensation in this case and directed that out of the said amount, a sum of Rs. 3,16,000 be paid to Mrs. Usha Wadhera while a sum of Rs. 2,50,000 each be paid to their son and daughter left behind by the deceased. It appears that the income of the deceased was stated to be between Rs. 5,000 to Rs. 7,000 per month. The Commission has therefore rightly taken the mean figure while determining the loss of dependency. We see no reason to interfere with the said determination or the multiplier chosen by the Commission. All that we need add is a sum of Rs. 75,000 towards conventional amount to take the total amount payable to the claimants to Rs. 8,91,000. A sum of Rs. 3,50,000 out of the said amount shall be paid to the widow of the deceased while the remaining amount can be deposited in the Fixed Deposits in the name of the minor son and daughter of the deceased till the time they attain majority. The interest accruing from the said income can be withdrawn by the mother/guardian of the children for upbringing and education of the children.

Case No. 16-DFT

(164) This case arises out of the death of Radhey Shyam Shastri who was 36 years old at the time of incident and had been engaged in performing religious and pooja ceremonies to earn his livelihood. The

evidence adduced by the Commission suggests that the deceased was earning Rs. 15,000 per month from such Pooja and other ceremories. The Commission. has however, taken the income of the deceased to be Rs. 7,500 per month, deducted 1/3rd amount towards his personal expenses and taken the loss of dependency for the family to be Rs. 5,000 per month or Rs. 60,000 per year. Applying a multiplier of 15, the Commission has awarded a sum of Rs. 9,00,000 to the claimant in this case, to which we add Rs. 75,000 towards conventional figure, taking the total amount of compensation to Rs. 9,75,000. There is in our opinion, no room for making any other alteration in this case.

Case No. 18-DFT

(165) This case arises out of the death of Ravinder Kumar, aged 40 years, who was a registered Medical Practitioner at the time of his death. The claimants happen to be his wife and two sons and a daughter. A claim of Rs. 70,00,000 was made before the Commission. The Commission has eventually awarded a sum of Rs. 1,16,000 only. The Commission has noted that the deceased had passed Ayurveda Rattan Examination and was a registered Medical Practitioner since 1976 as per the certificate marked as Ex. P232/18-DFT. The Commission also noted that the deceased was working as a Press Correspondent with a local newspaper. The Commission, has, however, come to the conclusion that the claim for payment of compensation was unsupported by any evidence and has accordingly taken the monthly wages fixed by the Deputy Commissioner. Sirsa for the years 1995-96 and determined the monthly earning of deceased as Rs. 1,322 or Rs. 15,864 per year. Deducting 1/3rd out of the said amount towards personal expenses, the Commission has taken the loss of dependency to be Rs. 10,576 per annum. The Commission has in our opinion failed to take into consideration the fact that the deceased was a Registered Medical Practitioner for a number of years and was qualified to practice medicine in that capacity. The absence of any specific figure mentioned in the statement of the widow left behind by the deceased could not be taken as conclusive of the deceased not being gainfully employed in the profession for which he was trained. Having regard to the totally of the circumstances, we are of the opinion that the income of the deceased could be taken to be Rs. 4,500 per month. Deducting 1/3rd towards personal expenses, the net loss

of dependency would come to Rs. 36,000 per annum. Applying a multiplier of 15 to the said figure, the claimants would be entitled to a sum of Rs. 5,40,000. Addition of Rs. 75,000 towards conventional amount to that figure would take the total amount payable to the claimants to Rs. 6,15,000.

Case No. 19-DFT

(166) This case arises out of the death of Om Parkash Mehta aged 43 years on the date of fire tragedy. His wife and two sons claimed Rs. 70,00,000 towards compensation and adduced evidence to show that the deceased was earning a sum of Rs. 1,00,000 per annum from agricultural land and running the business of a Commission Agent in the name of M/s Mehta Brothers, from which he was earning Rs. 2,00,000 per annum. Relying upon the decision of the Supreme Court in **State of Haryana and another** *versus* **Jasbir Kaur and others (37),** the Commission held that there was no loss of income to the family by reference to the agricultural land owned and cultivated by the deceased. The Commission has also held that there was no evidence to show that after the death of the deceased Om Parkash Mehta, the family had engaged anyone to look after the land mutated in their favour. As regards the income from the Commission Agency, the Commission has determined Rs. 36,490 per annum as income of the deceased. Deducting 1/3rd towards personal expenses, the net loss of dependency has been determined at Rs. 24,327 per annum. Applying a multiplier of 13, the Commission has awarded a sum of Rs. 3,16,251 to the claimants to be distributed equally among all the three claimants.

(167) There are only two aspects which we propose to highlight in this case, one relating to the money value of the contribution which the deceased was making towards cultivation of the agricultural land and managing the affairs concerning the same and the other regarding the payment of conventional amount of Rs. 75,000. It may be true that the claimants have not established that any one has been engaged by them after the death of Om Parkash Mehta to manage the agricultural land, but the mere absence of any such alternative arrangement may not suggest that the deceased was not contributing anything towards the cultivation of land and the resultant income from the same. In our opinion, the monetary equivalent of the contribution made by the deceased in the matter of cultivation of the land

(37) III (2003) Accident & Compensation Cases 90

held by him could not be less than Rs. 1,000 per month or Rs. 12,000 per year which amount could be added to the annual loss of dependency by reference to the Commission Agency business that the deceased was doing during his lifetime. Viewed thus, the annual loss of the dependency would work out to be Rs. 36,327. Applying a multiplier of 13 to the said figure, the claimants would be entitled to a sum of Rs. 4,72,251. Addition of Rs. 75,000 towards conventional amount to that figure would take the total amount payable to the claimants to Rs. 5,47,251.

Case No. 20-DFT

(168) The claim, in this case, arose out of the death of Des Raj who was, at the time of the incident, a 68 years old Pensioner. His widow Raj Rani and son Palwinder made a claim of Rs. 50,00,000 towards compensation before the Commission who arrived at the conclusion that the Pensioner was drawing a pension of Rs. 4,000 per month only and that the net loss of dependency after deduction of 1/3rd towards his personal expenses would come to Rs. 32,000 per annum. Applying a multiplier of 5, the Commission awarded a sum of Rs. 1,60,000 to be paid to both the claimants in equal share. In the absence of any material to show that the deceased was having any additional income from any other source, we are inclined to accept the view taken by the Commission that the deceased was, as Pensioner, earning only Rs. 4,000 and that the net loss of dependency was Rs. 32,000 per annum. The Commission has not, however, awarded to the claimants the conventional figure of Rs. 75,000 which we see no reason to deny them. We accordingly, enhance the amount of Rs. 1,60,000 awarded by the Commission to Rs. 2,35,000 to be paid to both the claimants in equal shares.

Case No. 22-DFT

(169) In this case, deceased Surinder Kumar was 37 years old and working as a Bank Collection Agent. The claimants before the Commission happended to be the widow, daughter, son and father of the deceased. The evidence adduced before the Commission attempted to prove that the Commission Agent was earning between Rs. 30,000 to Rs. 40,000 per annum apart from a sum of Rs. 5,000 per month from tuition

work. The One Man Commission has, however, found no evidence to support the claim of income from the tuition work. The Commission has, all the same, accepted the version given by the claimants tht the deceased was earning, from the Commission Agency, a sum of Rs. 32,314.90 ps. in the year 1996. Making that income as the basis, the Commission deducted 1/3rd towards personal expenses and determined the net loss of dependency to the family at Rs. 21,550 per annum. The Commission has, it appears, gone entirely by the amount earned by the deceased from the Commission Agency in the year 1995 ignoring the assertion made by the claimants that the income was between Rs. 30,000 to Rs. 40,000 per annum. On an average, therefore, the income of the deceased could have been taken to be Rs. 35,000 per annum instead of Rs. 32,314.90 ps., as was done by the Commission. To that amount, we are inclined to add a sum of from Rs. 15,000 towards income tuition work, keeping in view the fact that the deceased was an academically qualified young man, for whom Commission Agency work could leave enough spare time to be spent on providing tuition for supplementing his income. The gross annual income of the deceased could, therefore, be taken to be Rs. 50,000. Deducting 1/3rd of the said amount towards his personal expenses the net loss of dependency would come to Rs. 33,300. Applying a multiplier of 16 chosen by the Commission, the amount payable to the claimants comes to Rs. 5,32,800. To that amount, we need to add Rs. 75,000 towards conventional amount takig the compensation to Rs. 6,07,800 which we hereby award to the claimants.

Case No. 23-DFT

(170) This case arose out of the death of Ramesh Chugh, aged 46 years, who was an Agriculturist by profession and who was also one of the unfortunate victims of the fire incident. The claimants before the Commission comprised widow of the deceased and his two children. The claim for payment of a sum of Rs. 70,00,000 as compensation was sought to be supported on the basis that the death of deceased had deprived the family of the entire income earned by him from 29 acres of cultivable land owned by him in village Lohgarh, Tehsil Dabwali. The Commission has, however, discussed the evidence and relying upon the decision of the Supreme Court in **State of Haryana and Another** versus **Jasbir Kaur and Others (38),** came to the conclusion that the source of income remains

(38) III (2003) Accident & Compensation Cases 90 (SC)

available to the family since the landed property held by the deceased continues to remain available and stands mutated in favour of the claimants. The contribution made by the deceased towards management and cultivation of the said land could, however, be evaluated and an appropriate amount awarded as the family was forced to engage someone else to do what the deceased was doing during his life time. The Commission has, accordingly, taken the contribution of the deceased to be Rs. 7,000 per month, deducted 1/3rd amount out of the same towards his personal expenses to award a compensation of Rs. 7,28,000 by applying a multiplier of 13. The Commission has, in our view, committed a mistake on both counts, viz. taking the contribution of the deceased at Rs. 7,000 per month as also deducting 1/3rd out of the said amount. In the first place, there was no cogent evidence to establish that the family was indeed spending Rs. 7,000 per month except engagement of one Bihari Lal, a graduate who had passed away in August, 2003. Be that as it may, the engagement of a person to look after the lands could not be said to be improbable and unnatural having regard to the fact that ownership of the land and its cultivation was firmly established. In our opinion, the contribution of the deceased which now would necessitate the engagement of someone else to do what the deceased was doing could be assessed at Rs. 5,000 per month. The net loss on account of the death of the deceased could, therefore, be Rs. 60,000 per annum and no more. Applying a multiplier of 13 to the said figure, the amount of compensation would come to Rs. 7,80,000. To that amount should be added the conventional figure of Rs. 75,000 to take the total amount of compensation to Rs. 8,55,000 to be paid to the claimants in equal proportions.

Case No. 24-DFT

(171) This case arose out of the death of Sanjay Kwatra, a 26 years old businessman who was also one of the victims of the fire incident. The claim was made by his minor daughter Simmy Kwatra for a sum of Rs. 70,00,000 as compensation. The claimant had lost both her parents in the incident. The claim proceeded on the assertion that the deceased was earning Rs. 1,50,000 per annum from his readymade garments business. The Commission has, however, taken the monthly income of the deceased

to be Rs. 8,000, deducted 1/3rd of the same towards personal expenses of the deceased and determined the annual loss of dependency at Rs. 64,000. Applying a multiplier of 18, the Commission has awarded a sum of Rs. 11,52,000 with which we can find no fault except that, we need to add Rs. 75,000 to the said amount as conventional figure taking the total amount payable to the claimant to Rs. 12,27,000.

Case No. 25-DFT

(172) This case arose out of the death of Niranjan Dass Bansal, Advocate, aged 60 years and a Member of the Executive Committee of D.A.V. School. The claimants happen to be his widow and two sons. The deceased was also invited to the function and was, according to the statements made before the Commission, earning upto Rs. 12,000 to Rs. 15,000 per month from his law practice. The Commission has taken the income of the deceased at Rs. 12,500 per month and after deducting 1/3rd towards his personal expenses assessed the loss of dependency at Rs. 1,00,000 per annum. To that amount, the Commission has applied a multiplier of 5 having regard to the age of the deceased and awarded a sum of Rs. 5,00,000 to the claimants. The award is, in our opinion, justified and does not call for any alteration except addition of a sum of Rs. 75,000 towards conventional amount. The total amount would, thus, stand enhanced to Rs. 5,75,000 out of which a sum of Rs. 3,00,000 shall be paid to the widow of the deceased while the remaining shall be distributed equally among the two sons.

Case No. 26-DFT

(173) This claim arose out of the death of Sanjay Grover, aged 30 years, working as a Chemist, who too had lost his life in the fire incident. The claim made by his widow and two sons was to the extent of Rs. 70,00,000 on the basis that the deceased was earning about Rs. 10,000 to Rs. 12,000 per month from his Medical Store business. The deceased was a graduate and was also said to be taking part in social and extra curricular activities. The Commission has, however, taken the income of the deceased at Rs. 9,000 deducted 1/3rd out of the said amount towards his

personal expenses and determined the loss of dependency at Rs. 72,000 per annum. Applying a multiplier of 17, the Commission has awarded Rs. 12,24,000 out of which Rs. 3,24,000 was to be paid to the widow, while remaining amount is to be distributed equally among the sons. There is nothing wrong with the amount awarded by the Commission. All that we need to do is to add a sum of Rs. 75,000 towards conventional figure which takes the total amount of compensation to Rs. 12,99,000, rounded off to Rs. 13,00,000. A sum of Rs. 5,00,000 out of the said amount shall be paid to the widow and the balance distributed equally among the other two claimants.

Case No. 27-DFT

(174) This case arises out of the death of Gurdas Singh, aged 25 years, who was working as a Constable. The One Man Commission of Inquiry has taken the income of the deceased at Rs. 3,000 and the net accretion to the family at Rs. 2,000 per month or Rs. 24,000 per annum. That amount, in our opinion, appears to be on the lower side having regard to the fact that the deceased was holding a permanent job and had future prospects of rise in the police force. Adding 50% towards future prospects in the light of the decision in **Sarla Verma's case** (*supra*) the income determined by the Commission would go to Rs. 4,500. Deducting 1/3rd towards his personal expenses, the loss of dependency to the family would work out to Rs. 3,000 per month or Rs. 36,000 per annum. Appling a multiplier of 18, chosen by the commission, the total amount payable to the claimants comes to Rs. 6,48,000. Addition of Rs. 75,000 towards conventional charges would take the figure of Rs. 7,23,000.

Case No. 28-DFT

(175) This claim was made by Master Venus Sethi and parents of Surinder Kumar, deceased, aged 30 years, who also lost his life in the fire incident. The deceased was, according to the claimants, running a Karyana Shop at Dabwali and earing Rs. 20,000 to Rs. 30,000 per month. The Commission has, however, declined to accept that version and determined the monthly income of the deceased at Rs. 10,000, deducted 1/3rd out of

the said amount and determined the loss of dependency at Rs. 80,000 per annum. The Commission has then applied a multiplier of 17 to award a sum of Rs. 13,60,000 towards compensation. There is, in our opinion, no room for any enhancement in the amount awarded by the Commission. All that we need to do is to add a sum of Rs. 75,000 as conventional figure to that amount, which would take the total to Rs. 14,35,000, out of which a sum of Rs. 2,50,000 each shall be paid to the parents of the deceased while the remaining shall be invested in a Fixed Deposit in the name of his minor son Venus Sethi till the time he attains majority. The interest accruing on the investment can, however, be withdrawn by the guardians for upbringing and education of the minor.

Case No. 29-DFT

(176) The claim, in this case, was made by the daughter of the deceased being the only surviving member of the family who perished in the incident. Ashok Kumar Sikka, the deceased father of the claimant, was a Rural Development Officer-cum-Branch Manager, State Bank of India, Dabwali. He accompanied by his wife and the sister of the claimant, was attending the ill fated function only to meet a fiery end. The claim proceeded on the basis that the deceased was, at the time of his death, earning Rs. 13,424 per month as salary from the bank. The Commission deducted 1/3rd out of the said amount and determined the loss of dependency at Rs. 8,950 per month or Rs. 1,07,400 per annum. The Commission has then applied a multipler of 15 to award a sum of Rs. 16,11,000. Addition of a sum of Rs. 75,000 towards conventional figure meets the ends of justice as there is nothing wrong either with the multiplicant or the multiplier chosen by the Commission. The addition of a sum of Rs. 75,000 towards conventional amount shall take the total amount of compensation payable to the claimant to Rs. 16,86,000.

Case No. 30-DFT

(177) In this case arising out of the death of Jagwinder Singh, the deceased was engaged in tent house business at the time of incident. The Commission had taken the income of the deceased to be Rs. 3,000 per

month only and loss of dependency at Rs. 24,000 per annum. This amount, in our opinion, is on the lower side having regard to the fact that the deceased was, as per the evidence on record, engaged in tent house business and was, on the fateful day, at the venue to arrange the public address system for the ill fated function. The income of the deceased can, in our view, be taken to be Rs. 4,500 per month. Deducting 1/3rd of the said amount towards personal expenses, the loss of dependency to the family would work out to Rs. 3,000 per month or Rs. 36,000 per year. Applying a multiplier of 13, chosen by the Commission, the total amount payable to the claimants would work out to Rs. 4,68,000. Adding a sum of Rs. 75,000 towards conventional amount to that figure, the total compensation payable to the claimants would come to Rs. 5,43,000.

Case No. 31-DFT

(178) The claim in this case was made by Saloni Bhateja, daughter of Ravi Bhateja, who was a qualified doctor holding a MBBS degree, and posted as Medical Officer in Primary Health Center, Village Lambi, District Muktsar (Punjab). The deceased was aged 42 years drawing at the time of his death Rs. 6,712 per month and was an income-tax assessee. He had, during the financial year preceding the year of his death, earned an annual income of Rs. 62,250. It was also alleged that the deceased was earning Rs. 7,000 to Rs. 8,000 from private practice. The Commission has, however, refused to accept that the deceased had any income from private practice and taken the income of the deceased at Rs. 6,742 per month, deducted 1/3rd out the same towards his personal expenses rounded off the net loss of dependency to Rs. 4,500 per month or Rs. 54,000 per annum. Applying a multiplier of 15, the Commission has awarded a sum of Rs. 8,10,000. The Commission does not appear to have taken into consideration the future prospects of the deceased having regard to the fact that the deceased was holding a permanent Government job and had prospects of further rise in service. Applying the principles land down in **Sarla Verma's case** (*supra*) addition of 30% of the salary income to the gross income at the time of incident would be perfectly justified. The gross monthly income of the deceased would therefore, come to Rs. 8,756 per month. Deducting 1/3rd

out of the said amount, the net loss of dependency to family would come to Rs. 5,843 per month of Rs. 70,120 per annum. Applying a multiplier of 15, the total amount of compensation payable to the claimant would work out to Rs. 10,51,800. To that amount, we add a sum of Rs. 75,000 towards conventional figure to take the total amount of compensation payable to the claimant to Rs. 11,26,800.

Case No. 32-DFT

(179) In this case, the deceased Sukhbir Singh was a 31 years old Contractor who left behind his parents to make a claim before the Commission for payment of Rs. 70,00,000 as compensation. The deceased was, according to the evidence led before the Commission, a graduate and had gone to the function along with his daughter and his wife where all of them got burnt to death. The deceased was, as per the evidence on record, a liquor contractor as well as a Property Dealer, earning between Rs. 20,000 to Rs. 25,000 per month. The Commission has, however, declined to accept that version and taken the income of the deceased to be Rs. 10,000 to Rs. 12,000 jointly with his father. The share of deceased in that income has been taken as Rs. 6,000 per month or Rs. 72,000 per annum. Deduction of 1/3rd of the said amount has reduced the loss of dependency to Rs. 48,000 per annum. Applying a multiplier of 5, the Commission has awarded a sum of Rs. 2,40,000 to the claimants. The Commission has, in our opinion, assessed the income of the deceased at a lower figure. In the absence of any evidence in rebuttal, the income of the deceased could be taken to be Rs. 12,000 per month, if not more. The net loss of dependency could, therefore, be taken at Rs. 8,000 per month or Rs. 96,000 per annum. Applying a multiplier of 5, the amount payable to the parents would come to Rs. 4,80,000. To that we add a sum of Rs. 75,000 towards conventional amount to take the total amount payable to the claimants to Rs. 5,55,000 in equal proportion.

Case No. 33-DFT

(180) This case arises out of the death of Radhey Shyam, aged 27 years. The Commission has taken the income of the deceased at Rs. 8,100 per month on the date of incident and after deducting 1/3 of the

said amount towards personal expenses, determined the loss of dependency for the family at Rs. 64,800 per annum. Applying a multiplier of 5, the Commission had awarded a sum of Rs. 3,24,000. In our opinion, the income of the deceased could be taken at Rs. 9,000 per month keeping in view the fact that the deceased was a Trained Graduate Teacher. We accordingly take the income of deceased at Rs. 9,000 deduct 1/3rd of the same towards personal expenses and determine the loss of dependency for the family at Rs. 72,000 per annum. Applying the multiplier of 5, the total amount payable to the claimants would come to Rs. 3,60,000. Addition of Rs. 75,000 towards conventional amount would take the amount of compensation to Rs. 4,35,000.

Case No. 34-DFT

(181) This claim arose out of the death of Gurdev Singh Shant, 63 years old Freedom Fighter and Chairman of Improvement Trust, Dabwali. The claim was made by his wife Surjit Kaur for payment of Rs. 70,00,000 as compensation. The claimants had stated that the deceased was earning Rs. 10,000 per month from the jewellery shop of his brother. The Commission has, however, taken the income to be Rs. 5,100 per month, deducted 1/3rd to determine the loss of dependency to Rs. 3,400 per month or Rs. 48,000 per annum. Applying a multiplier of 5, the Commission has awarded Rs. 2,04,000 to be paid to the widow of the deceased and son Iqbal Singh in equal shares. The assessment of the income of the deceased has not been, in our opinion, fair and reasonable in this case. The Commission could and indeed ought to have assessed the income of the deceased at Rs. 9,000 per month and awarded compensation on that basis. We accordingly, determine the loss of dependency in this case at Rs. 6,000 per month after deduction of 1/3rd towards his personal expenses. The annual loss of dependency would, thus, come to Rs. 72,000. Applying a multiplier of 5, we award a sum of Rs. 3,60,000 to the claimants. Addition of Rs. 75,000 towards conventional figure would take the amount of compensation payable to the claimants to Rs. 4,35,000, out of which a sum of Rs. 3,00,000 shall be paid to the widow of the deceased, while the balance shall be paid to his son Iqbal Singh.

Case No. 35-DFT

(182) In this claim petition, deceased Pawan Kumar was a 40 years old bank employee. The claim was made by his wife and daughter for a sum of Rs. 70,00,000. The Commission has taken the income of deceased as Rs. 7,685.39 ps., deducted 1/3rd out of the said amount and determined the loss of dependency at Rs. 5,124 per month or Rs. 61,488 per annum. Applying a multiplier of 15, the Commission has awarded Rs. 9,22,320, rounding it off Rs. 9,22,500, with which we find no fault, except that, we add a sum of Rs. 75,000 towards conventional figure to that amount taking the total amount of compensation payable to the claimants to Rs. 9,97,500. The amount shall be paid in equal shares to both the claimants.

Case No. 36-DFT

(183) In case No. 36-DFT arising out of the death of Rajbir Singh, the Commission had taken the income of the deceased at Rs. 1,530 and determined the loss of dependency to the family at Rs. 12,240 per annum. Applying a multiplier of 5, the Commission had awarded a meager amount of Rs. 61,200 to the claimants. The Commission has in the process disbelieved the version given by the mother of the deceased that he was working as a Contractor and was earning Rs. 15,000 to Rs. 20,000 per month. The Commission has instead chosen to rely upon the minimum wages payable under the Minimum Wages Act as on the date of incident while determining the compensation payable to the claimants. The Commission, in our opinion, was not justified in doing so. The evidence on record may not have been conclusive, but in the absence of any evidence to the contrary, the same could give an indication of the amount which he was earning. The deceased had passed the Senior Secondary Examination and was an invitee at the function. In the totality of these circumstances, therefore, we are of the view that the income of the deceased could be taken to be Rs. 15,000 per month which happens to be the lower of the figure mentioned by his mother who appeared as witness. Deducting 1/3rd out of the said amount, the net loss of dependency to the family would come to Rs. 10,000 or Rs. 1,20,000 per year. Applying a multiplier of 5, the amount of compensation payable to the claimants would work out to Rs. 6,00,000. Addition of Rs. 75,000 towards conventional amount would take the amount of total to Rs. 6,75,000.

Case No. 37-DFT

(184) In this case arising out of the death of Naresh Kumar, the Commission has taken the income of the deceased at Rs. 6,000 and determined the loss of dependency at Rs. 4,000 per month. The Commission had then applied a multiplier of 11 and awarded a sum of Rs. 5,28,000 to the claimants. The income of the deceased was according to the evidence adduced before the Commission between Rs. 5,000 to Rs. 7,000 per month. The Commission has, therefore, taken a mean figure while determining the amount of compensation. There is no error in that approach to warrant any interference from this Court. All that we need say is that Rs. 75,000 shall stand added to that figure as conventional amount taking the amount of compensation to Rs. 6,03,000.

Case No. 73-DFT

(185) In this claim, deceased Manphool Chand was a Science Teacher in Government service at the time of his death. The claim was filed by his mother Jamuna Bai for payment of Rs. 70,00,000 towards compensation. The deceased was, according to the claimant, getting a salary of Rs. 5,000 per month as per the salary certificate issued by the Principal of the School. He was a trained Teacher and had gone to the function his son and daughter were also attending. The Commission has, taking the income of the deceased to be Rs. 4,800 per month, awarded compensation of Rs. 1,92,000 to the mother. In the process, the Commission has overlooked the fact that the deceased had future prospects of higher income on the principles state in **Sarla Verma's case** *(supra)*. We, therefore, add 50% of the salary income to his gross monthly income which takes the total monthly income of the deceased to Rs. 7,200 per month. Deducting 1/3rd of the amount towards his personal expenses, the net loss of dependency would come to Rs. 4,800 per month or Rs. 57,600 per annum. Applying a multiplier of 5, the amount of compensation would work out to Rs. 2,88,000. To that amount, we add Rs. 75,000 towards conventional amount, to take the total amount of compensation payable to the claimant to Rs. 3,63,000.

Case No. 343-DFT

(186) This case arose out of the death of Shalbh Juneja. The Commission has taken the monthly income of the deceased at Rs. 2,352, deducted 1/3rd of the said amount, and determined the loss of dependency at Rs. 18,816. Applying a multiplier of 13, the Commission has awarded a sum of Rs. 2,44,608. The deceased, in this case, was working as a Teacher in St. Joseph School at Dabwali at the time of his death and earning a salaryof Rs. 2,300 per month. He was B.Sc., B.Ed. He was at the ill fated venue with the nephew Vivek who was a student of D.A.V. School. The claimant in the case who happens to be the elder brother of the deceased was the only legal heir left behind. Taking into consideration all these circumstances, the loss of dependency to the family would indeed come to Rs. 18,816 per month. Applying a multiplier of 13 the amount of compensation comes to Rs. 2,44,608. We need only to add Rs. 75,000 towards conventional amount to take the total amount payable to the claimant to be Rs. 3,19,608.

Case No. 344-DFT

(187) Suresh Kumar Sethi aged 33 years was in private employment on the date of his death in the fire incident. The parents made a claim for the payment of Rs. 70,00,000 towards compensation. The deceased, according to them, was a graduate and was working at a shop at a monthly salary of Rs. 2,000. The Commission has accepted that version, deducted 1/3rd of the income towards his personal expenses, determined the loss of dependency at Rs. 16,000 per annum and awarded a sum of Rs. 80,000 as compensation by applying a multiplier of 5. The amount so determined does not appear to be just and reasonable and is more in the nature of pittance than reasonable compensation to which the parents of the deceased were entitled. The deceased, it is proved on the record, was a graduate. His employment in a shop at a paltry sum of Rs. 2,000 per month was, therefore, only a temporary feature in life which was not an index of his real potential to earn a higher amount. We have, as seen earlier, taken even the value of the services rendered by a housewife to be Rs. 45,000 per annum. We see no reason why we should not adopt that amount for a person who happened to be the only life support for the old parents. He was not

only serving his parents but also earning Rs. 2,000 per month to supplement the income which take the loss of dependency to Rs. 45,000 + Rs. 16,000 = 61,000. Applying a multiplier of 5, the amount of compensation would come to Rs. 3,05,000. To that figure, we add Rs. 75,000 towards conventional amount taking the total to Rs. 3,80,000.

Case No. 345-DFT

(188) The deceased, in this case, was 35 years old Rakesh Kumar. His parents made a claim for Rs. 70,00,000 towards compensation for his death in the fire incident. According to the claimant, deceased was earning Rs. 1,00,000 to Rs. 1,50,000 per annum from his mobile oil business in the name and style of M/s Gupta Auto Store, Dabwali. He was also an income-tax assessee and used to file his annual returns. A tax challan for payment of tax was also produced during the hearing before the Commision. The Commission has accepted that version and taken the income of the deceased at Rs. 1,00,000 per annum. Deducting 1/3rd of the same determined the loss of dependency to Rs. 67,000 per annum. Applying a multiplier of 5, the amount of compensation came to Rs. 3,35,000 to be apportioned equally between the parents. This amount, in our opinion, needs to be suitably enhanced especially when the deceased was not only proved to be gainfully employed in business but was earning a substantial amount from the same. Instead of Rs. 1,00,000, the income of deceased could be taken at Rs. 1,25,000 per annum. Deducting 1/3rd of the said amount, the net loss of dependency would come to Rs. 83,334 per annum. Applying the multiplier chosen by the Commission, the amount of compensation would work out to Rs. 4,16,670. To that, we add Rs. 75,000 towards conventional figure to take the total amount of compensation payable to the claimants to 4,91,670, rounded off to Rs. 4,92,000.

Case No. 362-DFT

(189) In this case, deceased Bhim Sain aged 33 years was engaged in oil mill business. His father and widow filed the claim petition before the Commission in which it was alleged that the deceased was a partner in the Jyoti Oil Mills, Dabwali earning between Rs. 40,000 to Rs. 50,000 per annum. The Commission has accepted the income of the deceased to be

Rs. 45,000 per annum and after deducting 1/3rd taken the loss of dependency to be Rs. 30,000 per annum. Applying a multiplier of 17, an amount of Rs. 5,10,000 has been awarded to the claimants with which we cannot find any fault, except that the Commission ought to have awarded a sum of Rs. 75,000 towards conventional figure also which we hereby award taking the amount of compensation payable to Rs. 5,85,000. The widow shall receive a sum of Rs. 4,00,000 out of the said amount, while the balance shall go to the father of the deceased.

Case No. 366-DFT

(190) In this case, deceased Ravi Kumar, aged 34 years was engaged in business. The claim for payment of compensation was made by his brother, his wife and his niece. Evidence adduced before the Commission suggested that the deceased was working as a Commission Agent at Dabwali in the name and style of M/s Ravi Trading Company, Mandi Dabwali and caring an annual income of Rs. 40,000 to Rs. 50,000. The Commission has also noted that the income of M/s Ravi Trading Company was assessed at Rs. 41,170 for the financial year 1995-96. Deducting 1/3rd of the said amount, the loss of dependency has been worked out at Rs. 27,447, rounded off to Rs. 27,450. Applying a multiplier of 16, the Commission has awarded Rs. 4,39,200 and directed the apportionment of the same among the claimants with which we can find no fault. We only add Rs. 75,000 to that figure toward conventional amount to take the total amount payable to the claimants to Rs. 5,14,200 to be proportionately distributed among the claimants.

Case No. 368-DFT

(191) This case arose out of the death of Ashok Kumar, a 44 years old Brick-Kiln Owner. The claim was made by his widow, daughter and his son for a sum of Rs. 70,00,000 as compensation. The evidence adduced before the Commission suggested that the deceased was an income-tax assessess and his income for the year 1994-95 was assessed at Rs. 1,59,600. The Commission deducted 1/3rd of the same towards personal expenses of the deceased determining the loss of dependency for

the family at Rs. 1,06,400 per annum. Applying a multiplier of 13, the Commission awarded a sum of Rs. 13,84,000 as compensation. There is, in our opinion, no room for enhancement in this case except that we add Rs. 75,000 toward conventional figure which would take the total amount of compensation payable to the claimants to Rs. 14,58,200.

Case No. 373-DFT

(192) In this case, deceased Kishori Lal was 67 years old. He was an Income-tax Practitioner who left behind three sons, the claimants in the case. The evidence adduced before the Commission established that the deceased was earning an income of Rs. 50,000 per annum. Deducting 1/3rd out of the said amount, the Commission has taken the loss of dependency at Rs. 33,334 per annum and applied a multiplier of 5 to the same to award a sum of Rs. 1,70,000. Keeping in view the fact that income of the deceased as disclosed by the claimants has been accepted by the Commission and an appropriate multiplier applied to the same, we find no room for any enhancement in this case except that we add Rs. 75,000 towards conventional figure to the amount awarded by the Commission which takes the total amount payable to the claimants to Rs. 2,45,000 to be shared equally among the three claimants.

Case No. 377-DFT

(193) This case pertains to the death of 60 years old pensioner named Sutanter Singh Bhatti who died in the fire incident. The claim was made by his wife and two sons for payment of a sum of Rs. 70,00,000. The evidence on record established that the deceased was getting a pension of Rs. 38,400 per annum, out of which the Commission has deducted 1/3rd of the said amount and determined the loss of dependency to Rs. 25,600 per annum. Applying a multiplier of 5, the Commission has awarded Rs. 1,28,000. We see no reason to enhance the said amount except adding a sum of Rs. 75,000 as conventional amount. The total compensation payable to the claimants would, thus, come to Rs. 2,03,000 , out of which 75% shall be paid to the widow of deceased, while the remaining 25% shall be apportioned equally among the sons.

Case No. 472-DFT

(194) In this case arising out of the death of Satkartar Singh, the Commission has taken the income of the deceased at Rs. 2,712 deducted 1/3rd toward personal expenses and determined the loss of dependency at Rs. 21,768. Keeping in view the age of the claimant, the Commission has chosen a multiplier of 8 and awarded a sum of Rs. 1,75,000. The claimant happen to be the parents of the deceased who was serving as a Teacher in the private School at the salary mentioned above. The Commission has while doing so disbelieved the version given by the father that the deceased was also earning Rs. 12,000 per month from tuition work. The deceased was a Trained Teacher which fact has not been disputed and stands firmily established by the certificates marked in the course of the inquiry. It would not therefore, be incorrect to assume that the deceased may have been offering tuition to the students and supplementing his income. In the absence of any documentary evidence, we are inclined to hold that over and above Rs. 2,712 per month towards salary, the deceased was also earning atleast Rs. 3,300 per month from tuition taking his gross income to be Rs. 6,000. Deducting 1/3rd of the said amount, the loss of dependency would come to Rs. 4,000 or Rs. 48,000 per annum. Applying a multiplier of 8 to that figure the amount payable to the claimants would come to Rs. 3,84,000. Addition of the conventional figure of Rs. 75,000 would take the amount of compensation to Rs. 3,84,000 + Rs. 75,000 = Rs. 4,59,000.

Case No. 490-DFT

(195) This case arose out of the death of Shri Dharam Singh. The Commission has assessed the income of the deceased at Rs. 2,100 per month and determined the loss of dependency to the family at Rs. 16,800. Applying a multiplier of 8, the Commission has awarded a sum of Rs. 1,35,000 to the mother of the deceased who was 60 years old at the time of her statement before the Commission.

(196) The deceased, in this case, was a young boy of 23 years and was not engaged in any vocation. The evidence on record shows that the deceased was a Matriculate and had completed two years Diploma Course in Agriculture D-Pharma from Sirsa. He was an able bodied person and could have well started a career in due course. The commission has

applied to him the minimum wage payable to a skilled worker and attributed to him an income of Rs. 2,200 only. That amount appears to us to be on the lower side. Keeping in view the professional qualification which the deceased had acquired his gainful employment was only a matter of time. In our opinion, the notional income of the deceased could be taken for purposes of award of compensation at Rs. 4,200. Deducting 1/3rd out of the said amount, the loss of dependency would come to Rs. 2,800 per month or Rs. 33,600 per annum. Applying a multiplier of 8 to the said figure, the amount payable to the claimant would come to Rs. 2,68,800. Addition of Rs. 75,000 toward conventional amount to that figure would take the total amount payable to the claimant to Rs. 3,43,800.

Case No. 492-DFT

(197) In this case, the claim was made by the sons of deceased Som Nath Kamboj who was 40 years old serving in Haryana Civil Services and posted as Sub Divisional Magistrate, Dabwali. The evidence adduced before the Commission suggested that the deceased was a highly qualified officer and was selected for appointment in the Haryana Civil Services on the basis of a competitive examination. He was drawing a salary of Rs. 9,668 per month on the date of his death. The Commission has deducted 1/3rd out of the said amount toward personal expenses of the deceased and taken the loss of dependency to the family to be Rs. 77,344 per annum. It has then applied a multiplier of 15 to award a sum of Rs. 11,60,000. This amount, in our opinion, needs to be suitably enhanced keeping in view the fact that the deceased was holding a permanent job in the State Government and had prospects of further rise. On the principles stated in Sarla Verma's case *(supra)*, an amount equivalent to 30% of the salary income of the deceased could be added to the gross income of the deceased which would take the gross monthly income of the deceased to Rs. 12,568 per month or Rs. 1,50,816 per annum. Deducting 1/3rd out of the said amount, the loss of dependency would come to Rs. 1,00,544 per annum. Applying a multiplier of 15, the total amount of compensation would work out to Rs. 15,08,160. To that figure, we add Rs. 75,000 taking the total amount of compensation payable to the claimants to Rs. 15,83,160.

(198) The amounts of compensation payable to the claimants in the cases discussed above may now be summarised as under :---

Sr. No.	Case No.	Name & Age of the Deceased	Amount awarded by the Commiss-ion (in Rs.)	Annual Income at the time of death (in Rs.)	Future prospects (in Rs.)	Annual loss of dependency {5+6-1/3rd towards personal expenses} (in Rs.)	Revised amount of compen-sation payable {7× multiplier applied} (in Rs.)	Conventional figure (in Rs.)	Total Amount {8-9} (in Rs.)
1	2	3	4	5	6	7	8	9	10
1	8-DFT	Gurdeep Singh, 19 years	312000	54000	0	36000	468000	75000	543000
2	9-DFT	Ravinder Kumar, 20 years	390000	144000	0	96000	480000	75000	555000
3	12-DFT	Ashwani Kumar, 29 years	390000	144000	0	96000	480000	75000	555000
4	10-DFT	Balbir Singh, 24 years	408000	48000	0	32000	544000	75000	619000
5	11-DFT	Ashok Gill, 26 years	648000	54000	0	36000	648000	75000	723000

6	13-DFT	Bhagirath. 32 years	426300	37608	18804
7	15-DFT	Ashok Wadhera. 32 years	816000	72000	0
8	16-DFT	Radhey Shyam Shastri. 36 years	900000	90000	0
9	18-DFT	Ravinder Kumar 40 years	160000	54000	0
10	19-DFT	Om Parkash Mehta. 43 years	316251	36490	0
11	20-DFT	Des Raj. 68 years	160000	48000	0
12	22-DFT	Surinder Kumar. 39 years	345000	50000	0
13	23-DFT	Ramesh Chugh. 46 years	728000	60000 (Contri-bution)	0
14	24-DFT	Sanjay Kwatra. 26 years	1152000	96000	0

37608	639336	75000	714336
48000	816000	75000	891000
60000	900000	75000	975000
36000	540000	75000	615000
36327 (24327 + 12000)	472251	75000	547251
32000	160000	75000	235000
33300	532800	75000	607800
60000 (Contri-bution)	780000	75000	855000
64000	1152000	75000	1227000

1	2	3	4	5	6
15	25-DFT	Niranjan Dass Bansal, 60 years	500000	150000	0
16	26-DFT	Sanjay Grover. 30 years	1224000	108000	0
17	27-DFT	Gurdas Singh. 25 years	432000	36000	18000
18	28-DFT	Surinder Kumar, 30 years	1360000	120000	0
19	29-DFT	Ashok Kumar Sikka, 43 years	1611000	161088	0
20	30-DFT	Jagwinder Singh, 21 years	362000	54000	0
21	31-DFT	Ravi Bhateja. 40 years	810000	80904	24276
22	32-DFT	Sukhbir Singh. 31 years	240000	144000	0

7	8	9	10
100000	500000	75000	575000
72000	1224000	75000	1300,000 (rounded off)
36000	648000	75000	723000
80000	1360000	75000	1435000
107400 (Rounded off)	1611000	75000	1686000
36000	468000	75000	543000
70120	1051800	75000	1126800
96000	480000	75000	555000

23	33-DFT	Radhey Sham, 27 years	324000	108000	0
24	34-DFT	Gurdev Singh Shant, 63 years	204000	108000	0
25	35-DFT	Pawan Kumar Sharma, 40 years	922500	92232 (Rounded off)	0
26	36-DFT	Rajbir Singh, 25 years	61200	180000	0
27	37-DFT	Naresh Kumar, 25 years	528000	72000	0
28	73-DFT	Manphool Chand, 35 years	192000	57600	28800
29	343-DFT	Shalbh Juneja, 26 years	245000	28224	0
30	344-DFT	Suresh Kumar Sethi, 33 years	80000	24000	0
31	345-DFT	Rakesh Kumar, 33 years	335000	125000	0

72000	360000	75000	435000
72000	360000	75000	435000
61488	922500 (Rounded off)	75000	997500
120000	600000	75000	675000
48000	528000	75000	603000
57600	288000	75000	363000
18816	244608	75000	319608
61000 (45000+ 16000)	305000	75000	380000
83334	416670	75000	492000 (Rounded off)

1	2	3	4	5	6	7	8	9	10
32	362-DFT	Bhim Sain, 33 years	510000	45000	0	30000	510000	75000	585000
33	366-DFT	Ravi Kumar, 34 years	439200	41170	0	27450 (Rounded off)	439200	75000	514200
34	368-DFT	Ashok Kumar, 44 years	1384000	159600	0	106400	1384000 (Rounded off)	75000	1458200
35	373-DFT	Kishori Lal, 67 years	170000	50000	0	33334	170000 (Rounded off)	75000	245000
36	377-DFT	Sutanter Singh Bhatti, 60 years	128000	38400	0	25600	128000	75000	203000
37	472-DFT	Satkartar Singh, 26 years	175000	72000 (Rounded off)	0	48000	384000	75000	459000
38	490-DFT	Dharam Singh, 23 years	135000	50400	0	33600	268800	75000	343800
39	492-DFT	Som Nath Kamboj, 40 years	1160000	116016	34800	100544	1508160	75000	1583160
								TOTAL	**27697655**

Category 6

(199) In this category of cases fall 88 claim petitions filed by those injured in the fire incident. The Commission has categorized these cases into different groups depending upon the extent of disability suffered by them and awarded compensation accordingly. The first of these groups comprises cases in which the victims suffered disability on account of burn injuries ranging between 1% to 10%. In Table "A" to the report submitted by the Commission are enumerated 29 such cases. The second group comprises cases where the disability reported ranges between 11% to 20% enumerated in Table "B" to the report. Similarly Table "C" to the report enumerates cases where the disability suffered is between 21% to 30%, while Table "D" enumerates cases in which the disability reported is between 31% to 40%. Tables "E", "F", "G", "H", "I" and "J" similarly enumerate cases with disabilities ranging between 41% to 50%, 51% to 60%, so on and so forth. Table "K" is the last of the tables enumerating 9 cases in which the percentage of disability is reported to be 100%.

(200) The Commission of Inquiry has, while dealing with the claims in question, referred to certain text books and articles dealing with "Burn Injuries", "Burn Trauma" and their treatment. It has also referred to several judicial pronouncements that lay down the approach to be adopted by the Courts while awarding compensation in injury cases. While we see no error or misdirection on the part of the Commission in identifying and applying the principles governing assessment and award of compensation in injury cases, we may briefly refer to some of the decisions on the subject only to emphasise that the task and process of assessment of compensation in injury cases is by no means an easy task and that some amount of speculation and guess work is inherent in the process of adjudication of such claims.

(201) In **Wards** *versus* **James (39),** Lord Denning while dealing with the principles governing award of compensation for personal injury identified three distinct matters that need to be kept in mind while undertaking any such exercise. He said :—

> **"Firstly, Accessibility :** In case of grave injury, where the body is wrecked or the brain destroyed. It is very difficult to assess a

(39) (1965) 1 All England Reports 563

fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from award in comparable cases.

Secondly, Uniformity : There should be some measure of uniformity in award so that similar decisions are given in similar cases: otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice.

Thirdly, Predictability : Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to be public good".

It was further said :

"Although you cannot give a man so gravely injured much for his 'lost year', you can, however, compensate him for his loss during his shortened span, that is, during his expected 'years of survival'. Your can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid ? He may, owing to the brain injury, be rendered unconscious for the rest of his days, or owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wounder they find it wellnigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out pattern and they keep it in line with the changes in the value of money".

(202) Reference may also be made to ***Thomas*** *versus* **British Railway Board, (40),** where Scarman, L.J. Observed :—

".....The greatest element of damage in a case such as this is the pain, the suffering and the loss of the ordinary pleasures and convenience associated with healthy and mobile limbs. All that

(40) 1977 ACJ 222 (CA. England)

the court can do is to award such a sum as will enable the plaintiff to acquire some material possessions or to develop a lifestyle which will offset to some extent her terrible disability".

(203) In **H. West and Son Limited *versus* Shephard (41)** the House of Lords emphasised the need for uniformity in the method and the approach to ensure that awards are reasonable, assessed with moderation and also to ensure that comparable injuries are compensated by comparable awards.

(204) In **Fowler *versus* Grace (42),** the difficulty in the assessment of monetary compensation notwithstanding the need for valuation in terms of money was emphasized to avoid a situation where the law became sterile and incapable of giving any remedy at all. The Court observed :

"If a person in an accident loses his sight, hearing or smelling faculty or a limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent in terms of money. Nevertheless a valuation in terms of money must be made, because, otherwise the law would be sterile and not able to give any remedy at all. Although accuracy and certainty were frequently unobtainable, a fair assessment must be made. Although undoubtedly there are difficulties and uncertainties in assessing damages in personal injury cases, that fact should not preclude an assessment at best as can, in the circumstances be made". (emphasis supplied)

(205) To the same effect are the observations made by Lord Morris in **Perry *versus* Cleaver (43)** where the Court stated :—

"To compensate in money for pain and for physical consequences is invariably difficult but it is recognized that no other process can be devised than that of making a monetary assessment".

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(41) 1958–65 ACJ 504 (HL, England)
(42) (1970) 114 Sol Jo 1993
(43) 1969 ACJ 363 (H.L. England)

(206) Back home, the pronouncements of the Supreme Court have laid down the norms to be adopted in assessing compensation in injury cases and broadly classified damages payable under two distinct heads, namely pecuniary damages and non-pecuniary damages. The distinction between the two was pointed out by the Supreme Court in **R.D. Hattangadi** *versus* **Pest Control (India) Pvt. Ltd. and others (44)** in the following words : -

> "Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as, pecuniary damages and special damages. **Pecuniary damages** are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may includes expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages of compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life".

(207) The difficulties besetting the process of calculating damages were recognized by the Supreme Court even in **Susamma Thomas's case** *(supra)* where the Court observed that calculation of damages necessarily remains in the realm of hypothesis in which reason, arithmetic is a good servant but a bad master. The overall picture is what matters. The amount of award, observed their Lordships, must not be niggardly since the law values life and limb in the free society in generous scales. To the same effect

(44) 1995 ACJ (Supreme Court) 366

is the decision of the Supreme Court in **Concord of India Insurance Co. Limited** *versus* **Nirmala Devi (45).**

(208) Let us, in the light of the above pronouncements, now take up for consideration the first group of 29 cases appearing in Table "A" of the report in which percentage of disability suffered by the victims ranges between 1% to 10%. Table "A" contained in the report gives the particulars of the victim and the percentage of burns sustained by him/her as also the percentage of disability reported by the doctors examined in each one of the cases. A closer look at the percentage of burns and the percentage of disability suffered by each victim would show that except in Claim Petition No. 426-DFT filed by Mrs. Surinderpal Kaur alias Shinder Pal Kaur where no burns or disability is reported, in all other cases set out in Table "A", the disability reported is not necessarily equivalent to the extent of burns suffered by the victim. For instance, in Claim Petition No. 379-DFT against 2% burns, the disability suffered is 3%. A converse situation is found in Claim Petition No. 389-DFT where the percentage of burns is 10% but the disability is only 2%. In the case of Mehak claimant in Claim Petition No. 420-DFT the percentage of burns was reported to be 35% but the disability is only 6%. Having said that, we must mention that in as many as 9 cases out of 29, enumerated in Table "A", the extent of burn injuries and the percentage of disability are exactly the same. In the remaining, it is either more or less than the percentage of burns. The position is similar in cases enumerated in Table "B" also where the disability suffered is between 11% to 20%. The extent of burns and the disability are more or less comparable though not in all cases. That is true even in Table 'C" with a few exceptions in which cases of disability ranging between 21% to 30% have been enumerated. In Table "D", the disparity between the percentage of burns and the percentage of disability becomes more prominent. For instance, in Claim Petition No. 355-DFT filed by Vinod Bansal 25% burns give rise to 36% disability. So also in Claim Petition No. 432-DFT filed by Mrs. Shashi Bala 11% burns give rise to 40% disability. A converse situation is noticed in Claim Petition No. 435-DFT filed by Sanjay Midha where 65% burns have given rise to only 35% disability.

(45) 1980 ACJ 55 (S.C.)

(209) The inference that one can draw from the above state of affairs is that while burns and disability go hand in hand, one need not necessarily be proportionate to the other. No definite co-relation is discernible between the extent of burns and the extent of disabilities suffered by the victims. Lesser burns have at times resulted in higher disability. The converse is also noticed in many cases where higher percentage of burns have resulted in relatively lower disability. It will not, therefore, be possible to adopt a norm or formula for calculation of compensation by reference to both i.e. Burns and disability. Any such attempt may lead to anomalous and at times absurd results. The proper course, therefore, appears to be to make the extent of disability as the solitary basis for award of compensation regardless of the extent of burns suffered by the victim except may be in exceptional cases where the disability may be less but non pecuniary damages become awardable on account of loss of amenities such as marriage prospects for young girls and boys. Subject to that exception, we shall proceed to determine the amount of compensation payable on the basis of the extent of disability suffered by the victims on account of the burn injuries sustained by them.

(210) The One Man Commission has, in cases appearing in Table "A" where the disability is between 1% to 10% awarded on a uniform basis a sum of Rs. 2,00,000 towards compensation. It has, while doing so, drawn support from the decision of the Supreme Court in **Lata Wadhwa's case** *(supra)* where the Court noted that Justice Chandrachud had not awarded any compensation in cases where the burns were less than 10% but considered payment of Rs. 2,00,000 in favour of each such victim to be just and reasonable. What is significant is that the report submitted by Justice Chandrachud and the judgment delivered by their Lordships of the Supreme Court have both taken the extent of burns as the basis for award of compensation. There was, it appears, no material before the Supreme Court or before Justice Chandrachud for that matter to indicate the extent of disability suffered by the victims on account of the burn injuries sustained by them. Two questions, in the above backdrop, arise at the threshold, namely :—

(i) Whether award of Rs. 2,00,000 in 28 cases appearing in Table "A" to the report is just and reasonable compensation in cases where the victims have suffered 1% to 10% disability (not burns); And

(ii) If a higher amount than what has been awarded in **Lata Wadhwa's case** *(supra)* is to be awarded what should that amount be, having regard to the time period that separates the two incidents.

(211) As noticed earlier, in cases enumerated in Table "A" of the report, the extent of disability in comparison to the percentage of burns is lower except in one case where 2% burns have resulted in 3% disability. It is also noteworthy that in Claim Petition No. 420-DFT while the disability is only 6%, the burns sustained were 35%. We therefore, consider it reasonable to hold that if the extent of disability is the basis for award of compensation, the amount should be higher than what was awarded in **Lata Wadhwa's case** *(supra)* for a comparable percentage of burns. This means that for disability between 1% to 10% a higher amount of compensation ought to be payable than what was paid for burns sustained between 1% to 10%.

(212) We are also of the view that payment of compensation to a victim who has suffered 10% disability at the same rate at which a victim who has suffered only 1% disability would also not be fair and reasonable. While the Supreme Court has accepted the classification of victims by reference to the extent of burns between 1% to 10% in **Lata Wadhwa's case** *(supra)* we see no reason why victims cannot be classified more closely to reduce the disparity in the award of the amount as far as possible. The proper course, in our opinion, would be to classify the victims in Table "A" into two groups, one who have suffered injuries between 1% to 5% and the other comprising victims who have suffered injuries between 6% to 10%

(213) Coming to the second question, viz. what is the reasonable amount of compensation payable to the victims in the two categories mentioned above, we are of the view that having regard to the totality of the circumstances, the nature of the evidence led and taking support from what the Supreme Court has awarded in **Lata Wadhwa's case** *(supra)* award of a sum of Rs. 3,00,000 to victims who suffered 1% to 5% disability should meet the ends of justice. The higher amount awarded by us would not only take care of the qualitative difference between the extent of burns and the resultant disability but also the time gap between the incident in **Lata Wadhwa's case** *(supra)* and the one we are concerned with.

(214) In so far as victims falling in second category namely those who suffered disability between 6% to 10% are concerned award of a sum of Rs. 4,00,000 to each one of them would be just and fair in our opinion. This amount would include payment for shock, pain and suffering which the victims have gone through or may have to go through for the rest of their lives.

(215) The second head under which amounts have been awarded to the victims is on account of loss of marriage prospects. The Commission has even for that purpose taken support from the decision of the Supreme Court in **Lata Wadhwa's case** *(supra)* where compensation for loss of marriage prospects was related to the extent of burn injuries. The compensation awarded, accordingly, ranged between Rs. 3,00,000 to Rs. 10,00,000 in the case of unmarried young girls and Rs. 3,00,000 to Rs. 5,00,000 in the case of unmarried young boys. It is noteworthy that in the case of victims who had 1% to 10% burns Justice Chandrachud had not awarded any amount by way of compensation. Their Lordships of the Supreme Court had, however, awarded a consolidated sum of Rs. 2,00,000 to such victims ex-gratia. We have raised that amount to Rs. 3,00,000 in cases where the disability is between 1% to 5% and to Rs. 4,00,000 in cases where the disability is between 6% to 10%. We are of the opinion that every disability must in the case of unmarried girls and boys affect their marriage prospects also. The difficulty arises only in quantifying the amount of compensation payable on that account. Taking a cue from the amount awarded in **Lata Wadhwa's case** *(supra)* on account of loss of marriage prospects, we are of the opinion that the amount of compensation could start at the base figure of Rs. 2,00,000 in cases where the percentage of disability among girls was between 1% to 5% and rise by Rs. 50,000 in every slab of 5% higher disability. This would mean that for the first category of cases involving young girls who suffered disability between 1% to 5% the total amount of compensation would be Rs. 3,00,000 for disability in addition to Rs. 2,00,000 for loss of marriage prospects taking, the total to Rs. 5,00,000. For boys in that category the loss of prospects of marriage could be compensated by award of Rs. 1,00,000 with Rs. 50,000 additional amount for every slab of 5% next above the first slab of 1% to 5%.

(216) Adoption of the above method would, in our opinion, make the entire process uniform, transparent and predictable at the same time reduce the possibilities of any discrimination or unfair treatment in the matter of award of compensation. It goes without saying that in cases where the

claimants are married men and women, the amount of compensation towards marriage prospects would not be due and payable. Applying the above norms, the final picture as regards compensation payable to the victims would be as under :—

Sr. No.	Case No.	Name of Injured	Extent of disability (in %age)	Amount of non-pecuniary/ disability compensation (in Rs.)	Amount of compensation for loss of marriage prospects (in Rs.)	Total Amount (in Rs.)
1	2	3	4	5	6	7
			UNMARRIED GIRLS			
1	379-DFT	Ramandeep	3	300000	200000	500000
2	450-DFT	Pooja *alias* Shweta	4	300000	200000	500000
3	444-DFT	Anju Rani	4	300000	200000	500000
4	415-DFT	Prabhleen Kaur *alias* Heena	4	300000	200000	500000
5	384-DFT	Pooja Parihar	5	300000	200000	500000
6	420-DFT	Mehak	6	400000	250000	650000
7	425-DFT	Manju	6	400000	250000	650000
8	405-DFT	Ritu Bala	7	400000	250000	650000
9	407-DFT	Priya	8	400000	250000	650000

1	2	3	4
10	386-DFT	Neha *alias* Nikita	8
11	453-DFT	Simmi Monga	9
12	434-DFT	Saniya	11
13	429-DFT	Gunjan Kamra	12
14	381-DFT	Rekha Rani	17
15	421-DFT	Bhavik	24
16	393-DFT	Pooja	26
17	411-DFT	Gagan Monga	37
18	439-DFT	Sakshi	38.5
19	394-DFT	Varsha *alias* Anjli	38.5
20	441-DFT	Saloni Bhateja	40
21	454-DFT	Chanda Rani	45
22	383-DFT	Anmol Parihar	45
23	437-DFT	Rinku Sethi	60
24	458-DFT	Partima	68.5
25	436-DFT	Neha Midha	100
26	431-DFT	Gagandeep Butter	100

5	6	7
400000	250000	650000
400000	250000	650000
500000	300000	800000
500000	300000	800000
600000	350000	950000
700000	400000	1100000
800000	450000	1250000
1000000	550000	1550000
1000000	550000	1550000
1000000	550000	1550000
1000000	550000	1550000
1100000	600000	1700000
1100000	600000	1700000
1400000	750000	2150000
1600000	850000	2450000
2200000	1150000	3350000
2200000	1150000	3350000

27	410-DFT	Seema Rani	100	2200000
28	402-DFT	Sarabjit Kaur	100	2200000
29	396-DFT	Suman Kaushal	100	2200000
30	392-DFT	Geeta Rani	100	2200000
			UNMARRIED BOYS	
1	451-DFT	Abhishek	1	300000
2	457-DFT	Harsimranjit Singh	2	300000
3	418-DFT	Rajinder Kumar	2	300000
4	389-DFT	Dikshant	2	300000
5	475-DFT	Rakesh Kumar	2.5	300000
6	438-DFT	Sumit	3	300000
7	422-DFT	Lalit Kumar	3	300000
8	390-DFT	Deepak	3	300000
9	452-DFT	Gaurav	4	300000
10	445-DFT	Akash	6	400000
11	380-DFT	Pankaj Mehta	10	400000
12	446-DFT	David	13.5	500000
13	417-DFT	Rahul Grover	15	500000
14	459-DFT	Pawan Kumar	17	600000

1150000	3350000
1150000	3350000
1150000	3350000
1150000	3350000
100000	400000
100000	400000
100000	400000
100000	400000
100000	400000
100000	400000
100000	400000
100000	400000
100000	400000
150000	550000
150000	550000
200000	700000
200000	700000
250000	850000

1	2	3	4	5
15	378-DFT	Navdeep Singh	21.5	700000
16	403-DFT	Subhash Munna	26	800000
17	428-DFT	Rohit Joshi	27.5	800000
18	385-DFT	Sanjeev Kumar	30	800000
19	395-DFT	Vikku	40	1000000
20	404-DFT	Ashish Kumar Bansal	50	1200000
21	433-DFT	Sahil	54	1300000
22	419-DFT	Rajan	80	1800000
23	412-DFT	Prabhjot Vishwas	80	1800000
24	398-DFT	Ankit Chugh	80	1800000
25	442-DFT	Iqbal Singh	85	1900000
26	424-DFT	Navjeet Sethi	85	1900000
27	387-DFT	Venus Sethi	88	2000000
28	456-DFT	Boby Girdhar	95	2100000
29	399-DFT	Umesh Kumar	100	2200000
				MARRIED WOMEN
1	426-DFT	Surinderpal Kaur *alias* Shinder Pal Kaur	0	150000

6	7
300000	1000000
350000	1150000
350000	1150000
350000	1150000
450000	1450000
550000	1750000
600000	1900000
850000	2650000
850000	2650000
850000	2650000
900000	2800000
900000	2800000
950000	2950000
1000000	3100000
1050000	3250000
0	150000

2	423-DFT	Sudha Rani	3
3	474-DFT	Poonam Rani	7
4	449-DFT	Kiran	7
5	460-DFT	Veena Rani	8
6	406-DFT	Savita Angi	15
7	448-DFT	Alka	17.5
8	408-DFT	Seema	28
9	447-DFT	Sushma Rani	32.5
10	432-DFT	Shashi Bala	40
11	416-DFT	Kamlesh Rani	40
12	443-DFT	Rajni	50
13	391-DFT	Mitu Bala	50
14	382-DFT	Anju Rani	50
15	427-DFT	Savita Sharma	52
16	455-DFT	Madhu Bala	52
17	413-DFT	Veena Rani	70
18	440-DFT	Neera Jagga	100
19	400-DFT	Saroj Rani	100

300000	0	300000
400000	0	400000
400000	0	400000
400000	0	400000
500000	0	500000
600000	0	600000
800000	0	800000
900000	0	900000
1000000	0	1000000
1000000	0	1000000
1200000	0	1200000
1200000	0	1200000
1200000	0	1200000
1300000	0	1300000
1300000	0	1300000
1600000	0	1600000
2200000	0	2200000
2200000	0	2200000

1	2	3	4	5	6	7
			MARRIED MEN			
1	430-DFT	Mukesh Kamra	8	400000	0	400000
2	388-DFT	Bir Singh	8	400000	0	400000
3	477-DFT	Anil Kumar	22	700000	0	700000
4	356-DFT	Ramesh Sachdeva	30	800000	0	800000
5	435-DFT	Sanjay Midha	30.5	900000	0	900000
6	414-DFT	Jai Muni Goel	35	900000	0	900000
7	401-DFT	Keshav Sharma	35	900000	0	900000
8	355-DFT	Vinod Bansal	36	1000000	0	1000000
9	397-DFT	Nazir Singh	50	1200000	0	1200000
10	409-DFT	Girdhari Lal	70	1600000	0	1600000
				Total		**112400000**

Re : Question No. 6

(217) There are three distinct aspects which need to be addressed while dealing with this question. The first relates to payment of interest on the amount awarded in favour of the claimants. Whether any interest is at all awardable, and, if so, from what date and at what rate would fall for determination while dealing with this aspect. The second aspect relates to the mode of recovery to be adopted in the event of a default in the payment of the amount by those held liable. The third aspect that needs to be addressed is whether the injured victims are entitled to a direction for treatment at the expense of the State in future.

(218) Coming to the question of award of interest, it was argued on behalf of the School by Mr. Rajiv Atma Ram that the One Man Commission had not awarded any interest in favour of the claimants, which aspect has been left to be determined by the Court. He urged that no interest had been awarded even in **Lata Wadhwa's case** *(supra)* either by Justice Chandrachud, who conducted an inquiry into the claims or by the Apex Court. This, according to the learned counsel, implied that award of interest was not an essential part of the award of compensation for the Torts suffered by the claimants.

(219) On behalf of the claimants, it was per-contra argued that since the amount of compensation was being awarded on the principles governing claims made under the Motor Vehicles Act, 1988, there was no reason why it should be denied to the claiments especially when Section 171 of the Act empowers the Tribunal to award interest at such rate and from such date not earlier than the date of making the claim as may be specified by the Tribunal. It was contended that interest was awarded in **M.S. Garewal's case** *(Supra)* and is invariable awarded in all Motor Vehicle Accident Claim cases.

(220) Section 171 of the Motor Vehicles Act, 1988 makes a specific provision for award of interest where any claim is allowed by the Motor Accident Claims Tribunal. The rate of interest and the date from which the same is payable is, however, in the discretion of the Tribunal, subject to the condition that the date of award of interest cannot be earlier to the date of making of the claim. As seen by us in the earlier part of this judgment award of compensation to the claimants in death and injury cases

has been guided by the broad principles applicable to cases arising under the Motor Vehicles Act. The multiplier method of determination of compensation in death cases and the broad principles on which amounts have been determined by us in injury cases are not different from those applied and determined under the said Act. Such being the position, there is no reason why award of interest should be denied to the claimants especially when the right to claim and receive the amount relates back to the date on which the incident had taken place and the award of interest to the date on which a claim for payment of compensation filed. That apart award of interest simply ensures that the claimants are not prejudiced on account of the delay in determination of their claims by suitably compensating them, for such delay. No juristic principle has been cited by the respondents on which award of interest may be said to be impermissible in a case like the one at hand. Indeed even in **M.S. Garewal's case** *(Supra)* the Court had awarded interest at the rate of 6% in favour of the claimants. The fact that no interest was awarded in **Lata Wadhwa's case** *(supra)* also cannot in our opinion, be construed as a declaration of law especially when the question whether interest was payable and if so, from what date and at what rate had not been urged before their Lordships for determination. If the judgment in **Lata Wadhwa's case** *(supra)* is silent on the question of interest, the same cannot be cited as an authority for denial of interest to the claimants in the present case.

(221) That brings us to the question as to what should be the rate of interest and from what date. Insofar as the date from which the interest is to be awarded is concerned, we see no reason to go against the provisions of the Section 171 of the Motor Vehicles Act, 1988, no matter that provision may have no direct application to the case at hand. It would be just and proper in our opinion to award interest only from the date of the filing of the claim petitions before the One Man Commission. The rate at which the said interest ought to be paid to the claimants also should not present any serious difficulty. Although there are decisions in which rate of interest has been as high as 12% per annum, as in the case of **Kaushlya Devi** *versus* **Karan Arora and Ors. (46)** and **Municipal Corporation of Greater Bombay** *versus* **Shri Laxman Iyer and Anr., (47),** we are of the view

(46) AIR 2007 S.C. 1912
(47) 2003 (4) RCR (Civil) 764

that simple interest at the rate of 6% from the date of filing of the claim petition would serve the ends of justice.

(222) The next question relates to the mode of recovery of the amount awarded against the respondents in the event of their default in making the payment. It may be recalled that out of the total amount awarded by us. 45% has been made payable by the State Government out of the which 15% is its own liability while the remaining 30% is the liability of the Dakshin Haryana Bijli Virtran Nigam and Municipal Committee, Dabwali with liberty to the State to recover the same from the Board and Municipal Committee, Dabwali. A direction issued to the State Government to pay the said amount within the time stipulated by us, would in our opinion, suffice as a violation of the said direction may itself be the subject matter of contempt proceedings before this Court. What is significant is that 55% of the amount awarded by us is payable by respondents No. 4, 5 and 9. While proceedings for disobedience of the direction to pay may be permissible even for enforcement of the said direction against the said respondents also we need to clarify that apart from recourse to those proceedings, the amount held recoverable from respondents No. 4, 5 and 9 shall be recoverable both as fine and/or as arrears of land revenue. In the event of default in payment of the amount within the time that we are granting for such payment or in the event of a dispute as to the exact sum payable in terms of our order, the Court of Additional Civil Judge (Sr. Divn.), Dabwali, shall be competent to determine the question and direct payment which direction/ order shall tantamount to a certificate for recovery of the amount so determined from the said respondents, as fine and/or as arrears of land revenue by the concerned revenue authority.

(223) That leaves us with the only other aspect viz. whether directions for treatment at the expense of the State need to be issued for the benefit of the injured victims. All that we need say in that regard is that this Court had,—*vide* its orders dated 10th December, 1996, 24th September, 2001 and 18th February, 2002 directed such treatment. Treatment has been accordingly provided to the injured as and when required. All that we need say is that in case the State-run hospitals in Haryana are not equipped to provide the requisite treatment to the victims, such treatment

may be provided either at the Post Graduate Institute of Medical Education and Research, Chandigarh, or at the All India Institute of Medical Sciences, New Delhi, at the Cost of the State Government upon satisfaction of the Director, Health Services, Government of Haryana that such treatment cannot be provided in the State run Hospitals.

(224) Before concluding, we need to point out that while the hearing of these cases was, at an advanced stage, Civil Miscellaneous No. 1011 of 2009 was filed by applicant Vinod Kumar claiming compensation on account of death of his wife and daughter namely Smt. Asha, aged 28 years and Ganga alias Kunjan Rani aged about 3½ years and Civil Miscellaneous No. 16045 of 2009 was filed by applicant Smt. Anil Arora wife of Vijay Arora claiming compensation on account of death of her husband Vijay Kumar and sons namely Ankit aged six years and Archit aged seven years. It was submitted by Ms. Anju Arora, Advocate, that these claims could be entertained by this Court at this stage also and suitable directions be issued for claiming compensation. We regret our inability to do so. The proceedings before the Commission had remained pending for nearly six years. No claim petition was, however, filed by the applicants before the One Man Commission. The applicants have attempted to offer an explanation for their failure. We do not, however, consider it necessary to examine either the explanation or the claim for the present proceedings, at this stage, which remained confined only to cases that were filed before the One Man Commission and in which evidence was adduced by the claimants in proof of their respective claims. Whether or not the applicants can maintain the claims at this distinct point of time and, if so, whether the allegations forming the basis of claim are supported by any material and, if so, what is the amount which can be awarded by way of compensation, are mixed questions of law and facts, which we cannot, in these proceedings, entertain at this stage. To that we can say that the applicants shall be free to file appropriate proceedings permissible in law for such relief as may be due to them but subject to all just exceptions including maintainability and limitations.

(225) In the result we pass the following order :—

(1) The amounts determined in each one of the cases referred to in the body of this judgment are hereby awarded in favour of the claimants with interest at the rate of 6% per annum with effect from date of the filing of the claim petition before the One Man Commission.

(2) Out of the total amount payable to each one of the claimant, the State of Haryana shall pay 45% of the total amount of compensation awarded in each one of the cases dealt with by us with liberty to recover 15% each of the amount so paid from Dakshin Haryana Bijli Virtran Nigam and Municipal Committee, Dabwali. The balance 55% of the amount awarded shall be payable by respondents No. 4, 5 and 9 jointly and severally.

(3) The apportionment for the enhanced amount of compensation among the claimants shall be in the same ratio as recommended by the One Man Commission subject only to modifications and/or further directions indicated by us in the body of this judgment. We make it clear that in cases where we have directed deposit of the amount of compensation in the name of minor claimants, the same shall be disbursed to the claimants in case they have already attained majority.

(4) The amount awarded by us together with interest shall be deposited by the respondents in the ratio indicated in para 2 above with the Additional Civil Judge (Sr. Divn.), Dabwali for disbursement among the claimants within a period of 4 months from today, failing which the rate of interest awarded by us on the principal amount held payable, shall stand enhanced from 6% to 10% per annum from the date the period of 4 months expires till actual payment is made.

(5) In the event of any default by the respondents in the making of the payment, the claimants shall be free to not only institute proceedings for the breach of the direction of this Court but

also approach the Additional Civil Judge (Sr. Divn.), Dabwali for effecting recovery of the amount remaining unpaid.

(6) The Additional Civil Judge (Sr. Divn.), Dabwali, shall, in any such event, initiate proceedings for recovery of the amount that remains unpaid as if the same was recoverable as fine and/or as arrears of land revenue for which purpose he shall be competent to issue certificates and instructions to the Collector(s) concerned for recovering the amount outstanding.

(7) Treatment for the burn injury sustained by the injured victims shall be provided free of cost. In case the same is not available in the State-run hospitals in Haryana, the same shall be arranged in Post Graduate Institute of Medical Education and Research, Chandigarh or at the All India Institute of Medical Sciences, New Delhi upon satisfaction by the Director, Health Services, Government of Haryana that such treatment is essential but cannot be provided in the State-run hospitals.

(8) Liberty is given to the petitioners to seek further clarification of this order at any stage, should the need so arise.

(9) Civil Miscellaneous Nos. 1011 and 16045 of 2009 are dismissed with liberty to the applicants to file appropriate proceedings for payment of amount of compensation and/or other reliefs due to them subject to just exceptions including maintainability of claims and limitations etc.

(10) The costs involved in the setting up of the Commission from beginning till end shall be borne by the State of Haryana.

(11) The parties shall bear their own costs in this Court, and in the proceedings before the One Man Commission.

R.N.R.