the appeal on the ground that the civil Courts had no jurisdiction to entertain the suit. The suit is certainly entertainable to the extent of the declaration that is sought for by the plaintiff, and the suit shall be treated to be confined only to this relief. We, therefore, accept this appeal, set aside the decree of the learned District Judge and remand the case for decision on merits in the light of the observations given above. The counsel for the parties have been instructed to direct their clients to appear before the District Judge, Bhatinda, on the 24th December, 1959. As the decision of the case has already been considerably delayed, the learned District Judge will proceed with the appeal expeditiously. The costs in this Court will abide the event.

R.S.

APPELLATE CIVIL

Before D. Falshaw and G. L. Chopra, JJ.

MUNICIPAL CORPORATION, DELHI,—*Appellant.*

versus

SHRIMATI SUBAGWANTI, ETC.,—*Respondent.*

Regular First Appeal No. 69-D of 1953

1959

Nov., 27th

Tort—Collapse of building—Onus to prove lack of negligence—On whom lies—Duty to look after the building once it has passed its normal age—Extent of—The Fatal Accidents Act (XIII of 1855)—S. I A—Quantum of damages to be awarded—Factors to be taken into consideration in the determination of.

Held, that in a case, where a building has unexpectedly collapsed it becomes the duty of the persons responsible for the maintenance of the building to show that the building was kept in a proper condition, and that its collapse was not due to any negligence, since the persons responsible for the maintenance of the building are the only persons who are in a position to reveal the true state of affairs.

Held, that once the building has passed the normal age at which the mortar could be expected to deteriorate, a bounden duty is cast on the owner to carry out careful and periodical inspections for the purpose of determining whether in fact deterioration has taken place and whether any precautions are necessary to strengthen the building. If a public authority fails to carry out proper inspection of the building which, on account of old age etc., was potentially dangerous, and the top storey of which collapsed, the collapse would be considered to be due to the negligence of the responsible officers of that public authority.

Held, that under the Fatal Accidents Act there is no scope whatever for awarding damages to the plaintiff on account of his own suffering or bereavement nor indeed is there even any scope for allowing the dependant plaintiff damages for any pain and suffering which might have been suffered by the deceased himself before he died. The basis of the action is the pecuniary loss suffered by the dependants in consequence of the deceased's death. Nothing may be given by way of solatium. If no pecuniary loss is proved the defendant is entitled to succeed. * * *

As Lord Wright said in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.*, (1), "It is hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependant, and other like matters of speculation and doubt."

Regular First Appeal from the Decree of the Court of Shri Des Raj Dhameeja, Sub-Judge, 1st Class, Delhi, dated the 9th July, 1953, decreeing the suit to the extent :—

(1) *The plaintiffs in suit No. 552 of 1952, Shmt. Subhagwanti and others are granted a decree for Rs. 25,000, with proportionate costs.*

(1) 1942 A.C. 601

(2) *Munshi Lal and others plaintiffs are granted a decree for Rs. 15,000, with proportionate costs.*

(3) *Jagdish Raj, plaintiff, is granted a decree for Rs. 2,000 with proportionate costs.*

(4) *Kuldip Raj, plaintiff, is granted a decree for Rs. 20,000 with proportionate costs.*

MESSRS N. C. CHATTERJEE, R. S. NARULA, & K. K. RAIZADA, for Appellant.

GURBACHAN SINGH & N. D. BALI, for Respondent.

JUDGMENT

FALSHAW, J.—These are four appeals Nos. 69-D, 70-D, 71-D and 85-D of 1953, filed by the Delhi Municipal Committee against decrees of various amounts for damages passed in favour of the plaintiff-respondents. Falshaw, J.

The cases arise out of an incident which happened on the morning of the 7th of February, 1951, when the top portion of the famous Clock Tower which stood in one of the main business centres of Delhi, Chandni Chowk, suddenly collapsed, with the result that a number of persons were killed or injured by the falling debris. The plaintiffs in these suits are relatives of four of the persons who were killed. In appeal No. 69-D/53, the plaintiffs were the widow, a minor son and two minor daughters of Ram Parkash. In appeal No. 70-D/53, the plaintiff Jagdish Raj is a widower whose wife was killed. In appeal No. 71-D/53, the person killed was the wife of Tek Chand, plaintiff, and mother of Munshi Lal, Kala Ram, Bhandari Lal and Rani Devi, minor plaintiffs. In appeal No. 85-D/53, the plaintiff is a minor son of Gopi Chand who was killed. The first three cases were dealt with by a Single Judgment and were consolidated to the extent that while the plaintiffs led separate evidence, mainly

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on the question of damages, the evidence of the defendant was treated as being common. The lower Court awarded damages in a sum of Rs. 25,000 to Sobhag Wanti, etc., Rs. 15,000 to Munshi Lal etc., Rs. 2,000 to Jagdish Raj and Rs. 20,000 to Kuldip Raj.

The two questions involved in the appeals are the quantum of damages in individual cases assuming that the Committee is found liable to pay damages, and the question common to all the cases, whether the collapse of the Clock Tower was not due to the negligence of the Municipal authorities. In one of the suits the onus had been placed on the plaintiff to show that the fall of the Tower was due to the negligence of the Committee, but it is obvious that in a case like this when a building has unexpectedly collapsed, and whenever for technical reasons the onus is placed, it becomes the duty of the persons responsible for the maintenance of the building to show that the building was kept in a proper condition, and that its collapse was not due to any negligence, since the persons responsible for the maintenance of the building are the only persons who are in a position to reveal the true state of affairs.

The evidence led by the Committee consists of the statements of a number of its own officials and the statement of Mr. B. S. Puri, who at the time of the occurrence was Chief Engineer, Central P.W.D. and who was called in by the Committee after the collapse to investigate and report.

Jai Ram, an Overseer of the Municipal Committee, stated that on the 26th of January, 1950 (Republic Day) the Clock Tower was illuminated and also a flag was placed on the top. He himself went to the top of the building and he stated that he

did not at that time notice any crack or any defect in the Tower. He said that he also went up to the top on the 26th of January, 1951, when apparently only the national flag was affixed, and again he did not notice any defect. He also said that he had been in the Clock Chamber in November or December, 1950, because of pigeons having entered it and at that time he noticed no defect.

Mr. N. Chakrawarti who was the Municipal Engineer and so the person ultimately responsible, said that no major repairs were ever carried out in the Clock Tower, but only ordinary annual so-called repairs such as whitewashing and replastering at some places. He said that the Clock Tower was built about eighty years before. He also had gone up the Tower on Republic Day in 1950 and he did not notice any sign of decay or crack. In cross-examination he estimated the weight of the Clock at about 50 maunds. The Tower was about hundred feet high and consisted of four storeys. The top storey where the Clock was affixed consisted of pillars and arches. He said that the building was built with lime and mortar and some other material the nature of which he could not give and he said that old building with lime and mortar could be expected to exist for 200 or 300 years. This witness was also cross-examined in the case of Munshi Lal etc. and he expressed the opinion that some points in the arch must have failed. He said that periodical inspections of all those buildings were carried on but no records were ever kept of these inspections. He said that the material was not tested before the collapse and that it was not necessary that a building must develop cracks before collapsing on account of the ageing materials.

A. P. Jain stated that he was incharge of the electrical work of the Committee and that the

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clock in the Clock Tower was run by electricity, and, therefore, he had many occasions to visit the Clock Tower. He had not noticed any structural defect. He had gone up the Tower before the 26th of January, 1950, in connection with the installation of the illuminations.

B. S. Raina, Electrical Overseer, said that he worked under A. P. Jain and he also had gone up the Tower on the 26th of January, 1950, in connection with the illuminations and he had not noticed any crack or falling plaster. He also said that he too went up when the flag was hoisted on the 26th of January, 1951, and he had not noticed any signs of decay.

Sukhbir Parshad, Supervisor, said that he had inspected the Clock Tower in January, 1951, in connection with the hoisting of the flag, and that it was structurally sound. He said, however, in cross-examination that his inspection of the Clock Tower consisted of casting glance over it.

Ude Singh said that he used to look after the Clock and that he had been there in 1950 when the illuminations were on and he did not notice any fissures or fallen stones.

Mr. Rustogi, Supervisor, said that he was in charge of buildings in this area in 1945-46. He said that no major repairs were done to the Clock Tower though occasionally petty repairs, i.e., whitewashing and repairing of damaged floors was done, but no record was kept of such things. In any case his evidence did not relate to any period later than 1946.

The most important witness in the case appears to be Mr. B. C. Puri, the Chief Engineer, who was called in after the collapse. He said that he had inspected the Clock Tower after the collapse.

According to him it comprised three sections. The bottom section was about 25 feet high and substantially built. The middle portion was about 50 feet high and was built as a cylinder. The third section was 45 feet high and was of thinner construction, and it was this section which had collapsed. He said that when he examined the debris he picked up the mortar and found that it had deteriorated to such an extent that it was reduced to a powder without any cementing properties. He said that when he examined the middle portion which was still standing, he found a number of cracks in it which appeared to have been caused by the fall of the debris when the top part collapsed. However, he found that the middle portion was in such a condition that he recommended that it should be quickly dismantled. The following passage in his statement appears to be of particular importance :—

> "The top two sections consisted of a number of arches. In an arched building when the mortar loses its cementing properties the thrust of the arch results in the collapse of the building. In my opinion it was this thrust that caused this collapse. The man who built this tower could have foreseen as to how long this mortar would retain its cementing power. By looking from outside nobody could judge that this tower was going to collapse. Had an expert examined this building specifically for the purpose of finding out whether it was likely to fall he might have found out that it was likely to fall. I cannot say whether the Committee was guilty or not of negligence in the matter of the maintenance of this tower."

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In the cross-examination he stated that when he picked up mortar from the debris it crumbled into powder into his fingers. He said that the process of deterioration could not be sudden, and he had no idea when the process of deterioration might have set in. He could not say whether it was 30, 50 or even 5 years.

This witness was also examined in Kuldip Raj's case. He said that if the Tower had been examined with a view to finding out if it was strong enough to bear its weight and if proper tests had been carried out it was possible that it might have revealed the defects which actually led to the collapse. He said further that if a building was old and slender as the top portion of the Clock Tower was, experienced engineers ought to have been appointed for certifying its soundness and he added that the Government never built slender buildings like the Clock Tower in question. He further said that if he had known the age of the Clock Tower he might have advised the Committee to examine it more carefully. He was of the opinion that a slender structure like the top storey of the Clock Tower might be expected to last for a period of time ranging from 40 to 45 years and he estimated the existence of the middle portion at a further period of ten years.

For some reason or other when the report submitted by Mr. Puri to the Committee was produced by the defendant during the examination of this witness on the 8th of June, 1953, objection was taken to its admission on account of its late production, and the lower Court excluded it, in my opinion, quite wrongly. It is, however, to be presumed that Mr. Puri's report was on the lines of his statements.

The statement of some witnesses produced by various plaintiffs who claimed to have noticed from

the ground level cracks which were visible in the Clock Tower some time before the collapse is hardly worth discussing, and was rightly ruled out of consideration by the Lower Court.

The learned counsel for the appellant Committee has seized on the observation of the learned Subordinate Judge in the case of Sobhag Wanti etc. to the effect that the evidence adduced by the defendant leaves no room for doubt that there were superficial signs in the Tower which might have given warning to the defendant Committee that the Tower was likely to fall and thus enable them to avoid it. It was thus contended that since the defects which led to the collapse of the Tower were latent, the Committee could not be held guilty of negligence. While, however, I have no doubt that the collapse of the Tower came just as much a surprise to the Committee as to the unfortunate people who were in its vicinity at the time, it does not seem to me that this is any answer to the plaintiff's case in view of the evidence of the Chief Engineer which put the safe existence of the portion of the building which collapsed at 40 or 45 years, whereas the evidence of the officials of the Committee showed that the Clock Tower was built at least 80 years ago. It is, therefore, quite clear that once the building had passed the normal age at which the mortar could be expected to deteriorate, a bounden duty was cast on the Committee to carry out careful and periodical inspections for the purpose of determining whether in fact deterioration had taken place and whether any precautions were necessary to strengthen the building. In my opinion there is no evidence worth the name to show that anything like this was ever done. No doubt evidence has been led to the effect that inspections were carried out from time to time, but no records of any such inspections have been kept, and it

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would seem that if in fact any inspections were carried out they were of a perfunctory nature like that described by the witness whose inspection consisted of casting a glance around. The witnesses of the Committee have seized on the two occasions of Republic Day in 1950 and 1951 as fixed points at which it could be said that some officials had certainly gone up the Tower and found no defects, but the question which at once suggests itself in this connection is to what extent the officials who went up the Tower were pre-occupied in affixing illuminations or flags and to what extent they had gone there for the purpose of inspecting the Tower for the purpose of finding out whether it was still in a safe condition.

If the mortar found in the debris when picked up by Mr. Puri turned into powder into his fingers it seems probable that if the mortar had been closely inspected at any time before the Tower collapsed it would have shown the signs of crumbling, but obviously inspection on these lines was never carried out, and the Chief Engineer has said in so many words that if he had had any idea that Clock Tower was anything like 80 years old he would have advised the Committee to have an expert inspection carried out before the disaster occurred. In my opinion it is impossible to believe that if any expert inspection had been carried out at any time in the years immediately preceding the collapse some signs would not have been discovered which would have furnished a warning that top portion of the building was in a dangerous state and required strengthening.

In these circumstances although a large number of cases were cited on behalf of the appellant regarding latent defects and the position of private house-holders portions of whose houses had fallen

and caused damage to persons or property, I do not think these cases are at all helpful. Some of the cases even referred to damages for injury caused by the fall of branches of trees, which appear to me to be on an entirely different footing from buildings. Moreover in the case of ordinary private householders and in the absence of any evidence showing that the building was old enough to be dangerous on that account alone, it seems to me that different considerations arise than those which arise in the present case, in which I find that the evidence shows that a potentially dangerous building maintained by a public authority was not subjected to the careful and systematic inspection which it was the duty of the Committee to carry out.

Out of the cases cited before us the one which most nearly approaches the present case appears to be the case of *Kuppammal* v. *M. and S. M. Rly. Co., Ltd., and Corporation of Madras* (1). In that case a long brick wall was built and maintained by the Railway Company round part of its premises. Adjoining this wall the Corporation had constructed a latrine and one day a section of the railway wall 80 feet long collapsed without warning and part of the collapsed wall knocked down the wall of the latrine and killed two people who were inside. The case was tried on the original side and it was held by Gentle, J., that the Railway Company owed a duty to the lawful users of the latrine, including the two deceased, to take reasonable care to prevent this wall falling, and in failing to remedy the defects and to keep the wall in a safe condition they were guilty of breach of duty which they owed and were, therefore, negligent and liable to pay damages. Each case of this kind undoubtedly depends on its own facts, and

(1) A.I.R. 1938 Mad. 117.

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on the facts in the present case I do not consider that there can be any doubt whatever that if the Committee had performed its duty in carrying out proper inspection of the Clock Tower which on account of old age, etc., was potentially dangerous the collapse of the top portion of the Tower might have been foreseen, and that its collapse was due to the negligence of the responsible officials of the Committee.

This brings us to the question of damages which requires separate consideration in each case. In the case of Sobhag Wanti, etc., the evidence is to the effect that Ram Parkash, deceased, was 30 years old at the time of the accident, his widow being aged about 28 and his son 14 and daughters 12 and 2 years old. The evidence, however, regarding the income of Ram Parkash and the amount of loss caused to his widow and children is not very satisfactory. One witness Manohar Lal stated that Ram Parkash had a saw mill and a cloth shop but he could not give any figures of his earning capacity. The only other witness on the point was the widow who stated that the monthly expenses of Ram Parkash, which is an ambiguous phrase, amounted to Rs. 500 or Rs. 1,000. She said that as a matter of fact he had two cloth shops as well as the saw-mill, and that Ram Parkash's father was living. The latter might thus have been in a position to produce the accounts of the business of Ram Parkash but he was not produced.

The position regarding pecuniary loss in cases under the Fatal Accidents Act is stated as follows at page 98 of the Eleventh Edition of Clerk and Lindsell on Torts :—

> "The basis of the action is the pecuniary loss suffered by the dependants in consequence of the deceased's death. Nothing

may be given by way of solatium. If no pecuniary loss is proved the defendant is entitled to succeed. * * * *

As Lord Wright said in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.* (1), "It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependant, and other like matters of speculation and doubt."

In this case without any elaborate discussion of this material the Court has fixed the damages at Rs. 25,000. It was contended on behalf of the appellant Committee that there was no material at all and we were left to infer that no damages at all should be allowed. It is, however, obvious that some damages must be allowed as the widow and children must have been receiving a monthly sum from the deceased for their subsistence and for the education of the children, two of whom are said to be studying in school. At a bare minimum

(1) 1942 A.C. 601

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I consider that this sum must be taken to be Rs. 150 per mensem since there can be no doubt that the family was well above the ordinary labouring class, and for the purpose of capitalising it I would fix the period at 15 years in view of all the circumstances. This would bring the sum to Rs. 27,000 which is more than what the Lower Court has arrived at. I thus see no reason for reducing the amount of damages in this case.

In the case of Jagdish Raj who brought the suit for Rs. 15,000 the sum decreed for the loss of his wife is only Rs. 2,000 and this sum was fixed because it was brought out that by the time of the trial he had already married another wife. There is evidently no reason for interfering in this case.

In the case of Tek Chand and his four children the evidence led is to the effect that he himself was about 46 years old and that his wife was 40 or 42 at the time of her death. There were six children of whom two were sons who apparently separated from their father already. The other children were aged 16 (son), 14 (son), 8 (son) and 12 (daughter). The plaintiff's case was that he worked as a broker in ornaments and that before his wife's death he was earning about 350 per mensem. It is difficult to believe that his income has declined solely because of the death of his wife and it must be taken that his income was about 100 per mensem but the point is not so much of his income as of what was the pecuniary loss due to the death of his wife and as far as I can see the only loss in this respect is that he has had to employ a maid servant for the purpose of cooking for himself and his children at Rs. 15 per mensem plus food.

In awarding Rs. 15,000 the Lower Court has not indicated on what basis this sum was calculated and it certainly appears to be excessive. If the

increased expenses caused by the loss of the wife are taken at Rs. 40 per mensem and a period of 15 years is taken for the purpose of calculating the total sum the amount would come to Rs. 7,200 and in my opinion this is a fair figure.

Finally there is the case of Kuldip Raj in whose case the damages for the loss of his father have been assessed at Rs. 20,000. The evidence of the earning capacity of the deceased is vague and unsatisfactory. He is said to have earned his living by astrology and one or two witnesses have estimated his income at Rs. 250 to 300 a month but the fact remains that, as was admitted by his brother, he was living in an evacuee house of which the rent was only Rs. 5.

It is quite clear that the Lower Court has fallen into error in the case of this plaintiff who was apparently about 12 years of age at the time of the suit. The learned Subordinate Judge has calculated the pecuniary loss due to the death of the father at only Rs. 5,600 and the remaining sum of Rs. 14,400 has been allowed to the plaintiff on account of mental pain and suffering. This appears to be on account of the pain and suffering of the plaintiff himself, who was about ten years old at the time of the loss of his father, and who was left completely orphaned as his mother had died some time before. Under the Fatal Accidents Act there is no scope whatever for awarding damages to the plaintiff on account of his own suffering or bereavement nor indeed in my opinion is there even any scope for allowing the dependant plaintiff damages for any pain and suffering which might have been suffered by the deceased himself before he died. The sum of Rs. 14,400 can, therefore, not be allowed on this account. It was, however, contended on behalf of the plaintiff and not seriously contested on behalf of the Committee that it was

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open to ask to increase the damages for the pecuniary loss of the plaintiff which certainly appear to have been underestimated by the lower Court. Even on the assumption that the figure relating to the alleged earnings of the deceased had been greatly exaggerated by the witnesses produced it is evident that the plaintiff a young boy must have been kept and maintained properly by his father and again at certainly higher level than the lowest. At a bare minimum I would put plaintiff's pecuniary loss at Rs. 50 per mensem and I would allow damages at this rate for a period of fifteen years which would come to Rs. 9,000.

The net result is that I would dismiss the appeals of the Committee in the case of Jagdish Raj and Sobhag Wanti, etc., with costs, and in the case of Munshi Lal, etc., I would reduce the sum decreed from Rs. 15,000 to Rs. 7,200 and in the case of Kuldip Raj from Rs. 20,000 to Rs. 9,000. In these two cases I would leave the parties to bear their own costs.

Chopra, J,

CHOPRA, J.— I agree.

SUPREME COURT

Before S. J. Imam, J. L. Kapur and K. N. Wanchoo, JJ.

THE STATE,—*Appellant.*

versus

HIRALAL GIRDHARILAL KOTHARI AND OTHERS,—*Respondents.*

Criminal Appeals Nos. 25 to 27 of 1958

1959

Nov., 30th

Code of Criminal Procedure (V of 1898)—Section 337 (1)—Tender of pardon under—Whether in respect of the only offences mentioned—Official Secrets Act (XIX of 1923)—Section 5—Person accused of offence under, read with S. 120-B of the Indian Penal Code—Whether can be tendered pardon—Such person—Whether can be examined as an approver—Application for tender of pardon and