Jay Laxmi Salt Words (P) Ltd vs State Of Gujarat on 4 May, 1994

Equivalent citations: 1994 SCC (4) 1, JT 1994 (3) 492

Author: R.M. Sahai

Bench: R.M. Sahai, Kuldip Singh

PETITIONER:
JAY LAXMI SALT WORDS (P) LTD.

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT04/05/1994

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
KULDIP SINGH (J)

CITATION:
1994 SCC (4) 1 JT 1994 (3) 492
1994 SCALE (2)797

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by JAY LAKSHMI SALT WORKS (P) LTD. (Sahai, J.) R.M. SAHAI, J.- This appeal by grant of certificate under Article 133(1)(a) of the Constitution of India by the High Court of Gujarat raises substantial question of law about applicability of the period of limitation as provided in Article 36 of the Limitation Act, 1908+ (referred to as 'the Act') as it stood prior to 1963 to claim of damages founded on negligence. The High Court was of opinion that the controversy whether Article 36 could apply to rule laid down in Rylands v. Fletcher' raises a question of general importance which required to be authoritatively decided by this Court.

2. The certificate granted by the High Court under Article 133(1)(a) of the Constitution was in following terms:

> "The main question involved is that of limitation and whether the rule in Rylands v. Fletcher', would result in invoking the provisions of Article 36 of the old Limitation Act or whether Article 39 of the Act would be the appropriate Article or whether the residuary Article 121 applies and that is a substantial question of law. This point has not yet been decided by any decision of the Supreme Court directly on the point and hence is a substantial question of law which is of importance to the petitioner before us as well of general public importance and hence the certificate is granted under Article 133(1)(a) of the Constitution."

3. Although the finding of fact recorded by the High Court that the State was guilty of negligence has become final since the State did not challenge it by way of cross appeal or cross objection yet it appears necessary to give a brief outline of it in order to appreciate the controversy and the legal issues that arise for consideration in this appeal. In 1954 the State of Saurashtra, which now is part of State of Gujarat, made a plan for reclamation of vast area of land from saltish water of sea by erecting a 'reclamation bundh' so as to prevent the sea water flowing in several creeks in the area on the seaside of the bundh from flowing further to the claimed site and making the lands in that area saltish. This bundh was completed in the year 1955. In the very first monsoon of 1956, due to change of natural course of different streams in the reclaimed area and its diversion towards the appellant's factory which was existing from before led to increased flow and discharge of water on appellant's land and factory. The appellant even before the construction of the bundh had been writing to the authorities concerned either to abandon the bundh or to change the location of weirs so as not to face the appellant's factory. But this request had not been acceded to and when there was heavy downpour and the appellant found that the level in the river was rising he ran from one authority to the other requesting them to lessen the level of water + Ed.: Now covered by Art. II 3 of Limitation Act, 1963 1 LR (1868) 3 HL 330: 37 LJ Ex 161 : [1861-73] All ER Rep and avoid increased flow near his factory with no result. By the time his running could bring forth any movement the flood level rose to such an extent in the night between 4th and 5th July, 1956 that water filtered to the premises of the factory breaking even the protective bundh made by the appellant on the border of its factory. After the flood receded the appellant approached the authorities and the Government for redress and claimed damages of approximately Rupees Four Lakhs. It was asked by the Government to get it privately assessed, and the Chief Engineer Charotar Gram Udhar Sahkari Mandali Limited, Vallabh Vidyanagar did submit a report on 30th August, 1956. On 24th August, 1956 an Official Committee was appointed and the Committee found that the appellant had suffered a loss of Rs 1,58,735. Since this amount was not paid the appellant filed the suit for damages against the State. Amongst many defences raised the two main were that there was no negligence either in the construction of the bundh or in the action of the officers and the suit was barred by time. In' respect of the quantum determined by the Committee it was claimed that it was not acceptable to the State Government. Various issues were framed. The trial court dismissed the suit as it did not find any negligence as the damage was an act of God. It further found that the suit was barred by time. In first appeal in the High Court one of the Judges who constituted the Bench and wrote the leading judgment held that the construction of bundh by the State could not be termed as non-natural user as, "the dam was

erected over the land and streams of water. The purpose was to save the lands on the reclamation site from becoming useless. Therefore, the dam in question, was just like, which, an owner of a field would erect, where the boundary of his land is eroded by constant flow and rush of water." After discussing the oral and documentary evidence in detail the learned Judge held that the act of planning and construction of the bundh was done in a negligent manner and the damages caused to the appellant were ascribable to the negligence of the officers concerned in planning and constructing the bundh. The learned Judge set aside the finding of the trial court that the damage suffered by the appellant was due to an act of God. It was specifically held that the appellant proved the negligence on the part of the officers of the then State Government in planning and construction of the bundh as a result of which flood water entered the factory of the appellant on 4th and 5th July, 1956 causing extensive damage. Yet the suit was dismissed as according to the learned Judge the suit could have been filed within 2 years from the date the cause of action arose under Article 36 of the Act. But since the suit was filed after 2 years, 11 months and 15 days from the date of the incident it was barred by time. The other Judge who constituted the Bench agreed with learned Judge on the questions of fact but differed on applicability of Article 36 of the Act. He held that article which was applicable to such cases was the residuary Article 120 of the Act, therefore, the suit could have been instituted within 6 years from 5th July, 1956 the date on which the appellant suffered damages. In view of difference of opinion between the two learned Judges on question of law the following order was passed :

> "Since we differ on the questions whether Article 36 applies to the present case or Article 120 applies and whether the rule of strict liability as enunciated in Rylands v. Fletcher' and as modified by the Supreme Court in the State of Punjab v. Modem CultivatorS2 is applicable to the facts of the present case, this appeal shall have to be under clause 36 of the Letters Patent, referred to third Judge."

The third Judge framed two questions extracted below which according to him arose on difference of opinion between the learned Judges who constituted the Division Bench :

> "(1) Whether Article 36 of the Limitation Act, 1908, applies to the present case; or Article 120 applies?; and (2) Whether the rule of strict liability as enunciated in Rylands v. Fletcher' and as modified by the Supreme Court in State of Punjab v. Modern CultivatorS2 is applicable to the facts of the present case?"

Both the questions were answered as under:

> "(1) Article 36 of the Limitation Act, 1908, applies to the present case and I hold that the suit is barred by limitation. (2) The rule of strict liability as enunciated in Rylands v. Fletcher' has not in terms been modified by the Supreme Court in State of Punjab v. Modem CultivatorS2; and in any event, the rule of strict liability as enunciated in Rylands v. Fletcher' even as modified, if it is so held to be modified, is not applicable to the facts of the present case."

4. Are the answers correct? Was Article 36 as it stood in the relevant period, prior to 1963 exhaustive of torts as held by the High Court? What was the scope of malfeasance, misfeasance and nonfeasance? Was the rule of Rylands v. Fletcher' applicable? Has it been modified by our Court in State of Punjab v. Modem Cultivators2? Prior to adverting to these issues it appears appropriate to notice in brief how the High Court grappled with the problem. Mr Justice Sheth who agreed on facts with Mr Justice Desai, was of the opinion that, liability could arise out of malfeasance, misfeasance or nonfeasance or even independently of any one of them. But Article 36 applied if it arose out of any one of them only. He thereafter discussed the rule of strict liability as explained by the English Courts in Rylands v. Fletcher', its modification in Read v. J. Lyons & Co. Ltd.3 the vicissitudes it suffered subsequently in Rickards v. John Inglis Lothian4 and Bartlett v. Tottenham5 both on natural and non-natural user of land and artificial collection of goods resulting in injury and various exceptions carved out of it. The learned Judge then discussed the ratio in the State of Punjab v. Modem Cultivators2 and observed that the rule of strict liability as modified by this Court entitled the appellant to successfully claim damages.

2 AIR 1965 SC 17: (1964) 8 SCR 273 3 (1947) AC 156: (1946) 2 All ER 471 4 (1913) AC 263: 29 TLR 281 5 (1932) 1 Chancery 114

5. Mr Justice Desai did not agree with Mr Justice Sheth on applicability of strict liability as erection of dam by the Government on own land to save other land could not be held to be non-natural user. He, however, held that the act of planning and constriction of the bundh in question was done in a negligent manner. He, therefore, set aside the finding of the trial court that it was an act of God. Having held so the learned Judge relied on Essoo Bhayaji v. The Steamship 'Savitri '6 and observed as under:

> "This decision lays down a principle that for all actions of tort not specifically provided for in other articles of Schedule 1, the proper article to apply will be Article 36, which is a residuary article so far as actions based on torts including negligence are concerned. Having considered Articles 19 to 27, we find that they provide for actions in cases of specific types of torts."

And as Article 36 of the Act applied to actions based on negligence, and the suit was filed after two years from the date the cause of action arose the trial court did not commit any error in dismissing the suit as beyond time.

6. When the matter went to the learned third Judge Mr Justice Divan held, that the decision in Essoo Bhayaji6 and Jadu Nath Dandput v. Hari Kar7 even though not referred received imprimatur in National Bank of Lahore Ltd. v. Sohan Lal Saigal8. Consequently so far actions in torts were concerned Article 36 was residuary article the period of limitation under which would start from the time the tort took place. The learned Judge was further of opinion that even if question of liability was based on the rule in Rylands v. Fletcher' as modified in Modern CultivatorS2 instead of negligence the same result would follow so far as limitation was concerned as liability based on rule of this decision was as much liability in tort as on negligence the only difference being that in the former it is unintended and even independent of negligence. The learned Judge held that, the words,

,malfeasance', 'misfeasance' and 'nonfeasance' were to be understood, "...as synonymous with the compendious expression, 'torts' and therefore they must be read as equivalent to tort and the period of limitation would start from the time when the tort takes place."

7. To determine if the law stated, seemingly, so simply by the learned third Judge yet so broadly, is accurate understanding of the exhaustiveness of the expression used in Article 36 as extending to all kinds of torts it may be necessary to understand the meaning and scope of torts and the width and ambit of the expression used in Article 36. 'Tort' dictionarily means "breach of duty leading to damage". Same meaning attaches to it in law. Salmond has defined 'it as, "a, civil wrong for which the remedy is a common law action in unliquidated damages and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation."

6 ILR (1886) 11 Bom 133 7 (1913) 17 CWN 308 : 17 CLJ 206 : 18 IC 253 8 AIR 1965 SC 1663: (1965) 3 SCR 293: 35 Comp Cas 604

8. Winfield has defined tortious law arising from breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by an action for unliquidated damages. In general, torts consist of some act done without just cause or excuse.

> "The law of torts exists for the purpose of preventing men from hurting one another whether in respect of their property, their presence, their reputations or anything which is theirs."

Injury and damage are two basic ingredients of tort. Although these may be found in contract as well but the violations which may result in tortious liability are breach of duty primarily fixed by the law while in contract they are fixed by the parties themselves. Further in tort the duty is towards persons generally. In contract it is towards specific person or persons. An action for tort is usually a claim for pecuniary compensation in respect of damages suffered as a result of the invasion of a legally protected interest. But law of torts being a developing law its frontiers are incapable of being strictly barricaded. Liability in tort which in course of time has become known as 'strict liability', 'absolute liability', 'fault liability' have all gradually grown and with passage of time have become firmly entrenched. 'Absolute liability' or "special use bringing with it increased dangers to others"(Rylands v. Fletcher') and 'fault liability' are different forms which give rise to action in torts. The distance (sic difference) between 'strict liability' and 'fault liability' arises from presence and absence of mental element. A breach of legal duty wilfully, or deliberately or even maliciously is negligence emanating from fault liability but injury or damage resulting without any intention yet due to lack of foresight etc. is strict liability. Since duty is the primary yardstick to determine the tortious liability its ambit keeps on widening on the touchstone of fairness, practicality of the situation etc. In Donoghue v. Stevenson9 a manufacturer was held to be liable to ultimate consumer on the principle of duty to care. In Anns v. Merton London Borough Council1O it was, rightly, observed:

> "[T]he broad general principle of liability for foreseeable damage is so widely applicable that the function of the duty of care is not so much to identify cases where liability is imposed as to identify those where it is not....."

Truly speaking entire law of torts is founded and structured on morality that no one has a right to injure or harm others intentionally or even innocently. Therefore, it would be primitive to class strictly or close finality (sic finally) the ever-expanding and growing horizon of tortious liability. Even for social development, orderly growth of the society and cultural refineness, the liberal approach to tortious liability by courts Is more conducive.

9. In between strict liability and fault liability there may be numerous circumstances in which one may be entitled to sue for damages. And it may be partly one or the other or may be both. In a welfare society construction 9 (1932) AC 562: 1932 All ER Rep 1 10 (1978)AC728:(1977)2 All ER492 of dam or bundh for the sake of community is essential function and use of land or accumulation of water for the benefit of society cannot be non-natural user. But that cannot absolve the State from its duty of being responsible to its citizens for such violations as are actionable and result in damage, loss or injury. What is fundamental is injury and not the manner in which it has been caused. 'Strict liability', 'absolute liability', 'fault liability' and 'neighbour proximity' are all refinements and development of law by English Courts for the benefit of society and the common man. Once the occasion for loss or damage is failure of duty, general or specific, the cause of action under tort arises. It may be due to negligence, nuisance, trespass, inevitable mistake etc. It may be even otherwise. In a developed or developing society the concept of duty keeps on changing and may extend to even such matters as was highlighted in Donoghue v. Stevenson9 where a manufacturer was held responsible for injury to a consumer. They may individually or even collectively give rise to tortious liability. Since the appellant suffered loss on facts found due to action of respondent's officers both at the stage of construction and failure to take steps even at the last moment it was liable to be compensated.

10. But to be actionable and get redress from court it must assume legal shape by falling in one or the other statutorily, judicially or even otherwise recognised category of wrong. That is why the appellant based his claim on negligence. Therefore, it is necessary to determine what is the ambit of it as it was vehemently urged that once the State was found guilty of negligence the appellant could succeed not only by establishing negligence but also approaching the court within the statutory period provided under the Law of Limitation and the courts were precluded from invoking either the rule of strict liability or any other concept. According to the learned counsel civil liability should be dealt within the four corners of statutory enactments both for sake of certainty and uniformity irrespective of whether the party benefited was damage. Winfield has defined 'negligence' as under:

> " 'Negligence' as a tort is the breach of a legal duty to take care which results the State or an individual. For this submission advanced with plausibility it appears necessary to determine how wide or narrow is the ambit of negligence in realm of torts. Can it be strictly compartmentalised? When the State was found reluctant in discharge of its duties or public responsibility then was it negligence alone or it was something more or less?

11. 'Negligence' ordinarily means failure to do statutory duty or otherwise giving rise to in damage, undesired by the defendant, to the plaintiff. Thus its ingredients are

(a) a legal duty on the part of A towards B to exercise care in such conduct of A as falls within the scope of the duty;

(b) breach of that duty;

(c) consequential damage to B."

According to Dias, "[L]iability in negligence is technically described as arising out of damage caused by the breach of a duty to take care."

These textbooks thus make it amply clear that the axis around which the law of negligence revolves is duty, duty to take care, duty to take reasonable care. But concept of duty, its reasonableness, the standard of care required cannot be put in strait-jacket. It cannot be rigidly fixed. The right of yesterday is duty of today. The more advanced the society becomes the more sensitive it grows to violation of duties by private or even public functionaries. Law of torts and particularly the branch of negligence is consistently influenced and transformed by social, economic and political development. The rule of strict liability developed by English Courts in Rylands v. Fletcher' was judicial development of the liability in keeping with growth of society and necessity to safeguard the interest of a common man against hazardous activities carried on by others on their own premises even though innocently. By conservative standard it could not be termed as negligence as damage arose not by violation of duty. Yet the law was expanded to achieve the objective of protecting the common man not by narrowing the horizon of legal injury but by widening it. In Donoghue v. Stevenson9 the House of Lords held a duty to take care as a specific tort in itself. Even improper exercise of power by the authorities giving rise to damage has been judicially developed and distinction has been drawn between power coupled with duty. Where there is duty the exercise may not be proper if what is done was not authorised or not done in the bona fide interest of the public. In David Geddis v. Proprietors of the Bann Reservoir' 1 the failure to keep the reservoir clean as a result of blameworthy negligence leading to overflow was held to be liable for negligence. It was reiterated in Tate and Lyle Industries Ltd. v. Greater London Council12. It was held that where public right was interfered with which resulted in public nuisance the claim for damages was maintainable. The English Courts have extended the principle of strict liability to varied situations. Thus the distinction arising out of damage due to negligence and even without it rather unintentionally and innocently is a firmly established branch of law of tort. In Read v. J. Lyons & Co. Ltd.3 it was observed that damage caused by escape of cattle to another land was a case of pure trespass constituting a wrong without negligence. Thus negligence is only descriptive of those sum total of activities which may result in injury or damage to the other side for failure of duty both legal or due to lack of foresight and may comprise of more than one concepts known or recognised in law, intended or unintended.

12. Was the ratio in Rylands v. Fletcher' modified by this Court in Modem Cultivators29 If So to what extent? What is its effect on facts of this case? That was a case where the land of the plaintiff used for silting operation was flooded due to escape of canal water. It was claimed that in 11 (1878)3AC430 12 (1983) 2 AC 509: (1983) 1 All ER 1 159 absence of proof of negligence the suit was not liable to be decreed. The Court did not apply the principle laid down in Rylands v. Fletcher' :

> "That any occupier of land who brings or keeps upon it anything likely to do damage if it escapes is bound at his peril to prevent its escape and is liable for all the direct consequences of its escape, even if he has been guilty of no negligence ... a principle derivatively created from the rule of 'strict liability'... as canal systems are essential to the life of a nation and land that is used as canals is subjected to an ordinary use and not to unnatural use."

The Court preferred to rely on the principle developed by American Courts on canal breaks and applied the principle of 'fault liability' which may even be inferred from circumstances. The view of the High Court, therefore, that the rule of strict liability was modified by this Court in Modern CultivatorS2 does not appear to be correct. 'Absolute liability', or 'strict liability' and 'fault liability' do not go together.

13. With this background it may now be examined if the High Court, even after recording the findings in favour of the appellant, was justified in throwing out the suit because Article 36 is residuary article extending to all kinds of torts. The article as it stood at material time prior to 1963 read as under

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> "Description of suit:- 36. For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for."

Period of limitation:-- Two years Time from which period begins to run:- When the malfeasance, misfeasance or non-feasance takes place.

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14. In Black's Law Dictionary the meaning of each of these expressions is explained as under:

> "Malfeasance.- Evil doing; ill conduct. The commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful; the doing of an act which person ought not to do at all or the unjust performance of some act which the party had no right or which he had contracted not to do. Comprehensive term including any wrongful conduct that affects, interrupts or interferes with the performance of official duties. Misfeasance.- The improper performance of some act which a man may lawfully do.
>
> Non-feasance.- Non-performance of some act which ought to be performed, omission to perform a required duty at all, or total neglect of duty."

Stroud defines it as under:

> "Misfeasance.- There is no such distinct wrongful act known to the law as 'misfeasance.
>
> Non-feasance.- The decisions as to 'nonfeasance' cannot be invoked to excuse a highway authority from liability for nuisance caused by a defective stud brought on to the highway, not for the purposes of the highway, but for purposes of traffic regulation under the Road Traffic Acts."

The words are undoubtedly of very wide import. They are strong expressions as well. Malfeasance and nonfeasance bring into motive, intention, malice etc. Law of torts, however, is not confined and cannot be strictly categorised. Where the State undertakes common law duty its actions may give rise to common law tort. Negligence in performance of duty is only a step to determine if action of Government resulting in loss or injury to common man should not go uncompensated. If construction of bundh is a common law or public duty then any loss or damage arising out of it gives rise to tortious liability not in the conservative sense but certainly in the modem and developing sense. A common man, a man in the street cannot be left high and dry because wrongdoer is State. The basic element of tort is duty. And that comes into play fully when there is a common law duty. Since construction of bundh was a common law duty any injury suffered by a common man was public tort liable to be compensated. Can it be said to be covered in the expressions used in Article 36? Malfeasance and misfeasance necessarily import intention, knowledge and malice, therefore, they may not be available in every tortious liability arising out of violations of public duty. Evil doing or ill conduct postulates something more than mere omission or commission. Misfeasance is now recognised as imputable to discharge of duty arbitrarily. In Calveley v. Chief Constable of the Merseyside Policel3 it was held that for the tort of misfeasance it was necessary that the public officer must have acted maliciously or with bad faith. In Dunlop v. Woollahra Municipal Council14 it was held that without malice the claim for misfeasance could not be accepted. Non-feasance on the other hand is omission to discharge duty. But the omission to give rise to action in torts must be impressed with some characteristic, namely, malice or bad faith. The expressions 'malfeasance', 'misfeasance' and 'nonfeasance' would, therefore, apply in those limited cases where the State or its officers are liable not only for breach of care and duty but it must be activated (sic actuated) with malice or bad faith. The defective planning in construction of a bundh, therefore, may be negligence, mistake, omission but to say that it can only be either malfeasance, misfeasance and nonfeasance is not correct. Observations in Bhayaji6 to the following effect, "The words 'malfeasance, misfeasance, or nonfeasance independent of contract' used in Article 36, are of the widest import, and embrace all possible acts or omissions, commonly known as torts by English lawyers; that is to say, wrongs independent of contract."

13 (1989) 1 All ER 1025 14 (1981) 1 All ER 1202: (1982) AC 158 were made in a different context and was not intended to be so widely stated as has been understood by the High Court as the Court while examining various articles of Limitation Act for purposes of deciding if the claim was covered in one or the other articles observed "I rather from such a perusal come to the conclusion that it was intended that two years should be the outside time allowed for bringing a suit founded upon tort, except in certain well-defined particular instances."

15. Similarly Jadu Nath Dandput v. Hari Kar7 was a case of illegal distress and carrying of the standing crops. The Court did not agree that it was a case squarely covered under Article 36 as the cause of action arose partly under Article 36 and partly under Article 49. But what impressed the High Court was the extract from Stephen's Commentaries to the following effect:

> "Personal actions are actions founded either on contracts or on torts; that is to say, they are either actions ex contract or actions ex delicto; torts being wrongs independent of contract; and being either (i) nonfeasances, or the omission of acts which a man was by law bound to do, or (ii) malfeasances, or the commission of acts, which were themselves unlawful."

That is why it was observed that these decisions even though not noticed received approval in National Bank of Lahore Ltd. v. Sohan Lal Saigal8. Although the Court held that claim for damages for loss of contents from the lockers arose out of breach of contract and it was not a case which could be considered to be covered under tort yet while dealing with argument advanced on Article 36 the Court observed:

> "Article 36 applied to acts or omissions commonly known as torts by English lawyers. They are wrongs independent of contract. Article 36 applies to actions 'ex delicto' whereas Article 115 applies to actions 'ex contractu'.
>
> These torts are often considered as of three kinds, viz., nonfeasance or the omission of some act which a man is by law bound to do, misfeasance, being the improper performance of some lawful act, or malfeasance, being the commission of some act which is in itself unlawful."

This extract was understood by the High Court as demarcating all violations either as 'ex delicto' or 'ex contractu'. But it was erroneous understanding of the decisions to hold that Article 36 was residuary article and applied to all tortious liabilities. The Court itself had taken care by using the word 'often'. Even in England where the law of torts has been developed demarcations have not been frozen so rigidly as has been attempted to be done by the High Court. Use of expression, "not herein specifically provided for" in Article 36 was to make it residuary article to such wrongs for which limitation was provided in the article but the interpretation placed by the High Court that it was exhaustive of all torts, was not in conformity with principle of interpretation nor the scheme and purpose of the enactment. This Court in National Bank case8 extracted the English principle to demonstrate that it was residuary provision to distinguish it from contractual obligations but it could not be narrowed down so as to be exhaustive of all torts. As explained earlier damages arising out of strict liability or duty to take care as was in Donoghue v. Stevenson' or public law duty may not be strictly covered ill these expressions. As has been explained earlier the damage was caused to the appellant not only because of negligence of officers but also because it was due to failure in discharge of public duty and mistake at various stages. Liability in tort may arise as observed by Salmond without fault. The basic ingredients of torts, namely, injury and damage due to failure to observe duty has been found to have been established. In the conservative sense it was negligence. But in modern sense and present day context it was not only negligence but mistake, defective

planning, failure to discharge public duty. It was thus tort not in the narrow sense but in the broader sense to which Article 120 applied. The suit, therefore, could not be thrown out as it was filed beyond two years from the date the incident took place. The substantial question of law if Article 36 was exhaustive of all torts is thus answered in the negative. Further the rule in Rylands v. Fletcher' has not been modified by our Court in Modern Cultivators2. And the article of Limitation Act applicable to the facts of the case was Article 120 and not Article 36.

16. Even assuming that Article 36 of the Act applied, was the suit filed after expiry of two years from the date the incident took place, barred by time? In other words what is the exact point of time from when the period of limitation has to be computed. The First Schedule to the Act as it then stood made three divisions, first, for suits, second for appeal and third for applications. The nature and description of the suit is mentioned in the 1st column of the Schedule, period of limitation in the 2nd and the time from which the period begins to run in the 3rd and the last column. In contents the former deals when the right to sue accrues, the latter when the right shall come to an end if not exercised within the period provided as it cannot remain uncertain or in doubt or in suspense forever and the last deals with computation, namely, the point from which the limitation begins to run. A look at the entries in the first division would indicate that different point of time has been adopted for different nature of suits. In some it is from the date of the order, in others from the date of knowledge. In yet others when the cause of action accrues etc. For compensation for damages it is linked either with nature of claim, namely, if it is one time of cause of action or recurring cause of action etc. That is why in some of these items the period begins to run from the time and date of the incident and in others from the date of knowledge. In Article 36 the time begins to run, " when the malfeasance, misfeasance or nonfeasance takes place". The word 'when' means at what time. The time according to finding recorded by the High Court was negligence in act of planning and construction of bundh. When did it take place? 'Take' has many shades of meaning. How it should be understood, precisely, in a set of circumstances depends on the context in which it has been used. Literally speaking it can mean when it happens but that would not be consistent with the purpose of its use and may defeat the very objective as malfeasance or nonfeasance arose not on 4th or 5th July but when dam was started in 1955 and in any case when completed in 1956. At that time there could have been no occasion for the appellant to claim any damages. Therefore, time obviously cannot be said to run either from the date the construction of bundh was commenced or it was completed. Therefore, the computation has to be from some other point. For instance, where there is a single wrong the time may start running immediately. In cases of assault, battery or death the cause of action may arise immediately. The limitation may be counted from that very point. It is the individual or the single act which by itself furnishes the cause of action. But there may be others where even though injury may have been caused but the cause of action may not arise unless something more happens. For instance if one accumulates something hazardous on its own premises and it leaks then the cause of action will arise not by accumulation or even by mere leakage but cause of damage and injury. Therefore, the construction of the words 'when' and 'takes place' used in Article 36 has to be construed liberally so as not to deprive the person who suffers damages. In wrongs like negligence, strict liability or violation of public duty time begins to run not before the damage takes place. But the computation under the article has to be from malfeasance, misfeasance and nonfeasance. It has been explained earlier that the negligence or violation in such duty which results in damage could not furnish the starting point. What could be the other point? The cause of

action to claim damages arises when the actual loss has taken place. It is thus not the date on which negligence or mistake took place but the date when injury is suffered. But computation has to be from misfeasance or nonfeasance etc. that is violation of duty. This duty has to be different than the duty which was the cause of negligence. Therefore in such actions which are latent in nature the aggrieved party has to make a claim for damages and it is the failure in discharge of this duty in this regard which too can furnish the starting point of limitation. Since the authorities refused to pay damages even though it was got assessed at their own direction the computation of the period for filing suit could arise from that date. Otherwise it would cause great injustice. A common man, an average citizen who in a developing country cannot afford to pay huge court fee would be deprived of his just claim only because he was pursuing his remedy vigilantly in the Government of a welfare State.

17. Therefore the computation for purposes of limitation under Article 36 could commence either from the date when malfeasance, misfeasance or nonfeasance occurred or from the date when the damage took place or where claim is lodged within period allowed by law and the damage is ascertained then from the date the claim is rejected. It is the improper performance of duty or arbitrary action of the authorities in not accepting the claim when damage was found by the Official Committee to have taken place. The limitation to file the suit on facts of this case arises from the date the Government refused to pay the amount determined by the Committee. Since the rejection was not communicated nor the copy of the report was supplied despite request the suit could not be said to be barred by time.

18. In the result, this appeal succeeds. The decree and order passed by the two courts below are set aside. The suit of the appellant for Rs 1,58,735, the amount of damage determined by the trial court which was neither appealed from nor objected to by the respondent is decreed with costs throughout. The respondent shall further pay interest at the rate of 6% per annum from the date of decree till December 1982 and at the rate of 9% per annum from 1982 to December 1992 and at the rate of 12% per annum from January 1993 till the amount is paid.