Vohra Sadikbhai Rajakbhai & Ors vs State Of Gujarat & Ors on 10 May, 2016

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Bench: R.K. Agrawal, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1866 OF 2016

VOHRA SADIKBHAI RAJAKBHAI & ORS.	.....APPELLANT(S)	
VERSUS		
STATE OF GUJARAT & ORS.	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

The essence of the issue that needs to be decided in the instant appeal is captured by the appellants by formulating the following substantial question of law; though the same is not appropriately framed:

> "Whether gross negligence in not maintaining particular level of water in the dam by the respondents; that has resulted into damage and destruction to the plantation of the appellants, causing loss of livelihood, could be said to be an 'Act of God'?" It so happened that the respondents had constructed and maintained a dam. 60,000 cusecs of water from this dam was released, which flooded the land of the appellants and destroyed the plantation therein. As per the respondents, the water had to be

released from the dam as it reached alarming level because of heavy rains and non-release would have breached the dam. The action was, thus, taken in public interest and it was occasioned because of the rains, which was an act of God. The appellants, on the other hand, contend that it was sheer negligence on the part of the respondents in not maintaining low level of the water keeping in mind the ensuing monsoon season and, therefore, the damage which the appellants have suffered has direct nexus or causal connection with the aforesaid act of negligence and it cannot be attributed to the rains. It is, thus, pleaded that the respondents cannot term it as an act of God and excuse themselves from the tortious liability.

There is hardly any dispute on the factual matrix under which the aforesaid issue has cropped up for determination.

The appellants herein are the owners of land, which is proximate to the Mazum dam that has been built over river Mazum. They had grown hybrid berry trees over the said land which, they claim, belong to their ancestors and were earning their livelihood from the fruits of the said trees. Respondents have built a dam over River Mazum in the nearby area for supplying water for irrigational purpose and thereby to earn revenue. In June 1997, there were heavy rains in the said area which resulted in overflowing of the water in the dam. In order to save the dam, the respondents released nearly 60,000 cusecs of water. This release of water flooded the fields of the appellants. With the submerging of the land of the appellants, all the trees standing on the land got uprooted resulting in destroying the whole cultivation of hybrid berries. According to the appellants, there entire 8 bighas of agricultural land became part of the river Mazum and the only source of livelihood was lost.

The appellants claimed compensation for the damage done to the trees standing on the said land by serving legal notice to the respondents under Section 80 of the Code of Civil Procedure, 1908. Damages and compensation to the extent of ?21,50,000 was claimed alleging that it happened due to gross negligence and lack of administration on the part of the respondents. The case set up in the notice was that the respondents had stored more than the retention capacity of the water in the dam during the month of June 1997 despite knowing fully well that during the ensuing rainy season there would be more flow of water in the dam. This act on the part of the respondents was termed as an act of gross negligence and lack of good administration. No reply to the notice was given by the respondents, which forced the appellants to file a civil suit in April 1998 against the respondents for a compensation of ?21,50,000.

The trial court appointed Court Commissioners to verify the position of the agricultural land of the appellants and report the ground situation to the Court. The team of Court Commissioners, known as panchas, who visited the site, submitted their report for inspection confirming the submergence of the agricultural fields of the appellants. They also reported that due to this submergence, the trees of the appellants grown on the said land were uprooted and were lying amidst the mud and

sand brought by the river water. In this report, they also mentioned that as many as 1500 boar trees were uprooted and washed away due to the said floods. Several photographs were also annexed with the report in respect of the aforesaid inspection carried out by the Court Commissioners.

Respondents contested the suit inter alia on the ground that the place where the said dam, known as Mazum dam Water Scheme, is constructed was situated nearby the village Volva of Modasa, which is 33 kms. away from the place of the appellants. It was further stated that due to heavy rains the water level of the dam had gone abnormally high and, therefore, there was no option but to release further water flow from the dam in the river to control the floods. For this purpose, advance information was given to the offices such as the Head of Departments, Revenue Authorities, etc. It was also stated that during the monsoon season at what level the capacity of the water is to be filled in the Mazum dam is decided in advance. But in the eventuality of the heavy rain fall at the upper side areas, to maintain the level of the water dam, the additional water received from the upper areas are released into the river by opening the doors of the dam so that any damage to the dam can be prevented. This decision of how much water has to be released into the river is taken by the Competent Officer. On that basis, it was pleaded that no compensation was payable as the respondents were forced to take the decision to avert natural calamity and this decision was occasioned because of excessive rain, which was an act of God.

On the basis of pleadings, following issues were framed by the trial court:

"(i) Whether plaintiff proves the suit claim?

(ii) Whether plaintiffs are entitled to get the interest on suit claim?

If yes, at what rate?

(iii) Whether plaintiffs prove that they have given legal notice to the defendants?

(iv) What order and decree?" Though Issue No.3 was decided in favour of the appellants holding that a proper notice was served upon the respondents under Section 80 of the Code of Civil Procedure, 1908 before filing the suit, insofar as Issue No.1 is concerned, the findings of the trial court went against the appellants. The trial court held that the respondents were forced to release the water due to the heavy rains. The trial court also found that land of the appellants is situated adjacent to the river bank and, therefore, due to heavy rain, the river could have overflown resulting in entering of the water into the fields of the appellants in any case. It further held that action of the respondents in releasing the water from dam was a prudent action keeping in view that minimum damage is caused to the public at large because of the heavy rains, which is dependent upon the nature. The trial court further held that the appellants had not given specific evidence about the actual loss, i.e. how many trees the appellants were having and how many out of those trees were washed away in the water. Likewise, the appellants had also failed to produce the evidence with

regard to the price of the produce allegedly destroyed by obtaining the information in this regard from the Agricultural Produce Marketing Committee. Though the appellants had examined one witness, he had given only oral testimony without any documentary support. The trial court also concluded that the appellants could not prove that they had suffered damage and loss due to the negligence on the part of the respondents. On the basis of the aforesaid findings, the suit of the appellants was dismissed. The appellants preferred an appeal against the said judgment, which has also been dismissed by the High Court vide judgment dated June 27, 2011, which is impugned in the instant appeal.

A perusal of the judgment in appeal would reflect that since the water had to be released from the dam, as a result of excessive rain, in order to see that less damage is caused, it was a force majeure circumstance and, therefore, the appellants were not entitled to any compensation.

We may state at the outset that there is no dispute on basic facts. It is admitted by the respondents that a decision was taken to release the water from the dam. It has also come on record that the respondents had decided to release 60,000 cusecs of water. Because of the release of this water, land of the appellants with standing fruit bearing trees got submerged. It resulted in uprooting and destroying many trees. The panchas, who were appointed by the Court to visit the site have submitted their report to this effect stating that almost 1500 trees were damaged. On these facts, two aspects need consideration, which are:

> (a) Whether the act of releasing the water from the dam would amount to negligence on the part of the respondents or it was inevitable due to heavy rains and is to be treated as an 'act of God'?
>
> (b) If the answer to the aforesaid question is in the affirmative, whether the appellants would be entitled to some compensation even in the absence of proof of actual/exact damage caused?

We may state at the outset that neither the appellants prosecuted their case properly nor the respondents contested it appropriately. No doubt, the appellants submitted that there was negligence on the part of the respondents in not ensuring that the water level is maintained at sufficiently low level to meet the exigency of accumulation of further water because of the ensuing rains as they have also pleaded that the plantations in their fields got damaged because of the release of water by the appellants. However, they have not led any specific evidence to show the loss. It has also not come on record as to at what level the water was in the dam before the rains. On the other hand, the respondents took the plea that the water level in the dam rose because of torrential rains which has resulted in overflowing of the water in the dam and the decision to release the water became necessary in the larger public interest. However, the respondents have also not properly controverted the allegations of the appellants that water was not maintained at an appropriate level to take care of ensuing monsoons. They have also not supported their plea by leading any evidence to the effect that had the water been not released it would have breached the dam and that act would have caused more public harm. The courts below also took a myopic view by simply going by the fact that the action on the part of the respondents in releasing the water from the dam was necessitated

because of heavy rains and those heavy rains are an 'act of God'.

No doubt, both the parties agree that the overflowing of the dam was caused due to heavy rains. However, the question is as to whether the respondents were supposed to take reasonable care in this behalf by keeping the level of water in the dam sufficiently low in order to meet the exigency of ensuing monsoon? This would have depended upon another factor, namely, whether the rains in the said season were much more than normal and beyond the expected level or it was known before hand, as per the prediction of the Meteorological Department that there would be heavy rains? It is only on that basis one can find out as to whether there was negligence on the part of the respondents in keeping the particular level of water in the dam by not taking into consideration the possible flow of the water as a result of expected rains.

The admitted facts on record are that the damage to the trees and plantation of the appellants is caused due to the release of water from the dam by the respondents. A specific plea is raised that the respondents had stored more than the retention capacity of the water in the dam during the month of June 1997 despite knowing fully well that during the ensuing monsoon season there would be more flow of water in the dam.

Since the dam is constructed and maintained by the respondents and the appellants suffered losses as a result of release of water from the said dam, onus was on the respondents to prove that they had taken proper care in maintaining appropriate level of water in the dam taking into account the provision for the water that can get accumulated in the said dam due to the forthcoming rainy season. The respondents are the owners of the dam in question. They are expected to keep the said dam in such a condition which avoids any loss or damage of any nature to the neighbours or passers by. The doctrine of strict liability, which has its origin in the case of Rylands v. Fletcher[1], will have application in the instant case. Following observations of Blackburn, J. state the principle of strict liability:

> “The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape.” The learned Judge went further to expound the aforesaid principle in the following manner:
>
> “The general rule as above stated seems on principle just. The person whose grass or corn is eaten down by the escaping cattle of his neighbour, or whose mine is flooded by the water from his neighbour's reservoir, or whose cellar is invaded by the filth of his neighbour's privy, or whose habitation is made unhealthy by the fumes and noisome vapours of his neighbour's alkali work is damnified without any fault of his own; and it seems but reasonable and just that the neighbour, who has brought something on his own property which was not naturally there, harmless to other so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it

there no mischief could have accrued, and it seems but just that he should at his peril keep it there so that no mischief may accrue, or answer for the natural and anticipated consequences." Lord Cairns, while agreeing with the aforesaid view of Blackburn, J., clarified that this rule shall apply where there was non-natural user of land. This concept of non-natural use of land was succinctly brought out by the Privy Council in Rickards v. Lothian[2], as is clear from the following formulation:

"It is not every use to which land is put that brings into play this principle. It must be some special use bringing with it increased danger to others, and must not merely be the ordinary use of the land or such a use as is proper for the general benefit of the community." In Read v. J. Lyons & Co.[3], another qualification to the aforesaid rule was added, namely, the non-natural use by the offending party should result in 'escape' of the thing from his land which causes damage and so in the absence of 'escape', the rule has no application.

The aforesaid principle has withstood the test of time as it is not only followed by the courts in England in subsequent judgments repeatedly, even this Court has adopted in certain cases and extended to cover accidents arising out of use of motor vehicles on road. {See – State of Punjab v. Modern Cultivators[4]; Indian Council for Enviro Legal Action v. Union of India[5]; and Kusuma Begum (Smt.) v. The New India Assurance Co. Ltd.[6]}.

In Modern Cultivators' case referred to above, the damage was caused by overflowing of water from a breach in a canal. This Court held that use of land for construction of a canal system is an ordinary use and not a non- natural use. The Court attributed negligence on the part of the authorities and awarded damages to the plaintiff therein on the said findings of negligence. In this case, thus, the damages were awarded even when the use of land for construction of a canal system was found to be an ordinary use.

In Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat[7], this Court explained the ratio of Modern Cultivators in scholarly manner, as follows: "12. Was the ratio in Rylands v. Fletcher modified by this Court in Modern Cultivators? 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 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 Cultivators does not appear to be correct. 'Absolute liability', or 'strict liability' and 'fault liability' do not go together." In Jay Laxmi's case, damage was caused by overflow of water from a reclamation bundh constructed by the State of Gujarat for reclamation of vast area of land from saltish water of sea. In this case, this Court held the Government responsible as the said act was treated as violation of public duty and negligence which lay in defective planning and construction of the bundh. On that premise, damages were awarded. The Court explained the jurisprudence of liability in torts and also the two principles, namely, 'strict liability' and 'fault liability', in paragraph 8 and thereafter enumerated other circumstances which may fall in-between 'strict liability' and 'fault liability', in paragraph 9. We would like to quote hereinbelow these two paragaphs for our benefit:

"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 [LR (1868) 3 HL 330 : 37 LJ Ex 161 : [1861-73] All ER Rep 1]) 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. Stevenson[(1932) AC 562 : 1932 All ER Rep 1] a manufacturer was held to be liable to ultimate consumer on the principle of duty to care. In Anns v. Merton London Borough Council [(1978) AC 728 : (1977) 2 All ER 492] 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 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. Stevenson [(1932) AC 562 : 1932 All ER Rep 1] 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." The Court, thereafter, explained that in order to become a claim as actionable claim, it is necessary to determine that the defendant was guilty of negligence.

There are two exceptions to the aforesaid rule of strict liability, which were recognized in Rylands v. Fletcher itself, viz.: (a) where it can be shown that the escape was owing to the plaintiff's default, or (b) the escape was the consequence of vis major or the act of God. An act of God is that which is a direct, violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. Generally, those acts which are occasioned by the elementary forces of nature, unconnected with the agency of man or other cause will come under the category of acts of God. Examples are: storm, tempest, lightning, extraordinary fall of rain, extraordinary high tide, extraordinary severe frost, or a tidal bore which sweeps a ship in mid-water. What is important here is that it is not necessary that it should be unique or that it should happen for the first time. It is enough that it is extraordinary and such as could not reasonably be anticipated. We would like to discuss a few cases having bearing on this issue with which we are confronted in the instant appeal.

In Nicholas v. Marsland[8], the respondent owned a series of artificial lakes on his land. In the construction and maintenance of these lakes, there had been negligence. However, owing to a most unusual fall of rain, which was so abnormal that could not have been reasonably anticipated, some of the reservoirs burst and carried away four country bridges. The respondent was held not liable on the premise that the water escaped by the act of God.

The aforesaid judgment in Nicholas's case was, however, criticized by the House of Lords in Greenock Corporation v. Caledonian Railway[9]. In that case, the Corporation obstructed and altered the course of a stream by constructing a concrete paddling pool for children. Due to a rainfall of extraordinary violence, a great volume of water which would normally have been carried off by the stream overflowed the pad and caused damage to plaintiff's property. The House of Lords held that the rainfall was not an act of God and the Corporation was liable to pay damages as it was its duty 'so to work as to make proprietors or occupiers on a lower level as secure against injury as they would have been had nature not been interfered with".

Such a situation came up before this Court as well in S. Vedantacharya & Anr. v. Highways Department of South Arcot & Ors.[10]. In this case, this Court held that before heavy rain can be accepted as a defence for the collapse of a culvert, the defendant must indicate what anticipatory prevention action was taken. We would like to quote the following passage from the said judgment:

> "State Government erected a reservoir adjoining the plaintiff's land in order to provide drinking water facilities to a village in the State. The State acquired a part of the plaintiff's land for the purpose of constructing a channel for carrying the overflow of water from the reservoir to a Nalla which was at a distance of about 1500 feet from the waste-weir of the reservoir. This channel was however not constructed except to the extent of 250 feet on the side of the Nalla. Due to very heavy rainfall the water from the reservoir overflowed into the waste-weir and thereafter flowed over the plaintiff's land, causing considerable damage to the land and the crops standing thereon. In a suit by the plaintiff for damages they alleged that due to the negligence of the State in not taking proper precautions to guard against the overflow of water they had sustained the loss. The State inter alia contended that the loss was due to heavy rain which was an act of God and therefore they were not liable and further that the construction of the reservoir was an act of the State in the sovereign capacity and, therefore, it was not liable for the tortious or negligent acts of its servants. It was held that the fact that the danger materialised subsequently by an act of God was not a matter which absolved the State from its liability for the earlier negligence in that no proper channel for the flow or overflow of water from the waster- weir was constructed by it in time; that the act of the State in constructing the reservoir for the supply of drinking water to its citizens at best could be considered a welfare act and not an act in its capacity as a sovereign; and that, therefore, the State was liable in negligence for the loss caused to the plaintiff." In nutshell, what needs to be examined is as to whether the damage to the property of the appellant herein was the result of an inevitable accident or unavoidable accident which could not possibly be prevented by the exercise of ordinary care, caution and skill, i.e. it was an accident

physically unavoidable. While examining this issue, we have to keep in mind that the onus was on the respondents to satisfy the aforesaid requirements.

Undoubtedly, it has come on record that the overflow of dam was occasioned by torrential and heavy rains. However, as pointed out above, the appellants specifically pleaded that the respondent authorities did not keep the level of water in the dam sufficiently low to take care of the ensuing monsoon rains. They have, thus, set up the case that there was a negligence on the part of the respondents in not taking care of the forthcoming monsoon season and keeping the water level in the dam at sufficiently low level to absorb the rainfall which was going to rise the water level in the dam.

The respondents have not refuted the aforesaid averment of the appellants. The only defence put up by them was that the overflow of the water in the dam was occasioned by the rains in the monsoon season which compelled the authorities to release the water from the dam in larger public interest. In such a scenario, it was incumbent upon the respondents to demonstrate, by adequate evidence, that the water in the dam was kept at reasonable and proper level to take care of normal rains; the rains in the said monsoon season were more than the ordinary rains which could not be foreseen; and that the public purpose was served in taking the decision to release the water which prevented larger catastrophe. Merely by saying that the level of water in the dam increased because of monsoon rains and that the water was released in public interest cannot be treated as discharging the burden on the part of the respondents in warding off the allegation of negligence. It is a matter of common knowledge that with advanced technology available with the Meteorological Department in the form of satellite signals etc, there is a possibility of precise prediction of the extant of rainfall in the monsoon season. In view of the principle laid down in Rylands v. Fletcher, onus was on the respondents to discharge such a burden, and it has miserably failed to discharge the same. On that basis, we are constrained to hold that there is a negligence on the part of the respondents which caused damage to the fields of the appellants.

This brings us to the question of quantum of damages. No doubt, actual/exact proof of damage is not given by the appellants. At the same time, we find that the trial court had appointed Court Commissioners to verify the position of agricultural lands of the appellants. The said Court Commissioners, also known as panchas, had visited the site and submitted their report for inspection confirming the loss suffered by the appellants due to submergence of the agricultural fields of the appellants. In this report, they specifically pointed out that as many as 1500 boar trees were uprooted and washed away as a result of the release of water from the dam which flooded the fields of the appellants. Several photographs were also annexed along with the report to support the aforesaid conclusion. This kind of evidence, which went unrebutted, proves that the appellants have, in fact, suffered damages. No doubt, the appellants have not led any evidence to show actual cost of each tree, in order to arrive at the

precise quantum of damages. However, even in the absence of such an evidence showing exact loss suffered, the appellants would still be entitled to reasonable compensation once factum of suffering loss stands proved. Where a wrong has been committed, the wrong-doer must suffer from the impossibility of accurately ascertaining the amount of damages. Likewise, the party claiming compensation must give the best evidence to prove damages. In the instant case, we find that the loss is not only on account of rain, though a part thereof can be attributed to the nature, but also due to the negligence on the part of the respondent authorities in not taking due precautions in time which could have avoided some loss/damage, if not entirely. If damage has resulted from two or three causes, namely, from an act of God as well as a negligent act of a party, the award of damages can be apportioned to compensate only the injury that can be attributed to the negligent act of the respondents {See Workman v. G.N. Ry. Co.[11]} The appellants claimed damages to the tune of ?21,50,000, for which no specific proof/evidence is given. At the same time, we find that one Mohemmed Ikbal Mohemmedalam Galivala, who is an agriculturist, had appeared as the plaintiffs' witness and deposed that he was having the agriculture experience for the last 20 years, particularly experience of cultivation of boar as well as its profit and income. He has given figures of losses which the appellants had to suffer due to damage of plantation and loss of income, etc. thereby trying to justify the claim of damages made by the appellants, but those figures are not supported by any evidence. However, it is not in dispute that loss has occurred and, therefore, a reasonable compensation can still be awarded. Exercising our power under Article 142 of the Constitution, we are of the opinion that ends of justice would be met in awarding damages to the tune of ?5,00,000. We have arrived at the above figure keeping in view the statement of Mohemmed Ikbal Mohemmedalam Galivala, witness who appeared on behalf of the appellants, though not accepting the figures given by him in its entirety, and the cross- examination of the respondents of this witness on this aspect. The appellants shall also be entitled to interest from the date of judgment of the trial court, i.e. December 24, 2010 at the rate of 9% per annum and also the cost of the present appeal.

The appeal is allowed in the aforesaid terms. Decree be drawn accordingly.

.....J. (A.K. SIKRI) .....J. (R.K. AGRAWAL) NEW DELHI;

MAY 10, 2016.

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[1] (1868) LR 3 HL 330 [2] (1913) AC 263 [3] (1947) AC 156 (HL) [4] AIR 1965 SC 17 [5] (1996) 2 Scale 44 [6] JT 2001 (1) SC 37 [7] (1994) 4 SCC 1 [8] (1875) LR 10 Ex.255 [9] (1917) AC 556 (HL) [10] (1987) 3 SCC 400 [11] (1863) 32 LJQB 279