M.S. Grewal & Anr vs Deep Chand Sood & Ors on 24 August, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3660, 2001 AIR SCW 3430, (2002) 1 JCR 100 (SC), 2002 (1) ALL CJ 740, (2001) 4 ALLMR 496 (SC), 2001 (9) SRJ 44, 2002 ALL CJ 1 740, 2001 (5) SCALE 610, 2001 SCC(CRI) 1426, 2001 (4) LRI 1289, 2001 ALL MR(CRI) 496, 2001 (8) SCC 151, 2001 (3) BLJR 2294, (2001) 7 JT 159 (SC), (2001) 43 ALLCRIC 862, (2001) 2 ANDHWR 568, (2001) 4 SCJ 402, (2002) 1 MAD LW 491, (2001) 6 SUPREME 655, (2002) 1 RECCIVR 214, (2001) 5 SCALE 610, (2001) 2 ACC 540, (2001) 3 ACJ 1719, (2001) 45 ALL LR 192, (2002) 1 BLJ 36, (2001) 4 CIVLJ 583

Bench: A.P. Misra, Umesh C Banerjee

CASE NO.:
Appeal (civil) 9738 of 1996

PETITIONER:
M.S. GREWAL & ANR.

Vs.

RESPONDENT:
DEEP CHAND SOOD & ORS.

DATE OF JUDGMENT: 24/08/2001

BENCH:
A.P. Misra & Umesh C Banerjee

JUDGMENT:

BANERJEE, J.

A very sad tale concerning fourteen young kids resulting in untimely and unfortunate death of all of them stands out to be the subject matter of the Appeal under consideration: Sad tale by reason of the fact that a sheer fun of young ones turned out to be fatal as a consequence of utter and callous neglect of teachers on duty.

Adverting to the factual aspects, it appears that on 28.5.1995, 59 boys and 18 girls (totaling 77) students, all in 4th, 5th and 6th classes of Dalhousie Public School, Badhani, Pathankot were brought for a picnic at Tandapatanindora on the bank of river Beas. The Head Master of the School deputed one Shri Surinder Pal Singh and another Shri K. Shanmugham being teachers in the School for escorting and taking due and proper care of the students. Incidentally, the site chosen for the picnic was the same on which the earlier picnic of the School was held on 7th May, 1995.

On the contextual facts, it appears that the School concerned has in its activities, a usual picnic for all the students in batches. Some of the students had already been into the picnic and these 77 were chosen for the batch which was scheduled for 28th May, 1995. It has been the version of the School authorities that in a true educational institution, extra curricular activities play a dominant role in imparting proper education to the students and outings/picnics thus have been a regular feature in the school:

> whereas in the event of there being a plan for overnight stay, the School management without parental consent would not permit the concerned student for participation therein though however, the same is not a requirement in a day time outing or picnic.
>
> The factual score further reveals that the management of the School organised the picnic on 7th May, 1995 for the students as noticed above and selected the same site on the bank of river Beas which flows from North to South direction having a width of approximately 200 ft. On the fateful day, however (28th May, 1995) the students were accompanied by five teachers, two mess boys, one supplier and the driver of the bus along with two European ladies (GAP students) in the picnic party. The records depict that in the post lunch period, fourteen students alongwith two teachers Shanmugam and S.P.Singh went down the river for a considerable distance with about 14 students and the teachers however discovered a sudden dibber of about 6 8 ft. deep by reason wherefor the teachers themselves along with the students fell into a great danger whereas teachers could save themselves up the students fell a victim of utter neglect of the teachers - The children were allowed to play in the danger zone of the water without any caution or any warning being sounded, the resultant effect of which drowning of these unfortunate fourteen children a rather unfortunate sad end and finale to the so-called extra curricular activities of the School.

On the further factual score, it appears that the Government of Himachal Pradesh, ordered a judicial inquiry under the Commission of Inquiry Act 1952 by the District and Sessions Judge, Kangra and the State of Punjab also ordered an inquiry by the sub-divisional Magistrate, Pathankot but nothing was forthcoming by reason wherefor the private respondents on 14th July, 1995, being the parents of the unfortunate children moved a writ petition under Article 226 of the Constitution in the High Court against the Petitioner Nos.1 and 2 and respondent Nos.14- 16 seeking a relief by way of an inquiry by C.B.I to find out the causes for the tragedy and fixation of responsibility therefor and punishment to the guilty ones together however, with a prayer for adequate compensation from the School authorities and on 2nd August, 1995, the High Court ordered an Inquiry to be conducted by the Central Bureau of Investigation and the latter upon examination of various witnesses recording

the unfortunate incident of drowning of children concluded in paragraph 41 of the report as below:

> 41. The conclude investigations have established that the death of 14 students by drowning was caused by the rash and negligent acts of firstly allowing the students to stray down stream by about 1100 ft. and enter into unchartered waters and secondly, due to direct instigation by Shri Surinder Pal Singh whereby the students in their efforts to catch him and thereafter to race to the bushes on the western river bank down stream, entered into the water of Dibber and were drowned as the depth of the water exceeded their average height. The investigation has thus prima facie established the commission of offence u/s 304A of the Indian Penal Code by S/Shri S.P. Singh, Director Physical Education, Dalhousie Public School and Shri K. Shanmugam, teacher, Dalhousie Public School, Badhani.

The Writ Petition, however, came up for final disposal before the High Court on 4th March, 1996 wherein the writ petition was allowed and it was ordered that the Chairman and the Management of the School shall pay a compensation of Rs.5 lakh to each of the parents of fourteen students who died in the incident and a sum of Rs.30,000/- to each of the parents of students who suffered due to drowning incident within two months with interest at the rate of 12% per annum from 28th May, 1995 by depositing the same in the registry of the High Court and hence the Special Leave Petition before this Court and the subsequent grant of leave with an order to deposit a sum of Rs.7 lakhs towards discharge of the liability of the petitioner, if ultimately upheld by the Court to be disbursed in accordance with the orders of the court. Incidentally, the order requiring the petitioner to deposit a sum of Rs.7 lakhs stands complied with.

It is on this factual backdrop Mr. Bahuguna, learned Senior Advocate in support of the Appeal in no uncertain terms stated before the Court that the event that has happened, should not have happened. Strong reliance was placed on the report of the C.B.I. wherein there has been total exoneration of any liability so far as the management of the School are concerned though responsibility has been fixed on to School teachers personally. Mr. Bahuguna with his usual eloquence expressed his deepest sorrow for the incident and on the very first day of the hearing submitted that irrespective of any instruction in the matter, a sum of Rs. 2 lakhs can be termed to be a reasonable figure and his clients should be prepared to pay the same a good gesture undoubtedly, but since the same does not receive concurrence from Mr. Malhotra, the learned Senior Advocate, appearing for the Respondents herein, we refrain ourselves from expressing any opinion thereon. Be that as it may, Mr. Bahuguna contended the quantum had been fixed by the High Court at a strangely staggering figure Rs. 5 lakhs without however any basis whatsoever - Acknowledging, however, the fact that no amount of compensation can possibly redress the grievances of the parents in the contextual facts, it has been contended that the law courts also cannot possibly proceed on emotions and sentiments only: the order pertaining to payment of compensation must have its foundation on some finding of fact in the absence of which the order becomes totally untenable. A number of decisions have been cited to depict that the quantum must be realistically realistic having its proper basis rather than assessment thereof on sentiment and anguish. Mr. Bahuguna submitted that the anguish of the Judges of the High Court obviously is understandable but that does not however mean and imply, award of compensation to a staggering amount of Rs.5 lakhs per student

by reason wherefor the School stands foisted with the liability of more than one crore. Mr. Bahuguna contended that assessment of compensation must also have a co-relation with the ability or capability to pay. Ability to pay, it was contended is a necessary criteria in regard to the fixation of quantum of compensation in the event of there being an unfortunate event and it is on this score that paragraph 41 of the Report has been taken recourse to The teachers have been ascribed to be negligent and not a whisper about the conduct of the school and as such conferment of liability on to the school in any event is totally an injudicious discretion of the High Court. True, and as noticed hereinbefore the conclusion of CBI, fixed the entire responsibility upon the two teachers and criminal proceedings stand initiated by reason therefor and the accused persons as a matter of fact also stand convicted under Section 304-A I.P.C. but what is the affect of such a finding: Needless to record that the CBIs investigation was not in regard to the assessment of the quantum of tort feasors or joint tort-feasors liability and as such the report by itself would not be of any assistance to the school authorities in the matter of fixation of monetary liability by reason therefor.

Incidentally, this Court in C.K. Subramania Iyer and Others v. T. Kunhikuttan Nair and Six Others [(1969) 3 SCC 64] while dealing with the matter of fatal accidents laid down certain relevant guidelines for the purpose of assessment of compensation. Paragraph 13 of the report would be relevant on this score and the same is set out hereinbelow:

> 13. The law on the point arising for decision may be summed up thus: Compulsory damages under Section 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case.

The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the Appellate Court should be slow in disturbing the findings reached by the courts below, if they have taken all the relevant facts into consideration.

(Emphasis supplied) The observations as above, undoubtedly lays down the basic guidance for assessment of damage but one redeeming feature ought to be noted that compensation or damages cannot be awarded as a solatium but to assess the same with reference to loss of pecuniary benefits. In the decision last noted [(1969) 3 SCC 64] this Court placed strong reliance on two old decisions of the English Courts to wit: Franklin v. The South East Railway Company (157 English Reports 3 H & N, p.448) wherein Pollock, C.B. stated :

We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough and such reasonable expectation might well exist, though from the father, not being in need, the son had never done anything for him. On the other hand a jury certainly ought not to make a guess in the matter, but ought to be satisfied that there has been a loss of sensible and appreciable pecuniary benefit, which might have been reasonably expected from the continuance of life.

The other decision relates to the case of Taff Vale Railway Company v. Jenkins [(1913) AC 1] wherein Atkinson, J. stated the law as below:

I think it has been well established by authority that all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think be drawn from circumstances other than and different from them.

Be it placed on record that in assessing damages, all relevant materials should and ought always be placed before the court so as to enable the Court to come to a conclusion in the matter of affectation of pecuniary benefit by reason of the unfortunate death. Though mathematical nicety is not required but a rough and ready estimate can be had from the records claiming damages since award of damages cannot be had without any material evidence: whereas one party is to be compensated, the other party is to compensate and as such there must always be some materials available therefor. It is not a fanciful item of compensation but it is on legitimate expectation of loss of pecuniary benefits. In Grand Trunk Railway Company of Canada v. Jennings (13 Appeal Cases 800) this well accepted principle stands reiterated as below:

In assessing the damages, all circumstances which may be legitimately pleaded in diminution of the damages must be considered. It is not a mere guess work neither it is the resultant effect of a compassionate attitude.

As noticed above, a large number of decisions were placed before this Court as regards the quantum of compensation varying between 50,000 to one lakh in regard to unfortunate deaths of young children. We do deem it fit to record that while judicial precedents undoubtedly have some relevance as regards the principles of law, but the quantum of assessment stands dependent on the fact-situation of the matter before the court, than judicial precedents. As regards the quantum no decision as such can be taken to be of binding precedent as such, since each case has to be dealt

with on its own peculiar facts and thus compensation is also to be assessed on the basis thereof though however the same can act as a guide: Placement in the society, financial status differ from person to person and as such assessment would also differ. The whole issue is to be judged on the basis of the fact-situation of the matter concerned though however, not on mathematical nicety. On the issue of negligence, the CBI report and subsequent decision the Criminal Court have foisted liability on to the teachers accompanying the students But what is the effect of such a finding? Significantly, the school authority though claimed to be not liable in any way, in no uncertain terms however blamed the teachers and their utter negligence, resulting in such a tragedy.

Negligence in common parlance mean and imply failure to exercise due care, expected of a reasonable prudent person. It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do (vide Blacks Law Dictionary). Though sometimes, the word inadvertence stands and used as a synonym to negligence, but in effect negligence represents a state of the mind which however is much serious in nature than mere inadvertence. There is thus existing a differentiation between the two expressions whereas inadvertence is a milder form of negligence, negligence by itself mean and imply a state of mind where there is no regard for duty or the supposed care and attention which one ought to bestow. Clerk & Lindsell on Torts (18th Ed.) sets out four several requirements of the tort of negligence and the same read as below:

(1) the existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in suit on the class of person to which the claimant belongs by the class of person to which the defendant belongs is actionable;

(2) breach of the duty of care by the defendant, i.e. that it failed to measure up to the standard set by law;

(3) a casual connection between the defendants careless conduct and the damage;

(4) that the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote.

While the parent owes his child, a duty of care in relation to the childs physical security, a teacher in a School is expected to show such care towards a child under his charge as would be exercised by a reasonably careful parent. In this context, reference may be made to a decision of Tucker, J. in Ricketts v. Erith Borough Council and Another (1943 (2) All ER 629) as also the decision of the

Court of Appeal in Prince and Another v. Gregory and Another (1959(1)WLR177).

Duty of care varies from situation to situation - whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the play-field. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to playground near a river for fun and swim, the degree of care required stands at a much higher degree and no deviation therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for swim by reason of popular sayings will not be a sufficient compliance. As a matter of fact the degree of care required to be taken specially against the minor children stands at a much higher level than adults: Children need much stricter care. Incidentally, negligence is an independent tort and has its own strict elements specially in the matter of children the liability is thus absolute vis-à-vis the children. The school authorities in the contextual facts attributed negligence to the two teachers who stand convicted under Section 304A of the Indian Penal Code as noticed above and Mr. Bahuguna appearing in support of the appeal during the course of hearing, however, also in no uncertain terms attributed utter negligence on the part of the teachers and thus conceded on the issue of negligence. Concession, if any, as noticed above, though undoubtedly a good gesture on the part of the school authority, but can the school absolve its responsibility and corresponding culpability in regard to the incident: Would they be termed to be a joint tort feasors or would it be a defence that the school has taken all due care having regard to its duty and it is irrespective thereof by reason of utter neglect and callous conduct on the part of the two of the teachers escorting them that has caused the injury Mr. Bahuguna contended that the school cannot be made liable under any stretch of imagination by reason of the happening of an event which is not within the school premises and has, in fact, happened by reason of the neglect of two of the teachers. It is on this score that Mr. Malhotra rather emphatically contended that the liability cannot simply be obliterated by reason of plea of utter neglect on the part of the two of the teachers: School concerned can be said to be liable even as a joint tort-feasor and in any event, Mr. Malhotra contended that applicability of the doctrine of vicarious liability cannot be doubted or be brushed aside, in any way whatsoever and since the issue of vicarious liability has been more emphatic and pronounced than the issue of joint tort-feasor, we deem it expedient to deal with the second of twin issues first as noticed above.

Be it noted that the doctrine of vicarious liability has had a fair amount of judicial attention in the English Courts. By the end of 18th century, the idea began to grow up that some special importance ought to be attached to the relationship of master and servant and in 1849 it was officially held that existence of that relationship was essential. Thereafter, though primary liability on the part of anyone could be established on proof of direct participation in the tort, such direct participation was not even theoretically required to make a master liable for his servants torts. The liability is derived from the relationship and is truly vicarious. At the same time, the phrase implied authority which had been the cornerstone of the masters primary liability gives way gradually to the modern course of employment. (vide Winfield & Jolowicz on Tort 15th Ed.).

In recent years, the tendency has been however, towards more liberal protection of third party and so in establishing a particular course of employment the court should not dissect the employees basic task into component parts but should ask in a general sense: What was the job at which he was engaged for his employer? And it is on this perspective Lord Wilberforce in Kooragang Investments Pty. Ltd. v. Richardson & Wrench Ltd. (1982 A.C. 462) stated:

> Negligence is a method of performing an act:
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> instead of it being done carefully, it is done negligently. So liability for negligent acts in the course of employment is clear. Cases of fraud present at first sight more difficulty: for if fraudulent acts are not directly forbidden, most relationships would carry an implied prohibition against them. If committed for the benefit of the employer and while doing his business, principle and logic demand that the employer should be held liable, and for some time the law rested at this point. The classic judgment of Willes J. in Barwick v. English Joint Stock Bank (1867) L.R. 2 Ex.259, 266 stated the principle thus:
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> In all these cases it may be said.that the master has not authorised the act. It is true, he has not authorised the particular act but he has put the agent in his place to do that class of acts and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in.
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> That was a case where the wrong was committed for the masters (viz., the banks) benefit, and Willes J. stated this as an ingredient of liability at p.265:
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> ..the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the masters benefit, though no express command or privity of the master be proved.
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> But a sharp distinction has been made as regards the group of cases which is concerned with the use of motor vehicles. These are the cases Lord Wilberforce observed:
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> (i) where a servant has, without authority, permitted another person to drive the masters vehicle; (ii) where a servant has, without authority, invited another person on to the vehicle, who suffers injury; (iii) where a servant has embarked on an unauthorised detour, or, as lawyers like to call it, a frolic of his own. These cases have given rise to a number of fine distinctions, the courts in some cases struggling to find liability, in others to avoid it, which it is not profitable here to examine. It remains true to say that, whatever exceptions or qualifications may be introduced, the underlying principle remains that a servant, even while performing acts of the class which he was authorised, or employed, to do, may so clearly depart from the scope of his employment that his master will not be liable for his wrongful acts."

The English law, therefore, takes a softer attitude in cases where motor vehicles are involved in the matter of foisting of liability so far as the employer is concerned the reason obviously being if the concerned employee acts in a manner contrary to the course of employment and on a frolic of his own why should the employer be made responsible: It seems logical but obviously there are cases and cases on the basis wherefor the liability of the employer ought to be fixed. The Privy Council in Kooragang Ltd. attributed frolic of his own to be the exonerating factor but this frolic has also to be considered from facts to facts in the matter of foisting of liability on to the employer. In any event, we need not devote much of our time to the excepted cases, since we have in this country several legislations covering the excepted categories. The recognition of broader approach however, stands undisputed and has also our concurrence herewith. Significantly, however, Mr. Malhotra with all the emphasis at his command and rather strongly commented upon the submissions of Mr. Bahuguna on the issue of award of compensation by reason of specific legislations in the country in particular reference to Motor Vehicles Act and on a conjoint reading of the 2nd Schedule thereto, Mr. Malhotra contended that the quantum would be far in excess of the amount awarded by the High Court submissions seem to be rather attractive: Motor Vehicles Act and the 2nd Schedule thereto cannot but be treated to be a guide in the matter of award of compensation and there cannot possibly be any doubt in regard thereto. We shall however be dealing with the issue slightly later in this judgment.

Turning attention however on to the issue of vicarious liability, one redeeming feature ought to be noticed at this juncture that to escort the children was the duty assigned to the two teachers and till such time thus the period of escorting stands over, one cannot but ascribe it to be in the course of employment the two teachers were assigned to escort the students : the reason obviously being the children should otherwise be safe and secure and it is the act of utter negligence of the two teachers which has resulted in this unfortunate tragedy and thus it is no gain-said that the teachers were on their own frolic and the school had done all that was possible to be done in the matter safety of the children obviously were of prime concern so far as the school authorities are concerned and till such time the children return to school, safe and secure after the picnic, the course of employment, in our view continues and thus resultantly, the liability of the school. A profitable re-capitulation of facts depict that the criminal court has already found both the teachers guilty of utter negligence and convicted them under Section 304 A IPC (which provides that whoever causes the death of any person by doing any rash or negligence act not amounting to culpable homicide shall be punished with) We are not inclined to record anything contra, save what stands recorded by the District Court in the criminal proceeding but we are constrained to record our anguish over the conduct of the teachers escorting the students even a simple rule of discipline and safety would have prompted the teachers not only to go to the river where they went but no where near the river ought to have been the guiding factor children are children: fun and frolic stand ingrained in them and it is School/Teachers deputed for escorting ought to be reasonably careful since entrusted with the safety this entrustment ought to have infused a sense of duty which should have prompted them to act not in the manner as they have so acted.

In view of the above, we are unable to record our concurrence with the submissions of Mr. Bahuguna that the doctrine of vicarious liability cannot in any event be made applicable in the facts of the matter under consideration. Liability of the school, in our view, in the contextual facts cannot

be shifted for any reason whatsoever by reason of the factum of teachers being within the course of employment of the school at the time of the tragedy.

Next is the issue maintainability of the writ petition before the High Court under Article 226 of the Constitution. The appellant though initially very strongly contended that while the negligence aspect has been dealt with under penal law already, the claim for compensation cannot but be left to be adjudicated by the Civil law and thus the Civil courts jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting however recording that the law courts exists for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. In this context reference may be made to two decisions of this court: The first in line, is the decision in Nilabati Behera (Smt) alias Lalita Behera (Through the Supreme Court Legal Aid Committee) v. State of Orissa and Others (1993 (2) SCC 746) wherein this Court relying upon the decision in Rudal Sah (Rudal Sah v. State of Bihar & Anr.: 1983 (4) SCC 141) decried the illegality and impropriety in awarding compensation in a proceeding in which courts power under Articles 32 and 226 of the Constitution stand invoked and thus observed that it was a clear case for award of compensation to the petition for custodial death of her son. It is undoubtedly true however that in the present context, there is no infringement of States obligation unless of course the State can also be termed to be a joint tort-feasor, but since the case of the parties stand restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except noting the two decisions of this Court as above and without expression of any opinion in regard thereto.

The decision of this Court in D.K. Basu vs. State of West Bengal [(1997) 1 SCC 416] comes next. This decision has opened up a new vesta in the jurisprudence of the country. The old doctrine of only relegating aggrieved to the remedies available in civil law limits stands extended since Anand, J. (as His Lordship then was) in no uncertain terms observed:

> The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.
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> Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of civil courts obligation to award damages. As a matter of fact

the decision in D.K Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of justice oriented approach. Law courts will lose its efficacy if it cannot possibly respond to the need of the society technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.

The only other issue, thus left outstanding in the matter under consideration pertains to the quantum of compensation. It is at this juncture that we record our appreciation for the gesture of Mr. Bahuguna who at the very commencement of the hearing submitted that while the figure of Rs. 5 lacs compensation per child seem to be strangely absurd but he recommended a figure of Rs. 2 lacs per child as monetary compensation for the events that had taken place; compensation there cannot be any, far less monetary compensation, for the unfortunate death of ones own child it cannot be termed to be a solatium. Unfortunately the situation in the facts of the matter does not warrant us to accept the same as a result of which we wish to deal with the matter in slightly more greater detail.

Mr. Bahuguna for the appellant with however strong vehemence contended that the High Court has totally misread and misapplied the principles of law in the matter of awarding compensation and in any event the quantum thereto has been fixed at an absurdly higher figure. The anguish of the High Court, Mr. Bahuguna contended, is understandable by reason of the factual import in the matter but that does not however mean and imply that a court of law would be guided by emotions and allow the sentiments to play a pivotal role in the matter of assessment of damages. It has been the contention of Mr. Bahuguna that there is not an iota of evidence as to the pecuniary loss for pecuniary benefit and as such the assessment of quantum has been totally arbitrary and in utter disregard of the known principles of law.

As noticed hereinbefore six several judgments have been cited wherein the quantum of compensation varies between Rs. 30,000/- to Rs.1,50,000/- but in every decision there was a factual basis for such an assessment and there is no denial of the same. But the adaptability of the multiply method and its acceptability without any exception cannot just be given a go by. This Court in a long catena of cases and without mixing word did apply the multiply method to decide the question of compensation in the cases arising out of Motor Vehicles Act. It is in this context the view of British Law Commission may be noticed and which indicates the multiplier has been, remains and should continue to remain, the ordinary, the best and the only method of assessing the value of a number of future annual sums. The actuarial method of calculation strictly speaking may not have lost its relevance but its applicability cannot but be said to be extremely restricted said the British Commission. Lord Dennings observations in Hodges vs. Harland & Wolff Limited [(1965) 1 ALL ER 1086] also seem to be rather apposite. Lord Denning observed that

multiplier method cannot but be termed to be of universal application and as such it would meet the concept of justice in the event the same method is applied for determining the quantum of compensation. Incidentally in a very recent decision of this Court (Civil Writ Petition No. 232 of 1991 in the matter of Lata Wadhwa and Others vs. State of Bihar & Others [of which one of us (U.C.Banerjee, J.) was a party] wherein a three-Judge Bench of this Court has had the occasion to consider an award of a former Chief Justice pertaining to the assessment of compensation by reason of a huge accidental fire. Significantly a writ petition was filed in this Court and this Court thought it expedient to have the claims examined by a former Chief Justice of the country and the latter duly and upon adaptation of multiplier method finalised the quantum of compensation which more or less barring some exceptions stands accepted by this Court in the decision noticed above. In Lata Wadhwas decision factual score records that while 150th Birth Anniversary of Sir Jamshedji Tata, was being celebrated on 3rd March, 1989 within the factory premises at Jamshedpur and a large number of employees, their families including small children had been invited, a devastating fire suddenly engulfed the Pandal and the area surrounding and by the time the fire was extinguished, a number of persons lay dead and many were suffering with burn injuries. The death toll reached 60 and the total number of persons injured were 113. The factual score in Lata Wadhwas case further depicts that amongst the persons dead, there were 26 children, 25 women and 9 men and Srimati Lata Wadhwa the petitioner in the matter lost her two children, a boy and a girl as also her parents. It is on this score that the learned arbitrator fixed in the absence of any material a uniform amount of Rs. 50,000/- to which again a conventional figure of Rs.25,000/- has been added for determining the total amount of compensation payable. While dealing with the matter this Court (Pattanaik, J. speaking for the Bench) observed:

So far as the determination of compensation in death cases are concerned, apart from the three decisions of Andhra Pradesh High Court, which had been mentioned in the order of this Court dated 15th December, 1993, this Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and Ors. (1994 (2) SCC 176), exhaustively dealt with the question. It has been held in the aforesaid case that for assessment of damages to compensate the dependants, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The Court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of

his net income the deceased was accustomed to spend for the benefit of the dependants, and thereafter it should be capitalised by multiplying it by a figure representing the proper number of years purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, it is the overall picture that matters, and the Court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed:

The multiplier method is logically sound and legally well-established method of ensuring a just compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases.

In the decision of Susamma Thomas (supra), this Court in paragraphs 7 & 8 of the report observed:

7. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death. How much has the widow and family lost by the fathers death? The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in Davies v. Powell Duffryn Associated Collieries Ltd.[1942 AC 617] which says:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on 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 dependent, and other like matters of speculation and doubt.

8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent. Thus except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages. (Per Lord Macmillan in Davies v. Powell) Lord Wright in the same case said, The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death. These words of Lord Wright were adopted as the principle applicable also under the Indian Act in Gobald Motor Service Ltd. v.

R..M.K. Veluswami [AIR 1962 SC 1] where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

Needless to say that the multiplier method stands accepted by this Court in the decision last noticed and on the acceptability of multiplier method this Court in para 16 had the following to state:

> It is necessary to reiterate that the multiplier method is logically sound and legally well- established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years virtually adopting a multiplier of 45 and even if one-third or one-

fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis.

These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110- B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be just., the statutory determination of a just compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a just compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases.

In Lata Wadhwas case, however, this Court came to a conclusion that upon acceptability of the multiplier method and depending upon the facts situation namely the involvement of TISCO in its tradition that every employee can get one of his child employed in the company and having regard to multiplier 15 the compensation was calculated at Rs. 3.60 lacs with an additional sum of Rs.50,000/- as conventional figure making the total amount payable at Rs.4.10 lacs for each of the claimants of the deceased children.

The decision in Lata Wadhwa, thus, is definitely a guiding factor in the matter of award of compensation wherein children died under an unfortunate incident as noticed morefully hereinbefore in this judgment.

Having considered the matter in its proper perspective and the applicability of multiplier method and without even any further material on record we do feel it expedient to note that though Mr. Bahuguna attributed the quantum granted by the High Court as strangely absurd, we, however, are not in a position to lend our concurrence therewith. It is not that the award of compensation at Rs. 5 lacs can be attributed to be the resultant effect of either emotion or sentiments or the High Courts anguish over the incident. The High Court obviously considered the overall situation as regards social placements of the students. As stated hereinafter the school presently is one of the affluent school in the country and fee structure and other incidentals are so high that it would be a well nigh impossibility to think of admission in the school at even the upper middle class level. Obviously the school caters to the need of upper strata of the society and if the 2nd Schedule of Motor Vehicles Act, can be termed to be any guide, the compensation could have been a much larger sum. Thus in the factual situation award of compensation at Rs. 5 lakhs cannot by any stretch be termed to be excessive. Another redeeming feature of Mr. Bahuguna submissions pertains to the theory of ability to pay: Audited accounts have been produced for the year 1995 depicting a situation, though not of having stringency but the situation truly cannot but be ascribed to be otherwise comfortable to pay as directed by the High Court. The matter, however, prolonged in the law courts in the usual manner and it took nearly six years for its final disposal before this Court these six years however had rendered the financial stability of the school concerned in a much more stronger situation than what it was in the year 1995. The school as of date stands out to be one of the most affluent schools in the country as such ability to pay cannot be termed to be an issue in the matter and on the wake thereto we are not inclined to deal with the same in any further detail.

In the view we have taken as above, we could have awarded a larger sum but judicial propriety deters us from doing so, since in the normal course of events appellate forum ought not to interfere with the award of compensation.

In the view, we have taken as noted hereinbefore, we do not feel it inclined to deal with the other issue of the school authority being a joint-tort feasor as submitted before this Court by the respondents. The issue thus is left open.

As regards the question of interest as contended by Mr. Malhotra, we feel it inclined to grant 6% simple interest from the date of the judgment of the High Court till payment on the reducing balance. The amount so directed by the High Court together with interest as modified above be paid by eight (8) quarterly installments.

The amount deposited in terms of earlier order of this Court inclusive of interest with the Registrar of this Court be made available to the parties pro-rata in terms of this order and the balance, however, be paid as directed above.

This appeal thus stands disposed of without any order as to costs.

.J. (A.P. Misra) .J. (Umesh C. Banerjee) August 24, 2001