

Item No. 5A

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 604/2023

Hussain Ahamad

Applicant

Versus

State of U.P. & Ors.

Respondent(s)

Date of completion of hearing and reserving of order: 15.03.2024

Date of Pronouncement of order: 18.04.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Rahul Khurana, Mr. Hasil Jain & Mr. Shaim Hasan, Advs.

Respondent(s) Mr. Bhanwar Pal Singh Jadon & Mr. Chetan Jadon, Advs. for the State of UP
Mr. Pradeep Misra & Mr. Daleep Dhyani, Advs. for UPPCB (Through VC)
Mr. Raj Kumar, Adv. for CPCB
Mr. Arunava Mukherjee (Through VC) & Mr. Nisarg P. Khatri Advs. for R - 6

ORDER

1. In this original application, issue relating to illegal mining by respondent no. 5-M/s. Maa Bhagwati Brick Field and respondent no.6-Shri Ram Brick Field at Muzaffarnagar district, UP leading to death of five children in two separate incidents has been raised. These children had accidentally felled into the pits created by illegal mining of sand/clay from nearby agricultural fields by respondent nos. 5 and 6 by digging upto 15-20 feet deep and abandoning them, which were filled up with water during the rainy season and were left unattended. Since these pits were filled with water and mud, they were not visible and children had accidentally fallen into the pits and had died.

2. Accordingly, in the original application, compensation for the family members of the deceased children has been claimed invoking the Principle of Polluter Pays. Along with the original application, FIRs have been enclosed stating that dead bodies were recovered from the pits dug up by the Brick Kiln Owners which were filled with water. Photographs of pits filled with water have also been enclosed.

3. Tribunal by order dated 13.10.2023 had constituted a joint committee comprising of Member Secretary, State Pollution Control Board (SPCB), representative of the Secretary, Central Pollution Control Board (CPCB) and District Magistrate, Muzaffarnagar and had directed the committee to visit the site and find out the factual position and suggest remedial measures.

4. Committee had submitted the report dated 03.01.2024 which was duly considered by the Tribunal in the proceedings dated 05.01.2024 and had noted the finding of the committee about digging of the pits by the private respondents which got filled up with rainy water resulting into the accident. Since in the report of the joint committee, disclosure about payment of compensation to the family members of the deceased children was not made, therefore, fresh report was called. Committee had submitted the supplementary report dated 01.03.2024 disclosing that on account of subsequent change of stand about cause of accident by family members of the deceased children, postmortem was not done and, accordingly, as per the scheme no compensation could be paid under the National Disaster Response Funds. Committee had filed additional/supplementary report on 05.03.2024 disclosing that owner of M/s. Shri Ram Brick Field has provided ₹1 lakh compensation each to the families of two deceased children and that FIRs have been filed and in respect of respondent- M/s. Maa Bhagwati Brick Field, it is stated that the said brick field has

submitted the letter dated 05.03.2024 to the City Magistrate, Muzaffarnagar expressing willingness to provide compensation to the family members of three deceased children and seeking 15 days time.

5. Tribunal on 13.10.2023 had issue notice to the respondents. No response on behalf of respondent no. 5 has been filed in spite of service of notice. Respondent no. 6 by filing the reply has denied its responsibility.

6. We have heard Learned Counsel for the parties on the issue of award of compensation to the family members of the deceased victim and on the issue of responsibility of respondent nos. 5 and 6 in this regard.

7. First issue is as to whether the accident has occurred on account negligent and failure of failure of respondent nos. 5 and 6 to comply with the environmental laws.

8. Uttar Pradesh Pollution Control Board (UPPCB) has filed report of the joint committee on 03.01.2024 reflecting that respondent nos. 5 and 6 brick kilns had obtained lease/license for digging the soil for the purpose of brick kiln. In respect of respondent no.5, joint committee had recorded the following factual status on the spot after visiting the site:-

- “8. निरीक्षण के दौरान उपस्थित मृतक बच्चों के पिता हुसैन पुत्र युसुफ निवासी ग्राम दभेड़ी रसूलपुर, तहसील बुढाना जिला मुजफ्फरनगर से चर्चा के दौरान पता चला कि उनके 03 पुत्र फैजल आयु 8 वर्ष, अराद आयु 10 वर्ष एवं अहसान आयु 12 वर्ष दिनांक 27.06.2023 को उक्त स्थल पर गड्ढों के पानी में डूबने से मृत्यु हो गयी थी।
9. उपस्थित लोगों से चर्चा के दौरान संज्ञान में आया कि खनन क्षेत्र में इस प्रकार के कई गड्ढे बनाये गये थे, जिनकी गहराई 2 मीटर से अधिक थी एवं उनका उपयोग ईंटों की पथाई के लिए आवश्यक मिट्टी का गारा बनाने हेतु किया जाता है। वर्षा ऋतु के दौरान पूरे खनन क्षेत्र व गड्ढों में पानी का भराव हो गया था, जिस कारण गड्ढों की गहराई का पता नहीं चलता है तथा उक्त दुर्घटना घटित हो गये।
10. निरीक्षण के समय उपस्थित लोगों द्वारा बताया गया कि दुर्घटना के समय इस खनन 10 क्षेत्र में किसी प्रकार की दुर्घटना की रोकथाम हेतु बाडबन्दी

नहीं की गयी थी, न ही किसी प्रकार का कोई सूचना पट्ट स्थापित किया गया था, जो कि घोर लापरवाही का द्योतक है।

11. प्राप्त जानकारी एवं चर्चा के अनुसार दुर्घटना के समय खनन क्षेत्र में 2 मीटर से अधिक गहराई में मिट्टी खुदाई की गयी तथा कई गड्ढे बनाये गये तथा गड्ढों का प्रयोग ईट पथाई हेतु गारा बनाये जाने में किया गया, जो कि उ०प्र० शासन भूतत्व एवं खनिकर्म अनुभाग की अधिसूचना संख्या 1157/86-2021-03 (सा०) / 2021 दिनांक 29.10.2021 में दिये गये प्राविधानों का स्पष्ट उल्लंघन है। ईट भट्टा द्वारा खचत क्षेत्र में अनुमन्य गहराई से अधिक खनन किये जाने के सम्बन्ध में खनन विभाग से नियमानुसार अग्रिम कार्यवाही के सम्बन्ध में आख्या पृथक से प्राप्त किया जाना उचित होगा।
12. उक्त दुर्घटना के सम्बन्ध में कार्यालय तहसीलदार बुढाना, मुजफ्फरनगर के पत्र संख्या 794/र०का० दिनांक 26.06.2023 संलग्न है (संलग्नक-7)। आख्यानुसार दिनांक 26.06.2023 को अपरान्ह लगभग 1:00 बजे ग्राम रसूलपुर दगेडी, तहसील बुढाना निवासी अहसान ना०बा० आयु लगभग 10 वर्ष पुत्र आरिफ, असद आयु लगभग 08 वर्ष एवं फैसल आयु लगभग 06 वर्ष पुत्रगण हुसैन निवासीगण रसूलपुर दभेडी, तहसील बुढाना की गाँव अलीपुर अटेरना स्थित माँ भगवती ब्रिक फील्ड में भट्टे की पथवार के खुदान में बरसात के पानी से भरे गहरे गड्ढे में खेलते हुए डूबने से मृत्यु हो गयी है। मौके पर उपस्थित मृतक बच्चों के पिता आरिफ एवं हुसैन पुत्रगण युसुफ निवासीगण रसूलपुर दभेडी एवं अन्य लोगों के ब्यान लिये गये। मृतक के अभिभावकों द्वारा मृतक बच्चों के पोस्टमार्टम कराने एवं अन्य कोई कानूनी कार्यवाही कराने से इंकार किया गया है।”

9. In respect of respondent no. 6, joint committee on spot inspection had found as under:-

- “6. निरीक्षण के दौरान पाया गया कि संदर्भित स्थल के चारों ओर तार से घेराव किया गया है।
7. निरीक्षण के दौरान सन्दर्भित स्थल का लेवल आसपास की भूमि के लेवल से लगभग 1.5 मी० तक गहरा पाया गया। सर्वेक्षण के दौरान यह भी स्पष्ट हुआ कि उक्त खनन क्षेत्र में अतिरिक्त मिट्टी का भराव कर गहरे गड्ढों को भरने की प्रक्रिया की गयी है। वर्तमान में मात्र 1 से 1.5 फुट गहरे गड्ढे / नालियां पायी गयी, जिसमें अल्प मात्रा में जल का भराव पाया गया। निरीक्षण के समय मिट्टी खुदाई एवं ईट पथाई का कार्य होता हुआ नहीं पाया गया। निरीक्षण के समय लिये गये फोटोग्राफ निम्नवत् हैं
8. निरीक्षण के दौरान उपस्थित श्री जनेश्वर पुत्र श्री बीरबल निवासी ग्राम कसियारा से चर्चा के दौरान पता चला कि उनका 13 वर्षीय पुत्र प्रियांशु दिनांक 13.07.2023 को अपनी माता के साथ उक्त स्थल के सन्निकट खेतों में काम करने हेतु आया हुआ था। तत्समय उसके पैर गन्दे हो गये थे, पैरों को धोने के लिए वह खनन क्षेत्र में स्थित पानी भराव क्षेत्र में चला गया तथा पैरों

को धोने के दौरान उसका पैर फिसल गया, जिसके कारण वह पानी में डूबने लगा, जिसको बचाने के लिए एक अन्य बच्ची स्वाति पुत्री तुलसीराम निवासी ग्राम कसियारा, आयी, वह भी पानी में फिसलकर डूब गयी तथा दोनों बच्चों की मृत्यु पानी में डूबने के कारण हो गयी थी।

9. उपस्थित लोगों से चर्चा के दौरान संज्ञान में आया कि खनन क्षेत्र में इस प्रकार के कई गड्ढे बनाये गये थे, जिनकी गहराई 2 मीटर से अधिक थी एवं उनका उपयोग ईंटों की पथाई के लिए आवश्यक मिट्टी का गारा बनाने हेतु किया जाता है। वर्षा ऋतु के दौरान पूरे खनन क्षेत्र व गड्ढों में पानी का भराव हो गया था जिस कारण गड्ढों की गहराई का पता नहीं चलता है तथा उक्त दुर्घटना घटित हो गयी।
10. निरीक्षण के दौरान उपस्थित लोगों द्वारा बताया गया कि दुर्घटना के समय इस खनन क्षेत्र में किसी प्रकार की दुर्घटना की रोकथाम हेतु बाडबन्दी नहीं की गयी थी, न ही किसी प्रकार का कोई सूचना पट्ट स्थापित किया गया था, जो कि घोर लापरवाही का द्योतक है।
11. प्राप्त जानकारी एवं चर्चा के अनुसार दुर्घटना के समय खनन क्षेत्र में 2 मीटर से अधिक गहराई में मिट्टी खुदाई की गयी तथा कई गड्ढे बनाये गये। गड्ढों का प्रयोग ईंट पथाई हेतु गारा बनाये जाने में किया गया, जो कि उ०प्र० शासन मूलत्व एव खनिकर्म अनुभाग की अधिसूचना संख्या 1157/86-2021-03 (सा०)/2021 दिनांक 29.10.2021 में दिये गये प्राविधानों का स्पष्ट उल्लंघन है। ईंट भट्टा द्वारा खनन क्षेत्र में अनुमन्य गहराई से अधिक खनन किये जाने के सम्बन्ध में खनन विभाग से नियमानुसार अग्रिम कार्यवाही के सम्बन्ध में आख्या पृथक रूप से प्राप्त किया जाना उचित होगा।
12. उक्त दुर्घटना में दो बच्चों की मृत्यु हो जाना प्रकाश में आया है, इस सम्बन्ध में पीड़ित पक्ष द्वारा थाना चरथावल जिला मुजफ्फरनगर में एफ०आई०आर० सं० 0228 दिनांक 13.07.2023 (संलग्नक 4) दर्ज करायी गयी है, जिसमें जिला प्रशासन स्तर पर कार्यवाही अग्रसर है।”.

10. Along with the joint committee report, statement of the persons recorded by Tehsildar have been placed on record who had confirmed the factum of death of children by drowning in the pits dug up by respondent nos. 5 and 6 for the purpose of illegal mining. Along with the joint committee report, communication of Tehsildar, Budhana, dated 26.06.2023 sent to the Additional Collector, Muzaffarnagar is enclosed which mentions as under:-

“राजस्व निरीक्षक शाहपुर की आख्या के अनुसार आज दिनांक 26.06.2023 को अपरान्ह लगभग 1.00 बजे ग्राम रसूलपुर दभेडी तहसील बुढाना निवासी अहसान नाबा०आयु लगभग 10 वर्ष पुत्र आरिफ, असद आयु लगभग 08 वर्ष एवं फैसल आयु लगभग 06 वर्ष पुत्रगण हुसैन निवासीगण रसूलपुर दभेडी तहसील बुढाना की गाँव अलीपुर अटेरना स्थित माँ भगवती ब्रिक फिल्ड में भटटे की पथवार के खुदान में बरसात के पानी से भरे गहरे गड्डे में खेलते हुए डूबने से मृत्यु हो गयी है।”

11. Along with the joint committee report submitted on 01.03.2024, communication sent by Sub-Divisional Magistrate, Sadar, Muzaffarnagar to the City Magistrate, Muzaffarnagar dated 27.02.2024 is enclosed which confirms the factum of death of children on account of drowning in the pits in the mining area of respondent no. 6. This communication also refers to the report of Tehsildar confirming the death of the children due to drowning in the pits created by brick kilns. Along with the report, a communication dated 26.02.2024 sent by Regional Officer, Budhana, Janpad, Muzaffarnagar to City Magistrate, Janpad, Muzaffarnagar has also been enclosed giving the details of the incident and cause of death due to drowning in the pits created by brick kiln-respondent no. 5.

12. Record reflects that initially FIRs were registered but on account of the resistance by family member no postmortem was done and FIRs have been filed on the basis of the affidavits given by mother and father of the deceased but these affidavits are inconsequential in present proceeding as they are verbatim the same and appears to have been obtained, subsequently, under pressure. Those affidavits were given in the criminal proceedings whereas, present proceedings are for award to compensation for violation of environmental norms.

13. Record reflects that so far as respondent no. 6 is concerned, it has paid compensation of ₹1 lakh each to the family members of deceased Swati and Priyanshu and so far as respondent no. 5 is concerned, it has also expressed the willingness to pay the compensation to the family

members of three deceased children by submitting the letter annexure 5 enclosed with additional report of the joint committee dated 05.03.2024 stating as under:-

“माननीय निवेदन यह है कि माँ भगवती ब्रिक फील्ड अलीपुर अटेरना पर खनन में 3 बच्चों की पानी में डूबने से मौत हो गयी थी जिसमें उनके, परिवार वालों से बात चल रही है जिसमें हमें 15 दिन का समय देने की कृपा करें”.

14. Hence, it is clear that death of five children had taken place on account of their accidental drowning in the pits dug up by respondent nos. 5 and 6 while illegally extracting the soil beyond the permissible limit and these pits were filled with rain water and mud, hence were not visible, which resulted into the accidental death. It was a failure of the project proponents for not reclaiming the mined areas and also leaving it unfenced.

15. Under section 15(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as the “NGT Act”), the Tribunal has the power to grant relief and compensation to the victims of environmental damage. In terms of sub-section (2) of section 15, the relief and compensation and restitution of property and environment referred in various sub-clauses of sub-section (1) is in addition to the relief paid or payable under the Public Liability Insurance Act, 1991. Under section 17(1) of the NGT Act, where death of, or injury to, any person (other than a workman) or damage to any property or environment results from an accident or the adverse impact of an activity or operation or process, under any of the scheduled enactment, the person responsible is liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as determined by the Tribunal. Schedule II of NGT Act includes death, permanent, temporary, total or partial disability or other injury or sickness. It also covers medical expenses incurred for treatment of injuries or

sickness and expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons.

16. The Tribunal in OA No. 885/2022, *In re: News item in India TV dated 02.12.2022 titled “Chhattisgarh: Seven dead as part of limestone mine collapse in Bastar Village”* vide order dated 17.05.2023 has considered in detail the issue of awarding compensation to the victims of mining accident. In that order, the Tribunal has also considered the judgment on the issue of awarding compensation to the family members of deceased persons on account of illegal mining attracting the Principle of Absolute Liability. The Tribunal in the above matter in this regard has held as under:-

“7. It is clear from the report that death of six persons has taken place due to collapse of soil bed in the course of excavation of soil. The report mentions that accident site area has been fenced with sign board of restricted area. The excavation activities are prohibited in the area.

8. Though the Committee has failed to identify the violator, there is no dispute that death is in the course of illegal excavation. There is a failure on the part of State machinery in preventing such hazardous activities and also identifying the persons undertaking such activities. In such situation, there is no reason to deprive the heirs of the deceased from just compensation to be paid by the State with liberty to recover the same from violators. While primary liability for such deaths is of the persons undertaking illegal excavation activities, State cannot avoid its responsibility for safety of human lives for failure of its vigilance and regulatory mechanism. It appears that acknowledging this responsibility, the State has given some amount of compensation i.e. Rs. 4 lakhs in respect of each death which cannot by any standard be considered to be adequate. Even on *ad hoc* basis and in absence of particulars of loss of earning, compensation in such cases has to be atleast Rs. 20 lakhs for each death. This is the view taken by this Tribunal in number of cases, including vide order dated 28.03.2023 in OA No. 204/2023, *In re: News item published in Newspaper The Hindu dated 07.03.2023 titled “Three children die during illegal mining in West Bengal”*. The Tribunal held:

“xxxxxx.....xxx

5. The Tribunal has dealt with number of cases of deaths and injuries to victims by failure to follow environmental norms and enforce right to environment which is part of right to life, heirs of the deceased and the **victims have been held**

entitled to compensation on the principle of absolute liability arising out of doing hazardous commercial activity. Though such liability basically is of violator of law, where law violator is not made to pay compensation, the State has also been held to be liable to pay compensation as per its duty as welfare State to protect the citizen and also for failure to take steps to protect the citizens against hazardous illegal activities to prevent which is duty of the State. The Tribunal has acted consistently with parens patriae duty of the State in terms of law laid down inter alia in MCD v. Uphaar Tragedy Victims Association, (2011) 14 SCC 481 and Vadodra Municipal Corporation v. Purshottam v. Murjani & Ors. (2014) 16 SCC 14. Some of the observations from Supreme Court judgements are:

“T.N. Centre for Public Interest Litigation v. State of T.N., (2017) 6 SCC 734

The State stands on the position of a loco parentis to the citizens and when there are so many deaths of farmers in the State of Tamil Nadu, it becomes obligatory on the part of the State to express concern and sensitiveness to do the needful and not allow the impecunious and poverty-stricken farmers to resign to their fate or leave the downtrodden and the poor to yield to the idea of fatalism. The concept is alien in the welfare State and the social justice which is required to be translated in a democratic body polity. As is manifest from the assertions and the grievances that have been agitated, deaths are due to famine backdrop and other natural causes and also due to immense financial problem. The State, as the guardian, is required to see how to solve these problems or to meet the problems by taking curative measures treating it as a natural disaster. Silence is not the answer.

MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481

The law is well settled that a constitutional court can award monetary compensation against the State and its officials for its failure to safeguard fundamental rights of citizens but there is no system or method to measure the damages caused in such situations

Compensatory damages are intended to provide the claimant with a monetary amount necessary to recoup/replace what was lost, since damages in tort are generally awarded to place the claimants in the position he would have been in, had the tort not taken place; which are generally quantified under the heads of general damages and special damages. Punitive damages are intended to reform or to deter the wrongdoer from indulging in conduct similar to that which formed the basis for the claim. Punitive damages are not intended to compensate the claimant which he can claim in an ordinary private law claim in tort. Punitive damages are

awarded by the constitutional court when the wrongdoer's conduct was egregiously deceitful.”

6. We may also refer to some earlier orders of the Tribunal dealing with industrial and other accidents on account of violation of environmental norms in the State of West Bengal, where the Tribunal awarded compensation to the victims. Some extract from order dated 18.12.2020 in O.A. No. 272/2020, News item published in the “Times of India” dated 20.11.2020 entitled “Six killed as blast tears through Malda Plastic recycling factory” is reproduced below:-

“xxx.....xxx.....xxx

6. The Tribunal dealt with the issue by requiring payment of compensation to the victims, restoration of environment and adopting suitable safety measures to avoid such recurrence in the light of Expert Committee reports. In the present case, the State PCB has acknowledged that the activity was illegal and the unit has now been found to be demolished. This cannot be sufficient step for enforcement of law and for remedy to the victims. The Tribunal fixed minimum interim compensation in such cases at Rs. 15 Lakhs in case of death, Rs. 5 Lakhs in case of serious injury and Rs. 2.5 Lakhs for simple injuries as follows²:

“6. ... we assess interim compensation for death to be 15 lacs each (taking into account multiplier of around 16 and loss of earning of about one lac a year, taking the minimum wage, apart from conventional sums), for grievous injury Rs. 5 lac per person, for other injuries of persons hospitalized Rs. 2.5 lac per person and for displacement at Rs. 25000/- per person.”

7. The State is under obligation to secure atleast this amount of compensation to the victims and if it is not able to do so, the State must pay this much amount of compensation out of its own funds, with liberty to recover the same from the persons responsible for the situation.

8. Accordingly, we direct the District Magistrate, Malda to give compensation in above terms to the victims within three months out of the State funds, excluding the amount already paid. It will be open to the District Magistrate to recover the amount from the concerned violators by taking coercive measures, as per law. The victims will be at liberty to seek any other relief in appropriate proceedings. This direction is without

¹1. News item published in the “Times of India” dated 20.11.2020 entitled “Six killed as blast tears through Malda Plastic recycling factory”, OA No. 272/2020 decided on 18.12.2020.

2. In re: News item published in The Economic Times dated 21.12.2021 titled “3 dead, 44 injured in flash fire at IOC's Haldia refinery”, OA No. 440/2021 decided on 07.01.2022.

² Order dated 08.06.2020 in O.A. No. 22/2020 (WZ), Aryavart Foundation through its President v. Yashyashvi Rasayan Pvt. Ltd. and Anr.

prejudice to the criminal liability of the management and the operators of such activities.”

7. *In the present case, death of the children is patently due to violation of established norms. The State Authorities failed to enforce the law and prevent the incident. Apart from illegal engagement of children, the mining in the river bank is not shown to be by any Authority of Law, such as, mining lease, replenishment study, DSR and Environment Clearance. No safeguards have been used in the process. Thus, the State cannot escape liability for violation of environmental norms. While primary liability is of the persons engaged in illegal mining on ‘Absolute Principle’ laid down in M.C. Mehta vs. Union of India & Ors., (1987) 1 SCC 395, when the violators have not been made to pay, it is the liability of the State to pay the compensation and recover the same from the violators. Liability for compensation is in addition to liability under the Criminal Law.*

8. *Further, vide order dated 11.06.2021 passed in O.A. No. 44/2021 titled as In re: News item published in The News Indian Express dated 12.02.2021 titled **“At least 19 dead in Virudhunagar firecracker factory blast, more than 30 injured” the Tribunal held:-***

“xxx.....xxx.....xxx

9. *...Compensation can be assessed on reasonable basis guided by restitution principle atleast at floor level, leaving other remedies of the victims open. Thus, **broadly agreeing with the Committee, we direct that the scale of compensation should be Rs.20 lakhs in respect of each of the deceased victims and Rs.15 lakhs to persons who have burns in excess of 50% and Rs.10 lakhs for persons who have burns from 25 to 50% and Rs.5 lakhs for persons who have injuries between 5 to 25%. Victims who were treated as outpatients and who had but minor degree of burns or other forms of simple injuries shall be paid Rs.2 lakhs.***

9. *The Tribunal had dealt with series of industrial and accidental matters directing environmental compensation for deceased and injured in recent past³.*

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- ³1. *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh*, OA No. 73/2020 decided on 01.06.2020.
2. *Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.*, OA No. 85/2020 (Earlier OA 22/2020) (WZ) decided on 03.02.2021.
3. *Bonani Kakkar vs. Oil India Limited & Ors.*, OA No. 43/2020(EZ) decided on 19.02.2021.
4. *News item published in the local daily “Economic Times” dated 30.06.2020 titled “Another Gas Leakage at Vizag Factory kills two, critically injures four...”*, OA No. 106/2020 decided on 22.12.2020.
5. *News item published in the “Indian Express” dated 01.07.2020 titled “Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured”*, OA No. 108/2020 decided on 22.12.2020.
6. *News item published on 13.07.2020 in the local daily named “India Today” titled “Massive fire engulf Vizag chemical plant, explosions heard, injuries reported”*, OA No. 134/2020 decided on 22.12.2020.
7. *News item published in the “Times of India” dated 20.11.2020 entitled “Six killed as blast tears through Malda Plastic recycling factory”*, OA No. 272/2020 decided on 18.12.2020.
8. *News item published in the “Indian Express” dated 23.11.2020 entitled “Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory”*, OA No. 274/2020 decided on 16.08.2021.

10. In view of above, we direct the District Magistrate, Siliguri/Darjeeling to ensure payment of compensation @ ₹20 Lakh each to the heirs of the deceased and ₹5 Lakh to the injured, after deducting the amount already paid. The payment may be made within one month and make the violators accountable under Environmental Law be taken simultaneously at the earliest.

11. The State PCB may exercise its regulatory authority under the environmental laws - the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act and Rules 1986, in coordination with any other concerned authority.”

9. Accordingly, we direct that the District Magistrate, Bastar may disburse further amount of Rs. 16 lakhs to the heirs of each of the deceased and Rs. 2 lakhs each to the injured within one month from today. It will be open to the District Magistrate to identify the violators and proceed against them in accordance with law, including

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9. In RE: News item published in the local daily “Indian Express Sunday Express” dated 28.06.2020 titled “Gas Leak in Agro Company Claims life of one”, O.A No. 107/2020 decided on 08.01.2021.
 10. In re : News item published in Navbharat Times dated 24.12.2020 titled “Gas leaks in IFFCO Plant, 2 Officers dead”, O.A. No. 04/2021 decided on 04.06.2021.
 11. In re: News item published in The Indian Express dated 07.01.2021 titled “Four workers dead due to toxic gas leak in Rourkela Steel Plant”, O.A. No. 09/2021 decided on 11.02.2021.
 12. In re: News item published in The News Indian Express dated 12.02.2021 titled “At least 19 dead in Virudhunagar firecracker factory blast, more than 30 injured, O.A. No. 44/2021 decided on 03.03.2022.
 13. In re: News item published in Times Now News dated 23.02.2021 titled “Karnataka: Six killed in quarry blast in Hirenagavalli, Chikkaballapur”, O.A. No. 59/2021 decided on 22.04.2022.
 14. In re: News item published in The Hindu dated 23.02.2021 titled “Two dead, 5 missing in fire at UPL Plant”, O.A. No. 60/2021 decided on 14.12.2021.
 15. In re: News item published in The Times of India dated 28.02.2021 titled “Delhi : Man charred to death as illegal factory catches fire”, O.A. No. 65/2021 decided on 31.08.2021.
 16. In re: News item published in The Hindu dated 14.03.2021 titled “Safety lapses led to reactor blast at pharma unit”, OA No. 79/2021 decided on 31.08.2021.
 17. In Re: News item published in the “Indian Express” dated 04.11.2020 titled “Ahmedabad: Nine killed as godown collapses after factory blast”, OA No. 258/2020 decided on 23.03.2021.
 18. In re: News item published in The Times of India dated 08.06.2021 titled “18, mostly women, killed in fire at Pune chemical unit”, OA 130/2021 decided on 01.02.2022.
 19. Rakesh Suresh Chandra Kapadia v. Gujarat Pollution Control Board & Ors., OA No. 31/2021 (WZ), decided on 08.11.2021.
 20. In re: News item published in The Hindustan Times dated 17.06.2021, titled “Blast in firecracker unit in Maharashtra’s Palghar, at least 10 injured”, OA No. 134/2021 decided on 25.06.2021.
 21. In re: News item published in The Indian Express dated 12.07.2021 titled “Six killed in factory fire: Owner held, raids on to nab second accused”, OA No. 171/2021 decided on 07.09.2021.
 22. In re: News item published in The Indian Express dated 07.01.2022 titled “Gujarat: At least 06 dead, 20 sick after gas leak at industrial area in Surat”, OA No. 05/2022 decided on 18.01.2022.
 23. In re: News item published in India Today dated 26.12.2021 titled “7 dead in boiler explosion at noodle factory in Bihar’s Muzaffarpur, probe ordered”, OA No. 02/2022 decided on 22.04.2022.
 24. In re: News item published in The Economic Times dated 21.12.2021 titled “3 dead, 44 injured in flash fire at IOC’s Haldia refinery”, OA No. 440/2021 decided on 07.01.2022.
 25. In re: News item published in The Tribune dated 22.02.2022 titled “7 killed in blast at firecrackers factory in Himachal Una”, OA No. 143/2022 decided on 08.03.2022.
 26. In re: News item published in Hindustan Times dated 05.03.2022 titled “Bhagalpur: 14 dead in firecracker unit blast”, OA 198/2022 decided on 27.05.2022.
 27. In re: News item published in The Times of India dated 12th April, 2022, titled “Six killed in chemical factory blast in Gujarat”, OA No. 272/2022 decided on 12.04.2022.
 28. In re: News item in NDTV dated 14.04.2022 titled “6 killed, 12 injured after fire breaks out at Andhra Pradesh Pharma Unit”, OA No. 284/2022 decided on 20.04.2022.
 29. In re : News item published in Business Standard dated 09.02.2023 titled “Blast at JSPL’s Raigarh plant kills two workers, two others injured”, OA No. 110/2023 decided on 28.02.2023

for recovery of compensation. The State may review its vigilance and regulatory regime to prevent such incidents in future.”

17. In the above matter, the Tribunal had awarded compensation of ₹20 lakhs to the family members of the deceased and ₹2 lakhs to the injured persons finding that the originally awarded compensation amount of ₹4 lakhs in respect of each death could not be considered to be adequate by any standard, even on *ad hoc* basis and in absence of particulars of loss of earning, compensation in such cases has to be at least ₹20 lakhs for each death. The Tribunal has also noted its earlier judgments taking the same view.

18. The Tribunal in OA No. 66/2022 in the matter of **K. Saravanan v. State of Tamil Nadu**, vide order dated 16.01.2023 had taken note of the norms of payment of compensation in para 7(b) as under:-

“.....

b. Norms for compensation

1. *The compensation that is payable for victims of the tragedy could never be arbitrary. The need to compensate or right to secure compensation could themselves be not a matter of debate at all. Only the scale of compensation and the persons who would become liable to pay the compensation will require to be appraised.*
2. *There are several compensation regimes for deaths and injuries and different enactments which are dis-similar and grossly variant. The Workmen Compensation Act, which is surely applicable, provides compensation that will have scales of compensation determined on the age and the income of the workman. The liability shall be on the principal employer. Here the problem is that the licensee has sub-leased the premises to three different persons whom we have named above but have not gathered statements from any one of them since they appear to be in judicial custody after arrest, pending investigation into criminal offences instituted against them.*
3. *The Public Liability Insurance Act casts an absolute liability, caps the entitlement to a paltry sum of Rs.50,000/- for death and Rs.25,000/- for grievous injury. It cannot be efficacious to look for relief under the said Act.*
4. *The scales of compensation under different enactments for transport accidents as in Carriage by Air Act, Railways &*

Motor Vehicles Act are different. In the first three enactments set out, there is absolute liability and the compensation ranges between Rs.8 lakhs and Rs.15 lakhs. The Motor Vehicles Act contemplates three regimes: absolute liability under Section 140, prescribing Rs.2 lakhs for death, Rs.50,000/- for grievous injuries and compensation up to Rs.800,000/- under a structured formula of strict liability norm under Section 163A. Just compensation under Section 166 is what is most scientific and driven essentially through two decisions in Sarla Varma Vs. DTC - (2009) 6 SCC 121 and as modified by National Insurance Company Vs. Pranay Sethi - (2017) 16 SCC 680. The compensation is determined based on a multiplier formula which will be applied against the multiplicand that is quantified as the likely contribution to the family by the deceased victim. The conventional heads of claims, such as, loss to estate, loss of love and affection, loss of consortium towards spouse, funeral expenses are all added. In the amendment contemplated by Amendment Act 32 of 2019, the minimum threshold amount that will become payable shall be not less than Rs.5 lakhs for fatal accident and Rs.2 lakhs for grievous injuries.

5. *In traumatic accidents such as bomb blasts or fire accidents due to electrocution or terrorist activities, public law remedies have been resorted to, where the compensation shall not always be made to depend on the age of the victims and the number of dependents. They are invariably fixed sums within the broad age brackets, such as persons less than 20 years of age and above the said age limit. In MCD Vs. Uphaar Tragedy Victims Association - (2011) 14 SCC at page 481 - the compensation was fixed at Rs.10 lakhs in the case of those aged more than 20 years and Rs.7.5 lakhs to those aged less than 20 years and compensation of Re.1 lakh was awarded to each of the injured victims. The amount carried interest at 9%.*
6. *In Dabwali Fire Tragedy Victims Vs. Union of India & Others, a Division Bench of the P & H High Court provided compensation by examining the recommendations of the One-man Commission that elicited details about the age of the victims, the number of dependents of each of them, the income of the deceased persons, in amounts ranging between Rs.1 lakh and Rs.15 lakhs. The decision of the Division Bench passed in CWP 13214 of 1996 through its decision on 09.11.2009, was confirmed by the decision of the Supreme Court in - (2013) 10 SCC at page 494. In Sanjay Gupta v State of UP (2015)5 SCC 283, the Supreme Court was dealing with an incident of devastating fire that broke out in a Consumer Show held at Victoria Park, Meerut. It was organised by a private company through contractors engaged by them after seeking permission from the State Government. It resulted in death of 64 persons and grievous injuries to several others. The Commission of Enquiry found the State and its authorities to be prima facie responsible for statutory violations while granting permission and during the show. No doubt, in this case there was no violation of any law in the grant of licence, but there had been a lack of*

care to see that the premises had been used only by the persons who held the licence.

7. *In Sanjay Gupta (Supra) the Supreme Court had taken note of the compensation awarded in Uphaar Tragedy Victims Association case, decided in 2011 as well as Dabwali fire tragedy case, decided in 2013. They observed that the State Government should see that the victims did not remain in a constant state of suffering and despair and interim compensation of Rs.30 lakhs was directed to be paid, which subsequently through a direction issued in the same case and reported in (2018) SCC 634, to be distributed on pro-rata basis through the Jurisdictional District Judge.*
8. *There have been other earlier decisions of the Supreme Court when fixed sums have been awarded through public law remedy. In what was referred as boat tragedy case dealing with deaths of children due to boat capsize in MS Grewal Vs. Deep Chand Sood (2001) 8 SCC 151, the court awarded compensation at the rate of Rs 5 lakhs for each child and on the recommendations of former Chief Justice Chandrachud's report in Lata Wadhwa Vs. State of Bihar in (2001) 8 SCC at page 187—the compensation ranged between Rs.2 lakhs per child and an amount upto Rs.5 laksh per adult. To persons who had burn injuries to the extent of 10% or below, the Supreme Court awarded, in modification of the Chief Justice's Report, a minimum amount of Rs.2 lakhs.*
9. *In all the cases before us, we do not have data of the number of dependents for the deceased persons. In respect of injuries, a few have been treated as outpatients and immediately discharged while some persons are still undergoing treatment. The percentage of burns have varied from 5% to 75%. Unfortunately, among the injured victims, there have been casualties during the treatment, for on as late as 05.04.2021, the tally of dead was 27. In this accident, there is no report of any child as having been injured or dead. We confronted only a few persons who are injured and who are less than 18 years of age. We do not think it would be proper for us to assess compensation for everyone by eliciting the age, income, etc. **It will be appropriate to take the examples of lumpsum amounts awarded through public law remedies and allow for independent rights to be pursued by any victim through statutory forums prescribed under the Workmen Compensation Act, if so advised. The Workmen Compensation Act itself does not recognise any payment other than through the Commissioner and any compensation that we will recommend could be directed to be paid to the party under notice to the Workmen Compensation Commissioner so that they are not treated as amounts awarded by 'contracting out'. In the decisions which we have referred, the ex-gratia payment made by the government will not be required to be deducted. On the other hand, we believe that the State Government shall take responsibility for 10% of liability for lack of effective supervision through Inspector of Factories***

and 10% on the Central Government for their failure to implement the safety laws. Rest of the 80% shall be levied on the licensee and his lessees jointly and severally and the 10% each as we have fixed on the Central and State Governments shall be several. One of us, (Kulkarni) is of the view that on account of the quoted provision of immunity, the payment by the State and the Centre shall be by way of contribution in gratis rather than responsibility by default. Further, as per rule 2(37) of the aforesaid rules, the occupier who has the control and who is responsible for managing the affairs of premises is solely responsible for the accident for the violations of rules and conditions of the licence.

10. **Taking note of the fact that in the Uphaar tragedy victims case the maximum compensation was Rs.10 lakhs, but it related to an incident that took place in 1997, almost 25 years back, we will double the compensation for death at Rs.20 lakhs per family of each of the deceased victims and Rs.15 lakhs to persons who have burns in excess of 50% and Rs.10 lakhs for persons who have burns from 25 to 50% and Rs.5 lakhs for persons who have injuries between 5 to 25%. Victims who were treated as outpatients and who had but minor degree of burns or other forms of simple injuries shall be paid Rs.2 lakhs. The amounts shall be directed to be paid within the time the Tribunal may set and direct a further liability of interest at 12% p.a. for default of payment. The compensation is not merely a financial reparation for the loss of lives and injuries that have restitutive attributes but also designed to be punitive for the criminal negligence in carrying out hazardous activities in brazen violation of several laws that we have outlined above. The compensation amounts must necessarily therefore, be higher than what could occasion in a straightforward case of granting compensation as a welfare measure such as under the Workmen's (Employees') Compensation Act.**
11. *The amounts on the same scales could be made also to victims of accidents in the same district just before and after our visit*

XIII. REMEDIAL MEASURES TO PREVENT ACCIDENTS

Sl No.	Activity	At whose instance
1	Video clips of safety through whatsapp and mobile devices apart from periodical workshops imparting norms of safety to be circulated to all employees	Central Government-Explosives experts State government-Industrial safety
2	Strict vigilance to ensure conformity as regards working only in sheds and not in open spaces	PESO and District Revenue Authority
3	Drone surveillance of various sheds	PESO and District Revenue Authority
4	Submit the compliance of the occupier once in a six months or quarterly basis and mandated to be	Manufacturer/ Licensee

	<i>uploaded on the public domain on the website of the respective regulatory agency.</i>	
5	<i>Permanent closure of sheds which have in the past been found guilty of breaches.</i>	<i>Licensing authority</i>
6	<i>Punitive fines of not less than Rs. 50 lacs for instances of violations of conditions of license such as grant of lease, sublease, employment of more personnel than authorised, use of banned chemicals etc.</i>	<i>Licensing authority</i>
7	<i>Public liability insurance for all factories to be made obligatory.</i>	<i>Collector</i>
8	<i>Group insurance providing for higher compensation of not less than Rs. 5,00,000 than the limit hitherto observed for Rs. 50,000.</i>	<i>Licensing authority</i>
9	<i>Existing manpower of the various regulatory authorities to be strengthened in order to have periodical post clearance monitoring and ensure better compliance</i>	<i>Central government State Government</i>
10	<i>Defaulting industries need to be immediately inventoried and regulated within a time frame</i>	<i>Revenue Division of the Collectorate</i>
11	<i>Firecrackers' manufacturing and bulk storage facilities under the ambit of Consent Management within specified time frame as mandated</i>	<i>Tamil Nadu Pollution Control Board</i>
12	<i>Occupational Health surveillance i.e., periodical health check-up of the employees</i>	<i>Directorate of Industrial Safety and Health</i>
13	<i>Fire-fighting facilities such as dry powder extinguisher, soda ash, limestone etc. are in place to handle the accident in the Fireworks Industry/metal-based fire accident.</i>	<i>State Fire Services</i>
14	<i>Provision for appropriate clothing, gloves, and footwear</i>	<i>Licensee</i>
15	<i>Increased automation that avoids physical handling of dangerous chemicals and substances</i>	<i>Industrial Entrepreneurs/ Dept. of Industries & Commerce</i>
16	<i>Through CSR funds of the industries located in the district, more focus should be given to the development of education to the local communities and their upliftment.</i>	<i>Licensing authorities For MSMEs & Factories Ministry of Commerce/ Company Affairs</i>
17	<i>Crisis Management System and Co-ordination Committee constituted shall meet periodically and review effective monitoring mechanism and suggest measures for prevention and recurrence of such accidents.</i>	<i>Central Government, State Government and District Collector</i>
18	<i>As per section 9B of Explosive Act 1884 punishment for certain offences given is very moderate. The same requires legislative review for greater stringency.</i>	<i>Legislature</i>
19	<i>Since the unit in which the accident occurred is no more in a state to take manufacturing activity, the licence granted by PESO, NOC granted by District Authorities, Arms Act license for sulphur, factories Act license shall be cancelled.</i>	<i>The respective licensing authorities</i>
20	<i>The workers who are engaged in most hazardous operations viz. mixing, filling of chemicals, colour pellets making shall be certified after training and those alone shall be employed. The unit shall not functional unless these workers are certified.</i>	<i>Licensees/ employers</i>
21	<i>To monitor the ambient air quality in all clusters of firework factories, minimum of two Continuous Ambient Air Quality Stations shall be installed, through which impact on environment due to incidental explosion can be quantified.</i>	<i>Tamil Nadu Pollution control Board</i>

”

19. Having regard to the criteria which has been laid down by the orders of the Tribunal and considering the fact that in the present case also death of five children has taken place on account of the drowning in the pits dug-up by the respondent nos. 5 & 6 while illegally extracting soil beyond the permissible limit, the said respondent nos. 5 & 6 are liable to pay compensation to the extent of ₹20 lakhs to the family members of each deceased children and ₹2 lakhs to the injured. In the incident involving the respondent no. 5, M/s Maa Bhagwati Brick Kiln, three children had died, therefore, respondent no. 5 is liable to pay compensation of ₹ 20 lakh to family members of each deceased children. In the incident involving the respondent no. 6, M/s. Shree Ram Brick Kiln, two children had died. M/s. Shree Ram Brick Kiln has provided ₹1 lakh compensation each to the family of two deceased children, therefore, now it is liable to pay ₹19 lakhs each to the family members of each deceased children.

20. We are to direct that in terms of the above judgement, the amount will be disbursed at the first instance by the State Government then it will be open to the State Government to recover the same from the respondent nos. 5&6, respectively.

21. Let the above payments be made by the concerned District Magistrate to the family members of the victims within a period of two months from today and action taken report be submitted before the Registrar General of the Tribunal within three months.

22. OA is accordingly disposed of.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

April 18, 2024
Original Application No. 604/2023
JG/AVT