* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 05.07.2013

% Judgment delivered on: 11.09.2013

\+ **W.P.(C) 5812/2011**

TASKINUDDIN & ORS ..... Petitioners
Through: Mr. M. Sufian Siddiqui, Rakesh Bhugra, M. Tabishzia, Advocates

versus

STATE (NCT OF DELHI) & ANR ..... Respondents
Through: Mr. Dhanesh Relan, Advocate for respondent No.1.
Mr. G.S. Singh, Advocate for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition under Article 226 of the Constitution of India has been preferred by the petitioners for issuance of an appropriate writ, order or direction, directing the respondents to pay the petitioners suitable amount of compensation with interest, for loss of lives and injuries suffered in a tragic fire incident in a factory/ business premises of respondent No.2.

2. An unfortunate fire incident took place on 25.01.2011 in the premises of M/s Amazing Creation Garment Export Factory at Tughlakabad area of South Delhi, where 14 workmen died and 5 other workmen were injured. The FIR of the said incident was registered on 26.01.2011 with PS Govindpuri, u/s 287,337,338,304-A IPC as FIR No 23/2011.

3. Petitioner no 1 is the father of the deceased workman Amir Siddiqui, petitioner no 2 is the husband of the deceased workman Lalita Devi, petitioner no 3 is the father of deceased workman Shabbo, petitioner no 4 is the father of the deceased workman Mohd. Nizamuddin, petitioner no 5 is the husband of deceased workman Suman Devi, petitioner no 6 is the father of the deceased workman Mohd. Rais , petitioner no 7 is the father of the deceased workman Alam, and petitioner no 8 is the injured workman Rizwan in person. The deceased workmen along with petitioner no 8 were working as "helper" with M/s Amazing Creation, dealing in the manufacture and packing of garments and export of various type of garments – according to the petitioners and, dealing in dry cleaning, according to respondent No.2. According to the petitioners, the duties performed by the workmen included the acts of thread cutting, ironing, and chemical washing of the garments for export.

4. The respondent no 1 is the State (NCT of Delhi) and respondent no 2 is the owner of the factory, M/S Amazing Creations Co, Mr. Shamim Khan.

5. It is the case of the petitioners that on the fateful day of the fire accident, all the deceased workmen and the injured workmen were working on the fifth floor of the factory, when suddenly the boiler in the hall area of the said floor burst, resulting into a massive fire. Due to highly inflammable

liquid being stored near the boiler, the fire spread rapidly - engulfing the area where the workers had been working. The petitioners further allege that due to the narrow staircase, and placement of generator near the staircase, the workmen could not escape from the fire. Moreover, the walls and roof of the floor were made of fibre sheet, which aggravated the fire, trapping all the workmen in its embrace. The petitioners claim that the loss of life and injuries to the injured has resulted in severe impairment of the fundamental right to life guaranteed by Article 21 of the Constitution of India, and the said accident took place due to the acts and omissions of the respondents.

6. Ld Counsel for the petitioners submit that the respondent no 1 i.e the State, NCT of Delhi has miserably failed to discharge their statutory duties by not preventing the factory owner, respondent no 2 from running the said factory in flagrant violation of all statutory laws relating to fire prevention, building bye laws, labour laws etc which resulted into the deaths and injury of the workmen.

7. Ld counsel for the petitioners further submit that even after the fire incident, the various agencies of respondent no 1 have been lackadaisical in their attitude to grant compensation for the incident, or initiate appropriate and prompt action against respondent no 2.and have, instead, been passing the buck to each other.

8. The petitioners' grievance is that they have been running from pillar to post to secure compensation from respondent no 1 and its agencies, but to no avail. The petitioners first approached the Hon'ble Chief Minister Lt. Governor of Delhi vide letter dated 11.03.2011 which was forwarded to the Deputy Commissioner, Labour, (South), Government of NCT to enquire

about the status regarding the complaints of the petitioners. The Petitioners again wrote a letter dated 14.03.2011 to the concerned authorities of respondent no 1 and further sent another complaint vide letter no 07.05.2011 to the Commissioner of Police.

9. However, there was no response from respondent no 1 and, finally, on 22.06.2011 a letter was sent by the Deputy Labour Commissioner, (South), Government of NCT of Delhi addressed to the Public Grievance Cell, Office of the Chief minister, Delhi through which it was informed to the petitioners that a notice dated 04.02.2011, and another dated 03.032011 was sent to the respondent no 2 / factory owner demanding compensation, and regarding the issuance of Recovery Certificate of compensation amount of Rs.79,74,841/- alongwith interest and penalty thereon. Via the said letter, the petitioners came to know that respondent no 1 had directed respondent no 2 to deposit a sum of Rs 5,00,000 in respect of each dead workman, and Rs 50,000 in respect of each injured workman as provisional compensation in accordance with section 4A r/w section 8 (i) of the Employees' Compensation Act, 1923 (Act).

10. The letter dated 03.03.2011 was sent by the Deputy Labour Commissioner, (South), Government of NCT to the respondent no 2, upon which the wife of respondent no 2 - factory owner filed a reply seeking four weeks time. Respondent No 1, thereafter, issued a recovery certificate dated 21.03.2011 to the District Collector requesting to initiate recovery proceedings against respondent no 2 / factory owner to recover the compensation amount of Rs 79,74,841 plus interest at the rate of 12% from

the date of the accident till the date of payment along with penalty of 50% on the principal amount of each workmen.

11. Ld counsel for the petitioners submits that an ex-gratia amount of Rs.1,00,000 was granted to the kin of the deceased workmen, and Rs 20,000 to all the injured workmen by the SDM, Kalkaji, South Delhi. All the Petitioners, except petitioner no 1& 4 have accepted the aforesaid ex-gratia compensation.

12. The petitioners submit that despite the issuance of Recovery Certificate dated 21.03.2011 - issued by the Deputy Labour Commissioner, (South), Government of NCT of Delhi/respondent no 1, no action has been taken on the same till date, and no money has been received by the petitioners till date.

13. The Ld counsel for the petitioner submits that all the petitioners are destitute persons and were dependent upon the deceased persons and therefore speedy justice should be meted to them.

14. The Ld Counsel for the petitioners submits they cannot be relegated to the remedy under the Act, because the deceased workmen died due to the negligence attributable to the respondents, and the same resulted in serious infraction of the most valuable of the fundamental rights of the deceased and injured workmen. Moreover, its a blatant case of negligence on the part of the respondents, which resulted in the aforesaid accident, and the things speak for themselves.

15. Ld counsel for the petitioner further submits that that the amount of compensation calculated under the Act is grossly inadequate and nothing but a travesty of justice. The said Recovery Certificate has also been challenged

by respondent no 2 before this court, and notice has been issued to respondent no 1. Thus, the compensation may be granted in terms of the Motor Vehicles Act,1988 (MV Act)

16. The petitioner has placed heavy reliance on a division bench judgment of this court in ***Jaipur Golden Gas Victim Association v Union of India & Ors*** [*164(2009) DLT 346 DB]* wherein compensation was granted in terms of the MV Act to the victims of the Jaipur Golden fire tragedy. In this case, the petitioners had approached the Court with the plea that a huge fire broke out in the godown of respondent no 5. In the said godown, respondent no 5 had stored a consignment of rodent killing pesticides, which contained Aluminium Phosphate and Zinc Phosphate. The officials of respondent no 5 along with fire brigade officials poured water over the fire in a bid to extinguish it. Aluminium Phosphate and Zinc Phosphate reacted with water, resulting in emission of highly poisonous Phosphine Gas which continued to emit till 7th April, 2004. Due to inhalation of the aforesaid gas, about thirty five persons living in the neighbourhood of respondent No. 5's godown were taken unwell and were rushed to the hospital with symptoms of breathlessness, pain in chest, vomiting, diarrhea, nausea and stomach ache. In all four persons died due to exposure to chemical gases that were emitted during the fire in respondent No. 5's godown. The petitioners relied upon the medical record of the deceased/injured. The court found that respondent No.5 was using the premises as a godown without any prior mandatory statutory permission. There had been violation of Section 417 of the Delhi Municipal Corporation Act. The court relied upon the DD entry and FIR lodged by the police. The court also relied upon the FSL reports

and subsequent opinion of a doctor from a government hospital, which indicated the cause of death of one of the victims.

17. The court held that not only the respondent godown owner was liable, but also respondent MCD was equally liable as it was negligent in discharging its statutory function and ensuring that citizens' right to health and pollution free environment was not infringed. The court dealt with various issues with regard to the maintainability of writ proceedings; award of monetary relief in writ proceedings; power to mould the relief in writ jurisdiction; the applicability of the principle contained in ***Rylands v. Fletcher*** *(1868) LR 3 HL 330* and in the case of ***M.C. Mehta & Anr. v. Union of India & Ors.,*** *1987 (1) SCC 395*and, *inter alia*, held as follows. Though the extract is rather lengthy, I consider it appropriate to quote the same in extenso on account of it being very relevant, scholarly and lucid.

> *"PRESENT WRIT PETITION IS MAINTAINABLE*
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> *41. As far as the maintainability of present writ petition against respondent no. 5 is concerned, it is submitted that Article* 226 *of Constitution makes no distinction between a public function and a private function. In U.P. State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors. reported in : 1999 1 SCC 741 the Supreme Court held as under:*
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> > *"27. ...When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the*

> *power conferred upon the High Courts under Article* 226 *of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances....”*

42. Moreover, in our opinion, the present writ petition is maintainable as undoubtedly respondent-MCD has been remiss and negligent in discharging its statutory obligations and in ensuring that a citizen's fundamental right to health and pollution free environment was not infringed. Consequently, present writ petition is maintainable.

MONETARY RELIEF CAN BE AWARDED IN THE PRESENT WRIT PETITION

43. As far as respondent No. 5's submission that no writ petition for money claim is maintainable is concerned, we are of the view that the same is untenable in law. ***In our opinion, the Constitution does not place any fetter on the exercise of extra ordinary jurisdiction of the Court and reliefs to be granted under such extra ordinary jurisdiction is left to the discretion of the Court in the light of facts and circumstances of each case. Moreover in the present case what has been sought is award of compensation and not payment of monetary claim.***

COMPENSATION CAN BE AWARDED IN ARTICLE 226 *PROCEEDINGS*

44. It is further well settled that proceedings under Article* 226 *of the Constitution of India, enable the courts, to reach out to injustice, and make appropriate orders, including directions to pay damages or compensation. *The Supreme Court in Dwarka Nath v. Income Tax Officer and Anr. reported in : AIR 1966 SC 81 held as under:*

> *“(4). ...This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide*

language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws in analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 *of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in T.C. Basappa v. Nagappa : 1955-1 SCR 250 : AIR 1954 SC 440 and Irani v. State of Madras : 1962-(2) SCR 169 : AIR 1961 SC 1731."*

45. Further the Supreme Court in Air India Statutory Corporation case reported in : 1997 (9) SCC 377 held that, "the Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts."

46. The concept of compensation under public law, for injuries caused due to negligence, inaction or indifference of public functionaries or for the violation of fundamental rights is well known. *In Nilabati Behera v. State of Orissa : (1993) 2 SCC 746 at page 762, the Supreme Court held as under:*

> *"17. ...a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle, which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers."*

47. In Chairman, Railway Board v. Chandrima Das reported in : (2000) 2 SCC 465 Supreme Court emphasised the obligation of the State to protect women from violence, including rape and held that this right is a part of Right to Life guaranteed under Article 21 of the Constitution. In that case, the aggrieved party was a victim of rape committed in a railway compartment. The court rejected the Central Government's disclaimer of liability, and declared that the right of the victim under Article 21 had been violated. It awarded Rs. 10 lakhs as pubic law damages. It is pertinent to mention that the court did not examine who was the

perpetrator, or what duty he owed to the Government. It was held sufficient that a wrong had occurred in a railway coach, which was under the control of the railway authorities.

48. It is pertinent to mention that this Court has also awarded compensation in writ jurisdiction in Raj Kumar v. Union of India 125 (2005) DLT 653, Delhi Jal Board v. Raj Kumar (2005) VIII AD (Delhi) 533, Chitra Chary v. DDA (2005) I AD (Del) 29, Shri Chand v. Chief Secretary (112) 2004 DLT 37, Shobha v. GNCTD : (2003) IV AD (Delhi) 492, Shyama Devi v. GNCTD (1999) I AD (Cr) Delhi 549, All India Lawyers' Union (Delhi Unit) v. Union of India : AIR 1999 Del 120, B.L. Wali v. Union of India (2004) VIII AD (Delhi) 341, Ram Kishore and Ors. v. Municipal Corporation of Delhi 2007 VII AD (Delhi) 441, WP(C) 5072-73/2005 titled as Kishan Lal v. Govt. of NCT of Delhi decided on 3rd July, 2007, Kamla Devi v. Govt. of NCT of Delhi and Anr. : 2005 ACJ 216, and WP(C) 3370/2000 titled as Master Dheeru v. Govt. of NCT of Delhi and Ors. decided on 9th February, 2009.

IN ARTICLE 226 *PROCEEDINGS, THE COURT CAN ALWAYS MOULD THE RELIEF*

49. The power of the High Courts and the Supreme Court under Article* 226 *and Article* 32 *respectively, to mould the relief so as to compensate the victim has been affirmed by the Supreme Court on numerous occasions *including Common Cause, A Registered Society v. Union of India : (1999) 6 SCC 667, Chairman, Railway Board v. Chandrima Das: (2000) 2 SCC 465, Delhi Domestic Working Women's Forum v. Union of India : (1995) 1 SCC 14, D.K. Basu v. State of W.B : (1997) 1 SCC 416 and Rudul Sah v. State of Bihar : (1983) 4 SCC 141."*

APPLICATION OF RULE IN RYLAND V. FLETCHER

50. The principle of liability without fault was enunciated in Ryland v. Fletcher reported in (1868) LR 3 HL 330. Facts of the said case were that defendant, who owned a mill, constructed a reservoir to supply water to the mill. This reservoir was constructed over old coal mines, and the mill owner had no reason to suspect that these old diggings led to an operating colliery. The water in the reservoir ran down the

old shafts and flooded the colliery. ***Blackburn J. held the mill owner to be liable, on the principle that the person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape.*** *On appeal this principle of liability without fault was affirmed by the House of Lords (per Cairns, J.) but restricted to non-natural users.*

51. To oppose the application of Ryland v. Fletcher rule the only submission advanced by respondent No. 5 before us was that running of a godown per se is not an inherently dangerous or hazardous industry and further the cause of fire could not be attributed to negligence of respondent No. 5.

52. But the fact is that ***the Rule in Rylands v. Fletcher (supra) was subsequently interpreted to cover a variety of things likely to do mischief on escape, irrespective of whether they were dangerous per se e.g. water, electricity, explosions, oil, vibralious, noxious fumes, colliery spoil, poisonous vegetation, a flagpole****, etc. (see 'Winfield and Jolowiez on 'Tort', 13th Edn. P. 425) vide National Telephone Co. v. Baker (1893) 2 Ch 186, Eastern and South African Telegraph Co. Ltd. v. Cape Town Tramways Co. Ltd. (1902) AC 3 81; Hillier v. Air Ministry (1962) CLY 2084, etc. See: Delhi Jal Board v. Raj Kumar reported in ILR (2005) Delhi 778.*

53. Consequently, in our view, the submission of respondent No. 5 that running of a godown would not attract the rule enunciated in Ryland v. Fletcher is untenable in law.

54. Moreover, in our opinion, the dispute raised with regard to cause of fire is irrelevant for attraction of the rule in Ryland v. Fletcher inasmuch as one has only to see as to whether a person has put the land to a non-natural use and whether as a consequence of such use, some damage has been caused to the public at large. In the present instance, the above test is admittedly satisfied as respondent No. 5's premises was situated in a residential area which could not have been used as a godown and further as a consequence of fire in the

> ***godown containing consignment of pesticides, gas escaped which caused loss of lives and injuries to people living in the neighbourhood. Accordingly, the rule in Ryland v. Fletcher is attracted in the present case.***
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> *APPLICATION OF PRINCIPLE EVOLVED IN M.C MEHTA'S CASE*
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> ***55. In any event, storage of chemical pesticides was certainly an inherently dangerous and/or hazardous activity and, therefore, the principle evolved by the Supreme Court in M.C. Mehta and Anr. v. Union of India and Ors. reported in : 1987 (1) SCC 395 would apply***" (emphasis supplied)

18. The Supreme Court, in ***M.C. Mehta*** (supra), held that the law has to develop with the times. The decision in ***Rylands v. Fletcher*** (supra) was rendered in the older days. The ground realities have undergone a change with industrialization. In any event, our courts are not inhibited by the rule laid down in ***Rylands v. Fletcher*** (supra). The Supreme Court held:

> ***"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.*** *Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by*

the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm ***the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not.*** *This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher (supra).*"

19. The Division Bench in ***Jaipur Golden Gas Victim Association*** (supra) further observed:

"56. A Division Bench of this Court in the case of Association of Victims of Uphaar Tragedy and Ors. v. Union of India and Ors. reported in 2003 III AD (Delhi) 321 held that where an accident occurs at an enterprise engaged in a hazardous or

inherently dangerous activity, then the said enterprise would be strictly and absolutely liable to compensate all those who are affected by the said accident and such liability is not subject to any of the exceptions which operate under the Rylands v. Fletcher Rule. In the said case, each injured was directed to be paid a compensation of rupees one lakh for mental pain, shock and agony suffered by them.

57. In fact, the Supreme Court in Union of India (UOI) v. Prabhakaran Vijaya Kumar and Ors. reported in MANU/SC/7608/2008 *: 2008 (9) SCC 527 referred to Ryland v. Fletcher rule and after pointing out its limitations, reiterated the principle of strict liability in M.C. Mehta case (supra) as under:*

> *"21. Rylands v. Fletcher (supra) in fact created a new legal principle (the principle of strict liability in the case of hazardous activities), though professing to be based on analogies drawn from existing law. The judgment is noteworthy because it is an outstanding example of a creative generalization. As Wigmore writes, this epoch making judgment owes much of its strength to 'the broad scope of the principle announced, the strength of conviction of its expounder, and the clarity of his exposition'.*
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> ***22. Strict liability focuses on the nature of the defendants' activity rather than, as in negligence, the way in which it is carried on (vide 'Torts by Michael Jones, 4th Edn. p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item***

of its overheads" (see Fleming on 'Torts' 6th Edn p. 302).

23. Thus in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

24. The basis of the doctrine of strict liability is two fold (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide 'Torts' by Michael Jones 4th Edn p. 267).

25. As pointed out by Clerk and Lindsell (see 'Torts', 14th Edn) "The fault principle has shortcomings. The very idea suggests that compensation is a form of punishment for wrong doing, which not only has the tendency to make tort overlap with criminal law, but also and more regrettably, implies that a wrongdoer should only be answerable to the extent of his fault. This is unjust when a wholly innocent victim sustains catastrophic harm through some trivial fault, and is left virtually without compensation"....

x x x x x x x x

58. In Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat reported in : (1994) 4 SCC 1 the Supreme Court held as under:

***"9. ...What is fundamental is injury and not the manner in which it has been caused**. 'Strict liability', 'absolute liability', 'fault liability, and neighbour proximity', are all refinements and development of law by English courts for the*

> *benefit of society and the common man.* ***Once the occasion for loss or damage is failure of duty, general or specific, the cause of action under tort arises. It may be due to negligence, nuisance, trespass, inevitable mistake etc. It may be even otherwise.*** *In a developed or developing society the concept of duty keeps on changing and may extend to even such matters as was highlighted in Donoghue v. Stevenson 1932 AC 562: 1932 All ER Rep 1 where a manufacturer was held responsible for injury to a consumer. They may individually or even collectively give rise to tortuous liability.* ***Since the appellant suffered loss on facts found due to action of respondent's officers both at the stage of construction and failure to take steps even at the last moment it was liable to be compensated."***

(emphasis supplied)

20. After discussing the entire law as it stands on the concept of "strict liability" the court in the above cited judgment held as under:

> *"From the undisputed facts, it is apparent that respondent No. 5 was engaged in an inherently dangerous or hazardous activity as it had stored chemical pesticides and consequently, its duty of care was absolute. Accordingly, the exceptions to strict liability as evolved in Ryland v. Fletcher rule are not applicable. Therefore, respondent No. 5 is liable to compensate the victims of the gas and fire tragedy in accordance with the strict liability principle evolved by the Supreme Court in M.C. Mehta case (supra)."*

21. The petitioner further relies on a judgment of this court in ***Kamla Devi v Government of NCT of Delhi & Anr,*** *114 (2004) DLT 57*. In this case, the court granted compensation on the death of a deceased electrician, due to an explosion caused by terrorist activity. The court further held that public law

demands, as distinct from private law tort remedy, is that crime victims be given compensation even in no fault situations by state, as it is the breach of constitutional guarantee under Article 21 of the constitution. The petitioner relies on the following paragraphs:

> ***"5. Let us see who are the persons responsible for the wrong. Primarily it is the terrorist who was assembling the bomb. Next, it is the State as it failed in living up to its guarantee that ''no person shall be deprived of his life .. except according to procedure established by law''. The State failed to prevent the terrorist from harming innocent citizens like Uday Singh. Terrorism itself is an indicia of the inability of the State to curb resentment and to quell fissiparous activities. Social malaise in itself is a reflection of the State's inefficiency in dealing with the situation in a proper manner. Apart from the general inability to tackle the volatile situation, in this case, the State agencies failed in their duty to prevent terrorists from entering Delhi. It was their responsibility to see that dangerous explosives such as RDX were not available to criminals and terrorists. The incident occurred as there was a failure on the part of state to prevent it. There was failure of intelligences they did not pick up the movement of this known and dangerous terrorist. So, it would be extremely difficult even to suggest that the State did not fail in its duty towards the late Uday Singh and his family.*** *The other players in this sad drama could be the owner of the Guest House. Did he take due care in permitting such a dangerous person to enter and reside in the guest house? Did he maintain his guest house in good repair so as to have prevented the same from collapsing under the impact of the explosion?* ***Then, the municipal officials may also be roped in. Did they inspect the property from time to time? Did they take any action if the building was in any way not in accordance with the regulations and law? Did they find the building to be structurally sound?*** *Of course, these are questions which need a thorough investigation and cannot be gone into in this writ*

petition. But, this does not mean that without these questions being answered the petitioner is to be left without a remedy.

6. A crime has been committed. A wrong has been done and a citizen has lost his life because the State was not vigilant enough. A fundamental right has been violated. But, mere declarations such as these will not provide any succour to the petitioner.

She needs to be compensated. It is too late in the day to now suggest, that in a situation such as this, the petitioner should be relegated to the ordinary civil courts to seek her tort law remedy.

7. It is true that the cases which came up before the Supreme Court related to custodial death, death of school children on a picnic, death of a passenger in a train as a result of the inaction on the part of the railway employees. In all these cases it could be said that the victims were under some sort of State custody, punitive or protective. It could be argued that Uday Singh was not in any such situation. He died as a result of a terrorist act and, perhaps, contributed, in part, due to the structural defect in the guest house building. What has the State got to do with this? I am afraid, the State has everything to do with this. The state owed a duty to protect the life and liberty of an innocent citizen such as Uday Singh. The State owes a duty to the widow (Kamla Devi) and the child (Mukesh), now that Uday Singh has been snatched away from them, that they live their lives with dignity. Compensation, in this case, would not only be a balm on their scars, it would also provide them with hope or the future. The fact of the matter is that Uday Singh lost his life on account of an act of terrorism. The State failed to prevent it. The Primary duty of the State is to maintain peace and harmony amongst its citizens. If for some reason, it is unable to put the lid on simmering discontent, then it is its duty to protect innocent citizens from harm. If it fails in this duty, then it must compensate the citizens who have been wronged."

Finally, the court culls up the following principles:

"21. The principles which emerge can be summarized as follows:-

1. Whenever an innocent citizen is killed as a result of a crime, particularly when it is an act of terror or communal violence or a case of custodial death, the State would have failed in its public duty to ensure the guarantee enshrined in Article 21 *of the Constitution.*

2. The modern trend and the international norm is to focus on the victims of crime (and their families) by, inter alia, ensuring that they are promptly compensated by the State in adequate measure under a well-laid out Scheme.

3. In India, there is no such criminal injury compensation scheme in place and the private law remedies of damages and compensation are grossly inadequate. Legislation on this aspect is not forthcoming.

4. In such a situation the High Court, in exercise of its powers under article 226 *of the Constitution can and ought to direct the State to compensate the crime victim and/or his family.*"

22. The petitioners have filed an additional affidavit in compliance of the order dated 14.03.2013 of this court in the present writ petition where they have calculated the quantum of compensation for each petitioner separately in terms of the MV Act whilst placing reliance on a Supreme Court judgement of ***Sarla Verma amd Ors v Delhi Transport Corporation and Anr,*** *(2009) 6 SCC 121*

23. Ld Counsel further submits that the respondent no 1 in the counter affidavit to the writ petition has not given parawise reply to the same. The averments made in the writ petition have not been denied by them.

24. Lastly, Ld Counsel for the petitioner has handed over in this court a copy of the ***Delhi Victims Compensation Scheme, 2011*** (The Scheme) framed by the Lt Governor of National Capital Territory of Delhi in exercise of the powers conferred by Section 357 A of the Code of Criminal

Procedure, 1973 for the purpose of providing compensation to the victims or their dependent(s) who have suffered loss or injury or require rehabilitation as a result of an offence. Ld counsel has also handed over a copy of the reply of the Delhi State Legal Services Authority (DLSA), to information sought under the Right to Information Act,2005, on the number of victims who have been granted compensation in compliance to the Scheme, and also the categories of cases in which the DLSA has granted compensation till may 2013. The Ld counsel points out from the reply that 72 victims have been compensated so far, and in 4 cases compensation has been granted in writ petitions against MCD and BSES.

25. Ld counsel has further prayed during his arguments that this court may direct the State to formulate a comprehensive Victims of Crime Compensation Scheme for timely and justifiable relief to the victims, in line with the Criminal Injuries Compensation Scheme 2001 - as prevalent in UK and other countries, in terms of the General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

26. Counter affidavit on behalf of respondent no 1 has been filed by Mr. V. S Arya , Joint Labour Commissioner, District South, Labour Department. It is admitted in the counter affidavit that on 25.01.2011, a fire accident did occur in the premises of M/S Amazing Creation Garment Factory at Tughlakabad area in South Delhi, and that an F.I.R was lodged on 26.01.2011 at P.S Govindpuri.

27. It is further stated in the counter affidavit that Employee's Compensation Commissioner had initiated a suo moto action by issuing notice dated 04.02.2011 to the employer of the M/S Amazing Creation

Garment Export Factory for depositing the amount of compensation to the tune of Rs 5,00,000 in respect of each deceased workmen, and Rs 50,000 in respect of each injured workmen within 3 days from issue of notice. Recovery Certificate dated 21.03.2011 was issued for Rs.79,74,841/- along with interest @ 12% p.a. from the date of accident till payment along with penalty of 50% of the principal amount. The respondent no.1 has objected to the application of the ***Sarla Verma*** (supra) on the ground that the formula prescribed therein is applicable only on the claims filed before the MACT, and not on the claims under the Act. Therefore, the compensation should be calculated as per the provisions of Section 4 of the Act.

28. The Respondent no 2 claims that there are disputed questions of facts involved in this case, which cannot be adjudicated on the basis of affidavits of parties - in the absence of cogent evidence and without leading evidence, and without conducting cross- examination and, therefore, the appropriate remedy would be to initiate a civil action.

29. He further states that the fire report dated 27.03.2012 has failed to ascertain the exact cause of fire and, therefore, he cannot be held liable in the absence of conclusive facts. Respondent no 2 has completely denied responsibility for the incident and has further stated that he was only running a "dry cleaning business" in the premise which is not a "manufacturing" process. As such, the provisions of the Act are not applicable. He has further asserted that no manufacturing activity was carried out in the said premises, and there was no employer-employee relationship, or master - servant relationship between him and the deceased/injured workmen. He avers that he himself is one of the victims of the accident and has filed his

medical reports to that effect. He further claims that the place of the accident has been sealed by the police/SDM for the purpose of investigation and the title deeds of the property have been seized. As such, he does not have the means to survive himself and even the State has not extended any help to him for rehabilitation and better treatment.

30. Respondent no 2 in his counter affidavit has stated that there has been a gross violation of natural justice in passing the Recovery Certificate by Commissioner, Workmen Compensation (CWC), without giving any opportunity of being heard to the respondent no 2.

31. Ld counsel for respondent no 2 has submitted that in view of the decision in ***Grid Corporation of Orissa Ltd v Sukamani Das,*** 1997 (7)SCC 298, this petition is not maintainable. In this case, respondent's husband died due to electrocution and the respondent claimed compensation on ground of negligence of appellant authority i.e GRIDCO as they failed in their duty to maintain the electricity transmission line. The appellant authority denied the liability on the ground that the wire had snapped due to thunderbolt and lightening, and not because of the negligence as proper guarding was provided for the electricity line and also pleaded that the writ petition was not maintainable because disputed questions of facts were involved. The writ petition was allowed by the High Court, but on appeal to the Supreme court, the decision was reversed. The following paragraphs from the judgement are relied on:

> *"6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article* 226 *of the Constitution. The High Court went wrong in proceeding on the*

basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioner. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 *of the Constitution is not a proper remedy…"*

32. Reliance is also placed on a judgement of this court in ***Shri Dharampal v Delhi Transport Corporation & Anr*** in *C.W.P No 1108 of 2001*, where the petitioner in the writ petition had claimed compensation of Rs 5 Lakhs each from both the respondents on account of the death of his wife due to electrocution. The petitioner had alleged negligence on the part of the respondents in failing to repair and maintain the dilapidated electric lines due to which short circuit had occurred and his wife died. The following paragraphs are relied upon:

"19. Where the compensation had been claimed on account of death and injury on the basis of constitutional wrong but not due to electrocution, the approach of the Supreme Court has been different. Some of the prominent decisions are Rudul shah V State of Bihar (1983) 3 SCR 508, Nilabeti Behera, D.K Basu v State of West Bengal (1997) 1 SCC 416 and Chairman Railway Board V Chandrima Das. However, it has been held that in cases of electrocution involving disputed questions of fact, a writ petition under Article 226 is not maintainable. it is in the electrocution cases as can be seen ...that the approach has been different.....The net result is that in cases involving claim for compensation on account of death due to electrocution , where the facts are disputed , the Supreme Court has held that a writ petition for payment of compensation is not maintainable under Article 226 of the Constitution . The remedy in such cases will obviously be only before civil court.

x x x x x x x x x x

....this court has no other option but to hold that the writ petition in the facts and circumstances which involves disputed questions of facts is not maintainable and the petitioner will have to approach the Civil Court to claim compensation for the death of his wife on account of alleged negligence of the respondents…"

33. Further, the respondent no 2 submits that respondent no 1 has not denied any allegations in the petition, and, therefore, have allegedly admitted their negligence. Consequently, they alone have the constitutional liability and obligation to pay the complete monetary compensation to the petitioners.

34. The respondent no 2 in response to the additional affidavit of claim for compensation by the petitioners, has also averred that 8 petitioners have filed the present petition , whereas 5 others have filed their cases before the Employee's Compensation Commissioner (South District), Delhi. It is

pertinent to mention here that that respondent no 2 has only provided certain case nos. that he claims are pending, and has not filed any document to show this. In the same affidavit, respondent no 2 has also denied the particulars of the petitioners with regard to their age, marital status, employment, income, salary etc.

35. The respondent no 2 also submits that a writ petition under Article 226 of the Constitution is only maintainable against the State - who have a constitutional duty and obligation to protect the fundamental rights of the people.

36. The petitioners in their rejoinder have denied having filed any claim petition under the Act, as averred by the respondent no 2 in his counter affidavit.

37. The petitioners submit that the respondent no 2 was given a fair opportunity to be heard, before issuance of the Recovery Certificate. He was, in fact, issued a show cause notice by the District Collector's office of the Deputy Labour Commissioner, South, Govt of NCT to which the respondent no 2 had replied by stating that he does not own any movable or immovable properties. Further, it is clear from the F.I.R that the accident had taken place due to the negligent acts of the respondents, *inter alia*, by not keeping the machine boiler etc in proper condition by the owner of the factory and by permitting the running of the factory premises in a highly congested and residential premises without clearances by the fire department, the municipality and the labour department.

38. The petitioners have placed on record the compensation claimed on the basis of the judgment in ***Sarla Verma*** (supra). They have also claimed

interest @ 7.5% p.a. from date of filing of the writ petition upto the date of payment in addition to costs as granted in the case of ***Jaipur Golden Gas Victims Association v UOI & Ors*** (Supra).

39. The respondent no 1, has calculated the compensation according to the provisions of the Act, as follows:

Sl no	Name of Deceased Workmen	Age	Category of workmen	Minimum wages	Relevant factor as per schedule IV of EC Act, 1923	Amount of Compensation (R.F * 50% of minimum wages)
1.	Amir (son of petitioner no 1)	19	Skilled	Rs 6448	225.22	Rs7,26,109
2.	Lalti Devi (wife of petitioner no 2)	35	Skilled	Rs 6448	197.06	Rs 6,35,321
3.	Shabbo (Daughter of petitioner no 3)	18	Skilled	Rs 6448	226.38	Rs 7,29,849
4.	Nizamuddin(Son of Petitioner no 4)	18	Skilled	Rs 6448	226.38	Rs 7,29,849
5.	Suman Devi (Wife of petitioner no 5)	20	Skilled	Rs 6448	224.00	Rs 7,22,176
6.	Rais (Son of Petitioner no 6)	18	Skilled	Rs 6448	226.38	Rs 7,29,849
7.	Mukhtar Alam (Son of Petitioner no 7)	27	Skilled	Rs 6448	213.57	Rs 6,88,549

40. Also, it has been stated that as per Section 4 A(3)(b) of the ECA, interest @ 12% is also payable.

41. It is well settled by now that a writ court can award compensation while exercising the extraordinary constitutional jurisdiction. The question has been dealt with extensively by the Supreme Court in ***Rudul Shah V State of Bihar*** *(1983) 3 SCR 508,* ***Smt Nilabati Behera v State of Orissa & Ors*** *(1993) 2 SCC 746,* ***D.K Basu v Union of India*** *(1997) 1 SCC 416,* ***Chairman, Grid Corporation of Orissa Ltd (GRIDCO) and Ors*** *(Supra),* ***Tamil Nadu Electricity Board v Sumathi and Ors*** *(2000) 4 SCC 543 ,* ***S.P.S Rathore V State of Haryana*** *(2005) 10 SCC 1* and by this court in ***Jaipur Golden*** (supra) and ***Kamla Devi*** (supra).

42. The position that emerges from the afore mentioned decisions is that at least in cases, where the relevant facts are not in dispute; there is established negligence in the acts and omissions of the respondent authority / authorities on the face of the record, and; there is consequent deprivation of a fundamental right of the petitioner, the writ court may award monetary compensation.

43. In ***Darshan & Others V Union Of India & Others,*** *200ACJ 578,* the deceased had died of drowning after falling into an open manhole. The Division bench of this court held as follows:

> *"Coming to instant case, it is one of rest ipsa liquitor, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the record in leaving the manhole uncovered. The dereliction of duty on their part in leaving a death trap on a public road led to the untimely death of Skattar Singh. It deprived him of his fundamental right under Article* 21 *of the Constitution of India. The scope and ambit of*

Article 21 *is wide and far reaching. It would, undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Accordingly, Article* 21 *of the Constitution is attracted and the petitioners are entitled to invoke Article* 226 *to claim onetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights."*

44. In the case of ***Varinder Prased v BSES Rajdhani Power Ltd and Others***, *2012(127)DRJ 630*, this court took into account its earlier decision in ***Ram Kishore v MCD*** *2007(97) DRJ 445*, to hold that a writ petition to claim compensation is maintainable under Article 226 of the constitution of India, in case there is a violation of fundamental rights. In ***Varinder Prasad*** (supra) an unfortunate boy died in an accident, when the shed of the house, where under he was playing, collapsed on him. This court in several other cases as well viz. ***Chob Singh v Govt of NCT of Delhi and Anr*** *192 (2012) DLT 100* , ***Santu Ram & Anr v State and Ors*** in *W.P. (C) 768/2009* has granted compensation.

45. In ***Subramanium and Anr V Delhi Metro Rail Corporation and Ors*** *in W.P No 5024/2007* this court held as under:

"10*….the courts in India have over a period of time unshackled its conservative approach of not entertaining causes while exercising extraordinary original jurisdiction under Article 226 of the Constitution, in such like cases. The rigour of conservatism has been relaxed, not only in the field of civil wrongs that is, torts, but also in the area of contracts where State or its instrumentalities are parties. As a matter of fact, the courts have gone to the extent of saying that it would be incorrect to state that where facts are disputed, a writ court would not have jurisdiction to entertain a petition under Article 226 of the Constitution. It is one thing to say that the court in its*

discretion may not entertain a petition in which disputed questions of fact arise for consideration, it is another thing to contend that a court does not have jurisdiction to entertain a petition which raises disputed questions of fact. The latter proposition is now discarded by the Supreme Court. [See. Smt. Gunwant Kaur & Ors. Vs. Municipal Committee Bhatinda & Ors. : (1969) 3 SCC 769 and ABL International Ltd. And Anr. Vs. Export Credit Guarantee Corporation of India Ltd. and Ors. : (2004) 3 SCC 553

10.1 The approach, with regard to civil wrongs committed by officers of the State or the instrumentalities of the State are on no different footing where claims are based on strict liability. While there is no gainsaying that, an affected person could vindicate his right qua a civil wrong committed on him, by instituting a civil suit, a claim in public law for compensation, for unconstitutional deprivation of the fundamental right to life, would also be available to him. This claim would be in addition to the claim available in private law for damages caused on account of tortious acts of the public servants. Compensation, if any, would be paid by constitutional courts for 'established infringement of rights granted under Article 21 of the Constitution'.

10.2 In this behalf, the courts have eschewed the policy of relegating an aggrieved party to a remedy of a civil suit, where there is established violation of the victim's right under Article 21 of the Constitution, on the ground that it may be long drawn and cumbersome, and at times, result in illusory relief to the victim's family. The power conferred on the court, whether under Article 32 or Article 226 *of the Constitution is exercised, where the violation of the fundamental right is gross and patent - it affects a large number of persons, or it would be unjust or unduly harsh and oppressive either on account of the poverty of the claimant or his socially and economically disadvantaged position, to relegate him to a civil action for infringement of his rights."*

46. In the present case, it is not in dispute that the near relatives of petitioner nos. 1 to 7 died, and petitioner no 8 was injured due to the

breakout of a fire while they were working in the factory premises of respondent no 2 . The occurrence of the said incident has been recorded in the FIR and subsequent charge sheet has also been filed by the police. Respondent No.1 has admitted the said incident. Even respondent No.2 has admitted the incident – as he claims that he was also injured in the said incident, though he denies his negligence and also the nature of activity allegedly found in the premises, the cause of the fire and the relationship of workmen and employer. Whether, or not, the unit was a manufacturing unit, or only a dry cleaning unit – as claimed by respondent no.2 is not at all relevant to my mind.

47. There is no dispute that the said factory/unit was being run in an illegal manner in a "low rise residential building", as is evident from the fire report. Neither respondent no 1, nor respondent no.2 have claimed that the former had permitted the use of the building for commercial/manufacturing purpose, nor respondent no.2 has disclosed that he had obtained the requisite municipal licenses or fire clearances before running his unit. It is not their claim that the activity was being run in a proper manner, and that there were checks and measures in place. The factory/unit seems to be operating from 2005 in flagrant violation of all statutory laws, rules and regulations. There is no explanation offered by the Respondent no 1 as to how an export factory, or a dry cleaning unit (as claimed by respondent no.2) storing and using highly inflammable substances was permitted to run in a residential building in a congested area. There can be no denying the fact that respondent no 1 owed a duty of care towards public, so that no action or inaction on their part causes harm to the citizens. Even after the incident,

they have not done anything substantial to provide relief to the petitioners, except for sending letters and reminders. It is absolutely clear that respondent no 1 has been utterly negligent in discharging its statutory obligations and in ensuring that the citizen's fundamental rights to life was not infringed.

48. Though from a perusal of the report of the Assistant Electrical Inspector dated 08.04.2011 it is seen that the electrical installation of the premises was found completely burnt out/ damaged, and the exact cause of fire could not be ascertained, however, from the perusal of the copy of charge sheet filed in the court of Sh Samar Vishal, MM Saket Courts, it appears that the incident has occurred due to the use and presence of a highly inflammable liquid. The relevant extract there from reads as follows:

> *" In the investigation carried out so far, it was found that the accused (respondent no 2) had been using a highly flammable liquid for washing of the prepared garments on the fourth floor of the building which did not have any proper ventilation and the 4th floor of the building was used for washing of the garments on 25.01.2011 at about 4 p.m with solvent and the solvent spread in the air and the electrical spark which came from the hydro machine in which the washed garments were being dried , caused fire which caused a big sound resulting in engulfing the workers working there and falling off the roof of the 4th floor of the building . Hence, there are sufficient evidences against the accused Shamim of Column No. 11 and the challan against him is prepared u/s 287/285/337/338/304A IPC. The case may be heard please."*

49. Further, it is clear from the FSL report no 2011/C-1123 dated 24.06.2011, that on gas chromatography examination most of the exhibits "*were found to contain residue of kerosene"* which is a highly inflammable liquid.

50. The cause of fire in the premises of respondent no.2 is of not relevance to fix the liability of the respondents. I may only refer to para 54 of the judgment in ***Jaipur Golden*** (supra) which has been extracted herein above. As observed by the Supreme Court in ***Prabhakaran Vijaya Kumar & Ors.*** (supra) (taken note of in para 57 of ***Jaipur Golden*** (supra)), strict liability focuses on the nature of the defendants activities, rather than on the way in which it is carried out. Therefore, the respondents would be liable, irrespective of their being/not being any negligence. I may, however, hasten to add that there is sufficient undeniable evidence on record to conclude that there has been immense neglect and dereliction of duty by the respondent authorities i.e. a duty of care – owed to those serving in the unit of respondent no.2.

51. Respondent no 2's contention that he being a private person, therefore a writ is not maintainable against him is unfounded. In ***Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors v V.R Rudani and Ors*** *AIR 1989 SC 1607:*

> *"The words "Any parson or authority" used in Article* 226 *are. therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied"*

52. In ***S. Radhika Sameena v S.H.O , Habbenagar Police Station , Hyderabad*** *, 1996 (4) ALD 1*, the court entertained a writ petition against a

private person and granted relief of compensation against him in the nature of mandamus. The public interest litigation concerned an innocent woman and her treacherous husband. The High Court of Andhra Pradesh directed the respondent no 4 (the husband) to pay a compensation of Rs 5 lakh provisionally estimated. Though the order was against a private person, the respondent no 1 to 3, who were public servants, were directed to ensure compliance of the order.

53. In ***Sandhu Varahala Babu and Ors v Government of Andhra Pradesh , Co operation Department and Ors*** *, 2005(5)ALT 126.* In para 35 of the said judgement the court summarized as follows:

> *" (1) Article* 226 *empowers the High Court to issue writs to 'persons' or 'authorities' to enforce ordinary rights.*
>
> *(2) An order can be issued against private persons by granting appropriate relief under Article* 226 *of the Constitution.*
>
> *x x x x x x x x x x*
>
> *(5) A writ can be maintained under Article* 226 *if there is flagrant violation of the principles of natural justice, which are required to be followed under a statute.*
>
> *(6) The power of the High Court is not confined only to issue of writs to a public authority. It can also issue directions to enforce any of the fundamental rights or for any other purpose.*
>
> *(7) The scope of Article* 226 *has been widened by maintaining the writ petition against other authorities and persons also."*

54. As noticed above, the issue stands settled by, *inter alia*, ***Jaipur Golden*** (supra). There have been several instances where high courts have issued writs against private persons when fundamental rights of a person have been violated.

55. Moreover, in the present case, the petitioners are also seeking relief against the respondent State on account of their failure to take steps to prevent the horrible incident. Had the State been vigilant, the factory/unit could not have been set up or operated in a low rise residential premises. Had the State been vigilant, fire protection mechanisms, proper fire escape, clear passages and ventilation would have been ensured. Had the State been vigilant, respondent No.2 would not have been permitted to store highly inflammable substances without license and without making proper arrangement therefor. Neither of the respondents paid heed to these aspects, which is what led to the incident. The liability of the State is coextensive with that of respondent no.2.

56. In these proceedings, this court is not examining the validity of the Recovery Certificate in question. The same is the subject matter of a separate writ proceedings initiated by respondent no.2. In my view, whatever be the outcome of the said recovery proceedings, the petitioners right to claim compensation from the respondents cannot be denied. If, eventually, the compensation found legally due against respondent no.2 is found to be higher than that awarded in these proceedings, the compensation realized in these proceedings would be adjustable.

57. Respondent no.2's next contention that he was running a Dry Cleaning business, and hence it cannot be termed as a manufacturing business, thereby excluding him from the purview of the Act, appears to be an attempt on his part to escape his liability for the said incident under the Act. I do not consider it necessary to get embroiled in this dispute, which may be resolved in other appropriate proceedings i.e. under the Act or under

the I.P.C. Prima face, though, it appears from the F.I.R that respondent no.2 was in fact running an export factory at the premises of the fire accident. The same records :

> *"…on inspecting the house it was found that in the house, the work of cutting clothes, pressing and finishing used to be carried out"*
>
> *(Translated from Hindi)*

58. Further, a copy of the reply dated 25.07.2011 sent by the Additional Deputy Commissioner of Police (South East), New Delhi to Deputy Secretary, Delhi Minorities Commission has been filed in this court, also shows that he may have been running an export factory. The reply says:

> *" Enquiry has been got conducted through ACP, Kalkaji which revealed that on 25.01.2011 at about 5.00 PM an incident of fire in Gali no 8, RZ H. No. 58-1, TKD Extension, New Delhi took place where a garment export factory in the name and style of Amazing Creations was being run. Immediately all the 19 injured persons were evacuated and sent to Safdarjung and JPN hospitals in Private and PCR vans . ..During enquiry it revealed that 14 persons succumbed to their burn injuries at the JPN & safdarjung hospital….*
>
> *….The establishment is registered with Ministry of Commerce and Industry vide Certificate of Import/Export Code dated 07.06.2010 … The factory was established in 2005 as per certificate issued by Apparel Export Promotion Council."*

59. As noticed above, to grant compensation in these proceedings, it is not necessary to determine the issue whether a garment manufacturing unit or a dry cleaning unit was being run in the premises. The liability would, in either case, fall on the respondents since they have failed to exercise due care and caution that they were obliged to, under the law.

60. In any event, it is clear that respondent no 2 was carrying out an inherently dangerous/ hazardous activity and, therefore, the principle of "strict liability" evolved by the Supreme Court in ***M.C Mehta*** (supra) and followed in ***Jaipur Golden*** (supra) would apply. In light of the above discussions and precedents, this writ petition for grant of compensation is maintainable against both the respondents, and the petitioners are entitled to grant of compensation for the undeniable right to life of the near relatives of the petitioner nos.1 to 7 and of petitioner no.8.

61. Now, I proceed to consider the method of calculation to be applied for the computation for quantum of damages to be granted in the present case.

62. In ***General manager, Kerala State Road Transport Corporation, Trivandrum v Mrs Susamma Thomas & Ors*** *(1994) 2 SCC 176*, the Supreme Court held as under:

> "*The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales." All this means that the sum awarded must be fair and reasonable by accepted legal standards.*"

63. The Supreme Court in ***Sube Singh v State Of Haryana*** *AIR 2006 SC1117* has held that :

> "*It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law*

> *remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of Code of Civil Procedure"*

64. In ***Oriental Insurance Co Ltd v Ram Prasad Varma & Ors*** *2009(2) SCC 712,* the Supreme held that "just*"* must be given its logical meaning. Though, the compensation awarded cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

65. The Supreme court in ***Association of Victims of Uphaar Tragedy and Ors*** *AIR 2012 SC 100* held:

> "*Therefore what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more."*

66. The accident in question is not covered by the provisions of the MV Act. In my view, the MV Act cannot, therefore, be invoked for purpose of calculation of damages to which the petitioners may be entitled to. The decision in ***Sarla Verma*** (supra) was rendered in a case arising under the MV Act. The petitioners have not shown as to how the principles for computation of damages under the said Act can be extended to claim for compensation when the same is not arising out of accident involving a motor vehicle. I may note that in ***Jaipur Golden*** (supra), the petitioners had claimed compensation in accordance with the MV Act. However, it appears that there was no opposition to the said manner of computation of damages and the court awarded compensation as framed by the petitioners. Pertinently, in ***Kamla Devi*** (supra), this court applied its mind to the

aforesaid aspect from para 17 onwards. This court referred to ***U.P. State Road Transport Corporation v Trilok Chandra*** *(1996) 4 SCC 30*, wherein the Supreme Court had observed that calculation of compensation and the amount worked out in the Schedule suffers from several defects and that neither the tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. This court, therefore, held that the structured formula given in the 2nd Schedule to the MV Act cannot be relied upon as a ready reckoner, but this does not mean that it has to be debunked altogheter. For instance, it may be used for arriving at the appropriate multiplier.

67. The court applied the principle that the petitioner would be eligible to receive a standard compensation for the fatal injury caused to the deceased. Over and above the same, the petitioners were held entitled to receive additional compensation in respect of loss of dependency.

68. In ***Kamla Devi*** (supra), the court held as under:

> *5. The compensation to be awarded by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:-*
>
> *(a) `standard compensation' or the so-called `conventional amount' (or sum) for non-pecuniary losses such as loss of consortium, loss of parent, pain and suffering and loss of amenities; and*
>
> *(b) Compensation for pecuniary loss of dependency.*
>
> *6. The `standard compensation' or the `conventional amount has to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee. Keeping this in mind, in case of death, the standard compensation in 1996 is worked out at Rs. 97,700/-. This needs to be updated for subsequent years on the basis of the Consumer Price Index for*

Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of India.

7. Compensation for pecuniary loss of dependency is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MV Act, 1988 cannot be relied upon, however, the appropriate multiplier can be taken there from. The multiplicand is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency.

8. The total amount paid under 6 and 7 above is to be awarded by the Court along with simple interest thereon calculated on the basis of the inflation rate based on the Consumer Prices as disclosed by the Government of India for the period commencing from the date of death of the deceased till the date of payment by the State.

9. The amount paid by the State as indicated above would be liable to be adjusted against any amount which may be awarded to the claimants by way of damages in a civil suit or compensation under the Criminal Procedure Code."

69. Applying the aforesaid principle, the compensation to which each of the petitioners would be entitled would be as follows:

70. The standard compensation has to be awarded by taking the base amount as Rs 50,000/- in 1989, as mentioned in ***Kamla Devi(***supra). The said amount would require to be adjusted for Jan 2011 when the deaths of the near relatives of Petitioner no 1 to 7 occured , based on the Consumer Price Index for Industrial Workers (CPI –1W), published by Labour

Bureau, Govt. of India (Bureau). The average CPI (IW) for the year 1989, (in which as afore mentioned, the standard compensation was of Rs 50,000) is 171 with the base year being 1982 (having being indexed at 100). The said index chart with base year 1982, ranges from 1988 to 2005. Indexes from 2006 onwards have been fixed by the Labour Bureau with base year 2001 (having being indexed at 100). To integrate i.e to link the new series of CPI (IW) with base year 2001 and previous series , with base year 1982, the Bureau has fixed the linking factor at 4.63. Therefore, to arrive at index numbers from 2006 onwards with base year 1982, the original values as provided for in the new series are multiplied with the link factor of 4.63.

71. In the present case, the index for the year January 2011, is 188 (with base year 2001). To arrive at the index value for January 2011 with base year 1982 , the said index of 188 is multiplied by 4.63 , which comes to 870. Therefore, the standard compensation, as per inflation corrected value comes to (50,000×870/171)= Rs 2,54,385.97

72. As far as the pecuniary compensation is concerned, the appropriate multiplier is taken from the MV Act, the last drawn wages as claimed by the petitioners no 1 to 7 is used for calculating the multiplicand. It is relevant to mention here that respondent no 2 has simply made a bald denial of the last drawn wages without putting anything on record to prove the contrary.

73. Accordingly, the total compensation as per ***Kamla Devi*** (supra) is calculated as under:

	Petitioner No.1	**Petitioner No.2**	**Petitioner No.3**	**Petitioner No.4**	**Petitioner No.5**	**Petitioner No.6**	**Petitioner No.7**
Relation with deceased	Father	Husband	Father	Father	Husband	Father	Father
Name of the deceased	Amir	Lalti Devi	Shabbo	Md. Nizammuddin	Suman Devi	Rais	Mukhtar Alam
Last drawn salary of the deceased	Rs7200	Rs5260	Rs5200	Rs7200	Rs5200	Rs7200	Rs7200
Annual income	Rs7200 × 12 = Rs86,400	Rs5260 × 12 = Rs63,120	Rs5200 × 12 = Rs62,400	Rs 7200×12=Rs 86,400	Rs5200 × 12 = Rs62,400	Rs7200 × 12 = Rs86,400	Rs7200 × 12 = Rs86,400
Age	19 years	35 years	19 years	18years	20years	18years	27years
Multiplier	16	17	16	16	16	16	18
Dependents	Father and Mother	Husband and 2 Daughters	Father and Mother	Father and Mother	Husband	Father and Mother	Father and Mother
Family Units ^	6	6	6	6	4	6	6
Value of each unit *	86,400/6= 14,400	63,120/6= 10,520	62,400/6= 10,400	86,400/6= 14,400	62,400/4= 15,600	86400/6=14,400	86400/6=14,400
Multiplicand #	86,400 - (2×14,400) = Rs57600	63120 - (2 ×10,520) = Rs42,080	62400 - (2 × 10,400) = Rs 41,600	86400 - (2 × 14,400) = Rs57,600	62400 - (2 × 15,600) = Rs31,200	86400 - (2 × 14,400) = Rs57,600	86400 - (2 × 14,400) = Rs57,600
Pecuniary compensation @	16 × 57600 = Rs9,21,600	17 × 42,080 = Rs7,15,360	16 × 41,600 = Rs6,65,600	16 × 57,600 = Rs9,21,600	16 × 31,200 = Rs4,99,200	16 × 57,600 = Rs9,21,600	18 × 57,600 = Rs10,36,800
Total compensation $	Rs2,54,386 + Rs9,21,600 = **Rs11,75,986**	Rs2,54,386 + Rs7,15,360 = **Rs9,69,746**	Rs2,54,386 + Rs6,65,600 = **Rs9,19,986**	Rs2,54,386 + Rs9,21,600 = **Rs11,75,986**	Rs2,54,386 + Rs4,99,200 = **Rs7,53,586**	Rs2,54,386 + Rs9,21,600 = **Rs11,75,986**	Rs2,54,386 + Rs10,36,800 = **Rs12,91,186**

^ **Family Units:** 2 units for each adult member and 1 unit for each minor member
* **Value of Each unit:** Yearly income /total number of family units
\# **Multiplicand:** Annual income of the deceased – Amount he would have spent on himself
@ **Pecuniary Compensation:** Multiplier × Multiplicand
$ **Total compensation:** Standard Compensation + Pecuniary Compensation

74. I may observe that the amount granted to petitioner no 3 and petitioner no 7 is more than what they have claimed. The said discrepancy has arisen because , in their claim, they seem to have taken the wrong multiplier while calculating the amount of compensation.

75. As far as the quantum of compensation to be granted to petitioner no.8, who has been injured in the accident, this court will base its compensation based on the guidelines provided by the Supreme Court in ***Raj Kumar V Ajay Kumar & Anr 2011*** *(1) SCC 343*, though dealing with a case of motor accident, the court considered the "General Principles relating to compensation in injury cases". It was observed as under:

> *"**General principles relating to compensation in injury cases***
>
> *5….. **The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury.** This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair : AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) Ltd. : 1995 (1) SCC 551 and Baker v. Willoughby 1970 AC 467.*
>
> *6. The heads under which compensation is awarded in personal injury cases are the following:*
>
> *Pecuniary damages (Special Damages)*

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7.Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) --involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on

account of permanent disability - item (ii)(a). We are concerned with that assessment in this case."

76. In ***Oriental Insurance Company Ltd v V.S Vijay Kumar Mittal*** , *2008 ACJ 1300* ,this Court discussed the principles relating to the award of non-pecuniary compensation towards pain and suffering, loss of amenities of life and disfiguration. This Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the case of permanent disability and held that the courts have awarded about ₹ 3,00,000/- under the heads of non-pecuniary damages for permanent disability of 50% and above. The findings of this Court are as under:-

"*10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.*

11. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

12. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and non pecuniary

damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Whereas, non pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

13. Pecuniary loss may include the following:

(i) Special damages or pre-trial pecuniary loss.
(ii) Prospective loss of earnings and profits.
(iii) Medicinal expenses.

(iv) Cost of future care and other expenses.

14. Non pecuniary loss may include the following:

(i) Pain and suffering.
(ii) Damages for mental and physical shock.
(iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
(iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
(v) Disfigurement.
(vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life".

77. This court has also taken note of the above judgements and granted compensation in accordance with the same in ***Harinder Kaur v Add. District and Sessions Judge and Ors*** *2012 (131)DRJ 63.*

78. Therefore, Petitioner no 8 is granted the following amounts under Pecuniary and non pecuniary damages:

A	**PECUNIARY DAMAGES (SPECIAL DAMAGES)**			
	(i) Expenses related to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure	(a)during hospitalization (w.e.f. 25.01.2011 till 02.02.2011)	Rs 5000	
		(b)at home (45 days) (w.e.f. 03.02.2011 till 20.03.2011) 500x45	Rs 22,500	
		(c)Special Diet/ Nourishing Food	Rs10,000	
	(ii) Loss of earning during treatment at home and hospital (9 days + 45 days) = Rs.7200/30x54 (Age: 20 Years; Last drawn Salary: Rs 7200 p.m; Annual Income= Rs 86,400; Multiplier: 16)		Rs. 12,960/-	
	(iii) Loss of future earning on account of permanent disability (20% of Annual income x multiplier) = Rs. 17280x16		Rs. 2,76,480/-	
			TOTAL PECUNIARY DAMAGES	Rs 3,26,940
B	**NON PECUNIARY DAMAGES (GENERAL DAMAGES)**			
	(i)Damages for pain, suffering and trauma as a consequence of injuries		Rs1,00,000/-	
	(ii)Loss of amenities (and/or loss of prospects of marriage)		Rs1,00,000/-	
	(iii)Loss of expectation of life (shortening of normal longevity)		Rs1,00,000/-	
			TOTAL NON-PECUNIARY DAMAGES	Rs 3,00,000/-
A+B	**TOTAL COMPENSATION UNDER BOTH PECUNIARY AND NON-PECUNIARY DAMAGES**			**Rs 6,26,940/-**

79. It is pertinent to mention here that the petitioner no 8 has put nothing on record to substantiate his claims under A(i). Claim under A(ii) and A (iii) is calculated based on his last drawn wages .However, following claims has not been objected to by the respondents, therefore, the same is taken as it is claimed. Though as can be ascertained from the F.I.R that he has suffered 80%-90% burn according to MLC No 11256/11, and therefore, the compensation under A(iii) should be higher, if we assume, that the effect of the disablement on the petitioner on his actual future earning capacity should be at least more than 50%. But the petitioner himself has claimed *"20% presumptive permanent disability taken on account of 80%-90% burn injuries as per F.I.R"*, it is granted accordingly. The Court in ***Vijay Kumar Mittal*** *(supra)* cited various examples from decided cases wherein non pecuniary damages had been awarded in varied circumstances. These instances show that in cases of bodily injury, the non pecuniary damages have varied between Rs 2.80 lakhs to Rs 4 lakhs. Thus, the claim of petitioner no 8 under non pecuniary damages seems to be justified and the same is awarded accordingly.

80. It goes without saying that the same is without prejudice to the petitioners to claim additional compensation, if they are so entitled in law, in other appropriate proceedings. The compensation that may have already been received, or that may be realized under this judgment would be adjusted against any further compensation to which they are held entitled to. It shall be open to the petitioners to realize the compensation from either of the respondents.

81. The petitioners shall be entitled to an interest @7.5% p.a from the date hereof till the date of realization of the amount.

82. So far as the petitioner's plea that this court should direct the framing of a scheme for compensation to the victims is concerned, I am not inclined to issue any such direction in the present writ petition, as I am concerned with the specific disputes raised in the present petition. If the petitioners are so minded, it is open to them to initiate appropriate public interest petition in that respect.

83. Petition stands disposed of in the aforesaid terms.

(VIPIN SANGHI)
JUDGE

SEPTEMBER 11, 2013