

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

(By Hybrid Mode)

Original Application No. 846/2022

In re: News report published in the Newspaper The Hindu dated 15.11.2022 titled **“Stone quarry collapses in Mizoram, 12 feared dead”**

Date of hearing: 28.11.2022

**CORAM: HON’BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON’BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON’BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON’BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Respondent(s): Mr. Siddhesh Kotwal, Advocate for the State of Mizoram
Mr. Aman Bhalla, Advocate for CPCB
Mr. Rajan Kumar Chourasia, Advocate for MoEF & CC
Mr. Amit Prasad & Ms. Devina Sehgal, Advocates for ABCI Infrastructure Pvt. Ltd., the Project Proponent (PP)

ORDER

1. This matter has been put up in the light of media report titled **“Stone quarry collapses in Mizoram, 12 feared dead”**, to the effect that as a consequence of collapse of slope in Hnahthial District, Mizoram, 12 persons, who were the workers engaged by ABCI Infrastructure Private Limited, died.

2. Vide letter dated 16.11.2022, the Registry gave advance notice of today’s hearing to CPCB, State PCB, Regional Officer, MoEF&CC, Shillong, Mining Department and the ABCI, Infrastructure Pvt. Ltd.-PP.

3. In pursuance of above notice, counsel have entered appearance for the PP, MoEF&CC, CPCB and the State of Mizoram. However, no written response has been filed.

4. Learned counsel for the State has made an oral statement that the PP was indulging in illegal blasting for mining for which FIR has been lodged and investigation is in progress. Further action will be taken as per law. MoEF&CC and CPCB have not taken any stand. Learned counsel for the PP has stated that compensation of Rs. 1 lakh each has been given to the deceased and payment of *ex-gratia* is awaited from the PM Relief Fund. It was a case of accident for which the PP has no responsibility.

5. We express our regret that adequate sensitivity is not shown by the authorities in dealing with human tragedy of such magnitude. Least expected from the authorities and the PP was an affidavit setting out their respective versions. In such serious issues, investigation cannot be long drawn and statutory regulators could atleast give prima facie version. It is further surprising that compensation paid to the victims is ridiculously low. Compensation ought to have been paid atleast as per scale laid down in Employees/Workmen Compensation Act, 1923 or as per *Sarla Varma Vs. DTC*¹ and *National Insurance Company Vs. Pranay Sethi*² as laid down by this Tribunal dealing with cases of such disasters.

6. As laid down by the Hon'ble Supreme Court in *M.C. Mehta v. UOI & Ors.*³, liability of owner of any hazardous commercial activities for damage is absolute and not governed by *Ryland v Fletcher* rule. This Tribunal has held⁴ that in such cases, compensation should be @ Rs. 20 lakhs in respect of each of the deceased victim on principle in *Uphaar Cinema*⁵. If the PP fails to pay such compensation, the State has to pay and recover the same from PP.

¹ (2009) 6 SCC 121

² (2017) 16 SCC 680

³ (1987) 1 SCC 395

⁴ O.A. No. 804/2022, *In re : News item published in The Indian Express dated 01.11.2022 titled Delhi : 2 dead in factory fire in Delhi's Narela*

⁵ (2011) 14 SCC 481

7. We further note the discussion on the subject in order dated 11.01.2021 in O.A. 44/2021, 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 observed as follow:-**

“xxx.....xxxx.....xxx

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 capsizing 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."

8. In view of the above, pending further orders, the State Authorities may ensure disbursement of compensation to the victims by taking such coercive measures as may be necessary against the PP failing which the State itself will be liable for payment. State may also take appropriate stringent measures against violation of law. Action to be taken by the State Authorities should include fixing responsibility for violating environment and safety norms, including in handling of explosive for blasting.

9. Further, a joint Committee to be headed by the Chief Secretary, Mizoram with other members being Regional Officer, MoEF&CC, Shillong Regional Officer, CPCB, Shillong, District Magistrate, Hnahthial, Member Secretary, State PCB, State Disaster Management Authority, Secretary, Geology and Mining Department, Mizoram, nominee of Petroleum, Explosives Safety Organization (PESO), nominee of Chief Controller of Explosive, Nagpur and nominee of IIT Dhanbad may present a factual and action taken report in the matter with recommendations to prevent such disasters in future within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The Member Secretary, State PCB will be the nodal agency for coordination and compliance. The Committee will

be free to take assistance from any other expert/institution. It may interact with the stake holders. It may particularly mention the cause of the incident, extent of damage, person responsible, remedial measures taken and measures required to be adopted to prevent such incidents. It will be free to conduct proceedings online except for the visit by the some of the concerned Members to the site, as may be decided by the Committee. It may meet within one week and prepare action plan for preparing its report. A copy of the report be placed on website of the State PCB for response of the PP or any other stake holder before the next date.

10. We also request the Mizoram State Legal Service Authority to provide legal assistance to the victims.

List for further consideration on 20.01.2023.

The District Magistrate, Hnahthial and SP may remain present on the next date by Video conferencing.

A copy of this order be forwarded to the Chief Secretary, Mizoram Regional Officer, MoEF&CC, Shillong Regional Officer, CPCB, Shillong, District Magistrate and SP, Hnahthial, Member Secretary, State PCB, State Disaster Management Authority, Secretary, Geology and Mining Department, Mizoram, Petroleum, Explosives Safety Organization (PESO), Chief Controller of Explosive, Nagpur, IIT Dhanbad and Mizoram State Legal Service Authority by email for compliance.

Adarsh Kumar Goel, CP

Arun Kumar Tyagi, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

November 28, 2022
O.A. No. 846/2022
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