

(1999) 04 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Petition No. 4837 of 1996

Dharamvir Kataria (Col.)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-04-1999

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (1999) 1 ACC 553 : (2000) ACJ 815 : (1999) 3 AD 665 : AIR 1999 Delhi 291 : (1999) 79 DLT 683 : (1999) 123 PLR 49 : (1999) 3 RCR(Civil) 481

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Mr. B.K. Aggarwal, Mr. S. Vaidyalingam and Mr. S.K. Sharma, for the Respondent

Judgement

Anil Dev Singh, J.—The petitioner, Col. Dharamvir Kataria, is the husband of the deceased Mrs. Mangla Kataria, Head of the Department of Statistics and Demography, National Institute of Health and Family Welfare (for short "NIHFW"). The first respondent is the Union of India, the second respondent is the Director of NIHFW, third respondent is Director General of Works, fourth respondent is M/s.Bharat Bijlee Ltd. and the fifth respondent is M/s. A.G. Enterprises.

2. The NIHFW, a Government organisation, built two multistoreyed Blocks of Type IV Quarters and two multistoreyed Blocks of Type V Quarters in its Campus at Munirka. The construction was carried out by the Central Public Works Department (for short "CPWD"). The residential flats were taken over by the NIHFW on June 15, 1995. Type IV and V Blocks have been provided with two numbers lifts. These lifts were installed by the fourth respondentM/s.Bharat Bijlee Limited under the supervision and direction of the CPWD. The lifts were handed over by the CPWD to NIHFW on June 13, 1996. After two days viz. June 15, 1996 the lifts were handed back by NIHFW to Electrical Division No. XIII of the CPWD for their operation and maintenance. Though the fourth respondent M/

s. Bharat Bijlee Ltd, had undertaken warranty and guarantee responsibility of the lifts, contract for their operation and day-to-day care was awarded to the fifth respondent M/s. A.G. Enterprises, w.e.f. June 26, 1996.

3. The wife of the petitioner, Mrs. Mangla Kataria, who was the Head of the Department of Statistics and Demography, NIHFV, was allotted Flat No.13 on the 4th floor of Block I (Type V Quarters) in August/September 1995. However, at the time of handing over of the flat to her, the lifts were not in operation. In this regard, she made representations to the concerned for making the lifts operational. It was only on June 13, 1996 that the facility of lifts was made available to the residents of multistoreyed Blocks of Type IV and V in NIHFV residential campus.

4. On July 4, 1996 at about 1.10 p.m. Mrs. Mangla Kataria is said to have boarded the lift situate in her block. where after she was not seen alive. Her body was discovered in the pit of the lift on July 4, 1996 at about 9.30 p.m. On July 8, 1996 CPWD appointed a Committee consisting of Mr.K. Ananthanayan, Superintending Engineer (E) Delhi Central Electrical Circle -VII and Mr.N. Nagarajan, Superintending Engineer (E), Delhi Electrical Circle-VI, CPWD to consider and submit a report on the various points, namely, probable cause of the accident, specific lapses, if any, on the part of the operating staff, malfunctioning of the lift, if any, leading to the accident, measures to be taken for preventing such accidents in future and suggestions for improving the service. Though the Committee was formally appointed on July 8, 1996, the lift was inspected by both the members of the Committee on July 5, 1996 Along with the representative from Police Station, Vasant Vihar, and M/s.Bharat Bijlee Ltd. who are the manufacturer and supplier of the lifts. The Executive Engineer, Assistant Engineer and Junior Engineer of E.Div. XIII of CPWD, who were in charge of the lift were also present Along with the Contractor, the fifth respondent M/s. A.G. Enterprises. The lift was again inspected by the Committee on July 18, 1996.

5. On July 5, 1996 the petitioner lodged a First Information Report with the Police Station Vasant Vihar in regard to the incident. On the same date, the FIR was registered u/s 304-A of the Indian Penal Code. After the investigation of the matter, charge sheet was filed against Mr.Ram Charitra Patel, Lift Operator and Mr.Ajit Sood, employee of the fifth respondent u/s 304-A of the Indian Penal Code inter-alia with the allegation that the Lift Operator Mr.Ram Charitra Patel had no proper training for rescue operations and was not suitable for the job. Investigation revealed that the operation of the lift was handed over to A.G. Enterprises and fault was found with lift operator Ram Charitra and the representatives of the fifth respondent Mr.G.N. Ojha and Mr.Ajit Sood.

6. The petitioner claims that the death of his wife resulted due to negligence of the respondents. He claims compensation from the respondents for his wife had been deprived of her life due to their alleged negligence.

7. On the other hand, the respondents rely upon the report of the Committee appointed by the Superintending Engineer, CPWD and contend that the recovery of body of Mrs. Mangla Kataria from the pit of the lift is shrouded in mystery. They suspect foul play. It is pointed out that the position of the body found in the pit does not suggest that she had fallen from the lift. The respondents claim that even if she had fallen from the lift, no tortuous liability can be fastened on the respondents as in the circumstances, the possibility is that she must have fallen in the pit due to her own negligence.

8. I have heard the petitioner and learned counsel for the respondents in detail.

9. The main questions which require determination are whether the deceased Mrs. Mangla Kataria boarded the lift and whether she fell out of the same due to the negligence of the respondents? In order to determine the questions it would be necessary to refer to the evidence which was collected by the Inquiry Committee and to the certain portions of their report. The Committee examined Sher Bahadur, Chowkidar; Ram Charitra, Lift Operator; Chandra Kishore Bajpayee, Lift Operator; C.R. Vashisht, Mechanic of the fourth respondent M/s. Bharat Bijlee Ltd.; Rakesh Gautam, JE (E), EDXIII; A.K. Ahuja, Executive Engineer (E), ECD-I; and Sarjan Singh, Executive Engineer (E), ED-XIII. The statements of these persons, as noted by the Committee, need to be noticed. These statements, as understood by the Committee, in the words of the Committee, may be set out below:-

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Sher Bahadur, Chowkidar:

"From the statement of Sh. Sher Bahadur, Chowkidar, it appears that Mrs. Kataria residing in Flat No. 13 on 4th floor had entered the building at about 1 PM and at that time the lift was functional. He has corroborated the statement of Sh. Ram Charitra, lift operator, that there was an emergency alarm from the lift shortly thereafter and he saw the lift operator going up through the stairs to the Machine Room. He had also followed the lift operator to the Machine Room and saw him rolling the lift by hand. Thereafter he has come to the ground floor.

Sh. Sher Bahadur has also corroborated the statement of the 2nd lift operator (Sh. Chander Kishore) trying to operate the lift during his shift and lift door not opening in 4th floor while functioning satisfactorily in all the other floors. He has also seen the lift being attended to by Mechanic at about 5.45 and the lift working thereafter till 6 PM when his duty came to an end. "

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Shri Ram Charitra, Lift Operator:

"From the statement of Sh. Ram Charitra, Lift Operator on shift duty at Annexure-6, it has been observed that while he was sitting on Ground Floor near control room and observing the lift at about 1.30 P.M. he heard an alarm sound

indicating that somebody was trapped in the lift. This statement is corroborated by the chowkidar Sh. Sher Bahadur in his statement at Annexure-9. From this it appears that some person was inside the lift when the lift alarm sounded.

From the statement of Sh. Ram Charitra, on hearing the emergency alarm he had immediately rushed through stairs to the machine room. While going up he had seen the lift indication as fourth floor. According to him, he had not opened the landing door and he went straight to the machine room, switched off power to the lift controller and started rolling the lift upwards after releasing the brake till it came to level with a floor. Sh. Ram Charitra, Lift Operator, explained that he could observe the lift coming in level with the floor from the machine room itself by seeing the mark on the ropes of the lift car.

Thereafter, when he came down he observed the lift to be standing at 5th floor with both the car and landing doors open and nobody being inside it, from which he had presumed that the person, who was trapped in the lift, had gone out.

From the further statement of Sh. Ram Charitra, Lift Operator, it is observed that he had brought the lift manually to the ground floor and had not operated it thereafter till completion of his duty at 2 PM. "

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Shri Chandra Kishore Bajpayee, Lift Operator:

From the statement of Sh. Chandra Kishore Bajpayee, Lift Operator, who came to duty at 2 PM on 4.7.96, he had heard about a lady having got trapped in the lift at about 1.30 P.M. and had been taken out and where after the lift was reported to be out of order. Sh. Chander Kishore also stated that at the instance of the resident of Flat No. 23 in VIth floor, he switched on the supply to the lift and operated the same from the ground floor by pressing the selector buttons of the car standing from outside the lift. He had stated that the lift door did not open on the 4th floor while the lift was functioning satisfactorily at other floors. After observing that no apparent defect/fault was present in the controller he permitted the resident of Flat No. 23 to use the lift for coming to VIth floor and that he met the gentleman at the VIth floor after he came out of the lift. Thereafter the resident of Flat No. 23 had put up a notice in English and explained to the lift operator that he is advising the other residents not to use the lift for 4th floor. Sh. Chander Kishore Bajpayee also stated in his deposition that the mechanic of M/s. Bharat came at about 5.30 P.M. and operated the lift. When he wanted to know the defect, he advised the mechanic to go to the 4th floor and he went to bring a stool. In the meantime, the lift mechanic had removed the landing door track cover by standing on the floor and handed it over to him for keeping the same in machine room and he was asked to operate the lift. According to Sh. Chander Kishore, Lift Operator, the lift was thereafter working satisfactorily in all floors and he had operated the same till the discovery of the body. No other repair appears to have been carried out either by the lift mechanic or by the lift operator during this period.

Sh. Chander Kishore Bajpayee stated that around 9 P.M. the residents of Type V Block started searching frantically for Mrs. Kataria and to the queries made to him by the residents regarding any knowledge of Mrs. Kataria, he had stated that he heard she was trapped in the lift but he is not aware whether she went to her house or elsewhere. He stated that during the continued search one of the residents enquired him about any availability of space above or below the lift where a person can be found. For this he had stated that space is available and that can be seen by taking the lift to the 1st floor. Thereafter he had taken the lift to the 1st floor and opened the ground floor landing door with the help of the special key. On opening the landing door, he along with other residents saw the body of the lady with face down. She was clutching some letters in one hand while her hand bag was lying opened near her head. This has been corroborated by the Director NIHFV during the discussions with her (refer Annexure-5). "

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Shri C.R. Vashist, Mechanic:

"Sh. C.R. Vashisht, mechanic of M/s. Bharat Bijlee has stated that on 4.7.96 at about 4.30 PM, he got a complaint from his service centre regarding lifts of Type IV Block and while he was attending the same at about 5.30 PM, he was asked to attend the malfunctioning of lift No.1 in Block I of Type V also. As he came to this Lift, he was told that though the lift is functioning, there is some noise in the 4th floor landing door and that the lift had also got stuck up during the day. On examination on 4th floor he found that the top track cover was rubbing against the gauge plate and after he removed the said cover plate, he gave it to the lift operator for keeping it in the Machine Room.

The statement of Sh. C.R. Vashisht, Mechanic of M/s. Bharat Bijlee corroborates that there indeed was some problem in opening of the doors of 4th floor which had been rectified temporarily by removal of the track cover and no other defects were noticed in the lift operation."

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Shri Rakesh Gautam, J.E. :

"The statement of the J.E., Sh. Rakesh Gautam does not throw much light on the incident except confirming that at about 4.25 PM on 4.7.96 it was brought to his notice that lifts of Block I of Type V and both Blocks of Type IV are out of order. Thereafter he had contacted M/s. Bharat Bijlee and lodged the complaint with them on telephone. Copies of the complaint register, daily check register and logbooks of Type IV block lifts (4 nos) and Type V block-I lift (2 nos) are enclosed collectively as Annexure 13. "

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Shri A.K. Ahuja, EE(E):

Sh. A.K. Ahuja, EE (E), ECD-I stated that the lifts of Type-IV block were ready as

for back as on 16.8.95 and that the final inspection cum precommissioning safety tests were carried out on these lifts and completed on 30.8.95. The trial run of these lifts were done for 30 days from 31.8.95 to 4.10.95. The final inspection and precommissioning safety tests for the two lifts of block-I of Type-V were conducted and completed on 2.2.96 & 13.3.96 respectively. The trial run of these lifts were one for 30 days during 5.2.96 to 30.4.96. The precommissioning safety tests were carried out as per the proforma that was being prescribed by DGS&D inspection wing for inspection of lifts when these works were being executed through DGS&D. These tests were carried out by the firm in the presence of JE(E) and AE(E) and were supervised by the EE(E). The estimate for operation of lifts were submitted to the Director NIHFW vide No. 22(207)DCEC-VI/WI/95-96/71 dated 25.1.96 as it was intimated earlier by the Director that the operation and maintenance will be carried out by CPWD. As the NIHFW authorities neither sanctioned the estimates for operation nor took over the lifts, the same were kept closed. After the intervention of CE(E)I on 7.5.96 once again servicing was got done from M/s. Bharat Bijlee and all safety tests that were sought by NIHFW authorities and EE(E) ED-XIII were performed and the lifts were handed over to NIHFW on 13.6.96. The final testing of the two lifts of block II Type-V quarters is yet to be carried out and after completion of testing, the trial run will be done. The copy of test report of all the 6 (six) lifts, the log books for the final run period and the copy of handing over notes are enclosed collectively as Annexure-14."

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Shri Sarjan Singh, ED (E):

"Sh. Sarjan Singh ED(E) EX-XIII stated that as desired by the NIHFW authorities, the persons were engaged only for performing the rescue of passengers in case if they are trapped in the lift. He also stated that due to frequent power failure it was decided to keep only one lift, connected to the emergency D.G.Set, operational and the second lift in all the blocks were kept shut down. He stated that the persons were engaged by M/s. A.G. Enterprises to whom the work was awarded under work order No. 2/AEV/EDXIII/96-97 dated 25.6.96. The firm is an experienced firm having a number of lift operators under their roll operating similar lifts in other buildings both under CPWD and other organisations. The persons engaged have adequate experience on the job entrusted to them. The persons have rescued a number of persons who were similarly trapped earlier as seen from the logbook of the lifts of both Type-IV and Type-V blocks."

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10. In order to properly analyze the position as reflected from the statements of the various persons examined by the Committee it will also be necessary to refer to the observations of the Committee based on spot examination and the statements :-

6.1. PROBABLE CAUSE OF ACCIDENT:

After detailed examination of the witnesses, examination of the lift, machine room etc. we consider the following to be the most probable reason for the accident :-

The lift is automatic cum manual operating type and was normally operated in auto mode.

The landing doors, which are spring loaded automatic closing type can be opened only by the use of a special key meant for the same or when the car is in floor level and the power supply to the lift is switched off, the car door can open the landing door by mechanical engagement if the landing door is forced open. The landing door can also be opened manually from inside the lift, when the car door is open, by lifting the roller of landing door lock upwards. While opening the landing door manually, they have to be kept open either by hand or by some implement without which the door gets closed automatically.

The lift car door is operated through a motor and it operates only when the lift is in level with a floor. The lift car door can be opened from inside only when power supply to the lift is disconnected either from the machine room or switch room.

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The log book of the lift was examined and no complaint has been recorded for the lift prior to the complaint on 4.7.96. However, one person appears to have been trapped in the lift at 3.40 PM on 2.7.96 and was rescued at 3.55 PM on that day, but the reasons for being trapped are not recorded. On 4.7.96 the lift was not working between 1.30 PM and 4.25 PM and between 4.40 PM and 6.00 PM.

The lift was observed to be working satisfactorily except that the track cover on 4th floor landing door was removed and kept in the machine room. From the statements of the lift operator and the lift mechanic of M/s. Bharat Bijlee, the track cover had been removed on 4.7.96 at about 5.45 PM to enable smooth operation of the car and landing doors at 4th floor. Prior to this, the lift door was not opening automatically at 4th floor. No other defect/fault appears to have been noticed in the lift prior to the discovery of body on 4.7.96 and no other repair except for removal of landing door track cover of 4th floor, appears to have been carried out on the lift. The lift was otherwise working satisfactorily when it was checked after the discovery of the body.

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From the above, it is deduced (deduced) that Mrs. Kataria appears to have come to the building at about 1.00 PM, had collected her letters and had travelled in the lift to the 4th floor. The lift door did not open in 4th floor and hence she had pressed the alarm. The lift operator, on hearing the alarm, had rushed to the machine room. While going up through the stairs for machine room he had seen the lift position as 4th floor in lift position indicator. He had specifically not noticed whether the lift was in level or not, at the machine room, but had switched off the supply to the lift controller and started rolling the lift upwards by

release of the brake and rotating the wheel manually till it came in level with the next landing.

It is possible that while the lift operator was performing the function as per procedure, the lady who was trapped inside the lift, not getting any response to the rescue alarm, tried to force open the lift car door from inside. As the power supply to the lift was cut off by the lift operator, she could open the lift car door from inside. As the lift was moving upwards very slowly, the landing door lock roller might have come just in eye level of the lady and in her anxiety to open the door, she might have lifted the same and got the landing door opened as no effort is needed for lifting the lever or opening the door and can be done easily. At the time when the landing door was opened, the lift should have been at least 2 to 2-1/2 feet above the floor level for the landing door lever roller to be at eye level of the lady inside the lift. When she had opened the landing door, she might have seen the lift moving very slowly upwards. In her anxiety to get to the floor, she should have crouched and jumped. As the lift should have been more than 2-1/2 ft. above the floor, there is a strong possibility for the person to leave the hands from the lift floor before her foot touching the floor and her foot might have slipped inside the lift shaft. By this possibility, because of her weight and not having hold at any place, she might have fallen through the lift shaft into the lift pit. As the Lift Operator and the Chowkidar were in the machine room and the communication between the machine room and the pit is obstructed by the lift, the lift operator in the machine room might not have heard the sound of the fall. Since the landing door was self closing, the same would have got closed behind her. The lift operator could have seen the lift in 5th floor after he has brought the lift in level and could have presumed that the lady had gone out on her own.

It is most unfortunate that the lady had not kept her patience which has led to this accident. The situation in which the accident appears to have taken place, it has not drawn the attention of anybody in the campus for about 8-9 hours when by chance due to some investigative questioning by the residents the body could be located. This sequence of events however suffers from a lacunae, in so far as the evidence that the lady was clutching the letters and the position of body when her body was found. Any person falling accidentally even by 1 ft. or so will have a tendency to open up the hands and catch hold of anything that comes on the way to have a hold and protect him/her from the anticipated fall. Further if a lady wearing a saree had a fall of even 2-3 feet, her saree will have a tendency to balloon up and thereby it could not have covered her up fully up to the ankle as was described by the Director, NIHFV or by the lift operator or by hearsay of residents heard on 4.7.96 night. If this aspect is considered then the discovery of the body in the lift pit cannot be due to any malfunctioning of the lift and may be due to other causes which has no connection with the operation of the lift. This aspect was not considered as this is beyond the scope of the committee.

Based on the position of the body as found in the lift pit as was described by the people around, the lady could not have walked into the lift at ground floor level

and had a fall even if the landing doors are wide open as in such circumstances the body should have been lying in line with the opening of the lift or at least at some angle and not at 90 degree to the centre line of lift opening. Further there was no evidence to suggest, even remotely, that the landing doors on any of the floors could be opened by any means other than what has been explained in para-3 above or the landing doors of any of the floors having remained open at any time.

6.2 Specific lapses, if any, on the part of the operating staff.

No lapse has been observed on the part of the engineers in the precommissioning safety tests carried out on the lifts, in the selection of the firm for operation of the lifts or selection of lift operator.

From the statement of the EE(E) EX-XIII, it is observed that the operating staff is not meant to sit inside the lift but is required to sit outside the lift and in case of any alarm the lift operator is required to respond immediately and rescue the person trapped inside the lift. Accordingly, the lift operator had reacted immediately on receipt of the alarm. Normally while rescuing the persons the lift is required to be taken to the next higher floor.....

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11. From the above statements and the probable cause of the accident, as noticed by the Committee, the following points emerge :-

1. Mrs. Kataria was residing in Flat No. 13 on Fourth Floor of the building in question.
2. On the fateful day at about 1.00 P.M. she was seen by Sher Bahadur Chowkidar while entering the building in question.
3. Both Ram Charitra, the lift operator who was on duty at that point of time, and Shri Sher Bahadur, Chowkidar, heard emergency alarm from the lift soon after Mrs. Kataria was seen by Sher Bahadur entering the building. In the circumstances, the Committee deduced that Mrs. Kataria had travelled in the lift to the fourth floor at or about 1.00 P.M. However, the lift car door and the landing door did not open.
4. After hearing the alarm Ram Charitra did not come to the fourth floor in the first instance to open the landing door with the special key, nor did he communicate with Mrs. Kataria who was trapped in the lift. He along with Sher Bahadur went straight to the machine room situate at the seventh floor and started rolling the lift upward after switching off power to the lift controller.
5. By manual operation the lift was rolled to the fifth floor by Ram Charitra and it was found by him that the lift car door and the level landing door were both open, whereupon he presumed that the trapped person had been res- cued.
6. Neither Ram Charitra nor Chowkidar Sher Bahadur checked as to whether Mrs.

Kataria had actually been rescued. They did not check as to whether Mrs. Kataria had reached her flat.

7. On an earlier occasion on July 2, 1996 at 3.40 P.M. one person was trapped in the lift who was rescued at 3.55 P.M.

12. Despite the above said features the Committee did not attribute any negligence to the lift operator Ram Charitra or the contractor M/s. A.G. Enterprises, or the manufacturer M/s. Bharat Bijlee Ltd., or the C.P.W.D. The fault was attributed to Mrs. Kataria as it was assumed that in her anxiety to come out of the lift she might have lifted the landing door lock lever and tried to jump out on the landing and in the process may have fallen through the lift shaft into the lift pit. The conclusion arrived at by the committee absolving the C.P.W.D. and the fourth and the fifth respondents including the lift operator of the negligence does not seem to be correct. It cannot be disputed that Ram Charitra did not communicate with Mrs. Kataria when she was trapped in the lift. He should have first come to the fourth floor and ought to have reassured Mrs. Kataria that he was going to rescue her. He should have told her what he intended to do for rescuing her. He should have also told her what she was expected to do in such a situation. It is significant that Ram Charitra did not even use the special key to open the lift doors. If he had used the special key and had opened the lift doors the incident could have been averted. It is surprising why the special key was not used by him. The allegation of the petitioner that only one special key was provided for several lifts and the same may not have been available with Ram Charitra at the time of the incident seems to be correct. To provide one special key for several lifts would amount to compromising on safety parameters. It is also significant to note that on July 2, 1996, i.e., only two days earlier to the incident in question, a person had been trapped in the lift. Despite this incident of July 2, 1996 precaution was not taken to keep the special key available for an emergency. It appears that Ram Charitra was not trained for undertaking rescue operations. Even at the cost of repetition it may be observed that if Ram Charitra had the requisite training, on hearing the emergency alarm he would have first stopped at the fourth floor, while rushing to the machine room through the stairs, to reassure the trapped person that she was going to be rescued and she should not panic. He should have also told her what he was doing to rescue her and what she should do or desist from doing. Since Ram Charitra failed to take these precautions a person placed in a situation in which Mrs. Kataria was placed would think that there was nobody to rescue him or her. Such a situation can lead to a panic reaction, but the panic reaction in such an eventuality will be the natural result of the negligence of others who are responsible for not adhering to the safety norms while operating the lift. It is also not claimed by the C.P.W.D., M/s. Bharat Bijlee Limited and M/s. A.G. Enterprises that any instructions were displayed in the lift for the guidance of the trapped passengers. The manufacturer M/s. Bharat Bijlee Ltd., the C.P.W.D. and M/s. A.G. Enterprises, who were responsible for the operation of the lifts, ought to have displayed the safety instructions.

13. No significance can be attached to the observations of the committee that the saree of the deceased due to fall would have ballooned up but it was found that the saree was up to her ankles. There is nothing to suggest that Mrs. Mangla Kataria died immediately around 1.10 P.M. on July 4, 1996 on falling into the pit of the lift. If she did not die immediately she could have adjusted her clothes. She was also found to be clutching to the letters which were found to be in one of her hands. This factor is also not unusual. In a case of a fall the person instead of opening his hands may clutch the same due to fear. When fear grips a person he has a tendency to clutch his hands forcibly. Besides, the investigation by the police rules out any foul play (see page 216, Vol.I of the court record). The post mortem report also suggests that the death was caused due to multiple injuries as a result of a fall.

14. Another aspect of the matter also needs to be noticed. Admittedly, lifts in the residential complex of the Institute were not provided with attendants for operating the lifts. It seems to me that in a multistoreyed residential building an attendant in the lift would be needed to operate the same as children and old persons would also be making use of the same. In the absence of an attendant they are likely to panic in case of any disorder in the lift. In such an eventuality there will always be an imminent possibility of a mishap. It is also important to note that the office noting of June 24, 1996 of the C.P.W.D. reveals that for each shift one lift operator with the knowledge of the lift mechanism and an attendant was to be provided (page 495, Part II of the court record). Despite the decision no attendant was appointed. If the attendant was not necessary a question arises as to why it was decided by the C.P.W.D. to appoint an attendant. It seems to me that the C.P.W.D. was alive to the fact that an attendant in the lift would be needed as the lift was located in residential building where children and old persons would also be making use of the same, but still no attendant was provided in the lift.

15. In view of the above discussion, I have no hesitation in concluding that respondents 1 and 3 to 5 overlooked safety parameters in the operation of the lift. This is a clear breach of the public duty which has resulted in the death of petitioner's wife. But for their negligence, Mrs. Mangla Kataria would have been still alive. Mrs. Mangla Kataria boarded the lift at about 1.00 P.M. on the fateful day and fell out of the same due to the negligence of the said respondents. The time of fall is more or less crystalised by the fact that her wrist watch, which she was wearing on the fateful day, has been found to have stopped at 1.10 P.M. (see FIR No. 202/96 at page 112 of Vol.I of the court record).

16. In the circumstances, it appears to me that there was clear violation of the victim's right guaranteed under Article 21 of the Constitution. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , the Supreme Court relying upon various authorities including the decisions in Rudul Sah Vs. State of Bihar and Another, ; Sebastian M. Hongray Vs. Union of India AIR 1984 S.C. 1026; and Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, :-

"Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, Therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title 'Freedom under the law' Lord Denning in his own style warned :

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power if not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for negligence. This is not the task of Parliament, the court must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfarer state; but abused they lead to a totalitarian state. None such must ever be allowed in this country." "

17. The view of the Supreme Court in Nilabati Behera's case (supra) was reiterated in D.K. Basu Vs. State of West Bengal, , where it held as follows :-

"43. Till about two decades ago the liability of the Government for tortuous acts of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defense of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this Court has taken the view that the defense of sovereign immunity is not available to the State for the tortuous acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, the decision of this Court in Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus : SCC 761

"In this context, it is sufficient to say that the decision of this Court in Kasturilal

upholding the State's plea of sovereign immunity for tortuous acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defense to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in *Rudul Sah Vs. State of Bihar and Another*, and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, *Kasturilal* related to the value of goods seized and not returned to the owner due to the fault of government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights, *Kasturilal* is, Therefore, inapplicable in this context and distinguishable."

The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, Therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."

18. Thus, claim in public law for compensation for deprivation of constitutionally guaranteed right to life and liberty is a claim based on strict liability. Such a claim can be entertained in a writ petition. It is a remedy in addition to the remedy available in private law for damages for tortuous acts of the State or its functionaries or public servants. Exercise of power by the High Court under Article 226 of the Constitution for grant of compensation for the violation of indefeasible and inalienable right of a person guaranteed under Article 21 is an exercise of the power of the court under the public law jurisdiction for compelling the violator to make reparation of the wrong done.

19. The next question relates to the quantum of compensation and who should pay the same. Mrs. Mangla Kataria was the Head of Department of Statistics and Demography in NIHFV and was about 54 years old. At the time of incident she was drawing a gross salary of Rs.11,903/- per month (see page 497, Vol.II of the court record). In my opinion, an amount of Rs.4.5 lakhs would be an appropriate compensation to be awarded in the writ petition to the petitioner and his two children Deepak Kataria and Vandana Kataria in equal proportion. I order accordingly.

20. In the first instance, the compensation shall be paid by the first respondent-Union of India as its unctinary, the third respondent was negligent in discharge of its duty which resulted in breach of the right of Mrs. Mangla Kataria to life guaranteed by Article 21 of the Constitution. It will, however, be open to the Union of India and the third respondent to proportionately recover the amount from the fourth and the fifth respondents as they were equally guilty of culpable negligence.

21. The award of the above compensation in public law jurisdiction shall be without prejudice to any other action which may be lawfully available to the petitioner and other heirs of Mrs. Mangla Kataria. The compensation shall be liable to be adjusted against any amount which may be awarded to the claimants by way of damages in a private law remedy. Any observations made herein on merits shall not affect the decision of the courts in other proceedings arising from the incident in question. They will be free to arrive at their own conclusions.

22. With the above directions the petition is disposed of.