

Non Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.630 OF 2013
(Arising out of SLP(C) No.6715 of 2010)

DAV MANAGING COMMITTEE & ANR. ... APPELLANTS

VS.

DABWALI FIRE TRAGEDY VICTIMS ASSN. ... RESPONDENTS
& ORS.



JUDGMENT

V. Gopala gowda, J.

Leave granted.

2. We have heard Mr.Rakesh Dwivedi, learned senior counsel for the appellants and Mr.Manoj Swarup, learned counsel for respondent no.8 – Rajiv Marriage Palace and dispose of the appeal by passing the following judgment.

3. This appeal is directed against the judgment and order dated 9th November, 2009 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No.13214 of 1996, urging various grounds and praying for setting aside the impugned judgment. According to the appellants the relevant necessary facts and the grounds framing certain questions that would arise for consideration of this Court are confined at the time of hearing only with regard to the grievance of the appellants that the High Court having accepted the findings of fact recorded on the question of negligence on the part of the appellants and respondent no.8 – Rajiv Marriage Palace, who were held negligent in the fire accident caused on the fateful day on account of which 446 persons died and so many others had burn injuries. On the question that framed for its consideration by the High Court with regard to apportioning the respondent's negligence for the tragedy in question and the liability for payment of compensation flowing from the same upon the parties to the writ proceedings have recorded the acts of omissions and commissions on the role played by each one of those held responsible for the accident. The High Court has apportioned 55% liability of compensation between the appellants and respondent no.8-- the owners of the Rajiv Marriage Palace, where the function was held and fire accident took place and the remaining percentage of liability of compensation was fastened 15% each upon the Municipal Committee, Dabwali, the Haryana State and the

Haryana State Electricity Board (now the name has changed to Dakshin Haryana Bijli Vitran Nigam). Having recorded such finding and apportioning the compensation amount awarded by the High Court between the appellants and respondent no.8- Management of Rajiv Palace, it has been held that the appellants and respondent no.8 would be jointly and severally liable to pay 55% of the compensation to the claimants, therefore the appellants have appeared before this Court by filing this appeal questioning not apportioning the percentage of the liability of compensation between the Appellants and respondent No.8 awarded to the claimants.

4. It is only to the aforesaid extent, the appellants herein are confined to their relief in this appeal though they have questioned the impugned judgment urging various grounds regarding the findings recorded on the contentious issues, namely the negligence on the part of the appellants and the quantum of compensation awarded in favour of each one of the claimants, in respect to the dead persons and the injured persons by applying the guidelines and the judgments of this Court and also the All England Reports and the Division Bench Judgments of the Karnataka High Court and the Delhi High Court on the question of awarding compensation in favour of the claimants, namely Lata Wadhwa & Ors. Vs. State of Bihar & Ors. reported in (2001) 8 SCC 197, and Association of Victims of Uphaar Tragedy and Ors. V. Union of

India and Ors. reported in 104 (2003) Delhi Law Times 234 (DB) and another judgment of this Court in the case of D.K. Basu v. State of West Bengal reported in (1997) 1 SCC 416. The quantum of compensation awarded by the High Court by following the principle laid down in the aforesaid judgments of this Court and Delhi High Court that was challenged in this Appeal, but the same was not pressed into service at the time of hearing, except urging the legal contention regarding non apportionment of the percentage of liability of compensation upon respondent no.8 having answered the issue no.3 regarding the negligence on the part of both the appellants and respondent no.8—Rajiv Marriage Palace. Since the learned senior counsel has advanced the arguments only with regard to the non-apportionment of the percentage of the liability of compensation upon the appellants and respondent no.8 the learned senior counsel on behalf of the appellants has confined the aforesaid issue inviting our attention to the findings recorded on the issue no.3 by the High Court of Punjab & Haryana. It was pointed out to this Court by the learned senior counsel that the percentage of liability of compensation fastened by the Commission of Inquiry upon the appellants to the extent of 80% that has been interfered with the High Court has its higher percentage of liability of compensation fixed upon the management of School and accordingly it was modified to 55%. After making the observation the liability of compensation to be confined and

apportionment depending upon the nature and extent of the role played by the tort-feasors in the commission of the tort and the resultant loss to the claimants, the High Court after referring to the Association of Victims of Uphaar Tragedy case (supra) has reduced from 80% to 55% liability of compensation after recording a finding that both the appellant school and the respondent no.8 has tort-feasors on account of their negligence the fire accident had taken place and the persons who participated in the function died and others had burn injuries. Having recorded such a finding of fact regarding negligence both upon the appellants and respondent no.8 non apportioning the percentage of liability of compensation out of 55% liability of compensation fixed the appellants have got the grievance of that portion of finding on the question no.3 formulated answered against both the appellants and respondent no.8, therefore, this appeal is confined only to the aforesaid extent sought for in this appeal.

5. Learned senior counsel has invited our attention to the impugned judgment with regard to the findings recorded on question no.3 formulated by the High Court and correctly reduced to 55% of liability of compensation out of 80% liability of compensation fixed by the Commission of Inquiry. Having modified the Commission of Inquiry report from 80% to 55% the High Court further recorded a finding that the Appellant school and its agent namely, respondent no.8—Rajiv Marriage Palace would be jointly and severally liable

to 55% of the total amount of compensation payable to the claimants this aspect of the matter required to be examined is opposed by respondent no.8. The learned counsel has submitted that the appellant school requested the owners of the premises to permit their annual function to be held in the month of December, 1995 in which Deputy Commissioner of Sirsa and S.D.M. of Dabwali have attended the function as guests as it was for a public cause and for a function of school Kewal Krishan and Chander Bhan, the owners of Rajiv Marriage Palace, acceded to the request of the DAV School Management and gave its place for the school function. It is stated that respondent no.8 has neither paid the money nor made arrangements for holding the function. The entire function arrangement was solely looked after by the appellants-DAV Managing Committee.

6. It is also stated that the area was covered by pandal and bamboos and curtains all around leaving two gates of 12x12 feet and 8x8 feet. It is further stated that the question of overflowing of any electricity was neither needed nor was possible and further the DAV Managing Committee has made all arrangements for the audio system by taking extra wires. At about 1.40 p.m. on 23.12.1995 the pandal got fire and since it was all around covered only by curtains the fire spread. Out of two gates, one gate was blocked by the management of the School for VIPs only and as such for the rest of about 1200 persons only one gate was left. Apart from the said fact the area was

only 100x60 feet having a seating capacity of 400 persons within the knowledge of the appellants and they have invited and permitted 1200 persons and as such due to short circuit fire started from the one gate and due to stampede many persons were caught inside fire and many of them lost their lives and many others got burn injuries. The gate blocked for VIPs could manage to escape. Further, it is stated that out of six family members of the owners of Rajiv Marriage Palace, two brothers Chander Bhan and Kewal Krishan died in the accident. It is also stated that the land where the Rajiv Marriage Palace was built up has been taken over by the District authorities and the same has been converted into 'Shahid Smarker Park'. The CBI also filed the charge sheet against the owners of the Rajiv Marriage Palace, namely Kewal Krishan Dhamija and Chander Bhan Dhamija (since died) and Rajendra Kumar and Devilal of Chacha Bhatija Light Service and they did not even charge sheeted any person of DAV Public School which according to the C.B.I. took the place for school function though the alleged payment of Rs.6000/- to the respondent No.8 had never been proved by the appellants herein and when one of the reasons of death caused was stampede and opening of only one gate in the circumstances and allowing more than the capacity of the Marriage Palace and all arrangements such as focus light, photography and audio system in the function and the arrangement of generator set is also done by the DAV school authorities -- the appellants

herein, therefore, there is no role of play of negligence on the part of the respondent no.8—the management of Rajiv Palace. Therefore, there is no need for this Court to apportion the liability of compensation by the High Court upon respondent no.8 as it has no financial capacity to pay the same to the claimants. Therefore it is requested not to apportion the percentage of liability of compensation out of 55% determined in the writ petition by the High Court modifying out of 80% liability of compensation fastened by the Inquiry Commission and further the quantification of negligence could not have been made either by the Commission of Inquiry or by the High Court, therefore on such aspect the matter cannot be examined by this Court in the civil appeal proceedings. Therefore it is requested on behalf of the respondent No.8 not to apportion the liability of compensation out of 55% upon respondent no.8.

7. With reference to the aforesaid rival legal contentions, we have very carefully examined the contentions to find out as to whether the apportioning of compensation awarded in favour of the claimants fixed at 55% is required to be made between the appellants and the respondent no.8. With regard to this we have carefully gone through the reports of the Inquiry Commission before whom the parties have appeared and adduced evidence to justify their claims and counter claims. The Commission, on the basis of the evidence on

record, has fastened the liability of compensation upon the appellants and respondent no.8 for 80% and the same was examined by the High Court to answer the point no.3 which was formulated by the High Court for its consideration and to answer which reads thus:--

“3) Is the apportionment of the responsibility and negligence for the fire tragedy in question and the liability flowing from the same fair and reasonable having regard to the acts of omission and commission and the role played by each one of those held responsible for the incident?”

8. The High Court while examining the correctness and percentage of liability of compensation modified the percentage confined upon the appellants and respondent no.8 from 80% to 55% confining the negligence aspect upon the appellants and respondent no.8 has not been annulled. No doubt the composite negligence is fastened upon the appellants and respondent no.8, State of Haryana, the Haryana State Electricity Board and Municipal Committee Dabwali for the reasons recorded by the High Court. The correctness of the said finding not only examined in this appeal as the same is not questioned either by the appellants or by respondent no.8. While recording the finding on issue no.3 and reducing the liability of compensation to 55% out of 80% awarded by the Inquiry Commission, the High Court has held that the appellants and respondent no.8 namely Rajiv Marriage Palace would be jointly and severally liable to pay 55% of the total compensation

payable to the claimants, the remaining tort-feasors referred to supra. It is not possible for this Court to apportion the liability of compensation between the appellants and respondent no.8, particularly in the absence of the material evidence on record either before the Inquiry Commission or before the High Court and particularly having regard to the fact that what is stated that economic capacity of the partners of Rajiv Marriage Palace. In the absence of such findings it is not proper for this Court to frustrate the judgment of the High Court which is based on the Commission of Inquiry Report submitted by a retired Judge of Allahabad High Court and further on behalf of respondent no.8 it is stated that out of six family members, two persons, namely Kewal Krishan and Chander Bhan died on account of the burn injuries in the said function and further the land where the Rajiv Marriage Palace was built up has been taken over by the District authorities and the same has been converted into 'Shahid Smarker Park' and what is the other properties left out of the partners of the Rajiv Marriage Palace and the evidence is not forthcoming by this Court or before the High Court or in these proceedings. In this way, in the absence of the same it is not possible for this Court to apportion the liability of compensation and confine the same upon the appellants and respondent no.8 out of 55% of the liability of compensation confined and holding both the appellants and respondent no.8 responsible for jointly and severally.

9. For the aforesaid reasons the civil appeal is accordingly dismissed. However, it is open for the DAV Managing Committee to approach the competent civil court for apportioning the liability of compensation out of 55% fastened upon both the appellants and the respondent no.8 by initiating appropriate proceedings.

10. In view of the dismissal of the appeal, the interlocutory application for directions to keep in abeyance the disbursement of the amount of compensation deposited in civil court pursuant to order dated 15.3.2010 of this Court is also dismissed. The appellants shall also deposit the remaining awarded amount with the Civil Judge and the claimants are permitted to withdraw the same. The Civil Judge is directed to disburse the amount to the claimants proportionately as awarded by the High Court. A copy of this judgment shall be forwarded to the learned Civil Judge, Senior Division, Dabwali, Sirsa, Haryana.

JUDGMENT

.....J.
[Dr. B.S. CHAUHAN]

.....J.
[V. GOPALA GOWDA]

New Delhi,
January 23, 2013.