SUPREME COURT OF INDIA

LATA WADHWA & ORS.

Vs.

STATE OF BIHAR & ORS.

16/08/2001

(G.B. Pattanaik, U.C. Banerjee & S.N. Variava)

Writ Petition (civil) 232 of 1991

JUDGMENT

PATTANAIK,J.

This writ petition was filed by the three petitioners, invoking the jurisdiction of this Court under Articles 21 and 32 of the Constitution of India for issuance of a writ of mandamus or any other writ or directions, ordering prosecution of the officers of the Tata Iron and Steel Company and their agents and servants, for the alleged negligence in organising the function, held on 3rd of March, 1989 in Jamshedpur and direct that appropriate compensation be provided to the victims by the State Government as well as the Company. It was also prayed that a writ or direction be issued to the State Government to provide security and safety of the families, as it is apprehended that the company may use its influence to harass the petitioners and their relations, who happen to be the victims of the circumstances. The petitioners had also prayed for a direction that legal assistance be given to the victims of the circumstances to pursue the cases before the criminal and civil courts. It has been alleged in the writ petition that while 150th Birth Anniversary of Sir Jamshedji Tata, was being celebrated on 3rd of March, 1989 within the factory premises and a large number of employees, their families including small children had been invited, but the organisers had not taken adequate safety measures and on the other hand, several provisions of the Factories Rules and Factories Act had been grossly violated. A devastating fire engulfed the VIP Pandal and area surrounding and by the time the fire was extinguished, a number of persons lay dead and many were suffering with burn injuries. Some of the injured also died on the way to the hospital or while being treated at the hospital. The death toll reached 60 and the total number of persons injured were 113. Amongst the persons dead, there are 26 children, 25 women and 9 men. It was also stated that out of the 60 persons, who died, 55 were either employees or relations of employees of the Tata Iron and Steel Company and similarly, out of 113 persons injured, 91 were either employees or their relations. Smt. Lata Wadhwa, the petitioner No. 1, lost her both the children, a boy and a girl and her parents. Her husband was an employee of the company. It was alleged in the writ petition that the State of Bihar had been colluding with the company and there has been total inaction on the part of the State in taking appropriate action against the negligent officers for whose negligence, the tragedy occurred. The State in its counter affidavit, however denied the allegations made and further averred that inquiries had been conducted by a Committee constituted by the Government of Bihar, Department of Labour, Employment and Training and report was submitted to the company, indicating the negligence of the personnel and on that basis, criminal prosecution had been launched. The company also filed counter affidavit, denying the charge of negligence and lack of

care and sympathy for the injured as well as for the kith and kin of the deceased. The company in its counter affidavit further indicated the steps taken by several employees and how the doctors in the hospital worked round the clock. It was also averred that costly medicines from all over the world were brought for prompt and appropriate treatment. It is the positive case of the company that it is because of the steps taken by it, none of the relatives of the deceased approached any Court or authority for any compensation or damages, except the present petitioners, who were in fact acting on their own. In course of hearing of this petition and pursuant to the interim orders passed by this Court, the company furnished the particulars of the persons injured as well as the particulars of the persons, who died. When the writ petition came up for disposal, Mr. F.S.Nariman, the learned senior counsel appearing for the company stated to the Court that notwithstanding several objections, which have been raised in the counter affidavit, the company does not wish to treat the litigation as an adversarial one, and on the other hand, the matter is left to the Court for determining what monetary compensation should be paid, according to law, after taking into consideration all the benefits and facilities already extended and continuing as summarised in the affidavit dated 3rd of February, 1993. This Court on 15th of December, 1993, came to the conclusion that the question of grant of compensation should be looked into by a person, having expertise and ultimately requested Shri Y.V. Chandrachud, former Chief Justice of India to look into the matter and determine the compensation, payable to the legal heirs of the deceased as well as compensation payable to the injured persons. It was also indicated on the basis of an agreement between the parties that in determining the compensation, principles indicated by the Andhra Pradesh High Court in its decisions in Chairman, A.P.S.R.T.C. vs. Safiya Khatoon [1985 Accident Claims Journal (A.C.J.)212], Bhagwan Das vs. Mohd. Arif [1987 A.C.J.1052], and A.P.S.R.T.C. vs. G. Ramanaiya (1988 A.C.J.223) should be borne in mind. The Court also further observed that while determining compensation, the benefits and advantages conferred on the injured persons or upon the legal heirs of the deceased persons by the company, need not be taken into account and that factor would be taken into consideration, while passing the final orders. The Court, also by the aforesaid order dated 15th December, 1993, stayed the criminal proceedings, pending in the Court of Sub-Divisional Magistrate, Jamshedpur as well as the Criminal Revisional Application, pending before the Ranchi Bench of the Patna High Court. It was directed further, that the matter should be placed for orders, after receipt of the report from Shri Y.V. Chandrachud.

Shri Y. V. Chandrachud, had been intimating from time to time to this Court as to why it has not been possible to conclude the proceedings before him and when the matter was listed before the Court on 28th September, 2000, it transpired that the proceedings are moving with a snails pace. The Court, therefore, requested Shri Chandrachud, to conclude the proceedings and intimate the Court by 2nd week of November, as to the results of the same. Shri Y.V. Chandrachud, thereafter, took expeditious and effective steps and passed an order, granting compensation to the tune of Rs. 1,19,58,320/- in favour of the dependants of the deceased persons and Rs. 288 lakh as interim compensation in the injured cases. Finally, Shri Chandrachud had also submitted his report, quantifying the compensation payable in the injury cases too.

On behalf of the petitioners, an objection has been filed to the aforesaid report of Shri Y. V. Chandrachud and on behalf of the respondent-company, an affidavit in opposition to the said objection has been filed. The matter was ultimately heard at length and Ms. Rani Jethmalani argued on behalf of the writ petitioners and Mr. F.S. Nariman, the learned senior counsel, argued on behalf of the company.

The Report consists of two parts, Part I dealing with cases of death and Part II dealing with cases of burn injury. In view of the indications in the order of this Court, referring the matter to Shri

Chandrachud that in deciding the quantum of compensation, the principles evolved in Safia Khatoons case as well as two other cases of Andhra Pradesh High Court, in the Report, the principles evolved in the aforesaid Judgments have been analysed at the first instance. It has been held that the multiplier method having been consistently applied by the Supreme Court to decide the question of compensation in the cases arising out of Motor Vehicles Act, the said multiplier method has been adopted in the present case. In the report, even the view of British Law Commission has been extracted, which indicates: the multiplier has been, remains and should continue to remain, the ordinary, the best and only method of assessing the value of a number of future annual sums. It has also been stated in the aforesaid report that though Lord Denning advocated the use of the annuity tables and the actuarys assistance in Hodges vs. Harland & Wolff Limited (1965) 1 ALL ER 1086, but the British Law Commission accepted the use and relevancy of the annuity tables in its Working Paper No. 27 by observing : The actuarial method of calculation, whether from expert evidence or from tables, continues to be technically relevant and technically admissible but its usefulness is confined, except perhaps in very unusual cases, to an ancillary means of checking a computation already made by the multiplier method. Even Kemp & Kemp on Quantum of Damages after comparing the multipliers chosen by judges from their experience found a close proximity between the said multiplier method and those arrived at from the annuity tables in the American Restatement of the Law of Torts. After a thorough analysis of the different methods of computation of the compensation to be paid to the dependants of the deceased and what are the different methods of computing loss of future earnings, Shri Chandrachud has come to the conclusion that the multiplier method is of universal application and is being accepted and adopted in India by Courts, including the Supreme Court and as such, it would be meet and proper to apply the said method for determining the quantum of compensation. The counsel, appearing for the claimants as well as the company also agreed before Shri Chandrachud that the decision should be based on the principles enunciated in the three judgments mentioned in the order of the Supreme Court as well as the cases relied upon in those judgments. Amongst the deceased, there were many housewives and they have been classified in two categories, one those, whose husbands were employees of the company and as such whose income is known, and others who were outsiders, whose husbands income is not known at all. The deceased housewives have been grouped into four, on the basis of their age and different multiplier has been applied on the basis of their age. Shri Chandrachud also has considered the income of the husbands of those housewives, who are employees of the company and then on that basis, has tried to determine the loss on the death of the wife and after applying the multiplier and determining the total amount of compensation, an addition of Rs.25,000/- has been made as a conventional figure and the total amount of compensation has been arrived at. So far as the employees of the Tata Iron and Steel Company are concerned, who died in the tragedy, their annual income has been arrived at and thereafter 60% of the income has been held to be dependency and then, a multiplier has been applied and on finding out the total amount of compensation, a conventional amount of Rs.25,000/- has been added. So far as the children are concerned, in the absence of any material, a uniform amount has been fixed at Rs.50,000/- to which again, a conventional figure of Rs.25,000/- has been added for determining the total amount of compensation payable. So far as the children above 10 years of age are concerned, the contribution of those children to their parents have been assessed at Rs.12,000/- per year, taking all imponderables into account and multiplier of 11 has been applied and the conventional amount of Rs.25,000/- has been added. Two of the children in the said age group, whose father did not claim any compensation as they were negotiating with the employer, for getting a piece of land and as such no compensation has been determined in their case. In the case of death of known employees of the company, the annual income has been arrived at, and then taking into account the age of the deceased and finding the dependency at 60% of the annual income and then by application of

different multipliers, the compensation has been arrived at. As stated earlier, a conventional compensation of Rs.25,000/- has been added in each case. While determining the compensation, the benefits already granted to the dependants of the deceased as well as to the injured persons or their relatives have not been taken into account in view of the specific orders of this Court dated 15th of December, 1993, though it would be a relevant consideration for us, while disposing of the matter finally. No interest however has been granted, as the question of interest has been left for consideration of this Court. So far as the costs of the proceedings are concerned, this Court had directed the Tata Iron & Steel Company to bear the entire cost of the proceedings.

In case of persons injured with burn injury, it had been contended before Shri Chandrachud, on behalf of claimants that the organisers committed serious act of negligence in choosing the place for celebration in a sensitive area of the company where around the pandal, hazardous installations were there with hot and molten substances at temperatures ranging from 1200 to 1800 degrees and further notwithstanding the promulgation of an order under Section 144 of the Code of Criminal Procedure by the Local Administration on 3rd of March, 1989, the company had organised the celebrations in defiance of the same. It was also contended that the company ignored all standards of normal safety measures and such negligence ultimately lead to the trapping of several persons, getting burn injury. According to the claimants counsel, permitting the bursting of fire crackers in the hazardous area per se is a gross act of negligence and for such disaster, when the fire fighting equipments could not be readily available, the company must bear the consequences and is liable to pay adequate compensation to the injured persons, taking into account the very nature of injuries sustained and the amount of pain and suffering these injured have sustained and also the psychological stress these injured have sustained. It had also been urged that on account of such burn injury, many persons have suffered from social isolation and all of them suffered from constant physical suffering and emotional turmoil and as such, all these factors should be borne in mind, while determining the compensation. The learned counsel also urged that due care should be taken to provide sufficient amount to bear the expenditure of future course of treatment, so that the injured persons could at least be able to maintain themselves. Shri Chandrachud in his report in paragraph 15.1 had indicated the difficulties which he had to face in assessing the quantum of compensation on several heads, claimed by the claimants inasmuch as there was not an iota of material/data in support of different heads of claims made by the claimants. Even there was no pleading on the basis of which any adjudicating authority could rely upon for granting special damages on different heads, as claimed. Shri Chandrachud has indicated that though compensation have been claimed for cosmetic surgery, for psychotherapeutic treatment and towards the cost of massage of masseurs, but not even a scrap of paper is produced to substantiate the claim. In the absence of any data and figures by the claimants, Shri Chandrachud had referred to certain textual statements on burn injuries and their treatment, contained in well known treaties, and ultimately held that there is no hard and fast rule in cases of burn injuries that cosmetic surgery or massage or air-conditioning is an absolute necessity in every case and every case depends upon its own facts. There being no pleadings in the statement of claim, regarding the nature of burn injury suffered, the nature, duration and quality of treatment received by the burn victims, the requirement of future treatment prescribed by any Doctor, the state or condition of burn injuries when the Statement of Claim was filed, the disability suffered by any burn victim, the expenditure if any, incurred by any burn victim until the Statement of Claim was filed and the loss of earning capacity in any individual case, it is not possible to grant such fanciful claim, without any basis. Shri Chandrachud however, has hastened to add : I might add that TISCO gave me a solemn assurance that, even as of today, if any burn victim produces the advice of a Burn-Expert Doctor for further medical or surgical treatment in India, TISCO is prepared to bear the expenses of the said treatment. Having rejected the claim on the special heads on which claimants

had made and thereafter taking an overall view of the matter, depending upon the extent of burn injury suffered, the compensation has been arrived at ranging from Rs. 3 lakh to Rs. 10 lakh in case of girls and compensation to the tune of Rs. 3 lakh and Rs. 5 lakh has been awarded in case of boys, in which the claimants themselves have claimed. So far as the Non-pecuniary losses are concerned, Shri Chandrachud has found the same to be reasonable and accordingly, directed the payment of compensation on that score, ranging from Rs.1.5 lakhs to Rs.5.00 lakhs for the 29 housewives, Rs.2.5 lakhs to Rs.6.00 lakhs for 18 young girls, Rs.2.5 lakhs to Rs. 6.00 lakhs for 9 young boys and Rs.1.50 lakhs to Rs.5.00 lakhs for 16 other persons. It has been stated that the interim compensation already awarded has to be adjusted as against the final amount of compensation.

Mrs. Rani Jethmalani, appearing for the claimants vehemently argued that the determination of compensation by applying the multiplier itself is incorrect and, therefore, the compensation amount determined cannot be sustained. The counsel also urged that the determination made is vitiated, as guiding principles have not been considered. Mrs. Jethmalani further urged that the refusal to award punitive or exemplary compensation itself is grossly erroneous, particularly, when the hazard took place, solely on account of negligence on the part of the organisers and for such negligence, the company must be held responsible. According to Mrs. Jethmalani, Shri Chandrachud has not followed the settled principles for determination of compensation and committed serious error in not taking into account the future prospects of earning. According to Mrs. Jethmalani, the compensation awarded for death of housewives is wholly arbitrary and therefore, the determination should be set aside and the matter be referred for a fresh determination. According to Mrs. Jethmalani, the entire sufferings being the outcome of a celebration in a ultra-hazardous conditions, adequate care ought to have been taken in determining the compensation, even in the absence of any positive data on broad principles and as such, a fresh determination is necessary.

Mr. F.S. Nariman, the learned senior counsel, appearing for the company, on the other hand contended that in a compendious Public Interest Litigation, filed by three individuals on behalf of all those, who died and were injured in the tragic incident, the company itself was of the view that whatever amount of compensation is determined to be reasonable, the company will bear the same. It is in fact, he who came forward to make the offer and when the name of Shri Chandrachud was suggested, he had also agreed that the entire expenses could be borne by the company. But according to Mr. Nariman, in the absence of any data and figures for different heads of claim made by the claimants, the only option that was left for determination was some broad principles and in arriving at his ultimate conclusion, Shri Chandrachud has relied upon those broad principles and consequently, no error can be said to have been committed in the determination in question. According to Mr. Nariman, the principles evolved in Khatoons case have been duly analysed and applied and the contention of Mrs. Jethmalani that principles enunciated therein had not been followed, is not correct. Mr. Nariman, on his own, agreed that the compensation amount determined for the children could be doubled by this Court. Mr. Nariman, however seriously objected for the matter being remitted for re-determination, essentially, on the ground that it would be against the interest of the dependants of those who are dead as well as the injured and urged that if this Court is of the opinion that compensation awarded in respect of any of the claimants of the deceased persons or the injured is inappropriate, then this Court may arrive at the same and it would be a travesty of justice, if the matter would be prolonged by directing a further inquiry into the matter for re-determination. Mr. Nariman, emphatically urged that there has been no error committed by Shri Chandrachud in applying the broad principles and in fact, he had no other option in the absence of any data, being furnished by the claimants and the compensation awarded cannot be held to be arbitrary or meager, requiring any further interference by this Court. He also suggested that the benefits already given by the company itself could be taken into consideration, as was observed by

the Court in its order dated 15th of December, 1993.

So far as the determination of compensation in death cases are concerned, apart from the three decisions of Andhra Pradesh High Court, which had been mentioned in the order of this Court dated 15th December, 1993, this Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma Thomas and Ors., 1994(2) S.C.C. 176, exhaustively dealt with the question. It has been held in the aforesaid case that for assessment of damages to compensate the dependants, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The Court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants, and thereafter it should be capitalised by multiplying it by a figure representing the proper number of years purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, it is the overall picture that matters, and the court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed:

The multiplier method is logically sound and legally well-established method of ensuring a just compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases.

The Court also further observed that the proper method of computation is the multiplier method and any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. The Court disapproved the contrary views taken by some of the High Courts and explained away the earlier view of the Supreme Court on the point. After considering a series of English decisions, it was held that the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last. In view of the aforesaid authoritative pronouncement of this Court and having regard to the determination made in the Report by Shri Justice Chandrachud, on the basis of the aforesaid multiplier method, it is difficult for us to accept the contention of Mrs. Rani Jethmalani, that the settled principle for determination of compensation, has not been followed in the present case. The further submission of the learned counsel that the determination made is arbitrary, is devoid of any substance, as Shri Justice Chandrachud has correctly applied the multiplier, on consideration of all the relevant factors. Damages are awarded on the basis of financial loss and the financial loss is assessed in the same way, as prospective loss of earnings. The basic figure, instead of being the net earnings, is the net contribution to the support of the defendants, which would have been derived from the future

income of the deceased. When the basic figure is fixed, then an estimate has to be made of the probable length of time for which the earnings or contribution would have continued and then a suitable multiple has to be determined (a number of years purchase), which will reduce the total loss to its present value, taking into account the proved risks of rise or fall in the income. In the case of Mallett vs. McMonagle 1970(AC) 166, Lord Diplock gave a full analysis of the uncertainties, which arise at various stages in the estimate and the practical ways of dealing with them. In the case of Davies vs. Taylor (1974) AC 207, it was held that the Court, in looking at future uncertain events, does not decide whether on balance one thing is more likely to happen than another, but merely puts a value on the chances. A possibility may be ignored if it is slight and remote. Any method of calculation is subordinate to the necessity for compensating the real loss. But a practical approach to the calculation of the damages has been stated by Lord Wright, in a passage which is frequently quoted, in Davies vs. Powell Duffryn Associated Collieries Ltd. [1942] All ER 657, to the following effect:-

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump-sum by taking a certain number of years purchase.

It is not necessary for us to further delve into the matter, as in our opinion, Shri Justice Chandrachud, has correctly arrived at the basic figure as well as in applying the proper multiplier, so far as the employees of the TISCO are concerned, but the addition of conventional figure to the tune of Rs.25,000/- appears to us to be inadequate and instead, we think the conventional figure to be added should be Rs.50,000/-.

So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given datas for determination of compensation, did not assist in any manner by providing the datas for estimating the value of services rendered by such housewives. But even in the absence of such datas and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be re-calculated, taking the value of services rendered per annum to be Rs.36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs.50,000/- instead of Rs.25,000/- given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000/- per annum and multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs.10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs.20,000/- per annum. In their case, therefore, the total amount of compensation should be re-determined, taking the value of services rendered at Rs.20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs.50,000/- towards the conventional figure.

So far as the award of compensation in case of children are concerned, Shri Justice Chandrachud, has divided them into two groups, first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs.50,000/- has been held to be payable by way of compensation, to which the conventional figure of Rs.25,000/- has been added and as such to the heirs of the 14 children, a consolidated sum of Rs.75,000/- each, has been awarded. So far as the children in the age group of 10 to 15 years, there are 10 such children, who died on the fateful day and having found their contribution to the family at Rs.12,000/- per annum, 11 multiplier has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs.25,000/- has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs.1,57,000/- each. In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life- time. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of Taff Vale Ry. Vs. Jenkins [1913] A.C.1, and Lord Atkinson said thus:

........all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think be drawn from circumstances other than and different from them.

At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. There are several decided cases on this point, providing the guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not adduced any materials on the reasonable expectation of pecuniary benefits, which the parents expected. In case of a bright and healthy boy, his performances in the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety child and bad student, but as has been stated earlier, not an iota of material was produced before Shri Justice Chandrachud to enable him to arrive at just compensation in such cases and, therefore, he has determined the same on an approximation. Mr. Nariman, appearing for the TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made is grossly inadequate. Loss of a child to the parents is irrecoupable, and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well placed officials of the Tata Iron and Steel Company, and on considering the submission of Mr. Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs, to which the conventional figure of Rs.50,000/- should be added and thus the total amount in each case would be Rs. 2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. The TISCO itself has a tradition that every employee can get one of his child employed in the company. Having regard to these facts, in their case, the contribution of Rs.12,000/- per annum appear to us to be on the lower side and in our considered opinion, the contribution should be Rs.24,000/- and instead of 11

multiplier, the appropriate multiplier would be 15. Therefore, the compensation, so calculated on the aforesaid basis should be worked out to Rs. 3.60 lakhs, to which an additional sum of Rs.50,000/- has to be added, thus making the total amount payable at Rs.4.10 lakhs for each of the claimants of the aforesaid deceased children.

So far as the eight other persons, who died belonging to the other category, Shri Justice Chandrachud had arrived at the compensation on the basis of dependency at 60% of the annual income and thereafter has applied the different multipliers, depending upon the age, and we see no infirmity with the determination thus made. In their case, however, we would enhance the conventional figure from Rs.25,000/- to Rs.50,000/-.

So far as the compensation to the injured persons are concerned, before Shri Justice Chandrachud, though on behalf of the claimants, compensation on several heads had been claimed, but unfortunately, no materials had been placed, which could have been placed. On the basis of meager datas available, the compensation has been determined ranging from Rs.38 lakhs to Rs. 5 lakhs. In arriving at this figure, the percentage of burn has been taken into account, daily expenses have been taken into account, as indicated in Table-I, cost of medical treatment has been taken into account, as indicated in Table-II, Expenses for Psychotherapy has been taken into account, as indicated in Table-III, Effect on Marriage prospects have been taken into account, as indicated in Table-IV, Non-Pecuniary Losses have been taken into account, as indicated in Table-VII and even Punitive Damages have been taken into account, and finally the total amount of compensation has been arrived at. It may be stated that the injured persons with burn injury of 10% and below have not been awarded any compensation. It may also be stated that while discussing the claim on daily expenses, cost of medical treatment and expenses for psychotherapy as well as punitive damages have been rejected, but in the ultimate tabular form, compensation has been awarded on that score also and since the company has not raised any objection on that score, we do not intend to consider and nullify the said compensation amount, as indicated in the tabular form. It transpires from the report of Shri Justice Chandrachud that in the Statement of Claim, even there has been no indication as to the nature of burn injury suffered, the nature, duration and quality of treatment received, the requirement of future treatment prescribed by any Doctor, the state of condition of burn injuries, when the Statement of Claim was filed, the disability suffered by any burn victim and the expenditure, if any, incurred by any burn victim until the Statement of Claim was filed and last but not the least, the loss of earning capacity in any individual case. Shri Justice Chandrachud has also noted the statement of the counsel, appearing for the Tata Iron and Steel Company, that if any burn victim produces the advice of a Burn-Expert Doctor for any further medical or surgical treatment in India, TISCO is prepared to bear the expenses of the said treatment. The materials produced, indicate the anxiety and steps taken by the company officials in making available the services of doctors from Delhi, Bombay, U.K., USA and Italy and the injured patients were referred to hospitals in Delhi, Bombay, Madras and Bangalore. Even some of the injured patients were sent to U.K., U.S.A., and Paris for cosmetic surgery at the companys expense. In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered. In the case of Non-Pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered. But for arriving at a particular figure on each of the aforesaid head, the claimant is duty bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation. A bare perusal of the Report of Shri Justice Chandrachud, bear testimony

to the fact that the claimants did not discharge their obligations by putting the relevant materials to enable Shri Justice Chandrachud to arrive at the quantum of compensation. Determination of compensation in such cases is an upheaval task, more so, when no material is produced at all. In such circumstances, we must say that Shri Justice Chandrachud has shown maximum sympathy and has determined the compensation to the maximum extent possible, which is also not objected to by the company. We, therefore, do not find any justification for our interference with the quantum arrived at and enhancing the compensation, in respect of the injured persons, who suffered the burn injury on account of the tragic incident. It is true that persons having burn injury to the extent of 10% and below, have not been awarded any compensation and, therefore, we, as a matter of compassion, award a lump-sum of Rs. two lakhs in favour of each of those persons.

At the end, we express our gratitude for the services rendered by Shri Justice Chandrachud, ungrudgingly in tackling the problems of determining the compensation, almost single handedly, without any assistance from the claimants by way of putting any materials for determination of the compensation. We take note of the fact, as indicated in the affidavit of the company, as to several benefits given by the company to the heirs and dependants of the deceased and/or injured persons and though, we could have taken that into account in ultimate assessment of the compensation, but we do not think it appropriate to take that into consideration, after this length of time. The compensation awarded in favour of different claimants by Shri Justice Chandrachud be re-determined by the Registry of this Court, taking into account the enhancement made by us in this Judgment and then the balance amount, after taking into account the amount already in deposit, may be deposited by the company within a period of three months from today. The compensation amount could be disbursed in favour of each of the claimants by way of Account Payee Cheques, and the claimants, on being identified by the counsel, the same should be handed- over to them. In the event, any claimant would require that the compensation should be paid by Bank Draft, then the money could be sent to the claimant by A/c Payee Bank Draft, after deducting the commission of the bank from the amount in question. If any of the claimants are not in a position to come to this Court for receiving the compensation amount, then they should intimate the Registry of this Court, the address to which the amount could be sent and on being properly attested by the counsel, appearing for them and on receipt of such intimation, the amount in question could be sent by A/c Payee Cheque, by Registered Post.

We also keep on record the valuable services rendered by Ms. Rani Jethmalani, in putting forth the grievances of the claimants and arguing the matter with great ability and clarity of thoughts. We also keep on record the able assistance of Shri F.S. Nariman, the learned senior counsel, appearing for the company for his advice to his clients, not to pursue this litigation, as an adversarial one, but to come forward to pay the determined compensation with an helping attitude, which advice has been duly accepted by the company. We also appreciate the stand of Shri Nariman that the compensation for the children could be doubled outright and for others, the Court may determine, as to what would be the just sum. We are indeed sorry, that this matter has dragged on for this length of time, but there was no way out and the circumstances indicated by Shri Justice Chandrachud in his Report, are sufficient to hold that there has been no latches on his part, in determining the compensation.

This writ petition is accordingly disposed of. There will however be no order as to costs.