

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

Judgment Reserved on: 17.10.2023
Judgment Pronounced on: 07.11.2023

212 (14 CASES)	CWP-17922-2017 (O&M)
SARUP SINGH	... Petitioner
VERSUS	
UNION OF INDIA AND ORS.	... Respondents
SATPAL	CWP-17923-2017
	... Petitioner
VERSUS	
UNION OF INDIA AND ORS.	... Respondents
ISHWRI DEVI	CWP-17920-2017
	... Petitioner
VERSUS	
UNION OF INDIA AND ORS.	... Respondents
BALWANT SINGH	CWP-38118-2018
	... Petitioner
VERSUS	
UNION OF INDIA AND ORS.	... Respondents
SAWAN SINGH AND OTHERS	CWP-29385-2017
	... Petitioners
VERSUS	
UNION OF INDIA AND ORS.	... Respondents

GUDDI DEVI AND OTHERS

CWP-29755-2017

... Petitioners

VERSUS

UNION OF INDIA AND ORS.

... Respondents

CWP-17909-2017

CWP-17911-2017

CWP-17912-2017

CWP-17913-2017

CWP-17915-2017

CWP-17916-2017

CWP-17917-2017

& CWP-17918-2017

AMARJEET SINGH

... Petitioner

VERSUS

UNION OF INDIA AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ajay Jain, Advocate for the petitioner(s).

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Sunil Kumar Sharma, Sr. Panel Counsel and
Ms. Gehna Vaishnavi, Advocate for respondent No.1.

Mr. Pankaj Mulwani, DAG, Haryana
for respondents No.2 to 4.

VINOD S. BHARDWAJ, J. (ORAL)

A batch of 14 petitions is being decided by a common judgment as the issue involved herein is identical and between the similarly situated parties. For the facilities of reference, facts are extracted from CWP-17922 of 2017 titled as 'Sarup Singh Versus Union of India and others'.

The petitioner has approached this Court for seeking modification/ setting aside of the report submitted by Justice T.P. Garg, Commission of

Enquiry (hereinafter to be referred to as 'the Commission') into the incident of violence that took place at Village Haud Chillar in the then District Rewari, pertaining to the 1984 anti-Sikh riots claiming that the compensation recommended by the abovesaid Commission is inadequate. A further prayer has also been made for seeking enhancement of the compensation.

The petitioner has approached this Court averring that consequent upon the assassination of the former Prime Minister Smt. Indira Gandhi on 31.10.1984, violence erupted at Village Haud Chillar in the then District Rewari. On 02.11.1984, there was some rumour about the miscreants coming to attack village Haud Chillar. The then Sarpanch Dhanpat Singh was apprised about the possible apprehension and it was assured that no harm will come their way. However, a truck loaded of miscreants came to the village and set ablaze the residential houses and other properties of three families of the village. They targetted the Haveli of Kartar Singh and Balwant Singh; and killed as many as 17 persons including women and children and took away the household goods, ornaments, cash and food grains etc. An FIR No.91 dated 03.11.1984 was registered in this regard at Police Station Jatusana, District Mahendergarh under Sections, 148, 149, 302 and 436 read with Section 34 of the IPC, but no investigation was conducted into the same. The relevant extract of the abovesaid FIR reads thus:-

“Sd-Ram Kumar designation HC/219 The contents of FIR are mentioned here below:- I, am Sarpanch of village Chillar. There is one small dera near our village, which is called as Haujipur. The panchayat of both the villages is same. In village Haujipur there are 6/7 houses of Sikhs. That yesterday, i.e. on 02.11.1984 at about

11.30 AM, a truck from the side of Haily Mandi, Pataudi District Gurgaon full of persons came in our village Chillar. At that time, I along with Subedar Shri Deep Chand son of Mangal Singh Ahir, Lambardar Nanak Chand son of Sultan Ahir, Lambardar and other residents of the village and Rattan Singh son of Krishan Ram Jat, resident of Hagora, Sunder Lal son of Sohan Lal Jat, resident of Nurpur were present. The persons who had come in the truck were announcing that they will finish all the Sardar's living in Dhani (Haujipur) because the Sardar's had killed their popular leader Prime Minister Smt. Indira Gandhi. We made them understand and sent them back. But on 03.11.1984 in the evening, 3 trucks full of persons came from the side of Haily Mandi, Pataudi, reached village Haujipur and started putting everything on fire. Who so ever came out of the village was killed. At that time Lambardar Nanak Chand, Kanhiya Lal Panch resident of Chillar, Rattan Singh resident of Chamora, Sunder Lal resident of Nurpur came there and tried to make them understand but they did not hear us and started saying that "the Sikhs are traitors, we will finish them and if you interfere, consequences would not be good" Those persons were 400/500 in number. The sheds and houses were put on fire by them and started pelting stones. Due to the fire some persons were burnt alive. We cannot identify the persons who were burnt alive. The number of persons who were burnt alive would be about 20. We wanted to report the matter by going to the Police Station but we were stopped by those persons from going to the Police Station. Myself and Subedar Deep Chand have come to the Police Station for lodging the report. I have heard my statement, it is correct. Action be taken by going to the spot. Sd/- Dhanpat Singh. Attested Sd/- Ram Kumar, SHO. Police Station, Jatusana."

There were a total number of 32 casualties in the said incident. The public outcry continued to resonate through times and eventually the

Government notified “T.P. Garg Commission” to inquire into the said incident.

The terms of the inquiry to be held by the Commission are extracted as under:-

- (i) to the incidents of violence which targetted members of the Sikh community living in village Haud Chillar in November 1984.
- (ii) the sequence of the events leading to and all facts relating to such violence including facts relating to number of victims who died or were seriously injured due to the violence and damage to property.
- (iii) to recommend measures, which may be adopted to meet the ends of justice connected with the incidents under inquiry; and
- (iv) to consider such matters as may be found relevant in the course of the inquiry.

Pursuant thereto, the Commission conducted the inquiry into the matter and recorded the statements of the witnesses and submitted its report on 16.03.2015 to the Government of Haryana. As per the report, 32 persons were killed while 06 persons had sustained injuries. A total of 36 petitions had been preferred before the said Commission in respect of loss of life and property. It was recommended by the Commission that the State Government/Union Territories should pay uniform compensation. The operative part of the recommendations with regard to the compensation made by the Commission is as under:

“125 (a) In view of the detailed discussion in paras 60 to 112 (pages 144 to 187) of this report, a sum of Rs.20.00 lakhs over and above the amount already paid has been recommended to be paid to the claimants qua each of 31 deaths detailed at serial No.1 to 31 in the Table given in para 72 on pages 146 to 148 of this report

While a sum of Rs 25.00 lakhs should be paid to the widow of the lone army man Inderjit Singh shown at serial No 32 in the table given in para 72 on page 148 of this report This is because as per evidence on record she has not been paid any amount of compensation whatsoever till date on any earlier occasion by the Government.

(b) As regards 36 claims qua loss of property the description of which have been given in paras 85-86 (pages 157-158) of this report a detailed discussion has been made in paras 87 to 98 (pages 158 to 170) of this report. Accordingly and as per the observations made therein, the Commission recommends that an amount of Rs. 5.00 lakhs more qua the loss of property be paid over and above the amount of compensation already paid by the Government to each of 36 petitioners named in paras 85-86 (pages 157-158) of this report.

(c) Besides as per discussions in paras 95- 96 (pages 166 to 169) of this report in respect of the damage caused to the Gurudwara and the Janj Ghar in the village, as per discussions recorded in para-98 (b) page 111 of this report, the Commission recommends that an amount of Rs. 5.00 lakhs each for the Gurudwara and the Janj Ghar be also donated to any such religious structures in cane raised at a place where the majority of the survivors of village Haud have now settled. This can well be inquired into by the authorities concerned and only after satisfying themselves about the rehabilitation of the majority of such survivors and the place, appropriate decision may be taken by the authorities in this regard.

(d) Further, as per discussion in paras 99 to 112 (pages 172 to 187) of this report in respect to the injuries caused to Smt. Malan Bai through Sarup Singh (Petition No 35-HCC), Smt. Mahender Kaur (Petition No. 79-HCC), Sunder Singh (Petition No 80-HCC)

Sawan Singh (Petition No 7-HCC, Smt. Besar Bai (Petition No. 11-HCC) and Satpal (disabled son) through his mother Smt. Ramesh Kumari (Petition No. 37-HCC), the Commission recommends that an amount of Rs. 1.00 lakhs be paid to each of the 5 petitioners, namely, Shri Sarup Singh on account of injuries to his wife Smt. Malan Bai, Smt. Mahender Kaur, Sunder Singh, Sawan Singh and Smt. Besar Bai named in para 99 above. However, as per above discussions, the Commission recommends that an amount of Rs.50.00 lakhs be paid as compensation to Satpal petitioner through his mother Ramesh Kumari (named in para 99 above) as his guardian in the manner detailed in para 112 of this report above.

The abovesaid recommendations were accepted by the Government and compensation as suggested was undisputedly disbursed. Aggrieved of the compensation recommended by the Commission, the present petition has been filed for seeking enhancement of the compensation so that the same is commensurate to the loss sustained by riot victims and is more equitable.

A short reply had been filed on behalf of the respondent-Union of India wherein the facts as stated above were not disputed. It was, however, submitted that the Ministry of Home Affairs, Government of India had framed a policy i.e. "Sanction of 'Rehabilitation Package' to provide relief to the victims of 1984" riots and circulated the same vide letter No.U-13018/46/2005-Delhi-I(NC) dated 16.01.2006. As per the abovesaid rehabilitation package, the entire expenditure of payment of ex-gratia compensation in case of death, injury and for damage to property was to be initially made by the respective State Government/UTs and the same was to be reimbursed by the Central

Government after receipt of utilization certificate. Since the Commission had been set up after the rehabilitation policy dated 16.01.2006, the claim, if any, has to be disbursed firstly by the State Government and it can seek reimbursement of the same from the Union of India only thereafter. The said scheme was closed vide letter dated 05.12.2012 and it was conveyed that if any claim remains unsettled, the same was to be settled finally by 31.12.2012 and no new application was to be accepted for payment of compensation thereafter. It was also averred that the Ministry of Home Affairs has no role in the process of constitution of the Commission, verification of the claim as well as in making payment as per the recommendations of the Commission.

A separate written statement had been filed on behalf of respondents No.2 and 3 by the Joint Secretary, Government of Haryana in the Department of Home Affairs. The factual aspect as noticed above have not been disputed even by the respondents No.2 and 3 i.e. the State of Haryana. It has, however, been submitted that one CWP No.25029 of 2017 titled as 'Harbhajan Singh and others Vs. Union of India and Others' involving similar issues had been filed and the same was dismissed on 22.11.2017. The order passed in the said writ petition was subject matter of challenge in LPA No.31 of 2018. The same was also dismissed vide order dated 18.01.2018. Hence, the report submitted by the Commission as well as the recommendations made by it with regard to the quantum of compensation were affirmed. The operative part of the order dated 22.11.2017 passed in **CWP No.25029 of 2017 (supra)** is extracted as under:

“In this case, there were 32 cases of death, 6 cases of injury and 36 cases of loss to the property. The Commission had not only paid personal visits but also decided the amount of compensation after framing relevant issues on the pleadings and taking into consideration the evidence led by the parties.....

Consequently, the report of the Commission does not call for any interference for the purpose of further enhancement of compensation and hence, the present petition is hereby dismissed in limine.”

It was thus contended that the compensation recommended by the Commission has thus been held just, sufficient and reasonable by this Court and the said order has attained finality. The compensation assessed has already been disbursed and there is no reason for reopening the entire issue as individual claims were not being considered and a bench mark ex-gratia financial assistance was extended to the people who had suffered losses and that the aggrieved persons may, if so advised, take recourse to the remedies for seeking compensation by way of an appropriate individual petition. The process of assessment of compensation by applying the module of the Motor Vehicles Act, 1988 would not be applicable to the assessment of ex-gratia compensation as there is no such statutory provision. In matters of such magnitude and nature, ex-gratia compensation is disbursed under rehabilitation package by the States and on a uniform criterion without discrimination to any person and that said criteria cannot be held to be bad. Reference is also made to the judgments of various Hon'ble High Courts in relation to the victims of the 1984 riots, which are extracted as under:

“That this Court in case of Kulwant Kaur vs State Of Haryana on 16 April, 1998, (1999) 121 PLR 108 was pleased to order as under:-

“6 Keeping in view the facts of this case and in particular that petitioner, a hapless widow with three minor children has really to feed herself and her three female children and that her deceased husband was Havaladar in Army having a reasonably good pay and facilities life free accommodation and free ration an amount of Rs 3,50,000/- would not in any case be excessive. In fact it may be somewhat on lower side We thus, direct the Government of Haryana to make over the petitioner an amount of Rs 3.50 Lakhs minus Rs. 20,000/- already paid.”

That, the Delhi High Court, in case of Bhajan Kaur vs Delhi Administration ILR 1996 Delhi 754 was pleased to order as under:-

“It is also noteworthy that the Supreme Court awarded Rs. 1 lakh to Rs.7.5 lakhs for illegal curtailment of life as indicated in the aforesaid decisions. Therefore, obviously the compensation or ex gratia payment as a measure of immediate relief to the victim's family should be more than Rs. 50,000.00 and between Rs.1 lakh and Rs. 7.5 lakhs.”

That, the Delhi High Court in case, Ganny Kaur Vs Govt. of NCT of Delhi & Anr. on 8 March, 2018 directed to release a sum of Rs.5,00,000/- in favour of the petitioner.

That, the Jharkhand High Court in case of Balvinder Kaur & Ors vs Union of India & Ors, decided on 14 July, 2017, ordered as under:-

“This Court in view of the several orders passed by the Hon'ble Supreme Court and particularly, in the year 2006, an order was passed for payment of Rs.5.00 lakhs to each Sikh riots victims, if the petitioners have not received the

said amount, the Deputy Commissioner of the Bokaro district is directed to extend the same benefit after proper enquiry. The Hon'ble Supreme Court has also directed for payment of Rs 5.00 lakh other than what has been paid earlier to each of the Sikh riots victims in view of the report of Nanawati Commission."

That, the Chhattisgarh High Court in case of Kehar Singh And Anr. vs State Of Chhattisgarh And Anr decided on 1 May, 2002, ordered as under-

"8. Having considered the facts and circumstances of the case and material available on record and taking into consideration the judgment of Delhi High Court passed in case of Bhajan Kaur (supra) and the decision of Supreme court in case of SS. Ahluwalia v Union (supra), in the opinion of this Court, it is just and proper that a sum of Rs. 2,00,000/- as compensation be awarded from the date of incident with interest @ 9% per month after adjusting the amount already paid to the dependents, within one month from the date of receipt/production of a copy of this judgment."

It is further contended that the compensation granted to the riot victims varied from Rs.1,00,000/- to Rs.7.5 lacs and as such, the compensation recommended by the Commission and disbursed by the State cannot be said to be unjust, insufficient or unreasonable. All the aspects have been fully examined and the delay in assessment and disbursement of ex-gratia compensation has been duly factored in by the Commission while making its recommendations.

No replication/rejoinder to the written statement has been filed by the counsel for the petitioners

Learned counsel for the petitioners has vehemently argued that the respondent-State does not deny the occurrence of the incident. The sheer volume of the number of casualties at 32, the injured at 06 and those who sustained damage to their property at 36 establishes the magnitude of State failure in maintaining law and order resulting in incalculable loss to the victims on account of default of the respondent-State in performance of its obligations required as per law. It is argued that the compensation recommended by the Commissioner is insufficient and does not adopt any uniform formula for determination of compensation and it would have been feasible that a criterion for determination of compensation ought to have been recommended and that it could have been more apt to determine the compensation by applying the criteria as prescribed under the Motor Vehicles Act, 1988. The said methodology would have reflected the objectivity in determination of compensation. It is also contended that the Commission fell in error in not granting any interest on the said amount and that the petitioners were entitled to claim interest on the amount of compensation recommended w.e.f. the date of Constitution of the Commission till final disbursement of the compensation considering that the loss was sustained by the petitioners in the riots of 1984 and the computation of compensation as well as its disbursement was already delayed inordinately. The counsel for the petitioners places reliance on the Division Bench judgment of this Court passed in the matter of **“Dabwali Fire Tragedy Victims Association Versus Union of India and others”**, reported as

(2009) 10 RCR (Civil) 334 to substantiate his abovesaid arguments and seeking award of interest on the compensation so computed. The relevant extract of the abovesaid judgment reads thus:

“24. For the purpose of award of compensation, the Commission categorized the claim petitions into following six distinct categories:-

- 1) Death cases involving children between the age group of one month to ten years;*
- 2) Death cases involving children between the age group of ten to fifteen years;*
- 3) Death cases involving children between the age group of sixteen to twenty two years;*
- 4) Death cases involving housewives including working women;*
- 5) Death cases involving working men; And*
- 6) Claims based on injuries sustained by the victims men, women and children.*

Category 1 Cases

25. In so far as death cases involving children between the age group of one month to ten years, the Commission relying upon the decisions of the Hon'ble Supreme Court in C.K. Subramonia Iyer & Others v. T. Kunhikuttan Nair & Others AIR 1970 Supreme Court 376, New India Assurance Company Limited v. Satender & Others 2007 (1) Civil Court Cases 255 (SC), Lata Wadhwa & Others v. State of Bihar & Others (2001) 8 Supreme Court Cases 197, M.S. Grewal & Another v. Deep Chand Sood & Others 2001 Supreme Court Cases (Criminal) 1426, awarded to the parents/next of kin of each child killed in the incident, a lump sum amount of Rs.2,00,000/- towards compensation. It is noteworthy that majority of the victims fell in this category, as out of a total of four hundred and forty six dead, 172 happened to be children in the age group of one month to ten years.

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39. We have heard learned counsel for the parties at considerable length. We have also been taken through the material on record including the depositions recorded before the Commission. The following questions, in our opinion, fall for determination:

- 1) Whether the findings of fact recorded by the One Man Commission of Inquiry regarding the genesis of the fire incident and the concomitant negligence leading to 446 deaths and injuries to 200 suffer from any error of law or perversity to warrant interference from this Court?
- 2) If answer to Question No.1 above is in the negative, was the Commission of Inquiry legally correct in holding that respondent No.9-Rajiv Marriage Palace was an Agent of the D.A.V. School and Management Committee, respondents No.4 and 5, so as to render the latter vicariously liable for the acts of negligence committed by the former?
- 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?
- 4) Are the claimants entitled to seek enhancement in the payment of compensation in the light of the consensus allegedly arrived at before the One Man Commission?
- 5) In case, answer to question No.3 is in the affirmative, what is the extent of enhancement to which the petitioner and claimants are entitled in each category and/or claim petition filed by them before the Commission and on what basis?

6) *To what other reliefs are the claimants entitled? We shall deal with the above questions ad seriatim.*

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200. *There are three distinct aspects which need to be addressed while dealing with this question. The first relates to payment of interest on the amount awarded in favour of the claimants. Whether any interest is at all awardable, and, if so, from what date and at what rate would fall for determination while dealing with this aspect. The second aspect relates to the mode of recovery to be adopted in the event of a default in the payment of the amount by those held liable. The third aspect that needs to be addressed is whether the injured victims are entitled to a direction for treatment at the expense of the State in future.*

201. *Coming to the question of award of interest, it was argued on behalf of the School by Mr. Rajiv Atma Ram that the One Man Commission had not awarded any interest in favour of the claimants, which aspect has been left to be determined by this Court. He urged that no interest had been awarded even in Lata Wadhwa's case (Supra) either by Justice Chandrachud, who conducted an Inquiry into the claims or by the Apex Court. This, according to the learned counsel, implied that award of interest was not an essential part of the award of compensation for the Torts suffered by the claimants.*

202. *On behalf of the claimants, it was per-contra argued that since the amount of compensation was being awarded on the principles governing claims made under the Motor Vehicles Act, 1988, there was no reason why it should be denied to the claimants especially when Section 171 of the Act empowers the Tribunal to award interest at such rate and from such date not earlier than the date of making the claim as may be specified by the Tribunal. It was contended that interest was awarded in M.S. Garewal's case*

(Supra) and is invariably awarded in all Motor Vehicle Accident Claim cases.

203. Section 171 of the Motor Vehicles Act, 1988 makes a specific provision for award of interest where any claim is allowed by the Motor Accident Claims Tribunal. The rate of interest and the date from which the same is payable is, however, in the discretion of the Tribunal, subject to the condition that the date of award of interest cannot be earlier to the date of making of the claim. As seen by us in the earlier part of this judgment award of compensation to the claimants in death and injury cases has been guided by the broad principles applicable to cases arising under the Motor Vehicles Act. The multiplier method of determination of compensation in death cases and the broad principles on which amounts have been determined by us in injury cases are not different from those applied and determined under the said Act. Such being the position, there is no reason why award of interest should be denied to the claimants especially when the right to claim and receive the amount relates back to the date on which the incident had taken place and the award of interest to the date on which a claim for payment of compensation filed. That apart award of interest simply ensures that the claimants are not prejudiced on account of the delay in determination of their claims by suitably compensating them, for such delay. No juristic principle has been cited by the respondents on which award of interest may be said to be impermissible in a case like the one at hand. Indeed even in M.S. Garewal's case (Supra) the Court had awarded interest at the rate of 6% in favour of the claimants. The fact that no interest was awarded in Lata Wadhwa's case (Supra) also cannot in our opinion, be construed as a declaration of law especially when the question whether interest was payable and if so, from what date and at what rate had not been urged before their Lordships for determination. If the judgment in Lata

Wadhwa's Case (Supra) is silent on the question of interest, the same cannot be cited as an authority for denial of interest to the claimants in the present case.

204. *That brings us to the question as to what should be the rate of interest and from what date. Insofar as the date from which the interest is to be awarded is concerned, we see no reason to go against the provisions of the Section 171 of the Motor Vehicles Act, 1988, no matter that provision may have no direct application to the case at hand. It would be just and proper in our opinion to award interest only from the date of the filing of the claim petitions before the One Man Commission. The rate at which the said interest ought to be paid to the claimants also should not present any serious difficulty. Although there are decisions in which rate of interest has been as high as 12% per annum, as in the case of Kaushlya Devi Vs. Karan Arora & Ors. AIR 2007 SC 1912 and Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Anr., 2003(4) RCR (Civil) 764, we are of the view that simple interest at the rate of 6% from the date of filing of the claim petition would serve the ends of justice.*

205. *The next question relates to the mode of recovery of the amount awarded against the respondents in the event of their default in making the payment. It may be recalled that out of the total amount awarded by us, 45% has been made payable by the State Government out of which 15% is its own liability while the remaining 30% is the liability of the Dakshin Haryana Bijli Virtran Nigam and Municipal Committee, Dabwali with liberty to the State to recover the same from the Board and Municipal Committee, Dabwali. A direction issued to the State Government to pay the said amount within the time stipulated by us, would in our opinion, suffice as a violation of the said direction may itself be the subject matter of contempt proceedings before this Court. What is significant is that 55% of the amount awarded by us is payable by*

respondents No. 4, 5 and 9. While proceedings for disobedience of the direction to pay may be permissible even for enforcement of the said direction against the said respondents also we need to clarify that apart from recourse to those proceedings, the amount held recoverable from respondents No. No. 4, 5 and 9 shall be recoverable both as fine and/or as arrears of land revenue. In the event of default in payment of the amount within the time that we are granting for such payment or in the event of a dispute as to the exact sum payable in terms of our order, the Court of Additional Civil Judge (Sr. Divn.), Dabwali, shall be competent to determine the question and direct payment which direction/order shall tantamount to a certificate for recovery of the amount so determined from the said respondents, as fine and/or as arrears of land revenue by the concerned revenue authority.

206. That leaves us with the only other aspect viz. whether directions for treatment at the expense of the State need to be issued for the benefit of the injured victims. All that we need say in that regard is that this Court had, vide its orders dated 10.12.1996, 24.09.2001 & 18.02.2002 directed such treatment. Treatment has been accordingly provided to the injured as and when required. All that we need say is that in case the State-run hospitals in Haryana are not equipped to provide the requisite treatment to the victims, such treatment may be provided either at the Post Graduate Institute of Medical Education and Research, Chandigarh, or at the All India Institute of Medical Sciences, New Delhi, at the Cost of the State Government upon satisfaction of the Director, Health Services, Government of Haryana that such treatment cannot be provided in the State run Hospitals.

207. Before concluding, we need to point out that while the hearing of these cases was, at an advanced stage, Civil Miscellaneous No.1011 of 2009 was filed by applicant Vinod Kumar claiming compensation on account of death of his wife and

daughter namely Smt. Asha, aged 28 years and Ganga alias Kunjan Rani aged about 3½ years and Civil Miscellaneous No.16045 of 2009 was filed by applicant Smt. Anil Arora wife of Vijay Arora claiming compensation on account of death of her husband Vijay Kumar and sons namely Ankit aged six years and Archit aged seven years. It was submitted by Ms. Anju Arora, Advocate, that these claims could be entertained by this Court at this stage also and suitable directions be issued for claiming compensation. We regret our inability to do so. The proceedings before the Commission had remained pending for nearly six years. No claim petition was, however, filed by the applicants before the One Man Commission. The applicants have attempted to offer an explanation for their failure. We do not, however, consider it necessary to examine either the explanation or the claim for the present proceedings, at this stage, which remained confined only to cases that were filed before the One Man Commission and in which evidence was adduced by the claimants in proof of their respective claims. Whether or not the applicants can maintain the claims at this distinct point of time and, if so, whether the allegations forming the basis of claim are supported by any material and, if so, what is the amount which can be awarded by way of compensation, are mixed questions of law and facts which we cannot, in these proceedings, entertain at this stage. To that we can say that the applicants shall be free to file appropriate proceedings permissible in law for such relief as may be due to them but subject to all just exceptions including maintainability and limitations.

In the result we pass the following order:

- 1) The amounts determined in each one of the cases referred to in the body of this judgment are hereby awarded in favour of the claimants with interest at the rate of 6% per annum*

w.e.f. date of the filing of the claim petition before the One Man Commission.

- 2) *Out of the total amount payable to each one of the claimant, the State of Haryana shall pay 45% of the total amount of compensation awarded in each one of the cases dealt with by us with liberty to recover 15% each of the amount so paid from Dakshin Haryana Bijli Virtran Nigam and Municipal Committee, Dabwali. The balance 55% of the amount awarded shall be payable by respondents No.4, 5 and 9 jointly and severally.*
- 3) *The apportionment for the enhanced amount of compensation among the claimants shall be in the same ratio as recommended by the One Man Commission subject only to modifications and/or further directions indicated by us in the body of this judgment. We make it clear that in cases where we have directed deposit of the amount of compensation in the name of minor claimants, the same shall be disbursed to the claimants in case they have already attained majority.*
- 4) *The amount awarded by us together with interest shall be deposited by the respondents in the ratio indicated in para 2 above with the Additional Civil Judge (Sr. Divn.), Dabwali for disbursement among the claimants within a period of 4 months from today, failing which the rate of interest awarded by us on the principal amount held payable, shall stand enhanced from 6% to 10% per annum from the date the period of 4 months expires till actual payment is made.*
- 5) *In the event of any default by the respondents in the making of the payment, the claimants shall be free to not only institute proceedings for the breach of the direction of this Court but also approach the Additional Civil Judge (Sr.*

Divn.), Dabwali for effecting recovery of the amount remaining unpaid.

- 6) The Additional Civil Judge (Sr. Divn.), Dabwali, shall, in any such event, initiate proceedings for recovery of the amount that remains unpaid as if the same was recoverable as fine and/or as arrears of land revenue for which purpose he shall be competent to issue certificates and instructions to the Collector(s) concerned for recovering the amount outstanding.*
- 7) Treatment for the burn injury sustained by the injured victims shall be provided free of cost. In case the same is not available in the State-run hospitals in Haryana, the same shall be arranged in Post Graduate Institute of Medical Education and Research, Chandigarh or at the All India Institute of Medical Sciences, New Delhi upon satisfaction by the Director, Health Services, Government of Haryana that such treatment is essential but cannot be provided in the State-run hospitals.*
- 8) Liberty is given to the petitioners to seek further clarification of this order at any stage, should the need so arise.*
- 9) Civil Miscellaneous Nos.1011 and 16045 of 2009 are dismissed with liberty to the applicants to file appropriate proceedings for payment of amount of compensation and/or other reliefs due to them subject to just exceptions including maintainability of claims and limitations etc.*
- 10) The costs involved in the setting up of the Commission from beginning till end shall be borne by the State of Haryana.*
- 11) The parties shall bear their own costs in this Court, and in the proceedings before the One Man Commission.”*

It is thus contended that interest @ 6% per annum was awarded from the date of filing of claim petition before the one man Commission and as

such, the compensation at par, in the form of awarding interest from the date of constitution of the Commission, ought to also be granted to the petitioners herein.

Counsel for the State, on the contrary, contended that the judgment in the matter of *Dabwali Fire Tragedy (supra)* is not disputed, however, the said judgment is not applicable to the facts of the present case, since the counsel representing the petitioners before the Commission agreed that the amount claimed was on excessive side and that the petitioners would be satisfied if an amount of Rs.25,00,000/- or a little less is granted to the petitioners with respect to the each death. Hence, the ex-gratia compensation claimed by the petitioners themselves was around Rs.25,00,000/- and that the petitioners were satisfied with the said compensation to be just and appropriate. The compensation has thus been recommended by the Commission after recording the abovesaid satisfaction of the petitioners themselves. Hence, a compensation of Rs.25,00,000/- was awarded to the widow of the lone army man Inderjeet Singh, while a compensation of Rs.20,00,000/- had been granted to the claimants qua each of the remaining 31 deaths noticing that the said families had already received a compensation of Rs.7,00,000/- each earlier in point of time. Thus, once the parties had already got their statements recorded to the effect that they would be satisfied if a compensation equivalent to Rs.25,00,000/- is awarded to them, the same having been recommended and granted, it would not be open for them to seek redetermination of a higher compensation despite the compensation having been granted after recording their consent. He places reliance on the extract of the report which reads thus:

“73. During the course of final arguments, while frankly admitting the receipt of Rs.7.00 lakhs qua each of 31 deceased (out of 32) and nothing qua the death of the lone Army man Inderjit Singh, the learned counsel for the petitioner's Sarvshri R.S. Yadav and J.S. Makkar have both agreed that the amount of Rs.70.00 lakhs claimed qua each of 32 deaths is certainly highly exaggerated. They have, however, finally submitted at the bar that the petitioner's would be satisfied if an amount of Rs.25.00 lakhs or a little less is now granted to the petitioners qua each death.”

While advertng to the claim raised by the petitioners that they would be entitled to interest on the delayed disbursement of the ex-gratia compensation, counsel for the respondents has argued that the question of interest becomes significant where the claim is being disbursed in relation to the period when the loss occurred, however, where the claim is being determined on a current date and having already taken into consideration the delay caused, the petitioners would not be entitled to the interest on the compensation. The said aspect was duly considered while determining the *ex-gratia* compensation. The concept of interest shows that it is a return on a loan or other monetary obligation. In general terms, it is a return or compensation for use or retention by one person of a sum of money, owed to another. Thus, an element of amount being due, is an integral and basic feature for award of interest. The determination of the amount to be due as compensation, when being determined in present, and with consent of the parties, the said amount cannot thereafter be construed as due on any prior date than the determination of the amount itself. The Commission is conscious of all the said aspects and determines the award after considering all aspect and recommends the same in the present. The

determination of loss does not relate back to an earlier date and has to be interpreted in the present. The acceptance of the claim and agreement of the claimant to the said amount itself seals the demand and disentitles for claim of interest from any prior date. Reference is made to the extract of the report, which reads thus:

“74. Opposing the above submissions of the learned counsel for the petitioners, the learned Deputy District Attorney Shri S.K. Sharma and Ms Meenakshi Kumari, ADA argued that since an amount of Rs.7.00 lakhs has already been paid qua each death, the petitioners are not entitled to any a more amount of compensation. According to them, considering the price index and the devaluation of rupee since the year 1984-1985 till the year 2006-2007 upto which the sum of Rs.7.00 lakhs was paid in three phases and which carried much more value as compared to the present value of the currency, no additional amount is required to be granted on this count.

75. Considering the submissions made on behalf of the respondents i.e. the State and its various agencies in the above para, from the other side of the coin, their submissions would pale into complete insignificance. In case it is found that the petitioners were entitled to much more amount by way of compensation in the year 1984-85 itself then that awarded to them in three phases spread over from the year 1984-85 to 2006 -07, it will be seen that the value of currency has considerably decreased from time to time after that. In that view of the matter, if the amount as demanded by the petitioners through their learned counsel (referred to in para No.73 above) had been granted to them immediately or soon after the unfortunate incident, after adding the minimum amount of interest prevalent from that time onwards till date, the said amount would have come to a very large figure. Under the circumstances,

the arguments advanced on behalf of the respondents by Shri SK Sharma and Ms. Meenakshi Kumari have no force nor do they hold good in the present context of the situation. The fact remains that the amount of compensation awarded to the petitioners qua each death is too meagre (sic) and cannot be said to be "Just" "sufficient" and "reasonable" by any stretch of imagination

76. Let me, therefore, proceed to consider the principles laid down by the Hon'ble Supreme Court and the various High Courts from time to time in Order to determine "Just" amount of compensation in the instant case

77. Two earlier pronouncements of the Apex Court Lata Wadhwa and others Versus State of Bihar and others (2001) 8 Supreme Court Cases 197 and MS Grewal and another Versus Deep Chand Sood and others (2001) Supreme Court Cases (Cri) 1426 and three that of Andhra Pradesh High Court cited as Chairman AP SRTC Versus Shafiya Khatoon, 1985 ACJ 212 (A P) Bhagwas Das Versus Mohd Arif 1987 ACJ 1052 (A P) and A.P. SRTC Versus G Ramanaiah, 1988 ACJ 223 (A P) may be referred to in this regard

78. The basic decision for consideration is Shafiya Khatoon's case (supra). The principles laid down in this decision require to be stated fully and with care, especially since those principles constitute my beacon light. In paragraph 74 of the Judgment, the Hon'ble Judges of the Andhra Pradesh High Court made significant recommendations in the following terms:

"Compensation Cases raise issues of social economic and financial Policy not amenable to judicial reform but can be resolved by the legislature only after full consideration of factors which cannot all be brought into clear focus, or be weighed and assessed, in the course of the forensic process. The Judge however wise, creative and imaginative he may

be -is "cabin-d, cribb'd, confin'd, bound in" not, as was Macbeth, to his "saucy doubts and fears" but by the evidence and arguments of litigants. It is this limitation, inherent in the forensic process, which sets bounds to the scope of judicial law reform."

79. *In another decision of the Apex Court in the State of Haryana and another Versus Jasbir Kaur and others III (2003) Accident and Compensation Cases 90 (S C) it was held that while determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be neither a bonanza, nor a source of profit but at the same time it should not be a pittance.*

80. *Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. The expression "just" denotes equitability, fairness and reasonableness and non arbitrary If it is not so it cannot be just. In my opinion, that completes a fairly full re- statement of the principles laid down in the three pronouncements of the Hon'ble Supreme Court referred to in paras 77 and 79 above and the application of the principles laid down by the Andhra Pradesh High Court in the three pronouncements stated in para 77 above.*

81. *From the above discussions and taking into consideration the totality of facts, circumstances, situation and the manner in which the unfortunate incident took place showing the extent of extreme brutality. the method adopted in giving practical shape to the nefarious designs to commit the crime by setting fire to the whole village, killing innocent children, men and women, looting household articles and causing injuries to so many others Some of*

the helpless victims did put some resistance but in the face of such a large unruly mob armed with all sorts of weapons and bent upon killing them, their resistance proved ineffective and ultimately those who had put up resistance also succumbed to the injuries caused to them by the miscreants It was indeed an Act of gravest brutality for which there can possibly be no parallel in the entire history of this peaceful area Let us see as to who were the victims They were the persons who were firstly uprooted from their original habitats in village Karloowala, Tehsil Bakhar, District Mianwali (now in Pakistan) in the year 1947 on account of the partition of the Country, migrated to India and since residential property as well as agricultural lands were allotted to them (in lieu of the property left by them in Pakistan) in village Haud of District Rewan, they, by their continuous efforts and hard work had made barren lands cultivable, described and damaged. Havelis or houses livable and were living peacefully for about 37 years were ultimately killed in such a brutal manner, their houses looted and burnt, their cattle, fodder and all other belongings reduced to ashes leaving them again in the same condition in which they had found themselves after the partition of the Country in the year 1947 for no fault of theirs. Moreover, it will also be seen that nobody from the District Administration or the State Government ever took note of their plight except by giving them certain grants from time to time till the year 2007 and thereafter, in the year 2011 for the first time when the whole sordid episode was perhaps again agitated and brought to the notice of the Higher Authorities by the aggrieved persons, the State Government felt it fit and proper to constitute the present Commission and hence all these proceedings The plea raised on behalf of the State Government by their learned counsel that as many as 13 of the petitioners had filed their claims before the Nanavati Commission and as such were not entitled to any more amount at this stage, has no merit particularly, in view of

the fact that neither all the petitioners nor the next of kins Legal heirs of all the deceased approached Nanavati Commission nor could they perhaps approach the said Commission, may be either for want of proper and appropriate knowledge of its sittings being held in the National Capital Thus, taking an overall picture of the whole sequence of events, the manner in which the whole incident took place resulting in the killing of innocent children, men and women without any fault of theirs, it can safely be concluded and I have no hesitation in doing so and to hold that the amount of compensation awarded to them so far is too meagre (sic) and just a "pittance" and cannot be said to be "just" and "reasonable" by any stretch of imagination

82. *As per the latest jamabandi entries for the year 2008-09 brought on the record (Ex.R143/HCC 1) the whole village now vests in the Union Government and the village is recorded as "**Gair Mumkin Abadi**". It has nowhere been pleaded by the State Government or any of its agencies who were respondents before the Commission in this reference as to what efforts did they ever make or steps they ever took to rehabilitate the aggrieved families after the incident. By simply saying that an amount of Rs.1.00 lakh in most of the cases or a small amount in certain cases was paid for the loss of property cannot be said to be any solace by any stretch of imagination and, in my opinion, it cannot be said to be "just" compensation from any point of view so far as their rehabilitation is concerned.*

83. *During the course of entire proceedings, I had also the occasion to go to village Haud to see the things for myself The Deputy Commissioner, Rewari, the Senior Superintendent of Police, Rewari, several other District Officers and a large number of not only the aggrieved persons but inhabitants from neighbouring villages were present there. During the course of my*

inspection, I had noticed that all the havelis/houses in the village were in dilapidated condition, completely damaged, demolished, burnt and that there was no trace of human life whatsoever. I presented a very horrible sight and presented a clear picture of the holocaust of November, 1984 and which also could well be imagined after seeing the scene of crime.

84. In view of the foregoing and the entire discussions as also taking into consideration the totality of circumstances and all factors relevant thereto and after giving my very careful consideration, I would like to recommend that the State Government/Union Government should now pay an additional amount of Rs. 20.00 lakhs over and above the amount already paid to the claimants qua each of 31 deaths detailed at serial No 1 to 31 in the Table given in para 72 on pages 146 to 148 of this report. However, a sum of Rs. 25.00 lakhs should be paid to the widow of the lone army man Inderjit Singh deceased shown at serial No.32 in the Table in para 72 on page 148 of this report as she has not been paid any amount whatsoever by way of compensation till date. This should, in my opinion, suffice so far as any additional Relief that may be recommended and that has been found to be "sufficient" "Just and reasonable" compensation to be recommended qua 32 deaths as referred to above. In case any decision is taken as regards the acceptance of this particular recommendation made by the Commission by the authorities, any additional amount so given may be apportioned in the shares defined against each of the next of kins/legal heirs of the deceased shown in the Table of para No.72 on page No.146 to 148 of this report above."

He further contends that determination of just compensation is w.e.f. the date of recommendation and that once the ex-gratia compensation has been granted to the petitioners as per the statements made by their counsel

before the Commission, it would not be open to the petitioners to wriggle out of the said statements. Moreover, it is not the case of the petitioners that the statement made by their counsel before the Commission was without their authorization or consent. Hence, having given their consent and having agreed to the abovesaid amount and having availed the same, it would be uncalled for at this juncture to reopen what has already been finalized amongst the parties and that too with their own free consent.

It is argued that the compensation assessed in the matter of ***Dabwali Fire Tragedy (supra)*** was without the consent of the parties and the factum of delay had also not been taken into consideration while computing the compensation. Hence, the compensatory interest was granted by the Division Bench of this Court in its above mentioned judgment. However, in the present case, the delay in considering the claims has already been factored in by the Commission while recommending the abovesaid compensation, and the compensation disbursed earlier had also been considered before arriving at what would be the just, sufficient and reasonable compensation.

A further reference is made to the judgment of this Court in ***CWP-25029 of 2017 (supra)*** wherein similar prayer for grant of interest on account of loss against the property was not accepted by this Court and the said order of dismissal was also upheld by the Division Bench in LPA preferred against the judgment passed in CWP-25029-2017.

Counsel for the respondent-Union of India has reiterated the submissions noticed above and has submitted that the rehabilitation policy has already come to an end and that no claims can be entertained thereafter.

Responding to the abovesaid arguments, learned counsel for the petitioners has submitted that the interest was not awarded in the abovesaid **CWP-25029 of 2017 (supra)** since no such interest had been awarded in relation to the claim pertaining to loss of life. He thus contends that the denial of interest against the claim towards loss of property thus should not be construed as disentitling the petitioners from claiming interest on the compensation awarded against loss of life.

On a pointed query, he fairly concedes that the compensation recommended by the Commission has already been disbursed to the petitioners. It is further fairly concedes that the judgment in the matter of **Dabwali Fire Tragedy Association (supra)** was not based upon any consent of the claims and he also does not dispute the statement made on behalf of the petitioners by their counsel before the Commission. It is also not disputed by him that even though there were 32 deaths, however, the said deaths are largely confined to the same families and the beneficiaries happened to be Amarjeet Singh, Surjeet Kaur, Surjit Kaur, Balwant Singh and Guddi Devi in relation to as many as 29 claims. The details thereof have been given in paragraph No.72 of the report which is extracted as under: -

Sr. No.	Name of deceased.	Case No.	Name/Names of claimants & their relationship with the deceased	Share of the additional amount of compensation to be apportioned between each of the claimants if awarded at any time.
1.	Gyan Singh	44-HCC	Amarjit Singh (Sister's son)	$\frac{1}{2}$ share $\frac{1}{2}$ share

		62-HCC	Surjeet Kaur (Brother's Daughter)	
2.	Aminder @ Joginder Kaur	45-HCC	Amarjit Singh (Sister's son)	1/2 share
		55-HCC	Surjeet Kaur (Brother's Daughter)	1/2 share
3.	Sunita Devi	47-HCC	Amarjit Singh (Sister's son)	1/2 share
		59-HCC	Surjeet Kaur (Brother's Daughter)	1/2 share
4.	Mahinder Singh	49-HCC	Amarjit Singh (Sister's son)	1/2 share
		61-HCC	Surjeet Kaur (Brother's Daughter)	1/2 share
5.	Jamna Bai	50-HCC	Amarjit Singh (Daughter's son)	1/2 share
		60-HCC	Surjeet Kaur (Grand Daughter)	1/2 share
6.	Jasbir Kaur	51-HCC	Amarjit Singh (Sister's son)	1/2 share
		58-HCC	Surjeet Kaur (Brother's Daughter)	1/2 share
7.	Gurdiyal Singh	52-HCC	Amarjit Singh (Grand Daughter)	1/2 share
		46-HCC	Amarjit Singh (Daughter's son)	1/2 share
8.	Pritam Kaur	53-HCC	Surjit Kaur (Daughter)	Full Share
9.	Arjun Singh	54-HCC	Surjit Kaur (Daughter)	Full Share
10.	Gurcharan Singh	56-HCC	Surjit Kaur (Brother's Daughter)	1/2 share
		48-HCC	Amarjit Singh (Sister's son)	1/2 share

11.	Jasbir Singh	57-HCC	Surjit Kaur (Sister)	Full Share
12.	Satbir Singh	63-HCC	Surjit Kaur (Sister)	Full Share
13.	Krishna Devi	64-HCC	Balwant Singh (Husband's brother)	Full Share
14.	Tarawanti	65-HCC	Balwant Singh (Brother)	Full Share
15.	Kartar Singh	66-HCC	Balwant Singh (Son)	Full Share
16.	Dhani Bai	67-HCC	Balwant Singh (Son)	Full Share
17.	Bhagwan Singh	68-HCC	Balwant Singh (Brother)	Full Share
18.	Gulab Singh	69-HCC	Balwant Singh (Grand Son)	Full Share
19.	Veena	70-HCC	Balwant Singh (Brother)	Full Share
20.	Manohar Singh	71-HCC	Balwant Singh (Father's Brother)	Full Share
21.	Chanchal Singh	72-HCC	Balwant Singh (Father's Brother)	Full Share
22.	Sunder Singh	73-HCC	Balwant Singh (Father's Brother)	Full Share
23.	Inder Singh	74-HCC	Balwant Singh (Father's Brother)	Full Share
24.	Sardar Singh	38-HCC	Guddi Devi (Daughter)	Full Share
25.	Harbhajan Singh	39-HCC	Guddi Devi (Sister)	Full Share
26.	Dayawanti	40-HCC	Guddi Dvi (Brother's Wife)	Full Share
27.	Veera Devi	41-HCC	Guddi Devi (Sister)	Full Share
28.	Surjeet Kaur	42-HCC	Guddi Devi (Sister)	Full Share
29.	Dhan Singh	32-HCC	Guddi Devi (Sister)	Full Share

It is also not disputed that the petitioners had the alternative remedy of preferring a claim petition before a competent Forum and that they have never preferred any such petition claiming damages and instead preferred their claims before the Commission only.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file including the report of the Commission with their able assistance.

While adverting to the objections raised by the counsel for Union of India that the rehabilitation policy/scheme has already come to an end in December 2012, I find that the said objection is not tenable. The language of the communication clearly reflects that the scheme has been closed against the entertainment of any new application for seeking claim. The claims that have/had already been raised and are pending for finalization before a Court of law or are subject matter of challenge before any higher Court/Forum cannot be termed as fresh claims. Hence, the objection raised by the respondent-Union of India is based upon misreading of the communication. Once the Union of India has acknowledged that it has reimbursed the compensation disbursed by the State Government on the basis of recommendations of the Commission, any further proceedings or claim arising on account thereof would also be part and parcel of the said scheme. The respondent-Union of India cannot deny its liability under the garb of rehabilitation scheme having been closed.

Having held so, the question which arises next for consideration before this Court is to determine as to whether the ex-gratia compensation recommended by the Commission and accepted by the State Government is just, fair, reasonable and sufficient or not?

Learned counsel for the petitioners has even though argued that determination of compensation ought to have been on the basis of a uniform criterion and applying the principles of Motor Vehicles Act, 1988 instead of any

lump sum amount. I, however, do not find myself in agreement with the submission advanced by the learned counsel for the petitioners. The Commission had made the recommendations, which were in the nature of an ex-gratia financial assistance to be given to the victims and was not devised as a mechanism for determination of the disputed issues. It has been claimed by the petitioners themselves that a large number of victims were minor children and women or the old aged persons. Notwithstanding that the Motor Vehicles Act, 1988 was notified at a much later point of time than the date of incident, however, even if assuming the same for the sake of arguments, the said criteria would have been followed, it would have invariably assessed the compensation at a much lower level. There is no pleading raised by the petitioners either before the Commission or before this Court to demonstrate the prejudice that may have occasioned and to reflect as to how and in what manner the compensation, if assessed by applying the formula of Motor Vehicles Act, 1988, would have been more beneficial. Determination of any such compensation would have required the petitioners to have first raised a demand about determination of compensation on that pattern and leading evidence to show the income to be assessed separately for women, children and old, their age, their dependency as well as the multiplication factor. Having not raised such a demand or issue, it must be presumed that the petitioners considered all options and had agreed for what was assessed best by them especially when there was no occasion of any duress at the time of their giving consent. Having exercised a choice and opted for best, the petitioners get bound by it. Besides, there is no evidence brought on record by the petitioner even before this Court

or before the Commission as was crucial for determining the income, the dependency and the multiplier, which are the basics for determination of the compensation. The argument advanced to revisit the methodology for computation of compensation is thus devoid of any merit or objectivity and even fails to show that the petitioners have been prejudiced in any manner by not adopting the formula under the Motor Vehicles Act, 1988. The argument thus stands largely conjectural and on the basis of a presumption that if the said formula would have been adopted, the petitioners would have been benefited more.

Testing further, the aspect with regard to determination of compensation through the above mode as suggested would have raised numerous issues regarding the freezing/fixation of various factors which could not have been done without leading evidence. Such an exercise can only be done by a trial Court and the issues about admissibility of evidence etc. were not the terms of reference of the Commission. The terms of inquiry prescribed for recommending measures to be adopted to meet the ends of justice or to consider such matters as may be found relevant in the abovesaid inquiry. The recommendations have been made under Term-III which empowered the Commission to recommend measures to meet ends of justice. The claimants were always at liberty to pursue their claims before a competent Court in a manner known to law and subject to the applicability of the relevant statutes, however, they preferred not to opt for filing any petition for claiming and seeking determination of the compensation and establishing the loss. The petitioners having subjected themselves to the abovesaid jurisdiction and having

consented to a compensation of Rs.25,00,000/- to be just, sufficient and equitable, would be bound by their own statement. The petitioners having not disputed their statement to be without their authorization or consent would now be estopped from wriggling out of the impact and consequences of such statement, more so when the said statement has been accepted by the Commission and an ex-gratia financial assistance/grant as just, fair and equitable compensation has been recommended thereupon. The above recommendations have thereafter been accepted by the State and the compensation/grant/financial assistance was disbursed accordingly. Hence, the respondents have not only acted upon the statement made by the counsel for the petitioners but have also discharged their obligation and altered their position as per recommendation made by the Commission in accordance with the statement made by the counsel for the petitioners. A unilateral withdrawal of such a statement at any later stage, after having availed the compensation would amount to retracting, which may have been permissible in law only in certain exceptional circumstances such as pressure, coercion, threat and/or undue influence. No such circumstances have been pleaded to exist in the present cases. Hence, the consent qua recording the statement on behalf of the petitioners was voluntary and without any pressure, coercion or undue influence in any manner whatsoever.

Further, principle of waiver and acquiescence would also be attracted and having waived the claim beyond the amount referred to above, it would not be open for the petitioners to re-agitate and re-claim what has been waived off. The abovesaid principle of law would apply to the facts of the

present case carving out a distinction from the case of *Dabwali Fire Tragedy (supra)* relied upon by the counsel for the petitioners.

Further, it is reflected from the written statement filed by the respondents that the compensation in other such similar circumstances and in cases arising out of the riots of 1984 from different High Courts of the country varied from Rs.1,00,000/- to Rs.7,50,000/-. Even if interest on the above amounts is worked out @ 8% per annum from 1984, the same would be Rs.3.20 lakhs and Rs.24 lakhs. If average of the highest and lowest amount is taken as a base compensation, the same would work out to Rs.4,25,000/- and interest for 40 years @ 8% per annum on the above amount would be at Rs.13,60,000/-, taking the total amount to Rs.17,85,000/-. Hence, even if the contemporaneous compensation is examined and the ensuing interest thereupon is to be factored in by applying a mean, the amount of compensation/financial assistance would be more or less equal to the compensation that has been recommended by the Commission itself. It cannot, thus, be outrightly said that the compensation recommended by the Commission and eventually awarded by the State was unjust, inadequate or unreasonable.

While advertng to the issue with regard to interest on the amount awarded from the date of constitution of the Commission, I find that the said submission is misconceived. A perusal of the report of the Commission from paragraph No.74 onwards clearly shows that the Commission has taken into consideration the price index as well as devaluation of rupee since the year 1984-85 and has also considered the minimum amount of interest prevalent from the time onwards till date while determining to what should be just and

proper compensation. It has also been noticed earlier pronouncements and principles about determination of compensation and that what should be deemed as just and reasonable. The element of interest in compensation is usually compensatory to make up for the devaluation of the rupee and its lack of purchasing power from the date when the amount fell due and till such time that it is disbursed. Once such factors including the pricing index, the rate of interest etc. have been taken into consideration while awarding compensation/ex-gratia financial assistance any further addition of interest would amount to giving a double benefit and award of such interest can no more be termed as compensatory interest. The Commission, after noticing all these aspects and having recorded the consent of the petitioners, had made the recommendations as per the demand made by the petitioners. It was thus a decision made by the petitioners themselves and having felt satisfied about a particular amount of money, the petitioners cannot later be permitted to contend that the amount released to them, on their demand, was unjust, insufficient or unreasonable. I am further strengthened by the judgment of the Single Bench in the matter of *Harbhajan Singh (supra)* wherein the issue of interest on the award was raised by the petitioners but the same was declined. The said judgment was affirmed by the Division Bench also. Irrespective of the reasons that may have weighed with the said Bench by not awarding an interest, the issue remains that the question was argued and was declined and the said judgment has been affirmed by a Division Bench. Any award of interest at this juncture would amount to reopening the entire controversy after much delay and notwithstanding the claim having been considered without success earlier.

The calculation of the contemporaneous compensation alongwith interest @ 8% per annum shows that the amount would work out to less than or equal to the amount of compensation already awarded. The same cannot thus be held to be meager or a pittance under any of the said parameters as well.

For the foregoing reasons and considering the recommendations made by the Commission as well as the statement made by the counsel for the petitioners before the Commission as also the compensation/financial assistance granted by the different High Courts in the incidents pertaining to the riots at the same time, I am unable to hold that the recommendations made by the Commission granting the compensation refer to in Paragraph No.125 thereof is unjust, unreasonable or insufficient. The award is thus affirmed and upheld finding no valid grounds to interfere in the said recommendation.

The present petitions are accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

07.11.2023.

rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No