

**IN THE COURT OF 2ND ADDL. SENIOR CIVIL JUDGE,
BHUBANESWAR, DISTRICT-KHURDA.**

PRESENT:- **Shri S.K.Pattanaik, M.A., LL.M,**
2nd Addl. Senior Civil Judge, Bhubaneswar.

M.S. NO. 125/28 of 2012/2001

Smt. Sasirekha Pati, aged about 56 as on 2008
W/o. Sri Chakradhar Pati,
Resident of New Street, Paik Lane, Jaypore,
Dist. Korapur (Orissa).

Plaintiff

-Versus-

1. State of Orissa represented
through the Chief Secretary,
Government of Orissa,
Secretariate, Bhubaneswar,
Dist : Khurda.
2. Collector, Sambalpur,
At/Po/Dist: Sambalpur.

Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff: M/s M.M. Jena & Associates

For Defendants : M/s. R.P. Nanda, G.P.

DATE OF ARGUMENT: 27.08.2014

DATE OF JUDGMENT : 16.09.2014

J U D G M E N T

This is a suit for compensation of Rs.25,00,000/- (Rupees Twenty five lakhs).

2. The gist of the plaintiff's case is as follows:-

The plaintiff's son Himansu Sekhar Pati was continuing and prosecuting his study in the second year of engineering course in the University College of Engineering, Burla, Sambalpur. As their college holds a spring festival every year in which a photography competition was one of the items, the son of the plaintiff along with seven of his friends on 30.01.1998 at about 1.00 P.M. went into Mahanadi bed in the month of January and February to take photography in the winter afternoon with an intention to take part in the competition to be held in his college. While going to the river, the plaintiff's son as well as other friends signed in the hostel register for their visit to river Mahanadi in presence of Hostel Superintendent.

It is the further case of the plaintiff is that as her son had a brilliant educational career and was budding engineer while enjoying the afternoon in the river bed on 30.01.1998 which was a holiday for IDD festival and were snapping photography for ensuing competition suddenly found heavy flush of water coming from Hirakud Dam site at about 1.30 P.M. at a height of 15 feet spreading over about two kilometers of width. Finding the water rushing towards them at a very high speed and in heavy quantity as none of them knew swimming except one Soubhagya Barik, on the advice of Soubhagya Barik they climbed above a big stone about 15 feet in height. The said Soubhagya Barik with best efforts rushed to the river embankment by swimming and was rescued by college peon who was present there. The said Soubhagya Barik immediately went to the principal of the college namely Sarbeswar Prusty and requested him to inform the Dam authorities over telephone to close the sluice gates in order to save the lives of other students who were inside the river. The said principal was busy in handing over the charge to the new principal as he was retiring from service on that date. He did not give any importance to the request of the students. Even after drowning of the students the college principal never informed the plaintiff over telephone available in the college. The students informed the plaintiff at about 6.30 P.M. on 30.01.1998 about the tragedy.

It is the further case of the plaintiff is that the said Soubhagya Barik getting no positive response from the principal immediately rushed to the fire brigade station located just close to the college campus and informed the officer present to take immediate action to rescue of his friends trapped inside the river. The firemen present expressed their inability to do so stating that they were not expertised and they do not know the swimming. They also refused to telephone the dam authorities to stop the water. They also did not provide any swimming tubes and refused bluntly as the said tubes cannot be provided without permission from the head office. The students and the nearby villagers rushed to the spot at about 2.40 P.M. but to their disappointment neither the hillock nor the friends were to be seen. By then everything was over. The entire area was submerged with water and there was no trace of seven students. Their dead bodies could only be traced after four days onwards just about one kilometer away from the place of occupation. Had the principal of that college intimated the dam authorities immediately at about 2.00 P.M. just after receipt of information from Soubhagya Barik to stop the sluice gates of the dam the plaintiff's son as well as his friends no doubt would have been saved. The plaintiff and the parents/guardians of other students who have met their untimely death due to grave callousness and negligent act of the authorities have been dumb founded. Some mothers of the deceased students have become totally bed ridden out of normal psychic order due to untimely departure of their beloved sons. This incident has also affected adversely to the study of other sons and daughters of the plaintiff.

It is also the case of the plaintiff is that there was absolutely no necessity for releasing the water without notice from the Hirakud Dam and that too during the day time on a holiday and during a picnic season when ordinarily to the knowledge of the dam authority, the students of engineering college and the medical college at Burla go into the Mahanadi river bed for such short visit as they have no other place for recreation nearby and these two colleges are situated just on the river bank. There was no warning given by the dam authority either through

media like newspapers, radio, TV or by loudspeaker or through siren in the locality. As a matter of fact on principle the dam authorities who start with the process of alerting the general public 24 hours before releasing water from the dam by wide publicity through newspapers, radio, TV, Siren, mike and they are also bound to inform the District Administration, police, fire brigade much before releasing water from the dam which was not at all done in this case. The P.S. Case No. 16/98 under Section 336/304-A IPC has been registered at Burla police station. The State Government appointed the Revenue Divisional Commissioner, Northern Division, Sambalpur to conduct an administrative inquiry. The said inquiring authority has submitted his report to the Government and found negligence on the part of the defendants and on public demand the State Government appointed an inquiry commissioner, all have submitted their report. The State Government paid Rs.2,00,000/- (Rupees Two lakhs) as a part compensation in the month of July 1998. This inadequacy compensation was also brought to the notice of the defendants.

It is the further case of the plaintiff that the dam authorities in spite of taking the measure and without any action taken for alerting the general public they opened 9 gates at a time as a consequence of which the plaintiff's son and six other brilliant sons of the State were drowned to untimely death. The plaintiff's family were all hopeful that their deceased son who was a brilliant student and was doing very well in every examination in engineering course in Mechanical line and as prevalent he could easily be absorbed in some reputed company within a couple of years at a handsome salary in the campus selection. He could earn at least Rs.2,00,000/- in Gulf country every month. The inaction, callousness and gross negligence on the part of the defendants having resulted in the sad demise of her son. As per the conclusion of the inquiry the Government has paid Rs.3,00,000/- (Rupees three lakhs) as compensation to the plaintiff which is completely or grossly inadequate and the act of the negligence of the defendants the plaintiff is minimum entitled to Rs.25,00,000/- (Rupees Twenty five lakhs) as

compensation from the defendants. That paying of Rs.3,00,000/- by the State Authorities in a most irrational manner have valued the life of the plaintiff's brilliant engineering son as well as those of his 6 other friends which has added to the agony of the plaintiff and can only be termed as mental harassment. The plaintiff has issued notice under Section 80 CPC to the defendants that in the event of compensation of Rs.25,00,000/- is not paid to her and an appropriate employment is offered to either one of her children or in relation to be named by her but the defendants did not comply the same. In this process prayed for the defendants are jointly and severally liable to pay a sum of Rs.25,00,000/- as compensation with pendent lite and future interest.

3. The defendants filed their written statement and challenged the suit on various grounds about its maintainability, cause of action, non-service of statutory notice, law of limitation, non-joinder of necessary parties. He specifically stated that the student Soubhagya Ranjan Barik who rescued from the incident had stated that Sabyasachi Patra, Himanshu Patra, Achyutananda Das, Sibasish Parida, Kali Prasad Padhi, Bineet Padhi and Malaya Das went to river Mahanadi to take bath at 1.15 P.M. on 30.01.1998. Further stated that Mahanadi bed near Hirakud dam was/is not frequently visited by the students as well as visitors for spending their leisure hour and the river bed of Mahanadi is neither recreation center nor picnic spot nor bathing ghat for the public together. The river bed of Mahanadi was/is not a place to enjoy the afternoon during holidays and also to snap photographs. The then Principal had handed over charge and retired on 31.01.1998. The Dean Students affairs informed the Principal at about 3.15 P.M. on 30.01.1998 about the incident and the principal immediately lodged an FIR telephonically in Burla Police Station and also he telephonically intimated some staff members assembled in the college. The Sub Collector came to the college immediately. At about 5.00 P.M. written FIR was lodged in Burla Police Station and a copy of the FIR was submitted to District Administration and around 8.00 P.M. all the parents/guardians of the students were informed and return calls were

received from some of the guardians. The Dean Students affairs came to know from the security staff at about 2.45 P.M. that some boys were swept away by the untimely flood in Mahanadi river while taking bath. The Dean and the Superintendent of North Hostel immediately rushed to the spot of the incident. On the way they met the student Soubhagya Ranjan Barik who escaped from the flooding water. They collected the names of the missing students and approached Sri Ishwar Bag and few residents of Kirba village who were returning with motor tubes.

It is also the case of the defendants that the Dean Students affairs requested them to go for a search in the river which they did not venture under the high spade of flood. Then they moved along the bank towards Mahanadi bridge in search of missing students. They came back immediately to the nearby fire station and requested the officer in charge to send the fire brigade for searching. The Dean also requested the Executive Engineer, Main Dam Division, Burla over phone from fire station at about 3 P.M. to close the gate. The Dam authorities are used to discharge the water from the Hirakud Dam by following the guidelines. Due to untimely and unseasonable heavy rain the decision was taken at a belated stage to discharge the excess water to save the Hirakud Dam as well as some towns and villages of the State and since the time was running out sufficient precautionary measures could not be taken for information of the public. In fact the river bed is neither recreation center nor picnic spot nor bathing ghat for the public together. Besides so many suitable spots/sites are available at Burla for recreation.

It is further stated by the defendants that the action deemed proper were taken against the delinquent officers as per law. The plaintiff has averred that the payment of compensation amount of Rs.3 lakhs is a paltry one and he prayed for to sanction Rs.25 lakhs each to the deceased family on the assertion that had her son been alive he would have earn much more now. Such assertion made by the plaintiff is only a hypothetical one and is not very reasonable. The Government

of Orissa for discharging its obligations had paid a sum of Rs.3 lakhs as compensation and the said payment of compensation was appropriate at that time. The compensation amount was paid as per the wholesale price index of that year and it may not be appropriate to keep on increasing the compensation amount from time to time taking into account the changing scenario. In this process prayed for dismissal of the suit.

4. Basing on the plaint averments and written statements, following issues are settled.

I S S U E S

1. Whether the suit is maintainable?
2. Whether there is any cause of action to file the suit?
3. Whether the suit is liable for dismissal for non-serving of valid and legal statutory notice under Section 80 CPC ?
4. Whether the suit bad for non-joinder of necessary party?
5. Whether this Court has territorial jurisdiction to decide the dispute ?
6. Whether the deceased Himansu Sekhar Pati died due to negligence of the defendants?
7. Whether the plaintiff is entitled to get a sum of Rs.25,00,000/- (Rupees Twenty five lakhs) as compensation from the defendants for loss of her son?
8. To what any other relief, the plaintiff is entitled?

5. In order to substantiate the allegation, the plaintiff Sasirekha Pati examined herself as P.W.1 and relied upon Ext.1 & 2 in support of her stand. Similarly, to substantiate the allegation, the Defendants have examined five witnesses. D.W.1 is Dayanidhi Dehury, D.W.2 is Gopinath Das, D.W.3 is Jagannath Jena, D.W.4 is Pradip Kumar Pradhan and D.W.5 is Sitansu Bhusan Tripathy, OSD and Deputy Collector, Sambalpur and relied upon certain documents vide Ext.A to Ext. H in support of their claims.

FINDINGS

ISSUE NO. 6 & 7 :

6. These issues are interlinked and interdependent to each other and need common evidence for discussion for which these issues have been taken up together for discussion. The plaintiff has filed the suit for compensation of Rs.25,00,000/- from the defendants. One Sasirekha Pati examined herself as P.W.1. He was staying in the said college hostel as a residential student. P.W.1 in her evidence has fully corroborated the plaint story as averred by the plaintiff. In cross examination she has stated that she got the news after three days of occurrence and she along with her husband to the place of occurrence. She has no direct knowledge about the incident and she was not present at the time of incident at the spot. She has also never visited the spot but her husband had visited the spot. She also stated that the students had been to the spot for picnic. She does not know whether picnic was from hostel or college. Her son was staying at hostel and she cannot say whether her son was obtained permission from the hostel authority or not. She has also not filed any document relating to permission from authority. She does not know about sending of 80 CPC notice or receive of acknowledgement and she has not gone through the report of any authority.

7. D.W.1 Dayanidhi Dehury in his evidence has stated that he was working as Executive Engineer, Main Dam Division, Burla from February, 1997 to 31 January, 1998 and he was in charge of Hirakud Dam during his incumbency period. On 30.01.1998 the water level of Hirakud Dam at 9 A.M. was 630.35 feet which was crossed the full reservoir i.e. 630 feet. Due to untimely and unprecedented rainfall in upper catchment area huge water entered into the Hirakud Dam reservoir. Gradually the water level was increased and crossed the full reservoir level. He and Superintendent Engineer namely Jagannath Jena after visiting the dam and verifying the water level decided to open

the sluice gate in discharging the excess water to river Mahanadi. Thereafter, they came to the Superintendent Engineer office where the Superintendent Engineer Jagannath Jena apprised the situation over phone to Chief Engineer who was on official tour to Bhubaneswar. After discussion with Chief Engineer Sri Jena decided to open two gates. Before opening two gates at 12 noon the siren was started to blow intermittently till 2 P.M. to give warning to the public so also the river users regarding opening of sluice gates of Hirakud Dam for releasing water from the reservoir. The order of opening of sluice gate was intimated to the work sarkar who had made necessary entry in the order book register at 12.40 P.M. on dated 30.01.1998. The sound range of siren is 8 kilometers in radius from Hirakud Dam. The siren was blown by Prafulla Nayak. The electrical wireman Bhagaban Rout was assisted to Prafulla in blowing the siren. After following the technical procedure one sluice gate was opened at 1.40 P.M. and 2nd was opened at 2 P.M. for discharging water from Hirakud reservoir to river Mahanadi. The opening of sluice gates have been duly recorded in order book. As the matter was very urgent and alarming they could not get time to give publicity through TV/radio regarding opening of sluice gate and release of water from Hirakud reservoir to river Mahanadi and only blown siren to give alarming and warning to the public and river users regarding opening of water from Hirakud reservoir to river Mahanadi. At 2.55 P.M. on 30.01.1998 the Dean of Burla Engineering College telephoned him to close the sluice gates and he consulted with Superintendent Engineer ordered to close the sluice gates and accordingly Lochan Mahakud, the worksarkar closed both the sluice gates at 3.20 P.M. and 3.25 P.M. So the dam authorities were not negligent in their duty and willfully discharged water from Hirakud Dam reservoir.

In cross examination he has stated that he was an employee of State Government. On the day of incident i.e. 30.01.1998 the seven students of Burla Engineering College were drowning and died in river Mahanadi. The spot of the incident is locally known as Kirba Ghat near Burla Engineer College. The said spot is open to all and there was no

sign board for restriction. He was put under suspension and was suspended for negligence of official duty. Negligence of official duty relates to cause of death of seven Engineering students on 30.01.1998 by drowning. One departmental proceeding was initiated against him for negligence of his duty and in the said departmental proceeding he was awarded punishment by the Government. Further stated that one criminal case was initiated against him at Burla Police Station and the same is now subjudice in the Court of SDJM, Sambalpur. They have never used TV, media and broadcasting department or mike with rickshaw, beating drums for blowing of siren as there was no time. On the day of incident i.e. on 30.01.1998 the water level in the reservoir was 630.35 feet. The RDC Dr. Hrusikesh Panda, IAS, Government of Orissa conducted enquiry and submitted his report to the Government. He cannot say whether he was found guilty or not.

D.W.2 Gopinath Das in his evidence has stated that he was working as Chief Engineer and Basin Manager, Upper Mahanadi Basin, Burla from 05.02.1997 to 02.02.1998. During his incumbency Hirakud Dam along with other irrigation project was under his administrative control. On 28.01.1998 he had been to Bhubaneswar from Burla on official tour through his office car bearing Regd. No.OR-D-3268 for official discussion. On 30.01.1998 while he was at Cutack at about 11 A.M. to 11.30 A.M. got telephonic message from Superintendent Engineer, Hirakud Dam circle, that on account of entering huge water from upper catchments to the reservoir, the water level of Hirakud dam reservoir crossed the full reservoir level of 630 feet and reached at 630.35 feet. If the sluice gates is not opened then there would be every chance of disaster to the dam and down stream. So the Superintendent Engineer after informing him decided to open sluice gates by taking all precautions and blowing siren. On 30.01.1998 at 8.30 P.M. he got information regarding missing of students due to release of water from Hirakud Dam, immediately he proceeded to Burla via Hirakud. In cross examination he has stated safety of dam should be the prime consideration on and every occasion when floods are observed in the

reservoir for purpose of moderating and regulating outflow in the reservoir, a level of +625 feet should be deemed the safe level normally for this purpose. From 25.01.1998 to 29.01.1998 the water level was above 627 feet. On the night of 29.01.1998 the water level was increased to 630.02 feet. There was heavy rain fall in upper catchment area since 26.01.1998 and the said rain fall was continued till 29.01.1998 of that area. As Chief Engineer, he is not the operating authority.

D.W.3 Jagannath Jena it appears in his evidence that he was working as Superintendent Engineer from 28.05.1997 to 31.01.1998, Hirakud Dam Circle, Burla. On 30.01.1998 at about 9 A.M. he and Executive Engineer (D.W.1) visited the Main Dam and found the water level of Hirakud Dam reservoir has crossed the full reservoir level i.e. 630 feet and reached at 630.35 feet and the same water level was duly visible at the water level gauge well of Hirakud Dam. Due to untimely and unprecedented rain fall at upper catchment area the water level was increased. He and Executive Engineer decided to open the sluice gate and before opening came to the office and appraised the situation to the Chief Engineer over phone who was on official tour to Bhubaneswar. After discussing the matter with the Chief Engineer D.W.2 they decided to open the sluice gates for one after another, accordingly he instructed the Executive Engineer to blow the siren before opening gates and the sound range of the siren is 8 kilometers in radius from the Hirakud Dam. The siren was blown from 12 noon onwards 2 P.M. to give warning to the public and also river users. One sluice gate was opened at 1.40 P.M. and second sluice gate was opened at 2 P.M. As the matter was very urgent and alarming they could not get time to give publicity through TV and Radio regarding opening of sluice gate and release of water from Hirakud reservoir to river Mahanadi. At about 3 P.M. on the said date i.e. 30.01.1998 the Executive Engineer informed him over phone that the Dean of Burla Engineering College has telephoned him to close the sluice gate as some boys have been washed out. After getting such information he immediately instructed the Executive Engineer to close

the two sluice gates at 3.20 P.M. and 3.25 P.M. respectively. The plaintiff's son on account of his negligence was drown in the water of Mahanadi river. The police charge sheet report of G.R. Case No. 145/98 established that as per the chemical examination report of viscera of the plaintiff's son it reveals that an ethyl alcohol is detected on viscera. So due to the own negligence of the plaintiff's son he was drown in the water.

In cross examination stated that on 30.01.1998 he was working as Superintending Engineer in charge of Hirakud Dam Circle, Burla and he was the only authority to order the opening of the gate of Hirakud Dam. He has not filed any document regarding observation of formalities. It is a fact that seven engineering students were drowning in the flow of river water. On 29.01.1998 at 9 A.M. the inflow of the water to the reservoir was 14810 cusecs and the outflow was 13399 cusecs. On the same day at about 12 noon the inflow was 114520 cusecs whereas the outflow was 12884 cusecs. On the same day at 10 P.M. the inflow was 234612 cusecs and the outflow was 12810 cusecs. He has not filed any document regarding taking of steps about precautionary measure on the relevant day and he has also not filed any document regarding sending information to the Collector and other authorities connected to the Dam on the relevant day. It is a fact that they have not contacted with Central Water Commission regarding inflow of water to the dam so also heavy rain fall in the upper catchments area as the said office is situated at a distance of 2 kilometers away from their office. They have opened two gates when the engineering students were drowning thereafter they closed the gate. He cannot say whether the RDC has opined in his report that more than two gates were opened on the relevant day and the report of RDC has not been challenged in any higher forum. The inflow of water to Hirakud reservoir on dated 30.01.1998 at 6 A.M. was 355000 cusecs.

D.W.4 Pradip Kumar Pradhan in his evidence has stated that on 30.01.1998 he was the hostel Superintendent of North Hostel, University

College of Engineering, Burla. On the said date there was no photography competition festival and no student of the college was allowed to enter Mahanadi bed to take photographs. On behalf of the college all students were warned not to go to the river bed of Mahanadi, canal siphon and power channel of Hirakud dam. The Mahanadi river bed is not a picnic spot or a recreation place. At about 3 P.M. he got information from the security that some students were swept away in Mahanadi river and so he immediately contacted the Dean Student Affairs and rushed to the spot and found that Fire brigade personnel were searching the students and they told them that some students were washed away and they were helpless and the only student Soubhagya Ranjan Barik was rescued. The matter was reported to the Principal and the list of the students washed away was handed over to him for necessary action.

In cross examination he has stated that he has not filed any document that he was working as Superintendent at the relevant time. The spring festival is being observed during February and March every year which is a cultural /spring festival. Art and photography is a topic includes in the cultural/ spring festival. The spring festival is being organized by the College. In this festival various photographs of different angles are being collected by the students and displayed in the class room and accordingly prize distribution is made. The students bring the photographs from different places for display. Burla Engineering College is a residential College facility of hostel accommodation. Any student going outside from the hostel must have put his signature on a register. He cannot say whether the students have obtained permission from B.B. Pani in charge of hostel Superintendent on that day to go outside or not. On his arrival he verified the register and contacted the Asst. hostel Superintendent prior to his arrival. He has not filed any circular or notification where the college students were warned not to go river bed of Mahanadi, canal siphon and power channel of Hirakud.

D.W.5 Sitansu Bhusan Tripathy, working as OSD and Deputy Collector, Collectorate Sambalpur in his evidence has stated that Chakradhar Pati the husband of the plaintiff on 22.04.1998 received a sum of Rs.1,00,000/- and on 02.09.1998 the said Chakradhar Pati has received Rs.2,00,000/- out of the Chief Minister Relief Fund from the then Tahasildar, Jaypur. In cross examination has stated that it has not been mentioned in the evidence affidavit that the amount was paid towards compensation. Further stated that the amount paid from the Chief Minister's Relief Fund is Anukampa Rasi.

8. The plaintiff has relied on some documents in support of his case. Ext.1 is the signature of plaintiff in Xerox copy of 80 CPC notice and Ext.2 is the identity card issued from University College of Engineering, Burla in favour of the deceased Himanshu Sekhar Pati. On the other hand, the defendants relied on some documents in support of their stand. The reservoir level record book vide Ext.A, the order book register vide Ext.B maintained by Dam Sub Division, Ext.C is the letter issued from Executive Engineer, Central Water Commission, Mahanadi Division, Burla addressed to Executive Engineer, Main Dam Division, Burla regarding rain fall data from 26.01.1998 to 30.01.1998, the log book of vehicle No.OR-D-3268 vide Ext.D, the operation manual of Hirakud Dam reservoir vide Ext.E, authorisation letter issued by the Collector and District Magistrate, Sambalpur vide Ext.F, money receipt on dated 22.04.1998 amounting to Rs.1,00,000/- received by Chakradhar Pati, father of deceased vide Ext.G and money receipt on dated 02.09.1998 amounting to Rs.2,00,000/- received by Chakradhar Pati, father of the deceased vide Ext.H.

9. Learned counsel for the plaintiff during course of his argument submitted that the plaintiff's son Himanshu Sekhar Pati and his friends have died on the incident dated 30.01.1998. An inquiry has been conducted by the RDC and basing upon the report actions have been taken against the Government officials. An amount of Rs.3,00,000/- has been paid from the Chief Minister's Relief Fund. Himanshu Sekhar Pati

was studying engineering course in Electrical Branch of Burla Engineering College. Due to negligence of the defendants the incident on dated 30.01.1998 was happened and the defendants are completely liable to pay the decretal amount for their negligence. He prayed for decree the suit in favour of the plaintiff.

10. Learned Government Pleader in his argument has submitted that the suit is liable to be dismissed for non-service of valid and legal statutory notice U/s. 80 CPC. The death of the engineering students was not caused due to negligence of the department or authority. The compensation amount of Rs.3,00,000/- which was paid was appropriate at that time as per the wholesale price index. It may not be appropriate to keep on increasing the compensation amount from time to time taking into account the changing scenario. Further submitted that since there is no negligence on the part of the authority or department, the suit filed on behalf of the plaintiff may be dismissed.

11. Keeping the above submissions in mind now first of all the evidence led by the plaintiff in support of her plaint averments are required to be examined in the touchstone settled position of law to find out as to whether a case of negligence has been established or not.

12. Admittedly, one unfortunate incident caused unprecedented situation in the entire State which was caused great embarrassment to the State Government in the year 1998. The said incident was happened on 30.01.1998. On that fateful day the son of the plaintiff along with his seven friends went to the river bed to take bath but it was pleaded that to take photography in the winter afternoon with an intention to take part in the competition which was a holiday (Idle Fetre). Suddenly water was released from Hirakud Dam without giving any warning as a result of which the son of plaintiff and his friends (7 students) climbed over a hillock in the river bed but the gaus of the water approached them within no time and all of them were drowned in the river Mahanadi and found dead thereafter. One Soubhagya Ranjan Barik, one of the student of the group was rescued from the incident as

he was known swimming. It is also admitted that the Dam authorities are used to discharge the water from the Hirakud Dam following the guidelines. Due to untimely and unseasonable heavy rain the decision was taken at a belated stage to discharge the excess water to save the Hirakud Dam as well as some towns and villages of the State. Since the time was running out sufficient precautionary measures could not be taken for information of the public.

13. Before proceeding for the above exercise it is felt apposite to discuss the word negligence which is necessary in the instant case. In **Donoghue-vrs-Stevenson (1932) AC 562** which covers the similar point of negligence. The relevant portion there from for proper appreciation of the case and in order to address the rival submissions advanced during hearing needs reproduction.

The House of Lords has recognized in the above noted case negligence is an independent tort and not based on certain mental element. In negligence action is based not on certain mental element but on the basis of conduct of the defendant i.e. conduct of defendant which may cause harm to the plaintiff. In this, fault is not an essential element. A person may be liable for negligence even without any 'fault'.

As regards to the definition of negligence it has been defined that "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinary regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do"

Further in **Grant-vrs.-Australian Knitting Mills (1936) AC 85 (103)** it has been defined in negligence as follows :

"In strict legal analysis, negligence means more than needless or careless conduct, whether in omission or commission it properly connotes the complex concept of duty, breach and damages thereby suffered by the person to human duty was owing"

According to Winfield “negligence as a tort is the breach of legal duty to take care which results in damages”

Negligence implies absence of intention to cause the harm. It must take reasonable care to avoid act or omission which can be reasonably foreseen would be likely to injure the neighbours. Whether the defendant owes any duty to the plaintiff or not can be determined on the basis of reasonable foreseeability of harm likely to be caused to the plaintiff, while doing the act of the defendant could foresee that it may cause injury to the plaintiff then would presume that he owed duty to the plaintiff and he should take care to avoid injury to the plaintiff. If he does not do this he would be liable for the injury caused to the plaintiff.

Negligence means absence of intention to cause the harm complained of. It may be defined as unreasonable conduct. To be very concise negligence is breach of legal duty to take care. It is carelessness in a matter in which carelessness is made obligatory by law.

In case of negligence the plaintiff has to prove that the defendant owed a duty to him to take care. Mere carelessness on the part of the defendant cannot be a ground for an action against the defendant unless it is proved that the defendant owed a duty of care to the plaintiff. If the defendant owes no duty to take care to the plaintiff the plaintiff cannot take any action against the defendant, even then injury had been caused to him by the act of defendant particular.

It has been further clarified that in action for negligence the plaintiff is to prove three essentials for the liability of the defendant (1) legal duty to take care, (2) breach of the said duty (3) consequential damage.

14. In a case reported in **AIR 1973 Mysore 240 (Mysore State Road Transport Corporation-vs-Albert Dias)** where it has been held that :

“The duty take care depends on reasonable foreseeability of the injury being caused to the plaintiff. If at the time of doing the act or omission the defendant could reasonably foresee injury to the plaintiff he owes a duty to prevent that injury and failure to do makes him liable. Duty to take care is the duty to avoid as doing or omitting to do anything, the doing or omitting to do which may have as its reasonable and probable consequence injury to others, and the duty is owed to those to whom injury may reasonably and probably be anticipated if the duty is not observed. In order to decide the liability of the defendant it has to be determined what a reasonable man would have foreseen and form an idea of how to would have behaved under the circumstances. How much care is to be taken in a particular circumstances on useful test is to enquire how obvious the risk must have been to an ordinary prudent man”.

15. Whether in a particular case the defendant owes a duty of care to the plaintiff or not, is a question based on the whether the defendant could reasonably foresee that an injury might be caused to the plaintiff by his act or omissions. It is not necessary that the person to whom injury had been caused is known to the defendant.

16. As regards to the breach of duty to take care means not taking due care, which would have been necessary in the special circumstances by the determination of the question whether the defendant has violated his duty to take care or not will depend on the facts and circumstances of each case. Now the question arises as to what is the standard of care required to be taken by the defendant in a given circumstances. In **Blythe-vs-Birmingham, Water Works Co. (1856) 25 LJ Ex. 212** it has been held that “negligence is the omission to do something which a reasonable, guided upon those considerations which ordinarily regulate the conduct of human affairs, would or doing something which a prudent and reasonable man would not do” The law requires the caution of a prudent man. The caution taken by a prudent

man has always been the rule. The standard is objective and not subjective. It is left to the judge to decide what, in the circumstances of the particular case the reasonable man would have done.

17. The Rules, that it is for the plaintiff to prove negligence and not for the defendant to disprove it, is in some cases one of considerable hardship for the plaintiff. The second requirement the harm must be of loss of kind that it does not ordinarily happen if proper care is being taken, thirdly the instrumentality causing the accident must be within the exclusive control of the defendant. The defendant needs only to have the right or and opportunity to control; actual control is not required.

18. Now let me advert the real exercise as stated in the foregoing paragraphs. At the outset it has to be seen whether due to negligence of the defendants the ill-fated/unfortunate incident was happened on dated 30.01.1998 or not. P.W.1 Sasirekha Pati is the mother of the deceased Himansu Sekhar Pati. According to P.W.1 her son was prosecuting his study in UCE, Burla and he was a second year Engineering student in the branch of Electrical. On the ill-fated day i.e. on 30.01.1998 her son Himansu Sekhar Pati went to the river bed of Mahanadi just behind his hostel along with some of his friends at about 1 P.M. for taking photographs. While going to river bed he and his friends signed the hostel register and they enjoyed the afternoon on the spot at Kirba inside Mahanadi river. At that time it was found heavy flush of water which was coming from Hirakud Dam site through the said river bed and encircled them. Finding no other alternative her son and his friends except Soubhagya Barik climbed on a stone of about 15 height feet. Soubhagya Barik could rescue himself by swimming and one Jitendra Bag the peon of the college was rescued Sobhagya Barik who was present there by chance. It is further stated by him that Soubhagya immediately rushed to the Principal and informed about the position of their friends but he was busy in handing over charge as the principal was got retired on the said date. The principal did not pay any importance to the request of the students. Thereafter, Soubhagya proceeded to the fire brigade office for

help but they could not help from there and later on when he came to the spot with local villagers at about 2.40 P.M. found his friends were not seen by then the entire spot was submerged with water. His son was drowned in the water and their bodies could only be traced after 4 days by local fishermen.

19. It is further stated that had the principal informed the Dam Authorities immediately the lives of her son and his other friends could have been saved. Her son along with his friends died in the said incident was due to the culpable, rash and negligence act and omission of Hirakud Dam authority as well as the Government officials under the State Government of Orissa which have dumb founded to him and her family members. It is also in the evidence of P.W.1 that the IIC, Burla Police Station lodged a written FIR on 31.01.1998 against the Dam Authorities i.e. Superintending Engineer, Executive Engineer and the SDO for their rash and gross negligence, carelessness, operation of the sluice gates dangerously and unprofessionally leading to the death of his son and his friends. The State Government has appointed the RDC Dr. Hrusikesh Panda, IAS to conduct an administrative inquiry and that report has been accepted by the Government on 19.05.1998. The action of the dam authorities was highly culpable, rash and gross negligence, arbitrarily, whimsical and tortuous in nature. The day of incident was a normal day and good enough to hold a picnic and attract visitors for amusement and snap taking. The dam authority is quite at home in dealing with in discharging water through the sluice gate in such season as per the procedure. On that day no guidelines or procedures was followed to discharge such water. Even siren was not blown no public announcement was made through mike, no intimation was sent to the district administration/police administration/fire station to take precautionary measure before releasing water from Hirakud Dam through the sluice gates. It was most unfortunate that the biggest dam of Asia was manned all through by a worksarkar. On public demand the Government suspended the engineers, i.e. Superintending Engineer, Executive Engineer, SDO and conducted departmental proceeding

against them, as a result they were all punished by the departmental authority against which the delinquent engineers filed appeals before Orissa Administrative Tribunal resulting in dismissal of the appeals. This fact is denied by the defendant. The plaintiff to prove his case filed identity card of his son vide Ext.2 and his mark sheet vide Ext.3 and also filed Xerox copies of other documents which have not marked in this case.

20. D.W.1 in his evidence has stated that as the water of dam crossed full reservoir touched 630.35 feet and the entry has been made by Prafulla Nayak the Gauge reader the siren was blown by said Prafulla Nayak and Bhagaban Rout, was the electrical wireman assisted Prafulla Nayak in blowing siren. After blowing siren one sluice gate was opened at 1.40 P.M. and second sluice gate was opened at 2 P.M. and the same is being maintained in the register by one Golap Senapati worksarkar. It is also stated by him that the matter was very urgent and alarming they could not get time to give publicity through TV, radio regarding opening of sluice gate and release of water from Hirakud reservoir to Mahanadi only blown siren for giving alarming and warning to the public and river users regarding opening of water from Hirakud reservoir to river Mahanadi. It is also stated by him that he was suspended for the reason of negligence of official duty. The negligence of official duty relates to cause of death of seven engineering students on 30.01.1998 by drowning. One departmental proceeding was initiated against him for negligence of duty and he was awarded punishment of that D.P. and the criminal case was lodged against him in Burla police Station. D.W.3 corroborated the evidence of D.W.1 stated in a parrot like manner of evidence, as regards to the opening of sluice gates. It is also stated that report of RDC which reveals the opening of more than two gates. The report submitted by the RDC has not been challenged by any higher forum. Basing upon the report the departmental proceeding was initiated against him and he was awarded punishment. He was also suspended on 31.01.1998 for negligence of duty. G.R. case has been pending in the Court of SDJM, Sambalpur regarding negligence of duty.

As per evidence of D.W.1 and 3 it is clear that Prafulla Nayak gauge reader entered water level in reservoir level record book. Siren was blown by Prafulla Nayak and Bhagaban Rout. Golap Senapati worksarkar who maintained the order book of opening of sluice gates. Lochan Mahakud the worksarkar who closed both the sluice gates. They are the important witnesses have not been examined from the side of defendants. They being the vital witnesses they should have examined in the side of defendants. No explanation has been given from the side of the defendants whatsoever on that score. So the best evidence available to the defendants have been withheld for the best reason known to them which calls a drawal of adverse inference against them about negligence.

21. As stated supra it is clear that it is sufficient to the plaintiff to prove the incident nothing more in such cases. Proof of negligence is prima facie evidence of negligence, more particularly whereas the thing is shown to be under the management of the defendant or his servant and the accident is such that, in ordinary course of the thing, it does not happen, if those, who have management use the proper care, it affords the reasonable evidence, in absence of explanation by the defendant, that accident arose from want of care. In this instant case it is admitted by D.W.1 and 3 that for opening of the sluice gates as the matter was very urgent and alarming they could not get time to give publicity through TV/radio regarding opening of sluice gates and release of water from Hirakud reservoir to river Mahanadi and only blown siren to give alarming and warning to the public and river users. It is also stated that the sound range of siren is 8 kilometers radius. Therefore, there is no alarm for the persons who were beyond 8 kilometers. When heavy flush of water releasing from reservoir of Hirakud Dam only by blowing a siren in my humble views it shows negligent on the part of the authority/defendants. Further if proper care would have taken by the authority there might not have any incident. D.W.1 in his evidence has stated that safety of Hirakud Dam is the prime consideration of Hirakud Dam authorities. The other aspect should not be neglected when prime

consideration is taken into account. Admittedly, sluice gates were opened and ill-fated incident and accident was occurred causing death of seven engineering students. It is the evidence of D.Ws.1, 2 and 3 there was rain in upper catchments area situated in Madhya Pradesh as a result huge water was entering into Hirakud Dam. That statement would go to show that there is a flow of water was coming to the reservoir then the person who are in charge of that would measured the same. D.W.2 has stated in his evidence that he got telephonic message at about 11 A.M. to 11.30 A.M. that the reservoir level was crossed 630 feet. If it was the time at 11 A.M. but the gates were opened at 1.00 P.M. onwards which appears that there was no continuous monitoring of the water level. The authorities/defendants were not under duty to take care of the same. More so, the defendants were under duty to care not only nearby side but also the ultimate through the water being flowed which has not been done in this case. D.W.1 in this regard has stated that at 9 A.M. it was 630.35 feet. D.Ws.1 and 3 have stated that at 9 A.M. the level was 630.35 feet which was crossed the level of reservoir. D.W.2 the Executive Engineer in his evidence has stated that he got information through telephonic message from D.W.3 regarding full of reservoir level 630 ft. and it was reached at 630.35 ft. So the evidence of D.Ws.1, 2 and 3 reveals that the full reservoir of water was noticed by D.Ws.1 and 3 at 9.00 A.M. but they have intimated the same to their authority D.W.2 at 11.00 A.M. after two hours. To that effect no explanation has been given by the defence witnesses that why it was delayed for two hours. Besides that Prafulla Nayak, the gauge reader has not been examined. Had he been examined he could have stated the details of flow of water coming to the reservoir and its recording. But fact remains that as per the statement of D.Ws.1 and 3 they have faced inquiry by RDC so also the departmental proceeding against them and they are found guilty of negligence in their duties which caused the death of the students including the plaintiff's son. This statement also clearly states that there was an act of negligence on the side of the defendants which caused the death of the engineering students.

22. That apart it is also pleaded and evident by D.W.1 that Soubhagya Ranjan Barik who was rescued from the ill-fated accident rushed to the principal immediately and ventilated his grievance that his friends were at stake in side the river bed but the said principal did not take any action according to him. Thus he immediately rushed to the fire brigade office for help that was in vein. Then the attempts made by Soubhagya Barik could not get satisfactory result for save of the lives of the son of the plaintiff as well as his friends. Though P.W.1 has been cross examined by the defence exhaustively but nothing substantial has been elicited from his mouth to demolish his evidence. Therefore, no reasonable care have been taken which would give the negligent act of the defendants.

23. An action for damage in tort if plaintiff proves that the deceased was drowned in the river then presumption of fact would be that there was lack of proper care of the defendants and in such type of case the maxim *res ipsa loquitur* applies and it up to the Court in deciding as to such at which the onus shift from one side to other. To attract the aforesaid principle two requirements are necessary, that is, that the thing causing the damage be under the control of the defendants and his servants and that the said accident must be ill-fated accident must be such as would not in the ordinary course of things have happened without negligence.

24. The Apex Court in case of **Syed Akabar-vrs.-State of Karnataka (AIR 1979 SC 1848)** has observed that :

“The rule of *res ipsa loquitur* in reality belongs to the law of torts. Where negligence is in issue, the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. It is to such cases that the maxim *res ipsa loquitur* may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant.

The event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. Further, the event which caused the accident must be within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the incident occurred”.

In view of the aforesaid legal position of law there can be no second option that it was for the defendant to prove that the deceased's death was not due to their negligence.

25. Now let me find out whether the defendants have discharged the burden that lay on him. In this case the defendants have examined four witnesses. D.W.1, Dayanidhi Dehury Executive Engineer and D.W.3 the Superintending Engineer are the persons who were present in the spot at the time of incident took place. Both the witnesses have admitted about the discharge of water from Hirakud reservoir to river Mahanadi as the matter was very urgent and alarming they could not get any time to give publicity through TV and radio regarding opening of sluice gates only blown siren. If this being the fact and it is the sum total of evidence of D.Ws.1 and 3 their evidence itself discloses that there was act of negligence of duty of the persons who were in charge of discharging water from the reservoir. D.W.2 also stated in his evidence it is a fact that 627 feet is the higher as per Ext.E of Table 6. When it is higher then it is the duty of the persons who were in charge of that they would have vigilant when the water level was 627 feet. Had they been taken little care and monitored the situation hours to hours and minutes to minutes the incident could not have been occurred and the engineering students might have saved their lives. The evidence of D.W.4 does not in any way help to the defendants. He only stated about the stay of the engineering students including the seven deceased students by that time were at the hostel and the said witness was the Superintendent of that hostel by the relevant time. Considering the admitted fact and on

scrutiny of the evidence as discussed above I am of the opinion that the death of the deceased was due to sheer negligence of the defendants. The plaintiff being the mother of the deceased Himansu Sekhar Pati is entitled to get the compensation.

26. At the cost of repetition negligence in common parlance means and imply failure to exercise due care, expected of a reasonable prudent person. It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do. In view of this it is clear and apparent that it has been occurred on the site of the defendants which cannot be ruled out.

27. Be it is noted that the duty of care varies from situation to situation whether it should be the duty of a person who are in charge of it or the duty of other person indirectly who were also being monitored the same. While it is true that when the water is being discharged from Hirakud reservoir to the river Mahanadi it is sufficient exercise of news and communication in every field which causes no harm to anybody and to see safe and security in every parts of the departure of water. But undoubtedly there was discharge of water by opening of sluice gates of Hirakud reservoir without giving any publicity causes no deviation there from could be heard on any count whatsoever. Mere satisfaction that blowing of siren is safe will not be sufficient compliance. As a matter of fact the degree of care required to be taken specifically not by only blowing siren. Instantly as I have discussed earlier negligence is an independent tort and has its own strict elements especially in the matter where the son of the plaintiff and his other friends seven in number were drowned in the said river. Here not only the responsibility of dam authority but also ultimately the defendants against whom the suit has

been filed is also liable vicariously which cannot be doubted or be brushed aside in any way whatsoever.

28. It is to be noted the doctrine of vicarious liability has had a fair amount of judicial attention in the English Courts. By the end of 18th century the idea began to grow up that some special importance ought to be attached to the relationship of master and servant. It was officially held that existence of relationship was an essential. Therefore the primary liability on the part of anyone could be established on proof of direct participation in the tort such direct participation was not even theoretically required to make a master liable for his servants torts. The liability is derived from the relationship and is truly vicarious. At the same time, the phrase implied authority which had been the corner stone of the masters primary liability gives way gradually to the modern course of employment. From these it can safely be concluded that the defendants are completely liable negligent and liable vicariously for the incident dated 30.01.1998 causing death of plaintiff's son Himansu Sekhar Pati.

29. In view of the aforesaid discussion the next question is what will be the quantum of compensation that the plaintiff is entitled to.

Life is precious that cannot be equated with money. There can be no exact uniform rule for measurement of value of Rs.1,00,000/- and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. In assessing damage the Court must exclude all considerations of matter which rest in speculation or fancy though conjectures to some extent is inevitable. As the evidence of P.W.1 goes his son was prosecuting his study in a premier Engineering College, Burla in the subject of Electrical branch and a second year student who had brilliant academic career. He would have passed from that front line institution of the country and would have been in a very good placement either in Government or abroad. More possibly he

would have may some reputed company with an attractive salary and perks. The only escape of tragedy Soubhagya Barik now at present in USA drawing attractive salary more than 12,000 dollars per month. Further stated that the friends of the deceased son are now working in high posts in different private organizations are getting more than Rs.30,000/- per month as salary. Learned counsel for the plaintiff submitted that on age calculation the deceased son would have served till the age of 60 i.e. at least another 35 years. Calculating his income from the lower side at the rate of Rs.30,000/- per month it would be amounting to Rs.1,18,00,000/-. But due to negligent act of the Government officials he died at the early age for which his father and mother have suffered a lot of mental agony and sufferings which cannot be equated with a small amount of Rs.3,00,000/- as Anukampa rashi. The plaintiff may be entitled to get compensation of Rs.25,00,000/- with interest from the date of incident till realisation.

30. P.W.1 also admitted that he has received exgratia of Rs.1,00,000/- and Rs.2,00,000/- as compensation from the Government on protest. The evidence of D.W.5 finds ample support to the evidence of P.W.1 with regard to receipt of Rs.1,00,000/- as exgratia and Rs.2,00,000/- as compensation from the defendants/Government. Learned counsel for the plaintiff has submitted that whether the amount of Rs.3,00,000/- as given from the Chief Minister's Relief Fund is compensation or exgratia or Anukampa and whether the plaintiff is entitled to get the compensation amount of Rs.25,00,000/- from the defendants. In this regard he relied on a decision reported in **2003 (1) CCC 241 (Bombay) at Page 254.**

31. It is pleaded that the son of the plaintiff Himansu Sekhar Pati was died at the age of 22 years. The plaintiff has relied his identity card issued by the Engineering College, Burla showing his date of birth i.e. on 18.06.1978. It is also stated by P.W.1 that her son would have been the only earning member of his family to look after his parents, younger brother and sisters. His untimely death at the hands of the defendants

has thrown them into cauldron of grief, sorrow and agony never to end and never to end, day in and day out they have been debarred from love and affection of their son for good which no amount of money can be compensated.

32. There is no prescribed formula in the matter of determination of the quantum of compensation in an incident resulting in the death of a person. The plaintiff and her husband were giving education of their deceased son Himansu Sekhar Pati from the premier engineering college, Burla with much hope and aspiration that he will be a qualified engineer. Had he been alive there would have much expectation from him by the parents. Now the plaintiff and her husband P.W.1 when witnessing the escapee Soubhagya Barik they could have realised the presence of their son in as much as according to them had there son been alive his monthly income would have at par with Soubhagya as stated supra. The plaintiff in her pleading and evidence has prayed for an amount of compensation of Rs.25,00,000/-. It is admitted by P.W.1 that the defendant-Government has paid a sum of Rs.1,00,000/- as exgratia and sum of Rs.2,00,000/- as compensation a total of Rs.3,00,000/- received by him. Learned counsel for the plaintiff submitted that in view of the decision as stated supra reported in 2003 (1) CCC 241 (Bombay) the said amount cannot be deducted from the total compensation. Learned counsel for the Government on the other hand stated that the said amount of Rs.3,00,000/- was the total amount given by the Government as compensation.

33. In a decision reported in **2003 (1) CCC 241 (Bombay)** where it has been held that :

“Now the further question remains is to consider about the exgratia payment made by the employer to the heirs of deceased Karmarkar. In fact the employer is not in any statutory obligation to make exgratia payment on account of untimely death of the employee. Exgratia payment made to the heirs of deceased is based on the principle of compassion looking at the service i.e.

rendered by the deceased employee. On this background the employer if makes any exgratia payment that amount received by the heirs can't be deducted from compensation i.e. determined under the provision of Sec.110B of the Motor Vehicle Act. Considering the ratio laid down by the Apex Court in Helen's case extending further and applying it to the payments made by the employer or by any other social organization as exgratia payment can't be a part of compensation determined by the tribunal under Motor Vehicle Act. Such deductions are impermissible. Therefore in my opinion the amount received by the heirs of deceased Karmarkar by way of exgratia payment from the employer can't be deducted from the total compensation i.e. determined by the tribunal".

34. In view of the aforesaid decision it is very clear that the amount received by him by way of exgratia cannot be deducted from the total compensation. In the instant case, the exgratia and compensation whatever the amount has been given by the defendants just after the occurrence was nothing but a consideration amount. It was not given with an intention to compensate the damage caused to the plaintiff. Therefore, the fundamental facts required to be proved has been successfully proved in this case. In the meantime, 13 years has already been passed. Thus, in the fitness of thing, in my humble views if an amount of Rs.25,00,000/- will be awarded as compensation to the plaintiff with interest that will serve the ends of justice. So, these issues are answered accordingly.

ISSUES NO.3, 4 & 5

35. The plaintiff in the present suit has sought for relief against both the defendants No.1 and 2. Admittedly, the office of the defendants situates within the territorial jurisdiction of this Court. The present suit being a suit for compensation it is coming within the purview of Section 19 of CPC and this Court has territorial jurisdiction to decide the dispute. The defendants in the suit have participated in the trial as well as adduced evidence till the final hearing. Therefore, no prejudice will be

caused to the defendants on deciding the suit by this Court. As regards to the non-joinder of necessary party the plaintiff has not sought for any relief from the Principal of the Engineering College, Burla. Therefore, the present suit cannot be dismissed for such above grounds. That apart, since the defendants have appeared in the suit and contested the same on getting notice, so, question of serving of 80 CPC notice within the statutory period does not arise. So, these issues are answered accordingly.

ISSUE NOS. 1, 2 & 8 :

36. These issues are formal in nature, need no elaboration. As per discussion, supra, the Plaintiff has got cause of action to file the present suit against the Defendants. So the suit is maintainable in the eye of law. There is no other evidence with regard to any other relief. So these issues are answered accordingly.

Hence, it is ordered.

ORDER

The suit be and the same is decreed on contest against the defendants with cost. The defendants are directed to pay compensation of Rs.25,00,000/- (Rupees Twenty five lakhs) with P.I. and F.I. @ 6% per annum within three months hence, failing which the plaintiff is at liberty to realise the same in due process of law.

Lawyer's fee at contested scale.

2nd Addl. Senior Civil Judge,
Bhubaneswar.

Judgment is typed out to my dictation, corrected and pronounced in open court, on this 16th day of September, 2014 under the seal and signature of this court.

2nd Addl. Senior Civil Judge,
Bhubaneswar.

LIST OF WITNESS EXAMINED FOR THE PLAINTIFF:

P.W.1 : Smt. Sasirekha Pati.

LIST OF WITNESS EXAMINED FOR THE DEFENDANTS:

D.W.1 : Dayanidhi Dehury.
D.W.2 : Gopinath Das
D.W.3 : Jagannath Jena
D.W.4 : Pradip Kumar Pradhan
D.W.5 : Sitansu Bhusan Tripathy

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

Ext.1 : Signature of P.W.1 S.R.Pati in Xerox copy of notice.
Ext.2 : Identity card of victim.

LIST OF DOCUMENTS FILED ON BEHALF OF DEFENDANTS:

Ext.A : Reservoir level record book.
Ext.A/1 : The hourly reservoir water level dated 30.01.1998.
Ext.A/2 : Signature of Bhagaban Rout.
Ext.B : Order book register.
Ext.B/1 : Order book maintained on dated 30.01.1998.
Ext.B/2 : Signature of Golap Senapati.
Ext.C : Letter issued from Executive Engineer,
Central Water Commission.
Ext.D : Log book of vehicle No.ORD-3268
Ext.D/1 : Relevant entry on Page 38
Ext.D/2 to D/4 : Signature of D.W.2
Ext.E : Operation manual of Hirakud Dam reservoir.
Ext.E/1 : Relevant entry relating to full reservoir level of
Hirakud Dam.
Ext.F : Authorisation letter issued by Collector and
District Magistrate
Ext.G : Money receipt dated 22.04.1998 amounting
to Rs.1,00,000/-
Ext.H : Money receipt dated 02.09.1998 amounting
to Rs.2,00,000/-

2nd Addl. Senior Civil Judge,
Bhubaneswar.

