

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**ORIGINAL PETITION NO. 25 OF 2005**

1. Mrs. Rashmi Handa  
D-4074, Vasant Kunj  
New Delhi – 110 017

2. Miss. Srishti Handa  
D-4074 Vasant Kunj  
New Delhi  
Through Mrs. Rashmi Handa

3. Master Kshitij Handa  
D-4074, Vasant Kunj  
New Delhi  
Through Mrs. Rashmi Handa

... Complainants

Versus

1. OTIS Elevator Company (India) Ltd.  
Through Chairman  
11<sup>th</sup> Floor, Himalaya House  
23, K.G.Marg  
New Delhi – 110 001

2. Research and Analysis Wing (RAW)  
Through Secretary (R)  
Cabinet Secretariat, Government of India  
Bikaner House Annexe  
Shah Jahan Road  
New Delhi – 110 011

3. Military Engineering Services  
Through Engineer-in-Chief  
Ministry of Defence, Government of India  
South Block  
New Delhi – 110 011

.... Opposite Parties

**BEFORE:**

**HON'BLE MR. JUSTICE J.M. MALIK, PRESIDING MEMBER  
HON'BLE DR. S.M. KANTIKAR, MEMBER**

For the Complainants : Ms. Surbhi Mehta, Advocate  
With Mr. Sharad Bhahsali, Advocate

For Opp. Party No. 1 : Mr.Rohan Batra, Advocate  
With Mr. Dhruv Dewan, Advocate

For Opp. Party No. 2 : Mr. Jaswinder Singh, Advocate

For Opp. Party No.3 : Mr. Amit Ranjan, Garrison Engineer  
E.M., Base Hospital

**PRONOUNCED ON 21<sup>st</sup> JANUARY, 2014**

**ORDER**

**JUSTICE J.M. MALIK**

1. Fame and power driven with the ulterior motive of greed, leads to devastation. To us here, death is the most terrible thing, we know. We understand 'death', for the first time, when he (death) puts his hand upon one, whom we love.

2. The facts of this unfortunate case, are these. Mr.Vipin Handa, aged about 46 years, who was working as Director, lost his life in tragic circumstances. The OTIS, OP1 installed Elevator in CGO Complex, in December, 2001. On 20.03.2003, at about 10.40AM, a meeting of senior officers concluded on the 11<sup>th</sup> Floor of Research Analysis Wing (RAW) office in the CGO Complex

at Lodhi Road, New Delhi. Lift No.6 is reserved for the officers of the level of Joint Secretary and above. During the second trip, Down, in the lift, Mr.Vipin Handa was one of the few officers who were in the Elevator. Approximately, at about 10.45AM, the lift abruptly stopped between 6<sup>th</sup> and 7<sup>th</sup> Floor. The operator in the lift informed the lift operator in the control room that the lift had stopped. Three persons from the control room reached the 7<sup>th</sup> Floor, opened the lift door on the 7<sup>th</sup> floor with a manual key and spoke with the operator inside. They asked all the occupants to await their return to begin the rescue operation, locked the lift door again and left. Two men went up to the Machine Room on the 11<sup>th</sup> Floor, switched off the main supply Miniature Circuit Breaker (MCB) and returned to the 7<sup>th</sup> Floor. They opened the lift door again, manually, and began helping the officers stranded in the lift to climb on to the 7<sup>th</sup> floor. The First Officer was rescued successfully.

3. Mr. Vipin Handa was the second officer to be rescued. While he was being rescued by the lift operators, the lift abruptly moved downwards for about 5-7 seconds, crushing Mr.Handa's neck between the cabin roof panel and the floor, causing his instantaneous death. At that time, the lift was closer to the 6<sup>th</sup> Floor and the remaining Eleven

officers were helped out. Mr.Handa's body remained hanging from the 7<sup>th</sup> Floor. Ultimately, the cabin roof panel was forced open with the assistance of the Delhi Fire Service and the In-house Maintenance/Engineering Staff and Mr.Handa's body was recovered and taken to hospital. Maintenance staff of OP1 was absent during the entire incident on 20.03.2003. Body of Mr.Vipin Handa was taken to AIIMS, New Delhi, where he was declared brought dead, on arrival, at 12.53PM. The matter was reported to police vide Annexure P-15. Copy of autopsy report mentioned the cause of death as "hemorrhagic shock due to multiple injuries caused by blunt force".

4. Mr. Vipin Handa was selected by Indian Revenue Service (Customs & Central Excise Group A) in the year 1980 and was posted to the Directorate of Revenue Intelligence under the Ministry of Finance, from 1987-2000. He was appointed as First Secretary to the Embassy of India in the United States of America, in the year 1995. He was also posted as Counsellor in the High Commission of India in Islamabad. During his posting at Pakistan, Mr.Vipin Handa was expelled from Pakistan after a period of approximately 18 months. Thereafter, Mr.Handa was assigned to Research and Analysis Wing under the Cabinet Secretariat where his death occurred. He was also awarded the Uttam Seva Praman Patra posthumously by the

Government of India for the year 2003 and got other meritorious certificates from various other Departments.

5. OTIS Co., OP1, installed the Elevator in RAW, OP No.2, under the Cabinet Secretariat. Military Engineering Services ('MES', in short), OP No.3, entered into a maintenance and repair contract with OP1. OP 1 was liable under condition 46 of the General Conditions of Contract, to rectify the defects immediately. The instant complaint was filed by Mrs.Rashmi Handa, wife of Mr.Vipin Handa and by their daughter and son, claiming compensation and damages to the tune of Rs.1,89,05,922/-, with interest @ 20% p.a. from the date of institution of claim, i.e. 18.03.2005.

**DEFENCE OF OP 1 :**

6. The following defences were listed. The complainants are not consumers under the Consumer Protection Act, 1986. The cause and responsibility of the unfortunate incident is relatable to OP 3 and its employees. At the time of unfortunate accident, the employees of the OP1 were not supposed to be present at the site as per the maintenance contract signed between OP 3 & 1. As per the agreement, employees of OP1 were supposed to be present from 0700 hrs to 10.00 hrs, 12.30 hrs to 14.30 hrs and 16.30 hrs to

19.00hrs, for attending to the complaints, etc. This case entails complex questions of facts requiring detailed evidence which will not be possible to decide in these summary proceedings. OP 3 is responsible for, as is evident from Expert Committee report, submitted by Prof. C.B.Bhatia, upon request made by Deputy Commissioner of Police, dated 30.04.2003. The report further states that death of Mr.Vipin Handa was caused due to break release action, which was done when the second officer among 13 stranded in lift no.6, was being rescued out of the lift on the 7<sup>th</sup> floor. It is further reported that the lifts stop functioning inadvertently, due to "Voltage Fluctuation" and that all manual controls in the lifts supersede the automatic control and interlocking. OP1 did everything it could under its power to take note of the situation and intimate the same to the OP3. OP 2 & 3 did not do anything in to remove the problem of power fluctuation by installing stabilisers as it was the duty of OP2 & 3. OP 1 rectified the malfunction as and when asked for. Nobody contacted OP1 on its emergency numbers. OP1 was contacted only at 12.00 Noon, after the incident. The employees of OP3 who were present at the time of the accident, are responsible for the same. They should have waited for the employees of OP1. They tried to rescue the stranded passengers on their own without following the instructions which appeared on a pamphlet/sticker pasted in the lift itself, which led to untimely death of Mr. Vipin Handa.

## **DEFENCE OP 2:**

7. OP 2 acquired the lift system from OP1, through OP3, which is actually responsible for the over-all maintenance of the entire office complex of OP2, including lift system. In the contract, OP3 has entrusted the responsibility of repairs and maintenance of lift system to OP1. The lift in question was installed in December, 2001, its warranty had expired in November, 2002, followed by Annual Maintenance Contract (AMC) entered into by OP3 and OP1. It is explained that, as a matter of fact, OP2 is a 'consumer' of the services being provided by OP 1 and OP3, both in regard to its acquisition and its maintenance. This Commission has no jurisdiction to proceed against OP2. OP1 was not having any personnel in the premises, on the ill-fated day when Sh.Vipin Handa had lost his life. He died due to gross negligence on the part of OP1. Under the Government Rules, the maintenance of a Government building, is done only by a Government Agency. In the instant case, OP 3 had constructed the Headquarters complex of OP2 and right from the very beginning, it has been maintaining the complex in all respects. The family pensionary dues in respect of Mr.Vipin Handa, Ex-Director, payable to his family amounts to Rs.1,19,877/-. The family of the deceased officer was paid family pensionary dues, including ex-gratia, under extraordinary Pension Rules, as lumpsum compensation in the sum

of Rs.5,00,000/-, the highest amount payable to the family of the Government servant who dies in harness. As per seniority list, Sh.Vipin Handa was to be promoted to the Grade of Joint Secretary in the year 2004, which was dependent on the recommendations of the Departmental Promotion Committee.

### **DEFENCE OF OP 3**

8. OP 3 has enumerated the following defences. This case should be dismissed under Order VII, Rule 11 CPC as it discloses no cause of action. The case is bad for non-joinder of OP3. OP 3 sent numerous letters, reminders and personal visits to office of OP1 to rectify the defects, but all in vain. Joint meetings were held between OP3 and OP1 for rectifying the defects, but OP2 paid no heed and took the same very casually. It is wrong to say that OP1 and OP3 are jointly and severally liable for the maintenance of the lift. There was no negligence or lapse on the part of OP3. OP 1 was paid a sum of Rs.4,94,988/- by this OP for the Comprehensive Maintenance Contract. Complaints were lodged with OP1 and 18 reminders have been filed on record, in this context. OP1 miserably failed to rectify the defects in spite of repeated letters and reminders sent by OP3. OP1 has not provided proper services to the maintenance of the

lift. OP1 should have deputed permanent staff to be stationed for RA W building, during the office hours. OP3 has taken interest and care for the smooth functioning of the lift. Moreover, the relevant clause of the Agreement, i.e., 6(1) runs, as follows:-

**“PRECAUTIONS AGAINST LOSS/DAMAGES**

*6.1 All the precautions against loss/damages shall be taken by the contractor. In case of accident during operation of lift, the contractor is liable to pay compensation, as applicable. The unit rate is to include the cost of compensation and NO EXTRA amount on this ground shall be entertained”.*

Although complaint was lodged with the police, no case is made out against the employees of OP3, under Section 304A.

**MAINTAINABILITY OF THE COMPLAINT:**

9. We have heard the counsel for the parties and perused the written submissions. The first argument urged by the counsel for M/s. OTIS Elevator Company (India) Ltd., OP1, was that complainants have improperly instituted the complaint because Ms.Srishti Handa, complainant No.2 , who was a major, did not sign the complaint. She also did not file her affidavit in support of the complaint. Consequently, the complaint cannot be considered to be

instituted on behalf of complainant no.2. Moreover, Mr. Kshitij Handa, who has attained majority during the pendency of this case, did not elect on the continuation of the proceedings.

10. We are unable to pin any value to these feckless arguments. It appears that the counsel for the OP1 has not inspected the Correspondence File, properly. The original Vakalatnama was signed by Mrs.Rashmi Handa and Ms.Srishti Handa. Their Advocate was Ms.Meenakshi Arora. The complainants have later changed their counsel. A second Vakalatnama is also available on record. The same was signed on 24.02.2012. It is signed by the three complainants and four Advocates of the complainants, namely, Mr.Sharad Bansal, Mr.Kaustubh Sinha, Ms.Surbhi Mehta and Mr.Virender Negi. It is thus clear that this objection was raised merely for the sake of cavil. Such like technicalities should not come in the way of maintainability of this complaint. Consequently, we are of the considered view that this objection must be eschewed out of consideration. This case was argued by Ms.Surbhi Mehta, Advocate.

**JURISDICTION OF THIS COMMISSION:**

11. The second submission made by the counsel for OP1 and OP3 was that such like controversy cannot be decided in summary proceedings. This matter involves adjudication of complex questions of facts relating to causation of the accident which led to the death of the deceased for which appreciation of detailed evidence is required. Counsel for OP1 has placed reliance on ***Synco Industries Vs. State of Bikaner and Jaipur, (2002) 2 SCC 1 (para 3) and Bhagwanji D. Patel and Anr. Vs. Indian Bank and Ors., III (2011) CPJ 175 (NC) (para 18).***

12. This does not appear to be a coherent argument. In ***Dr.J.J.Merchant & Ors., Vs. Shrinath Chaturvedi, AIR (2002) CPJ 8 (SC)***, a judgment, delivered by Three-Judges' Bench, the same question was raised before the Apex Court. Paras 9, 10 & 11 are relevant. Para No.11 is reproduced, as hereunder :-

*“11. Further, under the Act, the National Commission is required to be headed by a retired Judge of this Court and the State Commission is required to be headed by a retired High Court Judge. They are competent to decide complicated issues of law or facts. Hence, it would not be proper to hold that in cases where negligence of experts is alleged, consumers should be directed to approach the Civil Court”.*

It is thus clear that this authority applies to this case to a hair.

**NEGLIGENCE AND DEFICIENCY – THE CRUX OF THE MATTER :**

13. The principal argument advanced by all the three Opposite parties is that the death of the deceased is not attributable to any deficiency of service on the part of each OP, respectively. They have tried to put the blame on each other. They have tried to wriggle out of their liability. It must be mentioned here that there is a Technical Report of Lift Accident Investigation, submitted to Delhi Police, on 27.04.2003, by Prof. C.M.Bhatia, which report is of infinite importance. It is a very lengthy report but the main conclusions drawn by the Expert, are reproduced here as under :-

**“5. MAIN CONCLUSIONS :**

***The following are the main conclusions:-***

*48. The accident causing the death of the diplomat took place due to sudden downward motion of the lift when he was being rescued. His body was half-way in and half-way out. There is no reason that the lift could move down under the conditions, which have been described to the undersigned.*

*49. The following is the sequence of events and comments as per the Technical Investigation conducted with the agencies involved in providing*

*the service:*

*- The lift stops on 7<sup>th</sup> due to voltage fluctuation with 13 people inside it.*

*- Some helper staff switches off the main MCB of the lift.*

*- The operator switches off the Reset Button located in the lift cabin.*

*- The lift door is opened with the help of manual key and one officer is rescued successfully.*

*- The second officer, i.e., the diplomat is being rescued. He is half, in and half, out, and the door of the lift is open when the lift moves down by a few feet, all of a sudden, and stops near the 6<sup>th</sup> floor, with the remaining 11 people inside it \*.*

*- The diplomat gets stuck in the shaft \*.*

*- The lift continues to be stationary near the 6<sup>th</sup> floor with no further motion \*.*

*- All remaining 11 officers are rescued out in the similar manner as before. Nothing happens earlier to the first officer, who was rescued on 7<sup>th</sup> floor, or to the other 11 officers who were rescued later, on 6<sup>th</sup> floor. They are all safe and sound \*.*

- The answer to the (\*) mark points is that while the second officer was being rescued, the Machine Room door on the 11<sup>th</sup> floor was opened, or possibly it was left open. Some body entered the Machine Room and released the lift brakes, through the Brake Release Key, moving it down and hence causing the accident.

- There is enough evidence at the site that the Brake Release Key has been used.

**50. Let us examine the other possibilities (other than the use of Brake Release Key) of downward motion of the lift.**

- Since the power supply was switched off, the lift was dead and could not move through the electrical circuit, either downwards or upwards. The lift light fan and telephone inside the cabin have a separate supply and they are working. The MCB only activates or deactivates the motion and automatic control system related to it.

- Even if the power was switched on by some body through turning-on the MCB, on 11<sup>th</sup> floor, the interlock control will prevent the lift from moving. Because the lift door was open and the diplomat was in the process of rescue with half of his body in and half out.

- It may be mentioned that all manual controls in such lifts supersede the automatic control and

*interlocking.*

*- Further, since the power was switched off when the brakes were released, the interlocking did not work.*

*- The lift control interlocks therefore did not recognize the release of brakes, because this action was done manually, by passing the controls.*

***Releasing the brakes through the Brake Release Key is the only cause of accident and is due to the human error/factor beyond any element of doubt”.***

## **SUBMISSIONS OF OP1**

14. The counsel for OP1 has invited our attention towards the said Technical Committee Report, wherein the Expert, also opined, as under :-

### **“2.TECHNICAL BACKGROUND:**

*The lift under question is lift number 6, installed at the RAW Office in the CGO Complex, New Delhi. This lift, as per the statement of some RAW officials, whom the undersigned met during the process of investigation, is reserved for use of officers of higher rank, e.g, Joint Secretary and above. The lift has been commissioned by a multinational company, M/s. OTIS Ltd., and is also being maintained by M/s. OTIS Ltd. At the time of said accident, the maintenance contract was with M/s. OTIS Ltd., and was valid. On visual examination*

*of the lift and its controls by the undersigned, it was evident that the lift is equipped with very sophisticated and modern technology, with Microprocessor Cased Control. It is also equipped with all necessary security and safety control and there is no reason why such an accident should take place. The capacity of the lift could not be ascertained because no specifications were provided to the undersigned".*

15. Counsel for OP 1 has also argued that, upon inspection of the lift, the Expert did not find that any part of the lift was broken at the time of the accident. It is alleged that employees of Military Engineering Service (MES), OP 3, tampered with the 'Break Release Key', in the lift room, which was in their exclusive control and occupation. The accident took place about 10.45AM, but the employees of OP3 did not contact the OP1, until 12.00 Noon. He contended that this was a case of accident simplicitor and the police confirmed in its charge-sheet dated 20.03.2003 wherein it was mentioned to fix the responsibility on the employees of OP3 for the said accident. It was argued that lift brakes were fiddled by the employees of OP3 and the OP1 cannot be held responsible for the same.

16. The attention of this Commission was invited towards page 14 of the said Report, wherein it was mentioned :-

*“20. On being asked that when did M/s. OTIS Ltd., write to MES on installation of the Voltage Stabiliser for the lift number 6 to prevent its malfunction; Capt. Venkatesh did not know the details, but certainly said that it was almost very recently”.*

17. The attention of this Commission was also invited towards Statement of Mr. Bhushan Kumar, Lift Operator (employee of OP 3). It was emphasised that the report of the Expert should be given due weight and credence. Again, OP1 had put stickers inside the lift, categorically prohibiting interference with the lift mechanism, without involving OP1. The acts of OP3 are, in fact, in violation of Rule 6 (xiii) of the Bombay Lift Rules, 1958, framed under the Bombay Lifts Act, 1939, which provides that no person shall fully interfere with any mechanism of the lift installation. OP 1 has been maintaining the lifts under the Annual Maintenance Contract (AMC). He further laid emphasis on the law laid down in ***C. Venuprasad, General Manager (Operations) Premier Vinyl Flooring Ltd. Vs. M/s. Narangs International Hotel Pvt. Ltd., decided by this Commission on 09.11.2012, (Original Petition No.179 of 1994 & Original Petition No.2 of 1996)***. He has referred to para Nos.11 and 24 of the said judgment, which are reproduced here, as under :

*“11. On the other hand, learned counsel for the OP Hotel has contended that the blame squarely rests on the OTIS Elevator Co. (India) Ltd, who is a reputed elevator manufacturer. They had not only installed the lift but had the renewal maintenance contract for over the years. Their responsibility and accountability cannot be overlooked on their plea of some foreign material having been found in the gear oil for the simple reason that the gear box is a sealed unit and the special type of gear oil is supplied by the OTIS Elevator Co. (India) Ltd, themselves. Their own employee, Mr. Johnson in his evidence has stated that foreign material could have entered either from outside or it could even be the result of some wear and tear/breakdown of gear/worn shaft. To blame the hotel staff with the allegation of tampering of gear box, therefore, cannot be sustained. It must have been the adulterated gear oil which was supplied by the OTIS Elevator Co. (India) Ltd., which would have caused the damage to the gear inside the box.*

*25. On the plea of the complainant Hotel that the gear box was a sealed equipment and the gear oil could be replenished/replaced only by their own staff, we are inclined to believe the defence of the OTIS Co., that when the elevator was stuck on the 24<sup>th</sup> of February, 1994 and 26<sup>th</sup> of February, 1994, the Hotel staff had handled the equipment without informing the OTIS staff and in the process had opened the gear box to release the break*

*system. May be, in the process, the Hotel staff would have put some lubricating material into the system or may have handled the machine in a crude and rough manner, resulting in some inner parts getting brittle inside. We find that Mr. John, in his cross-examination, has denied that he ever opened the gear box but has admitted that only the gear box cover has been opened to release the break in case of certain situation. Since it is contended that there is no need to open the gear box cover in order to release the break system, we do not find any substance in the contention of the complainant Hotel that their staff was totally innocent with regard to the handling of the lift machine at their own level resulting in the malfunctioning”.*

18. It was further submitted that the purported malfunctioning of lift number 6 had only occurred during the period January to August, 2002. It was explained that since then, there had been no complaint regarding any mal-functioning of the lift and the lift had been working properly. However, one complaint was received in February, 2003, which was not in relation to the lift halting but regarding certain noise in the lift. Consequently, for eight months, prior to the said accident, lift number 6 had been working properly. The problems relating to lift number 6 were related to “Voltage Fluctuation”, on account of fluctuations in supply by the Delhi Electricity Board. OP1 was aware of this problem of voltage

fluctuation and it advised OP3 vide letter dated 04.07.2002, i.e., 8 months' prior to the accident to install a Voltage Stabilizer, for the protection and safe operation of the lift, which is reproduced, as under:-

*“Dear Sir,*

*We were informed by our Route Examiner that the voltage available at the site sometimes found to be unbalanced which cause frequent breakdown on new lifts and this also affect the life of the lift in long run. We would, therefore, request you goodself to arrange to install Service Line Voltage Corrector Stabiliser of 50 KVA on each phase for the protection and safe operation of our equipments. The stabilizer specifications are in details herewith”.*

The proof of its service upon the OP is also not placed on record. It is also strange enough that this letter was not produced before the Technical Expert. He has mentioned the same in so many words, in his report. The production of this letter at that stage casts a flim of doubt about its genuineness. However, it may be mentioned that on 17.02.2003, OP3, through Major Amit Khosla, Garrison Engineer, wrote letter to OP1 pointing out, as under :-

*“Dear Sir,*

*1. It has come to the notice of undersigned that in spite of repeated requests to Mr.Sunil Chadda (GM) (Mod) and Mr.Bhupinder Singh, Manager Service by the Engineer-in-Charge regarding rectification of*

*certain noise found during operation of lift No.6, no action has been taken so far to rectify the same.*

*2. You are again requested to rectify the defects immediately.*

*3. Please treat the matter urgent.*

*Sd/-  
(Amit Khosla), Major  
Garrison Engineer”.*

19. There is no response to this significant letter. It is also argued that in the Tender for Repairs and Maintenance Contract, dated 24.05.2002, there was no stipulation for installation of Voltage Stabiliser. OP1 did not receive any consideration for the same. OP3 had a Helpline in case of emergency. The Mechanic of OP3 was not required to be present at 10.40AM. His duty came to an end after working from 7.00AM to 10.00AM. OP3 did not provide any training to their staff, to carry out rescue operations. In support of his case, Counsel for OP 1 has cited the following authorities:-

***i) Barnett Vs. Chelsea [1969] 1 Q.B. 428***

***ii) Knightley Vs. Johns [1982] 1 W.L.R. 349***

***iii) M’Kew Vs. Holland, 1970 SC (H.L.) 20***

***iv) Horton Vs. Taplin Contracts Ltd [2003] I.C.R. 179***

We have gone through the aforesaid judgments. The facts of the said cases and the law laid down therein do not dovetail with the facts of this case.

## **SUBMISSIONS OF OP 2:**

20. Counsel for OP2 explained that the lift in question was installed in December, 2001. Its warranty had expired in November, 2002. Thereafter, there was AMC entered into between OP3 and OP1. OP 2 itself is a “consumer”. It is receiving services from OP1 & 2. OP1 has committed deficiency in service and as such, it is liable for the payment. Again, the definition of the word ‘consumer’, given in Section 2(b) of Consumer Protection Act, 1986, is not wide enough to include OP2. OP1 was also informed through letters dated 11.06.2002 and 30.07.2002 by the Joint Secretary, through which, problems encountered were pointed out, particularly, about lift No.6. OP1 did not respond and as such, shows malafide and culpable negligence. The attention of this Commission was invited towards the contract, particularly clause 6.1, which has already been quoted above. Learned counsel concluded his arguments by stating that only OP1 is liable to pay the compensation to the complainants.

## **SUBMISSIONS OF OP3 :**

21. The Chief Engineer appeared in person. He contended that all the facts are mentioned in their written statement. He argued that OP3 is

not liable for the said incident. He stressed that in view of Clause 6.1 of the Agreement, quoted above, they are not liable for any accident.

22. After mulling over of the evidence and after hearing the counsel for the parties, our findings against all the OPs, are as follows.

### **DEFICIENCY ON THE PART OF OP1 :**

23. This is an indisputable fact that the lift was installed in the premises of OP2 in December, 2001. Nowadays, in the year 2014, the position of electricity supply is very good. It has improved with the passage of time. During the year 2001-02, it was a well-known fact that the electricity supply was not good. There used to be short-cuts, every now and then. The principal defence of OP1 is that due to voltage and fluctuation, the lift stopped and the accident occurred. The deficiency on the part of OP1 is apparent. It is said that money is the biggest seed of strife. Why did they install the lift without Voltage Stabiliser? That fact was known to OP1 from the very first day. Their defence that no Tender was made for Voltage Stabiliser is not worthy of credence. They should have refused to install the lift without Voltage Stabiliser, irrespective of the fact whether there was Tender for Voltage Stabiliser or not. It was risky and the OP1

was aware of that. OP1 has committed an egregious mistake in this context. This is the first deficiency on their part.

24. It is surprising to note that the lift in question was installed only 14 months' prior to the unfortunate accident. In its letter vide Annexure P-2, Mr.Pankaj Sharma, Assistant Manager, Modernisation, OTIS Elevator Company (India) Ltd, wrote to OP3 through Garrison Engineer Project, on 13.12.2001, where, it was clearly specifically and unequivocally mentioned, as under :-

*"1.*

*The equipments components, fixtures being retained are 100% serviceable for smooth functioning of the lift, as a whole, after modernization.*

*2. The lift after renovation/modernization shall perform satisfactorily for a minimum period of 20 years".*

25. The mention of Voltage Stabiliser is conspicuously missing. How can you give such like assurance in absence of Voltage Stabiliser. Like lift No.6, Lift No.5 stopped for 32 times, as per the list submitted on record. There are letters subsequent to the death of Mr.Vipin Handa, as well, which reveal that the needful was not done in time. It is also interesting to note that as per Annexure P-3, Garrenger (Project) West informed the OTIS, OP1, that their Site Engineer was absent since 02.04.2002. OP3 has failed to prove that its Site Engineer

used to visit the spot, on each and every day. The Attendance Register showing their presence, was conspicuously missing. According to practice, they have to maintain an Attendance Register, where their presence is marked and certified, either by OP2 or OP3. The production of their Attendance Register would have gone a long way to establish that their Engineer was available, particularly, on 20.03.2003, till 10.00AM. In case, their Engineer visited the spot, each and every day, while the complaint was made in respect of Lift Nos.5 & 6 for 32 times, vide pages 34 and 35, as per the agreement, where it was mentioned that the Site Engineer was to look after the premises from 07.00 hrs to 10.00 hrs, 12.30 hrs to 14.30 hrs and 16.30 hrs to 19.00hrs, why so many complaints/defects cropped up?. Was it only an eye-wash?. No evidence of their regular visit saw the light of the day. No explanation was given as to why Attendance Register was not maintained. It also appears that the Site Engineer does not appear on each and every day, as is apparent from Annexure P-3. It also appears that these defects were prevailing for enough time and OP1 did not take any essential steps.

26. OP3 also filed other complaints which go to show the bizarre conduct of OP1. Letter dated 17.02.2003, is crucial. The help of OP1 seems to be exiguous. This is before the death of Mr.Vipin Handa. That is why it is said, "A Stitch in time, Saves Nine". It was incumbent upon OP1 to examine the power installation and install Voltage Stabiliser along with lift, in such like critical position. It appears that lift was being operated on continuous basis despite knowledge of breakdown of the similar nature. OP1 did not try to rectify the problem. The Expert Report clearly mentions that the lift in question was a Voltage Stabiliser lift and needs Voltage Stabiliser, as a compulsory component for its smooth functioning.

27. Now, we turn to the Agreement entered into between OP1 & OP3. Its paras 3.1 and 3.2 are important. However, Para 6.1 is significant and crucial, (already quoted at Para No.8, page 10 of this order), which rocks the boat to a dangerous extent.

28. The Expert's report also mentions the following facts:-

*"16. During all these events on 20.03.2003 the maintenance person from M/s Otis Ltd. was not available. No person from M/s Otis was available to be examined on 25.03.2003.*

*M/s Otis Ltd., was represented by the three persons as experts, out of those, two were examined by the Expert.*

*1. That the concerned lift ((lift number 6) had been malfunctioning ever since it has been commissioned and installed. The lift had therefore been stopping inadvertently*

during its operational service very frequently. This malfunctioning was noticed during the warranty period and it continues to be the same in the extended maintenance contract period.

2. The main reason for the malfunctioning of the lift may be the fluctuations in the incoming voltage supply Delhi Vidyut Board (BSES Rajdhani Power). On being asked whether the firm has examined how much fluctuation in voltage is there and what remedies have been taken; Mr. Anurag Manglik replied that a letter in writing has been given to M/s MES to install Voltage Stabilizer for this lift. No copy of such a letter written to MES was made available to the undersigned either as evidence or for his examination.

3. Further he did not know as to when was it done and what action was taken by M/s MES. He avoided the question by simply saying that he is a Technical Expert and does not know about the follow up action. The service manager of M/s Otis Ltd., who is responsible for this job and he should know better.

4. On being asked whether M/s Otis Ltd. provided any training to the Lift Operators on running the lift and also on the rescue operation of stranded persons, when such malfunction takes place; Mr. Anurag Manglik again avoided the reply by saying "that the firm provides training to their own staff. On doing further cross examination on the use of the Brake Release Key, Mr. Anurag Manglik agreed that somebody has definitely used the key, which caused the downward movement of the lift during the time when the diplomat was in the middle of rescue process.

5. He also agreed that due to Voltage Fluctuation the lift control circuits would make the supply to turn-off. Once the voltage supply is turned-off, and the MCB is also switched off. Under this condition the mechanical brakes will hold the lift in its current position. The lift will therefore not move until somebody releases the mechanical brakes with the help of the Brake Release Key. In case the brakes are fully released the

*lift will move down rapidly due to its weight and gravitational force. However, if the brakes are momentarily released there will be a momentary down ward motion.*

*6. Mr. Manglik replied that Mr. Harish is a Sub-Contractor and M/s Otis Ltd., has sub-contracted some work to him. Mr. Anil Sharma, the Second Witness explained that Mr. Harish has been Sub-contracted a part of the Civil Engineering work by M/s Otis Ltd., and not the Electrical Engineering work of the lift.*

*7. While Mr. Bhushan Kumar says repeatedly that during the rescue operation of the Machine Room on the 11<sup>th</sup> floor was locked and Mr. Harish was not to be found anywhere nearby; Mr. Harish claims that around 11.0 A.M., when he was returning from the canteen after having a cup of tea and snacks, on 20.03.2003, Mr. Bhushan Kumar met him on the ground floor of the building. Mr. Bhushan Kumar was in a state of shock and was repeating the sentenced “**Baiya ne marwa diya**” and insisted that Mr. Harish should accompany him to the Machine Room on the eleventh floor for help.*

*8. M/s Otis Ltd., have not been providing proper service to the building lift. They have a responsibility to address the problems of malfunctioning of the lift, which the firm has been avoiding to address.*

*9. The reply given to the undersigned by Mr. Anurag Manglik that M/s OTIS people would reach the site within 15 to 20 minutes for service as and when they are informed does not fit into the service contract. The firm should rather depute a permanent staff to be stationed at RAW building, at least during the working hours of the office. Otherwise, why are they being paid for the service and maintenance contract?.*

*10. M/s Otis Ltd., also did not seem to have advised M/s MES in time to install Voltage Stabilizer to nullify voltage*

*fluctuations and also about the sensitivity of lift control due to such fluctuations. It is an act of sheer negligence and is termed as a non-professional attitude on the part of M/s Otis Ltd., causing death due to negligence.*

*11. M/s Otis Ltd., also did not provide any training to the lift operators on the proper functioning of the day-to-day service and on the rescue operation during the emergency.*

*12. The sub-contracting clause of the agreement needs to be studied and debated. In case M/s Otis Ltd., has sub-contracted the job to a third agency, in violation to the contract agreement, due action may please be taken as per MES rules.*

29. There is no record which may go to show that OP1 had assessed the situation before installation of the lifts, no piece of evidence was produced. There is no evidence on record which may go to show that OP1 had given training to OP2 & OP3 about the steps to be followed, in a sequence, in case of sudden stoppage of the lift. OP1 also did not produce any evidence in the form of Duty Chart, Log Book, Job Card, etc., to prove that they could reach the spot, within 15-20 minutes. No record was produced to show that previously, rescue operations were carried out.

30. Mr. Harish, is a Sub-Contractor and M/s. OTIS Co. Ltd. has sub-contracted some work to him. No sub-contracts saw the light of the day. Role of Mr.Harish in the entire case is doubtful. OP1 has failed to show that it has an authority to sub-contract the work. The contract between the OTIS and Mr.Harish was a crucial document which was withheld by the OP1 for the reasons best known to them. According to Mr.Bhushan Kumar, Harish was not available and Mr.Harish explained that he had gone to take a cup of tea.

### **LIABILITY OF OP3:**

31. However, it is clear that OP 2 and 3 are jointly and severally responsible for the above said accident. The counsel for the complainant has argued that each of them is jointly and severally liable in view of judgments *i) Dr. Balram Prasad Vs. Dr.Kunal Saha, 2013 (13) SCALE 1 and (ii) Malay Kumar Ganguly Vs. Dr.Sukumar Mukherjee, (2009) 9 SCC 221*. We are in agreement with her contention.

32. It is difficult to fathom, who had fiddled with the lift/control room. The role of Mr.Bhushan, Mr.Vijay and Mr. Harish is very

doubtful, as per the Expert Report. The following excerpts from the report of Technical Expert, are important:-

*“1. The contradiction of statements between Mr.Harish and Mr.Bhushan Kumar clearly raises doubt that the Machine Room door on the 11<sup>th</sup> floor was open during the rescue operation on 20.03.2003. As such, the room was accessible to anybody. Therefore, somebody released the Brake when the diplomat, was half way in and half way out of the lift.*

*2. It is highly objectionable to keep the officers stranded inside the lift for 15-20 minutes, waiting for the arrival of M/s. OTIS Ltd., staff to rescue the officers. Since this phenomenon of lift stoppage has been taking place almost every day, M/s. MES should have warned M/s. OTIS Ltd., to do proper maintenance or else quit.*

*3. On being asked whether he was satisfied with the quality of services provided by M/s Otis Ltd., he replied that he was not satisfied. However, when the undersigned asked whether he reported the matter to his seniors for finding a remedy, to the poor quality of service, Capt. Venkatesh avoided the reply by saying that “his job is to report events only”.*

*4. On being asked that when did M/s Otis Ltd., write to MES on installation of the Voltage Stabilizer for the lift number 6 to prevent its malfunction; Capt. Venkatesh did not know the details, but certainly said that it was almost very recently.*

*5. M/s MES has also not played their dutiful role to ensure the safety and security of officers using this lift. M/s MES could have studied the contract clause and could have taken an action against M/s Otis Ltd. for their non-cooperation towards providing proper service as per service agreement clause and also for not deputing an engineer/ supervisor at RAW premises for rescue operation.*

*6. It is believed that there is one more lift operator, named Mr. Vijay Kumar Gupta. This person never came in front of Investigating Team, for reasons not known to the undersigned”.*

33. What is the use of such like maintenance agency. The case exposes the sloth and callousness of the administration. OP3 did not deny the receipt of letter dated 04.07.2002, though counsel for OP2 argued with vehemence that the said letter was not served upon OP3.

34. As per the contract, OP3 failed to produce that they were maintaining the Attendance Register to show that the Engineer from OTIS used to come and visit the place. There is not even an iota of evidence to show that OP3 had charged the amount due to absence of Site Engineer from OTIS as per AMC. On the one hand, OP3,

submits that they did not properly rectify the defects, on the other hand, they do not have record to show that Site Engineer ever visited the spot from OTIS. The Maintenance Agreement provides provision of Attendance Register. Consequently, OP3 is wee bit negligent and deficient in discharge of their duty.

**DEFICIENCY ON THE PART OF OP2:**

35. It is clear that Tender for installation of lifts was given by OP2. The giving of Tender is not a mere formality. This must be known that OP2 is a Government Institution. For Tender, the proposal goes through so many officials/Experts, who ought to have known that, without Voltage Stabiliser, they are going to put the lives of officials in jeopardy. It is shocking that, to save some money, the precious lives of the people were put in danger. This is the first deficiency on the part of OP2.

Secondly, although they entered into contract, they never tried to see whether the contract is being followed properly or there were some deficiencies.

Thirdly, a number of complaints were lodged before the OTIS Co. Ltd. They did not pay any heed to those complaints. It is surprising to note that OP2 is so powerless that it cannot compel OP1 to rectify the above said deficiencies. Were they working in cahoots with the other OPs? The moment they came to know that OTIS is not giving proper service, they should have immediately, without wasting any time, cancelled their contract and should have put some other Agency to look after their lifts. Lamently, OP2 did

not make any effort to straighten out the problem. It must also be made clear that OP2 is a “consumer”, qua, the OP1 and OP3. OP2 is not a “consumer”, qua, the deceased. On the contrary, the deceased, is a “consumer”, qua, the OP2. However, their liability is limited and that fact will be considered at the appropriate time.

### **EFFECT OF SECTION 304-A:**

36. The logic trotted out by OP3 is that a case under Section 304-A was lodged against their employees, the police investigated the case and found that the case was not made out against the employees of the Opposite Party No. 3. It was contended that no liability can be saddled with OP3.

37. This argument carries no conviction. There is marked difference between the Criminal proceedings and Civil proceedings. The Civil Court is not bound by the Criminal Court’s judgment, but the converse may not be true. Consequently, this argument deserves no consideration.

### **COMPENSATION**

38. The complainant has submitted the revised calculation in regard to the compensation. She submitted that it has to be considered in view of the latest Apex Court’s authority in the case of ***Dr. Balram Prasad v. Dr. Kunal Saha (supra)***. She further pointed out that the compensation should not be calculated on the basis of guidelines laid down in the case of ***Sarla Verma & Ors. V. Delhi Transport Corporation***

**(2009) 6 SCC 121**, as pointed out by the counsel for OP-1. According to the calculations, the complainant has claimed total damages in the sum of Rs.3,01,48,195/-. In the new calculations, she had added Foreign Allowances, Recreation Grant, amount of future loss of income @ 30%, loss of Consortium in the sum of Rs.10,00,000/-, Legal expenses in the sum of Rs.30,00,000/- and has mentioned about the following notes:-

*“1. The deceased was posted as Counsellor at Indian Embassy at Islamabad until 24/1/2003 when he was deported.*

*2. The income of the deceased was not taxable as can be seen from para 5 of the LPC attached as Annexure-1A. The tax deducted is reimbursed through AFA (Additional Foreign Allowance). Hence, no tax is deductible from the total emoluments.*

*3. Exchange rate has been taken as Rs. 48.92 per USD prevalent at that time and as mentioned in the Last Pay Certificate of the deceased.*

*4. Considering the exemplary career, future prospects and the status of the deceased, this is a fit case for applying the methodology adopted by the Hon'ble Supreme Court in the Kunal Saha case and not the multiplier suggested by Sarla Verma case. Therefore, the claimant has taken the multiplier as 23 i.e., the difference between the age of the deceased at the time of his death and the life expectancy of a healthy individual as 70 years.*

*5. For the period 25.1.2003 to 20.3.2003, only the basic pay details are available. Admissible allowances estimated as per evidence attached.*

6. All RAW officers are entitled to a 15% Security Allowance on the Basic Pay”.

39. On the other hand, Opposite Party No. 1 has placed reliance on **Sarla Verma & Ors. V. Delhi Transport Corporation (Supra)**.

40. This case pertains to the life of a young upcoming officer. He could have been promoted as Cabinet Secretary or at a equivalent post at the fag end of his career. His sudden death reminds us a quote of Walter Scott in ‘The Lady of Lake, -

“Like the dew on mountain  
Like the foam on river  
Like the bubble on the fountain  
Thou art gone, and forever”.

41. In view of the latest law quoted in **Dr.Balram Prasad case** (supra), we allow the claim made by the complainants in the sum of Rs.3,01,48,195/- , jointly and severally, with interest at the rate of 9% from 20.03.2003, the date of death of Sh.Vipin Handa. The said amount be paid to the complainants, within 90 days, from the date of receipt of this order, otherwise, it will carry interest at the rate of 12% p.a., till its realization. The liability of OP2 is limited to 5% of decretal amount and liability of OP3 is limited to 25% of the decretal amount. The rest of the amount will be paid by OP1.

The case stands disposed of on the above said lines.

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(J.M. MALIK,J.)

**PRESIDING MEMBER**

.....  
**(DR.S.M.KANTIKAR)**  
**MEMBER**

dd/25