set aside and it is held that the building is a residential building as contemplated under the Act and thus the landlord is capable to eject the tenant if he proves that he *bona fide* requires the premises for his own use and occupation. Since in the present case the Appellate Authority has not given any finding on issue No. 1, the case will have to be sent back for decision on that issue.

10. For the reasons recorded above, this petition succeeds and the order of the Appellate Authority is set aside and the appeal is sent back for decision in accordance with the law. The parties are directed to appear before the Appellate Authority, Ludhiana, on 24th April, 1980. The records of the case be sent back to the Court immediately.

H. S. B.

Before G. C. Mital, J.

STATE OF PUNJAB,—*Appellant.*

versus

DR. PARTAP SINGH,—*Respondent.*

Regular First Appeal No. 56 *of* 1972 *and*

Cross-objection No. 13-C *of* 72.

April 11, 1980.

Constitution of India 1950—*Article* 300(1)—*Government—Whether liable for tortious acts committed by its employees—Suit for damages by Government servant against Government in matters arising out of service conditions—Whether maintainable—Order regarding such conditions—Whether qualifies as a sovereign function of the State—Government—Whether liable for payment of general damages to plaintiff in such cases.*

Held, that under Article 300(1) of the Contitution of India 1950 the Union of India and the States have the same liability for being sued for torts committed by their employees as was that of the East India Company. As such a suit for damages is maintainable.

(Para 5).

Held, that sovereign functions of a State have nowhere been exhaustively enumerated nor is there any authoritative definition of what constitutes the sovereign functions. However, the passing of

the orders of extension of service, placing the Government servant under suspension and ordering an enquiry are in the course of employment under the terms of contract of service subject to the statutory rules or other relevant provisions applicable in these matters and the decision in this regard about one particular case can never be treated as a sovereign function of the State. The passing of orders with regard to the conduct of a particular government servant would come within the ordinary working of the Department qua that Government servant and cannot be called sovereign act of the State, as such matters arise out of master-servant relation that exists between the Government employees and the Government. The Government, would, therefore, be liable for the tortious acts committed by its employees and would also be liable for payment of general or non-pecuniary damages to the plaintiff in case the plaintiff makes out a case. (Paras 4 and 5).

Regular first appeal from the decree of the Court of Shri M. S. Lobana, Sub-Judge, 1st Class, Amritsar dated the 8th day of November, 1971 granting a decree in favour of the plaintiff for the recovery of Rs. 56,999/52 paise against the defendant, with proportionate costs and directing the defendant to pay future interest at the rate of six per cent per annum on the amount of Rs. 52,686/90 paise, from the date of the suit till the date of recovery.

Claim :—For recovery of Rs. 2,00,000/- as compensation and damages.

H. S. Bhuller and G. S. Grewal, Additional A. G. Punjab, *for the Appellant.*

Partap Singh in person, *for the Respondent.*

JUDGMENT

Gokal Chand Mital, J.

(1) Dr. Partap Singh was a Civil Surgeon being in the service of the State of Punjab in the Health Department and was due to retire in the normal course on attaining the age of superannuation on 16th of June, 1961. Since he had some leave to his credit, he proceeded on leave preparatory to retirement on 18th of December, 1960. The State Government by order, dated 3rd of June, 1961, extended the period of his service beyond the date of his retirement till the conclusion of an enquiry which was instituted the same day on some allegations of misconduct etc., and by another order of the same date, he was placed under suspension. To impugn the aforesaid action, Dr. Partap Singh filed a civil writ petition in this Court

which was dismissed on 4th of April, 1962, which decision is reported in *S. Partap Singh* v. *State of Punjab,* (1). Against the decision of this Court, Dr. Partap Singh preferred an appeal before the Supreme Court which was allowed on 2nd of September, 1963, which judgment is reported in *S. Partap Singh* v. *State of Punjab* (2). *The* Supreme Court held that the orders, dated 3rd of June, 1961, extending the period of service beyond retirement, ordering an enquiry against him and placing him under suspension were issued at the instance of Shri Partap Singh Kairon, the then Chief Minister, Punjab, due to *mala fides* against him and were quashed on this basis alone.

2. In pursuance of the order of the Supreme Court, the Governor of Punjab issued notification, dated 7th of December, 1963, cancelling the previous orders of the Government, dated 3rd of June, 1961, and notified that Dr. Partap Singh stood retired from service on 16th of June, 1961, on attaining the age of superannuation. Since no provision was made in the aforesaid notification for payment of dues to him nor any payment was made within a reasonable period thereafter, Dr. Partap Singh filed a civil suit on 1st of August, 1964, for recovery of Rs. 2,00,000 against the State of Punjab, through the Secretary to Government, Punjab, Department of Medical and Public Health, Chandigarh in the following manner:—

1.A (i) Rs. 32,780 as arrears of pay, allowances, etc. for the period from June, 1961, to 7th December, 1963, during which period he was wrongfully retained in service, at the rate of Rs. 1,100 per mensem which was the last pay drawn by him;

(ii) Rs. 14,900 on account of loss of income from private wards of district headquarter hospitals, examination and other fees as Civil Surgeon during the period 3rd of June, 1961, to 7th of December, 1963, at the rate of Rs. 500 per mensem, of which he was deprived on account of wrongful order of suspension; ...

(iii) Rs. 6,320 on account of interest on the aforesaid two items at the rate of 12 per cent per annum;

(1) A.I.R. 1963 Punjab 298.
(2) A.I.R. 1964 S.C. 72.

I-B. Rs. 15,000 on account of damages for lack of opportunity for proper exercise of the profession in an independent practice and other institutions at the district headquarter hospitals and other institutions under the Civil Surgeon.

In this manner, the grand total under head I comes to Rs. 69,000. The aforesaid amount was claimed in the alternative on two more different grounds which have been detailed in the plaint as well as in the judgment of the trial Court and need not be reproduced here.

II. Rs. 10,000 as damages for compulsory servitude against will, consent and violation of the Fundamental Rights of the plaintiff under Article 19 of the Constitution.

III. Rs. 19,000 on account of compound interest at the rate of 12 per cent per annum on the sum of Rs. 58,000 which was lyng to the credit of the plaintiff in his Provident Fund, the payment of which was delayed from 3rd June, 1961, to 9th of December, 1963, minus the interest recoverable under rule 13.13 of the Punjab General Provident Fund Rules.

IV. & V. Under these heads a sum of Rs. 2,000 was claimed as personal expenses incurred in defending the enquiry and getting the same set aside and Rs. 500 for revocation of the leave.

VI. Rs. 1,00,000 as damages for mental pain, worry, anxiety and strain on health and injury to his proper feelings of dignity and pride.

The grand total of all the aforesaid claims came to Rs. 2,00,500 and by giving up the claim for Rs. 500, the relief was restricted to Rs. 2,00,000 only.

3. The claim of the plaintiff was opposed by the State of Punjab and on the contest of the parties, the following issues were framed:—

1. Whether the suit is barred by Order 2, rule 2, C.P.C. O.P.D.
2. Whether the plaint does not disclose any cause of action against the Punjab State? O.P.D.

3. Whether action against the plaintiff was taken in exercise of the sovereign function of the State and whether the action in tort does not lie against the State on that account and that it is not justiciable? O.P.D.

4. Whether the State of Punjab is not liable for acts of the Chief Minister ? O.P.D.

5. Whether notice under section 80 C.P.C. is invalid? O.P.D.

6. Whether findings of the Supreme Court in writ Nos. 961 of 1961 and 80 of 1963, decided on 2nd September, 1963 operate as *res judicata*? If so, on what matters? O.P.P.

7. Whether the suit is within time? O.P.P.

8. To what compensation and/or damages is the plaintiff entitled and for what period? O.P.P

After the parties were given opportunity to lead evidence, issues Nos. 1 and 6, which were treated as preliminary issues, were decided in favour of the plaintiff, issues Nos. 2 to 4 were decided against the State of Punjab, issue No. 5 was not pressed and issue No. 7 was not disputed and the contention of the plaintiff that the suit is within time was upheld. Under issue No. 8, the plaintiff was awarded Rs. 56,999/52, as detailed below:—

I-A. (i) Rs. 29,187.

(ii) Rs. 13,500.

(iii) Rs. 606-12.

III. Rs. 3,706-50.

VI. Rs. 10,000.

Consequently, by judgment and decree, dated 8th of November, 1971, the trial court passed a decree for the aforesaid amount in favour of the plaintiff and against the defendant, with proportionate costs with a further direction that the plaintiff would be entitled to interest at the rate of 6 per cent per annum on the amount of Rs. 52,686-90-0 from the date of the suit till realisation.

4. Against the aforesaid judgment and decree of the trial Court, it is surprising that the State of Punjab alone came up in appeal to this Court and when the plaintiff received notice of the State appeal, he filed cross-objections for the grant of a decree for a total sum of Rs. 2,11,530/70, Rs. 1,43,000 for the balance claim in respect of which decree was not passed by the trial Court and Rs. 68,530/70 being the interest on that amount from the date of filing of the suit till the date of filing of the cross-objections and future interest on the aforesaid amount from the date of filing of the cross-objections till payment thereof.

5. The learned counsel appearing for the State of Punjab in the first instance has challenged the findings of the trial Court under issue No. 3 and has urged that no action in torts is maintainable in a Court of law against the sovereign functions of the State and the orders passed by the Chief Minister or on his instructions regarding the service matters of the plaintiff being a sovereign act, no decree could be passed by the Court below under the Law of Torts. A somewhat similar point came up for consideration before a Full Bench of this Court in *Baxi Amrik Singh* v. *The Union of India,* (3), wherein it was ruled as follows :—

> "Held, that though sovereign functions of a State have nowhere been exhaustively enumerated nor is there any authoritative definition of what constitutes the sovereign functions, from a review of the ratio of the various authorities that have been noticed above, certain rules of guidance, which appear to be well settled emerge and they may be stated thus:
>
> 1. Under Article 300(1) of the Constitution of India the Union of India and the States in our Republic have the same liability for being sued for torts committed by their employees as was that of the East India Company.
>
> 2. The nature and extent of this liability is that the Union of India and States are liable for damages occasioned by the negligence of servants in the service of the Government if the negligence is such as would render an ordinary employer liable.

(3) 1973 P.L.R. 1.

3. That in view of the rule stated above, the Government is not liable if the tortious act complained of has been committed by its servant in exercise of its sovereign powers, by which we mean powers that cannot be lawfully exercised except by sovereign or a person by virtue of delegation of sovereign rights.

4. The Government is vicariously liable for the tortious acts of its servants or agents which are not proved to have been committed in the exercise of its sovereign functions or in exercise of the sovereign powers delegated to such public servants.

5. The mere fact that the act complained of was committed by a public servant in course of his employment is not enough to absolve the Government of the liability for damages for injury caused by such act.

6. When the State pleads immunity against claim for damages resulting from injury caused by negligent act of its servants, the area of employment referable to sovereign powers must be strictly determined. Before such a plea is upheld the Court must always find that the impugned act was committed in the course of an undertaking or an employment which is referable to the exercise of the delegated sovereign powers.

7. There is a real and marked distinction between the sovereign functions of the Government and those which are not sovereign and some of the functions that fall in the latter category are those connected with trade, commerce, business and industrial undertakings.

8. Where the employment in the course of which the tortious act is committed is such in which even a private individual can engage, it cannot be considered to be a sovereign act or an act committed in the course of delegated sovereign functions of the State.

9. The fact that the vehicle, which is involved in an accident, is owned by the Government and driven by its servant does not render the Government immune

from liability for its rash and negligent driving. It must further be proved that at the time the accident occurred, the person driving the vehicle was acting in discharge of the sovereign function of the State, or such delegated authority.

10. Though maintenance of Army is a sovereign function of Union of India, it does not follow that the Union is immune from all liability for any tortious act committed by an army personnel.

11. In determining whether the claim of immunity should or should not be allowed, the nature of the act, the transaction in the course of which it is committed the nature of the employment of the person committing it and the occasion for it, have all to be considered".

On a reading of the aforesaid eleven rules, it would be necessary to see, on the facts of this case, the nature of the act, the transaction in the course of which it is committed, the nature of employment of the person committing it and the occasion for it, besides other relevant matters. On the facts of this case, the plaintiff was in the employment of the State to serve as a doctor in the Government hospitals and there was a relationship of master and servant subject to the statutory rules of service. The passing of orders with regard to the conduct of a particular Government servant would come within the ordinary working of the Department *qua* that Government servant and cannot be called a sovereign act within the meaning of the Full Bench decision of this Court in *Baxi Amrik Singh's case* (Supra). The passing of the orders of extension of service placing the Government servant under suspension and ordering an enquiry are in the course of employment under the terms of contract of service subject to the statutory rules or other relevant provisions applicable in these matters and the decision in this regard about one particular case can never be treated as a sovereign function of the State. The orders in the present case were passed either by the then Chief Minister or by the Secretary of the Health Department who authenticated the orders in the name of the Governor and in doing so acted as the agent of the State Government and, therefore, as already held these orders were not passed in exercise of the sovereign functions of the State. The State of Punjab would be liable for the tortious acts committed by the then Chief Minister or

the Secretary of the Health Department. If the order, dated 3rd of June, 1961, is to be held to have been issued in exercise of the sovereign functions of the State, then I find that no order would ever be treated or called as having been issued in exercise of powers other than sovereign functions of the State. This broad proposition was specifically negatived by the Full Bench of this Court in the aforesaid decision and that is why the eleven principles were laid down for guidance. Therefore, I decide issue No. 3 against the State and uphold the findings recorded by the Court below.

6. The next argument raised was that the Court below has erred in law in awarding the amount of about Rs. 57,000 but while highlighting the argument, the learned counsel for the State only made submission with regard to item, I-A(ii), III and VI and fairly conceded that the amounts awarded by the Court below under items I-A(i) and I-A(iii) have been rightly allowed and no argument is being raised in their behalf.

7. As regards item I-A(ii), it is urged that no damages could be allowed on account of loss of income from private wards as Civil Surgeon and for private practice. It cannot be disputed that if the plaintiff had not been suspended and had been allowed to work as Civil Surgeon under the orders, dated 3rd of June, 1961, whereby his length of service was extended, he would have drawn income from private wards to which a Civil Surgeon is entitled under the service rules. A reading of para 16 of the judgment of the Court below would show that the plaintiff had categorically stated in his statement that he was making an income of Rs. 500 per mensem on this account and had been including a sum of Rs. 6,000 annually in the income-tax returns and this statement remained unchallenged and uncontroverted and, in my opinion, was rightly accepted by the trial Court in giving decision in favour of the plaintiff. Besides raising the argument, no reason or material has been shown to me as to why a different view be taken.

8. This matter can be viewed from another angle. Suppose the order, dated 3rd of June, 1961, had not been passed and the period of service had not been extended, then the plaintiff would have been free to engage in private practice. The plaintiff appeared as a witness and stated that in private practice he could have easily made more than Rs. 69,000 as claimed by him as alternative damages for loss of private practice. Not only that this part of his

statement remained unchallenged, as no cross-examination was directed in this behalf. His statement is further supported by the statement of Dr. P. A. Paul, Surgeon Superintendent, Philadelphia Hospital, Ambala and Fellow of the International College of Surgeons, who had stated that the plaintiff could have easily earned Rs. 7,000 to Rs. 8,000 per mensem in those days. He is further supported by the statement of Dr. Udham Singh, M.S., Surgeon, Tirath Ram Shah Hospital, Delhi, according to whom the plaintiff could easily earn Rs. 5,000 to Rs. 6,000 per mensem. Under these circumstances, the grant of Rs. 500 per mensem over and above Rs. 1,100 per mensem is in no case excessive and does not call for interference on this additional ground, with the result that I uphold the finding and the grant of Rs. 13,500 under item I-A(ii).

9. Coming to item No. III, under which a sum of Rs. 3,786.50 has been awarded as interest at the rate of 4 per cent per annum on the delayed payment of provident fund, I do not find any reasonable ground has been made for interference with this amount of the decree. In fact no reasonable argument was advanced by the counsel for the State. The basic facts have not been disputed that the amount of provident fund to which the plaintiff would have been entitled on the date of his retirement was not paid to him because of the impugned order, dated 3rd of June, 1961. Otherwise, the same would have been paid to the plaintiff on which he could have earned interest by depositing the same in the bank. Since the delay in the payment was due to the illegal orders passed, the grant of interest at the rate of 4 per cent per annum was rightly allowed by the Court below and no interference is called for. Accordingly, I maintain the decision of the Court below under this head.

10. Coming to item No. VI, under which a sum of Rs. 10,000 has been awarded by the Court below on account of damages for mental pain, worry, anxiety strain on health and injury to proper feelings of dignity and pride of the plaintiff and this matter has been more seriously argued by the plaintiff-respondent than the counsel for the State as the counsel for the State remained content merely by citing a Full Bench decision of this Court in *Lachman Singh and others* v. *Gurmit Kaur and others* (4), whereas the plaintiff-respondent has dealt with this matter in much greater detail as would be seen hereafter.

(4) 1979 P.L.R. 1.

11. Dr. Partap Singh has urged that under the law of Torts, the trial Court has rightly found that he is entitled to general damages on account or mental pain, worry, anxiety, strain on health and injury to his proper feelings of dignity and pride but has stressed that the award of Rs. 10,000 under this head is much too small and wholly inadequate as regards the serious allegations levelled against him which remained unsubstantiated and were found by the Supreme Court to have been concocted due to the *mala fides* of the then Chief Minister due to which the plaintiff felt concerned and upset and suffered from anxiety and worry, the result of which was that his health was pulled down as corroborated by the statements of Shri Abdul Ghani Dar, Dr. Udham Singh, Shri Jaswant Singh, Advocate and Dr. P. A. Paul. According to Dr. P. A. Paul, during the pendency of the departmental proceedings and the cases in Court, the plaintiff was suffering from anxiety and neurosis.

12. On the facts of this case, it has been borne out that serious allegations of criminal nature and misconduct were levelled on which not only an enquiry was sought to be conducted against the plaintiff by passing *mala fide* order, dated 3rd of June, 1961, but the same were got published in various newspapers like Prabhat, Jathedar, Partap, Hind Samachar and the Tribune on various dates in order to give wide publicity so that the plaintiff may not only suffer from anxiety, strain and ill-health, but his dignity and pride may also suffer in the eyes of the public and all these publications were made with the connivance of the then Chief Minister and the officers of the State Government as without them the departmental proceedings could not become available to the press. The plaintiff has further stressed that in spite of the decision by the Supreme Court, when the plaintiff filed the present suit, the State Government instead of owning the mistake continued to press in its written statement that the allegations against the plaintiff were correct and insisted on the same, which clearly shows a contumacious act on the part of the State because it continued to cause mental pain and anxiety and strain on the health of the plaintiff and also to injure his proper feelings of dignity and pride for which he is entitled in law to general damages in tort which are called non-pecuniary damages.

13. On facts no reasonable argument has been raised on behalf of the counsel for the State to disturb the findings of fact recorded

by the trial Court in this regard and in fact no argument was raised to upset that finding. It was the plaintiff alone who reiterated this matter before me for obtaining a decree for Rs. 1,00,000 under the item of general damages under head VI made in the plaint. Therefore, the finding of fact recorded in this regard by the Court below is upheld which is fully corroborated by the voluminous evidence on the record.

14. The above view of law for grant of general damages is fully supported by a Divsion Bench judgment of the Bombay High Court in *Rustom K. Karanjia and another* v. *Krishnaraj M. D. Thackersey and others* (5), rendered by Palekar and Tulzapurkar, JJ. In that case, the Editor of Blitz published an article derogatory against the plaintiff who filed a suit for the recovery of Rs. 3,00,000 as damages on the ground that the imputations made in the article were false and malicious and as a result of the same, he was injured in his character, credit and reputation and in the way of his business and had been brought into the public hatred, contempt and ridicule. The trial Court decreed the entire claim of Rs. 3,00,000 and two of the defendants came up in first appeal to the High Court where it was ruled that the plaintiff was entitled to damages on account of the grounds stated in the plaint. In awarding Rs. 3,00,000, the trial court had taken the view that on the facts of the case exemplary damages were necessary to be awarded but with this part of the view of the trial court, the High Court did not agree. The relevant passage from the decision of the High Court may be usefully reproduced below:—

> "That brings us to the question of damages. The plaintiff claimed general damages of rupees three lacs, and the whole claim has been decreed. The learned Judge took the view that exemplary damages were necessary to be awarded and he has made it clear in the last but one para of his judgment that the deterrent aspect was not absent from his mind. It is contended on behalf of the defendants that the damages are excessive and unreasonable, and, in any case, exemplary damages could not have been awarded. It is now settled after the decision of the House of Lords in *Rookes* v. *Barnard* (6), and the decision of the

(5) A.I.R. 1970 Bombay 424.
(6) (1964) 1 All. E.R. 367.

Court of Appeal in *McCarey* v. *Associated Newspapers Ltd.* (7), that at common law, damages for defamation are purely compensatory. There is no room hereafter for importing the concept of exemplary or punitive damages except in two well-defined categories of cases. The first category is of those cases where the plaintiff is injured by the oppressive, arbitrary or unconstitutional action by the executive or the servants of the Government. The second category is comprised of those cases in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. Except in these two types of cases, there is no departure from the ordinary compensatory principle for all torts, including libel. Where a newspaper is the defendant, it cannot be said without more that the publication has been made with a view to make profits. As pointed out in *Broadway Approvals Ltd.* v. *Odhams Press Ltd.* (8), newspapers in the ordinary course of their business publish news for profits. Only when a more pecuniary benefit is shown to have been made by a newspaper would it become liable for punitive damages."

The Bombay Bench approved of the decision of the Court of Appeal in *McCarey* v. *Associated Newspapers Ltd.* (Supra), and relied on the following observations made by Lord Justice Pearson :—

"If I may summarise shortly in my own words what I think is to be derived from that case, it is this, that from henceforth a clear distinction should be drawn between compensatory damages and punitive damages. Compensatory damages in a case in which they are at large may include several different kind of compensation to the injured plaintiff. They may include not only actual pecuniary loss and anticipated pecuniary loss or any social disadvantages which result, or may be thought likely to result, from the wrong which has been done. They may also include natural injury to his feelings, the natural relief and distress which he may feel in being spoken of in defamatory terms; and, if there has been any kind of

(7) (1964) 3 All. E.R. 947.

(8) (1965) 2 All.E.R. 523 at page 537.

high handed, oppressive, insulting or contumelious behaviour by the defendant which increases the mental pain and suffering which is caused by the defamation and which may constitute injury to the plaintiff's pride and self-confidence, those are proper elements to be taken into account in a case where the damages are at large. There is, however, a sharp distinction between damages of that kind and truly punitive or exemplary damages. To put it in another way, when you have computed and taken into account all the elements of compensatory damages which may be awarded to the plaintiff and arrived at a total of £X. then it is quite wrong to add a sum of £Y by way of punishment of the defendant for his wrong doing. The object of the award of damages in tort now a days is not to punish the wrong doer, but to compensate the person to whom the wrong has been done. Moreover, it would not be right to allow punitive or exemplary damages to creep back into the assessment in some other guise. For instance, it might be said 'You must consider not only what the plaintiff ought to receive, but what the defendant ought to pay'. There are many other phrases which could be used, such as those used in the extracts which I have cited from some of the decided cases. In my view, that distinction between compensatory and punitive damages has now been laid down quite clearly by the House of Lords in (1964) I All ER 367 and ought to be permitted to have its full effect in the sphere or libel actions as well as in other branches of tort ....."

The observations of Lord Justice Diplok at p. 959 of the report were also approved, which may usefully be reproduced below:—

"In an action for defamation, the wrongful act is damage to the plaintiff's reputation. The injuries that he sustains may be classified under the two heads : (i) the consequences of the attitude adopted to him by other persons as a result of the diminution of the esteem in which they hold him because of the defamatory statement; and (ii) the grief or annoyance caused by the defamatory statement to the plaintiff himself. It is damages under this second head which may be aggravated by the manner in which, or the motives with which, the statement was made or persisted in. There may also be cases where Lord Devlin's

second principle is applicable, as, for example, if a newspaper or a film company (as in *Youssoupoff* v. *Metro-Goldwyn-Mayor Pictures Ltd.* (9), has, in the view of the damage awarding tribunal, deliberately published a defamatory statement in the expectation of increasing its circulation and profits by an amount which would exceed any damages awarded by way of compensation alone....."

Therefore, it is clear that the plaintiff, on facts and in law, has made out a case for claim of damages as rightly found by the trial Court.

15. In assessing the damages of Rs. 10,000 only, the trial Court was influenced by the fact that before the relations of Dr. Partap Singh became strained with the then Chief Minister, he was willing to play in the hands of the latter and did not hestitate in hampering the administration of justice in cases pending for judicial adjudication in Courts of law and in this regard relied on para 28 of the Supreme Court judgment in *S. Partap Singh's case* (supra). On the aforesaid consideration, the trial Court concluded as follows:—

"So, balancing all the circumstances, including the aggravating conduct of the then Chief Minister, I would assess the damages to the plaintiff on account of worry, anxiety, mental pain and injury to his proper feelings and dignity to pride at Rs. 10,000."

16. Normally, the appellate Court would not interfere with the quantum of damages awarded by the trial court but in the present case, as would be seen, the trial Court was influenced in awarding Rs. 10,000 by the conduct of the plaintiff which preceded before his relations became strained with the then Chief Minister. The Supreme Court observations were only on the aspect of the matter that Dr. Partap Singh was going out of the way to oblige the then Chief Minister and do his bidding though as an officer of the position and status the doctor held this was hardly a conduct which will properly be expected of him. On the facts of this case, the earlier conduct of the plaintiff is wholly irrelevant and that conduct did not justify the illegal and *mala fide* action taken by the then Chief Minister which is being questioned in the suit. Not only that after

(9) (1934) 50 T.L.R. 581.

the whole episode was over and the judgment of the Supreme Court had been rendered when the present suit was filed the State of Punjab again reiterated that the order, dated 3rd of June, 1961, was valid and the allegations were correct and in spite of that no material was brought on the record to justify the same and, therefore, it is clear that the State persisted in its stand in spite of the judgment of the Supreme Court which operated as *res judicata* between the parties. Therefore, I am of the view that there was no mitigating circumstance in this case for awarding Rs. 10,000 only for the agony and the disreputation which the plaintiff had to suffer during the years starting from 1961 to 1963. Enough material has come on the record that the plaintiff was a doctor of outstanding ability and was a very able surgeon on whom the Chief Minister could place his trust on account of his ability on medical side. Under these circumstances, not only starting false cases against him but giving wide publicity in several vernacular and English papers would clearly go to show that the State was conniving in bringing down the reputation of the plaintiff in the eyes of the public which resulted into mental injury to him as proved by the witnesses produced on the record.

17. This brings me to the consideration of the Full Bench decision in *Lachman Singh's case* (supra). Before the Full Bench, the point came up for consideration under the Fatal Accidents Act whereunder it is the settled law in England, which has been followed by the Courts in India, that only pecuniary damages can be awarded and the question of general damages for pain, suffering and sense of proper feelings and pride, which are termed as non-pecuniary, are wholly foreign. On the aforesaid reasoning, Dr. Partap Singh has urged that *Lachman Singh's case* is distinguishable. In highlighting his submission, he has relied on the following passages from various commentaries on the Law of Torts.

18. Ramaswamy Iyer in his book 'The Law of Torts', seventh edition, has stated as follows at pp. 32, 318 and 319:—

> "An action lies for nervous shock and bodily illness or disorder supervening on it, though the shock was caused not by the application of physical force to the body of the sufferer, but by words or acts calculated to cause emotional disturbance like fear, sorrow, or distress to him. This is now settled by decisions in England and elsewhere and has been accepted as good law in India".

"..... The phrase 'right to privacy' is used in the Indian case-law to refer to the right which an owner of a house may have under local custom to seclusion of his inner apartments from the view of his neighbour. Invasion of the privacy and seclusion of a man's premises, properly speaking, is part of law of trespass or nuisance. It has been used in the United States and also in England in a very different sense and refers to the right to freedom from emotional disturbance like annoyance, mental pain or distress caused by certain forms of misconduct which do not fall within one of the torts already recognised by the law. A common form of such misconduct is the unauthorised publication of one's name, likeness or private affairs by photographers, pressmen or commercial adventurers. Some of them, it is well-known, adopt aggressive and undesirable methods to achieve sensation and profit by such means. In the U.S. a right to privacy has been recognised not merely in such cases but also in regard to other forms of misconduct causing emotional distress. Formerly in the U.S.A. and also in England emotional distress was not by itself a cause of action but compensation for it could be claimed when it accompanied an independent tort like an invasion of the right to person, property or reputation. It was so to say, parasitic on another cause of action and not a tort by itself."

"The trend of case-law and legislation is towards recognising a general right to freedom from emotional disturbance caused intentionally or by unreasonable conduct. This is spoken of as the right to or of privacy. The right has grown beyond its original dimensions and is now a well-recognised subject of claim in the Courts. The law on this subject is thus set out in a well-known treatise in that country, on the Law of Torts by Harper and James. 'as civilisation becomes more complex and varied, new interests emerge and new values evolve and not the least of them are the interests in privacy. The most important of these interests are four, (i) The interest in seclusion. An illustration of a violation of it is wire-tapping or eavesdropping on the telephone. (ii) The interest in personal dignity and self-respect. Cases under this head relate to conduct such as the use of abusive or insulting language,

or indecent proposals. (iii) The interest in privacy of name, likeness and life history. Cases under this head are fairly common, such as the unauthorised publication of one's photograph for commercial purposes, improper methods adopted by debt-collecting agencies, as by sending letters in envelops conspicuously proclaiming the plaintiff's failure to pay his just debts, annoyance caused by publicity given to biographical details. (iv) The interest in sentimental associations. A violation of this right would be the unauthorised publicity or exposure of personal experiences with intimate friends or loved ones, of letters keepsakes and other symbols of sentimental associations with such persons."

Winfield and Jolowicz on Tort, Tenth Edition, at p. 118-119 has stated as follows:—

"Once it is realised that 'true nervous shock is as much a physical injury as a broken bone or a torn flesh wound', it might be thought that nothing further need be said on the subject save that the ordinary principles of liability for personal injury apply. As Lords Macmillan has said, however, 'in the case of mental shock there are elements of greater subtlety than in the case of an ordinary physical injury and these elements may give rise to debate as to the precise scope of legal liability". Where the shock is the result of an intentional wrongful act there is in fact no particular difficulty and, as we have seen, it was in a case of shock that Wright J. laid down his general principle concerning wilful acts calculated to cause harm."

Salmond on Torts, fourteenth edition, at pp. 285-286, has stated as under:—

"..... The crude view that the law takes cognisance only of physical injury resulting from actual impact has been discarded, and it is now well recognised that an action will lie for injury by shock sustained through the medium of the eye or the ear without direct contact. The distinction between mental shock and bodily injury was never a scientific one, for mental shock is presumably in all cases the result of, or at least accompanied by, some physical disturbance in the sufferer's system'."

"Secondly, one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is liable for such emotional distress, provided that bodily harm results from it. In *Wilkinson* v. *Downton,* the defendant, a licensed victualler, after going to the races on Derby Day, by way of a perverted practical joke, had told the plaintiff that her husband was lying injured at a public-house in Leytonstone as the result of an accident, and that she was to go at once in a cab with two pillows to fetch him home. The resultant shock to the plaintiff's nervous system produced severe and permanent physical consequences for which the defendant was held liable in damages by R. S. Wright J."

19. I think there is merit in the argument of Dr. Partap Singh that the law laid down in the Full Bench is not applicable to the cases of general damages and is restricted to cases or pecuniary damages under the Fatal Accidents Act.

20. There can be no yard-stick in making assessment of general damages as claimed by the plaintiff but if the Bombay High Court in *Rustom K. Karanjia's case* (supra), considered an award of Rs. 1,50,000 to be adequate, on the facts of the present case, if a sum of Rs. 25,000 is awarded, it would in no case be termed as excessive and accordingly, I enhance the damages from Rs. 10,000 awarded by the trial Court to Rs. 25,000 as against the claim of Rs. 1,00,000.

21. The plaintiff had also argued in support of his cross-objections under other heads, that the calculations made by the Court below under those heads are not correct inasmuch as, according to the plaintiff, under item I-A(i), he should have been allowed Rs. 29,223; under item I-A(iii) he should have been allowed Rs. 1,604/87 and under head III, he should have been allowed Rs. 6,168/59. The learned counsel for the State could not controvert the infirmity in calculations pointed out by the plaintiff. On correct calculations, the plaintiff would have been entitled to another sum of about Rs. 3,500 jointly under heads I-A(i), I-A(iii) and III. This aspect of the case was also kept in view by me in enhancing the general damages from Rs. 10,000 to Rs. 25,000 and, therefore, no separate enhancement is being made under these heads.

22. For the reasons recorded above, while dismissing the State appeal with costs, the cross-objections filed by the plaintiff-respondent are allowed to the extent that instead of Rs. 10,000 as general

damages, the plaintiff would be entitled to Rs. 25,000, i.e., there is further increase by a sum of Rs. 15,000 over and above what has been awarded to him by the Court below. On the enhanced amount, the plaintiff would be entitled to interest at the rate of 6 per cent per annuam from the date of filing of the suit till realisation. The plaintiff-respondent would be entitled to full costs of this Court on cross-objections which the State would be liable to pay to him.

H. S. B.

Before B. S. Dhillon and G. C. Mital, JJ.

KARNAIL SINGH,—*Petitioner*

versus

VIDYA DEVI ALIAS BEDO,—*Respondent.*

Civil Revision No. 130 *of* 1980.

April 11, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3) (a) (i)—Landlord occupying a building in the capacity of a tenant—Building belonging to such landlord in the same urban area rented out to a tenant—Landlord—Whether able to claim ejectment of the tenant on the ground of bona fide personal necessity without proving anything more—Section 13(3) (a) (i)—Whether stands in the way of the landlord for proving insufficiency of accommodation under his occupation.

Held, that a reading of section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949 would show that a landlord can apply for an order directing the tenant to put him in possession in regard to a residential building, if under clause (a) he is able to prove his *bona fide* requirement, under clause (b) he is able to prove that he is not occupying another residential building in the urban area concerned and under clause (c) if it is proved that he has not vacated such a building without sufficient cause after the commencement of the Act in the said urban area. The Act is a social legislation intended to give protection to the tenants against indiscriminate increase of rent and eviction. It has to be interpreted in a manner more beneficial to the tenants. If the Legislature wanted that the occupation of another residential premises in the urban area concerned should be as 'owner' or as 'landlord', then it would have so provided in sub-clause (b) but by not adding these words the intention of the Legislature is clear that only possession as of right, whether as owner, landlord tenant, mortgagee with possession or in any