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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 26.08.2015

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Judgment Pronounced on: 14.09.2015

+ W.P.(C) 3754/2015

MOHINI

..... Petitioner

Through: Mr.Dhananjay Kumar, Advocate.

Versus

THE STATE (GOVT. OF NCT OF DELHI) & ORS..... Respondents

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present writ petition is filed seeking a writ of mandamus/directions to direct respondent No.3, namely, Delhi State Legal Services Authority to award maximum suitable compensation with interest under the Delhi Victim Compensation Scheme 2011 for the loss of life suffered in a road accident by the husband of the petitioner. A declaration is also sought that Section 4 of the said scheme is unconstitutional.

2. The brief facts giving rise to filing of the present writ petition are that the husband of the petitioner, namely, Shri Gopal Singh Chauhan on 03.09.2012 met with a road accident with an unknown vehicle on Rafi Marg, New Delhi. He expired on 08.09.2012. An FIR under Section 279/338/304A IPC was registered at P.S.Tughlak Road. The accident was caused by some

unidentified/unknown vehicle and the accused/driver of the offending vehicle could not be traced. An untraced report was filed in the concerned court which was accepted on 29.01.2013.

3. It is urged that the petitioner who is the wife of the deceased, due to the sudden demise of her husband, suffered grave pain, agony and loss of support as the deceased was the sole bread earner of his family. The deceased has left behind the petitioner-his wife, one daughter and two sons. After the accident, the Special Divisional Magistrate sanctioned an amount of Rs.25,000/- to the petitioner on 23.01.2013.

4. The petitioner thereafter made an application to respondent No.3 for compensation of Rs.5 lacs under the Delhi Victim Compensation Scheme, 2011. Respondent No.3 vide order dated 28.01.2015 held that in exercise of powers under Sections 161/163 of the Motor Vehicles Act, the SDM Chankya Puri has already sanctioned a sum of Rs.25,000/- to the petitioner and hence in terms of Section 4 of the Scheme the petitioner is ineligible for grant of compensation. The application of the petitioner was dismissed. Hence, the petitioner has filed the present writ petition.

5. We have heard the learned counsel for the petitioner and perused the record.

6. Learned counsel for the petitioner relies upon the judgments in the case of *Suresh and Anr. vs. State of Haryana*, (2015) 2 SCC 277, *Kamla Devi vs. Govt. of NCT of Delhi & Anr.*, 2004 (76) DRJ 739 and *New India Sugar Mills Ltd. vs. Commissioner of Sales Tax, Bihar*, AIR 1963 SC 1207 to contend that respondent No.3 has wrongly not given compensation to the petitioner on a misreading of the Scheme.

7. On 01.05.2015, this Court gave an opportunity to the respondents to

file their counter affidavit. On 28.07.2015, neither counter affidavit was filed nor anybody appeared for the respondents. Same was the position when the matter was listed on 26.08.2015. Hence, on that day, seeing the lackadaisical approach of the respondent towards this case we heard the arguments of the learned counsel for the petitioner and reserved orders.

8. The controversy centres around the Delhi Victim Compensation Scheme 2011 (hereinafter referred to as ‘Scheme’) which has been framed in exercise of powers under Section 357A of Cr.P.C.

9. Section 357A of Cr.P.C. reads as follows:

“Section 357A Victim Compensation Scheme

1. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)

3. If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.”

10. The Scheme provides for a victim's compensation fund which applies to victims and their dependents who have suffered loss or injury or require rehabilitation as a result of the offence committed. The Schedule to the Scheme provides a minimum limit of compensation of Rs.3 lacs and a maximum limit of Rs.5 lacs where loss of life occurs. The victim or the dependent would be eligible for grant of compensation provided they have not been compensated for the loss or injury under any other scheme of the Central Government or the Government of NCT of Delhi. The Scheme also provides that compensation can be recommended by the court under Section 357 A of Cr.P.C. or on an application to be made by the victim or his/her dependent under Section 357A(4) of Cr.P.C.

11. In the present case, the Delhi State Legal Services Authority/Respondent No.3 declined to award any compensation under the Scheme in view of clause 4 of the Scheme. Clause 4 of the scheme reads as follows:-

“4. Eligibility for compensation- The victim or his dependent(s) shall be eligible for the grant of compensation after satisfying the criteria that he/she should not have been compensated for the loss or injury under any other scheme of the Central Government or the Government of National Capital Territory of Delhi.”

12. Reference may also be had to Clause 5 of the Scheme which reads as follows:-

“5. **Procedure for grant of compensation.**- (1) Wherever, a recommendation is made by the court for compensation under sub-sections (2) and (3) of Section 357A of the code, or an application is made by any victim or his/her dependent(s), under sub-section (4) of Section 357A of the Code, 1973 to the Delhi Legal Services Authority, it shall

examine the case and verify the contents of the claim with regard to the loss or injury or rehabilitation as a result of the crime and may also call for any other relevant information necessary for consideration of the claim from the concerned.

(2) The inquiry as contemplated under Sub-section (5) of Section 357A of the Code, 1973 shall be completed expeditiously and the period in no case shall exceed beyond sixty days from the receipt of the claim/petition.

(3) After consideration of the matter, the Delhi Legal Services Authority, upon its satisfaction, shall decide the quantum of compensation to be awarded to the victim or his/her dependent(s) on the basis of loss or injury or requirement for rehabilitation, medical expenses to be incurred on treatment and such incidental charges, such as funeral expenses etc.

Provided that – (1) the quantum of compensation to be awarded to be victim or his/her dependent(s) shall not be less or more than what is provided in the Schedule (2), if at a later date, compensation awarded by the court is more than the maximum limit, the amount of compensation paid shall be adjusted.

13. The relevant clause of the schedule reads as follows:-

SCHEDULE

Sl.No.	Particulars of loss or injury	Minimum Limit of Compensation	Maximum Limit of compensation
1.	Loss of life	Rs.3.00 Lakh	Rs.5.00 Lakh

14. The issue is as to whether the order passed by respondent No.3 is in accordance with clause 4 and 5 read with the aforesaid schedule of the scheme and whether respondent No.3 is correctly interpreting Clause 4 of the Scheme. Clause 4 disqualifies an applicant if “he has been compensated for loss or injury” under same other scheme. What would the phrase “has been compensated for the loss or injury” imply?

15. We may first look at the object and purpose of such schemes. This was noted by the Supreme Court in the case of *Suresh and Anr. vs. State of Haryana(supra)* in which the Supreme Court held as follows:-

“13. It would now be appropriate to deal with the issue. The provision has been incorporated in the Code of Criminal Procedure vide Act 5 of 2009 and the amendment duly came into force in view of the Notification dated 31-12-2009. The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation Under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of Law Commission. It recognises compensation as one of the methods of protection of victims. The provision has received the attention of this Court in several decisions including *Ankush Shivaji Gaikwad v. State of Maharashtra*, *Gang-Rape Ordered by Village Kangaroo Court in W.B.*, *In re, Mohd. Haroon v. Union of India* and *Laxmi v. Union of India*.

14. In *Abdul Rashid v. State of Odisha and Ors.* to which one of us (Goel, J.) was party, it was observed:

6. Question for consideration is whether the responsibility of the State ends merely by registering a case, conducting investigation and initiating prosecution and whether apart from taking these steps, the State has further responsibility to the victim. Further question is whether the Court has legal duty to award compensation irrespective of conviction or acquittal. When the State fails to identify the accused or fails to collect and present acceptable evidence to punish the guilty, the duty to give compensation remains. Victim of a crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the

victim. There are systemic or other failures responsible for crime remaining unpunished which need to be addressed by improvement in quality and integrity of those who deal with investigation and prosecution, apart from improvement of infrastructure but punishment of guilty is not the only step in providing justice to victim. Victim expects a mechanism for rehabilitative measures, including monetary compensation. Such compensation has been directed to be paid in public law remedy with reference to Article 21. In numerous cases, to do justice to the victims, the Hon'ble Supreme Court has directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of victims.”

16. The provision of Section 357A(1) Cr.PC shows that it provides that the victim/dependent shall receive adequate compensation. Section 357A (3) provides that where the trial court concludes that the compensation awarded under Section 357 is not adequate, it may make a recommendation for compensation. Section 357A (5) Cr.P.C. provides that the District Legal Services Authority after due enquiry will award “adequate compensation”.

The stress is on “adequate compensation”.

17. What would the term adequate compensation envisage? The Supreme Court in the case of *Sarla Verma vs. DTC, (2009) 6 SCC 121* while interpreting the Motor Vehicles Act interpreted “just compensation” to be adequate compensation as follows:-

“8.... Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles

relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation.”

18. We may also, to interpret Clause 4 of the Scheme, look at the relevant judgments on interpretation. Reference may be had to the case of *Deputy Chief Controller of Imports and Exports, New Delhi vs. K.T.Kosalram and Ors*, AIR 1971 SC 1283 where the Supreme Court while interpreting import control order held as follows:-

“In our opinion dictionary meanings, however, helpful in understanding the general sense of the words, cannot control where the scheme of the statute or the instrument considered as a whole clearly conveys a somewhat different shade of meaning. It is not always a safe way to construe a statute or a contract by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the instrument upon the basis of those definitions. What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of the subject-matter, the purpose or the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to

convey the idea of the speaker or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context.”

19. Reference may also be had to the case of *New India Sugar Mills Ltd. vs. Commissioner of Sales Tax, Bihar(supra)* where in para 11 the Supreme Court held as follows:-

“.... It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid. If the narrow and technical concept of sale is discarded and it be assumed that the Legislature sought to use the expression sale in a wider sense as including transactions in which property was transferred for consideration from one person to another without any previous contract of sale, it would be attributing to the Legislature an intention to enact legislation beyond its competence. In interpreting a statute the Court cannot ignore its aim and object....”

20. In view of the above legal position, Clause 4 of the Scheme has to be interpreted so as not to defeat the object of the Scheme. The Scheme read with Section 357A of Cr.P.C. envisages that the victim or the dependent should receive just compensation. To knock out an applicant under the Scheme merely because some meagre or token compensation was received by the applicant under some other statutory provisions would be unfair and contrary to the very object of the Scheme. Clause 4 is added to ensure that

no victim or dependent gets a bonanza or largesse. It is not intended to inflict injury. Clause 4 has to be read conjointly and would have to take its colour from Section 357A Cr.P.C. read with Clause 5 and Schedule to the Scheme. Reading Clause 4 of the Scheme in this manner would mean that the victim can be said to “have been compensated for the loss and injury” from some other scheme when he has received compensation equivalent to or more than what is the minimum stipulated in the Schedule to the Scheme. Such an applicant would not be entitled to receive any compensation under the present Scheme. However, where the amount received is less than the minimum stipulated under the Schedule, it cannot be said that he has been compensated for the loss and injury and the concerned authority shall grant appropriate compensation under the Scheme but taking into account the amount of compensation already received by the victim/dependent.

21. In view of the above, we set aside the order of respondent No.3 dated 28.01.2015 under the Delhi Victim Compensation Scheme, 2011. We direct respondent No.3 to re-consider the matter in the light of the interpretation of Clause 4 of the Scheme as stated above. Needless to add respondent No.3 would take into account the sum of Rs.25,000/- already received by the petitioner earlier. Respondent No. 3 shall take steps within two months from today.

22. The appeal is allowed on the above terms.

JAYANT NATH, J

CHIEF JUSTICE

SEPTEMBER 14, 2015/rb/n