

CWP No.23095 of 2015

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.23095 of 2015
Date of decision:04.09.2017**

Pawan Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ashwani Bhardwaj, Advocate,
for the petitioner.

Mr. Saurav Mohunta, DAG, Haryana.

Mr. Jagdeep Singh Rana, Advocate,
for respondents no.3.

Rakesh Kumar Jain, J.

The petitioner is the father of Meenakshi, who is presently 8 years of age and is a victim of acid attack. He has prayed for a direction to the respondents to grant compensation/relief, rehabilitation, complete treatment, reconstructive surgeries including medicines, food and bedding etc. to his daughter and has also prayed for the grant of ₹3 lacs as interim compensation in view of the notification dated 16.01.2014 issued by the State of Haryana.

In brief, on 20.03.2011, on the festival of Holi, when Jora Singh, brother of the petitioner was at his home, then at about 3.00 p.m. four persons, namely, Hoshiar Singh, Suresh, Satish and Udeybhan, all sons of Sajjan Singh, resident of village Budana, Police Station Narnaund, District Hisar, came over

there. Hoshiar Singh was holding a glass of acid in his hand. He tried to throw the glass on the face of Jora Singh but it fell on his left shoulder and chest etc. Suresh, who was also holding a glass of acid, also tried to throw the acid on the person of Jora Singh but it fell down on Meenakshi. Both of them suffered serious burn injuries. When they raised hue and cry, the petitioner and his brother Karan came there but by that time, the said accused fled away from the spot. The incident was reported to the police and FIR No.99 dated 21.03.2011, under Sections 326/34 IPC was registered at Police Station, Narnaund. It is submitted that at the time of incident, Meenakshi was 4 years of age. She was taken to All India Institute of Medical Sciences, New Delhi for treatment. The petitioner has attached the report of the AIIMS, prepared by Dr. Praffula Kumar Maharana, Senior Resident Unit-III, which read as under:-

“REPORT

As per the records available, kafi, a 3 yr female patient daughter of Sh. Pawan, resident of Budana, Haryana, was admitted on 20.03.11 under the casualty at R.P. Centre vide Cno.C-001879/11 and C.R.No-391412. She had a history of alleged acide injury to both eye, face, upper half of the body while she was in her uncle's lap and holi color mixed with acid was thrown over his uncle, as per the history given by father, mother and her uncle at admission. The child was initially taken to several private hospitals where she was treated initially and referred to Dr. R.P.Centre approximately 15 hr after injury, where an MLC was registered and the child was admitted.

Proper medical management was started immediately. The initial examination and assessment was difficult because the child was very uncooperative. Hence the visual acuity of the child couldn't be evaluated. The electrophysiological tests (such as VER) was not possible as it was not possible to place scalp electrodes. Child was subsequently examined under general anesthesia (EUA) on 21.03.11 at 3 pm in order to evaluate the severity and extent of

damage to the eye in detail, after getting proper informed consent from the parents and the necessary requisites for general anesthesia done. She was diagnosed to have both eye chemical injury grade VI (Dua's classification), with 360-- limbal ischemia, total epithelial defect, diffuse stromal haze, normal IOP in both eye arvd 100% conjunctival necrosis in right eye, 75% conjunctival necrosis in left eye the details of anterior chamber, iris, lens and posterior chamber could not be evaluated due to corneal haze. Ultrasound done for posterior segment did not show any structural abnormality. There was associated charring of lids, arms, head and neck and upper torso. The general condition of the child as evaluated by a pediatrician revealed that the child was irritable and all vitals were within normal limits. Appropriate medical management was continued. In view of the acid injury involving the arm, head and neck appropriate consultation was done with Pediatric, Pediatric surgery, and Dermatology department of AIIMS, where the child was advised every day monitoring of hydration, serum electrolytes, infection and referral to burn unit Safdarjung Hospital. After going through the detail clinical findings it was decided to continue the child on medical management and to refer the child to Burn unit Safdurjung Hospital for management of systemic burn injuries, the facilities of which were not present at R.P. Centre at that point of time.

Hence after explaining the future treatment plan, prognosis and the need for management of sytemic burn injury to the parents the child was discharged on medical management on 25.03.2011 with advice for regular follow up in cornea clinic, R.P.Centre. Clinically ocular condition at discharge was almost similar to that of EUA findings (of 21.03.2011). The prognosis of the child in terms of vision and maintenance of the integrity of the eye is very poor as per the established medical literature.

Injury to eyes and face of such severity can lead to permanent privation of the sight of either eye or permanent disfiguration of the head or face hence the kinds of hurt was designated as "grievous"

Dr. Praffula Kumar Maharana
Senior Resident Unit-III"

Meenakshi has turned virtually blind and her entire face has been

badly disfigured, which can be easily assessed from the photographs attached with the petition. The aforesaid accused faced the criminal trial and were, ultimately, held guilty by the competent Court of law vide judgment dated 31.03.2015 under Sections 326 and 34 IPC. However, by order of the same date, i.e. 31.03.2015, they were sentenced to suffer rigorous imprisonment for a period of 3 years and to pay a fine of ₹5,000/- each and in default of payment of fine, to suffer rigorous imprisonment for another one month.

Counsel for the petitioner has submitted that the Supreme Court in the case of **Laxmi vs. Union of India and others**, 2015(2) RCR (Criminal) 585, while dealing with Section 357-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”), has observed that all acid attack victims shall be paid compensation of ₹3 lacs by the concerned State/UT as the after care and rehabilitation cost, out of which a sum of ₹1 lac shall be paid to the victim within 15 days from the date of occurrence of such incident to facilitate her immediate medical attention and expenses and the balance amount of ₹2 lacs shall be paid as expeditiously as possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories were directed to ensure compliance of the said directions.

The aforesaid reported order was actually an interim order, which was passed on 18.07.2013 as, thereafter, another order was passed on 10.04.2015 while disposing of the writ petition, in which the following directions were issued by the Supreme Court:-

“17. We, therefore, issue a direction that the State Governments/Union Territories should seriously discuss and take up the matter with all the private hospitals in their respective

State/Union Territory to the effect that the private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries.

18. We also issue a direction that the hospital, where the victim of an acid attack is first treated, should give a certificate that the individual is a victim of an acid attack. This certificate may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.

19. In the event of any specific complaint against any private hospital or government hospital, the acid attack victim will, of course, be at liberty to take further action.

20. With regard to the banning of sale of acid across the counter, we direct the Secretary in the Ministry of Home Affairs and Secretary in the Ministry of Health and Family Welfare to take up the matter with the State Governments/Union Territories to ensure that an appropriate notification to this effect is issued within a period of three months from today. It appears that some States/Union Territories have already issued such a notification, but, in our opinion, all States and Union Territories must issue such a notification at the earliest.

21. The final issue is with regard to the setting up of a Criminal Injuries Compensation Board. In the meeting held on 14.03.2015, the unanimous view was that since the District Legal Services Authority is already constituted in every district and is involved in providing appropriate assistance relating to acid attack victims, perhaps it may not be necessary to set up a separate Criminal Injuries Compensation Board. In other words, a multiplicity of authorities need not be created.

22. In our opinion, this view is quite reasonable. Therefore, in case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries

Compensation Board for all purposes.

23. A copy of this order be sent to learned counsel appearing for the Secretary in the Ministry of Home Affairs and the Secretary in the Ministry of Health and Family Welfare for onward transmission and compliance to the Chief Secretary or their counterparts in all the States and Union Territories.

24. The Chief Secretary will ensure that the order is sent to all the District Magistrates and due publicity is given to the order of this Court.

25. A copy of this order should also be sent to the Member Secretary of NALSA for onward transmission and compliance to the Member Secretary of the State Legal Services Authority in all the States and Union Territories. The Member Secretary of the State Legal Services Authority will ensure that it is forwarded to the Member Secretary of each District Legal Services Authority who will ensure that due publicity is given to the order of this Court.”

The Women and Child Development Department of the State of Haryana framed various schemes, from time to time, in respect of *ad-hoc* relief/compensation, medical reimbursement and rehabilitation services to women acid victims. The first notification was issued on 02.05.2011, in which the following financial assistance was provided:-

“Financial Assistance

1. An amount of Rs. 25,000/- is to be provided by the concerned Deputy commissioner/SDM as *ad-hoc* relief to the victim in the hospital after lodging the FIR which would be reimbursed from Women & Child Development Department, Haryana.
2. The 100% reimbursement of the complete medical treatment including plastic surgery if any provided the surgery is under taken at PGI, Rohtak/Chandigarh and AIIMS, New Delhi.”

The aforesaid notification was superseded by notification dated 09.01.2013, in which following changes were brought in the financial

assistance provided in the notification dated 02.05.2011:-

“9. Financial Assistance

1. An amount of Rs. 25,000/- is to be provided by the concerned Deputy commissioner/SDM as adhoc relief to the victim at the earliest after lodging the FIR which would be reimbursed from Women & Child Development Department, Haryana.
2. Where death of the victim occurs the Board shall on the facts and circumstances of the case, pay a lump sum of Rs. 5,00,000/- to the legal heir (the children of the deceased if she has any so as to protect the interest of the child). This would be in addition to any expense incurred towards the treatment of the victim.
3. The 100% medical reimbursement of all treatment including plastic surgery if any is allowed to a victim of acid attack from amongst the hospitals approved by the Government of Haryana under the Category of “All disease” and “Artificial Appliance”. The amendments and the deletion/addition of Hospitals made by the Government from time to time would also be automatically be applicable under the scheme also. Provided the surgery is under taken at PGI, Rohtak/Chandigarh and AIIMS, New Delhi.”

Both the notifications dated 02.05.2011 and dated 09.01.2013 were further amended by notification dated 16.01.2014, in which the financial assistance was provided as under:-

“9. Financial Assistance

- (1) The victim shall be paid compensation by the concerned DC/SDM, as after care and rehabilitation cost, under the Haryana Victim Compensation Scheme of Home Department notified dated. 03.04.2013. The compensation shall be made as per the following schedule: -

Particular of Loss or Injury	Maximum Limit of Compensation
Acid attack involving, defacement, loss of limb or part of body and plastic surgery.	Rs. 3.00 lacs
Acid attack not involving, defacement, loss of limb or part of body and plastic surgery.	Rs. 50,000/-

Out of the amount of Rs. 3.00 lacs, a sum of Rs. 1.00 lakhs shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government) as adhoc relief to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs. 2 lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter.

(2) Where the acid attack results in the death of the victim, the State Level Committee shall, on the facts and circumstances of the case, pay a lump sum of Rs. 5,00,000/- to the legal heir (the children of the deceased if she has any so as to protect the interest of the child). This shall be in addition to any expenses incurred towards the treatment of the victim.

(3) The Acid Attack victim of Haryana shall be entitled to receive free of cost 100% medical treatment from amongst any of the Government Hospitals/Government approved Hospitals. The amount shall be reimbursed by the Women & Child Development Department. The amendments and the deletion/addition of Hospitals made by the Govt. from time to time shall also be automatically covered under the scheme. The list of the said Hospitals is posted on website of the Haryana Health Department at <http://haryanahealth.nic.in/menudesc.aspx?page=232>.”

(4) The victim of acid attack shall be given preference in allotment of fair price shops by the Food and Supply Department, Haryana.”

There is another notification dated 25.03.2016, in which the following financial assistance has been provided:-

“9. Financial Assistance

1. A sum of Rs. 1.00 lakh shall be paid to acid victim within 15 days of occurrence of such incident (Rs. 25,000/- as ad-hoc relief immediately by the concerned Deputy Commissioner to the acid victim which shall be recouped by WCD and the rest

- of the amount of Rs. 75,000/- within 15 days by the WCD) to facilitate immediate medical attention and expenses in this regard.
2. The Acid Attack victim of Haryana shall be entitled to receive free of costs 100% medical treatment including medicine, food, bedding and plastic surgery/reconstructive surgery, if any, from amongst any of the Government Hospitals/Government approved Hospitals. The amount shall be reimbursed by the Women & Child Development Department. The amendments and the deletion/addition of Hospitals made by the Govt. from time to time shall also be automatically covered under the scheme. The lists of the said Hospitals is posted on website of the Haryana Health Department at <http://haryanahealth.nic.in/menudesc.aspx?page=232>.”

Besides the aforesaid specific notifications pertaining to the acid attack victim, another notification was issued by the Haryana Government, Home Department on 28.08.2015, in terms of Section 357-A of the Cr.P.C. called as “The Haryana Victim Compensation (Amendment) Scheme, 2015”, in which the victim was also defined to include acid attack victim. In the said notification, the following financial relief was provided to the acid attack victim:-

1	2	3	4
“4A	Loss of life due to Acid Attack	-	Rs. 5.00 lacs
4B	Acid attack involving defacement, Loss of limb or part of body or plastic Surgery	-	Rs.3.00 lacs
4C	Acid attack not involving defacement, loss of limb or part of body or plastic surgery.	-	Rs.50,000/-

It is averred in the reply filed by respondents no.1 and 2 that since the incident had occurred on 20.03.2011 and the acid attack victim

compensation scheme was notified on 02.05.2011, therefore, the case of the petitioner is not covered. However, case of the petitioner was submitted to the Government for seeking relaxation/approval of the competent authority and after getting the necessary approval, the petitioner was advised to take treatment from the Government/Government approved hospital vide letter dated 04.10.2013 but the petitioner showed his inability to produce the medical bills and submitted only the prescription of the doctor given from time to time. The case of the respondents is that if the bills are submitted by the petitioner, the reimbursement thereof would be made to him.

During the course of hearing, this Court passed the order dated 15.02.2017, with a direction to pay ₹3 lacs as interim compensation. The interim order dated 15.02.2017 passed by this Court is reproduced as under:-

“Daughter of the petitioner is prima facie a victim of acid attack. The claim for compensation under the Scheme of Relief and Rehabilitation of Women Acid Victim is sought to be repudiated inter alia on the ground that she has become a victim of acid attack before 02.05.2011 and that no medical bills have been submitted, despite letters Annexures R-4 and R-5, having been issued to the petitioner.

Without expression of any opinion regarding the applicability of principle of prospectivity, considering the scheme to be a beneficial legislation and taking into consideration the photograph, Annexure P-6, indicating the extent of damage, caused to the minor girl, in the acid attack, in the interest of justice, an interim compensation of a sum of Rs. 2 lac by the State of Haryana and another sum of Rs. 1 lac by the Haryana State Legal Services Authority is ordered to be paid to the petitioner, within a period of one month, from the date of receipt of certified copy of this order subject to the final decision of the present petition. The above said amount of Rs. 2 lac and Rs. 1 lac, will be paid by the State of Haryana and the Haryana State Legal Services Authority, respectively, in the shape of bank drafts, in the name of petitioner,

Pawan Kumar, as interim compensation for the proper treatment of his daughter.

For compliance and further orders, now to come up on 03.05.2017.

Copy of this order, be sent to the Member Secretary, Haryana State Legal Services Authority, Panchkula, forthwith.”

On the next date of hearing, i.e. 03.05.2017, the Court has recorded that the interim order dated 15.02.2017 has been duly complied with, meaning thereby ₹3 lacs have already been paid to the petitioner.

The Court has seen that the maximum amount, which is being offered by the Government, is ₹3 lacs in case of injury, defacement, loss of limb etc. on account of acid attack under various schemes of the Government. Besides that, the Government has also offered 100% medical reimbursement of treatment including plastic surgery. The respondents have not denied the 100% medical reimbursement to the daughter of the petitioner provided the petitioner submits the medical bills of the amount having been spent on the treatment of his daughter.

Since the prayer of the petitioner for the payment of ₹3 lacs has already been take care of by this Court, therefore, the other prayers of the petitioner for compensation/relief, rehabilitation, complete treatment, reconstructive surgeries including medicines, food, bedding etc. are to be looked into.

Keeping in view the various notifications issued one after the other by the State Government from time to time for the purpose of relief and rehabilitation of the acid attack victims, it is ordered that the daughter of the petitioner shall be entitled to 100% medical reimbursement towards her complete treatment and reconstructive surgeries from the prime government

medical institutes and the respondents shall also arrange for her free medicines, food and bedding etc. during the course of her treatment.

The present petition is disposed of in the aforesaid terms.

September 04, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No