

IN THE PUNJAB AND HARYANA HIGH COURT AT  
CHANDIGARH

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CWP-16026-2022 (O&M).  
Date of Decision: 22.03.2023.

SHIV PARSAD AND ANOTHER

.. Petitioners

Versus

DLSA, LUDHIANA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Jasdeep Singh, Advocate,  
for the petitioners.

Ms. Divya Sharma, Advocate,  
for the respondents.

**VINOD S. BHARDWAJ, J. (ORAL)**

By way of the present writ petition, a challenge has been raised to the Order dated 09.10.2020 (Annexure P-3) passed by respondent No.2-District Legal Services Authority, Ludhiana as well as order dated 15.03.2022 (Annexure P-7) passed by respondent No.1 – the Appellate Authority on the ground that the compensation awarded is not adequate and appropriate.

The petitioner No.1 works as a labourer and was having three daughters. On 13.03.2018, when the petitioner came back from work, he came to know that one of his daughters was taken away by the accused Parmod Kumar - a neighbour and an acquaintance. The accused Parmod Kumar committed the offence of rape and thereafter murdered the 08 years old daughter of the petitioner. FIR No.103 dated 14.03.2018 under Sections

302, 376, 376 (1) of the Indian Penal Code, 1860 and under Section 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 was registered at Police Station, Jodhewal, Ludhiana, against accused qua the incident.

The accused was thereafter arrested and was convicted vide judgment dated 11.12.2019 passed by the learned Additional Sessions Judge, Ludhiana, for commission of offence of rape/aggravated penetrative sexual assault upon the minor prosecutrix and for causing her murder due to asphyxia by smothering. He was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/- for the commission of offence under Section 302 of the Indian Penal Code, 1860. He was also sentenced to undergo rigorous imprisonment for a period of 20 years for commission of offence under Section 376A of the Indian Penal Code, 1860.

After the passing of the aforesaid judgment of conviction dated 11.12.2019, the petitioners submitted an application to the respondent-Authorities on 06.03.2020 for compensation as per the National Legal Services Authority Compensation Scheme, 2018.

Vide order dated 09.10.2020, the application was allowed by the respondents and an amount of Rs.4 lacs was ordered to be awarded as compensation to the petitioners in terms of the Notification dated 30.11.2017 i.e. the applicable Victim Compensation Scheme. Considering that an amount of Rs.45,000/- out of the fine of Rs.50,000/- imposed on the convict was ordered to be paid to the victim, the compensation of only Rs.3,55,000/- was ordered to be disbursed to the petitioners herein.

Aggrieved thereof, the petitioners preferred an appeal before the Appellate Authority. The above said appeal was, however, declined

after taking into consideration that the order dated 09.10.2020 had been passed by the Committee of which the Chairman himself was a member. The Chairman could thus not be a Judge of his own cause while hearing the appeal. Consequently, the present petition has been filed.

No replication to the written statement was sought to be filed despite a specific stand of the respondent that the Punjab Victim Compensation Scheme of 2017 was in force as on the date of commission of the offence and the claim of the petitioners could not be considered under the Scheme of 2018. Reference was made to the order dated 05.09.2018 passed by the Hon'ble Supreme Court in the matter of "*Nipun Saxena and others Vs. Union of India and others*," bearing Writ Petition (Civil) No.565 of 2012 vide which it was held that the guidelines/recommendations of Scheme of 2018 shall be effective from 02.10.2018.

Faced with above, counsel for the petitioner does not press for the claim to be considered under the Policy of 2018.

Learned counsel appearing on behalf of the petitioners contends that the respondents have not disputed that the Victim Compensation Scheme notified on 30.11.2017 was in force as on the date of commission of the incident. As per Schedule attached to the aforesaid Scheme, a compensation of Rs.4 lacs is admissible to a victim of murder and rape and as per the explanatory footnote to the aforesaid Schedule, if a victim is less than 14 years of age, the compensation is to be increased by 50% over and above the amount specified in the Scheme. Resultantly, the petitioners were entitled to a compensation of Rs. 6 lakhs in terms of the Victim Compensation Scheme, 2017.

Learned counsel for the respondents does not dispute the fact that the Victim Compensation Scheme, 2017 was applicable as on the date of commission of the offence and also the fact that the footnote of the Schedule attached to the aforesaid Scheme stipulated an additional award of 50% of the compensation as mentioned in the schedule where the victim is a less than 14 years on the date of the commission of the offence. It is further not disputed that the deceased victim was a minor and was less than 14 years of age as on the date of incident.

I have heard the learned counsel for the respective parties and have gone through the documents on record.

Taking into consideration the undisputed fact that the Victim Compensation Scheme, 2017, specified a compensation of Rs.4 lacs in favour of a victim of offence of murder and rape and further that the compensation is to be increased by 50% when the victim is less than 14 years of age at the time of incident, there was no reason as to why the respondents District Legal Services Authority capped the compensation at Rs.4 lacs only. There being no ambiguity in the Victim Compensation Scheme, 2017 and the factual aspect not being under dispute, the payable compensation under the Victim Compensation Scheme, 2017 was to be assessed 50% over and above the computed amount which comes clearly to a sum of Rs.6 lacs. It is thus evident that the computation has not been carried out in accordance with the Victim Compensation Scheme, 2017.

Further, it has also come forth that the amount of Rs.45,000/- has been ordered to be deducted from the compensation payable to the petitioners on the ground that the same has been ordered to be disbursed to

the victim as a part of compensation from the fine imposed. It has not come forth as to whether the aforesaid amount has been deposited by the accused.

It may be possible that the accused chooses not to deposit the fine/compensation which is to be disbursed to the victim and opts to undergo the default sentence. The victim cannot be kept deprived of the benefit of the compensatory scheme.

Such contingent disbursement of compensation by way of a set off without actual disbursement is not in furtherance of the objective of the Scheme. A victim cannot be deprived of the compensation till such time that the convict opts to deposit the fine/compensation. The victim may by then move away from the place of incident and may not have any interest in seeking such balance amount. The disbursement of compensation cannot be permitted to be held in abeyance and at the pleasure of the violator himself.

Resultantly, the deduction of the sum of Rs.45,000 made in the impugned order is set aside. The amount of Rs.45,000/- as deducted above along with an additional sum of Rs.2,00,000/- in view of the footnote entitling the petitioners to an enhanced compensation to the extent of 50% over and above the amount as mentioned in the Schedule, is accordingly ordered to be disbursed to the petitioners along with interest @ 6% per annum from the date of the application till its actual disbursement. The petitioners would, however, submit an affidavit to the respondent-Authorities that in the event of the accused depositing the compensation in terms of the judgment of the trial Court, they shall not seek release of the said amount in their favour.

The petition is accordingly allowed.

March 22, 2023

raj arora

Whether speaking/reasoned

Whether reportable

(VINOD S. BHARDWAJ)

JUDGE

: Yes/No

: Yes/No