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

Date of decision: 10th January, 2023

+ **W.P.(C) 13161/2021 and CM APPL. 41543/2021**

SMT KAMESHWARI DEVI & ANR. Petitioners

Through: Mr. Jitender Kumar and Mr. Yogesh Saini, Advocates with Petitioner no. 1 and 2 in person.

versus

THE STATE (GOVT. OF NCT OF DELHI)

AND ORS

..... Respondents

Through: Ms. Hetu Arora Sethi, ASC for R-1.
Mr. Aayush Agarwala, Advocate with
Mr. Siddnam Nahata, Ms. Bhumika Sharma and Mr. Aurito Mukherjee, Advocates for R-2 and 3 (M: 9999105064).
Ms. Harshita Mishra, Secretary Litigation, DSLSA.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioners, who are the wife and the children of Late Shri Ram Preet Singh have approached this Court, seeking directions to the Respondents to enhance the amount of compensation awarded under the Delhi Victim Compensation Scheme, 2018. The Petitioners further seek the setting aside of the order dated 22nd December, 2020 passed by the District Victim Compensation Committee, Central District, Tis Hazari Courts, Delhi in respect of **FIR No.193/19** registered at P.S. I.P. Estate, by which a

compensation of Rs.3,00,000/- was directed to be paid to the wife of the deceased, Petitioner No.1 – Smt. Kameshwari Devi, and a sum of Rs.1,00,000/- each was directed to be paid to the daughters of the deceased, Petitioner No.2 – Ms. Pooja and Petitioner No.3 – Ms. Poonam. The operative portion of the said order dated 22nd December, 2020 is extracted below:

*“An affidavit of dependency has been filed by **Smt. Kameshwari Devi, wife of deceased** according to which the deceased is survived by her and her children. So, Smt. Kameshwari Devi, wife of deceased, Poonam and Pooja (daughters of deceased) are entitled for compensation.*

*The committee has also considered other provisions of Delhi Victim Compensation Scheme, 2018. Upon considering the same, the Committee is of the considered view that the case of the deceased falls under **SI. No.1 and Part-I** of the Schedule to the Delhi Victim Compensation Scheme, 2018 and as such, final compensation of **Rs.5,00,000/- (Rupees Five Lac Only)** should be paid to the following LRs of the deceased in proportion mentioned below:*

SI. No.	Name of victim/LRs of deceased	Bank Name & Branch	Account No.	IFSC Code	Amount
1.	Smt. Kameshwari Devi (wife)	State bank of India, Geeta colony	33804907158	SBIN0013763	Rs.3,00,000/- (Rupees Three Lac Only)
2.	Ms. Poonam (Daughter)	Punjab National Bank	1603001500058469	PUNB016030	Rs.1,00,000/- (Rupees One Lac Only)
3.	Ms Pooja (daughter)	State Bank of India	31966943583	SBIN0013763	Rs.1,00,000/- (Rupees One Lac Only)

Thus, in exercise of power under Section 357A(2) of Cr.P.C. it is recommended that a sum of Rs. 3,00,000/- (Rupees Three Lac Only) to be paid to Smt. Kameshwari Devi (wife of deceased) and a sum of Rs.1,00,000/- (Rupees One Lac Only) each to be paid to Ms. Poonam and Ms Pooja (daughters of deceased) as Final Compensation from the Victim Compensation Fund constituted under Rule 3 of the Delhi Victim Compensation Scheme, 2018.”

3. The background of the present case is that the deceased, who was an auto rickshaw driver, unfortunately passed away in an accident on 9th August, 2019, while he was driving his auto near ITO and an unknown vehicle hit him. An **FIR bearing No.193/19** was lodged in respect of the said incident at P.S. I.P. Estate. The investigation which took place in the matter could not identify the persons or the vehicle which caused the accident, leading to a closing order dated 22nd September, 2020 passed by the MACT Court, Tis Hazari Courts, Delhi, whereby the legal representatives of the deceased were granted liberty to approach the Secretary, Delhi State Legal Service Authority (hereinafter, “**DSLISA**”) or the concerned SDM for grant of compensation in accordance with law.

4. The deceased is survived by his wife and three children i.e., two daughters and a son. All of the three children have now attained the age of majority. The said LRs of the deceased, who are the Petitioners herein, had approached the DSLISA for award of compensation under the Delhi Victims Compensations Scheme, 2018. The said Authority, after considering the matter, awarded a total sum of Rs.5,00,000/-, vide order dated 22nd

December, 2020, as extracted hereinabove. It is this order which is under challenge in the present petition.

5. Ld. Counsel for the Petitioner submits that, due to the investigation having not resulted in identifying any of the culprits who caused the accident, the family of the deceased has not received any insurance amount under the Motor Vehicles Act, 1988. In addition, it is submitted that, one of the daughters i.e., Petitioner No.3 - Ms. Poonam is presently undergoing treatment with the Institute of Human Behaviour and Allied Sciences (IHBAS), and is unable to get any employment due to the mental trauma on account of her father's death.

6. The second daughter, the Petitioner No.2 - Ms. Pooja, who is present in Court, submits that she is undertaking a course in banking. The son of the deceased is also present in Court and submits that he was earlier employed in the marketing department of an insurance company, however, he is currently unemployed.

7. Ld. Counsel for Respondent Nos.2 and 3 submits that, under the Delhi Victims Compensation Scheme, 2018, the minimum limit of compensation is Rs.3,00,000/- and the upper limit is Rs.10,00,000/-. The impugned order dated 22nd December, 2020 has considered the various factors for awarding compensation under Clause 8 of the Delhi Victims Compensation Scheme, 2018, as per which one of the factors is financial loss to the victim or dependants, as also, the financial condition of the deceased.

8. Heard ld. Counsels for the parties, as also, Petitioners present in Court. The legal framework for the award of compensation to the victims of crime or the dependents of such victims emanates from Section 357A of the Code of Criminal Procedure, 1973. The said legal provision is reproduced

below:

“[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.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.]”

9. Further, the factors that ought to be taken into consideration while awarding compensation under the Delhi Victim Compensation Scheme, 2018, are stipulated in Clause 8 which is set out below:

“8. FACTORS TO BE CONSIDERED WHILE AWARDING COMPENSATION -

While deciding a matter, the Delhi State Legal Services Authority/District Legal Services Authority may take into consideration following factors relating to the loss or injury suffered by the victim:

- (1) Gravity of the offence and severity of mental or physical harm or injury suffered by the victim;*
- (2) Expenditure incurred or likely to be incurred on the medical treatment for physical and/or mental health of the victim, funeral, travelling during investigation/ inquiry/ trial (other than diet money);*
- (3) Loss of educational opportunity as a consequence of the offence, including absence from school/college due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;*
- (4) Impact on employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;*
- (5) The relationship of the victim to the offender, if any;*
- (6) Whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;*
- (7) Whether the victim contracted a sexually transmitted disease (STD) or any other disease as a result of the offence;*
- (8) Whether the victim contracted human*

immunodeficiency virus (HIV) as a result of the offence;

(9) Any disability suffered by the victim as a result of the offence and nature and extent of the disability:

(10) Financial condition of the victim against whom the offence has been committed so as to determine his/her need for rehabilitation.

(11) Financial loss to the victim or dependents extent and period of the same.

(12) In case of death, the age of deceased, his monthly income, number of dependents, life expectancy, future promotional/growth prospects etc.

(13) Or any other factor which the DSLSA/DLSA may consider just and sufficient.”

10. It is pertinent to note the observations of the Supreme Court in ***Ankush Shivaji Gaikwad v. State of Maharashtra [(2013) 6 SCC 770]***, wherein the Court emphasized that Section 357A, confers a power as also a duty on the courts to apply its mind to the question of awarding compensation in facts of each case. The relevant observations of the Supreme Court are extracted below:

*“50. Applying the tests which emerge from the above cases to Section 357, **it appears to us that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case.** We say so because in the background and context in which it was introduced, **the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system.** The victim would remain forgotten in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation,*

Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.”

11. In the present case, the deceased was an auto driver and he had a reasonable monthly income, considering that he was plying his auto-rickshaw in Delhi. He passed way at the age of forty-six. Hence, it can be reasonably stated that the deceased would have been able to continue to earn income from plying of the auto-rickshaw at least for the next fifteen years. Even if the average income of the deceased is taken to be Rs.25,000/- per month, the loss of income to his family, due to the death of the deceased, would be substantial in nature.

12. Further, it is usually seen in such accident matters that the family of the deceased not only receives compensation, if found eligible, under the Victim Compensation Scheme, 2018, but the MACT Court after conducting the due enquiry and on the basis of the investigation undertaken by the police, awards compensation to the family of the deceased under the Motor Vehicles Act, 1988. In the present case, the family of the deceased has been completely deprived of any compensation under the Motor Vehicles Act, 1988, due to the non-tracing of the culprits who caused the accident.

13. Considering the medical condition of the Petitioner No.3, as also, the fact that the family is currently surviving only on the income which is obtained from the auto-rickshaw, which has been rented out to a third-party, this Court is of the opinion that the compensation awarded to the Petitioners ought to be enhanced to the maximum amount of Rs.10,00,000/-.

14. Accordingly, the Respondent No.3 - Delhi State Legal Service Authority is directed to release a further sum of Rs.5,00,000/- to the Petitioner No.1 - widow of the deceased, which she would use in the manner as she deems appropriate, for the welfare of the children and for the family.

15. In future, whenever the DSLSA considers cases of compensation in the case of death or grievous injuries, the fact as to whether any amount has been received from the Insurance Company, or not, would be borne in mind while awarding the compensation to the victims or the dependents thereof.

16. The present petition, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH, J.

JANUARY 10, 2023
MR/AD

