



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

% **Judgment reserved on : 19 December 2024**
Judgment pronounced on: 03 February 2025

+ CM(M) 500/2021 & CM APPL. 23172/2021

DELHI STATE LEGAL SERVICES AUTHORITY (DSLSA)
..... Petitioner

Through: Ms. Deepali Gupta, Adv.

versus

SMT. DURGAWANTI & ORS.Respondents

Through: Mr. Manish Maini, *Amicus Curiae*.

Mr. T. Kanniappan, Adv. for
R-1 to R-4.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This Judgment shall decide the present Civil Miscellaneous (Main) Petition filed by the petitioner/DSLSA¹, invoking Article 227 of the Constitution of India, 1950, thereby assailing the impugned judgment/award dated 25.01.2021, passed by the learned Additional District Judge-01/Motor Accident Claims Tribunal (North West), Rohini Courts, Delhi [“learned Tribunal”], in MACT Case No. 217/19/17, titled *Durgawanti & Ors. vs. Sh. Bhupinder Singh*, whereby, in an apparently hit and run motor accident resulting in death, the claimants, being the widow, two daughters and one son of

¹Delhi State Legal Services Authority



the deceased, were awarded compensation, 90% of which is fastened upon the DSLSA.

FACTUAL BACKGROUND

2. Shorn of unnecessary details, the respondents, being the legal heirs of the deceased, filed a claim for compensation under the Motor Vehicles Act, 1988, before the learned Tribunal in relation to a hit and run accident that occurred on 08.10.2016 at approximately 5:30 a.m. The accident involved the rash driving of a motorcycle bearing registration number DL-8SBE-2863, which struck the victim, Ram Dhani, inflicting fatal injuries, to which he succumbed the following day.

3. The incident led to registration of FIR No 959/16 under Sections 279/304-A IPC² at Police Station Mangolpuri, Delhi. In the claim petition filed by the legal heirs of the deceased, respondent No.5, Shri Bhupinder Singh, claimed that the motorcycle had been stolen from his residence on the intervening night of 3rd-4th October 2016 and that an FIR³ regarding the theft was lodged on 08.10.2016. He contended that he was unaware of the accident, as the vehicle was not in his possession at the time.

4. Suffice to state that the learned Tribunal, *vide* the impugned judgment dated 25.01.2021, found that the accident was caused due to rash and negligent driving of the motorcycle, resulting in the death of Ram Dhani. It further noted that the vehicle was uninsured at the time

² Indian Penal Code, 1860

³ First Information Report



of the accident and that the owner, Shri Bhupinder Singh, failed to maintain valid insurance for a significant period.

5. The learned Tribunal acknowledged that the offending vehicle had been stolen and that the owner had reported the theft. However, it also noted that the statutory insurance requirement under Section 146 of the Motor Vehicles Act, 1988, had not been met. The learned Tribunal emphasized that compensation under the Motor Vehicles Act, 1988, is a beneficial provision, and in cases of hit-and-run accidents, the State may bear the liability to compensate the victims' families, especially when the owner of the vehicle was negligent in not maintaining valid insurance.

6. In light of the above, the learned Tribunal awarded payment of compensation to the tune of Rs. 7,67,600/- with interest @ 9 % per annum from the date of filing of the claim petition to the legal heirs of the deceased/respondents No. 1 to 4. At the same time further directed that 10% of the awarded compensation amount be paid by the respondent No. 5 owner, Sh. Bhupinder Singh, while the remaining 90% be paid by the DSLSA under the Delhi Victim Compensation Scheme, 2018 [**“DVC Scheme”**].

7. Aggrieved, the petitioner is before this Court seeking the following reliefs:

“a) Set aside the impugned Award/ Judgment dated 25-01-2021 in MACT Case no.217/19/ passed by Mr. Mukesh Kumar Gupta, ADJ -1 & Motor Accident Claim Tribunal (NW) Rohini Courts, Delhi, to the extent the said judgment directs the payment of compensation to be made by the petitioner DSLSA to the legal heirs of deceased from the fund of Delhi Victim Compensation Scheme, 2018.



- b) Hold/direct that the petitioner DSLSA is not liable to pay any amount to the legal heirs of the deceased in the MACT proceedings as directed by the Tribunal/ MACT from the fund of Delhi Victim Compensation Scheme, 2018.
- c) Pass any other or further order which this Hon'ble Court deems fit and just in favour of the Petitioner in the present circumstances of the case and in the interest of justice.

GROUND FOR CHALLENGE:

8. The impugned order has been assailed, *inter alia*, on the grounds that it was passed without properly appreciating the facts and by disregarding the grounds raised by the petitioner. Learned counsel for the petitioner took this Court through the provision of Section 357A of the Code of Criminal Procedure, 1973⁴ ["Cr.P.C."] and referred to the decision in **Satya Prakash v. State**⁵, wherein it was observed as follows:

"[16] Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated. In order to give complete mental satisfaction to the victim, it is extremely essential to provide some solace to him in the form of compensation so that it can work as a support for the victim to start his life afresh.

[17] Section 357 Cr.P.C. empowers the Court to award compensation to the victim(s) of the offence in respect of the loss/injury suffered. The object of the section is to meet the ends of justice in a better way. This section was enacted to reassure the victim that he is not forgotten in the criminal justice system. The amount of compensation to be awarded under Section 357 Cr.P.C. depends upon the nature of crime, extent of loss/damage suffered and the capacity of the accused to pay for which the Court has to conduct a summary inquiry. However, if the accused does not have the capacity to pay the compensation or the compensation awarded against the accused is not adequate for rehabilitation of the victim, the Court can invoke Section 357A to recommend the case to the

⁴ Cr.P.C

⁵ 2013 (203) DLT652



State/District Legal Services Authority for award of compensation from the State funded Victim Compensation Fund under the Delhi Victim Compensation Scheme, 2011. Section 357 Cr.P.C is mandatory and it is the duty of all Courts to consider it in every criminal case. The Court is required to give reasons to show such consideration.”

9. It is further urged that the learned Tribunal failed to recognize that the DVC Scheme is not applicable to motor accident victims. Clause 10(5) of the DVC Scheme specifically provides that the cases covered under the Motor Vehicles Act, 1988 (Act 59 of 1988), wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not fall under the purview of this Scheme. In support of this contention, learned counsel for the petitioner has relied on decision in **Karan v. State of NCT of Delhi**⁶

10. It is pertinent to mention that this Court, *vide* order dated 19.09.2023, appointed Mr. Manish Maini, Advocate as *Amicus Curiae*. He highlighted the amendment to the Motor Vehicles (Amendment) Act, 2019, particularly the provision for compensation to victims of hit-and-run cases, which addresses the growing number of accidents involving untraceable offending vehicles. This provision became effective on 1st April 2022, introducing Section 161, which sets out special provisions for court compensation in such cases. It was pointed out that, in accordance with Section 161, the Central Government is obligated to formulate a scheme to provide compensation to victims of hit-and-run accidents. Consequently, the Compensation of Victims of Hit-and-Run Motor Accident Scheme, 2022 was enacted, stipulating fixed compensation amounts of Rs.

⁶ Criminal Appeal 352/2003



2,00,000/- for the legal heirs of deceased victims and ₹50,000/- for individuals who sustain grievous injuries.

11. Learned *Amicus Curiae* further submitted that, in the present matter, the claimants (Respondents No. 1 to 4) may be compensated under either the DVC Scheme (administered by the DSLSA) or the Compensation of Victims of Hit-and-Run Motor Accident Scheme, 2022 (managed by the Central Government through the General Insurance Council), pointing out that Regulation No. 4 of the DVC Scheme expressly provides for the adjustment of compensation amounts received under other schemes.

ANALYSIS AND DECISION

12. I have bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the relevant record of the present case.

13. In matters covered by exercise of criminal jurisdiction, the legal framework for award of the compensation to the victims of crime or dependents of such victims derives its source from Section 357A of the Cr.P.C. It would be expedient to reproduce said provision, which reads as under:

“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 incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

14. Suffice to state that the DVC Scheme has been brought into effect pursuant to Sub-Section (1) to Section 357A, w.e.f. 27.06.2018⁷, by the GNCTD⁸. Before we proceed to discuss the salient features of the DVC Scheme, it is pertinent to mention that Section 357A was inserted into the statute book by Act 5 of 2009, w.e.f. 31.12.2009. Simultaneously, the amended Act also introduced definition of the expression ‘victim’ under Section 2(wa), which means ‘*a person who has suffered any loss or injury caused by reason of the act or omission for which the accused persons has been charged*’ and the expression ‘victim’ includes his/her guardian or legal heir. In short, the legislative history of the Victim Compensation Scheme shows that the initial DVC Scheme, 2011 was promulgated

⁷ Notification No. F.11/35/2010/HP-II/2677-2693 dated 27.06.2019

⁸ Government of National Capital Territory of Delhi



and later replaced by the DVC Scheme, 2015, which came into force, w.e.f, 23.12.2016. It was by virtue of directions of the Supreme Court in W.P.(C) 565/2012, titled as **Nipun Saxena v. Union of India**, that a direction was issued to NALSA⁹ to set up a committee of expert jurists to prepare model rules for victims of compensation for sexual offences and acid attacks. Consequent thereto, the Committee drafted Part-II of the Victims Compensation Scheme and the Supreme Court *vide* order dated 11.05.2018 directed all the States/Union Territories to incorporate recommendations of the Committee into the Victims Compensation Scheme.

15. In short, pursuant to the aforesaid directions by the Supreme Court regarding the coming into force of the DVC Scheme, Part-II of the Scheme specifically addresses compensation for victims of sexual assault and acid attack victims, while Part-I pertains to compensation for victims, including interim relief, in respect to other kinds of offences. The Schedule then categorizes various kinds of loss or injury, providing both minimum and upper limits for compensation amounts.

16. A perusal of the DVC Scheme would show that it also defines the expression 'victim' in nearly the same terms as Section 2(wa) of the Cr.P.C., under clause 2(k), meaning "*a person who has suffered loss or injury as a result of the offence and in case of his death, the expression 'victim' shall mean to include his/her guardian or legal heir*". Clause-4 of the DVC Scheme also provides for the eligibility conditions for grant of compensation as under:

⁹ National Legal Services Authority



“4. ELIGIBILITY FOR COMPENSATION -The victim or his/her dependent(s), as the case may be, 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:

Provided that an affidavit of victim or his/her dependent(s), as the case may be shall be sufficient unless the State or District legal Services Authority, as the Case may be, directs otherwise for the reasons to be recorded.

Provided also that the amount of compensation received under any other scheme shall be adjusted from the compensation payable hereunder and only the remainder shall be payable by the DSLSA.”

17. It would also be expedient to refer to Clause-8 of the DVC Scheme, which enumerates the parameters to be considered while awarding compensation. **Clause-10** then provides the procedure for grant of compensation and it would be relevant to reproduce the same as well, which reads as under:

“10. PROCEDURE FOR GRANT OF COMPENSATION- (1)

Wherever, a recommendation is made by the court for compensation under sub-sections (2) and/or (3) of section 357A of the Code, or an application is made by any victim or their dependent(s), under sub-section (4) of section 357A of the Code, to the Delhi State Legal Services Authority, or District Legal Services Authority, it shall examine the case and verify the contents of the claim with regard to the loss/injury and 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:

Provided that in exceptional cases of utmost hardship and gravity and in all acid attack cases, at any time after commission of the offence, the Member Secretary/Special Secretary of DSLSA or Secretary, DLSA may suo moto or on an application by the victims/dependents may after preliminary verification of the facts proceed to grant such relief (including interim monetary compensation) as may be required in the circumstances of each case.

(2) The inquiry as contemplated under sub-section(S) of section 357 A of the Code, shall be completed expeditiously and the period in no case shall exceed beyond sixty days from the receipt of the claim/petition or recommendation,;



Provided (*In terms of Order of Hon'ble Supreme Court in W. P.(Crl.). No. 129/2006, titled Laxmi v. Union of India & ors. Dt. 18.07.2013*) that in cases of acid attack an amount of Rs. One lakh shall be paid to the victim within 15 days of the matter being brought to the notice of DSLSA/DLSA. The order granting interim compensation shall be passed by the DSLSA/DLSA within 7 days of the matter being brought to its notice and the DSLSA shall pay the compensation within 8 days of passing of order. Thereafter, an amount of Rs. 2 lakhs shall be paid to the victim as expeditiously as possible and positively within two months of the first payment:

Provided further that the victim may also be paid such further amount as is admissible under this Scheme.

(3) After consideration of the matter, the DSLSA or DLSA, as the case may be, upon its satisfaction, shall decide the quantum of compensation to be awarded to the victim or his/her dependent(s) taking into account the factors enumerated in Clause 8 of the Scheme.

(4) The award of compensation under this Scheme shall be subject to the condition that if later on the trial court while passing the Judgment orders the accused person to be pay any amount by way of compensation under section 357 of the Code, the victim shall refund the amount of compensation awarded under this Scheme, or the amount of compensation received in pursuance of the order passed under section 357 of the Code, whichever is less. An Undertaking in Form "II" hereto shall be obtained by the Disbursing Authority from the victim before the disbursement of the compensation amount under this Scheme.

(5) The cases covered under the Motor Vehicles Act, 1988 (Act 59 of 1988) wherein the compensation is to be awarded by the Motor Accidents Claims Tribunal, shall not be covered under this Scheme.

(6) The DSLSA/ DLSA may call from any record or take assistance from any Authority/Establishment/Individual/Police/Court concerned or expert for smooth implementation of the Scheme.

(7) In case after the disbursement of compensation, at any stage it comes to the notice of DSLSA/DLSA that any relevant fact shared with it during the inquiry for compensation was false, the Authority can initiate proceedings for recovery of part/full compensation awarded after affording an opportunity of being heard to the beneficiary.”

18. A careful perusal of the aforesaid Clause-10 would show that by virtue of Sub-Clause 5, the legislative intent is to exclude the cases



covered under the Motor Vehicles Act, 1988 ,where compensation is to be awarded by the Motor Accident Claims Tribunal, and not to be covered under this Scheme.

19. The first and the foremost, Sub-Section (2) to Section 357A of the Cr.P.C., as well as Sub-Clause (1) to Clause 10 of the DVC Scheme, categorically provides that the *Court exercising criminal jurisdiction may recommend the matter for the grant of compensation* to the District or State Legal Services Authority, as the case may be. It is upto the District or the State Legal Services Authority to decide the quantum of compensation to be awarded in accordance with the Scheme. Pertinently, Sub-clause (5) to Clause-10 of the DVC Scheme specifically excludes those cases which are covered under the Motor Vehicles Act, 1988.

20. The aforesaid discussion on the position of law came to be considered in a decision by this Court in *Karan v. State of NCT of Delhi (supra)* wherein it was held as follows:

"92. Delhi Victim Compensation Scheme, 2018 contains two parts -Part I deals with the victims of offences categorized in the schedule whereas Part II deals with women victims/survivors of sexual assault and other crimes. The salient features of Delhi Victim Compensation Scheme,2018 are as under:

(i) In every matter wherein, the convict is not in position to compensate the victim, the Trial Court may consider the same and with reasons in writing, may recommend the matter to District Legal Services Authority.

(ii) Except Special Courts designated as Children Court/POCSO Court, Trial Court while making the recommendation cannot quantify the quantum of compensation. POCSO Court is authorized by law laid down under Section 33(8) of the Protection of Children from Sexual Offences Act, 2012 to quantify the quantum.



(iii) The recommendation may be made for grant of compensation according to the Delhi Victim Compensation Scheme, 2018. The Legal Services Authority is not authorized to grant the compensation beyond the limit provided in the Scheme.

(iv) In matters resulting into acquittal or discharge, similar recommendation may be made in case the Trial Court feels the need of rehabilitation of the victim provided the victim can be considered as a victim of an offence as defined in the scheme.

(v) In cases of untraced matters or wherein the identity of the offender cannot be established, the victim/dependants may be referred to District Legal Services Authority to move an application for grant of compensation.

(vi) At any stage of the trial, Trial Court may also recommend/refer the matter for grant of Interim Compensation. The interim compensation can only be quantified by the POCSO Court.

(vii) The compensation can only be granted in the categories mentioned in the Schedule to the Scheme in Part-I and Part-II. The other matters cannot be considered. Legal Services Authorities are not authorized/ empowered to go beyond the Scheme.

(viii) Compensation may be recommended in State Cases i.e. matter on which cognizance has been taken on basis of Police Report (for Interim, this may be considered as Institution on basis of FIR) or on complaint cases (only when the accused has been summoned).

(ix) In Part-I of the Scheme, it has been categorically provided that cases covered under the Motor Vehicles Act, 1988 wherein compensation is to be awarded by Motor Accidents Claims Tribunal, shall not be covered under the Scheme.

(x) In case the victim/dependants have already been granted compensation under any other governmental scheme, District Legal Services Authority does not have any authority to grant compensation under Part-I and under Part-II, the quantum so granted has to be considered/adjusted accordingly.

(xi) Under the purview of the Scheme as envisaged in Part-I, it is not the offence but the injury suffered by the victim which forms the basis of recommendation for grant of compensation.

(xii) The Scheme also provides for factors to be considered while awarding compensation in both Part-I and Part-II which have to be considered by the District Victim Compensation Committee for grant of compensation. In case, none of the



factors are satisfied, the committee is not empowered to grant the compensation.

(xiii) The Scheme does not provide for compensation in case of loss of property rather it focuses on physical or mental injury sustained by victim and similarly by the dependents in case of loss of life. Therefore, the matter wherein the victim has suffered loss of only movable/immovable property may not be recommended/ referred for compensation.”

21. In summary, a conjoint reading of Section 357A of the Cr.P.C., as well as Clause-10 of the DVC Scheme makes it amply clear that the claims for compensation arising from the use of motor vehicles on public roads, resulting in death or injury, are specifically excluded. The said aspect is also fortified by Sub-Section (3) to Section 357A of the Cr.P.C., which provides that the Trial Court, at the conclusion of trial, must consider whether compensation under Section 357 is adequate for rehabilitation of the victim. If it is not, the Court may make further recommendations for compensation, irrespective of whether the matter ends in acquittal or discharge, with the primary consideration being the rehabilitation of the victim.

22. At this juncture, it may also be noted that the decision in *Karan (supra)* was a Three-Judge Bench decision by this Court, wherein certain directions were given for the steps to be taken by the learned Trial Court after passing an order of conviction and before sentencing the accused, which involved the submission of Victim Impact Reports¹⁰. Suffice it to state that such directions resulted in a delay in the sentencing of convicted persons who were languishing in jail. It was in this backdrop that a reference was made again to a Five-Judge

¹⁰ VIRs



Bench of this Court in the case of **Saif Ali v. State GNCT of Delhi**¹¹, wherein, while the aforesaid observation in the context of Section 357-A of the Cr.P.C. prevailed and remained untouched, the Five-Judge Bench set aside certain directions, observing that the assistance of the DSLSA in preparing time-consuming VIRs caused unnecessary delays. The sum result is that, insofar as the interpretation to Section 357A Cr.P.C. is concerned, it still holds sway. Ultimately, it is for the Trial Court to make a recommendation to the DSLSA in criminal cases wherever they feel that the victim needs to be compensated, but only in accordance with the overall objective of the compensatory jurisprudence, in fundamental compliance with the DVC Scheme.

23. However, learned *Amicus Curiae* referred to decision of this Court in **Smt. Kameshwari Devi v. The State (Govt. of NCT of Delhi)**¹², dated 10.01.2023, wherein this Court, in a matter arising out of a motor accident and in which compensation had been granted by the MACT, directed the DSLSA to make further compensation, thereby enhancing the amount of compensation from Rs. 5 lacs to Rs. 10 lacs in accordance with the Schedule to the DVC Scheme. It was a case wherein an auto rickshaw driver had died in a hit & run case. Following the registration of the FIR, the police filed a closure report, and resultantly the MACT granted liberty to the legal representatives of the deceased to approach the Secretary, DSLSA, or the concerned SDM¹³ for the grant of compensation in accordance

¹¹ 2024 SCC OnLine Del 291

¹² W.P.(C) 13161/2021 & CM APPL. 41543/2021

¹³ Sub Divisional Magistrate



with the law. The compensation of Rs. 5 lacs was awarded by the District Compensation Committee which was assailed in the said case.

24. A careful perusal of the cited judgment would show that the Court took into account the factors for awarding compensation under Clause 8 of the DVC Scheme. However, this Court in the cited case failed to consider the conjoint legal interpretation of Section 357A read with Clause 10 of DVC Scheme that by necessary implication excludes the matters covered under Motor Vehicles Act, 1988. It appears that the binding part of the decision in *Karan (supra)* was also not cited before the Court, and therefore, the said decision is *per in curium* and does not have binding implication in law.

25. In summary, the impugned judgment-cum-award dated 25.01.2021, passed by the learned Tribunal, is patently flawed in law. Instead of recommending that the District or State Legal Services Authority may consider grant of compensation, the MACT itself proceeded to decide quantum of compensation to be shouldered by the District/State Legal Services Authority, which direction clearly falls foul in the teeth of the provisions under Section 357A of the Cr.P.C. as discussed above. It may be stated at this juncture that although Schedule to the DVC Scheme, *vide* Item No.1, categorizes compensation for 'loss of life' without qualifying it to be homicidal death or accidental death, as in the case of a motor accident. However, in view of the overall context of the compensatory jurisprudence and conjoint reading of Section 357A read with Clause-10 of the DVC Scheme, the cases under the Motor Vehicles Act are clearly excluded.



26. In view of the foregoing discussion, this Court has no hesitation in holding that impugned judgment-cum-award dated 25.01.2021 passed by the learned Tribunal is unsustainable in law and the same is hereby quashed. The respondents No. 1 to 4 shall be at liberty to seek realization of entire amount of compensation from the registered owner of the vehicle i.e. respondent No. 5/Shri Bhupinder Singh by filing appropriate execution application before the learned Tribunal in accordance with law.

27. The present CM(M) along with pending application stands disposed of.

DHARMESH SHARMA, J.

FEBRUARY 03, 2025

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