
(2015) 12 SC CK 0064

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 867 of 2013 (Under Article 32 of The Constitution of India)

Parivartan Kendra

APPELLANT

Vs

Union of India (UOI) and others

RESPONDENT

Date of Decision : 07-12-2015

Acts Referred:

Constitution of India, 1950 — Article 32
Criminal Procedure Code, 1973 (CrPC) — Section 164, 357A, 357C

Citation : (2016) 1 ALD 70 : (2016) 1 AWC 577 : (2016) 1 BomCR 785 :
(2016) 1 CDR 112 : (2016) 1 CGLJ 244 : (2016) 1 JLJR 105 : (2015) 8 MLJ
504 : (2016) 1 PLJR 210 : (2016) 1 RCR(Criminal) 336 : (2015) 13 SCALE 325

Hon'ble Judges : M. Yusuf Eqbal and C. Nagappan, JJ.

Bench : Division Bench

Advocate : Pinky Anand, ASG, A.N.S. Nadkarni, Advocate Genl., C.D. Singh, AAG, Suryanara Singh, Sr. AAG, Colin Gonsalves, Sr. Advocate, Mangla Verma, Jyoti Mendiratta, Abhish Kumar, Manu Yadav, Anil Shrivastav, Rituraj Biswas, Sapam Biswajit Meitei, Linthoingambi T

Final Decision : Disposed Of

Judgement

M. Yusuf Eqbal, J—By way of present writ petition filed in public interest Under Article 32 of the Constitution of India, the Petitioner-a registered NGO seeks to highlight the plight of the acid attack victims and the inadequacy how the compensation payable to the victims as per the orders of the Apex Court in Laxmi v. Union of India (in Writ Petition (Crl.) No. 129 of 2006). Petitioner also highlights the lack of a legal guarantee to free medical care, rehabilitative services or adequate compensation under the Survivor Compensation Schemes.

2. The Petitioner highlighting the plight of two dalit girls of Bihar, who were attacked around midnight of October 21, 2012 by four assailants who threw acid on the face and bodies of the girls while they were sleeping on their rooftops. It is alleged that these young assailants used to harass the elder sister on the streets, market and in the auto rickshaw while she was going to computer

classes or to work. This victim wanted to be a computer engineer and used to go to college regularly and supported her family working as a daily wage worker. However, these assailants used to make sexual advances towards her, pass lewd comments, and also used to pull her dupatta. They terrorized her and her family members by roaming near her house on their motorcycles, tore the curtains of their house and told her that if she did not heed to their demands and agree to have sexual relations with them they would damage and destroy her face.

3. In the aforesaid midnight, while both sisters were sleeping, assailants Anil Rai, Ghanshyam Rai, Badal and Raja climbed upon the roof and Anil covered the elder sister's mouth so that she could not scream and Ghanshyam and Raja held her legs so that she could not move. When Anil Rai was pouring the acid on her body and face, the acid also fell on her sister's body and burnt her arm. After the attack, these men did not make any effort to flee as they wanted to stay and enjoy the moment. As the acid started burning the girls, the girls started screaming and crying waking up their parents, who rushed to the rooftop. Upon this, the assailants fled. The victims were rushed to the Patna Medical College and Hospital. According to the Petitioner, the doctors arrived only the next morning and did not give them proper treatment and the family had to buy all the medicines on their own. Thereafter, victims' family was given Rs. 2,42,000/- from the Government of Bihar for the treatment of both. It has been contended by the Petitioner that till the filing of this writ petition more than Rs. 5 lakhs had already been spent on their treatment and still the victims require more treatment.

4. It has been submitted by the Petitioner that proper and adequate treatment was not given to the victim. The Patna Hospital waited for more than a month to conduct elder sister's grafting surgeries. Three grafting surgeries were performed on the elder sister. It is claimed that all these three surgeries were not performed properly and that the Hospital staff and doctors mistreated the victim and their family as they belonged to a lower caste. With the help of the Petitioner -Society, the victim was transferred to Safdarjung Hospital, Delhi on 5th April, 2013, where she finally received proper treatment. It has been further contended by the Petitioner that the Police also arrested the four perpetrators a month after the attack in November, 2012 in response to intense pressure from social organizations and the media. On 8.2.2013, the IG of Police had made a statement in an interview that the statement of the victim would be taken Under Section 164 of the Code of Criminal Procedure. However, according to the Petitioner, no such statement had been taken till filing of the writ petition. The victim and her family are, therefore, appalled by the treatment they have received at the hands of the Patna Hospital, the Police and the Government of Bihar.

5. By way of present writ petition, the Petitioner has sought justice, compensation and restoration of dignity of the survivors of the acid attack, and also the assurance that these horrific events are not repeated elsewhere. It is

contended that despite orders and directions of the Apex Court in Laxmi's case (supra), acid is still readily available to most of the population in India and the acid attackers are living with impunity, and the victims are not in a position to afford basic care or services. Since buying acid is simple, it is being used to settle most minor disputes. An acid attack survivor needs surgeries throughout his/her lifetime with each surgery costing around Rs. 3 lakhs. It has been further pleaded by the Petitioner that this crime is mainly committed in four countries of the world, namely, Bangladesh, Pakistan, Cambodia and India. All the other three countries have engaged in paving the way to an effective remedy for the survivors of the victims. Petitioner contends that Bangladesh passed a law in 2002, which is much stronger law than the Indian Law as Indian Law neither effectively address the gravity of acid attacks nor does it adequately help the acid attack survivors.

6. The Petitioner submits that the failure of the States to provide compensation under Survivor Compensation Schemes have caused the survivors to be isolated from all sections of society as they are unable to leave their house because of their disfigurements. The compensation of Rs. 3 Lakh does not cover the entire expenses incurred by an acid attack victim. The Petitioner further contends that the Union of India has not developed any standard treatment and management guidelines; public health facilities etc., to treat acid attack victims. The Petitioner has sought development of comprehensive rehabilitation scheme for acid attack survivors i.e., housing, education and employment.

7. The Petitioner has prayed for issuance of writ of mandamus to the State of Bihar to reimburse Rs. 5 lakh to the victim's family which is the amount spent on her treatment so far and for any other expenditure incurred on the treatment of the minor sister, and to provide compensation of at least Rs. 10 Lakhs to the victims' family in lieu of their pain and suffering. The Petitioner has also inter alia prayed for issuance of writ of mandamus or directions to develop a standard treatment and management guidelines for the treatment and handling of acid attack victims by constituting a panel of experts; to direct all private hospitals to provide free treatment in acid attack cases and to have pictorial displays with the first aid and primary care protocols and guidelines to neutralize the acid and stabilize the survivor in the all Public Health Centres, sub-centres and government hospitals. Petitioner has also prayed for inclusion of acid attacks in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and to reform educational programs in primary school to understand the gravity of violence against women.

8. We have heard Mr. Colin Gonsalves, learned senior Counsel appearing for the Petitioner, and learned Counsel appearing for the Union of India, State of Bihar and other States.

9. Before we proceed further, we would like to go through the orders passed by the Apex Court in the case of W.P. (Crl.) No. 129 of 2006 titled as Laxmi v. Union of India, dealing with a similar case of acid attack victim. On 18.07.2013, this

Court passed the following order:

6. The Centre and States/Union Territories shall work towards making the offences under the Poison Act, 1919 cognizable and non-bailable.

7. In the States/Union Territories, where rules to regulate sale of acid and other corrosive substances are not operational, until such rules are framed and made operational, the Chief Secretaries of the concerned States/Administrators of the Union Territories shall ensure the compliance of the following directions with immediate effect:

(i) Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.

(ii) All sellers shall sell acid only after the buyer has shown:

a) a photo ID issued by the Government which also has the address of the person.

b) specifies the reason/purpose for procuring acid.

(iii) All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.

(iv) No acid shall be sold to any person who is below 18 years of age.

(v) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to Rs. 50,000/-

(vi) The concerned SDM may impose fine up to Rs. 50,000/- on any person who commits breach of any of the above directions.

8. The educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:

(i) A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.

(ii) A person shall be made accountable for possession and safe keeping of acid in their premises.

(iii) The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.

9. The concerned SDM shall be vested with the responsibility of taking appropriate action for the breach/default/violation of the above directions.

10. Section 357A came to inserted in the Code of Criminal Procedure, 1973 by

Act 5 of 2009 w.e.f. 31.12.2009. Inter alia, this Section provides for preparation of 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.

11. We are informed that pursuant to this provision, 17 States and 7 Union Territories have prepared "Victim Compensation Scheme" (for short "Scheme"). As regards the victims of acid attacks the compensation mentioned in the Scheme framed by these States and Union Territories is un-uniform. While the State of Bihar has provided for compensation of Rs. 25,000/- in such scheme, the State of Rajasthan has provided for Rs. 2 lakhs of compensation. In our view, the compensation provided in the Scheme by most of the States/Union Territories is inadequate. It cannot be overlooked that acid attack victims need to undergo a series of plastic surgeries and other corrective treatments. Having regard to this problem, learned Solicitor General suggested to us that the compensation by the States/Union Territories for acid attack victims must be enhanced to at least Rs. 3 lakhs as the after care and rehabilitation cost. The suggestion of learned Solicitor General is very fair.

12. We, accordingly, direct that the acid attack victims shall be paid compensation of at least `3 lakhs by the concerned State Government/Union Territory as the after care and rehabilitation cost. of this amount, a sum of Rs. 1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) 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. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance of the above direction.

10. On 3rd December, 2013, in Laxmi's case (supra), when the affidavit of State of Haryana was placed before the Bench, in which it stated that the Government of Haryana is in the process of framing a scheme for full medical treatment, short term as well as long term, for specialised plastic surgery, corrective surgeries, providing specialised psychological treatment to the acid victims to help them to come out of the horror and trauma of the acid attack and their rehabilitation, this Court directed the Chief Secretaries of the States (other than Haryana) and the administrators of the Union Territories to file affidavit and indicate to this Court, the State's view in bearing 100% cost of treatment of the acid victims in line with the decision taken by the Government of Haryana and also with regard to framing of scheme on the lines of Haryana Government for medical treatment at specialised hospitals having facility for plastic surgery, corrective surgery and psychological as well as other treatment to the acid victims. This Court further directed the Chief Secretaries of the States and Administrators of the Union Territories to issue necessary instructions to the Police Stations within their respective State/Union Territory that as and when an FIR is lodged with the

police relating to acid attack, the concerned Police Station will send a communication to the jurisdictional S.D.M. about receipt of such information. Upon receipt of such information, the jurisdictional S.D.M. shall then make inquiry into the procurement of acid by the wrong doer and take appropriate action in the matter.

11. While disposing of the writ petition of Laxmi v. Union of India, this Court inter alia held, thus:

10. We have gone through the chart annexed along with the affidavit filed by the Ministry of Home Affairs and we find that despite the directions given by this Court in Laxmi Vs. Union of India and Others, , the minimum compensation of Rs. 3,00,000/- (Rupees three lakhs only) per acid attack victim has not been fixed in some of the States/Union Territories. In our opinion, it will be appropriate if the Member Secretary of the State Legal Services Authority takes up the issue with the State Government so that the orders passed by this Court are complied with and a minimum of Rs. 3,00,000/- (Rupees three lakhs only) is made available to each victim of acid attack.

11. From the figures given above, we find that the amount will not be burdensome so far as the State Governments/Union Territories are concerned and, therefore, we do not see any reason why the directions given by this Court should not be accepted by the State Governments/Union Territories since they do not involve any serious financial implication.

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13. Insofar as the proper treatment, aftercare and rehabilitation of the victims of acid attack is concerned, the meeting convened on 14.03.2015 notes unanimously that full medical assistance should be provided to the victims of acid attack and that private hospitals should also provide free medical treatment to such victims. It is noted that there may perhaps be some reluctance on the part of some private hospitals to provide free medical treatment and, therefore, the concerned officers in the State Governments should take up the matter with the private hospitals so that they are also required to provide free medical treatment to the victims of acid attack.

14. The decisions taken in the meeting read as follows:

? The private hospitals will also be brought on board for compliance and the States/UTs will use necessary means in this regard.

? No hospital/clinic should refuse treatment citing lack of specialized facilities.

? First-aid must be administered to the victim and after stabilization, the victim/patient could be shifted to a specialized facility for further treatment, wherever required.

? Action may be taken against hospital/clinic for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of Section 357C of

the Code of Criminal Procedure, 1973.

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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.

12. The above mentioned direction given by this Court in Laxmi's case (supra) is a general mandate to the State and Union Territory and is the minimum amount which the State shall make available to each victim of acid attack. The State and Union Territory concerned can give even more amount of compensation than Rs.

3,00,000/- as directed by this Court. It is pertinent to mention here that the mandate given by this Court in Laxmi's case nowhere restricts the Court from giving more compensation to the victim of acid attack, especially when the victim has suffered serious injuries on her body which is required to be taken into consideration by this Court. In peculiar facts, this Court can grant even more compensation to the victim than Rs. 3,00,000/-.

13. We have come across many instances of acid attacks across the country. These attacks have been rampant for the simple reason that there has been no proper implementation of the Regulations or control for the supply and distribution of acid. There have been many cases where the victims of acid attack are made to sit at home owing to their difficulty to work. These instances unveil that the State has failed to check the distribution of acid falling into the wrong hands even after giving many directions by this Court in this regard. Henceforth, a stringent action be taken against those erring persons supplying acid without proper authorization and also the concerned authorities be made responsible for failure to keep a check on the distribution of the acid.

14. When we consider the instant case of the victims, the very sight of the victim is traumatizing for us. If we could be traumatized by the mere sight of injuries caused to the victim by the inhumane acid attack on her, what would be the situation of the victim be, perhaps, we cannot judge. Nonetheless we cannot be oblivious of the fact of her trauma.

15. From perusal of the record of the case, it is found that elder sister suffered 28 % burns on her body and 90% on her face, owing to the alleged brutal attack on her. Due to the acid attack, the victim had undergone several surgeries, and has to undergo many more corrective and curative surgeries for her treatment.

16. Admittedly, three skin grafting surgeries were conducted by the PMCH but they were all improperly conducted as testified at Safdarjung Hospital. The victim, was brought to Delhi by the Petitioner and in Delhi some skin grafting surgeries were again conducted at the Safdarjung Hospital for Neck, Lips, Eyes, Nose, Arm, Forehead and Ear. Further skin grafting surgeries were also conducted at Fortis Hospital for Neck, Lips, Nose, Eye and Arm. In the opinion of victim's doctor also, she would be required to undergo multiple corrective and curative operations and medical support for the rest of her life. Victim would be required to have corrective and curative surgeries for Neck, Lips, Eyes, Nose, Arm, Forehead, Ears, Breasts and Elbow. Apart from the above medical conditions/treatment, which she is required to undergo, there are many other consequences, which an acid attack brings out in the life of the victim.

17. Considering the plight of the victim we can sum up that:

? the likeliness of the victim getting a job which involves physical exertion of energy is very low.

? the social stigma and the pain that she has to go through for not being

accepted by the society cannot be neglected. Furthermore, the general reaction of loathing which she would have to encounter and the humiliation that she would have to face throughout her life cannot be compensated in terms of money.

? as a result of the physical injury, the victim will not be able to lead a normal life and cannot dream of marriage prospects.

? since her skin is fragile due to the acid attack she would have to take care of it for the rest of her life. Therefore, the after care and rehabilitation cost that has to be incurred will have huge financial implications on her and her family.

18. On perusal of various contentions and evidence, we find it imperative to mention that even after this Court having passed an order dated 06.02.2013 directing the Union of India and States to implement compensation payable to acid attack victims by creation of a separate fund, only 17 States have been notified of the Victim Compensation Schemes (VSC). Out of which 7 states and 4 Union territories have not initiated the VSC. Even in those States where the Scheme has been implemented a meager compensation ranging between Rs. 25,000/- to Rs. 2 lakhs is provided for medical care. And many States have not provided any compensation for rehabilitation at all. In the present case, the Govt. of Bihar has fixed a pitiable amount of Rs. 25,000/- for the victims of acid attack.

19. The Guidelines issued by orders in the Laxmi's case are proper, except with respect to the compensation amount. We just need to ensure that these guidelines are implemented properly. Keeping in view the impact of acid attack on the victim on his social, economical and personal life, we need to enhance the amount of compensation. We cannot be oblivious of the fact that the victim of acid attack requires permanent treatment for the damaged skin. The mere amount of Rs. 3 lakhs will not be of any help to such a victim. We are conscious of the fact that enhancement of the compensation amount will be an additional burden on the State. But prevention of such a crime is the responsibility of the State and the liability to pay the enhanced compensation will be of the State. The enhancement of the Compensation will act in two ways:

1. It will help the victim in rehabilitation;
2. It will also make the State to implement the guidelines properly as the State will try to comply with it in its true spirit so that the crime of acid attack can be prevented in future.

20. Having regard to the problems faced by the victims, this Court in the case of Laxmi v. Union of India and Ors. by an order dated 18.07.2013, enhanced the compensation, stating that, "at least Rs. 3 Lakhs must be paid to the victims of acid attacks by the concerned Government". Therefore, a minimum of Rs. 3 Lakhs is to be awarded by the Government to each victim of acid attack. In the present case, a minimum amount of Rs. 6 Lakhs has to be awarded to the sisters.

21. In peculiar facts of the case, we are of the view that victim Chanchal

deserves to be awarded a compensation more than what has been prescribed by this Court in the Laxmi's case (supra). Though in this case we are not issuing any guidelines different from the guidelines issued in Laxmi's case, we should not forget that the younger sister was also injured by the acid attack. Although her degree of sufferance is not as that of the elder one, but she also requires treatment and rehabilitation. It is to be noted that this Court in Laxmi's case (supra) doesn't put a bar on the Govt. to award compensation limited to Rs. 3 Lakhs. The State has the discretion to provide more compensation to the victim in the case of acid attack as per Laxmi's case guidelines. It is also to be noticed that this Court has not put any condition in Laxmi's case as to the degree of injuries which a victim has suffered due to acid attack. In the instant case, the victim's father has already spent more than Rs. 5 lakhs for the treatment of the victim. In consideration of the severity of the victim's injury, expenditure with regard to grafting and reconstruction surgery, physical and mental pain, etc., we are of the opinion that the victim (Chanchal) should be compensated to a tune of at least Rs. 10 Lakhs. Suffice it to say that the compensation must not only be awarded in terms of the physical injury, we have also to take note of victim's inability to lead a full life and to enjoy those amenities which is being robbed of her as a result of the acid attack. Therefore, this Court deems it proper to award a compensation of Rs. 10 lakhs and accordingly, we direct the concerned Government to compensate the victim Chanchal to a tune of Rs. 10 Lakhs, and in light of the judgment given in Laxmi's case we direct the concerned State Government of Bihar to compensate the main victim's sister, Sonam to a tune of Rs. 3 Lakhs. of the Total amount of Rs. 13 Lakhs, a sum of Rs. 5 lakhs shall be paid to the victim and her family within a period of one month and the remaining sum of Rs. 8 lakhs shall be paid to the victims within a period of three months from the date of this order. Furthermore, the State shall upon itself take full responsibility for the treatment and rehabilitation of the victims of acid attack as per the Guidelines provided in Laxmi Vs. Union of India and Others , vide order dated 10.4.2015.

22. Disposing of the present writ petition, we additionally direct all the States and Union Territories to consider the plight of such victims and take appropriate steps with regard to inclusion of their names under the disability list.