

145

ANNEXURE - P4

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NO. 48-49/ 2004

IN

CIVIL APPEAL NO. 3187-88 OF 1998

IN THE MATTER OF :

UNION CARBIDE CORPORATION LTD. -PETITIONERS

VERSUS

UNION OF INDIA & OTHERS -RESPONDENTS

AFFIDAVIT ON BEHALF OF UNION OF INDIA

AS PER

DIRECTIONS OF THIS HON'BLE COURT DATED 23.8.2006

S.K. Bansal Under
I, ~~Yashvir Singh~~ Deputy Secretary to the Government of India,

Ministry of Chemicals and Fertilizers, Department of Chemicals and Petrochemicals, Shastri Bhawan, New Delhi do hereby solemnly affirm and state as under:-

1. That I am *Under* ~~Deputy~~ Secretary to the Government of India, Ministry of Chemicals and Fertilizers, Department of Chemicals and Petrochemicals, and as such I am conversant to the facts and circumstances of the case and competent to swear this affidavit.

2. That the above mentioned application was listed before this Hon'ble Court on 23.08.2006 and after hearing, their Lordships were pleased to pass the following order:

"I.A. Nos. 48-49 :

According to the applicant, the figure of compensation of 450 million dollars was worked out on the assumptions which have turned to be wholly fallacious. According to the application, that amount was worked out on the assumption that there were 3000 cases of death and about one lakh cases of injury. It is submitted that now actual figures are available. According to the applicant, in 15,248 cases, compensation in Category- IV (death cases) has been sanctioned and in injury cases, compensation has been sanctioned in 5,54,895 cases. The submission in the application, therefore, is that the actual cases of suffering were five times more than the those assumed at the time of the sanction of the amount of 450 million dollars.

Apart from legal submissions, on facts, it has been pleaded in the counter affidavit filed on behalf of the Union of India that only 5207 cases were found to have nexus with the gas exposure and death and in such cases, the amount between one lakh to five lakh was granted. It is further pleaded that in 10,007 cases, it could not be proved that death was caused due to exposure or ill effect to the MIC and therefore, the categories were virtually changed and

149

compensation between Rs.25,000/- and Rs.1,00,000 was awarded. Regarding the compensation to over 5,50,000 other cases, it is pleaded and contended that whoever was present and filed claim was granted compensation sum on account of trauma that had to be gone through because of the gas leakage.

In support of the facts given in the applications, reliance has been placed on the documents published by the State Government.

Under the aforesaid circumstances, learned counsel for the Union of India prays for an adjournment to file a detailed affidavit to support the stand of the Union of India about the number of cases and the cause of suffering and/or death. We permit such an affidavit to be filed and the same shall be filed within four weeks. Reply to that affidavit be filed within four weeks thereafter.

List after ten weeks."

3. This affidavit is being filed by the Union of India in, pursuant to the above mentioned order. At the outset, the deponent submits that the total amount of settlement approved by this Hon'ble Court in the year 1989 was US \$ 470 million, which when converted into Indian Rupees amounted to approximately Rupees 750 crores. Broadly the following category wise break up was assumed for working out the settlement amount of Rs.750 crore:

Category	No. of Cases	Amount of Compensation	Total Amount
Death Cases	3,000	From Rs. 1 Lakh to 3 Lakh per individual	Rs.70.00 crores
Serious Injury Cases	30,000 to 40,000	From Rs. 50,000 to 2 Lakh per individual	Rs.250.00 crores
Cases of Injuries of utmost severity	2,000	Rs. 4,00,000. per individual	Rs.80.00 crores
Simple Injury Cases	50,000	Rs.20,000 per individual	Rs.100.00 crores
Cases of loss of Personal belongings	50,000	Rs.15,000 per individual.	Rs.75.00 crores
Cases of loss of live stock	50,000	Rs.10,000 per individual	Rs.50.00 crores
Cases of temporary total or partial disability	20,000	Rs.25,000 to 1 Lakh per individual	Rs.100.00 crores
For creation of medical facilities	-	-	Rs.25.00 crores
Total compensation (all categories)			Rs.750.00 crores

4. It is pertinent to mention here that most of the death cases were related to children of very young age. In such cases, compensation awardable was Rs.15,000 to Rs.30,000 in comparable cases of Motor Vehicle Accident Claims. Similarly, in cases of death of an adult Rs.80,000 to Rs.1,00,000 were awardable in comparable cases of Motor Vehicle Accident Claims. But, in the case of Bhopal Gas Tragedy, in death cases compensation was assessed between Rs.1,00,000 to Rs.3,00,000 and therefore, for 3,000 deaths a sum of Rs.70.00 crores was estimated. This amount was nearly three times higher than what would have been awarded in comparable cases of Motor Vehicle Accident Claims.

749

5. For serious injury cases of about 30,000 victims, compensation ranging from Rs.50,000 to Rs.2,00,000 per individual was estimated, and therefore, Rs.250.00 crores were estimated for such victims.

6. For 20,000 cases of Temporary total or partial disability, compensation ranging from Rs.25,000 to Rs.1,00,000 for each individual was assessed and a total sum of Rs.100.00 crores were estimated to be awarded.

7. For 2000 cases of Injuries of utmost severity, Rs.4,00,000 per individual was assessed and a total sum of Rs.80.00 crores was estimated to be awarded to the victims of such type of injuries.

8. Apart from the above, general allocation of Rs.225.00 crores was also made for those other claims said to run into lakhs, filed by other claimants, who suffered minor injuries, loss of personal belongings and loss of livestock, etc. A compensation of Rs.20,000 per individual was estimated for minor injury cases, Rs.15,000 per case for loss of personal belongings and Rs.10,000 per case was estimated for loss of livestock. The number of cases in each of these categories was estimated to be 50,000. In addition, Rs.25.00 crores were estimated for creation of medical facilities.

9. While arriving at the sum of Rs.750.00 crores for an overall settlement, Hon'ble the Supreme Court took into consideration the

(150)

general run of damages in comparable accident claim cases and workmens' compensation cases. The broad allocations made were higher than those awarded or awardable in such claims. This exercise of allocation of amount of damages was not a predetermination of the quantum of compensation amongst the claimants either individually or category-wise. It was further clarified that no individual claimant should be entitled to claim a particular quantum of compensation even if his case was found to fall within any of the broad categories indicated in the Order. The determination of the actual quantum of compensation payable to the claimants had to be done by the authorities under the Act, on the basis of the facts of each case and without reference to the hypothetical quantification made only for purpose of an overall view of the adequacy of the amount. This also formed part of the order dated 4.5.1989 of this Hon'ble Court.

10. It is humbly submitted that in order to confer certain powers on the Central Government to secure speedy, effective and equitable disbursement of the claimed amount, The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was enacted by the Parliament. Section 9 of the said Act gave powers to the Central Government to frame a scheme and accordingly the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 was framed by the Central Government. Clause 5 of the scheme provides for categorization and registration of the claims. Further, the claims of

751

all the claimants were adjudicated by the Judicial Tribunal established by law and the compensation amount were determined/settled as per the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985, which had approval of this Hon'ble Court.

11. It is submitted that in view of the above mentioned facts, the Government of India framed the guidelines and quantum of compensation payable to each type of injury or loss, based on the power conferred by para 11(2) of the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 and keeping in view the order of the Hon'ble Supreme Court dated 4.5.1989 in Civil Appeal Nos. 3187-88 of 1988 with Special Leave Petition (Civil) No. 13080 of 1988. The guidelines initially issued by the Government of India on 13th April, 1992 determined the quantum of compensation payable in each of the categories is given in the following table:

Category	Range/Ceiling (Rs.)
Deaths	1-3 lakhs*
Permanent total or partial disability	50,000 to 2 lakhs
Temporary total or partial disability	25,000 to 1 lakh
Injury of utmost severity	Up to 4 lakhs
Claims for minor injuries	Up to 20,000
Loss of belongings	Up to 15,000
Loss of livestock	Up to 10,000

* - the range/ceiling in case of deaths was raised from Rs. 1- 3 lakhs to Rs. 1- 5 lakhs by the Government of India on 8th September, 1992.

12. It is submitted that the amount of compensation awarded and disbursed was strictly in accordance with the guidelines/scheme and principles as approved by this Hon'ble Court. It is also submitted that the validity of the Act and Scheme was upheld by this Hon'ble Court vide orders dated October 3, 1997.

13. It is humbly submitted that in any case the validity of the settlement by no stretch of interpretation could be questioned at this stage as each and every claimant has got compensation as per law and his entitlement. Not only this, the amount of settlement was finally found to be surplus/in excess of the actual requirement and therefore, the left-over amount available with the Reserve Bank of India of approximately Rs.1503 crore was directed to be disbursed on pro-rata basis vide orders of the Hon'ble Supreme Court dated 19th July, 2004 and 26th October, 2004. This fact itself shows that the claimants have got compensation more than what was reasonably awardable to them under the law, which itself was fixed at a much higher scale as compared to comparable cases in the motor vehicle accident claims and workmen compensation cases. In fact, while disposing of the application for pro-rata distribution of the left-over amount, vide order dated 19.07.2004, this Hon'ble Court gave liberty to the petitioners/applicants to move necessary application in case the amount available falls short to satisfy the claims of all persons fully. The petitioners/applicants have not filed any such application till date, as the amount available for disbursement on 1:1 pro-rata basis

has been found to be adequate for payment to the persons who have got their claims settled on pro-rata basis.

14. It is further submitted that in the affidavit filed on behalf of the Welfare Commissioner, Bhopal Gas Victims, Bhopal In I.A., Nos. 46-47 dated 14th October, 2004 It was specifically stated in para 4 that as regards claims relating to death category, i.e. '04' Category, total 22,150 cases were registered. Out of these cases, in 5207 cases award has been passed treating that in these cases death was caused due to exposure of MIC gas. In 10,084 cases death was not found proved because of exposure to MIC gas. Therefore, in these cases compensation has been awarded for personal injury. Rest 6859 cases have been rejected. Even on the face of these averments, which gives no room for doubt, the applicants/petitioners are relying on Annexure-2 of the present application. In fact, Annexure-2 itself nowhere suggests that the death cases rose to 15310, on the contrary, Serial No. 4 of the said Annexure says "Claims on Account of Death". Further the heading of the said Annexure-2 also says "Number of claims filed during 1985-89 and 1996-97". As the petitioners are involved with the cases related to the Bhopal Gas Leak Disaster of December, 1984 from the very beginning, they are fully aware of the distinction between "claims filed/lodged" and the "claims settled". It is submitted that the reasonableness of settlement will be adjudged on the basis of justness of the claims awarded and not on the basis of claims

filed/lodged. It is pertinent to mention here that a total amount of Rs.59 crore (approximately) has been awarded as compensation under 04 - death category in the 5207 cases. The category-wise disbursement of compensation as on 31st July,2006, is given in Annexure RA-1.

15. Further, the number of cases registered under the category 01 - Injury have increased from 1,10,000 to 5,58,125, but, the amount of compensation awarded in each case was not less than what was estimated and calculated by Hon'ble Supreme Court at the time of overall settlement, i.e. minimum Rs.25,000 and maximum Rs.4.00 lakhs.

In '02' (loss of livestock) category only 658 cases were registered, out of which in 233 cases a total sum of Rs.0.11 crore was awarded as compensation.

In '03' (loss of property etc.) category total 4901 cases were registered, out of which in 547 cases a sum of Rs.0.14 crore was awarded as compensation.

In '05' (loss to the Institutions - PSUs) category 84 cases were registered, out of which in 7 cases a sum of Rs.0.04 crore was awarded as compensation.

154

16. In '01' (Injury) category 10,01,723 cases were registered, out of which in 5,58,125 awarded cases a total sum of Rs.1457.00 crores has been awarded as compensation till 31st July,2006 and the sub-category-wise position of cases and compensation amount is given in the following Table:

S.No.	Category	No. of Cases	Compensation Amount
1.	Minor injury or on the basis of mere presence	5,16,406	Rs.25,000.
2.	Temporary Partial Disablement	38,478	Above Rs.25,000 but not more than Rs.50,000.
3.	Total disablement and injury of utmost severity including cases of Permanent Partial Disablement	3,241	Above Rs.50,000 but not more than Rs.4.00 lakhs
4.	Total	5,58,125	

17. It is humbly submitted that all the above mentioned cases were adjudicated by the Tribunal established under the law where appeal and revision were provided. The range of compensation for a particular category was also approved by this Hon'ble Court. Even after the disbursement of amount to the claimants, as per the approved Scheme, more than Rs.1500 crores were reported to be available with the Reserve Bank of India and on the directions of the Hon'ble Court dated 19th July, 2004 this amount was to be disbursed on a 1:1 pro-rata basis to all those claimants whose original claims had

(133)

been settled. As a result, an amount of up to Rs.8.00 lakh (original + pro-rata compensation) has been paid in death cases and an amount of Rs.50,000 to Rs.4.00 lakh has been paid in injury cases (original + pro-rata compensation) and further Rs.50,000 (original + pro-rata compensation) has been paid in cases of mere presence in the gas affected areas of Bhopal on that fateful night. Similarly, for temporary partial disablement an amount of Rs.50,000 to Rs. 2 lakh (original + pro-rata compensation) has been granted to the claimants. The amount of compensation which was assumed to be given for all categories was broadly allocated on higher side as observed by this Hon'ble Court also in the judgment dated 04.05.1989 and now after disbursal of left-over settlement amount, the overall rates of compensation have been doubled and total amount of Rs.3036 crore has been disbursed till 31st July,2006, as against original broad estimated settlement of Rs.750 crore, which is more than four times higher than the assumed amount.

18. It is clear from above that every category of claimants/ affected persons were awarded more compensation than what was duly prescribed to them under the Act. Thus, by no logic and reason it is open to say even for a moment that the justness or determination is impaired under the above mentioned facts. The application filed by the applicants is frivolous and may be dismissed with heavy costs. The present application is not maintainable and is

156

liable to be dismissed in view of the above mentioned facts and circumstances.

That no new facts which were not pleaded before the courts below have been pleaded in this Counter Affidavit.

DEPONENT

Verification:

I, the above named deponent do hereby verify and declares that the facts stated in the above affidavit are true to my knowledge based on record and nothing material has been concealed there from.

Verified at New Delhi on this 26th day of Sept 2006.

DEPONENT