

HIGH COURT FOR THE STATE OF TELANGANA

**WRIT PETITION NOS.4278, 4960 of 2019, 23299, 23387,
24164 and 24726 OF 2022**

W.P.No.4278 of 2019:

Between:

Smt Simhadri Bharathi, W/o Late S. Bapuji,
Aged 36 years, Occ:Household,
R/o. H.No.5-2-158 PT-197/B, Tirumala Nagar,
Near NTR Statue, Moulali, Secunderabad,
Telangana .

..... Petitioner

and

The State of Telangana, rep.by its Prl.Secretary
for Home, Secretariat, Hyderabad, T.S.,
and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 29.07.2022

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE DR. JUSTICE G.RADHA RANI**

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE DR. JUSTICE G.RADHA RANI**

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Vs.

\$ The State of Telangana, rep.by its Prl.Secretary
for Home, Secretariat, Hyderabad, T.S.,
and others.

.....Respondents

!Counsel for the petitioners : Sri K.Venkat Reddy

Counsel for the Respondents: Govt.Pleader for Home;
Sri J.Anil Kumar learned
counsel representing State
Legal Services Authority

<Gist :

>Head Note:

? Cases referred:

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HONOURABLE SRI JUSTICE P.NAVEEN RAO
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COMMON ORDER: *(per Hon'ble Sri Justice P.Naveen Rao)*

Heard learned counsel Sri K.Venkat Reddy for the petitioners, learned Government Pleader for Home for respondents 1 and 2, and learned standing counsel Sri J.Anil Kumar representing State Legal Services Authority for respondent no.3.

2. In all these Writ Petitions, accused who caused motor vehicle accidents as well as vehicles involved in the accidents, resulting in death of family members of claimants, were not traced. While registering the crimes as well as filing charge sheets, the Police have clearly indicated that the accused are undetected. Claiming that since accused were not detected and insurance companies are not identified, the family members of the victims cannot file cases under the Motor Vehicles Act, 1988 (for short, Act, 1988) to claim compensation for the loss caused, these writ petitions are instituted praying to grant compensation under Section 357-A of the Code of Criminal

Procedure, 1973 (for short, 'Cr.P.C') and 'the Telangana Victim Compensation Scheme' (Scheme) formulated and notified by the State Government vide G.O.Ms.No.9 Law (LA, LA&J-Home-Courts.B) Department, dated 07.03.2015. They are aggrieved by rejection of their claim by the Legal Services Authority.

3. In pursuant to the introduction of Section 357-A of Cr.P.C., as amended in the year 2008, every State Government is required to prepare a Scheme for providing funds to pay compensation to the victims of crime or their dependents/family members, who have suffered loss and injury as a result of crime leading to death or grave injury and who require rehabilitation. In coordination with the Central Government, 2015 Scheme is formulated by the State Government.

4. Learned counsel representing the petitioners submits that clause-6 of the Scheme deals with the eligibility for compensation under the Scheme and the claim made by the petitioners is covered by sub-clause (c) and, therefore, they are entitled to make claim for payment of compensation by the State Government without taking recourse to remedy under the Motor Vehicles Act and denial by the State Legal Services Authority is illegal.

5. Clause-7 of the Scheme provides procedure for grant of compensation. By referring to clause-7(6) of the Scheme, learned counsel Sri J.Anil Kumar representing State Legal Services Authority submits that as these cases are falling under the Act, 1988, the claimants ought to have filed appropriate cases before the competent Court under the Act, 1988 claiming compensation and without taking recourse to the provisions of the Act, 1988, straightaway these writ petitions are instituted. He would submit that in view of the terms of the Scheme, the decision made by the Legal Services Authority rejecting claim of petitioners to pay compensation is legal and in accordance with the Scheme. These writ petitions are not maintainable.

6. There is no dispute about the formulation of the Scheme and creating victim compensation fund. The only issue for consideration is whether clause-7(6) denies the petitioners to claim compensation under the Scheme if the deaths occurred in motor accidents and whether resort to clause-6(c) can be made by claimants to seek compensation under the scheme.

7. Before dealing with the scope of clauses – 6(c) and 7(6), it is appropriate to notice that though under the Act, 1988, the victim or the family member of the victim can make claim for

compensation by filing a case before the Motor Accident Claims Tribunal, but to avail the remedy under the Act, 1988 the accused must be identified and the vehicle involved in the accident also must be identified. In all these cases, neither accused was identified nor the vehicle involved in the accident was traced. Without the accused being identified and vehicle being traced, neither the insurance company nor the owner of the crime vehicle can be arrayed as respondent to set up a claim and in the absence of crime vehicle driver and owner and/or the insurance company, compensation cannot be awarded under the Act, 1988. In other words, as of now, petitioners are without remedy under the Act, 1988.

8. Having regard to the objective in introducing Section 357-A of Cr.P.C., and the Scheme formulated by the State Government, these cases can be treated as exceptions to normal course required to be adopted and the Scheme should be extended to the claimants to award compensation.

9. In the light of above view expressed by us, it is necessary to look into two relevant clauses relied upon respectively.

10. Clause-7(6) of the Scheme reads as under:

“7. Procedure for grant of compensation:-

(1) to (5) xxxxx

(6) The cases covered under Motor Vehicles Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, and cases covered under existing G.O.s and G.Os. issued by the Government from time to time shall not be covered under this Scheme.”

11. On a bare reading and in isolation, clause-7(6) of the Scheme makes it clear that victim compensation cannot be claimed if the alleged incident is a motor accident. In such a case, the provisions of the Act, 1988 are applicable and claimant has to file claim petition to claim compensation under the Act, 1988. As noticed above, the claimant cannot take recourse to Act, 1988 unless accused and the vehicle are identified and are implicated in the crime. That being so and as in these cases the accused and the vehicle are not identified, can they be said to be remediless.

12. The answer is in clause-6(c) of the Scheme. Clause-6(c) of the Scheme reads as under:

“6. Eligibility for compensation under the Scheme, shall be,-

(a) & (b) xxx

(c) on an application made by the victim or his dependents to the Legal Services Authority for award of compensation under sub-section (4) of Section 357-A of the Act where the offender is not traced or identified, and where no trial takes place;”

13. A close reading of clause-7(6) read with clause-6(c) of the Scheme, it is apparent that clause-6(c) carves out an exception to clause-7(6) of the Scheme. Ordinarily, a person claiming compensation on account of death or injury caused in the motor accident has to take recourse to provision of the Act, 1988 and, therefore, clause-7(6) of the Scheme prohibits consideration of claims under the Scheme in such cases. But a close reading of clause-6(c) makes it clear that even in case of claims arising out of motor accidents if the claimant has no remedy available under the Act, 1988, the claimant can take recourse to the Scheme to claim compensation from the Government. Thus, this exception is applicable to the cases on hand. In the instant cases, as noted above, the accused is undetected and the vehicles involved in the accidents are also not identified.

14. Having regard to the objective of the Scheme, we are of the considered opinion that the claimants are entitled to claim compensation as per the provisions of the Scheme notified by the State Government vide G.O.Ms.No.9, dated 07.03.2015.

15. At this stage, learned counsel Sri J.Anil Kumar points out that petitioners are entitled to claim compensation under the Scheme provided they are identified as eligible for the Scheme

only and not as a matter of course. He further submits that the District Legal Services Authority is required to enquire into the financial capacity of the family of the victim and only if it is ascertained that the family of the victim falls below the income level of ₹ 4.50 lakhs per annum they are entitled to claim compensation under the Scheme.

16. We see merit in the said contention. The Scheme is not open to everybody. It is applicable to persons identified as eligible to receive the compensation. Clause-5(3) of the Scheme reads as under:

“5. Application of the Scheme:-

(1) & (2) xxx

(3) The scheme shall be applicable to family whose income does not exceed ₹ 4.50 lakhs per annum.”

17. In view of the provision contained in clause-5(3) of the Scheme, we direct the petitioners to make an application to the concerned District Legal Services Authority within four weeks from the date of receipt of a copy of this order. On making such applications, the concerned Secretary, District Legal Services Authority shall enquire into the income status of the families of the claimants and if the families of the claimants are found to be falling within the income limit as prescribed in clause-5(3) of the Scheme, they shall be paid compensation as specified in the

Scheme. Such exercise shall be completed within a period of four weeks from the date of receipt of application and if they are found eligible then process the claim for compensation and settle the compensation within a period of four weeks thereafter.

18. There may be similar claims. Therefore, the State Legal Services Authority is directed to issue suitable instructions to the District Legal Services Authorities to process the claims and take appropriate decision in all the cases where the death or injuries are caused in a motor accident and if the driver and/or owner of the crime vehicle was undetected and the vehicle involved in the accident was not identified. In such cases, the claimants should not be driven out to take recourse to the remedies under the Act, 1988, as it is not efficacious remedy. Their applications for compensation shall be processed in accordance with the Scheme and settle the claims within a reasonable time not exceeding six weeks.

19. Learned counsel Sri J.Anil Kumar also points out that Clause-12 imposes limitation of twelve months from the date of occurrence of crime to make an application under the Scheme and not to entertain any claims beyond the said time limit. He

submits that in the present cases, the claimants have made applications after lapse of twelve months.

20. In the facts of these cases, we are inclined to give benefit of doubt in favour of petitioners, inasmuch as it is the consistent view of Legal Services Authority and also argued by learned Counsel representing the Legal Services Authority that if a death or injury is caused on account of motor accident, the claimant has to go before the Motor Accidents Claims Tribunal under the Act, 1988 and not entitled to make application under the Scheme. Petitioners were under the *bona fide* impression that they would be given sufficient relief under the Act, 1988, but to their dismay when charge sheets are filed, the Police have stated in the charge sheets as the accused 'undetected'. Further, on true construction of clauses-6(c) and 7(6), we have held herein above that clause-6(c) carves out exception to clause-7(6), when the motor vehicle is not traced and the accused is not detected, no remedy is available under the Act, 1988 and the claimants have to take recourse to the Scheme. Thus, for the first time, a clarity is shown on application of clause-7(6). In those circumstances, there was delay in making a claim. Further, their claim was not rejected by the District Legal Services Authority on that ground. Therefore, the

provision in clause-12 cannot be applied to reject the claim of petitioners. Further, proviso added to clause-12 vests discretion in the District Legal Services Authority to relax the limitation prescribed and to consider the claims. In the facts of these cases, even otherwise we are of the opinion that these are the fit cases for the Legal Services Authority to exercise discretion vested in proviso to clause-12. Further, the Scheme is a social welfare scheme requiring liberal construction and application of the benefit to needy people. Thus, looking from any angle, the petitioners cannot be non-suited on this ground.

21. Writ Petitions are accordingly allowed. Pending miscellaneous petitions if any shall stand closed.

P.NAVEEN RAO, J

DR. G.RADHA RANI, J

Date: 29.07.2022
Kkm

Note: L.R.copy to be marked :Yes

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
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