

\$~15

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

%

Reserved on: 11.04.2022

Pronounced on: 20.10.2022

+ **CRL.A. 63/2022**

X

..... Appellant

Through: Ms Kriti Awasthi and Ms Nimisha Menon, Advs.

versus

STATE OF NCT OF DELHI (ACTING THROUGH ITS SECRETARY) & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for State with SI Vidhi

Mr. Kanwal Jeet Arora, Member Secretary, DSLSA

Ms. Aditi Gupta, Advocate for Respondent No. 3

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

“There are cries for harshest penalties but often times such cries eclipse the real plight of the victim”¹

1. The present case raises important questions regarding the child survivors of sexual abuse. Child sexual abuse (hereinafter called “CSA”) has been interpreted by the World Health Organisation (hereinafter called “WHO”) as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which

¹ (Domestic Working Women’s Forum Vs. Union of India and others writ petition (CRL) No.362/93), the Supreme Court of India; 1995 (1) SCC 14

the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society.²

2. In a study by Mr. Singh MM, Parsekar SS, and Nair SN, called “*An epidemiological overview of child sexual abuse*,” it was found that about 37% of India’s population comprises children under 18, while around 53% of Indian children reported experiencing different kinds of abuse, which included being forced to nude photography, assault, inappropriate touching, and sexual abuse.³
3. The impact of the sexual offence is rightly pointed out in *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490, wherein the Supreme Court reiterated that:

“Rape is not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim’s most cherished of the fundamental rights, namely, the right to life contained in Article 21.”

Trauma of the victim

4. Owing to various emotional, social, and cultural factors, CSA survivors may not be able to express their feelings and experiences. The main rationale for this is that children are traumatized and are unsure of the proper words to express their encounter. CSA has long-lasting negative

² World Health Organization. *Report of the Consultation on Child Abuse and Neglect Prevention, 29-31 March*. Geneva, Switzerland: World Health Organization; 1999. Document WHO/HSC/PVI/99.1.

³ Singh MM, Parsekar SS, and Nair SN. An epidemiological overview of child sexual abuse. *J Family Med Prim Care* 2014; 3: 430.

effects on mental health. Effects can be immediate, intermediate, and long-term.⁴

Victimisation

5. Now, to shift focus onto survivors viz, the victim, or more appropriately, the survivor. In my considered view, victimisation process entails stripping the survivor of their defences and ends in the survivor reliving the horror of the sexual assault. The whole process takes root in three laps: before, during and after the course of the event.

Victimology

6. The criminal claims the survivors life, if not physically then affecting their mental and emotional state. It, thus, becomes imperative that the survivor of the crime is not overlooked and rehabilitation for the sufferings of the survivor is not overlooked. There is duty cast on the State to protect their rights and deliver justice to the survivors. This justice, in the form of compensation, should be given its liberal meaning thereby giving the maximum benefit and as quickly as possible.
7. The Law Commission's 154th Report (1996) on reforms in criminal procedure discussed concerns related to '*victimology*.' A whole branch has evolved to make the victim the focus of their study. The tools employed by this study include an understanding of the victim-offender relationship, assessing, and possible ways for compensating the victims.
8. In my opinion, survivor-centric justice is the key to prevent re-victimisation of the survivor. The literature suggests that justice for survivors of sexual violence has several components, such as: having a voice, being treated with dignity, being informed, and being able to participate in the justice process (Daly 2017; McGlynn and

⁴<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8445113/>
CRLA. 63/2022

Westmarland2019); experiencing validation and vindication (Daly 2017) and having the experience fully recognised as having taken place and being true (McGlynn and Westmarland 2019); (re)gaining a sense of connectedness and belonging in society, which is related to being treated with dignity and respect, and about being psychologically, financially and socially supported; and for there to be meaningful consequences for the offender, which includes offender responsibility but is not necessarily tied to punishment (McGlynn and Westmarland 2019). Justice is not only about calling wrongdoers to account, but also having them take responsibility for their actions (Daly 2017). Finally, the prevention of sexual violence is of fundamental importance to survivors' sense of justice. It entails the transformation of society into one that understands and recognises the harms of sexual violence and that actively makes efforts to reduce its prevalence, and therefore goes beyond (though still includes) the rehabilitation of individual offenders (McGlynn and Westmarland 2019).⁵

Compensation

9. The WHO has laid down how the violence at young age has life impacts on health and well-being of children, families, communities, and nations. Amongst them are:⁶
- **Impair brain and nervous system development.** Exposure to violence at an early age can impair brain development and damage other parts of the nervous system, as well as the endocrine, circulatory, musculoskeletal, reproductive, respiratory and immune systems, with lifelong consequences. As such, violence against

⁵Antonsdóttir, H.F. Compensation as a means to justice? Sexual violence survivors' views on the tort law option in Iceland. *Fem Leg Stud* 28, 277–300 (2020). <https://link.springer.com/article/10.1007/s10691-020-09442-2>

⁶Who.int. Violence against children. [online] Available at: <<https://www.who.int/news-room/factsheets/detail/violence-against-children>> [Accessed 10 June 2022].

children can negatively affect cognitive development and result in educational and vocational under-achievement.

- **Result in negative coping and health risk behaviours.** Children exposed to violence and other adversities are substantially more likely to smoke, misuse alcohol and drugs, and engage in high-risk sexual behaviour. They also have higher rates of anxiety, depression, other mental health problems and suicide.
 - **Lead to unintended pregnancies,** induced abortions, gynaecological problems, and sexually transmitted infections, including HIV.
 - **Contribute to a wide range of non-communicable diseases** as children grow older. The increased risk for cardiovascular disease, cancer, diabetes, and other health conditions is largely due to the negative coping and health risk behaviours associated with violence.
 - **Impact opportunities and future generations.** Children exposed to violence and other adversities are more likely to drop out of school, have difficulty finding and keeping a job, and are at heightened risk for later victimization and/or perpetration of interpersonal and self-directed violence, by which violence against children can affect the next generation.
10. Internationally, as well, the need to compensate has been recognised. Article 39, UNCRC (UN Convention on Child rights) requires State Parties to “*take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse...*”. India has acceded to the UN Convention on the Rights of the Child, 1989 (UNCRC).
11. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 provided for restitution by offenders to victims and recognized that State would have to financially compensate victims

who have sustained significant bodily injury or physical or mental impairment as a result of crime, when compensation could not be obtained from the offender.⁷

12. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005 adopted by the UN General Assembly, emphasized the State's obligation to provide compensation for economically assessable damage for gross violations of international human rights and humanitarian law.⁸
13. The Protection of Children Against Sexual Offences Act, 2012 (hereinafter called POCSO) acknowledges the importance of considering financial condition when awarding compensation. One of the most important considerations in creating this remedy framework is that the claims need to be decided as speedily and swiftly as possible. The element of speed and time efficiency particularly gains importance because the victim and family are in urgent need of rehabilitation. Any process of relief so

⁷1985. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. [online] Available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>> [Accessed 18 May 2022]. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>

Restitution

..

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights

⁸2005. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. [online] Available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>> [Accessed 18 May 2022]. <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

IX. Reparation for harm suffered

...

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services

designed, therefore, needs to be speedy, expedient, and be made keeping in mind the interest of the claimant-victim;

14. With this in mind, I shall now consider this appeal.
15. Important questions have arisen on a Micro and a Macro level owing to the much confusion surrounding the role of Special Courts in victim compensation under the Protection of Children Against Sexual Offences Act. The questions which I need to deliberate and answer are framed as under:
 16. At the Macro level, the questions I am concerned with are:
 - a) Under the Delhi Victim Compensation Scheme (hereinafter called DVC scheme) and the POCSO act, what is the adequate amount of compensation at Interim and Final stage that is to be paid to the child sexual abuse survivor and
 - b) Whether only a Special Court is legally competent to quantify the amount of compensation in such cases or whether the Respondent Authorities-i.e., Delhi State Legal Services Authority (hereinafter called DSLSA)/ District Legal Services Authority (hereinafter called DLSA) are parallelly allowed to quantify the amount of compensation on their own without a recommendation from the Special Court?
 - c) Whether a victim of offences under sections of the POCSO can approach either the Special Court or the Respondent authorities for compensation including interim compensation?
 17. On a Micro level I am to consider the correctness of the merits of the present cases wherein the ASJ has convicted the accused u/s 342 IPC and u/s 6 of POCSO and the child of the appellant has been awarded compensation of Rs. 50,000/-.

Brief facts

18. The present appeal has been filed by the appellant, being aggrieved of the compensation of Rs. 50,000 awarded to the victim being the appellant's daughter. The Ld. ASJ on 22.07.2019 convicted the accused and in its order of sentence dated 30.08.2019, besides sentencing the accused of 12 year Rigorous Imprisonment and 20, 000 fine, granted Rs. 50,000/- as compensation to the child in lieu of the mental trauma and bodily injury experienced by her.
19. The present appeal has been filed by the appellant seeking the following prayers:
 - “1. Allow the instant criminal appeal and enhance the amount of victim compensation awarded by the Ld. ASJ (POCSO), South-East district, Saket courts in order dated 30.08.2019, New Delhi in favour of the Appellant's daughter i.e., the minor victim; and*
 - 2. Direct the Special Court to take into consideration the National Legal Services Authority (NALSA) Compensation Scheme or the Delhi Victim Compensation Scheme, 2018 as a guideline while deciding on the quantum of compensation as directed by the Hon'ble Supreme Court in its judgement in W.P. (C) 565 of 2012, titled “Nipun Saxena and Anr v. Union of India and Ors” particularly in the case of the Appellant's minor daughter; and*
 - 3. Direct Respondent Authorities to frame/have guidelines so as to have an accountability mechanism at ground level to ensure that suo moto cognizance is taken in cases pertaining to the POCSO Act, 2012 where adequate compensation is not provided as is pertinent from the case of the Appellant's minor daughter; and*
 - 4. Pass orders specifically detailing the role/responsibilities of the Respondent Authorities with respect to enhancement of an amount awarded as compensation; and*
 - 5...”*
20. It will be relevant to reproduce a brief background in the present appeal.
21. On 08.12.2014, at around 05:30 PM, the Appellant returned from work and observed that the victim was playing in the streets outside their house

however, after sometime she realised that her youngest daughter, the victim, was not visible playing in the street. Unable to locate her daughter, the Appellant started to look for her and soon reached the room of the accused/Respondent No.5 as he would often call the victim to play there. On repeatedly knocking, the accused finally opened the door and the Appellant saw him fastening his trouser zip and her daughter putting her pants up. The Appellant immediately took the victim home and on enquiring, the victim disclosed that the accused had forcefully committed penetrative sexual assault with her. On receiving this information from the victim, the Appellant approached the Okhla Police Station to report the incident. Consequently FIR No.936/2014 was registered at PS Okhla Industrial Area u/s 376 IPC and Section 6 of the POCSO Act. The chargesheet in the present case was filed on 24.12.2014. On 16.05.2015, charges were framed against the accused u/s 342 IPC and Section 6 of the POCSO Act, 2012.

22. Pursuant to hearing the arguments from the prosecution and the defence and after examining all the relevant evidence for the trial, on 22.07.2019, the Ld. ASJ, found the accused person guilty of the charges framed against him.
23. The Ld. ASJ, awarded the victim Rs. 50,000/- as compensation in lieu of the mental trauma and bodily injury suffered by her. The order dated 30/08/2019 issued by Ld. Addl. Sessions Judge-07 (POCSO), states *“The matter appears to be a fit case where compensation needs to be awarded to the victim who has suffered trauma on account of penetrative sexual assault by the convict. The victim was just 07 years old at the time of sexual assault. Considering the mental trauma and bodily injury caused to the victim, I am of the considered opinion that a compensation of Rs. 50,000/-needs to be awarded to the victim.”*

24. Aggrieved by the compensation received, on 16.07.2021, an application, via email, on behalf of the victim for enhancement of the compensation amount awarded to her was filed before Respondent No. 2 /DLSA and Respondent No. 3 /DSLISA. The primary prayers in the application were:
- a. *That the compensation awarded to the victim be re-evaluated and reassessed as per the Delhi Victim Compensation Scheme, 2018; and/or*
 - b. *Pass any order it may deem fit in the interest of justice, equity and good conscience.*
25. On not receiving an acknowledgement from the Respondent authorities, a reminder was sent on 22.07.2021 for the email sent on 16.07.2021. Pursuant to the filing of the abovementioned application, a subsequent application was filed via email before the Respondent No.4 i.e., NALSA on 30.07.2021 to direct Respondent No.2 and 3 to take cognizance of the case. On 02.08.2021, the Respondent No. 4 directed Respondent No. 2 via email to take appropriate action as per the Legal Services Authorities Act, 1987 and apprise the action taken for the applicant under an intimation to Respondent No. 4.
26. Finally on 21.09.2021, Respondent No. 2 sent a letter to the Appellant mentioning that the application filed was not maintainable since the Delhi Victim Compensation Scheme, 2018 does not provide for review. It also mentioned about the provision for appeal in the scheme which was already exhausted by the Appellant. Additionally, it mentioned that since the compensation in this case was quantified by the court, the Appellant may approach the concerned court for enhancement.
27. The appellant has contended that since inadequate enforcement of the right of the victim to be compensated (after being a victim of Aggravated Penetrative Sexual Assault u/s 6 of the POCSO Act, 2012) is an infringement of Article 21 of the Constitution of India, consequently, the Appellant, on behalf of her daughter has preferred the present criminal

appeal seeking an authoritative pronouncement and appropriate directions/guidelines from this Court which will aid in enforcing the right of the victims to be compensated by the State adequately as per law.

28. There is also an attempt to seek clarity on whether the Respondent authorities can enhance an order for compensation passed by the Special Court. Owing to the lack of clarity many a times victims such as the Appellant's child find themselves unable to avail the benefits under the POCSO Act, 2012 which was enacted with an objective to ensure that the law operates in a manner that the best interest and well-being of the child are regarded as being of paramount interest at every stage and to ensure healthy, physical, emotional, intellectual and social development of the child who is survivor of sexual assault.

Submissions

29. The Ld Counsel for Petitioner submits that there is lack of clarity on scope of power available with the Respondent Authorities pertaining to victim compensation. The failure on the part of the Ld. ASJ to award adequate compensation in favour of the Appellant's child and the continuous inactions on part of the Respondent Authorities increases the vulnerability of her child and affects her fundamental rights against sexual abuse protected under Article 21 of the Constitution of India, more so, as this sum would constitute a crucial part of her rehabilitation and reintegration process, especially while the entire nation is battling with the COVID-19 pandemic.
30. The appellant has taken the position that both the Special Court as well as DLSAs concerned have concurrent power to award compensation in POCSO cases and that the DLSAs aren't merely disbursing authorities but also granting authorities. It is also submitted that child victims can approach the DLSA for enhancement of compensation granted by the Special Court

31. The DSLSA in its reply has stated that DSLSA and its subsidiary DLSAs don't have concurrent powers to grant compensation in POCSO Act cases and it is the prerogative of the Special Court, as per Section 33 (8) of the POCSO Act, to grant compensation in appropriate cases. Section 33 (8) POCSO Act reads as :

“(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child. “

Quantum of compensation

32. To right an injustice is to provide compensation.

"The root of 'compensate' is 'to weigh', i.e., to weigh different things together in order to establish a balance between them ... 'compensation' carries the connotation of providing something equivalent in value to that which has been lost" (Lomasky 1987, 142)

33. However, in our society, justice is achieved by deploying deterrence as a way of punishing the offenders, while the valuation of compensation to the primary victim of the crime is left to the mercy of the courts/public prosecutors/investigators. What needs to be addressed is the improper valuation of the damages caused to the survivor.
34. Two major arguments revolve around the advancement of public compensation to the victims of crimes of violence. One being, the obligation of the state and second being the social welfare argument.
35. In criminal justice administration, sexual assault is still seen as a crime against the state. As a result, unfortunately, the current legislation still focuses on the prevention of crime and fails to respond to the needs of the victim. Ultimately, it leads to the marginalization of the victims.
36. It cannot be overlooked that there are social impediments that disable a survivor of a CSA from fully recovering from the horrors of the crime. Its

impact, in-fact, goes far beyond the spectrum of physical/ bodily injury and psychological health of the individual but permeates into all aspects of the survivor's life including financial hardship, breakdown of interpersonal relationships, subsequent withdrawal from society. There is no denying the fact that childhood abuse/sexual violence makes the child survivor vulnerable in later life to mental health issues, withdrawal from society, impediments in access to education and re victimization, thus, there is an obligation imposed upon justice system, especially in POCSO cases, that every possible step is taken to ensure that there are no such challenges faced by child survivors and their families in overcoming such negative ramifications

37. However, as of now, I am bound by the parameters laid down by this court and the Hon'ble supreme court and will focus on the monetary/ financial compensation of Victims under POCSO.
38. No monetary compensation can put a value on dignity and no amount of compensation can undo the trauma undergone by the victim. But it is necessary to put money in the hands of the victim and family. The funds will not only provide a sense of safety but also cater to their immediate needs. For instance, in some cases, urgent relocation of the victim and family is required while in some it's the resumption of education. For the family of sexual violence survivors, especially in cases where children are involved, there is an urgent need to spend more time with them in order to provide some sense of emotional security. As a result, there will also be a loss of work.
39. Justice Verma committee in its report had stated "*No woman in India must feel a sense of shame or stigma in the event of sexual assault. She is entitled to the redressal of that injury and that offence and she is therefore statutorily and constitutionally capable of access to the rule of law.*"

40. In other words, the victims can and ought to recover like any other victims from an accident, but that is possible only when there is a due discharge of the functions by the State.⁹ I only partly agree with statement. I agree that the victims must recover like any other victim but rape is personal in nature. In any other accident the victim is not targeted with intention to violate the survivor or preyed upon, for instance in motor vehicle accident the injury is due to an accident hence, to recover, does not require psychological healing. However, in cases of sexual assault there is deliberate targeting and dehumanisation and reduction of the victim to an object. Hence, the state must enlarge maximum benefit to the survivor of the sexual assault.
41. In my considered view to assess the maximum quantum of compensation, special courts must depend upon the facts and circumstances of each case, the nature of the crime, the justness of the claim and the capacity of the accused to pay.
42. *When the act provides two spectrum one minimum one maximum, the leaning must be towards the maximum.* Since sexual violence derails the life of the survivor, it is important that the compensation must aid in getting the life of the survivor back on track. Adequate assistance to the survivor can go a long way in socially and psychologically empowering the survivor.
43. The compensation scheme states the maximum limit. In any beneficial scheme/ legislation, there cannot be a concept of maximum. How can there be price tag on the suffering of the survivor? No amount of compensation can undo the trauma. The least that can be to help the survivor get his/her life back on track. However, pecuniary compensation can be of assistance in the rehabilitation of the survivor.

⁹Justice Verma Committee, report dated 23-Jan-2013
CRLA. 63/2022

44. In ***Brahampal v. National Insurance Co., (2021) 6 SCC 512***

“The interpretation of a beneficial legislation must be remedial and must be in furtherance with the purpose which the statute seeks to serve. The aforesaid view has been reiterated by this Court on multiple occasions wherein this Court has highlighted the importance acknowledging legislative intention while interpreting the provisions of the statute.”

45. Further reliance is placed upon the decision in ***Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 :***

“12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation...”

13. In Hindustan Lever Ltd. v. Ashok Vishnu Kate [(1995) 6 SCC 326 : 1995 SCC (L&S) 1385] this Court observed : (SCC pp. 347-48, paras 41-42)

“41. In this connection, we may usefully turn to the decision of this Court in Workmen v. American Express International Banking Corpn . [(1985) 4 SCC 71 : 1985 SCC (L&S) 940] wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations : (SCC p. 76)

‘4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights’ legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the “colour”, the “content” and the “context” of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds [(1971) 1 WLR 1381 : (1971) 3 All ER 237 (HL)]). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal int

erpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court* [(1980) 4 SCC 443 : 1981 SCC (L&S) 16] we had occasion to say : (SCC p. 447, para 6)

“6. ... Semantic luxuries are misplaced in the interpretation of ‘bread and butter’ statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions.”

42. Francis Bennion in his *Statutory Interpretation*, 2nd Edn., has dealt with the *Functional Construction Rule* in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

‘A purposive construction of an enactment is one which gives effect to the legislative purpose by—

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a *purposive-and-literal construction*), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a *purposive-and-strained construction*).’

At p. 661 of the same book, the author has considered the topic of ‘*Purposive Construction*’ in contrast with literal construction. The learned author has observed as under:

‘*Contrast with literal construction.*—Although the term “purposive construction” is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: “If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions.” The matter was summed up by Lord Diplock in this way—

... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to

results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.’ ”

46. The compensation as per DVC scheme provides a maximum and a minimum. The statute/scheme should not decide the maximum. The court has the power to scale up and scale down. To scale down these provisions would mean injustice to the survivors who have suffered. These are the situations which require scaling up. For instance, the compensation for “rape” in the schedule has been provided as 7 lakhs maximum. In view of the aforesaid discussion, I am of the view that purposive interpretation and beneficial legislation requires the said sum of Rs. 7 lakhs to be considered as a minimum base while adjudicating compensation in POCSO cases.
47. Hence for POCSO survivors of “rape,” it should be 7 + 3.5 = 10.5 lakhs (50% of 7 lakhs being added in POCSO cases as per DVC scheme) lakhs. The final compensation shall not be less than 10.5 lakhs.
48. The special court will be within their rights and within POCSO to adjudicate and grant compensation for more than 10.5 lakhs. The special court shall decide the final compensation amount and the interim compensation granted by the DSLSA/DLSA and the special court, shall be adjusted from the final compensation amount awarded by the special court.

INTERIM RELIEF

The DVC scheme states that

12. INTERIM RELIEF TO THE VICTIM—

.....

Provided that the, interim relief so granted shall not be less than 25 per cent of the maximum compensation awardable as per schedule applicable to this Part, which shall be paid to the victim in totality.

49. In 2019, vide SUO MOTO WRIT (CRIMINAL) NO.1/2019,¹⁰ a study by the Supreme Court Registrar found that in 99 per cent of POCSO cases considered, child victims did not receive any interim compensation from the government.

“7.8 Percentage of cases in which interim compensation/final compensation provided:

Interim Compensation NOT provided - 99%

Interim Compensation provided - 1%

Final Compensation NOT provided - 99%

Final Compensation provided - 1%”

50. The Supreme Court further observed that:

“Virtually, no support persons are provided and no compensation is paid to the victims. Almost two-third of the cases are pending trial for more than one year.”

51. The other concerning trend amongst the Special courts is to award compensation only if the accused is convicted. CCL-NLSIU's Delhi Report revealed that Special Courts parked the decision to award compensation till after the evidence of the victim is recorded. NGOs and private advocates representing children voiced that such an approach frustrates the objective of interim compensation¹¹

52. In Malimath Committee Report on Reforms of Criminal Justice System (March 2003), it was observed:-

¹⁰ In Re: alarming rise in the number of reported child rape incidents, SMW (CrL.) 1/2019,

¹¹Report of Study on the working of Special Courts under POCSO Act, 2012, Centre for Child and Law , National Law School of Bangalore, 29.1.16

6.7.2 What happens to the right of victim to get justice to the harm suffered? Well, he can be satisfied if the state successfully gets the criminal punished to death, a prison sentence or fine. How does he get justice if the State does not succeed in so doing? Can he ask the State to compensate him for the injury? In principle, that should be the logical consequence in such a situation; but the State which makes the law absolves itself of such liability.¹²

6.8.1 The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy. When the sentence of fine is imposed as the sole punishment or an additional punishment, the whole or part of it may be directed to be paid to the person having suffered loss or injury as per the discretion of the Court (Section 357 Cr.PC). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.

6.8.7 Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The recent decisions in Nilabati Behera V. State of Orissa (1993 2 SCC 746) and in Chairman, Railway Board V. Chandrima Das are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the state for failure to protect the rights of the victim.

6.8.8 These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact

whether offenders are apprehended or punished. The principle invoked is the obligation of the state to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably.”

53. The difference between criminal justice administration and mechanism for the grant of compensation is jurisprudential. The criminal jurisprudence lays its foundation in the test of proving the offender guilty beyond reasonable doubt. Owing to the stigma attached to sexual offences, relationship between the accused and the survivor/survivor’s family, financial dependence on the accused, and the absence of victim protection measures, it is not uncommon for victims/survivors to turn hostile in court. Poor investigations and weak prosecution have also contributed to acquittals.
54. I do not find this approach consistent with the objectives of POCSO. The interim compensation is mandatory provision. Therefore, an outright rejection of compensation to survivors of sexual abuse who turn hostile or do not succeed in conviction of the accused would result in ignoring the failures of the State in protecting survivors of sexual abuse, and in providing them fullest support as envisaged under the Constitution, the POCSO Act and Rules. Even in the absence of conviction (for whatever reasons), in cases of sexual abuse, the child has undergone severe physical, social and psychological trauma. The child cannot be left to his/her state in the absence of conviction. As the Parliamentary Standing committee examining the POCSO bill 2012 had noted that the **“legislation will remain unfulfilled if both the preventive and rehabilitative aspects remain side-lined”**
55. The Rule 9 of POCSO rules 2020 reads as under: :

“Rule 9. Compensation –

(1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.”

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;*
- (ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;*
- (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;*
- (iv) loss of 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;*
- (v) the relationship of the child to the offender, if any;*
- (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;*
- (vii) whether the child became pregnant as a result of the offence;*
- (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;*
- (ix) whether the child contracted human immunodeficiency virus*

(HIV) as a result of the offence;
(x) any disability suffered by the child as a result of the offence;
(xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;
(xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.”

56. The Rule 9 of POCSO Rules makes it clear that interim compensation can be awarded by the Special Court, on its own, or based on an application by or on behalf of the child, at any time after the FIR has been registered. A sustained reading of the POCSO Rules along with the objectives of POCSO makes it clear that compensation is to be given as soon as the Special Court forms an opinion that the child has suffered loss or injury. In my opinion, the pendency might be getting created because the POCSO Rules state that compensation shall be given after registration of the FIR but do not provide a fixed time limit within which the compensation is to be disbursed. The POCSO Rules only give the starting point as registration of the FIR. This gap allows for the delay in disbursement of interim compensation.

57. Thus, I am of the opinion that the interim compensation is to be paid at the earliest. Although no time frame has been given but in my understanding 2 months within filing of charge sheet to disburse interim compensation would be reasonable. Section 357A (5) of the CrPC deals with grant of compensation to the victims which contemplates a similar time frame.
58. Since the charge sheet is a final report prepared by the investigation or law enforcement agencies for proving the accusation of a crime in a criminal court of law, the court shall form a preliminary opinion on the basis of the charge sheet. The charge sheet against an accused person is indicative that the preliminary investigation has already been completed by the police. Filing of charge sheet is indicative to prove that the child has suffered loss or injury as a result of that offence and is a victim of child sexual abuse
59. The question of whether the accused is guilty or not is not relevant or to be considered in awarding interim compensation. The focus is the survivor. Compensatory proceedings revolve around the needs of the survivor, not on the guilt of the accused.
60. The POCSO is a beneficial legislation aimed at ameliorating the suffering of children of sexual abuse. The DVC scheme contemplates 25% compensation, hence the special court must endeavour to award 25% of the compensation at the interim stage within 2 months of filing of chargesheet. The special court are within their rights to award compensation in excess of 25 % at the interim stage. The POCSO is a special statute, passed to ameliorate the suffering of the survivors. Hence, the endeavour must be to award the maximum compensation possible.
61. The Special Court, after forming a preliminary opinion on perusing the chargesheet will grant compensation.
62. I must reiterate that the trigger to award compensation is filing of the chargesheet. The Special Court must endeavour to, within 2 months of filing of chargesheet, award the compensation. After the conclusion of trial,

even if the order of acquittal is passed, but if the factum of rape / injury is substantiated, the Special Court is obligated to grant maximum permissible compensation, less the interim compensation awarded earlier by the special court and the DSLSA/DLSA.

POWERS OF SPECIAL COURTS VIS-A-VIS DLSAs/DSLAs

63. There are differing judicial opinions on the powers of the DLSAs/DSLAs to award compensation to child survivor of sexual abuse in POCSO cases. This has emerged from two judgments of the Hon'ble High Court of Delhi passed by different benches of same strength i.e. first in judgment in *W.P.(CrI.) 3244/2019, Mother Minor Victim No. 1 & 2 vs. State & Ors*, (herein after referred as “*Mother Minor*”) dated 15.06.2020 wherein it held

“21...every statutory power is also coupled with the duty to exercise it and in view of the express provisions of Section 33(8) of the POCSO Act and Rule 7 of the said Rules (Rule 9 of the Protection of Children from Sexual Offences Rules, 2020 as is currently in force), the duty to award compensation in appropriate cases has been conferred on the Special Courts and it is incumbent on the Special Court to pass necessary orders for compensation/interim compensation in appropriate cases. It is not open for the Special Court to delegate the said power and direct the concerned Legal Services Authority to examine any claim for compensation payable to a minor victim of an offence punishable under the POCSO Act....”¹³

64. Further in *W.P.(CrI.) 1419/2020, MST. X (Through Mother and Natural Guardian) v. State & Ors*, (hereinafter called *MST X*) dated 13.05.2021 it was held that:

“(k) There appears to be some dissonance and confusion insofar as the use of the words ‘recommendation’, ‘order’ and ‘direction’ is concerned,

¹³Justice Bakhru, Pg. 418 para 12
CRLA. 63/2022

*in that sections 357A(2) and (3) Cr.P.C., Clause 9(1)(Part-II) of the Delhi Victim Compensation Scheme 2018 and Rule 9(2) of the 2020 Rules speak of the court making 'recommendation' for award of compensation to the concerned legal service authority; but Rule 9(1) and (3) of the 2020 Rules say that the court may make an 'order' and 'direction' for award of interim compensation and compensation respectively. In relation to payment of interim compensation, under Rule 9(1) the court is empowered to make "an order for interim compensation". **To meaningfully construe these words, in the opinion of this court, a court seized of a plea for compensation under the POCSO Act, may in its discretion, do one of three things: (i) if the application is for interim compensation, the court may order payment of interim compensation to a victim; (ii) if the application is for compensation, the court may either recommend the award of compensation without specifying the quantum of compensation to be paid, leaving it to the concerned legal service authority to quantify it in accordance with the applicable schedule of the DVC Scheme 2018; or (iii) if the application is for compensation, the court may direct the concerned legal service authority to pay the compensation as quantified by it. Even a recommendation made by a court would be binding on the legal service authority and compensation would decidedly be payable, except the quantum payable would be left to computed by the authority. A direction to pay a quantified amount as compensation, would obviously be binding with no discretion left with the legal service authority.***

(l) If a victim applies for compensation directly to the legal service authority and not to the court, the authority would decide whether compensation is payable, and if so in what amount, subject to the other stipulations contained in the DVC Scheme 2018.

(m) There should be no confusion that a decision made by the court, whether as a 'recommendation', 'order' or 'direction', would be binding on the legal service authority, subject only to the court leaving the discretion to quantify the compensation payable to the authority or otherwise, depending upon what is said in the decision."

65. Due to the contradicting opinion on the scope of powers of DSLSA/ DLSA and Special Courts as mentioned above, it is unclear as to how a minor survivor of child sexual abuse is supposed to be compensated i.e.;
- a. Whether a victim of offences under sections of the POCSO, 2012 can approach either the Special Court or the Respondent authorities for compensation?
 - b. Whether only a Special Court alone is responsible to quantify the amount of compensation in such cases?
66. The challenge in *MST X* was regarding which authority is to compensate the victim. The challenge was whether the DVC scheme will apply to the Special Court when assessing the compensation. The judgment *MST X* merely answers this question, and states that:
- (f) Insofar as the State of Delhi is concerned, if a victim applies for compensation to the DLSA or DSLSA, the concerned authority is required to assess and pay compensation under and in accordance with the DVC Scheme 2018; however, if a victim applies for compensation under section 33(8) before the special POCSO court, the DVC Scheme 2018 is not binding but serves merely as a 'guideline' for the court to assess and pay compensation, whether at the interim or final stage. This position is in conformity with the mandate of the Hon'ble Supreme Court in Nipun Saxena (supra);*
67. It is clear from the above that the controversy in the above case was whether Delhi Victim Compensation Scheme was binding on the Special Court as well. The Court was only concerned with harmonizing the scheme and the Judgment rendered in *W.P.(Crl.) 3244/2019, Mother Minor Victim No. 1 & 2 vs. State & Ors.*, dated 15.06.2020, especially because the court in *MST X (supra)* opined that the court in *Mother Minor (supra)* was not apprised of the DVC scheme.
68. The Hon'ble Judge delved into the provisions of the scheme vis-a-vis the POCSO and Rules and interpreted the same.

69. On the other hand, the controversy before me revolves around adjudicating which is the proper authority-“Special Court or DSLSA/ DLSA” to assess the compensation?
70. The Hon’ble Supreme Court in its judgment in W.P. (C) 565 of 2012, titled “*Nipun Saxena and Anr. vs Union of India and Ors*”(2019) 2 SCC 703 directed that till the framing of a compensation scheme specifically for child victims in POCSO cases is not in place, the NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018 (hereinafter ‘NALSA COMPENSATION SCHEME’) shall act as guideline to Special Courts to award compensation to child victims of sexual abuse.
71. In *Nipun Saxena* (supra), vide order dated 11.12.2018, the Supreme Court recognized the exclusive power of Special Courts constituted under POCSO Act to grant compensation to child victims of sexual abuse by holding that:

"The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child. In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim. The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under section 35 7A of the Code of Criminal

Procedure, 1973 (sic) or any other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted. If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of section 33(8) of the Act."

(emphasis supplied).

ONLY THE SPECIAL COURTS CAN QUANTIFY THE COMPENSATION

72. As envisioned by the DVC Scheme, investigation and quantification of compensation was to be the sole domain of the Special Court and was its responsibility. Moreover, the DVC Scheme envisaged the Special Court to investigate and quantify the compensation. On 02.10.2018, DVC Scheme, came into effect. This Scheme has a Part-II schedule titled Schedule Applicable to Women Victims of Crime mentions a note which is extracted below: -

"Note: - As per order of the Hon'ble Supreme Court of India in W. P. (C) No. 565/2012 titled Nipun Saxena and Anr vs. Union of India and Ors. dated 05.09.2018, it is clarified that this Part shall also function as a Guideline to the Special Court for the award of compensation to victims of child sexual abuse under section 33(8) of the POCSO Act, 2012 and under Rule 7 of the POCSO Rules, 2012 until the Rules are finalized by the Central Government. The Special Judge will take the provisions of the POCSO Act, 2012 into consideration as well as any circumstances that are special to the victim while passing an appropriate order. The guidelines will be applicable to all children as the legislation is gender neutral. The Special Judge will also pass appropriate orders regarding actual physical payment of the compensation or the interim compensation so that it is not misused or mis-utilised and it is actually available for the benefit of the child victim. If the Special Judge deems it appropriate, an order of depositing the amount in an interest-bearing account may be

passed.”

73. The Standard Operating Procedure (“SOP”) with respect to operation of the Delhi Victim Compensation Scheme, 2018 further mentions that:

“A.6 As per Section 33(8) of the POCSO Act, 2012, only the Special Court designated as Children Court / POCSO Court are authorized by law to quantify the quantum of compensation. The said Special Court while quantifying the compensation should take into account the Schedule of compensation annexed in Delhi Victim Compensation Scheme, 2018;

A.7 No other Court except the Children Court/POCSO Court should quantify the quantum of compensation and it can only recommend the matter for grant of compensation to the concerned District Legal Services Authority;

A.8 Trial Court while recommending the matter for grant of compensation should take into consideration Delhi Victim Compensation Scheme, 2018 as well as the fact that those offences which are not covered under the ‘Scheme’, cannot be considered by District Legal Services Authority. Thus, such matters should not be recommended for grant of compensation.

A.9 Trial Court, at any stage of the proceeding pending before it, may recommend/refer the matter for grant of interim compensation to the victim. The interim compensation can only be quantified by POCSO Court under Section 33(8) of POCSO Act, 2012;

74. A cursory reading of the above makes it clear that the scheme envisaged only the Special Courts to have the power to quantify the compensation to be awarded to the child victims and forward the same to the DLSA/DSLISA for disbursal of the awarded amount. DLSA/DSLISA concerned only has powers of disbursal.

75. It is also clear that compensation under Section 33 and Rule 7 (now Rule 9 post amendment of POCSO Rules in 2020) of The POCSO lists the factors that the Special Court ought to consider while awarding compensation. Only the Special Court is entrusted with the responsibility to consider the

factors listed out. This is alignment with the intention of POCSO, that Special Courts which have the manpower, resources and backing of statutes can consider these factors and pass an order taking them into account. This also feeds into the objective of preventing re-victimisation of the survivor.

76. The Rule 9, Section 33 (8) of POCSO Act, and Nipun Saxena (*supra*) emphasise the role of Special court to quantify the compensation for the child survivor under POCSO.

77. ***In Alakh Alok Srivastava v. Union of India, (2018) 17 SCC 291 :***

“10. The POCSO Act has been legislated keeping in view the fundamental concept under Article 15 of the Constitution that empowers the State to make special provisions for children and also Article 39(f) which provides that the State shall in particular direct its policy towards securing that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. The Statement of Objects and Reasons of the Act indicate the focus for reduction of child abuse and protection of children from the offences of sexual assault, sexual harassment and pornography, etc.

23. Keeping in view the protection of the children and the statutory scheme conceived under the POCSO Act, it is necessary to issue certain directions so that the legislative intent and the purpose are actually fructified at the ground level and it becomes possible to bridge the gap between the legislation remaining a mere parchment or blueprint of social change and its practice or implementation in true essence and spirit is achieved.”

78. There seems to be some confusion in the DVC Scheme, where on one hand the Nipun Saxena (*supra*), POCSO rules and the SOP directs the special courts to award compensation, DVC scheme also gives power to the DSLSA/DLSA.

79. Relevant clauses in Part II of DVC scheme are as under:

LEGAL SERVICES AUTHORITY. -

The DSLSA or DLSA may award compensation to the victim or her dependents to the extent specified in the scheduled attached hereto.

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 the 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 including counselling 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) Loss of 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 victim became pregnant as a result of the offence, whether she had to undergo Medical Termination of Pregnancy (MTP)/give birth to a child, including rehabilitation needs of such child;**
- (8) Whether the victim contracted a sexually transmitted disease (STD) as a result of the offence;**
- (9) Whether the victim contracted human immunodeficiency virus (HIV) as a result of the offence;**
- (10) Any disability suffered by the victim as a result of the offence;**
- (11) Financial condition of the victim against whom the offence has been committed so as to determine her need for rehabilitation and re-integration needs of the victim.**
- (12) In case of death, the age of deceased, her 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.**

9. 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 her dependent(s), under sub-section (4) of Section 357A of the Code, to the Delhi State Legal Services Authority or District Legal Services Authority, for interim compensation it shall prima-facie satisfy itself qua compensation needs and identity of the victim. As regards the final

compensation, it shall examine the case and verify the contents of the claim with respect to the loss/injury and rehabilitation needs as a result of the crime and may also call for any other relevant information necessary for deciding the claim.

Provided that in deserving cases and in all acid attack cases, at any time after commission of the offence, Member Secretary or Special Secretary, DSLSA or Secretary, DLSA may suo moto or after preliminary verification of the facts proceed to grant interim relief as may be required in the circumstances of each case.

(2) The inquiry as contemplated under sub-section (5) of Section 357A 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 that in cases of acid attack an amount of Rupee One lakh shall be paid to the victim within 15 days of the matter being brought to the notice of DLSA. The order granting interim compensation shall be passed by 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 the 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 her dependent(s) taking into account the factors enumerated in Clause 8 of the Scheme, as per schedule appended to this Part.** However, in deserving cases, for reasons to be recorded, the upper limit may be exceeded.

Moreover, in case the victim is minor, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the Schedule appended to this Part.

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

(5) In case trial/appellate court gives findings that the criminal complaint and the allegations were false, then Legal Services Authority may initiate proceedings for recovery of compensation, if any, granted in part or full under this Scheme, before the Trial Court for its recovery as if it were a fine."

11. METHOD OF DISBURSEMENT OF COMPENSATION —

(1) The amount of compensation so awarded shall be disbursed by the DSLSA by depositing the same in a Bank in the joint or single name of the victim/dependent(s). In case the victim does not have any bank account, the DLSA concerned would facilitate opening of a bank account in the name of the victim and in case the victim is a minor along with a guardian or in case, minor is in a child care institution, the bank account shall be opened with the Superintendent of the

Institution as Guardian. However, in case the victim is a foreign national or a refugee, the compensation can be disbursed by way of cash cards.

Interim amount shall be disbursed in full. However, as far as the final compensation amount is concerned, 75% (seventy five percent) of the same shall be put in a fixed deposit for a minimum period of three years and the remaining 25% (twenty five percent) shall be available for utilization and initial expenses by the victim/dependent(s), as the case may be.

(2) In the case of a minor, 80% of the amount of compensation so awarded, shall be deposited in the fixed deposit account and shall be drawn only on attainment of the age of majority, but not before three years of the deposit.

Provided that in exceptional cases, amounts may be withdrawn for educational or medical or other pressing and urgent needs of the beneficiary at the discretion of the DSLSA/ DLSA.

(3) The interest on the sum, if lying in FDR form, shall be credited directly by the bank in the savings account of the victim/dependent(s), on monthly basis which can be withdrawn by the beneficiary.

12. INTERIM RELIEF TO THE VICTIM—

The Delhi State Legal Services Authority or District Legal Services Authority, as the case may be, may order for immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief (including interim monetary compensation) as deemed appropriate, to alleviate the suffering of the victim on the certificate of a police officer, not below the rank of the officer-in-charge of the police station, or a Magistrate of the area concerned or on the application of the victim/ dependents or suo moto.

Provided that as soon as the application for compensation is received by the DSLSA/DLSA, a sum of Rs.5000/- or as the case warrants up to Rs. 10,000/- shall be immediately disbursed to the victim through preloaded cash card from a Nationalized Bank by the Secretary, DLSA or Member Secretary, DSLSA/Special Secretary, DSLSA.

Provided that the, interim relief so granted shall not be less than 25 per cent of the maximum compensation awardable as per schedule applicable to this Part, which shall be paid to the victim in totality.

Provided further that in cases of acid attack a sum 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 additional sum of Rs.2 lakhs shall be awarded and paid to the victim as expeditiously as possible and positively within two months.”

* * * * *

Note: As per Order of Hon'ble Supreme Court of India in W.P. (C) No. 565/2012 titled Nipun Saxena &Anr. Vs. Union of India &Ors. dated 05.09.2018, it is clarified that this Part shall also function as a Guideline to the Special Court for the award of compensation to victims of child sexual abuse under Section 33(8) of Protection of Children from Sexual Offences Act, 2012 and under Rule 7 of Protection of Children from Sexual Offences Rules, 2012 until the Rules are finalized by the Central Government. The Special Judge will take the provisions of the Protection of Children from Sexual Offences Act, 2012 into consideration as well as any circumstances that are special to the victim while passing an appropriate order. The guidelines will be applicable to all children as the legislation is gender neutral. The Special Judge will also pass appropriate orders regarding actual physical payment of the compensation or the interim compensation so that it is not misused or mis-utilized and it actually available for the benefit of the child victim. If the Special Judge deems it appropriate, an order of depositing the amount in an interest-bearing account may be passed.”

(emphasis supplied)

WHY SPECIAL COURTS ARE APPROPRIATE AUTHORITY

80. The driving force behind the POCSO is not only the protection of children from the offences of sexual assault, sexual harassment and pornography but also to *give due regard for safeguarding the interest and well-being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.*¹⁴
81. The intention behind enacting POCSO Act thus, was to introduce in our judicial system “child friendly” procedures. The same is evident from its discussion in the Parliamentary Standing Committee Report on POCSO Bill wherein it stated that the intention of the Bill is “*to evolve child-friendly procedures for investigation and handling of child-abuse cases. The Committee understands that sexual offence of any kind not only harms*

¹⁴DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT TWO HUNDRED FORTIETH REPORT ON THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES BILL, 2011 (Hereinafter referred as Standing committee Report)

the child physically but also causes long term damage to the mental state of the child.”

82. Special Courts not only have adequate infrastructure, facilities and human resources to ensure that not only the quality of evidence by child is not diminished but it also provides for speedy adjudication of the claims. ¹⁵
83. I am in agreement with observation made by this Court in *Mother Minor* “***It is not open for the Special Court to delegate the said power and direct the concerned Legal Services Authority to examine any claim for compensation payable to a minor victim of an offence punishable under the POCSO Act.***”
84. My concern with assigning the DSLSA/ DLSA as an authority to evaluate the claims of compensation is that a body formed under Legal services authority Act cannot interpret or understand the complexities of abuse, in POCSO cases on account of in-built limitations such as calling witnesses, examining on witnesses on oath, summon witnesses, initiate contempt and perjury proceedings against the guilty parties.
85. The Special Courts under POCSO Act are to deal with adjudication and thereafter award compensation. A Sessions Court is designated as a Special Court.¹⁶ The provisions of CrPC are fully applicable to the Special Court.
86. The Special Courts are not only empowered by the statute but also equipped both in terms of legal frameworks requirements and rigors of Evidence Act, CrPC, and IPC, are all applicable to Special Courts. Special Courts are authorised to administer oath, call for evidence, examine witnesses and the facts before it and undertake the entire adjudicatory process thereafter to come to a figure of compensation. They have the

¹⁵Standing committee Report, Para 14.2

¹⁶Chapter 8 of POCSO act, Section 33 and 35

power to initiate perjury, initiate and recommend contempt proceeding, which are all lacking in DSLSA/ DLSA.

87. Hence, the Special Court is the only deciding authority for deciding the quantum of compensation. When the complainant/survivor seeks victim compensation that is in actuality a financial redress aimed at assisting survivors in rebuilding their lives after witnessing sexually violative crimes against the individual self.

Role of DSLSA/ DLSA: DISBURSAL AUTHORITY

88. POCSO Act, POCSO Rules and Nipun Saxena(*supra*) clearly lay down the power and the role of Special Courts with regards to Compensation. But the DVC Scheme also mentions the role of DSLSA/DLSA in quantifying the amount. This begs the question: what is the role of DSLSA/ DLSA vis-à-vis compensation?
89. It is only the DVC Scheme which requires the DLSA/DSLSA to be the authority to assess the quantum of compensation and disburse the said compensation. In addition to Special Court, the DVC also directs the DSLSA/ DLSA is to award the compensation. It is clear that the DVC Scheme was supposed to be used as a referral document. Upon proper construction of the scheme, it was to guide DLSA/DSLSA in its disbursal function, not be a source to confer authority on DLSA/DSLSA to quantify compensation.
90. In order to avoid confusion and iron out the creases in the thread of the fabric, with which the POCSO Act is woven, I will briefly discuss the role of the DSLSA/DLSA.
91. From the reading of the scheme and provisions of the Act, it appears that DSLSA/DLSA at best is a disbursal authority. It cannot, for the reasons above, be asked to assess the compensation.

92. My concern with assigning the DSLSA/ DLSA as an authority to evaluate the claims of compensation is that a body formed under Delhi State Legal Services Authority Act, 1987 cannot interpret or understand the complexities of abuse, usually involving POCSO cases on account of inbuilt limitations such as calling witnesses, examining of witnesses on oath, summoning witnesses and holding detailed trials.
93. The DSLSA/ DLSA does not have the authority to adjudicate cases. Even if we consider that DSLSA/ DLSA has been delegated the power to act judicially, then too this assumption of judicial power falls short on the face of the hierarchy followed in the Indian Legal System, that is, delegated legislation cannot override statutory power. Here, in the case, Special Courts have been statutorily entrusted to try cases whereas DSLSA/DLSA has been constituted to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalats in the State.
94. Even if we assume the power to evaluate and award compensation has been delegated, the said delegation cannot run parallel to the *same adjudicatory proceedings* which are to be undertaken by Special Courts. However, the scheme clearly contemplates the DSLSA/DLSA to grant compensation.
95. I am of the considered view that any observation on the scheme and the POCSO Act must contain in itself the intention behind bringing in POCSO. The POCSO was brought in to protect children from sexual abuse. It also focused not only on imposing severe punishment on the perpetrators but also on compensation as restitution for physical and mental injuries caused and completely delinked it from conviction of the accused. The POCSO, thus, was also envisaged as a forward-looking beneficial legislation. The same is clear from the Parliamentary standing committee examining the POCSO bill, 2012 comment:

Confining it to confirmation of a sexual offence against a child followed by levying of punishment through special courts is simply ignoring the real welfare of a child victim who may be in deep trauma with no family support and thus fully exposed to further abuse. Every attempt both at individual level and society level has to be made for enabling a child victim to become again a happy normal child. To achieve this objective, a fully functional and effective institutional mechanism has to be put in place and that can only done through making statutory provisions, formulating rules and guidelines.

The Committee is of the view that an exclusive law on protection of children from sexual offences should have all the allied aspects. However, mere inclusion of such provisions would not serve the purpose. It has to be ensured that all the institutional arrangements are also made fully functional.¹⁷

96. In my opinion there are two roles for DSLSA/DLSA envisaged in the DVC Scheme. While Section 9 of the DVCScheme mentions deciding the compensation as well as initiating enquiries for awarding compensation. This section burdens DSLSA/ DLSA with adjudicatory powers while Section 11 lays down about the process of disbursing the amount.
97. In the light of the above discussion the DSLSA/ DLSA cannot assume adjudicatory powers of the courts. The scheme which is in the form of executive instruction and has not been passed by the parliament cannot confer a statutory body with such powers. The Delhi State Legal Services Authority Act, 1987 does not itself contemplate itself does not contemplate understanding of critical/sensitive testimonies and care.
98. The powers of DSLSA have been laid down in Delhi State Legal Services Authority Act, 1987 as follows:

7. Functions of the State Authority—

(1) It shall be the duty of the State Authority to give effect to the policy

¹⁷Standing Committee Report, Para 3.1
CRLA. 63/2022

and directions of the Central Authority.

(2) Without prejudice to the generality of the functions referred to in subsection (1), the State Authority shall perform all or any of the following functions, namely:—

(a) give legal service to persons who satisfy the criteria laid down under this Act;

(b) conduct [Lok Adalats; including Lok Adalats for High Court cases]; [Lok Adalats; including Lok Adalats for High Court cases];”

(c) undertake preventive and strategic legal aid programmes; and

(d) perform such other functions as the State Authority may, in consultation with the 2[Central Authority,] fix by regulations.

99. If the function of adjudication and deciding of the compensation is removed from the scheme, the only thing left for Respondent authorities is to disburse the amount i.e. only section 11 remains. Hence, the Respondent authorities are the authorities to disburse the amount under section 11.

100. The questions that then remains are: what is the disbursal amount and when is it to be disbursed?

101. On an application made to the respondent authorities, the application shall be processed. The respondent authority will disburse an interim compensation immediately and not later than 60 days of the filing of the charge sheet. The said interim compensation shall be separate from the interim compensation awarded by the special court. The interim compensation will be capped at 25 % of the maximum compensation.

102. It must be borne in mind that in such cases, the victimisation of the survivor does not end with the crime. The survivors are again victimised by the treatment of the society towards them, by the criminal justice system and the obstacles they face after the crime. The Standing Committee was conscious with this thought “*The Committee would like to*

point out that as has been seen in the cases of the sexual abuse of women, their trials often lead to re-victimisation and ignominy, as the trial process itself makes the victim to relive the horrific experience. And, in the case of a child, due to her/his vulnerability it may lead to further trauma.”¹⁸

103. To prevent revictimization as well as to ensure the benefits of the act are also delivered to the survivor of the child sexual abuse, a broad meaning must be given when harmonising the Scheme and the Act. As a result I am the opinion that the Respondent authorities and the Special Court can disburse the compensation. The availability of multiple fora for grant of compensation empowers the right holder by giving them an agency to exercise their choice as well as to receive maximum compensation as quickly as possible.
104. For a survivor, immediate assistance is paramount. I am cognizant of the fact that the Special Court while forming an opinion and quantifying the compensation may take time.
105. There are needs for rehabilitation. A survivor of violent crime and the subsequent effects it yields on to the family. There are direct needs which include medical care, loss of earnings and property loss/ damage as well as the intangible needs which arise from assessing the pain and suffering of the survivor.¹⁹ To alleviate the immediate and direct consequences, it is necessary that the amount is disbursed immediately.
106. It would also be necessary to put money in the hands of the survivor and its family. A violent crime would also violate the safety that a child feels especially when the perpetrator is from within the family. As a result, it

¹⁸Standing committee, para 13.08

¹⁹McCollister KE, French MT, Fang H. The cost of crime to society: new crime-specific estimates for policy and program evaluation. *Drug Alcohol Depend.* 2010 Apr 1;108(1-2):98-109. doi: 10.1016/j.drugalcdep.2009.12.002. Epub 2010 Jan 13. PMID: 20071107; PMCID: PMC2835847.

would be pertinent to arrange for the safety of survivors of CSA. There is also a need to cater to their educational needs. The petitioner's family would also need to spend more time with the survivor thereto give the survivor emotional security, by reason of which there must also be loss of work. Since the system cannot turn the clock back nor 'undo' the offence, there is little else the Court can do other than prosecute the offender and provide to the victim whatever psychological security and sense of empowerment that monetary compensation can give. Compensation is not a complete remedy but it must also ensure that the surroundings of the survivor are made as normal as possible so as the survivor is not drowned with feeling of guilt or remorse. In my opinion, it was with this intention that the Scheme brought in the Respondent authorities to disburse the amount. Respondent authorities will be less traumatic and more accessible to the victim. This is where the role of Respondent authorities come in.

107. As mentioned above judgment *MST X* observed that in *Mother Minor victim DVC* scheme was not in apprised to the court. *MST X* envisaged an “either/or” relationship between Special Court and DLSA/DLSA and not an “and” relationship. In my opinion, it is only when these two authorities are put in motion alongside each other that the sufferings of the survivor can be eased. A blueprint envisioning this symbiosis entails disbursing interim compensation by both the Special court and DLSA/DLSA.

108. I do not intend to deny the relief carved out by the scheme by cutting a forum from the reach of the needy. As mentioned above, this is a beneficial legislation, thus, what is required of me is to synthesise the existing bodies for a positive manifestation of the objective laid in the POCSO Act/Scheme. The scheme and the POCSO encourage a complementary reading of the both.

109. Respondent authorities, with its disbursal functionality, reinforces the noble spirit envisioned in the Act and works to keep at bay any delay. To

put it briefly, Respondent authorities act like an essential appendage that keeps the machinery going. The survivors may knock at the doors of either Respondent authorities and the Special Courts without any fear of not getting any redressal.

110. Now to lay open the operation of the bodies for functioning:

111. Respondent authorities are to disburse 25% of the maximum amount as the interim compensation within 60 days of filing of the charge sheet.

112. The Respondent authorities will only be a disbursal authority and will not perform any adjudicatory function.

113. Moving on to the Special Court's: The Court's shall adjudicate the compensatory proceedings, form a preliminary opinion and grant an interim compensation with primary objective to rehabilitate. It shall award interim compensation which 25% of the maximum compensation as interim compensation. It can even exceed 25% of the maximum compensation as interim compensation after giving reasons. The interim compensation awarded by the special court and DLSA/DLSA shall be adjusted from the Final compensation.

114. The Respondent authorities, on being supplied with the charge sheet will release the funds immediately not later than 60 days, in its confined role of disbursing the 25 % of the maximum compensation. There is no need for an opinion to be formed. Respondent authorities thus can only be the body to disburse the compensation.

115. Thus, the endeavour of the Special Court *and* DLSA/DLSA to disburse the compensation at the interim stage will ensure maximum reach of the benefit by reconciling the essence of the Act and the Scheme.

Micro level:

116. With regard to the compensation provided by the Ld. ASJ (POCSO), I am of the opinion that the Ld. ASJ (POCSO) has failed to provide any

reasoning for awarding the amount of Rs. 50,000 as compensation. Even after finding the accused person guilty of the offences under/s 342 IPC & Section 6 of the POCSO.

117. The Hon'ble Apex Court in criminal appeal no 6287 of 2011 vide order dated 03.05.2013 titled "*Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770* " observed that:

"66. To sum up : while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 CrPC would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family."

118. In the present case the impugned order does not disclose that judicial parameters which have been applied or give any reasons while awarding the compensation. The LD ASJ in the impugned order, has come to the categorical finding that the child is a victim of penetrative sexual assault. The child victim, on date of the assault was a 7-year-old girl. For the aforesaid reasons the award of compensation of Rs.50,000 for mental trauma and bodily injury is highly insufficient and cannot be sustained and is set aside.

119. For the reasons and discussion stated above, which are not repeated here for sake of brevity, I am of the view that this is the case where the child is

to be rehabilitated. She is in need of maximum compensation under the scheme and the act and it is therefore directed that the respondent shall pay Rs. 10 lakhs (10.5 lakhs less Rs. 50,000 if already paid), in terms of schedule II within 4 weeks of passing of this order.

Conclusion:

120. As already observed the Registrar, Supreme Court in *Suo Motu*(supra), 99% of survivors do not receive interim compensation. This means not only have they undergone trauma of the incident but also have to deal with the fall out of the incident. In any case, the victim should never be made to suffer of the consequences of the act which weren't his/ her fault. To that end, DSLSA will file quarterly report on the cases wherein interim final compensation has been granted and the time taken by DSLSA to disburse the said amount. The Special Courts should also file yearly report on the number of number of cases interim compensation and final compensation granted. The reports shall be filed with Registrar -General, Delhi High Court for monitoring purposes.

121. In view of the discussion, the questions are answered as under:

- a) Maximum compensation laid down in the schedule is to be considered minimum.
- b) The final compensation to survivor of child sexual abuse should be the maximum amount mentioned in the schedule. For instance, for "rape" maximum compensation mentioned is 7 lakhs. Since the cases are under POCSO, the CSA survivor is also entitled to 7 lakhs +50% of 7 lakhs i.e., 10.5 lakhs. This is to be awarded by the Special Court and to be disbursed by DSLSA/DLSA.
- c) Within 8 weeks of the filing of chargesheet, Special courts will form an opinion and it will release 25% of the maximum awardable

compensation for rehabilitation to child survivor of CSA for rehabilitation. If the Special Court is of the opinion that 25% will not meet the rehabilitative needs of the survivor, it can award more than 25%. However, it will give reasons for awarding more than 25%. This interim compensation will be in addition to the interim compensation (amounting to 25% of the maximum amount) disbursed by the DSLSA/DLSA.

- d) Every POCSO FIR will concurrently be sent to both Member Secretary DSLSA and Special Court.
- e) The DSLSA/ DSLA will be also supplied with the copy of chargesheet and on the basis of the chargesheet, the DSLSA/DLSA immediately and not later than 60 days, release 25% to the survivors. The same can be through the survivor or the parents to be used for the benefit, rehabilitation, integration of the survivor for the child survivor of CSA.
- f) The interim compensations awarded by the DSLSA/DLSA and Special Court is to be adjusted from the final compensation awarded by the Special court.

With these observations, the appeal is disposed of.

भक्त्यमेव जयते

JASMEET SINGH, J

OCTOBER 20, 2022