

W.P.(C) No. 27408/2021 : 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 25TH DAY OF MARCH 2022 / 4TH CHAITHRA, 1944

WP(C) NO. 27408 OF 2021

PETITIONER/S:

SUO MOTU

BY ADV

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 2 THE SECRETARY TO GOVERNMENT
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 3 SECRETARY TO GOVERNMENT
SOCIAL JUSTICE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 4 SECRETARY TO GOVERNMENT
LABOUR AND REHABILITATION DEPARTMENT (E), GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 5 KEALA LEGAL SERVICES AUTHORITY
REPRESENTED BY ITS MEMBER SECRETARY, HIGH COURT BUILDINGS,
ERNAKULAM - 682 031.
- 6 INDUSTRIAL TRIBUNAL
KOLLAM

W.P.(C) No. 27408/2021 : 2 :

7 INDUSTRIAL TRIBUNAL
ALLEPPEY.

8 INDUSTRIAL TRIBUNAL
IDUKKI.

9 INDUSTRIAL TRIBUNAL
PALAKKAD.

10 INDUSTRIAL TRIBUNAL
KOZHIKODE.

BY ADVS.

SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL
SHYAMPRASANTH T.S., GOVERNMENT PLEADER
B.G.HARINDRANATH

SRI.TEK CHAND, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25.03.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 25th day of March, 2022.

JUDGMENT

SHAJI P. CHALY, J.

This *suo motu* writ petition was registered as per the direction issued by a learned Division Bench of this Court consisting of Hon'ble Mr. Justice K. Vinod Chandran and Hon'ble Mr. Justice Ziyad Rahman A. A, in the order dated 10th September, 2021, basically to vindicate the grievances, in the matter of compensation to the dependents of the accident victims under Section 10A of the Employees' Compensation Act, 1923 ('Act, 1923' for short) .

2. For convenience, it is only appropriate that the order dated 10th September, 2021 of the learned Division Bench is extracted as such, and it reads thus:

"We were considering a batch of Criminal Appeals [Cr1.A.Nos.315, 435, 680 and 806 of 2015], in which the appellants challenged the conviction entered by the Sessions Court for offence of robbery, house trespass and murder. The allegation was that in the course of the robbery the night watchman at the jewellery was murdered and his body dumped in a nearby well. We allowed the Criminal Appeals since there was no evidence against the appellants. One of the

appellants sought for return of the amounts deposited in Court as compensation awarded, which set us thinking about the plight of the sad lot of 'night-watchmen' who are generally ill-equipped and ill-paid. We observed that often they stake their lives to offer nothing more than a sense of security to those, whose property they watch over. We also noticed that the frail man, we often see, armed with a smouldering mosquito coil on the dim-lit verandah of shop rooms and ATM counters, ineffectively guard the effects of an individual, who slumbers in his or her opulent home. If the criminal case ends in acquittal, the family of the murdered man, often already thrown into the streets, have no perceivable means of getting a compensation.

2. We were of the opinion that such circumstances would give rise to a valid proceedings for compensation under Section 10A of the Employees' Compensation Act, 1923. We are informed that the Commissioners appointed under Section 20 of the Act of 1923 are the incumbents of the various Industrial Tribunals in the State, which do not have the administrative machinery to initiate proceedings or even get information of such accidental death having occurred. We, were of the opinion that not only in the case of security guards falling prey to dacoits and

robbers, in every case where there is an accidental death or injury in the course of employment there is no machinery in place for the matter to be brought to the notice of the notified Commissioners for the purpose of invoking the powers under the Act of 1923. We hence contemplated a *suo motu* proceeding and we sought the assistance of learned Senior Counsel Sri.P.Vijayabhanu.

3. The learned Senior Counsel has made a commendable effort and placed before us a note, which requires no additions at our hands and we extract the same hereunder, which would form the essential subject of the *suo motu* writ petition which we direct the registry to number on the basis of this order. The notes with the legal grounds and precedents read as under:

"1. Question of Law: During the hearing of these appeals, the legal question as to, whether compensation can be awarded to the dependents of the deceased under the Employee's Compensation Act, 1923, ("EC Act") if he was murdered during the course of his employment, has arisen.

2. Statutory Liability: Section 3 of the EC Act, creates a statutory liability on an employer to compensate his employee for any injury arising out of his employment. The

section is reproduced hereunder:

Section 3: Employer's liability for compensation. - (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter...

(Emphasis

supplied)

In the absence of a statutory definition for "accident", the question of whether murder can be deemed to be an accident, arises.

3. Accidental murder: The law on this issue has been settled by the Supreme Court in Rita Devi v. New India Assurance Co. Ltd. 2000 ACJ 801 (SC). The Supreme Court laid down a test to distinguish between "murder simpliciter" and "accidental murder." Para 10 of the judgment highlights this distinction and is reproduced hereunder:

"10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an

accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

The appellants in these appeals were found guilty for the offences punishable under Sections 302 and 392 of the Indian Penal Code. Section 392 provides for the punishment for robbery. Section 390 defines robbery as follows:

Section 390. Robbery- In all robbery there is either theft or extortion.

When theft is robbery.-Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. ...

4. Common Law: Judicial precedents have been pivotal in carving this position of law out from statutory equivocacy.

● In Clover, Clayton and Company, Ltd. v. Hughes [1910 A.C. 242], Lord Loreburn, L.C. said:

"What, then, is an "accident"? It has been defined in this House as an unlooked-for mishap or an untoward event, which is not expected or designed."

● In Challis v. London and South Western Rly. Co. (1905) 2 KB 154, the Court of Appeal held, where an engine driver who was driving a train under a bridge, was killed by a stone wilfully dropped by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:

"The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver, in other words it arose out of his employment. The argument for the respondents really

involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously."

● In the case of Nisbet v. Rayne & Burn (1910) 2 KB 689, where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal followed its earlier judgment in the case of *Challis*, (*supra*) to hold that the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. The Court rejected the contention raised by the employer, that this was not an "accident" within the meaning of the Act,

because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. This judgment was followed by a majority judgment by the House of Lords in the case of Board of Management of Trim Joint District School v. Kelly 1914 AC 667.

● The precedents on the matter have been concisely discussed by the High Court of Delhi, to summarize the law on the issue, in M/S Star Press v. Meena Devi (MANU/DE/0980/2017). The relevant portions of the judgment are extracted hereunder:

"31.1. The term "accident" is neither defined in the Employees' Compensation Act nor the General Clauses Act. According to the Black's Law Dictionary, the term "accident" means an unforeseen untoward incident, which was not reasonably anticipated.

xxx xxx xxx

31.5. The Employees' Compensation Act is a social beneficial legislation and has to be liberally construed. It was enacted to give succour to employees against injuries caused by accident. The object of the Act doesn't specify the applicability of the Act only in case of accidents by machines only. The injury caused by the act of another human being that result in fatal injuries tantamount to murder qua the

assailant and an accidental act qua the employee.

31.6. A causal connection is necessary between the accident and the employment to hold that the accident arose out of employment. When the incident of murder takes place in the work place, then the presumption would be that the murder would have been on account of the employment; in the absence of any other evidence pointing out that it could not have been on account of employment.

31.7. If it is proved that the employee in the course of his employment has to be in a particular place, and by reason of his being in that particular place, he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the incident and the employment.

5. High Court of Kerala: This Hon'ble Court has upheld these principles while deciding various cases.

(a) In Varkeyachan v. Thomman, 1979 ACJ 319, a workman died of stab injuries suffered at the gate of his employer's sawmill, where he was employed to do odd jobs. The application for compensation under the Workmen's Compensation Act was allowed. The Division Bench of the Kerala High Court upheld the

award and held that the employer was liable to pay compensation.

(b) In United India Insurance Co. Ltd. v. Thankamma, (2011) 3 KLT 466, the driver of a jeep was attacked by a passenger which resulted in the fatal injuries. The claim for compensation under Section 163A of the Motor Vehicles Act was allowed by the Claims Tribunal. The Division Bench of Kerala High Court, following *Rita Devi (supra)* upheld the award of the Claims Tribunal holding that the murder to be an accidental murder arising out of the use of the vehicle. The relevant portion of the said judgment is as under:

"1. Short question which arises for consideration in this appeal under Section 173 of the Motor Vehicles Act is whether a murder committed in a motor vehicle can be termed as "an accident arising out of the use of the motor vehicle", as contemplated under Section 163A of the Motor Vehicles Act."

9. The Apex Court held therein that it was an accidental murder arising out of the use of the vehicle and that the claimants were entitled to compensation from the owner and insurer of the offending auto-rickshaw. Applying the principles laid down in the above decision, in the facts of the present case it has to be held that the murder was not a pre-planned murder and that the same was

only an accidental murder. Deceased Vasudevan was the driver of the vehicle in question. He stopped the vehicle due to mechanical defect and an altercation ensued between the deceased and Sunny and Sunny suddenly stabbed deceased Vasudevan. Thus it can be seen that Sunny had no intention to cause the death of Vasudevan. That being so, it has to be taken that it is an accidental murder and not an intentional one. It follows that the murder of the deceased Vasudevan was due to an accident arising out of the use of the vehicle. That being so, the Tribunal is rightly came to the conclusion that the claimants are entitled to compensation as claimed by them.

(c) In United India Insurance Company Ltd. v. Philo, 1996 ACJ 849, a taxi was stolen and the taxi driver was killed. The application for compensation under the (then) Workmen's Compensation Act was allowed. The Division Bench of Kerala High Court held the murder to be an accident which arose out of the employment of the employee.

6. Limitation: The limitation for preferring a claim for compensation is provided in Section 10 of the Employee's Compensation Act, 1923, the relevant portion of which is reproduced hereunder:

Section 10. Notice and claim.- (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death

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xxx

xxx

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this subsection, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

It is pertinent to note that though the statutory limitation for presenting a claim is 2 years from the date of the accident/death, the Commissioner is conferred the discretion to condone delay".

4. As per S.R.O.No.54 of 2014 [G.O.(Ms) No.8/2014/LBR dated 18.01.2014] Government of Kerala in the Labour and Rehabilitation (E) Department has issued a notification appointing Industrial Tribunals indicated therein to be

Commissioners for Employees' Compensation for the areas specified therein. Considering the fact that there is no effective machinery or infrastructure provided to the Industrial Tribunals, the notified Commissioners under the Employees Compensation Act, we are of the opinion that the Kerala State Legal Services Authority could take an effective, proactive role insofar as the initiation of proceedings through the District Legal Services Authorities and Taluk Legal Services Authorities. However they would also require information as to any incidents of death in the course of employment including incidents similar to that of the security guard we referred to. The information could only be supplied by the police, who first take cognizance of such offences whether it be a murder or an accidental death. For the purpose of issuing suitable directions, the following authorities shall be shown as respondents:

1. State of Kerala, represented by the Chief

- Secretary,
Government Secretariat, Thiruvananthapuram-695
001.
2. The Secretary to Government, Home Department,
Government Secretariat, Thiruvananthapuram-695
001.
3. Secretary to Government, Social Justice
Department,
Government Secretariat, Thiruvananthapuram-695
001.
4. The Secretary to Government,
Labour and Rehabilitation (E) Department,
Government Secretariat, Thiruvananthapuram-695
001.
5. Kerala State Legal Services Authority,
Represented by its Member Secretary,
High Court Buildings, Ernakulam, Kochi - 682
031;
6. Industrial Tribunal, Kollam.
7. Industrial Tribunal, Alleppey.
8. Industrial Tribunal, Idukki.
9. Industrial Tribunal, Palakkad.
10. Industrial Tribunal, Kozhikode.

Registry is directed to register a *suo motu* writ petition and post it in accordance with the orders of the Hon'ble the Chief Justice."

3. Accordingly, as per order dated 3rd December, 2021, we have

issued notice to the State and its officials and also to the Kerala State Legal Services Authority for its response.

4. The Legal Services Authority, after conducting an in depth study in the matter, has submitted a report dated 10th February, 2022, relevant portion of which reads thus:

"In 1985, the United Nations General Assembly adopted the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power", wherein the term "victims of crime" was defined¹. The relevant portion is reproduced hereinbelow:

"A. Victims of crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age,

¹https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.29_declaration%20victims%20crime%20and%20abuse%20of%20power.pdf

language, religion, nationality, political or another opinion, cultural beliefs or practices, property, birth, or family status, ethnic or social origin, and disability.” (Emphasis supplied)

6. The adoption of the afore-mentioned declaration can be said to be a pivotal point where global attention was diverted to the rights and privileges of the victim and not only towards the accused. This declaration created certain rights and entitlements in favour of the victim. Subsequently, in the year 2009, the definition of “victim” was incorporated by way of Section 2(wa) of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”). The definition is reproduced hereinbelow.

“Section 2. Definitions

.....

(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”

7. From the above, it can be seen that the victim has a very broad definition as it includes a person who has suffered any loss or injury. However, the consideration of the victim is coming into the picture only when the accused is charged. This negates the position when the victim is present, but no one has been termed as an accused or when the perpetrator of the crime is not traced. However, this does not pose as an impediment for compensation to victims of crime because of the incorporation of Section 357A of the CrPC at a later stage. One remarkable point about the definition is that it also states that the term

victim will also include the victim's guardian or legal heir. Various judicial precedents have considered the closed kin to be within the purview of the definition of victim, such as widow of the deceased², father of the injured³. Further, it was observed by the Hon'ble Court of Delhi, that victim include those people who suffer proximate physical or emotional harm such as finances, live-in partner, etc. In this case, it was also observed by the Hon'ble Court that *"there has to be a relationship between the injury and the person who suffered it, i.e., the "victim". Consequently, the injury (to the victim who suffers it) has to be proximate; it cannot be remote. At the same time, given the nature of what is "injury" (under Section 44, IPC) the inquiry of proximity would be fact dependent. Courts would assess such issues, based on established principles, and balancing the facts on a case-to-case basis."*⁴

B. Compensation scheme for Victims under CrPC

8. It is pertinent to mention herein that in the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" adopted by the United Nations General Assembly in November 1985, the compensation to victims was envisaged and certain guidelines for compensation and assistance to victims of crime were provided thereto. The relevant portion is reproduced hereinbelow:

"...

Compensation

² *Roopendra Singh v. State of Tripura*, AIR 2017 SC 1801

³ *Daya Chanddra Sharma v. State of U.P.*, 2017 CrIj 1027 (All)

⁴ *Ram Phal v. State & Ors.*, (2015) CrLj 3220 (Delhi)(FB)

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening, and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.”

9. Subsequently, in the Indian jurisdiction, in the 154th Report of the

Law Commission, 1996, emphasis on victimology, i.e., protection of victims was laid. It was mentioned that crimes often entail substantive harm to people and not merely symbolic harm to the social order. Therefore, the needs and rights of the victim should receive priority attention in the total response to the crime, and thus, one of the recognized methods of protection of victims was considered to be compensation to victims as the needs of the victims and family are extensive and void. It was also noted in the said report that it was Margery Fry an English Magistrate who advocated compensation by the state for crime victims. The said report went on to note that while in India, the criminal law provides compensation to the victims and their dependents but in a very limited manner. Section 357 of the Code incorporates this concept and empowers the Criminal Courts to award compensation to the victims, but only when the offender is convicted and sentenced and fine forms part of that sentence. This was considered to be a big lacuna in doing complete justice as the victim had to wait for the entire process to get over and the fine was mandatorily required to be a part of the sentence. Considering this, sub-section (3) of Section 357 was introduced which provided for compensation to victims even when a fine was not specifically included in the sentence. However, this was also not sufficient to compensate a victim in all cases. Therefore, it was recommended by the Law Commission that the compensation to victims should not be limited only to fines, penalties and forfeitures realised but the State should accept the principle of providing assistance to victims out of its own funds in cases of acquittals, or where the offender was yet to be

traced but the victim is identified, and an offense is proved. Additionally, a new provision was recommended where State and District Legal Services Authorities may be vested with the power to award compensation in the appropriate manner.⁵

10. In the year 2003, the report by the Committee on Reforms of Criminal Justice System chaired by Justice V.S. Malimath was submitted to the Ministry of Home Affairs. Likewise, to the report of the Law Commission, in this report also the rights and privileges of the victims in criminal proceedings were advocated. It was recommended by the Committee that the right of the victim *inter alia* entail the right to participate in cases involving serious crimes and adequate compensation. In order to ensure adequate compensation to victims, it should be the obligation of the State to compensate the victim in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. Moreover, it was advised to create a victim compensation fund to be administered possibly by the Legal Services Authority.⁶

11. As a result of these recommendations, Section 357A of the Code was inserted by Act 5 of 2009 (w.e.f.31-12-2019). The relevant Section is reproduced hereinbelow:

“357A. Victim compensation scheme.—(1) Every State Government in coordination with the Central Government shall

⁵<https://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>

⁶https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf

*prepare a scheme for providing funds for the purpose of compensation to the **victim or his dependents** who have suffered loss or injury as a result of the crime and who require rehabilitation.*

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.” (Emphasis added)

12. In view of the above, the following steps are provided for determining and allocating compensation to the victim:

1.

- Step 1: Recommendation may be made by the Court, or an application may be filed by the victim to the State or District Legal Services Authority.
- Step 2: The State or District Legal Services Authority may start an enquiry.
- Step 3: Pursuant to the inquiry, the State or Legal Services Authority may award compensation within two months.

C. Mechanism established by the State of Kerala for Victim Compensation

13. In exercise of the powers conferred on the Government of Kerala by way of Section 357A, the Kerala Government issued the Kerala Victim Compensation Scheme, 2014 on 24th February 2014 for the purposes of compensating the victims or his dependents who have suffered loss or injury as a result of the crime. This scheme again defined the term victim and also provided the definition for dependent. As per this scheme, victim means a person who has suffered any loss or injury caused by reason of the act or omission on the part of the accused and who requires rehabilitation under this scheme and includes the guardian or legal heir of such person but does not include a person who is responsible for injury to such person. Further, dependent has been defined to include wife, husband, father, mother, unmarried daughter, and minor children of victim as determined by the authority empowered to issue dependency certificate or any other authority authorized by Government in this regard. Further, victim compensation fund was constituted and

budgetary allocation was to be made during annual budget of the State. Also, the State Legal Services Authority was made accountable for its functions under the scheme. _

14. The steps to be followed for granting compensation to victims are as follows:

- Step 1: Recommendation by the trial court or application by the victim to the State or District Legal Services Authority;
- Step 2: The District Legal Services Authority shall examine and verify the contents of the claim regarding loss or injury caused to the victim and arising out of the crime. The Authority may also call for any necessary information necessary for the determination of the genuineness of the claim.
- Step 3: After verifying the claims and conducting due enquiry, the District Legal Services Authority shall award adequate compensation within two months, in accordance with the provision of the scheme. The compensation shall be paid as a single lump sum or in two installments.
- Step 4: The disbursement of compensation will be done through the Aadhar linked bank account.

D. Certain Provisions of the Kerala Victim Compensation Scheme, 2014 beyond the purview of the Cr.P.C

15. In the Kerala Victim Compensation Scheme, 2014 ((hereinafter "Scheme") there are certain provisions which were not envisaged in

the CrPC. These include the following:

- a) If the trial court later than the award of Compensation orders the accused person to pay any amount by way of Compensation under Section 357(3) of the CrPC, then the accused shall remit an amount equal to the amount of compensation or the amount ordered to be paid under the Cr.P.C, whichever is less.
- b) Compensation received by the victim from the State in relation to crime in question, namely, insurance, ex-gratia or payment received under any other Act, or any other State scheme shall be considered as part of the compensation under the Scheme. Accordingly, the victim or his dependent who has received compensation amount from the collateral sources mentioned above shall be deemed to be compensated under the Scheme and shall not be entitled to separate compensation under the Scheme.
- c) The cases covered under the Motor Vehicles Act, 1988 shall not be covered under the scheme.
- d) Also, the District Legal Services Authority shall institute proceedings before the competent court of law for recovery of the compensation, granted to the victim or his dependent, from the accused if found eligible later.
- e) The District Legal Services Authority may also reject, withhold or reduce the award of compensation in the following circumstances:
 - i. Where the applicant failed to inform the crime to the Police Officer without reasonable delay.
 - ii. Where the applicant failed to co-operate with the police officer or other authority to bring the accused before justice.
 - iii. Where the applicant failed to provide all reasonable assistance to the District Legal Services Authority or other related authorities in connection with the crime.

- iv. Where the eligibility of the victim does not justify the award of compensation in light of the facts and circumstances of the case.

Conclusion

16. Considering the above, the following mechanism can be followed.

- Recommendations received from the trial court, or the applications received from the victim or dependents by the State Legal Services Authority or the District Legal Services Authority, can be sent to the Commissioner under Section 20 of the Employees Compensation Act, 1923. The Police must also share such FIRs to the State Legal Services Authority.
- These recommendations, applications and FIRs can be evaluated by the State Legal Services Authority or the District Legal Services Authority as to whether the same constitutes accidents in the course of employment.
- The Commissioner, thereafter, can do the appropriate enquiry as per the statutory provisions and award compensation.
- For enquiry to claim compensation, the Commissioner may seek assistance from the District Legal Services Authority. However, the quantum of compensation shall be decided by the Commissioner as per the Employees Compensation Act, 1923.”

5. Therefore, according to the Legal Services Authority, the

methodology as stated in the conclusion portion of the report can be followed in order to help the accident victims under the Act, 1923, apart from rendering its assistance under Section 357A of the Code of Criminal Procedure dealing with compensation to victims, and as per the scheme issued by the State Government namely, Kerala Victim Compensation Scheme, 2014 introduced on and with effect from 24th February, 2014. One of the mechanisms proposed by the Kerala State Legal Services Authority is that requisite assistance can be provided by evaluating the First Information Report either by the State Legal Services Authority or the District Legal Services Authority.

6. In fact, the Legal Services Authorities Act, 1987 is introduced on and with effect from 11th October, 1987, to constitute Legal Services Authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

7. The direction was issued by the Division Bench to register a *suo motu* writ petition on realizing the difficulties and the risk faced by the employees carrying out the duties of night watchmen in various

establishments and allied activities and the difficulties faced by the employees in getting compensation under the Act, 1923, especially due to the ignorance of their valuable rights.

8. Therefore, it was taking into account the nature of services to be rendered by the Legal Services Authorities, and also the deplorable situation of the employees, initiative was taken by the Division Bench of this Court. Considering the above aspects, we are of the view that the report of the State Legal Services Authority dated 10th February, 2022 can be accepted and necessary directions can be issued to take appropriate steps in accordance with the mechanism proposed by the authority in its report extracted above.

9. Accordingly, the *Suo Motu* writ petition is disposed of with the following directions:

1. The State Legal Services Authority or the respective District Legal Services Authority shall take appropriate action as proposed in the report and extracted above, if and when any application is received from the victims who are entitled to the benefit of the Act, 1923.
2. In order to enable the concerned Legal Services Authority to evaluate the applications under the Act 1923, on account of any accident arising during or in the course of employment and a crime is registered, there will be a direction to the State Government, to ensure through the State Police Chief that necessary assistance is given by the concerned police station as

- and when requested by the concerned Legal Services Authority at the earliest possible time, and to hand over a copy of the F.I.R for the said purpose.
3. On receipt of applications from victims or their legal heirs , the concerned Legal Services Authority shall evaluate the applications, after securing an FIR from the concerned police station or other authority and render assistance to file it before the appropriate statutory authority under the Act 1923. The Legal Services Authority concerned shall process such applications received at the earliest possible time.
 4. The registry of this court shall forward a copy of this Judgment to the Chief Secretary, Government of Kerala for appropriate action as directed above

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv

W.P.(C) No. 27408/2021 : 31 :

APPENDIX OF WP(C) 27408/2021

PETITIONER'S EXHIBITS:

- | | |
|------------|--|
| Exhibit P1 | ORDERS OF HONOURABLE MR. JUSTICE K. VINOD
CHANDRAN & HONOURABLE MR. JUSTICE ZIYAD
RAHMAN A. A. DATED 10.09.2021. |
| Exhibit P2 | OFFICE NOTES AND ORDERS OF THE HONOURABLE THE
CHIEF JUSTICE DATED 25.11.2021. |

RESPONDENTS' EXHIBITS:

ANNEXURE 1: TRUE COPY OF THE VICTIM COMPENSATION SCHEME, 2017
PUBLISHED IN THE OFFICIAL GAZETTE AS PER SRO NO. 755/2017 DATED
05.11.2017.

ANNEXURE II: TRUE COPY OF THE KERALA GAZETTE S.R.O. NO. 264/2021 IN WHICH
G.O.(Ms.) NO. 59/2021/HOME DATED 20.02.2021 WAS PUBLISHED.

/True Copy/

P.S to Judge.