

via Video-conferencing

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

**Date of decision: 13th May, 2021**

+ W.P.(CRL) 1419/2020

MST. X (THROUGH MOTHER AND NATURAL GUARDIAN)  
..... Petitioner

Through: Ms. Prabhsahay Kaur, Advocate.

versus

STATE & ORS. .... Respondents

Through: Ms. Nandita Rao, ASC (Criminal)  
with Ms. Gayatri Virmani and  
Mr. Amit Peswani, Advocates for the  
State.  
Mr. Zeeshan Hashmi, Advocate for  
respondent No. 2.  
Mr. Sumeet Chaudhary, Advocate for  
respondent No. 3.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

## **J U D G M E N T**

**ANUP JAIRAM BHAMBHANI, J.**

The petitioner, a boy aged about 06 years, has filed the present petition through his mother and natural guardian, impugning order dated 19.08.2020 made by the learned Additional Sessions Judge (ASJ) (POCSO), Saket Courts, New Delhi in CIS SC No. 66/2020 arising from FIR No. 645/2019 registered under sections 377/506 of the Indian Penal Code, 1860 ('IPC', for short) read with section 6 of the Protection of Children from

Sexual Offences Act, 2012 ('POCSO Act', for short) at P.S.: Mehrauli, New Delhi, whereby the learned Sessions Court has awarded to the petitioner, who was the victim of the offence, interim compensation of Rs. 50,000/-.

2. By way of a brief background, the proceedings arise from the petitioner/victim having been subjected to sexual assault, abuse and sodomy by his uncle in the victim's own house. The prosecution of the accused is underway and is presently at the stage of prosecution evidence, which is scheduled on 18.05.2021. It is stated in the petition that the victim belongs to an extremely weak financial background, with a mother who works as a housemaid and washes utensils in people's homes and a bed-ridden father who is unable to work due to his medical condition. As per status report dated 27.07.2020 filed by the Investigating Officer before the learned ASJ the family's monthly household income is about Rs.6,000/- in which 04 members of the family are to sustain.
3. Ms. Prabhsahay Kaur, learned counsel appearing on behalf of the petitioner contends that order dated 19.08.2020 made by the learned ASJ in CIS SC No. 66/2020 ('impugned order', for short) is flawed inasmuch as in awarding interim compensation of Rs. 50,000/-, the learned ASJ has only taken into account the expected expenditure that the victim may incur. In sum and substance, it is Ms. Kaur's contention that the learned ASJ has failed to appreciate that, even at the interim stage, compensation is to be granted to a minor who is victim of sexual abuse, to enable the victim and his family to overcome the incident and to compensate for the damaging effect on

the victim's psyche and to help rehabilitate the victim into society; for 'relief' and 'rehabilitation'; and not merely to cover for the expenses to be incurred for the time being. Learned counsel further contends that treating the Delhi Victim Compensation Scheme 2018 ('DVC Scheme 2018', for short) as a benchmark, interim compensation awarded should have been somewhere between Rs. 6 lacs and Rs.10.50 lacs; since under the applicable entry of the Schedule to Part II of the DVC Scheme 2018, a minimum compensation of Rs.4 lacs and a maximum compensation of Rs.7 lacs has been prescribed for unnatural sexual assault, with a further provision that such minimum and maximum compensation shall stand increased by 50% if the victim is a minor. It is contended that this is in accord with the decision of the Hon'ble Supreme Court in *Nipun Saxena & Anr. Vs. Union of India & Ors.*<sup>1</sup>, in which case it was *inter alia* directed that the National Legal Services Authority Compensation Scheme as approved by the Hon'ble Supreme Court w.e.f. 02.10.2018 should function as a guideline for the special courts to award compensation for a victim of child sexual abuse under Rule 7 of Protection of Children from Sexual Offences Rules 2012, ('2012 Rules', for short) which rule has now been replaced by Rule 9 of Protection of Children from Sexual Offences Rules, 2020 ('2020 Rules', for short).

4. Notice in this petition was issued on 07.09.2020; whereupon Ms. Nandita Rao, learned Additional Standing Counsel (Criminal) appeared on behalf of the State (Government of NCT of

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<sup>1</sup> (2019) 13 SCC 715

Delhi)/respondent No.1 and pointed-out that though the Delhi Victim Compensation Scheme is funded by the Government of NCT of Delhi, the scheme is administered by the Delhi State Legal Services Authority ('DSLISA' for short); and that therefore it is necessary to implead DSLISA as a party-respondent to the present proceedings. Accordingly, DSLISA was impleaded as party-respondent No. 3 in the matter. The accused/respondent No. 2 is represented by Mr. Zeeshan Hashmi, Advocate.

5. Subsequently, pleadings in the matter were completed; and counsel for the parties were heard at length.

### **Impugned Order**

6. In summary, the following portions of the impugned order may be noticed to appreciate the considerations and reasoning employed by the learned ASJ :

#### *“Medical Treatment*

*The child Victim ‘S’ was sodomized by his own uncle repeatedly. Child is not going to the school and belongs to a poor family. The child requires to be rehabilitated. His psychological counseling also requires to be undertaken in view of the observations made by CWC. Since CWC has already issued directions regarding psychological counseling by IHBAS, no further directions are required from the Court at this stage. CWC may review the counseling reports periodically (may be every 3/6 months depending upon frequency of meetings of the Victim with the doctors) and in case the Victim requires such medical intervention which cannot be provided free of cost by IHBAS or any other medical institution, a report may be filed before this Court with prayer for grant of interim compensation for medical intervention. No recommendation for interim compensation on this*

court is required at this stage in the considered view of the Court. The case reported in newspapers wherein Delhi Govt. reportedly granted compensation of Rs.10 Lakhs to the Victim is different from this one as the Victim in the said case is reported to be critical and battling for life.

#### Education

Now coming to the second part i.e. compensation for education of the child Victim. It is reported by the IO that the child belongs to a very poor family. IO has reported that monthly income of the family of the Victim is only about Rs.6,000/-. It is averred in the application that family of the Victim earns Rs.10,000/-monthly. The Victim is traumatized and parents are scared of sending him to school without proper security. Parents do not have sufficient money to arrange for a good school where these aspects can be taken care of. The Victim is six years old, and shall be attending primary school now. This need of the child victim is imminent and immediate. So the amount of interim compensation has to be awarded keeping in mind all these factors, and the probable amount that may be required for imparting education to the Victim in a primary school.

#### Decision

Considering the level of education that shall be imparted to the child Victim, interim compensation in the sum of Rs.50,000/- shall be an appropriate amount at this stage, in considered view of the Court. **Court recommends accordingly. Compensation shall be disbursed as per rules.**

(underscoring supplied; bold in original)

### Statutory landscape

7. The statutory framework and judicial precedents that are required to be noticed for purposes of the present petition are set-out herein-below. The general legal provision relating to payment of

compensation to victims of crime is section 357A of the Code of Criminal Procedure, 1973 ('Cr.P.C.', for short) and reads as under :

**Section 357A Cr.P.C.**

*“357A. Victim compensation scheme.— (1) Every State Government in co-ordination with the Central Government shall 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 Service 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 supplied)

8. Specifically in relation to compensation to children who are victims of sexual offences, the provisions of the POCSO Act and POCSO Rules provide as follows :

### **Section 33 POCSO Act**

“33. Procedure and powers of Special Court.—

(1) \* \* \* \* \*

(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.”*

(emphasis supplied)

### **Rule 7 POCSO Rules, 2012**

“7. 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.”*

(emphasis supplied)

### **Rule 9 POCSO Rules, 2020**

*“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 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, 1973 (2 of 1974) 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 child's medical treatment for physical or mental health or on both;*
- (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 such child's 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, 1973 or any other law 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 child's 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."*

(emphasis supplied)

It may be noted that Rule 9 of the 2020 Rules is *verbatim* the same as Rule 7 of the 2012 Rules.

### **Nipun Saxena vs. Union of India**

9. The authoritative judicial pronouncement on the issue is that of the Hon'ble Supreme Court in *Nipun Saxena vs. Union of India*<sup>2</sup>, in which judgment the Hon'ble Supreme Court set the tone for grant of compensation to *minors* who are victims of sexual offences. It is pertinent to note that though several orders were passed in *Nipun Saxena (supra)*, order dated 05.09.2018 made by a 3-Judge Bench of the Hon'ble Supreme Court is the one that is relevant for purposes of the present proceedings.
10. In order dated 05.09.2018 made by it, the Hon'ble Supreme Court recorded that under its directions the National Legal Services Authority ('NALSA' for short) had drawn-up the NALSA's Compensation Scheme for Women Victims/Survivors of Sexual

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<sup>2</sup> (2019) 2 SCC 703

Assault/other Crimes-2018 (‘NALSA Scheme 2018’, for short) but no scheme of a similar nature had been framed in so far as children were concerned. In this backdrop and in the context of section 33(8) of the POCSO Act, which provides for payment of compensation to children who are victims of sexual offences, and further noticing Rule 7 of the 2012 Rules, the Hon’ble Supreme Court observed as follows:

*“6. On a reading of the aforesaid rule, it appears to us that the Special Court may, in appropriate cases, on its own or on an application having been filed, pass an order for interim compensation for the immediate needs of the child. Of course, this rule is a gender neutral provision.”*

\* \* \* \* \*

*“8. In the interim, therefore, the situation is that there are no guidelines or rules that are applicable on the basis of which the Special Court can pass appropriate orders.”*

*“9. Keeping the hiatus in mind, we are of the opinion, after hearing the learned counsel for the parties as well as the learned Additional Solicitor General, that NALSA’s Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules are finalised by the Central Government.”*

*“10. The Special Judge will, of course, take the provisions of the POCSO Act into consideration as well as any circumstances that are special to the victim while passing an appropriate order.*

*“11. We need not emphasise that the legislation is gender neutral and, therefore, the guidelines will be applicable to all children.”*

(emphasis supplied )

Approving the NALSA Scheme 2018 for women victims in the above order, the Hon’ble Supreme Court further directed that the said scheme would be operational from 02.10.2018.

11. Subsequently, the DVC Scheme 2018 came to be framed on 27.06.2019 and was brought into retrospective operation w.e.f. 02.10.2018, i.e. the same date on which the NALSA Scheme for women victims was made operational by the Hon'ble Supreme Court. The relevant portions of the DVC Scheme 2018 are extracted below for ease of reference.

**DVC Scheme 2018 : Part-I**

*“Part-I*

2. DEFINITIONS — (1) *In this Scheme, in Part-I, unless the context otherwise requires:-*

...

(g) *"Offence" means any of the offences mentioned in the Indian Penal Code, 1860 (45 of 1860) or in any other law for the time being in force;*

\* \* \* \* \*

(k) *"Victim" means a person who has suffered loss or injury as a result of the offence and in the case of his death, the expression 'victim' shall mean to include his or her guardian or legal heir;*

\* \* \* \* \*

3. VICTIMS COMPENSATION FUND — (1) *There shall be a Fund, namely, the Victims Compensation Fund, from which the amount of compensation, as decided by the Delhi State Legal Services Authority or District Legal Services Authority, shall be paid to the victims or their dependent(s) who have suffered loss or injury as a result of an offence and who require rehabilitation.*

(2) *The 'Victims Compensation Fund' shall comprise the following:-*

(a) Budgetary allocation in the shape of Grants-in-aid to DSLSA for which necessary provision shall be made in the Annual Budget by the Government;

(b) Receipt of amount of fines imposed (under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974) and ordered to be deposited by the courts in the Victims Compensation Fund.

(c) Amount of compensation recovered from the wrongdoer/accused under clause 14 of the Scheme;

(d) Amount of compensation returned by the person receiving the compensation as per Form 'II' if any;

(e) Donations/contributions from International/National/Philanthropist/Charitable Institutions/Organizations and individuals.

(f) Contributions received from Companies under Section 135 of the Companies Act, 2013.

(3) The said Fund shall be operated by the Delhi State Legal Services Authority (DSLSA).”

4. ELIGIBILITY FOR COMPENSATION — The victim or his/her dependent(s), as the case may be, shall be eligible for the grant of compensation after satisfying the criteria that he/she should not have been compensated for the loss or injury under any other scheme of the Central Government or the Government: ...”

13. 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 the, interim relief so granted shall not be more than Rs.50,000/- (Rupees Fifty thousand) in any case except in cases of extreme hardship and gravity of the offence where an order may be passed for the reasons to be recorded in writing:

\* Provided further that in cases of acid attack a sum of Rs. One lakh shall be paid to the victim within fifteen 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 seven days of the matter being brought its notice and the DSLSA shall pay the compensation within eight days of passing of order. Thereafter an additional sum of Rs.two lakhs shall be awarded and paid to the victim as expeditiously as. possible and positively within two months.”

## **DVC Scheme 2018 : Part-II**

### **“Part-II**

*This part shall be called “Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes”*

\* \* \* \* \*

### **2. DEFINITIONS -**

1) In this Part, unless the context otherwise requires:—

...

(g) 'Women Victim Compensation Fund' — means a fund segregated for disbursement for women victim, out of State Victim Compensation Fund and Central Fund.

Within the State Victim Compensation Fund, a separate Bank Account shall be maintained as a portion of that larger fund which shall contain the funds contributed under CVCF Scheme by MHA, GOI contributed from Nirbhaya Fund apart from funds received from the State Victim Compensation Fund which shall be utilised only for victims covered under this Chapter

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(i) 'Injury' means any harm caused to body or mind of a female.

(j) 'Minor' means a girl child who has not completed the age of 18 years.

\* \* \* \* \*

(p) 'Woman Victim/ victim of other crime' means a woman who has suffered physical or mental injury as a result of any offence mentioned in the attached Schedule including Sections 304 B, Section 326A, Section 498A IPC (in case of physical injury of the nature specified in the schedule) including the attempts and abetment.

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### 3. WOMEN VICTIMS COMPENSATION FUND—

(1) There shall be a Fund, namely, the Women Victims Compensation Fund from which the amount of compensation, as decided by the Delhi State Legal Services Authority or District Legal Services Authority, shall be paid to the women victim or her dependent (s) who have suffered loss or injury as a result of an offence and who require rehabilitation.

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### 4. ELIGIBILITY FOR COMPENSATION -

A woman victim or her dependent (s) as the case may be, shall be eligible for grant of compensation from multiple schemes applicable to her. However, the compensation received by her in the other schemes with regard to Section 357-B Cr.P.C., shall be taken into account while deciding the quantum in the such subsequent application.

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### 7. RELIEFS THAT MAY BE AWARDED BY THE STATE OR DISTRICT LEGAL SERVICES AUTHORITY. -

The DSLSA or DLSA may award compensation to the victim or her dependents to the extent as 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.*

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#### **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)

12. It is extremely important to point-out that the above-quoted Note appearing at the end of Part-II of the DVC Scheme 2018 is in **complete contradiction** to Explanation appended to the end of the NALSA Scheme 2018 relating to compensation for women victims, which Explanation reads as follows :

*“Explanation: It is clarified that this **Chapter does not apply to minor victims under POCSO Act, 2012** in so far as their compensation issues are to be dealt with only by the Ld. Special Courts under Section 33(8) of POCSO Act, 2012 and Rules (7) of the POCSO Rules, 2012.”*

(emphasis supplied)

13. Accordingly, as of date, the issues raised by way of the present petition are covered by section 357A of the Cr.P.C., section 33(8) of the POCSO Act read with Rule 9 of the 2020 Rules, the DVC Scheme and the mandate of the Hon’ble Supreme Court in *Nipun Saxena* (supra).

### **Factual backdrop**

14. In the backdrop of the above-referred statutory landscape, it is argued that the petitioner moved an application dated 07.01.2020 before the learned ASJ under section 33(8) of the POCSO Act read with Rule 7(2)(3) of the 2012 Rules (as were applicable at that time) seeking interim compensation in accordance with the DVC Scheme 2018. It is submitted that all requisite details of the financial status, family income, gravity of the offence, physical and psychological impact and personal harm resulting from the offence were set-out in this

application as required. Through the Investigating Officer, the State filed reply dated 10.02.2020 to this application.

15. Subsequently a second application dated 25.02.2020 was also filed before the learned ASJ seeking compensation; to which the Investigating Officer filed another reply dated 27.07.2020. It is pointed-out that the second application came to be filed since the learned ASJ had not decided the question of interim compensation despite the first application having been moved; but in any case even in the first application the petitioner had furnished all required factual information as per the parameters set-out in Form-B, viz. the Preliminary Assessment Report, that are required to be filed by the police under the 2020 Rules. Attention of this court is drawn to the fact that in replies dated 10.02.2020 and 27.07.2020 the petitioner's difficult family situation was verified and confirmed by the Investigating Officer. In fact, in reply dated 27.07.2020 the Investigating Officer had this to say:

*“Hon’ble court also directed to file the status report regarding financial condition of Victim and his family. In this regard, it is submitted that on enquiry, it came to know the financial condition of victim family is very poor. In the family, Mumtaz (mother of Victim) w/o Hilala Sheikh R/o H. N. 1064, Ward No.07, Mehrauli is only doing a job of house cleanliness and earning Rs.6,000/- per month and residing in rented accommodation and paying rent Rs.3,000/- per month. Hilal Sheikh (Father of Victim) has not been working since 2-3 years due to health problem.”*

(emphasis supplied)

16. *Vidé* its report dated 05.03.2020 given in the matter, the Child Welfare Committee ('CWC') that assessed the situation of the minor said this:

*“CSJ has been appointed as Support Person. Report from CSJ is still awaited. The child is traumatized and has gone into a shell and barely interacts with anyone with obvious trust issues and constant feeling of helpness (sic). The child needs counselling by psychologist.*

\* \* \* \* \*

*— Director, IHBAS is directed to examine the case of the child and provide psycho/counseling treatment. The child may be admitted in IHBAS if required.*

\* \* \* \* \*

*BBA is further requested to submit the status of release of victim compensation.”*

(emphasis supplied)

The above report of the CWC is also extracted in the impugned order.

17. Attention of the court is further drawn to the petitioner's statement recorded under section 164 Cr.P.C., in which, after observing that she was satisfied that the minor was making his statement voluntarily without any pressure or influence of any kind, the learned Metropolitan Magistrate records the responses of child which *prima facie*, and subject of course to being tested during trial, confirm the very serious nature of allegations that the minor has made against his uncle, who he colloquially calls 'jamai' while identifying him by name.



18. Counsel for petitioner has further drawn attention of this court to the following judicial pronouncements whereby Co-ordinate and Larger Benches of other High Courts have awarded compensation to minor victims of crime, which it is submitted, is commensurate to the offence committed, unlike in the present case. A brief reference to the decision of other courts may be made at this point:

- (i) In ***Lalsuonglien & Others vs. State of Manipur***<sup>3</sup>, which was a case of sodomy committed on five minor boys, relying on the verdict of the Hon'ble Supreme Court in *Nipun Saxena* (supra) and the NALSA Scheme 2018, a Co-ordinate Bench of the Hon'ble High Court of Manipur awarded interim compensation in the sum of Rs. 7 lacs to *each of the victims* in 2019.
- (ii) By order dated 01.08.2019 in ***Re: Alarming Rise in the Number of Reported Child Rape Incidents***<sup>4</sup>, in what came to be referred to as the Unnao Rape case, the Hon'ble Supreme Court granted Rs. 25 lacs by way of interim compensation to some of the victims.
- (iii) *Vidé* judgment dated 21.03.2016 in ***The Minor through Guardian Zareen vs. State (Govt. of NCT of Delhi)***<sup>5</sup>, which was a case of brutal sexual assault on a 13-year old boy, a Division Bench of this court enhanced the compensation awarded by the

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<sup>3</sup> 2019 SCC OnLine Mani 164

<sup>4</sup> Order dated 01.08.2019 in Suo Moto Writ Petition (Criminal) No.1/2019

<sup>5</sup> Judgment dated 21.03.2016 in W.P. (Crl.) No.798/2015

Juvenile Justice Board under section 357A of the Cr.P.C. from Rs. 50,000/- to Rs. 3,00,000 with the following reasoning:

*“11. Ms. Kapur, points out that initially, when the writ petition was filed, a direction was sought to the respondent to declare the schedule of Delhi Victims Compensation Scheme 2011 as far as it related to victims of child abuse and assault as unconstitutional. A direction was also sought to reformulate the scheme with an enhanced and more rational scheme of compensation. During the pendency of this writ petition, the Delhi Victims Compensation Scheme 2011 was replaced with the Delhi Victims Compensation Scheme 2015.*

*“12. Be that as it may at this stage counsel for the petitioner and counsel for the State are in agreement that the scheme would not be applicable with respect to cases under The Protection of Children from Sexual Offences Act, 2012 (POCSO Act – hereinafter referred to as ‘Act’). However, Ms. Kapur, learned counsel for the petitioner submits that necessity of approaching this court has arisen for the reason that the Special Court while deciding the question of compensation, has relied upon terms of the Delhi Victims Compensation Scheme 2011 and granted Rs.50,000/- as compensation as according to the Special Court, this was the maximum amount which could have been awarded as per Delhi Victims Compensation Scheme 2011.*

\* \* \* \* \*

*“14. We have heard the counsel for the parties. Two questions arise for consideration before this Court. First, whether there was any restriction upon the trial court while granting compensation to the petitioner. The second question is whether adequate compensation has been granted in the facts of the present case.*

*“15. In the present case, in our view, the learned trial court has wrongly relied upon the Delhi Victims Compensation Scheme, 2011, and granted only Rs.50,000/- to the victim.”*

\* \* \* \* \*

“19. Reading of Section 357(A) of the Code of Criminal Procedure would show that the legislature in its wisdom has referred to a victim or its dependants who has suffered a loss or injury as a result of crime and who require rehabilitation.

“20. The definition under Section 357(A) is very wide and would in fact even cover cases which are covered under The Protection of Children from Sexual Offences Act, 2012 but then the reading of Section 33 of the Act would show that the power has been given to the Special Court to grant compensation and **there is no outer limit which has been fixed while granting the compensation.**”

\* \* \* \* \*

“22. During the pendency of this writ petition, we had directed the petitioner to file a subsequent affidavit which would enable the court to ascertain the loss suffered by the victim and to enable the court to grant compensation. Rule 7 of POCSO Rules provides the factors which are to be taken into consideration while awarding the compensation. Rule 7 has been reproduced hereinabove. **One of the prime factor to be considered is the gravity of the offence.** In this case, the gravity of the offence can be ascertained from the fact that the victim was 13 years of age at the time when the offence took place. He was studying in Class-9. He was called outside the classroom by force by 4 students of Class – 9, 11 and 12 who abducted the boy, took him to a jungle and thereafter attacked him and he was brutally sexually assaulted and penetrating with a stick. The petitioner not only suffered physically but also mentally. He was forced to change his school and his family was also traumatised.

“23. In view of the facts and circumstances of the present case, compensation granted to the victim is enhanced to Rs. 3,00,000/- (total). The petition stands disposed of.”

(emphasis supplied)

(iv) Following the mandate of the Hon'ble Supreme Court in *Nipun Saxena* (supra), *vidé* judgment dated 06.03.2020, a Co-ordinate Bench of this court in *Mother Minor Victim No.1 & 2 vs. State & Ors.*<sup>6</sup> has held that *since no special scheme for awarding compensation to victims under the POCSO Act has been framed*, the NALSA Scheme 2018 is required to serve as a guideline for award of compensation to victims of offences under the POCSO Act.

19. Responding on behalf of the the State (Government of NCT of Delhi), Ms. Nandita Rao, learned Additional Standing Counsel (Criminal) agrees that the DVC Scheme 2018 is *not binding* on the learned ASJ, especially in view of the settled judicial view taken on the issue by a Division Bench of our own High Court in *The Minor through Guardian Zareen* (supra). However, Ms. Rao argues that in the present case, no basis was provided in the application under section 33(8) of the POCSO Act for calculating the compensation to be paid, which is why the learned ASJ has awarded the minimum threshold amount of Rs.50,000/- provided under the DVC Scheme 2018. Furthermore, it is submitted that in clause 11(2) of Part II of the DVC Scheme 2018 it is stipulated that in case of a minor, 80% of the compensation awarded is to be deposited in a fixed deposit account, which amount can be drawn only after the victim attains majority; and in any case not before 03 years of the deposit, except in exceptional cases for educational or medical or other pressing needs of the

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<sup>6</sup> Judgement dated 06.03.2020 in W.P. (Crl.) 3244/2019

beneficiary, at the discretion of the DSLSA. Counsel accordingly argues that even if a higher amount had been awarded to the petitioner, it would not have been available to him for the purposes cited in the application.

20. Mr. Sumeet Chaudhary, learned counsel appearing on behalf of respondent No.3/DSLISA has adopted the arguments made by Ms. Rao; and agrees that the learned ASJ is not bound by the DVC Scheme 2018.
21. In so far as respondent No.2/accused is concerned, Mr. Zeeshan Hashmi, learned counsel appearing on his behalf submits that respondent No.2 has nothing to say in the matter since it is the conceded position that compensation payable to the victim, at least at the interim stage, is not to be recovered from the accused.
22. Contradicting the submissions made on behalf of the State, Ms. Kaur points-out that in application dated 25.02.2020 filed under section 33(8) of the POCSO Act claiming interim compensation, the petitioner had in fact set-out, item-wise, all required information as envisaged in Rule 7 of Rules 2012 (as was then applicable); which information was substantially also contained in the earlier application dated 07.01.2020 filed under section 33(8). Counsel emphasises that in fact in CWC report dated 05.03.2020, as also in replies dated 10.02.2020 and 27.07.2020 filed by the Investigating Officer, the petitioner's impecunious circumstances and traumatic condition stand confirmed. Ms. Kaur submits that a perusal of the record would also

leave no manner of doubt as to the heinousness of the offence to which the petitioner was subject.

### **Discussion and Conclusions**

23. This court has given its anxious consideration to the matter and the submissions made on behalf of the parties. Upon a conspectus of the foregoing statutory framework, the position that emerges in relation to a *minor who is victim of crime* is the following :

- (a) While section 357 of the Cr.P.C. provides for payment of ‘compensation’ to a victim from out of the ‘fine’ imposed by a court as part of the sentence awarded to a convict, section 357A of the Cr.P.C. contemplates payment of compensation to a victim under a Victim Compensation Scheme that is required to be formulated by every State Government in co-ordination with the Central Government.;
- (b) Compensation under section 357A Cr.P.C. is to be paid, principally in two ways : *one*, on the recommendation of a court under section 357A(2) or section 357A(3) of the Cr.P.C; and *two*, on an application made by a victim under section 357A(4) Cr.P.C. to the State or District Legal Services Authority for award of compensation;
- (c) In a case involving crime against a *minor, regardless of gender*, section 33(8) of the POCSO Act provides for payment of *compensation* to the *victim*. The word ‘compensation’ has not been defined in the Cr.P.C. nor in the POCSO Act nor in the POCSO Rules nor in the DVC Scheme. However, whatever

connotation is attached to the word ‘compensation’ would also attach to the phrase ‘interim compensation’, which would mean compensation paid at the interim stage of the proceedings in a given matter ;

- (d) The word ‘victim’ has been defined in section 2(wa) Cr.P.C. to include the guardian or legal heir of the victim; but section 357A Cr.P.C. contemplates the filing of an application by a victim or his dependants;
- (e) In addition to section 33(8) of the POCSO Act, w.e.f. from 09.03.2020, Rule 9 of 2020 Rules also applies to payment of compensation;
- (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);
- (g) Rule 9 of the 2020 Rules empowers a court to *award interim compensation* in appropriate cases, on its own or on an application filed by a victim, to meet the immediate needs or for relief or rehabilitation, at any stage after registration of the FIR;

which interim compensation is to be adjusted against the final compensation awarded;

- (h) Furthermore under Rule 9(2), the court, on its own or on an application filed by the victim, is also empowered to *recommend* the award of compensation, whether the accused is convicted or even acquitted or discharged or remains untraced or unidentified, if in the opinion of the court, the victim has suffered loss or injury as a result of the offence;
- (i) Although the DVC Scheme 2018 and the NALSA Scheme 2018 are in *pari materia*, there is a critical difference between the said two schemes insofar as their applicability to minors is concerned. While the Explanation appended to Part II of the NALSA Scheme 2018 reads as under:

*“Explanation: It is clarified that this Chapter **does not apply to minor victims under POCSO Act, 2012** in so far as their compensation issues are to be dealt with only by the Ld. Special Courts under Section 33(8) of POCSO Act, 2012 and Rules (7) of the POCSO Rules, 2012.”*

(emphasis supplied)

But, quite contrarily, the Note appended to Part II of the DVC Scheme 2018 reads as follows:

*“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.**

- (j) Although, a contrary observation appears in judgment dated 06.03.2020 of a Co-ordinate Bench of this court in *Mother Minor Victim No 1 and 2* (supra) to the effect that no special scheme has been framed for awarding compensation to victims under the POCSO Act and therefore the NALSA Scheme would serve as a guideline for the purpose, it would appear that the Co-ordinate Bench was not apprised that for the State of Delhi there already exists a DVC Scheme 2018 and that the Note appended to Part II thereof, as extracted above, *specifically says* that that part of the DVC Scheme 2018 would function as a guideline for award of compensation to victims of child sexual abuse under the POCSO Act. While the observations of the Hon'ble Supreme Court in *Nipun Saxena* (supra) were evidently made in relation to the entire country, and all States of the country may not have a scheme/guidelines for award of compensation to victims under the POCSO Act, at least insofar as the State of Delhi is

concerned, the DVC Scheme 2018 was framed and notified on 27.06.2019 and made applicable with retrospective effect from 02.10.2018. One must hasten to add that *as of now* the DVC Scheme 2018 is *almost* similar to the NALSA Scheme 2018, by reason of which, in substance it makes no difference whether a court in Delhi applies the DVC Scheme 2018 or the NALSA Scheme 2018 as a guideline for award of compensation to a victim under the POCSO Act; however, for obvious reasons it would be appropriate for a court in Delhi to refer to DVC Scheme 2018 and not the NALSA Scheme 2018, since the DVC Scheme 2018 may be modified from time-to-time and may not always be *in pari materia* with the NALSA Scheme 2018. Also in *Nipun Saxena* (supra) the Hon'ble Supreme Court has specifically said that the NALSA Scheme would apply only until rules/guidelines are framed in that behalf by a State/Central Government.

- (k) There appears to be some dissonance and confusion insofar as the use of the words 'recommendation', 'order' and 'direction' is concerned, in that sections 357A(2) and (3) Cr.P.C., Clause 9(1)(Part-II) of the DVC 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.

- (1) 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.

24. In the above view of the matter, in the opinion of this court, the learned ASJ was *not bound* by the DVC Scheme 2018, which scheme including the maximum and minimum compensation envisaged in the schedule thereto, would at best serve as ‘guidelines’ for assessment of compensation payable to the petitioner. Considering that the petitioner was subject to the offence of ‘Unnatural Sexual Assault’, for which the Schedule to Part II sets-down the minimum limit of compensation as Rs. 4 lacs and the upper limit of compensation as Rs. 7 lacs. Since the petitioner is a ‘minor’ for whom Clause 9 (Part-II) of the DVC Scheme 2018 says that the minimum and maximum limits of compensation would be deemed to be 50% higher than those mentioned in the Schedule, in the petitioner’s case the minimum and maximum limits would stand enhanced from Rs. 4 lacs to Rs. 6 lacs and from Rs. 7 lacs to Rs. 10.5 lacs respectively. To reiterate, these limits on the amount of compensation payable would be binding upon the DLSA/DSLISA but not upon the court. It may be noted that Clause 9(3) (Part II) of the DVC Scheme 2018 even grants discretion to the DLSA/DSLISA to say that “ ... However, in deserving cases, for reasons to be recorded, the upper limit may be exceeded.”

25. Furthermore, the Second Proviso to Clause 12 (Part-II) of the DVC Scheme 2018 says that the *interim relief* granted to a victim *shall not be less than 25% of the maximum compensation awardable as per the Schedule* and that such compensation *shall be paid to the victim in totality*. Clearly therefore, if the petitioner was to approach the DLSA/DSLISA seeking interim compensation, in accordance with the DVC Scheme 2018, the DLSA/DSLISA would be bound to award to the petitioner the sum of Rs. 2,62,500/- *i.e.* 25% of Rs. 10.5 lacs. It needs no jurisprudential justification to say therefore, that the court must bear this amount in mind as a benchmark while assessing the interim compensation payable to the petitioner.
26. Insofar as the factors to be considered for quantifying interim compensation are concerned, these would be the same as those for assessing compensation as indicated in Rule 9(3) of the 2020 Rules which are *in pari materia* with Clause 8 (Part II) of the DVC Scheme 2018. Of course, the factors set-out in the said Rule and Clause are not exhaustive and the court is required to “*take into account all relevant factors relating to the loss or injury caused to the victim*”.
27. A reading of the petitioner’s statement recorded under section 164 Cr.P.C on 09.12.2019 and report dated 05.03.2020 of the CWC show that *as per the allegations*, the petitioner was subject to repeated aggravated, unnatural, penetrative and oral sexual assault of different types and was also threatened with a knife on his neck, apart from being physically assaulted. The CWC has appointed a support person

for the petitioner and has recorded in its report that the petitioner is traumatised; that he has gone into a shell and hardly interacts with anyone; and that he is suffering from trust issues and the constant feeling of helplessness. The CWC has opined that the petitioner needs psychological counselling and has referred him to the Director, IHBAS, to examine the case and provide psychological counselling and treatment; and if required, even admit the petitioner to the institution. In replies dated 10.02.2020 and 27.07.2020 filed to the compensation applications, the Investigating Officer has verified and confirmed the petitioner's impecunious circumstances, whereby a family of 04 members is surviving on the income only of the mother, who makes about Rs. 6,000/- per month by working as a part-time housemaid cleaning utensils etc., of which a sum of Rs.3,000/- per month goes towards payment of rent; and that the petitioner's father has not been working for the last 2-3 years due to health problems.

28. From the petitioner's application dated 25.02.2020 seeking compensation, it can be gathered that the accused is the petitioner's uncle, who is alleged to have subjected the petitioner to the offences as detailed above, apart from having suffered the brutal, physical offences in what should have been the 'safety' of his own home, it is *not just likely but certain* that the petitioner, being only a 6-year old child, has suffered extreme psychological trauma, mental agony and post-traumatic stress. It is further stated in the application for compensation that the petitioner is also physically disabled in that he is missing the proximal and distal phalanx of fourth and fifth fingers

of his left hand. It is further stated in the application that the child is now even afraid to attend school and his parents are scared of sending him there, by reason of which he is at present abstaining from school and his education is suffering.

29. Although, the learned ASJ does not give any specific basis for assessing interim compensation at Rs. 50,000/-; she also does not say that the said sum is in accordance with the First Proviso to Clause 13 (Part I) of the DVC Scheme 2018; nor does the learned ASJ say that she is bound by the DVC Scheme 2018, regardless of that and in view of the foregoing discussion, the sum of Rs. 50,000/- awarded as interim compensation is low, to say the least. The learned ASJ segregates the heads under which interim compensation is assessed in two parts. *One*, for medical treatment, in relation to which the learned ASJ says that since the CWC has already issued directions to IHBAS for physiological counselling of the petitioner, no further directions are required from the court at this stage; and that if the petitioner requires medical intervention which cannot be provided free of cost by IHBAS or some other medical institution, a prayer for grant of interim compensation for medical intervention may be made before the court. *Two*, the learned ASJ assesses the interim compensation payable for the petitioner's education; and holds that since the petitioner would be attending primary school, Rs. 50,000/- is an appropriate amount to take care of the probable amount that would be required for imparting education in primary school.

30. Before proceeding further, it would benefit at this point, to understand the legal concept of ‘compensation’ and thereby of ‘interim compensation’ by referring to the words of the Hon’ble Supreme Court in *Yadava Kumar vs. National Insurance Co. Ltd. & Anr.*<sup>7</sup> where, in the context of a motor accident claim, the Hon’ble Supreme Court has very pithily explained the concept of ‘compensation’ in the following words:

*“17. The High Court and the Tribunal must realise that there is a distinction between compensation and damages. The expression compensation may include a claim for damages but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation.”*

(emphasis supplied)

Accordingly, while attempting to quantify the compensation payable to the petitioner even at the interim stage, the effort of this court should be to offer monetary recompense, to the extent possible, for atonement of the crime to which the petitioner was subject; the physical and mental trauma suffered by him; and the emotional scar left on his psyche.

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<sup>7</sup> (2010) 10 SCC 341



31. It is not hard to see that apart from the actual expenses that would be incurred for the petitioner's psychological counselling and treatment at a specialised institution like IHBAS, as recommended by the CWC in its report, it would also be necessary to put money in the hands of the petitioner's family, to arrange for the petitioner to safely attend the school he was attending earlier or some other school and to cater to his educational needs. The petitioner's mother would need to spend more time with him to give the petitioner emotional security, since he was assaulted by a relative in his own home; by reason of which she may not be able to go to work.
32. *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.*
33. Accordingly, upon an overall appreciation of the facts and circumstances of the case and the legal framework within which it is to be decided, order dated 19.08.2020 made by the learned ASJ in case CIS SC No. 66/2020 arising from F.I.R. No. 645/2019 registered at P.S.: Mehrauli, is set-aside; and the Delhi State Legal Services Authority is directed to disburse and pay to the petitioner *interim compensation* in the sum of Rs. 6,00,000/- (Rs. Six Lacs Only), forthwith and in any event within 04 weeks of receipt of this order. Of the said sum, Rs. 1,00,000/- (Rs. One Lac Only) shall be paid by the DSLSA by way of electronic remittance into a savings bank account held or to be opened (with DSLSA's assistance) in the petitioner's

name *jointly* with his mother, in a nationalised bank; and the remaining Rs. 5,00,000/- (Rs. Five Lacs Only) shall be deposited by the DSLSA by way of a fixed deposit in the petitioner's name with his mother as joint holder, in a nationalised bank, initially for a period of 5 (five) years with a provision for automatic renewal for another period of 5 (five) years, with a further provision of automatic renewal for a period of 2 (two) years. The interest earned on such fixed deposit shall be credited to the petitioner's savings bank account, on a monthly basis. The money in the savings bank account shall be available for withdrawal and use by the petitioner through his mother; but the petitioner or his mother shall *not* be permitted to break or prematurely encash the fixed deposit(s) made, without prior permission of this court. It is clarified that the provision for creation of fixed deposit, of automatic renewals and non-encashment has been made to prevent misapplication, mis-utilisation and frittering-away of the compensation amount meant for the minor petitioner by other members of the family; and to ensure that the money is secure till the petitioner attains the age of 18 years, whereafter the petitioner shall be entitled to use the money as he may decide.

34. It is further directed that the petitioner's mother shall use and apply the aforesaid sum of Rs. 100,000/- as also the interest received from the fixed deposit created in the petitioner's name, *only for the benefit and welfare* of the petitioner, towards his medical, educational, rehabilitation and other needs and requirement from time-to-time, and not for any other purpose. If the mother wishes to use the money for any other purpose, she may seek prior leave of this court. In the

unfortunate event of the petitioner's mother passing-away before the petitioner attains majority, the surviving guardian shall be at liberty to approach the court for the directions to secure the interests and welfare of the minor.

35. By way of abundant clarification, the interim compensation hereby awarded shall be subject to adjustment against the final compensation awarded by the learned learned ASJ upon conclusion of the trial.
36. The writ petition is disposed of in the above terms.
37. Pending applications, if any, also stand disposed of.
38. A copy of this order be communicated to counsel for the parties and also to the Secretary, DSLSA within 02 days from today, for information and compliance.

**ANUP JAIRAM BHAMBHANI, J.**

**13th May, 2021**  
Ne/uj/ds