

COURT OF DISTRICT JUDGE, BHOPAL

REGULAR CIVIL SUIT NO. 1113/86

UNION OF INDIA

(Plaintiff)

Versus

UNION CARBIDE CORPORATION

(Defendant)

SUIT FOR DAMAGES

The plaintiff abovenamed states as follows:

1. The plaintiff is represented in this suit by the Joint Secretary to the Government of India, Department of Chemicals & Petrochemicals and the address of the plaintiff for service of all notices and processes is that of its Advocate, Shri R.C. Agrawal, E-5/94, Mahaveer Nagar, Bhopal-462014.

2. The defendant is the Union Carbide Corporation, a corporation incorporated under the appropriate laws of the State of New York in the United States of America having its principal office in the State of Connecticut and also having an office and place of business at 270, Park Avenue, N.Y., New York, 10017, U.S.A.

3. The defendant, Union Carbide corporation (hereinafter referred to as 'Union Carbide') is a multinational Corporation and has diverse and extensive international operations in India, Canada, West Asia, the Far East, Africa, Latin America, Europe and other countries which account for approximately one-third of its total sales, and it ranks among the largest industrial companies in the world.

4. This case arises out of a terrible industrial disaster which took place in the city of Bhopal. On December 2-3, 1984, there was a massive escape of lethal gas from MIC storage tank at the Bhopal plant into the atmosphere, causing death and destruction to the innocent and helpless persons in the city of Bhopal and the adjacent country-side, and causing widespread pollution to its environs in the worst industrial disaster mankind has ever known.

5. It is the duty of the Union of India under the Constitution to endeavour to improve the public health and welfare of its citizens. The Constitution of India in the preamble and in Part IV (Directive Principles of State Policy) provides, inter-alia, that the Union of India shall strive to promote the health and welfare of and to secure justice for all its citizens. The Constitution further states that the Union of India shall provide free legal aid, by suitable legislation or in any other manner, to insure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Constitution further

provides that the Union of India shall protect and improve the natural environment including the forests, lakes and wildlife, of the republic.

6. The Parliament of India passed an Act entitled the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, (hereinafter referred to as the Act). The Act has come into force on March 29, 1985. The Act was enacted to ensure that claims (as defined by the Act) arising out of and caused by the Bhopal Gas Leak Disaster, hereinafter referred to as 'the Bhopal disaster' are dealt with speedily, effectively and equitably. It confers upon the Union of India certain powers and duties, including the right to represent and act in place of (whether, within or outside India) every person (as defined in the Act) who has made, or is entitled to make, such a claim. The Act further provides that the government shall have due regard to any matters which such person may urge with respect to his claim and shall, if such person so desires permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim.

7. The Union of India is entitled to bring this suit on behalf of all persons, who have suffered damages by virtue of the provisions of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, which empowers and enables the Union of India to file this suit for and on behalf of the victims of Bhopal disaster and all persons who have suffered loss and damages due to deaths, injuries and other damages caused by the Bhopal disaster.

8. Additionally, or in the alternative, the plaintiff Union of India—

(a) Brings this action as *parens patriae* by virtue of its interest and duty to secure the health and well-being, both physical and economic, of all victims of the disaster (including future generations of victims) almost all of whom are physically and/or financially or otherwise incapable of individually litigating their claims against the defendant, a monolithic, multi-national corporation;

(b) Further acts as *parens patriae* by virtue of its interest and duty to protect, preserve and restore the earth, air, waters and economy of the republic;

(c) Further acts as *parens patriae* in exercise of its rights and duties under the said Act;

(d) The Union of India is filing this suit as *parens patriae* for all persons to recover for them damages for any and all claims in respect of deaths, personal injuries to individuals, loss of property including death of and injury to animals owned by individuals, business loss, damage to environment and other losses, present and future, arising from the Bhopal disaster.

9. The Union of India also files this suit to recover damages for expenditures incurred and to be incurred by it and by the government of Madhya Pradesh and/or by instrumentalities of the state for aid and relief, arising from and caused by the Bhopal disaster, but not limited to, *ex-gratia* payments for death and injuries together with medical treatment, rehabilitation and food for the injured.

10. At all material times, defendant Union Carbide designed, constructed, owned, operated, managed and controlled a chemical plant in the city of Bhopal in the State of Madhya Pradesh through its subsidiary Union Carbide India Limited.

11. At all material times, defendant Union Carbide manufactured, processed, handled and stored at its Bhopal plant, methyl isocyanate (hereinafter 'MIC'),

a chemical used in the manufacture of agricultural pesticides produced and marketed by Union Carbide.

12. At all material times, defendant Union Carbide knew or should have known that MIC is an extraordinarily reactive, toxic, volatile, flammable and ultrahazardous chemical; that MIC is one of the most dangerous substances known to man; that MIC is easily contaminated and reacts to certain contaminants with explosive/violence and speed; that exposure to even small concentrations of MIC poses an immediate danger to living beings and the environment; and that human exposure to MIC is known to cause, among other things, death, serious respiratory impairment and eye and skin damage.

13. At all material times, defendant Union Carbide knew or should have known that the long-term effects of human exposure to MIC could lead to genetic and carcinogenic consequences.

14. With such knowledge, defendant Union Carbide undertook to design, construct, operate, manage and control a plant which would be safe for the production, handling, storage and processing of MIC in the city of Bhopal. The design included, by way of example and not limitation, the following :

- a. Process flow diagrams;
- b. Process and instrument diagrams;
- c. Performance specifications and materials of construction of all major and minor equipments;
- d. Performance specifications of control systems, control schemes and materials;
- e. Valve piping and materials of construction specifications;
- f. Design criteria and sketches of Union Carbide's Proprietary Equipment;
- g. Typical equipment arrangements and unit layout; and
- h. Description of special analytical instrumentation and laboratory quality control equipment.

15. Defendant Union Carbide warranted that the design was based upon the best manufacturing information available and that the drawings and design instructions were sufficiently detailed and complete so as to enable competent technical personnel to detail design, erect, commission and operate the Bhopal plant.

16. Defendant Union Carbide trained technical personnel for its Bhopal plant at its production facilities in the United States, including Institute, West Virginia. In addition, defendant Union Carbide supervised the Bhopal plant with personnel from its United States facilities.

17. Defendant Union Carbide represented to plaintiff that it was a pioneer in pesticide research and development with extensive research facilities and trained and experienced personnel. Defendant Union Carbide further represented to plaintiff that it would provide the Bhopal plant with the best and most up-to-date technical data and information in its possession for manufacturing, processing, handling and storage of MIC and that it would continually update this information.

18. Multinational corporations by virtue of their global purpose, structure, organization, technology, finances and resources have it within their power to make decisions and take actions that can result in industrial disasters of catastrophic

proportion and magnitude. This is particularly true with respect to those activities of the multinationals which are ultrahazardous or inherently dangerous.

19. Key management personnel of multinationals exercise a closely-held power which is neither restricted by national boundaries nor effectively controlled by international law. The complex corporate structure of the multinationals, with networks of subsidiaries and divisions, makes it exceedingly difficult or even impossible to pinpoint responsibility for the damage caused by the enterprise to distinct corporate units or individuals. In reality there is but one entity, the monolithic multinational, which is responsible for the design development and dissemination of information and technology worldwide, acting through a neatly designed network of interlocking directors, common operating systems, global distribution and marketing systems, financial and other controls. In this manner, the multinational carries out its global purpose through thousands of daily actions, by a multitude of employees and agents. Persons harmed by the acts of multinational corporation are in a position to isolate which unit of the enterprise caused the harm, yet it is evident that the multinational enterprise that caused the harm is liable for such harm. The defendant multinational corporation has to bear this responsibility for it alone had at all material times the means to know and guard against hazards likely to be caused by the operation of the said plant, designed and installed or caused to be installed by it and to provide warnings of potential hazards. The inherent duty of the defendant multinational corporation is to exercise reasonable and effective means to promote safety and assure that information is shared with all sectors of its organization and with the authorities in the country in which it operates. It had at all material times, the duty to keep itself informed and know and in any event should have with the use of normal care and prudence known the possibility and emergence of hazards and dangers likely to be caused by the operation of the said plant.

20. The defendant, a multinational corporation operating the said plant at Bhopal had at all material times, an absolute and non-delegable duty to ensure that the said hazardous plant did not cause any danger or damage to the people and the State by the operation of the ultrahazardous and dangerous activity at the said plant. This included a duty to provide that all ultrahazardous or inherently dangerous activities be conducted with the required standards of safety and to provide all necessary safeguards, information and warnings concerning the activity involved.

21. The defendant was in breach of this primary, absolute and non-delegable duty by the undertaking of an ultrahazardous and inherently dangerous activity causing widespread risks at its plant in Bhopal, and the resultant escape of lethal gas from MIC storage tank at the plant, which it should have foreseen and prevented. Defendant Union Carbide further failed to provide the required standard of safety at its Bhopal plant and failed to inform the Union of India and its people of the dangers therein. Defendant Union Carbide is primarily and absolutely liable for any and all the damages caused or contributed to by the escape of lethal gas from MIC storage tank at the Bhopal plant, as more fully set forth in paragraphs thirty six (36) to forty two (42) of this plaint.

22. The plaintiff states that in manufacturing, processing, handling and storing MIC gas at its plant in Bhopal and in designing and putting the plant into operation,

the defendant Union Carbide engaged in an ultrahazardous and inherently dangerous activity. This activity created the clear and potential danger of death, serious injury and damage to property in the event of the escape of lethal gas from MIC storage tank into the atmosphere.

23. Defendant Union Carbide allowed lethal gas to escape from MIC storage tank at its Bhopal plant on December 2-3, 1984, exposing multitudes of innocent and helpless people in the city of Bhopal, the adjacent countryside and its environs to the deadly effects of lethal gas, thereby contaminating and polluting an extensive area.

24. Defendant Union Carbide is absolutely liable for any and all damages caused or contributed to by the escape of lethal gas from MIC storage tank at its Bhopal plant, as more fully set forth in paragraphs thirty six (36) to forty two (42) of this complaint.

25. The defendant Union Carbide was under a duty to design, construct, maintain and operate its Bhopal plant in such a manner as to prevent the escape of lethal gas from MIC storage tank at the plant and to protect persons from the highly dangerous and fatal effect thereof and to warn persons of the dangers and risks associated with the plant and its manufacturing processes and the reasonable method to meet the same. Defendant Union Carbide was in breach of this duty, and the massive escape of the lethal gas occurred as the result of unreasonable and highly dangerous and defective plant conditions which involved MIC production and storage procedures and facilities, instrumentation, safety systems, warning systems, operation and maintenance procedures, and specifically included, by way of example and not limitation, the following :

- a. Defendant Union Carbide recommended, encouraged and permitted storing MIC in dangerously large quantities.
- b. No intermediate storage facility was constructed between the production plant and the storage tanks, thus creating the potential for a contaminate to enter the storage tanks.
- c. The storage tanks were not insulated and the chilling system was defectively designed and improperly maintained.
- d. The MIC storage tanks were not equipped with dual temperature indicators to sound alarms and flash warning lights in the event of an abnormal rise in temperature.
- e. The emergency relief system was defectively designed and improperly maintained.
- f. Defendant Union Carbide failed to provide even basic information with regard to protection against or appropriate medical treatment in the event of MIC exposure.
- g. Defendant Union Carbide failed to disclose the internal safety survey of its plant in Institute, West Virginia, dated September 10, 1984, which acknowledged that a runaway reaction in MIC storage tanks could occur.
- h. Defendant Union Carbide failed to provide specifications for determining what constituted either stable or unstable MIC.

26. In creating and maintaining unreasonably dangerous and defective

conditions, defendant Union Carbide is strictly liable for any and all damages caused or contributed to by the escape of lethal gas from MIC storage tank at its plant, as more fully set forth in paragraphs thirty six (36) to forty two (42) of this plaint.

27. Defendant Union Carbide was under a duty to design, construct, maintain and operate its Bhopal plant with reasonable care so as to protect persons from unreasonable and foreseeable dangers, and to use reasonable care to warn persons of the dangers and risks associated with the plant and its manufacturing process and the mode of meeting the same. Defendant Union Carbide was in breach of duty and the massive escape of lethal gas from MIC storage tank at the Bhopal plant occurred as the proximate result of this negligence, as more fully set forth in paragraph twenty five (25) of this plaint.

28. The Bhopal plant was in defendant's control and the massive escape of lethal gas from MIC storage tank at the Bhopal plant could not have occurred but for the negligence of defendant Union Carbide in the matter of designing the said plant and prescribing the procedure for operating the same.

29. Defendant Union Carbide is liable for any and all damages caused or contributed to by the escape of lethal gas from MIC storage tank at the Bhopal plant due to its negligence, as more fully set forth in paragraphs thirty six (36) to forty two (42) of this plaint.

30. Defendant Union Carbide expressly and impliedly warranted that the design, construction, operation and maintenance of its Bhopal plant were undertaken with the best available information and skill in order to ensure safety. These warranties were untrue in that the Bhopal plant was, in fact, defective and unsafe and the technical services and information provided by defendant Union Carbide and the resulting plant operating practices were defective in numerous respects, as more fully set forth in paragraph twenty five (25) of this plaint.

31. Defendant Union Carbide is liable for any and all damages caused or contributed to by the escape of lethal gas from MIC storage tank at the Bhopal plant due to its breach of warranties, as more fully set forth in paragraphs thirty six (36) to forty two (42) of this plaint.

32. Defendant Union Carbide falsely represented to plaintiff that its Bhopal plant was designed with the best available information and skill and that the operation of its Bhopal plant would be maintained with current and up-to-date knowledge. Defendant Union Carbide knew that these representations were false or asserted these representations without knowledge of their truth or falsity, and intended the plaintiff to act thereon. Plaintiff reasonably and justifiably relied upon these representations to its detriment.

33. Defendant Union Carbide is liable for any and all damages caused or contributed to by the escape of lethal gas from MIC storage tank at the Bhopal plant due to its misrepresentation, as more fully set forth in paragraphs thirty six (36) to forty two (42) of this plaint.

34. Defendant Union Carbide's conduct in failing to design, construct, maintain and operate a safe plant exposed people and property in Bhopal, the adjacent countryside and its environs to a massive disaster which defendant knew could occur. Such conduct on the part of defendant Union Carbide, in the light of its knowledge of the lethal properties of MIC, was unlawful, wilful, malicious and

reprehensible and was in deliberate, conscious and wanton disregard of the rights and safety of the citizens of the Union of India.

35. Defendant Union Carbide's conduct as described herein clearly establishes plaintiff's right to an award of punitive damages to deter this wrongful conduct from recurring ever again.

36. As a direct and proximate result of the conduct of defendant Union Carbide, numerous innocent persons in Bhopal, the adjacent countryside and its environs suffered agonizing, lingering and excruciating deaths, serious and permanent injuries, including but not limited to acute respiratory distress syndrome, ocular and gastro-intestinal injuries, and pain, suffering and emotional distress of immense proportion. The survivors, who experienced an unimaginable and unforgettable catastrophe, witnessing the virtual destruction of their entire world, have suffered and will continue to suffer severe emotional distress. Further injuries to such persons, and to generations yet unborn, are reasonably certain to occur.

37. As a further direct and proximate result of the conduct of defendant Union Carbide, numerous persons have been and will be required to undergo extensive medical examinations, rehabilitative care and treatment.

38. As a further direct and proximate result of the conduct of defendant Union Carbide, the families and relatives of the dead have suffered, and will continue to suffer, from the loss of support, aid, comfort, society and companionship of the deceased.

39. As a further direct and proximate result of the conduct of defendant Union Carbide, there was extensive damage to personal and business property resulting in disruption of industrial, commercial and governmental activities throughout the city of Bhopal, the adjacent countryside and its environs, with consequential losses of personal and business income and governmental revenue throughout the Union of India, as well as the impairment of future earning capacity of numerous thousands of persons. As far as has been ascertained up to now more than two thousand persons died as a result of being severely smitten by the escaped lethal gas from MIC storage tank at the said plant and several thousand persons suffered grievous and permanent damage to their person and health and several lakhs of persons were also inflicted bodily injury and damage by the same cause and widespread damage was also caused to the environment in and around Bhopal and to living cattle there.

40. As a further direct and proximate result of the conduct of defendant Union Carbide the Union of India was required to provide, and continues to provide, emergency aid and relief. This aid includes, by way of example and not limitation, the following :

- a. Expenditure for deaths and injuries;
- b. Expenditure for evaluation of damages;
- c. Expenditure for medical treatment, relief and rehabilitation;
- d. Expenditure for research, including medical and scientific studies;
- e. Expenditure for "Operation Faith" and its follow-up;
- f. Expenditure for food;
- g. Expenditure for loss of cattle;

- h. Expenditure for monitoring the environment, including plants and vegetation; and**
- i. Expenditure for other relief measures.**

41. As a further direct and proximate result of the conduct of defendant Union Carbide, there has been extensive damage to the natural environs of the city of Bhopal, and the adjacent countryside, and further harm is likely to befall the environment.

42. Because of the enormity of the Bhopal disaster, plaintiff is not currently able to allege with particularity and in dollar/rupee amount the precise damages suffered by persons having claims. While the exact number of dead and injured persons is not known, the plaintiff has ascertained upto now a death toll of more than two thousand (2,000) persons, serious injuries to several thousand persons and other injuries to lakhs of persons. In all, more than five lakhs (5,00,000) persons have sought damages upto now in respect of claims made by them. Neither the extent nor nature of the injuries or the after-effects of the injuries suffered by victims of the disaster have yet been fully ascertained. Surveys and scientific and medical studies are currently being conducted to ascertain the same and the plaintiff craves leave to place before the court full facts of damage to individuals, living beings and the environment as soon as the surveys and studies are completed for a proper determination of damages. As regards the damage and loss in respect of personal and business property and income, disruption of industrial, commercial and governmental activities and loss of governmental revenue throughout Union of India and impairment of future earning capacity of thousands of persons, survey and scientific studies are being conducted to ascertain the same and the plaintiff craves leave to place before the court the extent of damages and loss in this regard at an appropriate stage.

43. The various grounds pleaded for the liability of the defendant are in the alternative, and without prejudice to one another.

44. On 18th April, 1985, the Union of India filed a complaint against the defendant in the United States District Court, Southern District of New York, presided by Hon'ble John F. Keenan, by invoking Title 28 U.S.C. 1332, seeking the reliefs as claimed in the present suit. The defendant Union Carbide took out notice of a motion for the rejection of the complaint on the grounds of forum non-conveniens. The motion was opposed by the plaintiff. The learned Judge passed his order on 12th May, 1986. By the said order, the learned Judge dismissed the complaint on the grounds of forum non-conveniens on the following conditions :

- (i) Union Carbide shall consent to submit to the jurisdiction of the courts of India, and shall continue to waive defences based upon the statute of limitations;**
- (ii) Union Carbide shall agree to satisfy any judgment rendered against it by an Indian court, and if applicable, upheld by an appellate court in that country, where such judgement and affirmance comport with the minimal requirements of due process;**
- (iii) Union Carbide shall be subject to discovery under model of the United States federal republic rules of civil procedure after appropriate demand by plaintiff.**

45. By the order dated 28th May, 1986, the defendant Union Carbide was directed to indicate its acceptance or rejection in writing of the three (3) conditions contained in the opinion and the order dated 12th May, 1986 by or before 5.00 p.m. June 12, 1986.

46. Union Carbide filed in writing on June 12, 1986 its consent before judge Keenan agreeing to the above three conditions mentioned in para 44 above.

47. As submitted in para forty two (42) above, the plaintiff is not currently able to allege with particularity and in dollar/rupee amount the precise damages suffered by claimants. As submitted, surveys and scientific and medical studies are currently being conducted by plaintiff and at such time when surveys and studies are completed, plaintiff will allege a figure for compensatory damages sustained by persons with claims. In any case, the amount involved exclusive of interest and cost, is bound to exceed a sum of Rs.20,000 and, therefore, this hon'ble court has pecuniary jurisdiction to entertain this suit. The plaintiff is exempted from paying any court fee on the plaint by virtue of the notification dated 2nd August, 1986 issued by the State of Madhya Pradesh in exercise its powers under section 35 of the Court Fee Act, 1870 (No. VII of 1870). The plaintiff is not, therefore, called upon to value the plaint for purposes of court fee.

48. That the hon'ble court has jurisdiction to entertain and try the present suit. The plant is situated within the territorial jurisdiction of this hon'ble court. The disaster took place within the jurisdiction of this hon'ble court. The defendant has agreed to submit to the jurisdiction of the Indian courts, and this hon'ble court has, therefore, jurisdiction to entertain the suit.

49. The cause of action for the present suit arose against the defendant Union Carbide on December 2-3, 1984 and continues de die in diem at Bhopal within the jurisdiction of this hon'ble court. The cause of action also arose for the suit on 12th May, 1986 when the U.S. district judge rejected the plaintiff's complaint vide order dated 12th May, 1986 subject to the condition mentioned therein. The plaintiff's suit is thus within the time.

PRAYER

The plaintiff, therefore, prays for :-

- (1) A decree for damages for such amount as may be appropriate under the facts and the law and as may be determined by this court so as to fully, fairly and adequately compensate all persons and authorities, who have suffered as a result of the Bhopal disaster and having claims against the defendant;
- (2) A decree for punitive damages in an amount sufficient to deter the defendant Union Carbide and other multinational corporations involved in similar business activities from wilful, malicious and wanton disregard of the rights and safety of the citizens of India;
- (3) Interest;

- (4) Costs of and incidental to this suit; and
- (5) Such further or other reliefs as to this Court may seem fit and proper.

Sd/-

(Shyamal Ghosh)

Union of India through
Jt. Secretary, Department of
Chemicals & Petrochemicals,
New Delhi.....Plaintiff

Dated : 5th September, 1986

[Ann. A : The Bhopal Gas Leak Disaster (Processing of Claims) Act 1985; Ann. B : Opinion and order of Judge Keenan dated 12.5.1986; Ann. C : Order of Judge Keenan dated 28.5.1986 and Ann. D : Qualified consent of UCC to Judge Keenan's order dated 12.6.1986 have been excluded. References indicating their inclusion have also been omitted. *Ed.*]