

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3187—88 OF 1988

UNION CARBIDE CORPORATION

(Appellant)

Versus

UNION OF INDIA

(Respondent)

AND

- 1. Zahreeli Gas Kand Sangharsh Morcha, and**
- 2. Jana Swasthya Kendra, Bhopal**

(Interveners)

WRITTEN SUBMISSIONS ON BEHALF OF INTERVENERS

1. The interveners above-named are voluntary organisations of victims of the gas disaster at Bhopal engaged in organising and providing them medical and other relief and fighting for their rights and interests.

2. The interveners moved the court of District Judge, Bhopal under Order 1 Rule of 8A of the Code of Civil Procedure to be joined as interveners in the gas claim case No. 1113 of 1986 *Union of India Versus Union Carbide Corporation* pending for adjudication before the said Court. A true copy of the said application is annexed hereto as *Annexure-I*.*

3. The interveners, on 26.11.86 filed an application under section 94 read with Order 39 Rule 10 and section 151 C.P.C. in the Court of District Judge Bhopal in the said gas claim case No. 1113 of 1986 praying *inter alia*.

that it would only be just and proper with a view to doing minimum justice to the gas victims by way of providing them necessary medical care, food and alternative employment according to their reduced work capacity, direct the defendant (UCC) to immediately deposit a cash amount, out of its total liability, necessary for providing the aforesaid immediate relief to the victims. The plaintiff Union of India be directed to ascertain such amount and upon deposit in Court by the defendant to spend the amount for providing such necessary reliefs to the victims under directions of the Court.

*See *supra* at. 25.

A true copy of the said application is annexed hereto as *Annexure-II*.^{*} The Union Carbide Corporation submitted its reply dated 10th December, 1986 opposing the said prayer of the Interveners. The Union of India, however submitted no reply. A true copy of the said reply of UCC is annexed hereto as *Annexure-III*.^{**}

4. The learned District Judge, Bhopal, instead of taking up for consideration the Intervener's application for grant of interim relief made a suo-motu proposal for reconciliatory substantial interim relief to the gas victims. The defendant UCC submitted its response to the suo-motu proposal and the UOI also submitted its reply to the defendant's response. The parties reported to the District Court that serious efforts were being made to reach an out-of-court settlement and sought adjournments time and again for the purpose. On 18.11.87 the District Judge observed:-

Now that it is reported that no settlement has taken place so far, the court deems it fit to set down the case for hearing. The pending petitions deserve to be decided in a time bound manner. The parties shall appear on 27.11.1987 for drawing up of schedule for hearing all the remaining pending petitions so that the case can proceed in an expeditious manner. Shri Vibhuti Jua learned counsel for the Interveners reiterated consideration of prayer for interim relief. I really feel sorry for the loss of time so far and repeat that the redress to gas victims is of paramount consideration, which all concerned must work with best efforts and intentions.

A true copy of the order sheet is annexed hereto as *Annexure-IV*.^{***} It is submitted that the suo-motu proposal dated 2.4.1987 of the learned District Judge came to an end on 18.11.1987 and it was no more alive.

5. After the closing of the chapter of the suo-motu proposal for "reconciliatory interim relief", the learned District Judge on 27.11.87 ordered:

After consideration at some length schedule for hearing the interlocutory applications, Mr. Vibhuti Jha urged his petition (No. 2 of intervener's petition) for interim relief. That made me rethink about the schedule. I have been really moved by that fact that the third anniversary of the disaster is drawing close. The schedule is, therefore, ordered as follows: on 7th December, 1987, the court shall hear the issue of grant of interim relief coming from the court suo-motu. The interveners can of course, join in the arguments.

A true copy of order dated 27.11.87 is annexed hereto as *Annexure-V*.^{****}

It is significant to note that neither party objected to the order dated 27.11.87 of the District Judge. In fact, the parties appeared before a Division Bench of the High Court of Madhya Pradesh at Jabalpur on 30.11.87 in Misc. Civil Case

^{*}See *Supra* at 235.

^{**}See *Supra* at 237.

^{***}See *Supra* at 252.

^{****}See *Supra* at 253.

No. 704 of 1987. The Division Bench was considering a show cause notice issued by a learned Single Judge under section 24(1) (b) (i) C.P.C. as to why the claim case be not withdrawn from the file of the District Judge Bhopal and tried in the High Court. The defendant U.C.C. in its written submission dated 30.11.87 in response to the show cause notice inter alia urged the Division Bench of the Hon'ble High Court.

Not to pass any order of withdrawal of the suit since a large number of witnesses are in Bhopal. The transfer of the trial to and for that reason would cause great inconvenience and the trial may be delayed on that account.

It is submitted that the Division bench of the High Court was the proper forum where the defendant U.C.C. could agitate against the order dated 27.11.87 of the District Judge if they felt aggrieved by the same. The Division Bench of the Hon'ble High Court of Madhya Pradesh (Hon'ble Justice C.P. Sen and P.C. Pathak) by their order dated 3.12.87 in Misc. Civil Case No. 704 of 1987 while discharging the show cause notice further directed:-

Before parting, we must direct the parties to fully co-operate in the early disposal of the claim case in order that the victims of the tragedy get justice without further delay. *We also direct the District Judge to examine what interim relief can be granted to ameliorate the conditions of the victims and minimise the human sufferings, especially of the legal heirs of 2500 or so persons who died in the tragedy and those who have been permanently disabled and are not in position to earn their livelihood and have nothing to fall back upon* (emphasis added).

The Union Carbide Corporation did not agitate against the directions of the Hon'ble High Court regarding consideration of the question of grant of interim relief by the District Judge. A true copy of the order dated 3.12.1987 is annexed hereto as *Annexure-VI*.*

6. On 7.12.1987 arguments on the question of grant of interim relief were commenced in the District Court and both the parties were heard at length and they also filed written synopsis of their arguments. The Interveners were directed to submit their written arguments which they submitted on 12.12.87. A true copy of the same is annexed hereto as *Annexure-VII*.** Thereafter the Union Carbide Corporation also submitted its reply to the Intervener's written submissions. A true copy of the same is annexed hereto as *Annexure-VIII*.*** After considering all these submissions the learned District Judge passed his order dated 17.12.87 whereby he awarded interim relief amounting to Rs. 3,500 millions to the gas victims invoking the Court's inherent powers under Sections 94(e) and 151 of the Code of Civil Procedure.

*See *Supra* at 301.

**See *Supra* at 261.

***See *Supra* at 272.

7. Against the order dated 17.12.87 of the District Judge the defendant Union Carbide Corporation filed a Civil Revision under section 115 of the Code of Civil Procedure in the Hon'ble High Court of Madhya Pradesh at Jabalpur being C.R. No. 26/88. The revision petition was admitted for hearing on 21.1.88 and fixed for final hearing on 1.2.1988. On 21.1.88 the interveners through their counsel Shri Vibhuti Jha moved an application (IA No. 271/88) for being heard in the matter, which was allowed. A true copy of the said application is annexed hereto as *Annexure-IX*.^{*} In its order dated 21.1.88 the Hon'ble High Court ordered:-

Shri Vibhuti Jha, Advocate, Bhopal who is present has made an application (I.A. No. 271/88) for being permitted to be heard in the matter as an intervener. The prayer is not opposed. Accordingly it is allowed. It is ordered that he shall be heard in the matter.

A true copy of the said order is annexed hereto as *Annexure-X*.^{**}

8. The High Court heard the parties including the interveners from 1st to 5th February, 1988. The arguments advanced during these five days were confined to the legality or otherwise of the order of the District Judge (being the order in revision) On the conclusion of the hearing on 5th February, the learned Judge (Hon'ble Mr. Justice S.K. Seth) put a further question to the parties whether interim payment of compensation could be sustainable under the substantive law of Torts. The learned Judge asked the parties to address the Court on this question and the parties, including Union Carbide Corporation consented for the same. The case was adjourned to 17th February, the 1988 and from 17th to 19th of February the High Court heard arguments on this particular question whether interim compensation could be granted under the substantive law of torts and also on the question of liability.

9. In its order dated 4.4.1988 the Hon'ble High Court in C.R. No. 26/88 *inter alia* held:-

- a) The inherent powers under section 151 C.P.C. cannot be exercised with respect to matters affecting substantive rights of parties and for that the trial court committed illegality in awarding interim relief under inherent powers,
- b) However, under the substantive law of torts it was permissible for the Court to grant relief of interim payment.
- c) The Bhopal suit is governed by the rule of law of torts which is based on the principles of justice, equity and good conscience,
- d) The principles enunciated by the Hon'ble Supreme Court in *M.C. Mehta's* (Shri Ram Fertiliser) case regarding absolute liability squarely apply to the Bhopal suit and could be extended to award interim payment.
- e) In the Bhopal suit, it is legally permissible to lift the veil of the Indian Company;
- f) The requirements relating to interim payment of damages were fulfilled

^{*}See *Supra* at 332.

^{**}See *Supra* at 333.

in the Bhopal suit in as much as the U.C.C. has sufficient means and resources to enable it to make interim payment and that the U.C.C. is insured in respect of liabilities including that relating to the Bhopal claim to the extent of Rs. 262 crores;

g) Relief of interim payment of damages is to be granted only in respect of deaths and personal injuries. The monetary relief distributed so far by the Government has been only a pittance;

h) The measure of damages payable has to be correlated to the magnitude of the disaster and the capacity of the enterprise because such compensation must have a deterrent effect;

i) It would not be unreasonable to assume that if the suit proceeded to trial that plaintiff would obtain judgment in respect of the claims relating to deaths and personal injuries at least to the tune of Rs. 2 lakhs in each case of death and total permanent disability, Rs. 1 lakh in each case of permanent partial disablement and Rs. fifty thousand in each case of temporary partial disablement. Half of the amounts as mentioned in respect of each of the categories would constitute reasonable amounts payable by the Union Carbide Corporation by way of interim compensation;

j) The plaintiff has stated that a total number of 2,660 persons died and between 30,000 to 40,000 sustained serious injuries as a result of the disaster. Accordingly, it can be fairly assumed that at least 2,500 persons died and about 10,000 received serious injuries.

k) Keeping in view the insurance coverage of Rs. 262 crores available with the Union Carbide Corporation and the figures of deaths and serious injuries given by the U.O.I. the amount of Rs. 250 Crores could be appropriate as interim payment of damages and accordingly the order of the trial court is modified reducing the amount from Rs. 350 crores to Rs. 250 crores.

l) The defendant U.C.C. is ordered to pay Rs. 10,000/- as costs to the plaintiff Union of India and Rs. 2,000/- as costs to Shri Vibhuti Jha, Advocate Counsel for the interveners.

10. On the question of grant of interim relief by way of damages, the interveners, in the District Court as well as in the High Court, inter alia urged and they reiterate the same before this Hon'ble Court:-

a) The Hon'ble Supreme Court while dealing with the leakage of Oleum gas in Delhi in *M.C. Mehta's case* had very much in mind the Bhopal Gas leakage and the rule of strict and absolute liability of the enterprise to compensate the victims was laid down by this Hon'ble Court keeping in view the cases like the Bhopal disaster.

b) The Bhopal case is of an extraordinary and unprecedented nature and it demands an extraordinary treatment by the Courts as well as by the parties involved. It arises out of the worst peace time explosion in the history of human civilization and can not be treated as ordinary civil suit. The Union of India has filed the suit in a representative capacity acting as the guardian and *parens patriae* having appropriated to itself, through an Act of Parliament all powers of pursuing the claim against the Union Carbide Corporation on behalf of all the victims. The

victims have absolutely no say in the legal battle. In a case of such a magnitude, if the plaintiff Union of India falters or indulges in certain acts of omission or commission, the victims can not be denied their legal rights and it becomes a bounden duty of the court trying the case to safeguard the interests of the victims. In such a case the court cannot be expected to be a silent spectator or simply an umpire, but has to undertake judicial activism in order to do justice to the hapless victims.

c) When the plaintiff Union of India did not take any steps towards demanding interim payment of damages from the defendant UCC, the Interveners, being voluntary organisations of the victims, moved the trial court with such a prayer. On 27.11.87 when the intervener's counsel urged his petition for interim relief, the learned District Judge directed the parties to address the court on the question of grant of Interim Relief coming from the Court suo motu instead of hearing arguments on the intervener's application. This was done in view of an objection by the defendant that the intervener's application for interim relief could not be taken up since their first application under Order 1 rule 8A CPC was still not allowed. Therefore, it would be incorrect to say that the order dated 17.12.87 of the learned District Judge is based on his proposal dated 2.4.87. The correct position is that the order dated 17.12.87 is based on the order dated 27.11.87 of the learned District Judge.

d) After the leakage of poisonous gases from the Union Carbide plant at Bhopal, the scientific and technical experts of the defendant Union Carbide Corporation visited their Bhopal plant, conducted tests and experiments, interviewed various people and thereafter published a 24 page report in March, 1985 entitled BHOHAL METHYL ISOCHYANATE INCIDENT INVESTIGATION TEAM REPORT in order to manipulate a defence for UCC. However the defendant UCC now says that they had no control over the Bhopal Plant. A true copy of the Report is annexed hereto as *Annexure-XI*.*

e) In reply to the application for the grant of an interim injunction the defendant in the affidavit of John Macdonalad, their Asstt. Secretary dated 14th November 1986 in paragraph 25 at page 47 have stated:-

During the hearing of "forum non conveniens" motion before judge Keenan, who made every attempt to facilitate an overall settlement, Union Carbide Corporation whilst denying liability offered 100 million over the amount of its insurance coverage of 200 million in full and final settlement of all claims arising out of the Bhopal incident.

Also in the same affidavit at page 26 in para 2(a) it is stated:-

Union Carbide Corporation is a financially sound Corporation. It has more than 6.5. million i.e Rs. 8615 crores of unencumbered assets.

A true copy of the said affidavit is annexed hereto as *Annexure-XII*.*

*The annexure has been excluded. *Ed.*

Here what is significant to be noticed is the fact that even without admitting its liability UCC did offer to pay compensation to the tune of 200 million dollars 262 crores of rupees against its insurance coverage for the disaster. It is pertinent to note that no insurance company would be willing to cover the insured's risk unless the particular risk is covered under the Insurance Policy. Logically it goes on to prove, *prima facie* that any liability arising out of the Bhopal Plant is covered under the insurance coverage of the defendant UCC. However the defendant UCC still asserts that they had no control over the Bhopal Plant or its management.

f) The defendant UCC in paragraph 45 at page 67 of the written statement in their reply to para 4 of the plaint have admitted that :-

as a result of MIC being emitted from the MIC storage tank (Tank 610) at the Bhopal plant a terrible disaster resulted and affected many persons.

g) All these admissions and pleadings of the defendant UCC *prima facie* establish the liability of the defendant to compensate the victims of the disaster and there is no need for a complete trial to arrive at a finding of *prima facie* liability of the UCC.

h) A *prima facie* liability of the defendant having been made out, the interveners submitted the Court had inherent power under section 151 read with section 94(e) C.P.C. to pass an interim order directing the defendant to pay interim compensation. The Court has power to pass any interim order if it deems fit and urgently necessary for the ends of justice to do so, in the absence of any provision prohibiting passing of such an interim order. The inherent power of the Court is to be exercised upon its own judicial conscience and not upon the insistence of any party (as held in *Manoharlal Vs. Seth Hiralal* AIR 1962 SC 527 at 532). Absence of a direct authority or precedent ought not to deter the Court from acting upon its judicial conscience (as held in *Jalha Bhai Vs. Amanchand* AIR 1924 Bom 90 at 92-93 and *P. Shamdasani Vs. Central Bank* AIR 1938 Bom 99 at 205 and *D. Ydayar Vs. Rajarani*. AIR 1973 Mad 369).

j) It is incorrect to suggest that there is no provision or precedent under the substantive law of tort whereby monetary relief of interim nature could be granted to the victim. This Hon'ble Court on an earlier occasion while dealing with a case under the Motor Vehicle Act, extensively dealt with the provisions of Fatal Accidents Act 1855 and made certain observations while upholding section 92-A of the Motor Vehicle Act. The principles underlying those observations can be, and ought to be logically extended to and applied in the present case being a case of similar nature. Their lordships of this Hon'ble Court in *Gujarat SRTC Vs. Ramanabhai* (AIR 1987 SC 1690 at 1697) observed:

When the Fatal Accidents Act 1855 was enacted there were no motor Vehicles on the roads in India. Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to

some extent as coming within the principle of liability defined in *Rylands Vs. Fletcher*.... Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damage arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendations of the Indian Law Commission Chapter VII-A was introduced in the Act.... This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified.

The Bhopal Act has a two fold purpose :

- i) It authorises and empowers the Union of India to file appropriate consolidated claim against the UCC and to realise compensation on behalf of the victims.
- ii) Chalking out the procedure whether each one of the individual claimants has to be paid out of the consolidated compensation.

The first part related to the institution of a consolidated claim by the Union of India against UCC whereas the second part regulates the relationship between the government and the individual claimants in which UCC does not come into the picture at all.

- k) Section 10 (a) of the Bhopal Act declares that:-

Any sums paid by the government to a claimant otherwise than by way of damages received as a result of the adjudication or settlement of his claim by a court or other authority shall be deemed to be without prejudice to the adjudication or such settlement by such court or other authority of his claim and shall not be taken into account by such Court or other authority in determining the amount of compensation or damages to which he may be entitled in satisfaction of his claim.

In any event the relief provided so far by the government is minimal and insignificant and has totally failed to ameliorate the sufferings of the victims to any notable extent. While deciding the question of grant of interim payment in the suit, the relief provided by the government can not be taken into account. Moreover, government's assertion of providing "all possible relief" is not the same as providing "all necessary and sufficient relief" to the victims and can not constitute a defence for UCC to escape its liability to compensate the victims. Obviously while ordering interim payment in the suit the Court has to consider the

pressing necessities of the victims and the amount sufficient to cover the same.

l) The impugned order for interim monetary payment of damages is with relation to only four categories of personal injuries to gas victims :

- a) cases of death
- b) permanent disablement,
- c) partial permanent disablement,
- d) partial disablement.

On the basis of figures supplied by the government the Hon'ble High Court has prima facie held the cases of death to be not less than 2500 and the cases of serious injury in the aforesaid categories to be not less than 30,000. It is most respectfully submitted that the figures supplied by the Government are erroneous and do not give a true picture of the state of affairs. The figures supplied are based on the documentation so far made by the Government, and admittedly further documentation is under progress. The actual figures are much higher, at least twice such figures.

m) It is nobody's case that all the gas victims of Bhopal fall under the aforesaid four categories laid down by the Hon'ble High Court.

There are other categories too, of lesser affected people who are to be taken care of by the government. It is the duty (and not liability) of the government to take welfare measures for ameliorating the plight of these victims. The government has taken up some half hearted measures and has also prepared an Action plan. The Interveners crave leave of this Hon'ble Court to refer to and rely upon the same whenever necessary. The said action plan is faulty and inappropriate. The interveners have submitted their own Action plan to the Government for implementation. But this is all tax-payer's money and the UCC cannot escape its liability by shifting the same on to the shoulders of the people, who are victims themselves. An English translation of the Action plan submitted by the Interveners is annexed hereto as *Annexure-XIII*.*

n) The welfare measures taken up by the government are most inadequate is clearly borne out from the fact that even if the claim of the state government having spend about Rs. 60 crores during the period of 3 years after the disaster is taken at its face value the amount is negligible. As per the government there are more than 5 lakhs gas victims. If the amount is divided by 5 lakhs and further divided by 1100 (the days in 3 years), the amount would come to rupee one per victim per day which is a mockery of relief. It is therefore clear beyond any doubt that the victims of the gas disaster are on dire need of relief. It is also clear that it is the liability of the UCC, which allowed the disaster to take place, to provide this immediate interim compensation to the victims, who have suffered personal injuries. It is most respectfully submitted that every citizen has a right to life and liberty recognised and guaranteed under article 21 of the constitution. The taking away of life and liberty by the leakage of poisonous gases amounts to deprivation of the right to life and liberty.

o) On the question of quantum of interim compensation, the interveners

*The annexure has been excluded. *Ed.*

submitted in both the courts below that it has to be fixed taking into account the assets of the tortfeasor, i.e. U.C.C. its insurance coverage and the total amount claimed in the suit and has to be an amount which would substantially ameliorate the plight of the victims and, at the same time, would not cause undue hardship to the tortfeasor. As already submitted above in paragraph 10(e), the UCC has admitted that it is a financially sound corporation and has more than 6.5 billion dollars i.e. Rs. 8,515 Crores of unencumbered assets. It has also admitted that UCC has 200 million dollars i.e. Rs. 262 Crores of liability insurance. The amount claimed in the suit is 3 billion dollars or Rs. 3,900/-crores. Even as per an independent agency based in the United States of America, "The Council on International and Public Affairs", the estimation of damages arising out of the Bhopal disaster cannot be less than Rs. 5,250/- crores. The estimation of damages made by the said agency is annexed hereto as *Annexure-XIV*.^{*} This annexure is already on the record of the trial Court. Taking into account all these considerations, the interveners prayed that an amount of Rs. 1,000 crores be awarded as interim compensation to the victims which would be about one tenth of the unencumbered assets of UCC, about one fourth of the total claim in the suit, and about four times the insurance cover of UCC. This Hon'ble Court in *M.C. Mehta's case*, AIR 1987 SC 1086 in para 32 at page 1099, has already held:-

We would like to point out that the measures of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude (of the disaster) and the capacity of the enterprise, because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of... carrying on the hazardous or inherently dangerous activity by the enterprise.

p) The Union Carbide Corporation, in Paragraph 45 at page 67 of the written statement of defence have admitted that

as a result of MIC being emitted from the MIC storage tank (tank 610) at the Bhopal plant, a terrible disaster resulted and affected many persons (emphasis added)

In paragraph 99 at page 158 of the written statement UCC has admitted the jurisdiction of the Bhopal court to try the claim cases arising out of the gas disaster.

The UCC has admitted that it has 50.9% equity shares in the enterprise from whose plant emission of MIC took place. UCC has also asserted that it offered funds to the union and state governments to carry out relief measures for the victims. UCC has admitted that it sent high power investigation team to carry out scientific and technical investigations into the possible cause/causes of the Bhopal disaster. UCC asserts that it funded certain agencies to provide relief to the victims.

During the pendency of the Bhopal suit, in which UCC's Indian subsidiary, UCIL is not even a party, the Central Bureau of Investigation started interrogating

^{*}The annexure has been excluded. *Ed.*

one Mr. Sunderrajan, who is an employee of UCIL. On the one hand UCC denies that it has any relationship with UCIL or that UCIL is its subsidiary, but, on the other the hand, UCC moved an application in the District Court seeking an injunction against the Union of India restraining the latter from interrogating Mr. Sunderrajan. UCC even filed a revision petition in the High Court of Madhya Pradesh (being Civil Revision No. 224 of 1987) against the order dated 2.4.87 of the District Judge disallowing the application of UCC. This act on the part of UCC gives a clear indication that the interests of UCC and UCIL are identical and inseparable to the extent that UCC has openly and in a legal forum acted on behalf an employee of UCIL. Admittedly, UCC offered to pay 350 million dollars (including 200 million dollars of its liability insurance coverage) for an overall settlement of the Bhopal case. With all these facts and circumstances taken together, UCC cannot now deny its prima-facie liability to compensate the victims of the Bhopal disaster. It cannot be, and is not, denied that manufacture and storage of MIC is hazardous and inherently dangerous posing a potential threat to human life. In the landmark judgment in *Shri Ram Fertilizer Industry's case* AIR 1987 SC 1086 in para 31 at page 1099, their Lordships of this Hon'ble Court held:

We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of.... hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of *such activity the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.... we would therefore hold that.... the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis-the principle of strict liability under the rule of Rylands Vs. Fletcher* (emphasis added)

q) It is most respectfully submitted that the learned District Judge having judiciously satisfied himself that he had the jurisdiction and the power to award interim payment, in a suit for damages under tort, by way of relief and having objectively satisfied himself regarding existence of a prime facie case against UCC, on the basis of records available in the case, directed the defendant UCC to deposit the amount of Rs. 350/- crores. It is submitted that the order of the District Judge was founded on sound judicial premise and there was no scope for interference with the discretionary order. The amount of Rs. 350 crores as interim payment of compensation in fact, was inadequate, looking to the magnitude and gravity of the disaster. As submitted by the interveners, the appropriate amount of interim compensation would have been Rs. 1,000 crores at least. The defendant UCC were given sufficient opportunity to present their case before the

District Judge, which UCC availed of fully. There could be no cause for grievance for UCC. The learned District Judge acted in a most judicious manner objectively and bonafidely without any bias or emotion. In the light of the principles enunciated by this Hon'ble Court regarding absolute liability, the learned District Judge by no stretch of the imagination can be said to have prejudged the issue.

r) It is most respectfully submitted that the Hon'ble High Court acted without jurisdiction in interfering with the discretionary order of the District Judge in reducing the amount of interim compensation. It is submitted that the interveners were also aggrieved by the order of the District Judge in as much as the amount awarded was inadequate. However, the interveners did not challenge the order in revision, since the High Court, under section 115 of the Code of Civil Procedure, has no jurisdiction to modify the order of the trial court in as much as it relates to quantum. It is submitted that the Hon'ble High Court has jurisdiction to interfere with the order of the trial Court when it holds that the order is without jurisdiction or that the exercise of jurisdiction has been illegal or with material irregularity. It is submitted that after holding that the trial court had jurisdiction and that the exercise of such jurisdiction was neither illegal nor improper, the High Court had no jurisdiction to interfere with the order of the District Judge. The High Court also failed to appreciate that section 151 read with section 94 (e) C.P.C. gives ample power to the trial court to grant any relief of an interim nature. Even after holding that the trial Court had power to award interim damages under the substantive law of tort, the High Court seriously erred in interfering with the discretion exercised by the trial Court and in reducing the amount to Rs. 250 crores. In fact, in a revision under section 115 C.P.C. the High Court tended to pass a final judgment in the case when it held that the final award of compensation in respect of each case of death or permanent disablement could not be more than Rs. two lacs. It is humbly submitted that the order of the High Court, in as much as it relates to the quantum of interim damages and final damages, is absolutely without jurisdiction and is liable to be struck down. In an apparent attempt to pass an original order, different from that of the trial Court, in a revision under section 115, the High Court cannot be allowed to act without jurisdiction and to exercise jurisdiction not vested in it by law in an arbitrary manner at pleasure, while condemning the trial court of being too-innovating and observing:-

A judicial innovation is not an unbridled horse to be allowed to roam about freely in any direction it likes at its pleasure.

s) This Hon'ble Court in earlier occasions has also held that

procedure being merely a hand-maiden of justice it should not stand in the way of access to justice to the weaker section of Indian humanity and therefore, where the poor and the disadvantaged are without any access to justice, this Court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social action group acting pro bono publico would suffice to ignite the jurisdiction of this Court. We wholly endorse this statement of the law in regard to the broadening of locus standi and what has come

to be known as epistolary jurisdiction.

There has not been a case concerning more lives than the present one, where this Hon'ble Court could be called upon to "innovate new methods and strategies" and to ignite its epistolary jurisdiction for doing justice to the victims of the ghastly disaster, which was no short of a genocide. There has not been a comparable case in the legal history, where lakhs of poor, innocent people have perished, been maimed, incapacitated and rendered homeless in their sleep, by the acts of omission and commission of an industrial monster. It is most respectfully submitted that it would be justified for all courts, including this apex court, to rise above procedure and technicalities to do justice to the victims.

11 (a) Independently of the foregoing submissions and without prejudice to the above, it is submitted that this Hon'ble Court has the inherent power under the Constitution and the Supreme Court Rules apart from the Code of Civil Procedure. This inherent power may be invoked and utilised for doing complete justice in the matter by making an order in respect, inter alia, of any public injury either finally or by way of granting interim relief. It is submitted that the public injury in question lies not merely in the fact of physical injury caused to several persons but also separately in the very existence of an industrial plant that does not satisfy the basic safety standards. So far as the latter public injury is concerned it exists independently of any physical injury to individuals and is in any event a case of *res ipsa loquitur*.

b) It is submitted that this case needs to be distinguished from an ordinary suit under the Code of Civil Procedure. In fact, as has been already shown above and in the application for intervention filed by the present interveners (i) they (the present interveners) were permitted to take part in the trial Court under the Provisions of Order I Rule 8A of the Code of Civil Procedure in public interest as provided for by the said Rule. (ii) The order for interim compensation was in fact passed on the basis of an application filed by the present interveners. The present proceedings, it is therefore submitted, is in the nature of, and by way of, public interest litigation and not merely a civil litigation between Union Carbide Corporation and the Union of India. This is all the more so because the Union of India is required by the Bhopal Act to act on behalf of the victims and in consultation with them.

12. (a) For that the order dated 4.4.1988 of the Hon'ble High Court of Madhya Pradesh in civil revision No. 26/88 deserves to be modified by enhancing the amount of interim payment of damages from Rs. 250 crores to Rs. 1,000/- crores, treating these submissions in such manner as the Hon'ble Court may in the interests of justice deem appropriate.

b) Although the original order for payment of interim relief was passed by the Hon'ble District Judge, Bhopal in Gas claim Case No. 1113 of 1986 of 17.12.1987, even after the lapse of about 9 months, the victims have not received any fruits of the order.

c) It would only be expedient in the interests of justice and in the interest of the victims to order Union Carbide Corporation to deposit the amount of interim compensation with interest @ 18% per annum w.e.f. 17.12.87.

d) It is further submitted that in case this Hon'ble Court deems it fit to set

up a Committee to negotiate an overall settlement, a representative of the interveners may be associated with the said committee in the interest of the victims.

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to modify the order dated 4.4.1988 of the Hon'ble High Court of Madhya Pradesh in Civil Revision No. 26 of 1988 and enhance the amount of interim payment of damages to Rs. 1,000/- crores and to dismiss the appeal of Union Carbide Corporation and award costs.

Drawn by

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Dated: 3rd November, 1988

Filed by

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Morcha.

and

Jana Sawasthya Kendra