

Compensation from Amnesty report:

The May 1989 order of the Supreme Court setting out the settlement stated: “No individual claimant shall be entitled to claim particular quantum of compensation even if his case is found to fall within any of the broad categories.”²⁵⁰This meant that victims were denied their individual right to prove the extent of individual damages suffered and claim appropriate compensation.

Claims were adjudicated in claims courts by Claims Commissioners, Additional Claims Commissioners and the Welfare Commissioner (a sitting judge of the Madhya Pradesh High Court).²⁵¹

Claimants had to pass through several stages in order to secure compensation: registration; identification (requiring proofs of identity, residence and medical records to prove gas effects); notification of their hearing; categorization; adjudication and, for an unfortunate few, the appeals process.

Survivors say that the process involved innumerable trips to hospitals, government offices, lawyers, banks and the court. They said they had to stand for hours in long lines and endure apathy, indifference, suspicion and corruption at the hands of employees, brokers, middlemen and lawyers. For poor and illiterate people, the process was fraught and frustrating, and at the end they gained very little.

A 1995 assessment reveals that the maximum average compensation was awarded not in the two severely affected wards (Nos. 13 and 20) but in Ward No. 21, categorized as mildly affected.²⁵²In 1995 the average compensation received for personal injury was Rs.26,531, just above the stipulated minimum of Rs.25,000 (around US\$545 at current rates). Average awards were far smaller than originally envisioned. This indicates the arbitrary nature of the awards. The difference between the highest and the lowest average compensation paid for injury was Rs.8,483, although the 1992 guidelines issued to the Welfare Commissioner stated that the compensation for injuries should be in the range Rs.25,000 to Rs.400,000 (around US\$8,700). In at least five wards the average compensation was equal to the minimum, while in six wards it was actually less than the minimum. In cases where the victim had died, the average compensation given by 1995 was Rs.73,638 (around US\$1,605), far less than the minimum Rs.100,000 stipulated by the Supreme Court. An October 2002 survey in one severely affected ward revealed that 91% of the 1,481 claimants had received only the minimum compensation.²⁵³

Fast-track justice?

In 1995 special fast-track courts called Lok Adalats were set up to expedite the processing of thousands of claims in the claims courts. The lack of due process in these courts was described by a committee appointed by the Supreme Court:

*“In the Lok Adalats, a particular amount was specified and the claimants were coerced to accept this amount and accord their consent to the medical categorisation... In the office of the Lok Adalats, no legal assistance was available to the claimants”.*²⁵⁴

Lawyers and counsel were barred from representing victims in Lok Adalats. Victims were completely unaware of the process, and directions on minimum compensation were not followed. Claimants had to go to the Supreme Court to secure the right to appeal against the decisions of the Lok Adalats.²⁵⁵

Delays

Claimants faced significant delays at every stage of the process, even after adjudication. “The cheque was awarded at least two months after the judgment. And the money was available only a further 40 days after the award”, said Shanti Devi, herself a victim and now an activist.

Delays were aggravated by the fact that claimants were not paid any interest for the delay on the amounts payable to them. Interim relief of Rs.200 per month was ordered by the Supreme Court in March 1990 because adjudication of claims had not started. This was deducted from the eventual compensation that victims secured.

Problems with medical categorization

The Process of Injury Evaluation (PIE) categorized the degree of disability or injury according to scores given to symptoms, signs, treatment received and investigation results. Evidence suggests that claims of medical injury were not accurately scored. The PIE relied mostly on three investigations: X-rays, the Pulmonary Function Test (PFT) and the Exercise Tolerance Test (ETT). However, these were not widely administered: a 1989 study showed that while at least 60% of the victims required PFT and ETT, the claims directorate had ordered only 15% and 2% respectively to take these tests. The state government declared that “it was not practicable to subject every claimant to these time-consuming investigations in mass operations like this.”²⁵⁶

The medical records and the PIE did not assess how victims’ exposure and subsequent illness affected their ability to carry out their normal level of activities and their work. The ability of a claimant to produce medical records for the post-exposure period was critical. “A large number of victims were being categorized as ‘no injury’ even though they are ill and can produce proof of residence in the exposed area, all because they cannot produce medical documents for the post-exposure period.”²⁵⁷

As a result of the paucity of quality medical research on the consequences of the Bhopal gas leak and lack of comprehensive information about the toxicity of MIC, neither those claiming to have been affected nor those adjudicating their claims have had any rigorous basis to understand the link between the exposure to gas and the origin of health-related disabilities. This has given rise to a widespread sense of grievance that compensation has been arbitrarily decided.

Failure to register claims

A study by the Bhopal Group for Information and Action of three gas-affected localities concluded that the claims of 42.4% of the residents had not been registered. In one severely affected locality, nearly one sixth of the claims were not registered. The single largest omission comprised at least 15,000 gas-affected victims who were under 18 at the

time of registration of claims. Not until August 1992 did the Supreme Court order that minors had a legal entitlement to be registered. Children born to gas-affected parents have continued to be excluded, despite the Supreme Court recognizing the entitlement of “later born children who might manifest congenital or pre-natal MIC afflictions”.²⁵⁸

Failure to pay the compensation available

Of the Rs.750 crores (around US\$470 million at the prevailing rate) settlement, UCC contributed US\$420 million, which was held in a US dollar account, and UCIL contributed Rs.68.99 crores (around US\$44 million), held in a rupee account.²⁵⁹The money was available in 1989 but the claims courts began adjudicating cases only in 1992 and the process is still not complete.

Over the years, owing to the appreciation of the US dollar vis-a-vis the Indian rupee and the interest earned on undistributed funds, the sums held have grown considerably.²⁶⁰As of mid-2004, a total of Rs.1,503 crores (US\$327.5 million) was held by the Reserve Bank of India and Rs.1,535.58 crores (US\$334.6 million) had been disbursed by claims courts.²⁶¹

After approaches by victims’ groups, on 19 July 2004 the Supreme Court ordered the disbursal of the remaining funds, giving each of approximately 570,000 victims the same amount they had earlier received as compensation.²⁶²

Corruption

The claims system saw hundreds of thousands of poor and illiterate survivors facing a complex bureaucratic system. Survivors complain that the system required excessive paper work and complicated procedures and that this opened the way for intermediaries, brokers and opportunistic lawyers. Nanni Bai, a widow, paid Rs.60,000 to a lawyer and broker to procure compensation of Rs.100,000 for her husband’s death. Ahmadi Bai, 65, paid Rs.500 to a doctor to testify that her illness was because of her exposure. A number of survivors say that even the person who delivered the notification of the date of the claim hearing had to be bribed.

Kiran Jain, a 40-year-old widow, said: “Having all your papers is not enough. You have to pay a bribe for everything even to get a Pension Book or a Below Poverty Line card. If you pay, you get what you want; if you don’t, then just suffer.”²⁶³

Footnotes:

²⁵⁰Order 05-04-1989 in Civil Appeal Nos. 3187-89, Union Carbide Corporation v Union of India, Supreme Court of India.

²⁵¹Ramanathan, Usha, A Critical Analysis of Laws Relating to Personal Injury, dissertation submitted to Delhi University, September 2001.

²⁵²Dismal State Of Disbursal Of Compensation To Victims Of Union Carbide Gas Disaster, Bhopal Group for Information and Action, 1996.

²⁵³Survey of compensation among residents of Jai Prakash Nagar, Documentation Unit, Bhopal Peoples’ Health & Documentation Clinic, Sambhavna Trust, Bhopal, 2002.

254A Critical Analysis of Laws Relating to Personal Injury, op cit.
255A Critical Analysis of Laws Relating to Personal Injury, op cit.
256“Critique Of Medical Categorization, The Process of Injury Assessment Followed by the M.P. Government is Faulty”, Dr Nishith Vohra and Dr Sathyamala, 26 December 1989.
257“Critique Of Medical Categorization”, op cit.
258Compensation Disbursement, Problems and Possibilities, A Report of A Survey Conducted In Three Gas Affected Bastis Of Bhopal, Bhopal Group For Information And Action, January 1992.
259Order 15-02-1989 in Civil Appeal Nos. 3187-89, Union Carbide Corporation v Union of India, Supreme Court of India.
260The value of the US dollar has risen from an average of Rs.14.48 in 1988-89 to Rs.48.39 in 2002-03, an increase of some 350%.
261Order 19-07-2004 in IA Nos 46-47 Civil Appeal Nos 3187-89, Union Carbide Corporation v Union of India, Supreme Court of India.
262Order 19-07-2004, op cit. 2
63A number of other victims and survivors as well as organizations and activists working with survivors confirmed this.