

D.P.

10/91

SUMMARY OF BHOPAL JUDGEMENT

Judgement on the review petitions filed by various petitioners was announced by the five judge constitutional bench on 3rd October 1991. With only one dissenting judgement by Justice Ahmedi, the following account draws from the majority decision except where indicated; in the order that it was announced. Overall the settlement was upheld with few modifications.

1. Under Article 142(1) of the constitution, the Supreme Court HAD the necessary jurisdiction and power to withdraw or transfer a suit (civil or criminal) pending in the Bhopal District Court. Art 142(1) states that the court

'may pass such a decree or make such ORDER as is necessary for doing complete justice in any CAUSE or MATTER pending before it...'

The court, however must take into account whether or not such quashing is justified, and in this case it is convinced that neither the quashing of present nor of future prosecutions is justified, so all immunities against criminal prosecutions of UCC/UCIL are removed

2. The contention that the victims should have been given notice prior to the settlement under Order XXI Rule 3-B CPC is rejected.

3. Criminal proceedings can proceed against the Corporation and the Carbide officials under sections 304, 324, 326, 429 and others of the IPC. Consequentially immunity against criminal proceedings in the future is withdrawn.

4. 'Fairness Hearing' for establishment of adequacy of compensation amount for the gas victims is not required as section 4 of the Bhopal Act merely states that the Indian Government is to have 'due regard' to the views expressed by the victims. However it is admitted that exposure to gases might involve delayed manifestations of toxic morbidity.

5. The settlement is not vitiated for not affording the victims and victim groups an opportunity of being heard, however if the settlement fund is found to be insufficient, the deficiency is to be made good by UOI. The individual claimants shall be entitled to have their claims adjudicated under the statutory scheme of the Bhopal Act (The minority judgement says that if the settlement funds are insufficient then the settlement should have been reviewed and that the UOI should not be asked to make good the shortfall).

Ahmedi says - company must make good shortfall

6. The number of victims is according to the categorisation figures produced by the Directorate of Claims of the MP Government which is as under :

No of medical folders prepared	361,966
No of folders evaluated	358,712
No of folders categorised	358,712
No Injury	155,203
Temporary Injury	173,382
Permanent Injury	18,922
Temporary disablement caused by a temporary injury	7,122
Temporary disablement caused by a permanent injury	1,313
Permanent partial disablement	2,680
Permanent total disablement	40
Deaths	3,828

Those victims whose claims are not yet registered and unborn children would be provided for by a medical group insurance cover and the number of persons covered should be about and not less than 100,000 persons. Such victims would be entitled to compensation if they are able to prove injury in the next eight years. The premia for the insurance shall be paid by UCI out of the settlement amount.

7. UCC has been asked to set up a 500 bed hospital for victims in the next 18 months and provide free medical surveillance for the next eight years, consisting of periodic check-ups.

8. For the adjudication and disposal of claims, at least 40 Claims Commissioners (as envisaged in the Bhopal Act), must start within the next four months.

MAIN CRITICISMS

1. Denial of victims' rights to be heard is betrayal of justice.
2. While the possibility of future toxic morbidity and the existence of latent injuries has been admitted by the Court, Union Carbide has not been held liable for civil damages, which are likely to manifest in the future.
3. Failure to hold UCC absolutely liable is once again a betrayal of the rights and demand of the Bhopal victims and is violative of all norms of deterrence,
4. Holding the Indian Government responsible to make good the shortfall in the compensation amount is unjustified and allows Union Carbide to go unscathed.
5. The judgement recognises the occurrence of multisystemic damages and yet appears to rely on categorisation figures that are demonstrably without any basis.