should, both on humanitarian considerations and in fulfilment of the offer made before the Bhopal court, be borne by the UCC and UCIL. We are conscious that it is not part of the function of this Court to re- a shape the settlement or restructure its terms. This aspect of the further liability is also not a matter on which the UCC and the UCIL had an opportunity to express their views. However, from the tenor of the written submissions made before the District Court at Bhopal in response to the proposal of the Court for "reconciliatory substantial interim relief" b to the gas victims, both the UCC and UCIL had offered to fund and provide a hospital for the gas victims. The UCC had recalled that in January 1986, it had offered "to fund the construction of hospital for the treatment of gas victims the amount being contributed by the UCC and the UCIL in equal proportions". Shri Nariman had also referred to this c offer during the submissions in the context of the bona fides of the UCC in that behalf. It is, no doubt, true that the offer was made in a different context and before an overall settlement. But that should not detract the UCC and the UCIL from fulfilling these obligations, as, indeed, the moral sensibilities to the immense need for relief in all forms and ways d should make both the UCC and UCIL forthcoming in this behalf. Such a hospital should be a fully equipped hospital with provision for maintenance for a period of eight years which in our estimate might together involve the financial outlay of around Rs 50 crores. We hope and trust that UCC and UCIL will not be found wanting in this behalf. e

205. Then comes the question which we posed at the end of paragraph 135. This concerns the exposed members of the populace of Bhopal who were put at risk and who though presently asymptomatic and filed no claim for compensation might become symptomatic in future. f How should cases of yet unborn children of mothers exposed to MIC toxicity where the children are found to have or develop congenital defects be taken care of?

206. The question is as to who would provide compensation for such cases? g

207. We are of the view that such contingencies shall be taken care of by obtaining an appropriate medical group insurance cover from the General Insurance Corporation of India or the Life Insurance Corporation of India for compensation to this contingent class of possible prospective victims. There shall be no individual upper monetary limit h for the insurance liability. The period of insurance cover should be a period of eight years in the future. The number of persons to be covered by this Group Insurance Scheme should be about and not less than one lakh of persons. Having regard to the population of the seriously affected i

wards of Bhopal city at the time of the disaster and having regard to the addition to the population by the subsequent births extrapolated on the basis of national average of birth rates over the past years and the future period of surveillance, this figure broadly accords with the percentage of (*sic* the) population of the affected wards bears to the number of persons found to be affected by medical categorisation. This insurance cover will virtually serve to render the settlement an open ended one so far as the contingent class of future victims both existing and after-born are concerned. The possible claimants fall into two categories: those who were in existence at the time of exposure; and those who were yet unborn and whose congenital defects are traceable to MIC toxicity inherited or derived congenitally.

208. Insofar as the second class of cases is concerned, some aspects have been dealt with in the report of the Law Commission in United Kingdom on *Injuries to Unborn Children*. The Commission, referring to the then existing law, said:

> "7. Claims for damages for pre-natal injuries have been made in many other jurisdictions but there is no English or Scottish authority as to whether a claim would lie and, if it did, what rules and limitations should govern it. In our working paper we did not attempt to forecast how such a claim would be decided if it came before a court in this country, although we did add, as an appendix to the paper, a brief account of some of the decisions of courts in other jurisdictions ....
>
> 8. It is, however, important from our point of view to express our opinion (reinforced by our general consultation and supported by the report of the Scottish Law Commission) that it is highly probable that the common law would, in appropriate circumstances, provide a remedy for a plaintiff suffering from a pre-natal injury caused by another's fault. It is important to make our opinion on this point clear because, on consultation, it has become apparent that many people think that we were, in our working paper, proposing the creation of new liabilities, whereas it is probable that liability under the common law already exists ...."

Thereafter in United Kingdom, the Congenital Disabilities (Civil Liability) Act, 1976, was brought forth. Section 1(1) of that Act says:

> "1. (1) If a child is born disabled as the result of such an occurrence before its birth as is mentioned in sub-section (2) below, and a person (other than the child's own mother) is under this section answerable to the child in respect of the occurrence, the child's disabilities are to be regarded as damage resulting from the wrongful act of that person and actionable accordingly at the suit of the child."

It is not necessary for the present purpose to go into other features of that legislation and the state of corresponding law in India. Our present question is as to how and who would provide compensation to the two classes of cases referred to by us earlier. We hold that these two classes of cases are compensatable if the claimants are able to prove injury in the course of the next eight years from now.

209. The premia for the insurance shall be paid by the Union of India out of the settlement fund. The eligible claimants shall be entitled to be paid by the insurer compensation on such principles and upon establishment of the nature of the gas related toxic morbidity by such medical standards as are applicable to the other claimants under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, and the Scheme framed thereunder. The individual claimants shall be entitled to have their claims adjudicated under the statutory scheme.

210. We must, however, observe that there is need for expeditious adjudication and disposal of the claims. Even the available funds would not admit of utilisation unless the claims are adjudicated upon and the quantum of compensation determined. We direct both the Union of India and the State Government to take expeditious steps and set up adequate machinery for adjudication of claims and determination of the compensation. The appointment of the Claim Commissioners shall be completed expeditiously and the adjudicative process must commence within four months from today. In the first instance, there shall at least be 40 Claim Commissioners with necessary secretarial assistance to start the adjudication of the claims under the Scheme.

211. In the matter of disbursement of the amounts so adjudicated and determined it will be proper for the authorities administering the funds to ensure that the compensation amounts, wherever the beneficiaries are illiterate and are susceptible to exploitation, are properly invested for the benefit of the beneficiaries so that while they receive the income therefrom they do not, owing to their illiteracy and ignorance, deprive themselves of what may turn out to be the sole source of their living and sustenance for the future. We may usefully refer to the guidelines laid down in the case of *Muljibhai Ajarambhai Harijan* v. *United India Insurance Co. Ltd.*[78] We approve and endorse the guidelines formulated by the Gujarat High Court. Those guidelines, with appropriate modifications, could usefully be adopted. We may briefly recapitulate those guidelines:

(*i*) The Claims Commissioner should, in the case of minors, invariably order the amount of compensation awarded to the minor to be invested in long term fixed deposits at least till the date of the

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minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(*ii*) In the case of illiterate claimants also the Claims Commissioner should follow the procedure set out in (*i*) above, but if lump sum payment is required for effecting purchases of any movable or immovable property such as, agricultural implements, assets utilisable to earn a living, the Commissioner may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(*iii*) In the case of semi-literate persons the Commissioner should ordinarily resort to the procedure set out in (*ii*) above unless he is satisfied that the whole or part of the amount is required for expanding any existing business or for purchasing some property for earning a livelihood.

(*iv*) In the case of widows the Claims Commissioner should invariably follow the procedure set out in (*i*) above;

(*v*) In personal injury cases if further treatment is necessary withdrawal of such amount as may be necessary for incurring the expenses for such treatment may be permitted;

(*vi*) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be.

It should be stipulated that the FDR shall carry a note on the face of the document that no loan or advance will be allowed on the security of the said document without express permission.

(*vii*) In all cases liberty to apply for withdrawal in case of an emergency should be available to the claimants.

212. Government might also consider such investments being handled by promulgating an appropriate scheme under the Unit Trust of India Act so as to afford to the beneficiaries not only adequate returns but also appropriate capital appreciation to neutralise the effect of denudation by inflation.

213. Point [J] is disposed of in terms of the foregoing directions.

214. We might now sum up the conclusions reached, the findings recorded and directions issued on the various contentions:

(*i*) The contention that the apex Court had no jurisdiction to withdraw to itself the original suits pending in the District Court at Bhopal and dispose of the same in terms of the settlement and the further contention that, similarly, the Court had no jurisdiction to withdraw the criminal proceedings are rejected.

It is held that under Article 142(1) of the Constitution, the Court had the necessary jurisdiction and power to do so.

Accordingly, contentions (A) and (B) are held and answered against the petitioners.

(*ii*) The contention that the settlement is void for non-compliance with the requirements of Order XXIII Rule 3-B, CPC is rejected. Contention (C) is held and answered against the petitioners.

(*iii*) The contention that the Court had no jurisdiction to quash the criminal proceedings in exercise of power under Article 142(1) is rejected. But, in the particular facts and circumstances, it is held that the quashing of the criminal proceedings was not justified.

The criminal proceedings are, accordingly, directed to be proceeded with. Contention (D) is answered accordingly.

(*iv*) The orders dated February 14/15, 1989 insofar as they seek to prohibit future criminal proceedings are held not to amount to a conferment of criminal immunity; but are held to be merely consequential to the quashing of the criminal proceedings.

Now that the quashing is reviewed, this part of the order is also set aside. Contention (E) is answered accordingly.

(*v*) The contention (F) that the settlement, and the orders of the Court thereon, are void as opposed to public policy and as amounting to a stifling of criminal proceedings is rejected.

(*vi*) Having regard to the scheme of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, the incidents and imperatives of the American procedure of 'Fairness Hearing' is not strictly attracted to the Court's sanctioning of a settlement. Likewise, the absence of a 're-opener' clause does not, ipso facto, vitiate the settlement. Contention (G) is rejected.

(*vii*) It is held, per invitum, that if the settlement is set aside the UCC shall be entitled to the restitution of the US 420 million dollars brought in by it pursuant to the orders of this Court.

But, such restitution shall be subject to the compliance with and proof of satisfaction of the terms of the order dated November 30, 1986, made by the Bhopal District Court. Contention (H) is rejected subject to the condition aforesaid.

(*viii*) 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 the Union of India as indicated in paragraph 198. Contention (I) is disposed of accordingly.

(*ix*) On point (J), the following findings are recorded and directions issued:

(*a*) For an expeditious disposal of the claims a time bound consideration and determination of the claims are necessary. Directions are issued as indicated in paragraphs 204 to 208.

(*b*) In the matter of administration and disbursement of the compensation amounts determined, the guidelines contained in the judgment of the Gujarat High Court in *Muljibhai* v. *United India Insurance Co.*[78] are required to be taken into account and, wherever apposite, applied. Union of India is also directed to examine whether an appropriate scheme under the Unit Trust of India Act could be evolved for the benefit of the Bhopal victims.

(*c*) For a period of eight years facilities for medical surveillance of the population of the Bhopal exposed to MIC should be provided by periodical medical check-up. For this purpose a hospital with at least 500 beds strength, with the best of equipment and facilities should be established. The facilities shall be provided free of cost to the victims at least for a period of eight years from now. The State Government shall provide suitable land free of cost.

(*d*) In respect of the population of the affected wards, (excluding those who have filed claims), Government of India shall take out an appropriate medical group insurance cover from the Life Insurance Corporation of India or the General Insurance Corporation of India for compensation to those who, though presently asymptomatic and filed no claims for compensation, might become symptomatic in future and to those later-born children who might manifest congenital or pre-natal MIC related afflictions. There shall be no upper individual monetary limit for the insurance liability. The period of insurance shall be for a period of eight years in future. The number of persons to be covered by this group shall be about one lakh persons. The premia shall be paid out of the settlement fund.

(*e*) On humanitarian consideration and in fulfilment of the offer made earlier, the UCC and UCIL should agree to bear the financial burden for the establishment and equipment of a hospital, and its operational expenses for a period of eight years.

215. In the result, the review petitions are allowed in part and all the contentions raised in the review petitions and the IAs in the civil appeals are disposed of in terms of the findings recorded against the respective

contentions. In the light of the disposal of the review petitions, the question raised in the writ petitions do not survive. The writ petitions are dismissed accordingly without any order as to costs.

AHMADI, J. (*partly dissenting*)— I have carefully gone through the elaborate judgment prepared by my learned brother Venkatachaliah, J. and I am by and large in agreement with his conclusions except on a couple of aspects which I will presently indicate.

217. The points which arise for determination on the pleadings, documents and submissions made at the bar in the course of the hearing of these petitions have been formulated at points (A) to (J) in paragraph 8 of my learned brother's judgment and the conclusions reached by him have been summarised and set out in the penultimate paragraph of his judgment at (*i*) to (*ix*), with their sub-paragraphs. I am in agreement with the conclusions at (*i*) to (*vii*) which answer contentions (A) to (H). So far as conclusion (*viii*) pertaining contention (I) is concerned, I agree that the settlement is not vitiated for not affording the victims or victim groups an opportunity of being heard but I find it difficult to persuade myself to the view that if the Settlement Fund is found to be insufficient the shortfall must be made good by the Union of India. For reasons which I will presently state I am unable to comprehend how the Union of India can be directed to suffer the burden of the shortfall, if any, without finding the Union of India liable in damages on any count. As regards conclusion (*ix*) referable to contention (J), I am in agreement with sub-paragraphs (*a*), (*b*) and (*d*) thereof but so far as sub-paragraphs (*c*) and (*e*) are concerned I agree with the directions therein as I understand them to be only recommendatory in nature and not linked with the settlement.

218. In *Charan Lal Sahu case*[3] this Court upheld the constitutional validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (hereinafter called 'the Act'). In that case although the question referred to the bench was in regard to the constitutional validity of the said enactment, submissions were made on the question whether the impugned settlement was liable to be set aside on the ground that it was in flagrant violation of the principles of natural justice, in that, the victims as well as the victim groups had no opportunity to examine the terms of the settlement and express their views thereon. Mukharji, C.J. who spoke for the majority (Ranganathan, J. and myself expressing separately) observed that on the materials available "the victims have not been able to show at all any other point or material which would go to impeach the validity of the settlement". It was felt that though the settlement without notice to the victims was not quite proper, justice had in

fact been done to the victims but did not appear to have been done. Taking the view that in entering upon the settlement regard should have been had to the views of the victims and for that purpose notices should have been issued before arriving at the settlement, the majority held that "post-decisional notice might be sufficient but in the facts and circumstances of this case, no useful purpose would be served by giving a post-decisional hearing having regard to the circumstances mentioned in the order of this Court dated May 4, 1989, and having regard to the fact that there are no further additional data and facts available with the victims which can profitably and meaningfully be presented to controvert the basis of the settlement and further having regard to the fact that the victims had their say or on their behalf their views have been agitated in the proceedings and will have further opportunity in the pending review proceedings". It would, therefore, appear that the majority had applied its mind fully to the terms of the settlement in the light of the data as well as the facts and circumstances placed before it and was satisfied that the settlement was a fair and reasonable one and a post-decisional hearing would not be of much avail. Referring to the order of May 4, 1989 carrying the Court's assurance that it will be only too glad to consider any aspect which may have been overlooked in considering the terms of the settlement, Mukharji, C.J., opined that the further hearing which the victims will receive at the time of the hearing of the review petitions will satisfy the requirement of the principles of natural justice. K.N. Singh, J. while agreeing with the view expressed by Mukharji, C.J. did not express any opinion on the question of inadequacy of the settlement. In the circumstances it was held that there was no failure of justice necessitating the setting aside of the settlement as violative of fundamental rights. After stating this the learned Chief Justice observed that while justice had in fact been done, a feeling persisted in the minds of the victims that they did not have a full opportunity to ventilate their grievances in regard to the settlement. In his view this deficiency would be adequately met in the hearing on the review petitions (the present petitions). After taking notice of the aforesaid view expressed by the learned Chief Justice, Ranganathan, J. (myself concurring) observed as under: (SCC p. 728, para 164)

> "Though we are prima facie inclined to agree with him that there are good reasons why the settlement should not be set aside on the ground that the principles of natural justice have been violated, quite apart from the practical complications that may arise as a result of such an order, we would not express any final opinion on the validity of the settlement but would leave it open to be agitated, to the extent permissible in law, in the review petition pending before this Court."

It is, therefore, manifest from the above that the *Sahu*[3] bench was 'prima facie' of the view that the settlement was not liable to be set aside on the ground that the principles of natural justice had been violated. Mukharji, C.J. went on to say that no useful purpose would be served by a post-decisional hearing and that the settlement was quite reasonable and fair. Of course K.N. Singh, J. did not express any opinion on the inadequacy of the settlement amount but he was otherwise in agreement with the view expressed by Mukharji, C.J. on all the other points. The view of Ranganathan, J. and myself is evident from the passage extracted above.

219. This case has gone through several twists and turns. One of the world's worst disaster occurred on the night between December 2 and 3, 1984 choking several to death and injuring thousands of residents living nearabouts the industrial plant of UCIL. Litigation was initiated on behalf of some of the victims in the U.S. District Court, Southern District of New York presided over by Judge Keenan. After the enactment of the Act on March 29, 1985, the Union of India also approached Judge Keenan with a complaint. Judge Keenan ultimately terminated the proceedings before him on the ground of '*forum non conveniens*'. Thereafter the Union of India representing the victims filed a suit for damages in the Bhopal District Court against the UCIL as well as the UCC in which an order for interim compensation was made against which an appeal was filed in the High Court. The matter was brought to this Court against the High Court order. It was during the hearing of the said matter that a court assisted settlement was struck and orders were passed recording the same on February 14/15, 1989[1]. On May 4, 1989 this Court gave its reasons for the settlement[2]. Soon a hue and cry was raised against the settlement by certain victims and victim groups. In the meantime petitions were filed in this Court challenging the constitutional validity of the Act on diverse grounds. In the course of the hearing of the cases raising the question of validity of the Act submissions were also made regarding the validity of the settlement. The hearing continued from March 8, 1989 to May 3, 1989 and the same received wide publication in the media. The judgment in the said case was pronounced on December 22, 1989 upholding the validity of the Act. In the meantime petitions were filed under Article 137 of the Constitution to review the settlement. Several writ petitions under Article 32 also came to be filed. These came up for hearing before a Constitution Bench presided over by Mukharji, C.J. The hearing continued for more than two weeks and the media carried reports of the day-to-day court proceedings throughout the country. Unfortunately, before the judgment could be pronounced a tragic event took place. Mukharji, C.J. passed away necessitating a

rehearing by a Constitution Bench presided over by Misra, C.J. This hearing lasted for about 18 to 19 days and received the same wide coverage in the press, etc. In fact considerable heat was generated throughout the court hearings and the press also was none too kind on the court. It is, therefore, difficult to imagine that all those who were interested in the review of the settlement were unaware of the proceedings. Mr Nariman has placed on record a number of press clippings to make good his point that newspapers having large circulation throughout the country carried news regarding the settlement and subsequent attempts to challenge the same. Can it then be said that the victims were unaware of the proceedings before this Court? To say so would be to ignore the obvious.

220. In view of the observations in *Sahu case*[3], the scope of the inquiry in the present petitions can be said to be a narrow one. One way of approaching the problem is to ask what the Court could have done if a pre-decisional hearing was afforded to the victims. The option obviously would have been either to approve the terms of the compromise, or to refuse to superadd the Court's seal to the settlement and leave the parties to go to trial. The Court could not have altered, varied or modified the terms of the settlement without the express consent of the contracting parties. If it were to find the compensation amount payable under the settlement inadequate, the only option left to it would have been to refuse to approve the settlement and turn it into a decree of the Court. It could not have unilaterally imposed any additional liability on any of the contracting parties. If it found the settlement acceptable it could turn it into a Court's decree. According to the interpretation put by the majority in *Sahu case*[3] on the scope of Sections 3 and 4 of the Act, a pre-decisional hearing ought to have been given but failure to do so cannot vitiate the settlement as according to the majority the lapse could be cured by a post-decisional hearing. The scope of the review petitions cannot be any different at the post-decisional stage also. Even at that stage the Court can either approve of the settlement or disapprove of it but it cannot, without the consent of the concerned party, impose any new or additional financial obligations on it. At the post-decisional stage it must be satisfied that the victims are informed of or alive to the process of hearing, individually or through press reports, and if it is so satisfied it can apply its mind to the fairness and reasonableness of the settlement and either endorse it or refuse to do so. In the present case the majority speaking through brother Venkatachaliah, J. has not come to the conclusion that the settlement does not deserve to be approved nor has it held that the settlement fund is inadequate. Merely on the apprehended possibility that the settlement fund may prove to be inadequate, the majority

has sought to saddle the Union of India with the liability to make good the deficit, if any. The Union of India has not agreed to bear this liability. And why should it burden the Indian taxpayer with this liability when it is neither held liable in tort nor is it shown to have acted negligently in entering upon the settlement? The Court has to reach a definite conclusion on the question whether the compensation fixed under the agreement is adequate or otherwise and based thereon decide whether or not to convert it into a decree. But on a mere possibility of there being a shortfall, a possibility not supported by any realistic appraisal of the material on record but on a mere apprehension, *quia timet*, it would not be proper to saddle the Union of India with the liability to make good the shortfall by imposing an additional term in the settlement without its consent, in exercise of power under Article 142 of the Constitution or any statute or on the premise of its duty as a welfare State. To my mind, therefore, it is impermissible in law to impose the burden of making good the shortfall on the Union of India and thereby saddle the Indian taxpayer with the tortfeasor's liability, if at all. If I had come to the conclusion that the settlement fund was inadequate I would have done the only logical thing of reviewing the settlement and would have left the parties to work out a fresh settlement or go to trial in the pending suit. In *Sahu case*[3] as pointed out by Mukharji, C.J. the victims had not been able to show any material which would vitiate the settlement. The voluminous documentary evidence placed on the record of the present proceedings also does not make out a case of inadequacy of the amount, necessitating a review of the settlement. In the circumstances I do not think that the Union of India can be saddled with the liability to make good the deficit, if any, particularly when it is not found to be a tortfeasor. Its liability as a tortfeasor, if at all, would have to be gone into in a separate proceeding and not in the present petitions. These, in brief, are my reasons for my inability to agree with the latter part of conclusion (*viii*) imposing a liability on the Union of India to make good the deficit, if any.

221. One word about the shifting stand of the Union of India. It entered into a Court assisted settlement but when the review applications came up for hearing it supported the review petitioners without seeking the Court's leave to withdraw from the settlement on permissible grounds or itself filing a review petition. To say the least this conduct is indeed surprising.

222. I would have liked to reason out my view in greater detail but the constraint of time does not permit me to do so. The draft of the main judgment was finalised only yesterday by noon time and since the matter was already listed for judgment today, I had only a few hours to state my views. I had, therefore, no time to write a detailed judgment but just a

little time to indicate in brief the crux of some of the reasons for my inability to agree with the view expressed in the judgment of brother Venkatachaliah, J. on the question of Union of India's liability to make good the deficiency, if any.

ORDER‡

1. By these applications the Indian Red Cross Society seeks a modification of certain directions issued by this Court on February 15, 1989, in Civil Appeal Nos. 3187 and 3188 of 1988 pursuant to the settlement of the suit instituted by the Union of India against Union Carbide Corporation and the Union Carbide Corporation (India) Limited arising out of the Bhopal Gas leak disaster.

2. The prayer of the Indian Red Cross Society in these applications arises in the context of the order dated June 7, 1985, made by John F. Keenan, Presiding Judge of the Southern District Court at New York [US] directing the utilisation of 5 million dollars for relief to the victims of the gas leak disaster through Indian Red Cross Society. In the said order Judge Keenan referred to the willingness of the Union Carbide Corporation "to pay 5 million dollars to aid the victims of the gas plant disaster which occurred in December 1984 in Bhopal, India" and had desired and indicated that the administration of this fund, which was intended to be at the disposal of the Union of India, should be subject to certain reporting requirements as to the utilisation of the funds. Union of India did not agree to subject itself to those conditions. Referring to the alternative arrangements as to the administration of the interim relief necessitated by Union of India's disinclination to take up relief operation on the terms stipulated by the court, Judge Keenan observed:

> "Counsel for the Union of India has informed the court that the Union of India considers these reporting requirements so onerous as to compel the Union of India to decline the 5 million dollars in interim relief offered. Accordingly, the court directs that Liaison Counsel and Messrs Bailey and Chesley of the Executive Committee contact the American Red Cross Society to arrange for discussions with the Indian Red Cross Society, in order to formulate a plan for distribution of the 5 million dollars to the victims of the gas plant disaster."

3. The US District Court, therefore, proposed a scheme for the utilisation of the Interim Relief Fund through the agency of the American Red Cross Society. But what is of particular significance in the present context is as to how this interim relief fund was to be treated and accounted for at the end of the day when the litigation culminated in a final decision. That the payment was intended to be without prejudice to

‡ Ed.: This Order is of the Bench, signed by all the five Judges constituting it.

the contentions of the Union Carbide Corporation and that, further, the amount of interim relief would form part of the quantum that may finally be adjudicated was rendered explicit in the last paragraph of the said order dated June 7, 1985 which stipulated:

> "Neither the promulgation, implementation nor anything contained herein shall be asserted or used in any manner against the interests of Union Carbide Corporation. This provision of interim relief by Union Carbide Corporation shall be credited against the payment of any final judgment or settlement of the claims against Union Carbide Corporation arising out of the Bhopal gas leak of December 1984."

After the proceedings in the US District Court terminated upon the Union Carbide Corporation's plea of *forum non-conveniens* being upheld, Union of India instituted Suit No. 1113 of 1986 in the District Court at Bhopal. The claim in the suit came to be settled in this Court in the said Civil Appeal Nos. 3187, 3188 of 1988 by the orders dated February 14/15, 1989.

4. In terms of the said settlement the sum of 5 million US dollars was treated as part of the settlement fund. In the order of this Court dated February 15, 1989 this sum of 5 million US dollars was specifically referred to in clause (*a*) of paragraph 2 and paragraph 5. The relevant portions of the order are excerpted below: (SCC pp. 676-77, para 1)

> "(*a*) a sum of US dollars 425 million (Four Hundred and Twenty-five millions) shall be paid on or before March 23, 1989, by Union Carbide Corporation to the Union of India, less US dollars 5 millions already paid by the Union Carbide Corporation pursuant to the order dated June 7, 1985 of Judge Keenan in the court proceedings taken in the United States of America ....
>
> (5) The amounts payable to the Union of India under these orders of the court shall be deposited to the credit of the Registrar of this Court in a bank under directions to be taken from this Court.
>
> *This order will be sufficient authority for the Registrar of the Supreme Court to have the amount transferred to his credit which is lying unutilised with the Indian Red Cross Society pursuant to the direction from the International Red Cross Society.*"
>
> (emphasis supplied)

The case of the applicant — Indian Red Cross Society — is that in the course of the negotiations the American Red Cross had with it in the matter of administration of this relief, the Red Cross Society of India had made it clear to the American Red Cross that it would not undertake the relief administration unless the fund was assigned to it unconditionally. Red Cross Society of India would say that it was on this specific

understanding that it accepted the engagement to administer the funds in India. Accordingly, the Indian Red Cross Society contends that the order dated February 15, 1989 insofar as it treats the unutilised part of the interim relief fund as part of the settlement fund and authorises the Registrar of the Supreme Court to realise it as such is not consistent with the terms under which the relief fund was agreed to be entrusted to and accepted by the Indian Red Cross Society and that, therefore, those directions in the order dated February 15, 1989 require to be deleted.

5. We have heard Dr Chitale for the Indian Red Cross Society, Shri F.S. Nariman for the Union Carbide Corporation and the learned Attorney General for the Union of India.

6. In view of the circumstance that at the time these applications were heard, the validity of the settlement stood assailed in certain proceedings of review, the Union of India abstained from making any statement as to the merits of the claim of the Indian Red Cross Society. Union of India sought to steer clear of any possible implication of any appropriation of the settlement fund which might be susceptible of an inference of rectification by it of the settlement.

7. The Union Carbide Corporation while disputing the claim of the Indian Red Cross Society that the said 5 million US dollars constituted subject matter of a separate and distinct fund outside the scope of the litigation culminating in the orders of February 14/15, 1989, however, stated that it had no objection if the Union of India was agreeable to the Indian Red Cross Society retaining and utilising the money lying with it.

8. The grantability of the prayer of the Indian Red Cross Society really turns upon whether the interim relief of 5 million US dollars was a distinct award standing independently and outside of the final adjudication. It is manifestly not so. Judge Keenan's order dated June 7, 1985 makes that clear. It, however, appears true that the Indian Red Cross Society sought to stipulate with its American counterpart that the Indian Red Cross Society be free from any contingent obligations stemming from the final result of the litigation one way or the other. Indeed, at some point of time the American Red Cross, presumably at the instance of the Indian Red Cross Society, desired to have the matter submitted for further consideration of the District Court at New York.

9. But nothing has been placed before us to indicate that the District Court for the Southern District, New York, ever changed the terms of its order dated June 7, 1985. On the contrary, the affidavit dated November 20, 1989, of Mr John Macdonald filed on behalf of the Union Carbide Corporation indicates that from the very inception this interim relief fund was intended to be in the nature of an "advance payment" or

"credit of the defence". The following observations of Judge Keenan on April 16, 1985 as to the intended nature of the proposed interim relief place the matter beyond doubt. Judge Keenan observed:

> "It seems to me that some sort of emergency systematic relief should be supplied to the survivors on a prompt basis. Any such funding supplied by the defendant would be treated in the nature of an advance payment or credit to the defence."

10. It would appear that the agreement between the American Red Cross and the Indian Red Cross Society came to be discussed before the District Court, New York, during hearing on November 20, 1985. The portions of the transcript of what transpired at the hearing furnished in Mr John Macdonald's affidavit indicate that, far from approving the purported arrangement inter se between the American Red Cross and the Indian Red Cross Society, they show that the terms of the order dated June 7, 1985, as to the nature and character of the interim relief as an "advance payment" or "credit to the defence" were left undisturbed. The transcript of the hearing furnished in the affidavit of Mr John also reaffirms that "if there is any recovery against Union Carbide, it is a set-off".

11. This is not disputed nor any independent material placed before us to show that the terms as to the nature and character of the interim payment had been altered in terms of the inter se arrangements pleaded by the Indian Red Cross Society. In the circumstances, the agreement between the American Red Cross and the Indian Red Cross Society cannot prevail over the effect of the order dated June 7, 1985 of Judge Keenan. This Court's directions in this behalf in the order dated February 15, 1989, are not inconsistent therewith and do not, therefore, require any modification.

12. Now that the terms of the settlement have been upheld in the review proceedings the unutilised part of the interim relief of 5 million US dollars will become part of the Bhopal gas relief fund, and shall have to be administered as such. The Registrar of the Supreme Court shall be entitled to call up the funds with the Indian Red Cross Society which stood unutilised as on February 15, 1989.

13. The present applications of the Indian Red Cross Society are, accordingly, dismissed.