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FROM THE DESK OF CHIEF EDITOR

JUDGES ARE HUMAN BEINGS

The Preamble to the Indian Constitution opens with eloquent words: **We the People of India**. It is the people of India who elect the Members of Parliament and the Political Executive. Therefore, the two wings of the democratic state are the elected bodies. The Will of the people is contained in the Constitution. Both wings are under the Constitution. They have to translate the Constitution through the legislative and executive actions and processes. How to keep the two organs of the state within the constitutional limitations? Do the Members of these organs represent the Will of the people? In the year 2009 General Election, the Congress, the majority party formed the government. 58 percent of the registered voters voted. Congress party polled 28 percent of the votes polled. Consequently, the congress party formed the government with approximately 16 percent of the registered voters. In the General Election of the year 2019, approximately 67 percent of the registered voters voted. This number is the largest ever since 1952. The BJP polled 37 percent of the votes polled. Thus, the share of the BJP party was only 25 percent of the total numbers of voters registered. This leaves nothing to doubt that even if they were the majority party yet they represented only 16 and 25 percent of the registered voters respectively. This number is miserably poor. This is the biggest fallacy of Indian democracy. The making of the Indian Constitution was a carnival of democracy. A democracy of Abraham Lincoln (1861), government by the people, of the people and for the people. It is also the biggest challenge to Indian democracy.

The Constitution governs India. The third wing, the Judiciary is also bound by the Constitution. In fact, all the three wings of the state have to work within and in furtherance of the discipline of the Constitution. Moreover, the domain of the judiciary is to keep the other two organs of the state under the Constitution. The task is gigantic. It is certainly not easy. Nor smooth. There are many pitfalls.

We are told that Judges are not elected. It is true. It ought to be like this. The reason being, the judiciary is to keep the other two organs within the framework of the Constitution. The judiciary cannot be made to take the

cover of the Will of the people. Ultimately, it is the Will of the Constitution which is to prevail. If the judiciary had been elective, there would have been head on collision. All the three organs reflect the Will of the people through the medium of the Constitution. The three wings have to speak the language of the Constitution. The fact is that the Judiciary acts as the umpire to keep the other two components within the provisions of the Constitution. Consequently the judiciary cannot be elective. The judges are to be selective and not elective. The men of law wear the robes of a judge. Coupled with this, be a good human being to be a judge. Judges are the ambassadors of the Constitution.

Who is qualified to be a judge? I am not on qualifications. My concern is about the qualities of a judge. The judges are to be detached from the parties to the dispute. They are to be attached to the findings of the truth. Their sole concern is how best justice can be done. Judges deal with human disputes. Humanism must reflect in their judgments and in their conduct.

I wish to share an incident of early 1950s. A villager from the state of UP wrote post cards making allegations against a judicial magistrate. The magistrate made a complaint to the High Court. Number of notices were sent requiring the villager to appear before the High Court. He failed to appear. The non-bailable warrants were issued. The police produced the villager in court. He was asked, why did you not appear before the court earlier. His response was, he could not afford the railway fare. Now, the police had brought him to the court. The bench of two judges shared their concern. They felt that in this situation the allegations will not shake the judicial conscious. Therefore, it was felt that a warning would be sufficient. He was warned not to make such allegations in future. He was told to go back home. How should I go back when I have no money. This was an unusual situation. The judges decided to pay the fare personally. A senior advocate present in court offered to give him a meal and to be dropped at the railway station. Such a situation brings out the humane approach of the judges. It is reflective of the mindset of the judge.

It is said that one should be ‘as sober as a judge’. Sobriety is a lifelong journey of a judge. CJI S.A.Bobde sat on a motor bike, Harley Davidson (worth ₹50 lacs) just to have a feel of the same on June 29, 2020. He was in Nagpur Raj Bhawan. He was without a mask and the helmet. The photograph was flashed on print, electronic /social media. The fact was that he never drove or had a ride of the same. It was projected as if he had violated the Covid norms. We must not forget that judges are also human beings. This does not mean that judges should be totally devoid of such feelings. The CJI was fond of motor bikes during his younger days. Just the feel of a motor bike gave him thrill and happiness. It was not a derogatory conduct on the part of CJI. It was not demeaning the office that he was holding. The judges are not to curb their normal self as human beings. They need to be normal. Not to do anything abnormal. At the same time, we must not forget that CJI is the *paterfamilias* of Indian Judiciary. They must not do anything which would invite criticism. No action of a judge should cross the contours of sobriety. After the advent of

Indian Constitution, judges used to drive their own cars. It was only in early 1980s that the judges were provided with official cars. Still another incident. It is of late 1940s or of the year 1950. Chief Justice of Nagpur High Court, Justice Vivian Bose was driving his own car and was going to some district headquarters. While on the highway, he noticed a police jeep parked. He stopped his car. Asked the police inspector, if he needs any help in getting the car repaired. He gave a curt reply. Do it if you can. He set the fault right within minutes. Justice Bose started his car. The inspector inquired where he was going. He opened the rear door and sat on the back seat. Justice Bose drove and reached the town. The inspector was dropped at the police station. As the Chief Justice reached the Inspection Bungalow, the inspector also reached. The inspector saw the person who had driven him to the town. He realized that he is the Chief Justice. The inspector fainted. Justice Bose revived him. While leaving, Justice Bose shared with the officials what actually had happened. He instructed them not to take any action against him. Two points come to my mind. Look at the humility of the Chief Justice. Secondly, if somebody had captured his photograph while repairing the jeep or even otherwise. The next day, the news in the newspapers could appear: “Hon’ble the Chief Justice, Justice Vivian Bose repaired the jeep of the police inspector on the highway. He acted as the motor mechanic. The Chief Justice should not have done so. It did not behove the Chief Justice”. This is wrong way of perceiving the Chief Justice. His response was so spontaneous. He knew how to repair the jeep. He did not hesitate to render the required help. It was reflective of his helping nature. Moreover, he never thought that this was below his dignity. This showed, how balanced he was as a human being.

One more incident. It happened in the Supreme Court on March 13, 1968 in the court of Chief Justice of India. It was a bench of three judges including the Chief Justice, M.Hidayatullah. There was an attempt on their lives in the court. Justice A.N.Grover got two cuts on his scalp with the flick knife. He was bleeding. He was immediately put in the Chief Justice’s car in the back seat. Chief Justice Hidayatullah drove the car himself. He jumped a couple of red lights. Within minutes, he was in Willington Hospital. It seems that the judges of the top court also did not have official drivers at that time. Justice Grover was saved. A question was raised. Should the Chief Justice have jumped the traffic lights? Should he have driven the car himself? The answer cannot be given without keeping the situation in mind. It was the situation which demanded and warranted this. Let us not forget that after all judges are also human beings. A human life was to be saved. The Chief Justice acted in furtherance of the same.

It is the humane element which plays a vital role in dealing with human disputes. Judges are humans. They deal with human disputes. They ought to decide with humanistic approach. Judges filter the Constitution with humanism. Realistic approach is important. Technical justice is not the best recipe. Constitutional jurisprudence must grow on the foundation of humanism.

Balram K. Gupta

LATEST CASES: CIVIL

"*The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated*."

- *B.R. Gavai, J. in Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd., (2022) 2 SCC 1, para 28*

New Okhla Industrial Development Authority v. Ravindra Kumar Singhvi: 2022 SCC OnLine SC 186- **Law on filing false affidavit: Can defaulter get benefit of equity?**-**HELD**-that a person who misleads the Authority in obtaining allotment of a plot is not entitled to any relief. While adjudicating a case where the plaintiff had filed a false affidavit to obtain a plot, the Bench rejected the benefit of equity to the plaintiff holding that,***"…affidavits filed were not mere sheet of paper but a solemn statement made before a person authorized to administer oath or to accept affirmation. The plaintiff had breached such solemn statement made on oath."***

as per the decision in ITC Ltd. v. State of U.P., (2011) 7 SCC 493, and Section 14 of U.P. Industrial Development Act, 1976, the Chief Executive Officer alone could cancel the lease, the Bench held that the determination of lease by the Chief Executive Officer would arise if in case there was any violation of the terms of lease. The Bench stated,*"If the condition precedent for grant of lease itself was fraudulent, the cancellation of lease was not required to be preceeded by permission of the Chief Executive Officer."*

In the light of above, the Bench concluded that since the second plot allotted to the plaintiff had been allotted against the express terms of allotment, therefore, there was neither equity nor any law in favor of the plaintiff.

Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai: 2022 SCC OnLine SC 258 - **Permanent Injunction can't be granted against true owner once the title dispute is settled; SC reverses three concurrent findings -** **HELD-**Reversing the concurrent findings of all the Court below in a case where the plaintiff was granted the relief of permanent injunction despite having lost the title, the bench has held that the plaintiff is not entitled to a relief of permanent injunction against the true owner once the dispute is settled and the plaintiff has lost the title.

The Supreme Court found it unsustainable, both, on law as well as on facts as *an injunction cannot be issued against a true owner or title holder and in favour of a trespasser or a person in unlawful possession.*

The Court explained that an injunction is a consequential relief and in a suit for declaration with a consequential relief of injunction, it is not a suit for declaration simpliciter, it is a suit for declaration with a further relief. Whether the further relief claimed has, in a particular case as consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. Where once a suit is held not maintainable, no relief of injunction can be granted. *Injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to disposes him, except in due process of law.*

Therefore, holding that the prayer for permanent injunction must fail, the Court said that the plaintiff cannot be said to be in lawful possession of the suit land, i.e., the possession of the plaintiff is "not legal or authorised by the law", the plaintiff shall not be entitled to any permanent injunction.

The Court, hence, found that all the Courts below erred in granting permanent injunction in favour of the plaintiff and against the defendant, who is the true owner. It is to be noted that the Supreme Court is usually slow in interfering with the concurrent findings of the Courts below. However, in the case at hand, the Supreme Court reversed the findings of three Courts i.e. the Trial Court-decree, First Appellate Court, and the High Court.

Amar Nath v. Gian Chand: 2022 SCC OnLine SC 102-Merely writing "cancelled" on registered power of attorney wouldn't make it null and void- HELD- that mere writing the word "cancelled" or drawing a line would not render Power of Attorney null and void as there must be cancellation and it must further be brought to the notice of the third party at any rate.

The Court analysed Section 18 of the Registration Act and concluded that the

production of the certified copy of the power of attorney along with the original of the sale deed was fully justified as the section did not require production of original copy. Therefore, the claim of plaintiff that non-production of original PoA was fatal to valid registration was summarily rejected and the understanding of Section 18A by previous court was held erroneous. The Bench opined that the inquiry contemplated under the Registration Act, could not extend to question as to whether the person who executed the document in his capacity of the power of attorney was indeed having a valid power of attorney or not to execute the document or not as the document which was sought to be registered was sale deed and not the POA in question.

The Bench held that for cancellation of a registered POA there must be cancellation and it must further be brought to the notice of the third party at any rate. Additionally, noticing that there was no expressed restriction on price in the POA, the Bench held that at best the defendant 2 could be held guilty of breach of duty to for acting against the interest of principal however, defendant 2 having sold the property for Rs.30,000 instead Rs.55,000 could not invalidate the sale or render it null and void.

Sree Surya Developers and v. N. Sailesh Prasad: 2022 SCC OnLine SC 165 - Is independent suit questioning a compromise decree maintainable or one has to approach the same Court which recorded the compromise to challenge it?-HELD- that an independent suit questioning the Compromise Decree would not be maintainable. The Bench observed that a mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/or barred by law.

The Bench opined,***"What was required to be considered by the High Court was whether the independent suit questioning the Compromise Decree would be maintainable or not. The aforesaid crucial aspect had not been dealt with by the High Court at all and High Court had gone into the validity of the Compromise Decree in view of Order XXXII Rule 7 CPC."***

The Bench held that the plaint in exercise of powers under Order VII Rule 11 of CPC to challenge the Compromise Decree would be barred under Order XXIII Rule 3A of CPC and the party to a consent decree based on a compromise has to approach the same court, which recorded the compromise to challenge a decree based on compromise.

The Bench further remarked,***If we consider the reliefs of declaration of title, recovery of possession, cancellation of revocation of Gift Deed, declaration for DGPA and Deed of Assignment-cum-DGPA, the said reliefs can be granted only if the Compromise Decree is set aside.*** In the light of the above, the Bench concluded that the High Court had erred in setting aside the order of the Trial Court. Accordingly, the impugned judgment and order passed by the High Court was set aside and quashed and the order of the Trial Court was restored.

Mukesh Kumar v. Union of India: 2022 SCC OnLine SC 229 -Compassionate Appointment cannot be denied to children born from the second wife of a deceased employee- HELD- Holding that the condition imposed by the Railway Board circular that compassionate appointment cannot be granted to children born from the second wife of a deceased employee is discriminatory, held that an applicant cannot be denied consideration under the scheme of compassionate appointments only because he is the son of the second wife of his father.

The Court applied the law laid down by the Court in **Union of India v. V.R. Tripathi, (2019) 14 SCC 646**, wherein it was held that such a denial is discriminatory, being only on the ground of descent under Article 16(2) of the Constitution.

The Court, in the said judgment, had held that the scheme and the rules of compassionate appointment cannot violate the mandate of Article 14 of the Constitution. Once Section 16 of the Hindu Marriage Act regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would violate Article 14 if the policy or rule excludes such a child from seeking the benefit of compassionate appointment. The circular creates two categories between one class, and it has no nexus to the objects sought to be achieved. Once the law has deemed them legitimate, it would be impermissible to exclude them from being considered under the policy.

"Exclusion of one class of legitimate children would fail to meet the test of nexus with the object, and it would defeat the purpose of ensuring the dignity of the family of the deceased employee."

Relying on a number of Supreme Court rulings, the Court observed that compassionate appointment is an exception to the constitutional guarantee under Article 16, a policy for compassionate appointment must be consistent

with the mandate of Articles 14 and 16. That is to say, a policy for compassionate appointment, which has the force of law, must not discriminate on any of the grounds mentioned in Article 16(2), including that of descent. Hence, in this regard, 'descent' must be understood to encompass the familial origins of a person.

"Familial origins include the validity of the marriage of the parents of a claimant of compassionate appointment and the claimant's legitimacy as their child. The policy cannot discriminate against a person only on the ground of descent by classifying children of the deceased employee as legitimate and illegitimate and recognizing only the right of legitimate descendant."

Shrikant G. Mantri v. Punjab National Bank: 2022 SCC OnLine SC 218- 'Business to business' dispute not a consumer dispute-HELD- Section 2(1)(d) of the said Act is in two parts.

1. Section 2(1)(d)(i) of the said Act deals with buying of goods.
2. Section 2(1)(d)(ii) of the said Act is with respect to hiring of services.

By the 1993 Amendment Act, wherever the word "hires" was used, the same was substituted by the words "hires or avails of". By the said 1993 Amendment Act, insofar as Section 2(1)(d)(i) is concerned, an Explanation was provided to the effect that 'commercial purpose' does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self-employment. Hence, though the original Act of 1986 excluded a person from the ambit of definition of the term 'consumer' whenever such purchases were made for commercial purpose; by the Explanation, which is an exception to an exception, even if a person made purchases for 'commercial purpose', he was included in the definition of the term 'consumer', if such a person bought and used such goods exclusively for earning his livelihood by means of self-employment.

By the 2002 Amendment Act, the legislature has done two things.

1. It has kept the commercial transactions, insofar as the services are concerned, beyond the ambit of the term 'consumer' and brought it in parity with Section 2(1)(d)(i), wherein a person, who bought such goods for resale or for any commercial purpose, was already out of the ambit of the term 'consumer'.
2. The legislature did was that even if a person availed of the commercial services, if the services availed by him were exclusively for the purposes of earning his livelihood by means of self-employment, he would still be a 'consumer' for the purposes of the said Act.

Thus, a person who availed of services for commercial purpose exclusively for the purposes of earning his livelihood by means of self-employment was kept out of the term 'commercial purpose' and brought into the ambit of 'consumer', by bringing him on par with similarly circumstanced person, who bought and used goods exclusively for the purposes of earning his livelihood by means of self-employment.

"If a person buys goods for commercial purpose or avails services for commercial purpose, though ordinarily, he would have been out of the ambit of the term 'consumer', by virtue of Explanation, which is now common to both Sections 2(1)(d)(i) and 2(1)(d)(ii), he would still come within the ambit of the term 'consumer', if purchase of such goods or availing of such services was exclusively for the purposes of earning his livelihood by means of self-employment."

The upshot of the above-mentioned discussion led to the conclusion that when a person avails a service for a commercial purpose, to come within the meaning of 'consumer' as defined in the said Act, he will have to establish that the services were availed exclusively for the purposes of earning his livelihood by means of self-employment. There cannot be any straitjacket formula and such a question will have to be decided in the facts of each case, depending upon the evidence placed on record.

The Court was deciding the case where NCDRC has come to a finding that the appellant had opened an account with the respondent-Bank, took overdraft facility to expand his business profits, and subsequently from time to time the overdraft facility was enhanced so as to further expand his business and increase his profits.

The Court affirmed the said ruling and observed that the relations between the appellant and the respondent is purely "business to business" relationship. As such, transactions would clearly come within the ambit of 'commercial purpose'. It cannot be said that the services were availed "exclusively for the purposes of earning his livelihood" "by means of self-employment".

Mahima Tuli
Research Fellow

LATEST CASES: CRIMINAL

"*The word "laches" is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy*."

- *M.M. Sundresh, J. in Union of India v. N. Murugesan, (2022) 2 SCC 25, para 21*

Nahar Singh Vs. State of Uttar Pradesh & Anr., [Criminal Appeal No. 443 of 2022 arising out of Petition for Special Leave to Appeal (Crl.) No. 8447 of 2015], Date of Decision: 16.03.2022-Whether a Magistrate taking cognizance of an offence on the basis of a police report in terms of Section 190 (1)(b) of the Code of Criminal Procedure, 1973 can issue summons to any person not arraigned as an accused in the police report and whose name also does not feature in column (2) of such report?-HELD-Hearing a Criminal Appeal against the judgment passed by Hon'ble High Court opining, on this question, in the affirmative in the matter in which the Magistrate had taken cognizance of offences under Sections 363, 366 and 376 of the Indian Penal Code, 1860 on the basis of police report, the Hon'ble Supreme Court has held that if there are materials before the Magistrate showing complicity of persons other than those arraigned as accused or named in column 2 of the police report in commission of an offence, the Magistrate at that stage could summon such persons as well upon taking cognizance of the offence. It has been further held that for summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, charge sheet or the F.I.R.. A statement made under Section 164 of the Code could also be considered for such purpose.

Gadadhar Chandra Vs. State of West Bengal- 2022 SCC OnLine SC 321-Common Intention-Section 34 of IPC?-HELD-Hearing a Criminal Appeal against the judgment dismissing the Appeal against conviction for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, the Hon'ble Supreme Court has held that it presupposes prior concert. It requires meeting of minds. It requires a prearranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused.

Kamla Devi Vs. State of Rajasthan & Anr.: 2022 SCC OnLine SC 307-Factors to be considered by a Court while deciding a bail application?-HELD-Hearing a Criminal Appeal against the judgment granting Bail to the accused in connection with matter involving charges under Sections 302, 201 and 34 of the Indian Penal Code, 1860, the Hon'ble Supreme Court has held that the primary considerations which must be placed at balance while deciding the grant of bail are: (i) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice; (iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the accused tampering with evidence. It has been further held that the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt which would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused.

Sagar Vs. State of Uttar Pradesh and Anr.: 2022 SCC OnLine SC 289-The scope and ambit of Section 319 of the Code?-HELD-Hearing a Criminal Appeal against the judgment setting aside an order rejecting the application filed under Section 319 of the Code of Criminal Procedure, 1973 for summoning the accused under Section 302 IPC, the Hon'ble Supreme Court reiterating the law laid down in *Hardeep Singh v. State of Punjab and others, (2014) 3 SCC 92,* has held that power under Section 319 of the Code is a

discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

Sanjeev & Anr. Vs. State of Himachal Pradesh: 2022 SCC OnLine SC 288-Factors in an appeal against acquittal?-HELD- Hearing a Criminal Appeal against the judgment passed by the Hon'ble High Court reversing the acquittal rendered in favour of the appellants by the Trial Court in respect of the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the Hon'ble Supreme Court reiterating the law laid down in *Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436*, and *Anwar Ali and another v. State of Himachal Pradesh, (2020) 10 SCC 166* has noted that while dealing with an appeal against acquittal, the reasons which had weighed with the Trial Court in acquitting the accused must be dealt with, in case the appellate Court is of the view that the acquittal rendered by the Trial Court deserves to be upturned. The Hon'ble Supreme Court reiterating the law laid down in *Atley v. State of Uttar Pradesh, AIR 1955 SC 807* has further noted that with an order of acquittal by the Trial Court, the normal presumption of innocence in a criminal matter gets reinforced. The Hon'ble Supreme Court reiterating the law laid down in *Sambasivan and others v. State of Kerala, (1998) 5 SCC 412* has further noted that if two views are possible from the evidence on record, the appellate Court must be extremely slow in interfering with the appeal against acquittal.

Waheed-Ur-Rehman Parra Vs. Union Territory of Jammu & Kashmir: 2022 SCC OnLine SC 237-Whether in the case of certain witnesses being declared as protected witnesses in the exercise of powers under Section 173(6) of the Code of Criminal Procedure, 1973, read with Section 44 of the Unlawful Activities (Prevention) Act, 1967 by the trial court, can the defence seek recourse to the remedy under Section 207 and Section 161 of the Cr.P.C. for obtaining copies of redacted statements of these protected witnesses?-HELD-Hearing a Criminal Appeal arising against the judgment passed by the Hon'ble High Court reversing the order of the Trial Court in the matter of an application under Section 207 of the Cr.P.C., the Hon'ble Supreme Court has held that the provisions of Section 173(6) of the Cr.P.C. read with Section 44 of the UAPA and Section 17 of the NIA Act stand on a different plane with different legal implications as compared to Section 207 of the Cr.P.C.. The Hon'ble Supreme Court has further held that the objective of Section 44, UAPA, Section 17, NIA Act, and Section 173(6) is to safeguard witnesses. They are in the nature of a statutory witness protection. On the court being satisfied that the disclosure of the address and name of the witness could endanger the family and the witness, such an order can be passed. They are also in the context of special provisions made for offences under special statutes.

Rajesh Yadav and another vs The State Of Uttar Pradesh:2022 SCC OnLine SC 150-HELD-Hearing a Criminal Appeal, the Hon'ble Supreme Court has held that the trial courts shall endeavor to complete the examination of the private witnesses both chief and cross on the same day as far as possible. To further curtail this menace, we would expect the trial courts to take up the examination of the private witnesses first, before proceeding with that of the official witnesses.

M. Gopalakrishnan & others Vs. Pasumpon Muthu ramalingam & another: SPECIAL LEAVE PETITION (CRIMINAL) 30839/2021, Date of Decision: 11.03.2022-Expeditious proceedings?-HELD-Hearing a Criminal Appeal, the Hon'ble Supreme Court has held that before passing any such order for expeditious proceedings in a particular case (which might appear to be rather of innocuous nature), it would be appropriate for the higher Court to appreciate that any such order for one case, without cogent and extremely compelling reasons, might upset the calendar and schedule of the subordinate Court; might result in assigning an unwarranted priority to that particular case over and above other cases pending in that Court; and progression of such other cases might suffer for no reason and none of the faults of the litigants involved therein.

Amrinder Singh Shergill
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: MACT ACT

"*Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a court of equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.*"

— M.M. Sundresh, J. in Union of India v. N. Murugesan, (2022) 2 SCC 25, para 22

Regional Transport Authority v. Shaju: 2022 SCC OnLine SC 209 : "A bus by bus, a mini-bus by mini-bus and not bus by a mini-bus" isn't a correct way to interpret the expression "same nature" - HELD- that Rule 174(2)(c) of the Kerala Motor Vehicle Rules,1989 is valid and salutary and does not go beyond the scope of Section 83 of the MV Act, 1988. While interpreting the expression "same nature" the Bench observed that such expressions are better kept open ended to enable courts to subserve the needs of changing circumstances. The Bench expressed,***"…the assumption in the impugned judgment that the expression "same nature" is confined only to, mean "a bus by bus, a mini-bus by mini-bus and not bus by a minibus…." is not a correct way to read the provision. There is no need to restrict the meaning of an expression same nature."***

o interpret the expression, 'of the same nature', the Bench gauged through the whole statutory scheme under Chapter IV and Chapter V where the former provides for the powers of the Central Government with respect to fixation of the age of the vehicle, or fitness of the vehicle while later provides for the powers of the State Government to deal with transport vehicles except under Section 88 of the Act where the powers are subject to the rules made by the Central Government. The Bench opined that the placement of Section 83 in Chapter V is recognition of the need to provide a seamless mechanism for replacement of a vehicle during subsistence of a transport permit.

Considering the term "vehicle of the same nature" in the context of Chapter V relating to transport vehicles, the Bench explained,

"…it becomes clear that the provision is intended only to enable the owner to work his permit without any interruption even if there is a need to replace the vehicle covered by the permit. There is no other purpose. It is intended to be a simple transaction and this is reason why the scope of scrutiny is limited only to examining if the vehicle is of same nature as in the permit."

Hence, the Bench opined that the context, in which scrutiny of the Regional Transport Authority is called upon, is only to ensure that the conditions of the permit are not deviated from. Therefore, the scrutiny is not of the vehicle in itself but the vehicle in relation to the permit and a scrutiny of the vehicle, irrespective of its relation with the permit becomes an irrelevant consideration for the purpose of Section 83. Particularly, when questions relating to the vehicle or about the vehicle are matters of concern in Chapter IV, under which the Central Government is empowered to set the norms for the fitness or the age limit of the vehicle and Chapter V, on the other hand contains the legal regime with respect to operations of transport vehicles. Chapters IV and V operate in their own field subserving the purpose and objects mentioned therein.

In the light of the above, the Bench held that Rule 174 (2) (c) made by the State Government to enable replacement of the vehicle under a Transport permit, did not

impinge upon the powers of the Central Government with respect to fixation of the age of the vehicle, or fitness of the vehicle conferred upon it under Sections 56 and 59 in Chapter IV. The Bench observed,

"The scrutiny under Rule 174 is only to enable the Authority to ensure that the subsisting permit is not interrupted and at the same time public interest is not compromised by deviating from the permit. The Rule will have no bearing on the power of the Central Government and as such it would not be ultra vires the provisions of the Act."

Consequently, the Bench concluded that Rule 174(2)(c) was not ultra vires the provisions of the statute and the reasoning adopted by the Division Bench that Rule 174 (2) (c) has overridden the Act was not correct because a subordinate legislation must be interpreted to effectuate the statutory purpose and objective and the High Court failed to appreciate the context in which Rule 174 (2) (c) read with Section 83 was to be construed. Hence, the impugned judgment was set aside.

Safiq Ahmed v. ICICI Lombard General Insurance Co. Ltd.: 2021 SCC OnLine SC 1259 -**SC looks to curb the menace of fake Compensation Claims under Motor Vehicles Act; impleads Ministry of Transport-HELD-**After it was brought to the Court's notice that several fake claim petitions were being filed for getting compensation under the Motor Vehicles Act as well as under the Workmen Compensation Act, the bench has issued notice to the Ministry of Transport, Government of India seeking its response and suggestions on how to curb the menace of filing false/fake claim petitions.

The Special Investigating Team (SIT) has filed a Status Report with respect to complaints filed/enquiry completed, the names of the accused, where the criminal complaints are filed and in which criminal cases the charge sheets have been filed. The Status Report shows that total 1376 cases of suspicious claims from various Districts in the State of U.P. have been received so far by the SIT.

Some of the issues Highlighted in the Status report

- Out of total 1376 cases of suspicious claims received by the SIT since 2015, after completing enquiry of 247 cases of suspicious claims till date, total 198 accused persons have been prima facie found guilty of cognizable offence and accordingly total 92 criminal cases have been registered in various districts. Further, against some of the accused persons, more than criminal cases have been registered. Enquiry of remaining cases of suspicious claims is underway.
- Out of total criminal cases registered so far, investigation of 36 criminal cases have been completed and charge sheets against accused persons have been filed in 32 criminal cases 2 and final reports in 4 criminal cases have been forwarded to the concerned Criminal Court.
- total 92 criminal cases in various Districts have been registered till date, of which, 28 advocates have been named as accused persons in 55 cases. Charge sheets against 11 advocates in 25 cases have been forwarded to the concerned trial Court till date.
- Headquarter of the SIT is situated in Lucknow. Officers/employees have to go in the districts of the entire State and sometimes have to go in other States outside the State of Uttar Pradesh for conducting enquiry/investigation proceedings as and when so warranted.
- Due to the outbreak of Covid-19, there was a lockdown and termination of transportation services in the State and even some of the officers/employees have been got infected, enquiry/investigation process was adversely affected. It is stated that on getting the situation normal after completion of lockdown of Corona period, full attempts are being made to start this enquiry/investigation process speedily.
- As the respective insurance companies are not ready to being complainants in the FIR, the investigating officer of the SIT has to become the complainant and therefore also it takes some time. Investigating officer is also present in the Court.

Modus operandi in instituting the fake compensation petitions

1. Non-road accident injury-death converted into road accident claims;
2. fraudulent implantation of vehicle;
3. false implantation of driver;
4. claimant implantation;
5. multiple claims at various for a at different territorial locations for compensation out of injury/death caused arising out of the same accident. Often the claim applications are filed both before various MACT Tribunals as well as the authorities under the Employees Compensation Act, 1923;
6. fake/fabricated insurance policies; and
7. fake/fabricated income documents/medical documents for exaggerated compensation

Direction

The Court was hence of the opinion that before any further directions are issued, it was necessary to seek the response from the Ministry of Transport, Government of India to have their suggestions for remedial and preventive measures for curbing the menace of filing of false/fraud claim petitions.

The Court, hence, directed the Registry to implead the Ministry of Transport, Government of India as a party-respondent and issue notice. K.M. Nataraj, Additional Solicitor General of India has been requested to appear on behalf of the Ministry of Transport, Government of India and to assist the Court and to come out with suggestions how to curb the menace of filing false/fake claim petitions, after which the Court will issue directions to be applied pan India.

Rasmita Biswal v. National Insurance Company Ltd.: 2021 SCC OnLine SC 1193- 'Motor Vehicle Appellate Tribunals' may soon be a reality?-HELD- With an aim to curtail the pendency before the High Courts and for speedy disposal of the appeals concerning payment of compensation to the victims of road accident, the bench has asked the Department of Justice, Ministry of Law and Justice to consider constituting 'Motor Vehicle Appellate Tribunals' by amending Section 173 of the Motor Vehicles Act so that the appeals challenging the award of a Tribunal could be filed before the Appellate Tribunal so constituted.

The order came after the Court noticed that a large number of claim petitions, under the provisions of the Motor Vehicles Act, 1988 are being filed before the various Claims Tribunals established thereunder throughout the country. Against the awards of the Tribunals, appeals are filed under Section 173 of the Motor Vehicles Act, 1988 before the relevant High Court, either by the claimants or by the insurers and owners of the offending vehicles. Large number of such appeals are pending before the various High Courts.

The Court went on to give the following suggestions:

- The various Benches of such an Appellate Tribunal could consist of two Senior District Judges.
- To ensure access to justice and to avoid pendency, Benches of the Appellate Tribunal in various regional cities may be set up, in addition to the capital city of each State as may be indicated by the relevant High Court. For this purpose, appropriate rules governing the procedure of the Appellate Tribunal may also be framed.
- No further appeal against the order of the Appellate Tribunal need be provided. If any of the party is aggrieved by the order of the Appellate Tribunal, he can always invoke the writ jurisdiction of the concerned High Court for appropriate reliefs.

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NOTIFICATIONS

1. Procedure for detailed investigation of road accidents and Detailed Accident Report, notified vide Central Motor Vehicles (fifth Amendment) Rules, 2022: On February 25, 2022, the Ministry of Road Transport and Highways has issued notification to mandate the procedure for detailed investigation of road accidents, the Detailed Accident Report (DAR) and its reporting, along with timelines for different stakeholders, for quick settlements of claims by the Motor Accident Claim Tribunal (MACT).

Further, it has also mandated incorporation of validated mobile number in the Certificate of Insurance.

- In the Central Motor Vehicles Rules, 1989, the following rule shall be inserted, namely: –

"150A. Procedure for investigation of road accident. – The procedure to be followed for investigation of all accidents arising out of the use of motor vehicles shall be in accordance with Annexure–XIII and in the manner of submission and form, including electronic submission on such Portal as may be specified. ".

- Annexure XIII dealing with Procedure for Investigation of Motor Vehicle Accidents has been inserted.[1]

2. Compensation to kin of victims of hit and run accidents increased w.e.f April, 2022; Scheme for compensation to victims notified: On February 25, 2022, the Central Government has notified Central Motor Vehicles (Motor Vehicle Accident Fund) Rules, 2022. This shall come into force on April 1, 2022.

Key points:

- **Establishment of Motor Vehicle Accident Fund** – The Motor Vehicle Accident Fund shall comprise of the following three accounts: Account for Insured Vehicles, Account for Uninsured Vehicles or Hit and Run Motor Accident and Hit and Run Compensation Amount.
- **Powers and functions of Trustees** – The Trust shall make the periodical review of the working and utilisation of the Motor Vehicles Accident Fund (Trust Corpus), and make recommendations to the Central Government for relevant corrective steps, wherever necessary.
- **Disbursement of fund for hit and run compensation** – In case of hit and run motor accidents, the compensation under section 161 shall be disbursed from the Hit and Run Compensation Account in accordance with the Compensation to Victims of Hit and Run Motor Accidents Scheme, 2022.

Note: Section 161 of the Motor Vehicles Act provides for enhanced compensation for hit-and-run cases of death and injuries. Section 161 (effective April, 2022), as amended by the Motor Vehicles Act 2019, increased the compensation for death in hit-and-run cases from Rs 25,000 to Rs. 2 Lakhs; in cases of grievous injuries, the compensation was enhanced from Rs.12,500 to Rs 50,000.

On February 25, 2022, the Central Government notified the Compensation to Victims of Hit and Run Motor Accidents Scheme, 2022 which will come into force from April 01, 2022. The Scheme is issued in supersession of the Solatium Scheme, 1989.

Key points of the Scheme:

- **Constitution of Standing Committee and District Level Committee** – A Standing Committee is formed, authorised to carry out the functions and duties in order to provide relief to victims, consists of several senior officers of different ministries of Central Government. A District Level Committee is formed to carry out the issues raised at the level of each district.
- **Procedure for making claim application:** The applicant shall submit an application seeking compensation under this scheme in Form I, including through electronic means, along with a copy of claim raised by the hospital providing the treatment, if any, as per Scheme for Cashless Treatment formulated under Section 162, and the undertaking in Form IV, and such other documents mentioned in Form I, including through electronic means, to the Claims Enquiry Officer of the Sub-Division or Taluka in which the accident took place.
- **Payment of Compensation:** In hit and run cases, the damage incurred by the victims decides the damages that will be paid to them.

1.

A. The claims made under the provisions of the Act wherein the death is caused due to Motor Vehicle accident, the legal representatives of the deceased are decided by the Claims Enquiry Officers. Similarly, those victims who make claims due to suffering caused by grievous hurt in the motor vehicle accidents are awarded compensation.

B. On behalf of the Trust, General Insurance Council (GIC) makes e-payment to the bank account as provided by the claimant or legal representative of the deceased, as the case may be, and simultaneously send intimation to all the concerned authorities to whom the copy of the sanction order is endorsed.

C. The payment is made within fifteen days from the date of receipt of the sanction order or within a further period of thirty days with recorded reasons made in writing to the Claims Settlement Commissioner.

- **Annual Report:** The GIC will prepare an annual report on the working of this scheme and submit the same before the Standing Committee, with a copy to the Central Government.[2]

[1] https://static.pib.gov.in/WriteReadData/specificdocs/documents/2022/feb/doc202222720301.pdf

[2] https://static.pib.gov.in/WriteReadData/specificdocs/documents/2022/feb/doc202222720301.pdf

EVENTS OF THE MONTH

- Ms.Harshali Chowdhary, Additional District & Sessions Judge-cum-Faculty Member, Chandigarh Judicial Academy gave a Webinar on “Model Rules on Video Conferencing” on March 5, 2022 to the District Judiciary of Punjab, Haryana and UT Chandigarh including Trainee Judicial Officers.
- Chandigarh Judicial Academy organized online one day workshop on the Commercial Courts Act, 2015 on March 26, 2022. Dr.Balram K Gupta, Director (Academics), CJA, gave the opening remarks. He also gave the overview of the Commercial Courts Act. This workshop was divided into 05 academic sessions. Each session was devoted to cover specific aspects of the Commercial Courts Act. The first session was devoted to Why Commercial Courts and Contours of Jurisdiction. This session was taken by Justice R.K.Jain, Former Judge, Punjab & Haryana High Court. The second session was related to Amendments to the Code of Civil Procedure, 1908 under Commercial Courts Act, 2015. The resource person for this session was Justice Rajive Bhalla, Former Judge, Punjab & Haryana High Court. The third session of the workshop was structured to cover Intellectual Property Right Disputes relating to : (i) Trademark and Designs & (ii) Copyright and Patent. This session was covered by Hon’ble Ms. Justice Prathiba M. Singh, Judge, High Court of Delhi. Session four was allocated to Interplay between Commercial Courts Act, 2015 and Arbitration and Conciliation Act, 1996. The final session (fifth) was assigned to Construction and Infrastructure Contracts. Both these sessions were taken by Justice A.K.Sikri, Former Judge, Supreme Court of India, Judge, Singapore International Commercial Court. This Workshop on Commercial Courts dealt with different important and significant aspects. Equally, each session was taken by prominent judges from High Courts and the Supreme Court. Accordingly, CJA considered it appropriate to provide access to the judicial officers of different Judicial Academies across the country. The Workshop was particularly meaningful for all those judicial officers who are manning the Commercial Courts.