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FROM THE DESK OF CHIEF EDITOR

THE JUDICIAL DISCIPLINE OF A JUDGE

Late Sh.A.P.J. Abdul Kalam, the President of India visited the Supreme Court of India. He spent an hour interacting with the judges. While parting, he gave his message: You are 26 (now 34) Role Models of Judiciary for this nation. The people look up to you for removal of injustice. You must come up to their expectations. You must have a vision to do your best. Thus, every judge is a role model of the court to which he belongs.

The time of a judge is public time. The judge is its trustee. You must sit in the court on time. Also leave the court at the appointed time. The people present in the court should be able to set their watches. Punctuality, in fact, is part of the personality of a judge. The old timers tell us that the judges used to sit dot on time. Not even a minute late. Times have changed. The discipline of punctuality is no more the same. Most judges adhere to this discipline of punctuality. Some abrasions qua punctuality are there. The same must be avoided under all circumstances. The former Chief Justice of India, **late M.Hidayatullah once said: One who does not believe in punctuality of time does not have faith in the Rule of Law.** Punctuality reflects self discipline. More so, in the case of judges at all levels. Justice B.N.Srikrishna, a former Judge of Supreme Court of India shares that when he became a judge of the Bombay High Court, the then Chief Justice of Bombay High Court, Justice P.D.Desai told him that the least a judge can do is to sit dot at the scheduled time in court. This is what he precisely did throughout his judicial journey. Former CJI, Justice Y.K.Sabharwal stressed upon the importance of punctuality**:** the need for punctuality and regularity is not only to have full control over the work but also to have a moral authority to check indiscipline amongst those who are expected to play a role in the functioning of the court, including the court staff,

members of the bar, the litigants and the witnesses. Still another former Chief Justice of India, Justice R.C.Lahoti has cautioned the judges that if you cross the limit of 10 dot, it does not matter whether you sit late by 5 minutes or by 10 minutes. You are late in any case. Judges must always make an effort to be on time. My own experience at the Bar tells me that those who follow the discipline of time are always liked and appreciated by the Bar. It is understandable that occasionally the circumstances may conspire that it may render it impossible to be on time. In such a situation, the judge must inform so that the lawyers and the litigants may not wait. This too is part of judicial discipline. I am fully conscious of the fact that judges across the board are hard pressed for time. They not only work during the court hours. They continue to work even at home. They are humans. There are human limitations. Therefore, the time management is most important for judges. Time management is integral part of judicial discipline.

A judge has no personal life. He is a judge 24X7. He is in court from 10AM to 5PM. He continues to be a judge from 5PM to 10AM. The crown of a judge is not taken off even when he is sleeping. He is known as a judge. Whether in court or at home or outside. A judge always follows the disciplined life. He is watched every moment. In court or outside. His behavior and even the body language in court speak of the judge. A judge is bound by the code of conduct throughout. The court of the judge is his laboratory. It is learning and lifelong experience. A judge must have a hobby. May I suggest the reading of Autobiographies, Biographies and Reminiscences! Let me list some of them: 1.My Own Boswell : Memories of M.Hidayatullah, 2.My Life : Law and Other Things Motilal C. Setalvad, 3.Roses in December : M.C.Chagla, 4.The Family Story : Lord Denning, 5.To the Best of My Memory : P.B.Gajendragadkar, 6.Before Memory Fades : Fali S. Nariman, 7.Nani Palkhivala - The Courtroom Genius : Soli Sorabjee; Arvind P. Datar, 8.Of Life and Me : J.L.Gupta, 9.M.K.Gandhi's : The Law and the Lawyers : Maj. Gen. (Prof.) Nilendra Kumar; Neha Chaturvedi, 10.Legends in Law : V. Sudhesh Pai (Portraying 42 Life Journeys of Lawyers and Judges), 11.Legal Eagles : Indu Bhan (Top 7 Indian Lawyers), 12.Courting Politics : Shweta Bansal (9 Top Political Lawyers), 13.My Journey with Law and Justice : Professor (Dr) Balram K Gupta. This list is not exhaustive. Some more can be added in future. These are a great learning. They share their experiences. They are a store house of life experiences of best of minds. Relaxing and Entertaining. They provide enjoyment. Above all, they provide an adult dose of Judicial Discipline.

HAPPY NEW YEAR TO THE ENTIRE JUDICIAL FAMILY

Balram K. Gupta

LATEST CASES: CIVIL

"Identity is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely "for all times" which include the aspiration of an individual to be recognized by a different name for a just cause. Article 19(1)(a) of the Constitution provides for a guaranteed right to freedom of speech and expression which would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution." -A.M. Khanwilkar, J. in Jigya Yadav v. CBSE, (2021) 7 SCC 535, para 125

Avneesh Chandan Gadgil & Anr. Vs. Oriental Bank of Commerce & Ors.: 2021 SCC OnLine SC 1117- **Whether Section 5 of the Limitation Act shall be applicable to the appeal against the order of Recovery Officer under Section 30 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ?-HELD-** Referring to the case of International Asset Reconstruction Company of India Limited Vs. Official Liquidator of Aldrich Pharmaceuticals Limited and Ors., (2017) 16 SCC 137, the Hon'ble Supreme Court held : "9. Thus, as per the law laid down by this Court in the aforesaid case and even otherwise considering Section 30 of the Act, 1993, we are also of the view that Section 5 of the Limitation Act shall not be applicable to the appeal against the order of Recovery Officer as provided under Section 30 of the Act, 1993."

Beereddy Dasaratharami Reddy vs. V. Manjunath And Another: 2021 SCC OnLine SC 1236 -**Rights of karta to alienate the Joint Hindu Family property-HELD-** "6. Right of the Karta to execute agreement to sell or sale deed of a joint Hindu family property is settled and is beyond cavil vide several judgments of this Court including **Sri Narayan Bal and Others v. Sridhar Sutar and Others**, wherein it has been held that a joint Hindu family is capable of acting through its Karta or adult member of the family in management of the joint Hindu family property. A coparcener who has right to claim a share in the joint Hindu family estate cannot seek injunction against the Karta restraining him from dealing with or entering into a transaction from sale of the joint Hindu family property, albeit post alienation has a right to challenge the alienation if the same is not for legal necessity or for betterment of the estate." Further elucidating the position in Hindu law as discussed in Kehar Singh (D) through Legal Representatives and Others v. Nachittar it was held that the signatures of one of the coparcener was not required on the sale deed executed by the Karta.Further Held that "Omission to frame an issue as required under Order XIV Rule 1 of the Code of Civil Procedure, 1908 does not vitiate the trial where the parties go to trial fully knowing the rival case and lead evidence in support of their respective contentions and to refute contentions of the other side (**See – Kannan (Dead) by LRs. and Others v. V.S. Pandurangam (Dead) by LRs. and Others,** (2007) 15 SCC 157 **and Nedunuri Kameswaramma v. Sampati Subba Rao**, AIR 1963 SC 884)."

Acqua Borewell Pvt. Ltd. vs Swayam Prabha: 2021 SCC OnLine SC 1065: No injunction order can be passed against the third parties without impeding them as parties or without hearing them-HELD-The learned trial Court dismissed the injunction application by observing that some of the properties are evidently owned by the firms/trusts/companies which have not been made parties to the suit. In appeal against the said order, the Hon'ble High court partly allowed the appeal and passed the restraint order which was challenged before the Hon'ble SC. **The Hon'ble SC set aside the order of the High Court. It was held: "**Therefore, according to the plaintiffs also, the appellants herein (proposed defendants) are necessary and proper parties. Therefore, before granting any injunction with respect to the properties in which the appellants herein (proposed defendants) are claiming right, title or interest on the basis of the development agreements or otherwise they ought to have

been given an opportunity of being heard. No injunction could have been granted against them without impleading them as defendants and thereafter without giving them an opportunity of being heard." It was further held: "Therefore, the impugned common judgment and order passed by the High Court granting injunction with respect to 1/7th share in the total plaint schedule properties which has been passed without giving an opportunity of being heard to the appellants and without impleading them as party-defendants in the suit by the learned trial Court, is unsustainable and deserves to be quashed and set aside."

Murthy vs C. Saradambal: 2021 SCC OnLine SC 1219- HELD- Onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will. Before the Trial Court, the issue was whether the will was executed by the testator while in a sound and disposing state of mind? The Trial Court answered it against the Plaintiffs. The High Court reversed the said judgment.

In appeal, the bench noted the principles stated in various judgments regarding proof of will. It observed thus:

1. The legal principles with regard to the proof of a will are no longer res integra. Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will. (AIR 1959 SC 443 H.Venkatachala Iyenger vs. B.N.Thimmajamma)
2. When a will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What generally is an adversarial proceeding, becomes in such cases, a matter of the Court's conscience and then, the true question which arises for consideration is, whether, the evidence let in by the propounder of the will is such as would satisfy the conscience of the Court that the will was duly executed by the executed by the testator. It is impossible to reach such a satisfaction unless the party which sets up the will offers cogent and convincing with regard to any suspicious circumstance surrounding the making of the will. [Jaswant Kaur v. Amrit Kaur and others [1977 1 SCC 369]]Taking note of the facts and evidence on record, the bench allowed the appeal holding that the plaintiffs have not been successful in proving the validity of the will in accordance with law. The court said that a doubt is created as to whether the testator was in a sound and disposing state of mind at the time of making of the testament which was fifteen days prior to his death. The suspicious circumstances surrounding the very execution of the will have not been cleared by any cogent evidence, rather, the genuineness of Will remains in doubt.

Ajay Kumar Shukla And Others V. Arvind Rai And Others: 2021 SCC OnLine SC 1195 : Impleadment Of Few Affected Employees Sufficient In Service Matters; Non-Joining Of All Parties Not Fatal-HELD- "In matters relating to service jurisprudence, time and again it has been held that it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected. In view of the above, it is well settled that impleadment of a few of the affected employees would be sufficient compliance of the principle of joinder of parties and they could defend the interest of all affected persons in their representative capacity. Non-joining of all the parties cannot be held to be fatal."

Union of India v. Manraj Enterprises: 2021 SCC OnLine SC 1081-Contractual bar on interest doesn't only bar the parities from claiming it but also the Arbitrator from awarding it-HELD-Rejecting the contention of the respondent that the bar was on the parties from claiming interest on security deposits and earnest money and not on the arbitrator from awarding it, the Hon'ble SC observed: " once the contractor agrees that he shall not be entitled to interest on the amounts payable under the contract, including the interest upon the earnest money and the security deposit as mentioned in clause 16(2) of the agreement/contract between the parties herein, the arbitrator in

the arbitration proceedings being the creature of the contract has no power to award interest, contrary to the terms of the agreement/contract between the parties and contrary to clause 16(2) of the agreement/contract in question in this case."

Reliance was placed by the Court on *Union of India v. Bright Power Projects (India) (P) Ltd.,* (2015) 9 SCC 695, wherein it was held that Section 31(7) of the 1996 Act, by using the words "unless otherwise agreed by the parties" categorically specifies that the arbitrator is bound by the terms of the contract insofar as award of interest from the date of cause of action to date of the award is concerned. It was further observed and held that where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest.

Manmohan Nanda V. United India Assurance Co. Ltd. & Anr: 2021 SCC OnLine SC 1181 -**HELD-**Relying on General Assurance Society Ltd., v. Chandmull Jain AIR 1966 SC 1644, Delhi Development Authority v. Durga Chand Kaushish AIR 1973 SC 260, it was observed: "52. On a consideration of the aforesaid judgments, the following principles would emerge:

(i) There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the proposal. What constitutes a material fact would depend upon the nature of the insurance policy to be taken, the risk to be covered, as well as the queries that are raised in the proposal form.

(ii) What may be a material fact in a case would also depend upon the health and medical condition of the proposer.

(iii) If specific queries are made in a proposal form then it is expected that specific answers are given by the insured who is bound by the duty to disclose all material facts.

(iv)If any query or column in a proposal form is left blank then the insurance company must ask the insured to fill it up. If in spite of any column being left blank, the insurance company accepts the premium and issues a policy, it cannot at a later stage, when a claim is made under the policy, say that there was a suppression or nondisclosure of a material fact, and seek to repudiate the claim.

(v) The insurance company has the right to seek details regarding medical condition, if any, of the proposer by getting the proposer examined by one of its empanelled doctors. If, on the consideration of the medical report, the insurance company is satisfied about the medical condition of the proposer and that there is no risk of preexisting illness, and on such satisfaction it has issued the policy, it cannot thereafter, contend that there was a possible preexisting illness or sickness which has led to the claim being made by the insured and for that reason repudiate the claim.

(vi) The insurer must be able to assess the likely risks that may arise from the status of health and existing disease, if any, disclosed by the insured in the proposal form before issuing the insurance policy. Once the policy has been issued after assessing the medical condition of the insured, the insurer cannot repudiate the claim by citing an existing medical condition which was disclosed by the insured in the proposal form, which condition has led to a particular risk in respect of which the claim has been made by the insured.

(vii) In other words, a prudent insurer has to gauge the possible risk that the policy would have to cover and accordingly decide to either accept the proposal form and issue a policy or decline to do so. Such an exercise is dependant on the queries made in the proposal form and the answer to the said queries given by the proposer."**Held:** The object of seeking a medi claim policy is to seek indemnification in respect of a sudden illness or sickness which is not expected or imminent and which may occur overseas. If the insured suffers a sudden sickness or ailment which is not expressly excluded under the policy, a duty is cast on the insurer to indemnify the appellant for the expenses incurred there under. Hence in the instant case, the repudiation of the policy by the respondent insurance company was held to be illegal and not in accordance with law. Consequently, the appellant was held entitled to be indemnified under the policy.

Karuna Sharma
Civil Judge (Jr.Divn.)/JMIC
-cum-Faculty Member, CJA

LATEST CASES: CRIMINAL

"No right could be absolute in a welfare State. Man is a social animal. He cannot live without the cooperation of a large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of the public at large. Not every fundamental right under Part III of the Constitution is absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies."

- *M.R. Shah, J. in Small Scale Industrial Manufactures Assn. v. Union of India, (2021) 8 SCC 511, para 7*

Laxman Prasad Pandey Vs. State of Uttar Pradesh & Anr. : 2021 SCC OnLine SC 1224 :While taking note of details of the incident and the contention of the learned counsel for the parties, is it necessary to analyse the same to record the satisfaction to enlarge the accused on bail?-HELD-Hearing a Criminal Appeal against orders passed in cross FIRs, one under Sections 147, 148, 149, 307, 302, 188 and 120B IPC and Section 27/30 of Arms Act and other under Section 147, 148, 149, 307 IPC., the Hon'ble Supreme Court holding it necessary has reiterated the law laid down in Mahipal vs. Rajesh Kumar @ Polia & Anr. (2020) 2 SCC 118.

Gulab Vs. State of Uttar Pradesh: 2021 SCC OnLine SC 1211-Evidence of 'interested witnesses'; Failure to recover the weapon and examine a ballistic expert; Common intention under Section 34 of the IPC?-HELD-Hearing a Criminal Appeal in case of conviction of an offence punishable under Section 302 and under Section 302 read with Section 34 of the IPC, the Hon'ble Supreme Court has held that it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. Elucidating the difference between "interested" and "related" witnesses, stated that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused.

The Hon'ble Supreme Court has further held that the non-recovery of the weapon of offences would not discredit the case of the prosecution which has relied on the eyewitness accounts. The Hon'ble Supreme Court noted decision in *Gurucharan Singh v. State of Punjab, (1963) 3 SCR 585* which analysed the precedents and held that examination of a ballistic expert is not an inflexible rule in every case involving use of a lethal weapon. The Hon'ble Supreme Court further noted decision in *State of Punjab v. Jugraj Singh, (2002) 3 SCC 234* which noticed that surrounding circumstances in the prosecution case are sufficient to prove a death caused by a lethal weapon, without a ballistic examination of the recovered weapon.

The Hon'ble Supreme Court further noted the fundamental principles underlying Section 34, as under:

(i) Section 34 does not create a distinct offence, but is a principle of constructive liability;

(ii) In order to incur a joint liability for an offence there must be a pre-arranged and pre-mediated concert between the accused persons for doing the act actually done;

(iii) There may not be a long interval between the act and the pre-meditation and the plan may be formed suddenly. In order for Section 34 to apply, it is not necessary that the prosecution must prove an act was done by a particular person; and

(iv) The provision is intended to cover cases where a number of persons act together and on the facts of the case, it is not possible for the prosecution to prove who actually committed the crime.

These principles have been adopted and applied in *Chhota Ahirwar v. State of Madhya Pradesh, (2020) 4 SCC 126*.

Mohd. Zahid Vs. State through NCB : 2021 SCC OnLine SC 1183-Whether, the sentences imposed against the same accused by two different courts in two different trials should run concurrently or consecutively?-HELD-Hearing a Criminal Appeal against judgment dismissing the appeal and has confirming the judgment and order passed by the learned Trial Court, convicting the appellant for the offence under Section 29 read with Section 21(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985, the Hon'ble Supreme Court noted the principles of law that emerge as under:

(i) if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced;

(ii) ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence;

(iii) the general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 of Cr.PC;

(iv) under Section 427 (1) of Cr.PC the court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence.

Sunil Todi & Ors. Vs. State of Gujarat & Anr.: 2021 SCC OnLine SC 1174-Whether Section 138 only covers a situation where there is an outstanding debt at the time of the drawing of the cheque or includes drawing of a cheque for a debt that is incurred before the cheque is enchased?-HELD-Hearing a Criminal Appeal against judgment dismissing the petitions under Section 482 of the Code of Criminal Procedure, 1973, instituted by the appellants to quash the criminal complaint instituted for offences punishable under Section 138 of the Negotiable Instruments Act, 1881, the Hon'ble Supreme Court has held that a cheque may be issued to facilitate a commercial transaction between the parties. Where, acting upon the underlying purpose, a commercial arrangement between the parties has fructified the presentation of the cheque upon the failure of the buyer to pay is a consequence which would be within the contemplation of the drawer. The cheque, in other words, would in such an instance mature for presentation and, in substance and in effect, is towards a legally enforceable debt or liability.

Pradeep S. Wodeyar Vs. State of Karnataka: 2021 SCC OnLine SC 1140 - Special Court's power to take cognizance; Section 465 CrPC and interlocutory orders; Cognizance of the offence and not the offender; Cognizance by the Special Court of offences under the IPC; 'Authorised person' and Section 22 of MMDR Act?-

HELD-Hearing a Criminal Appeal against judgment dismissing petitions instituted for quashing the criminal proceedings initiated for offences punishable under the provisions of Sections 409 and 420 read with Section 120B IPC, Sections 21 and 23 read with Sections 4(1) and 4(1)(A) of the Mines and Mineral (Development and Regulation) Act 19571 and Rule 165 read with Rule 144 of the Karnataka Forest Rules 1969, the Hon'ble Supreme Court summarised it as:

(i) The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209 CrPC.;

(ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465 CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 CrPC;

(iii) The decision in *Gangula Ashok v. State of AP, (2000) 2 SCC 504* was distinguished in *Rattiram v. State of Madhya Pradesh, (2012) 4 SCC 516* based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2) CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides Section 465(2) CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the Courts ought to address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to prolong proceedings, among others;

(iv) It is a settled principle of law that cognizance is taken of the offence and not the offender.;

(v)The Special Court has the power to take cognizance of offences under MMDR Act and conduct a joint trial with other offences if permissible under Section 220 CrPC. There is no express provision in the MMDR Act which indicates that Section 220 Cr PC does not apply to proceedings under the MMDR Act;

(vi)Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC. Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

(vii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;

(viii) A combined reading of the notifications dated 29 May 2014 and 21 January 2014 indicate that the Sub-Inspector of Lokayukta is an authorized person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22 CrPC.

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

LATEST CASES: MOTOR VEHICLE ACT

"*The identity of an individual is one of the most closely guarded areas of the constitutional scheme in India.*"

— A.M. Khanwilkar, J. in Jigya Yadav v. CBSE, (2021) 7 SCC 535, para 123

N. Jayasree v. Cholamandalam Ms General Insurance Company Ltd. : 2021 SCC OnLine SC 967 - Whether the mother-in-law of the deceased can be termed as his legal representative?- HELD- The Bench granted compensation to mother-in-law of the deceased considering her to be of the dependents of the deceased. The Bench remarked,

"It is not uncommon in Indian Society for the mother-in-law to live with her daughter and son-in-law during her old age and be dependent upon her son-in-law for her maintenance."

The MV Act does not define the term 'legal representative'. Generally, 'legal representative' means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A 'legal representative' may also include any person who intermeddles with the estate of the deceased; such person does not necessarily have to be a legal heir. Hence, the Bench observed,

"In our view, the term 'legal representative' should be given a wider interpretation for the purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased."

Opining that the As MV Act is a benevolent legislation, therefore, it calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent, the Bench held that **in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency.**

Reliance was placed on *Gujarat SRTC* v. *Ramanbhai Prabhatbhai*, (1987) 3 SCC 234, by the Bench, wherein it had been held that, "*We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855*."

Hence, considering that the mother-in-law of the deceased was staying with the deceased and his family members since a long time and was dependent on him for her shelter and maintenance, the Bench held that **she might not be a legal heir of the deceased, but she certainly suffered on account of his death**. Therefore, the Bench declared that she was a "legal representative" under Section 166 of the MV Act and was entitled to maintain a claim petition.

Tukeshwari Devi v. Royal Sundaram Alliance Insurance Company Limited: 2021 SCC OnLine Jhar 705 – If the deceased is a child of tender age, how is the amount of compensation dealt with in motor accidents cases?- HELD-The Jharkhand Court relied on *New India Assurance Co. Ltd. v. Satender*, (2006) 13 SCC 60 wherein it was observed,

"12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death for the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

The Court thus held *"Considering the judgment of the Hon'ble Supreme Court, I feel that there is no need of any interference with the impugned award dated 26.03.2015 passed by the District Judge-III-cum-Presiding Officer, Motor Accident Claim*

Tribunal, Bermo at Tenughat, Bokaro in Motor Accident Claim Case No.51 of 2011."

United India Insurance Co. Ltd. v. Shalumol : 2021 SCC OnLine Ker 3209– HC holds a married daughter and maternal parents are entitled to claim compensation under MV Act-HELD- held that a married daughter and parents of the deceased woman are legal representative under the MV Act and hence, are entitled to claim compensation as a dependant of the deceased. The Bench remarked,

"Even if dependency is a relevant criterion to claim compensation for loss of dependency, it does not mean financial dependency is the 'ark of the covenant'. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money."

In the light of the above, the Bench upheld the decision of the Tribunal that the married daughter was a dependent of Sreedevi, and she was also entitled to compensation for loss of dependency.

Similarly, observing that the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, casts a statutory duty to maintain a senior citizen, who is unable to maintain himself, the Bench opined that even if Sreedevi had neglected to maintain her parents, they were legally entitled to an order of maintenance under the above statute. Therefore, the petition was dismissed and the impugned award was upheld.

Meena Pawaia v. Ashraf Ali: 2021 SCC OnLine SC 1083 – Motor Accident Claims: Deceased not earning at the time of death – Can heirs claim future prospect/future rise in income? - HELD- In a case dealing with motor vehicle accident resulting into the death of a 21 year old engineering student who was not serving and earning at the time of accident/death and hence, it was argued that nothing further is to be added towards the future prospect/future rise in income, the bench refused to accept such contention and held that even in case of a deceased who was not serving at the time of death and had no income at the time of death, their legal heirs shall be entitled to future prospects by adding future rise in income i.e. addition of 40% of the income determined on guesswork considering the educational qualification, family background etc., where the deceased was below the age of 40 years.

Award of future loss of income at Rs.5,000/- per month unjustified

The Court took note of the fact that the deceased at the time of accident was aged 21¬22 years and that he was a 3rd year student in civil engineering. Therefore, looking to his educational qualification he was having a bright future and hence, awarding the future economic loss to the claimants considering the income of the deceased as Rs.5,000/¬ was not sustainable at all.

It was further noticed that even the labourers/skilled labourers were getting Rs.5,000/- per month under the Minimum Wages Act in the year 2012. Hence,

"As the deceased was studying in the 3rd/4th semester of civil engineering, he cannot be considered worse than the labourers/skilled labourers."

Looking to the educational qualification and the family background, the Court noticed that the deceased was having a bright future studying in the 3rd year of civil engineering, hence, ***the income of the deceased at least ought to have been considered at least Rs.10,000/- per month, more particularly considering the fact that the labourers/skilled labourers were getting Rs.5,000/¬ per month even under the Minimum Wages Act in the year 2012.***

Future rise in income in case of death of an unemployed person

The Court held that the same principle which is applied to the salaried person and/or deceased self employed and/or a fixed salaried deceased has to be applied to the deceased who was not serving and/or was not having any income at the time of accident/death.

In case of a deceased, who was not earning and/or not doing any job and/or self employed at the time of accident/death, his income is to be determined on the guesswork. Once such an amount is arrived at he shall be entitled to the addition over the future prospect/future rise in income. It

cannot be disputed that the rise in cost of living would also affect such a person.

As observed by this court in ***National Insurance Company Limited V. Pranay Sethi, (2017) 16 SCC 680***, the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Motor Vehicles Act.

"In case of a deceased who had held a permanent job with inbuilt grant of annual increment and/or in case of a deceased who was on a fixed salary and/or self-employed would only get the benefit of future prospects and the legal representatives of the deceased who was not serving at the relevant time as he died at a young age and was studying, could not be entitled to the benefit of the future prospects for the purpose of computation of compensation would be inapposite. Because the price rise does affect them also and there is always an incessant effort to enhance one's income for sustenance. It is not expected that the deceased who was not serving at all, his income is likely to remain static and his income would remain stagnant."

It was noticed that ***to have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time.***

Therefore, even in case of a deceased who was not serving at the time of death and had no income at the time of death, their legal heirs shall also be entitled to future prospects.

Enhanced Award

The Court held that the claimants shall be entitled to future economic loss at Rs.14,000/¬ per month. The deceased at the time of accident was aged between 21-22 years. In total, the claimants shall be entitled in all a sum of Rs.15,82,000/- with interest thereon at the rate of 7% per annum from the date of claims petition till realization.

Sahana Khatoon v. New India Assurance Co. Ltd.: 2021 SCC OnLine Bom 3695- In absence of documentary evidence, can monthly income of deceased be determined as notional income for purpose of determining compensation under MV Act? - HELD- In Court's opinion, Member of the Tribunal had rightly reached the conclusion that at the time of the death, the age of the deceased was 45 years.

Adding to the above analysis, Court stated that there was no documentary evidence that could throw light on the daily income of the deceased. However, from the evidence of the widow, it was clear that the deceased was engaged in repairing tubes and tyres of various vehicles and not the bicycles. In that view of the matter, the Judge had determined the daily income of the deceased on very lower side.

Once it is established that the deceased was not unemployed and he was engaged in the business of vulcanization, without there being any documentary proof about his income, his monthly income will have to be determined as notional income.

Moving further, High Court elaborated stating that in absence of any documentary evidence and keeping aside the exaggeration in respect of earning per month income of the deceased, looking to the nature of self-employment of the deceased, the Court reached the conclusion that monthly income of deceased was Rs 5,000.

Claimants were entitled to 25% towards future prospects.

In Court's opinion, the Tribunal committed an error in deducting $1/3^{rd}$ income. Seven persons were dependent on the deceased. Therefore, a proper deduction would be $1/5^{th}$.

The inadequate amount was granted in favour of the claimants on account of loss of consortium for which they were entitled at the rate of Rs 44,000/- per dependent in view of the law laid down in *Magma General Insurance Co. Ltd v. Nanu Ram*, (2018) 18 SCC 130. Similarly, less compensation was granted to the claimants in respect of the loss of estate and future expenses which appellants will be entitled. Therefore, the claimants were surely entitled to enhancement.

Mahima Tuli
Research Fellow

EVENTS

- The Hon'ble High Court Monitoring Committee on Juvenile Justice in collaboration with Chandigarh Judicial Academy organized online two days workshop on the Juvenile Justice (Care and Protection of Children) Act, 2015 during December 18-19, 2021. The theme of the workshop was introduced by HMJ A.G.Masih and the inaugural address was delivered by HMJ Ravi Shankar Jha, Chief Justice, Punjab & Haryana High Court. In the inaugural address, Chief Justice Jha gave the overview of Juvenile Justice Act and focused on the challenges which are required to be addressed. This workshop was divided into 9 different sessions. Each session was devoted covering specific aspects of Juvenile Justice Act. The primary thrust of each session was the practical problems being faced in implementing the legislation. The sessions were taken by Hon'ble Ms. Justice Jaishree Thakur, Judge, Punjab & Haryana High Court, Ms.Mandeep Pannu, District & Sessions Judge, Moga, Sh.Baljinder Singh Sra, Judge, Children Court, Bathinda, Dr.Sukhda Pritam, CJM, Ambala, Sh.Sunil Kumar, Assistant Director, National Institute of Public Co-operation & Child Development (Ministry of Women and Child Development, Govt. of India), Regional Centre, Mohali, Dr.Vageshwari Deswal, Faculty of Law, Delhi University, Dr.K.P.Singh, Former DGP, Haryana, Ms.Sangeeta Vardhan, Former Chairperson, Child Welfare Committee, Chandigarh and Ms.Aarzu Gupta, Child Psychologist, GMCH-32, Chandigarh. Dr.Balram K Gupta, Director (Academics), CJA gave the summing up of the two days workshop. HMJ Amol Rattan Singh, Judge, Punjab & Haryana High Court, President, BoG, CJA delivered the valedictory address. He appreciated the initiative taken in structuring and conducting the workshop. He focused on the different aspects of Juvenile Justice and gave the road map for the future. Ms.Shalini Singh Nagpal, Director (Administration), CJA while giving the expression of gratitude thanked Hon'ble the Chief Justice, Justice Ravi Shankar Jha, HMJ A.G.Masih, HMJ Amol Rattan Singh, HMsJ Jaishree Thakur and all the Resource Persons who contributed in the successful culmination of the workshop.

- The Trainee Judicial Officers after another round of Court Attachment came back for the Institutional Training w.e.f. December 20, 2021. They would be reporting for the Police Training at the Punjab Police Academy, Phillaur on January 24, 2022.

- National Legal Services Authority, New Delhi in association with Haryana State Legal Services Authority organized National Consultation Meet of Members Secretaries, Officers of State Legal Services Authorities and District Legal Services Authorities on December 24, 2021 at Chandigarh Judicial Academy. The Inaugural Address was delivered virtually from HMJ Uday Umesh Lalit, Judge, Supreme Court of India and Executive Chairman, National Legal Services Authority. HMJ A.G.Masih, Judge, Punjab & Haryana High Court and Executive Chairman, HSLSA also physically addressed all who had come from different parts of the country.