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HIMACHAL SERIES

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conceived a child from accused P – however, accused P and C forcibly aborted the child carried by her - matter was reported to the police belatedly- held, that the delay in reporting the matter would show that the allegations made by her were not true and she was a consenting party- prima facie, no offence is constituted against the applicants P and C- Bail granted.
Title: Balbir Singh Vs. State of H.P. Page-489

Constitution of India, 1950- Article 226- Deputy Commissioner, Mandi had sought names for training of Patwari from Director, Sainik Welfare, Himachal Pradesh- Director, Sainik Welfare, Himachal Pradesh conveyed that his office was busy in conducting the interview of various posts- no recommendation was sent by him- held, that the respondent No. 3 could not have refused to send the name of the petitioner on the pretext that he was busy in other selection process-respondents No. 3 and 4 directed to sponsor the name of the petitioner for training of the patwari, if found suitable.

Title: Devinder Singh Vs. State of Himachal Pradesh and others Page-437

Constitution of India, 1950- Article 226 - **Himachal Pradesh Motor Vehicles Taxation Act, 1972**- Section 50- Petitioner filed a petition challenging the order passed by the Competent Authority under Himachal Pradesh Motor Vehicles Taxation Act, 1972- held, that Section 50 of Himachal Pradesh Motor Vehicles Taxation Act, 1972 provides remedy of appeal, therefore, Writ Petition is not maintainable.
Title: Jitender Singh Vs. State of H.P. & others Page-508

Constitution of India, 1950 - Article 226- Petitioner retired from the society and was paid a sum of Rs.3,32,454/- towards gratuity- remaining amount of Rs.1,27,766/- was not paid- leave encashment amounting to Rs.1,25,966/- was also not paid- held, that the petitioner had a right to get retiral benefits immediately on his superannuation- respondent directed to pay the balance gratuity amount and leave encashment.
Title: Partap Singh Mehta Vs. The Himachal Fruit Growers Cooperative Marketing and Processing Society Limited Page-438

Constitution of India, 1950- Article 226- Petitioners, who were appointed against the disability quota, claimed that they should be considered for appointment on regular basis from the date of their appointment on contractual basis- held, that in view of mandate of Supreme Court of India of granting reservation to persons with disability, direction issued to the opposite party to consider the case of the petitioners and to take action within 8 weeks.
Title: Ashwani Kumar Vs. Himachal Pradesh State Electricity Board & others Page-515

Constitution of India, 1950- Article 226- Petitioner pleaded that he had completed 8 years of service as daily wager and is entitled for regularization of his services- held, that regularization depends upon the vacancy and can

be made on the recommendation of the selection committee constituted by Appointing authority- respondent specifically pleaded that no vacancy for mason was available against which petitioner could be regularized- petitioner had also not mentioned that any vacant post was available, therefore, respondent could not be directed to regularize the services of the petitioner- however, respondent directed to regularize the service of the petitioner as and when any vacancy would arise. (Para-5 & 6)
Title: Ramesh vs. State of H.P. & Ors. Page-492

Constitution of India, 1950 - Article 226- Petitioner retired from the society and was paid a sum of Rs.3,32,454/- towards gratuity- remaining amount of Rs.1,27,766/- was not paid- leave encashment amounting to Rs.1,25,966/- was also not paid- held, that the petitioner had a right to get retiral benefits immediately on his superannuation- respondent directed to pay the balance gratuity amount and leave encashment.
Title: National Insurance Company Ltd. vs. Raman Mittal & anr.
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Constitution of India, 1950- Article 226- Petitioner was dismissed from the service for entering into second marriage during subsistence of his first marriage- his compassionate allowance was fixed with effect from 1.9.1979- initially petitioner accepted the allowance, however, he filed an application after 26 years, which was dismissed- held, that in view of Rule 41 of the Central Civil Services (Pension) Rules, 1972, a person who is dismissed from the service forfeits his pension and gratuity but is entitled to Compassionate Allowance- Writ Petition dismissed.
Title: Sant Ram Badhan Vs. The Senior Deputy Accountant General (A & E) & Ors. Page-481

Constitution of India, 1950- Article 227- Claim Petition was filed by the claimant before MACT, Nahan, pleading that he had sustained injury while sitting as a pillion rider- petition was allowed- Insurance Company filed a Writ Petition challenging the Award pleading that the claim petition was filed after more than 7 years of the accident- no police report was lodged regarding the accident- Insurance Company was not afforded any opportunity to verify the veracity of the accident and the application of the Insurance Company under Section 170 of M.V. Act was wrongly dismissed- held, that Writ Petition challenging the award would be maintainable only in those cases where the award on its face is perverse or is based upon fraud and Insurance Company has no remedy under Motor Vehicle Act for challenging the award- award cannot be challenged on the ground that compensation is high, excessive or unreasonable- the mere fact that the Claim Petition was filed after 7 years is not sufficient to view the claim petition with suspicion as there is no limitation for filing the claim petition.

Title: National Insurance Company Ltd. vs. Raman Mittal & anr.
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H.P. Urban Rent Control Act, 1987- Section 14- Landlord sought the eviction of the tenant on the ground that the demised premises is in

dilapidated condition - door of the shop is rotten and is hanging in air, the ceiling of the shop is damaged which requires replacement, building is totally unsafe for human dwelling and can collapse at any time but the tenant denied this fact- held, that the witnesses of the petitioner had admitted that the shop was in good condition and there was no possibility of the shop collapsing- it did not require any immediate repair- further, landlord was residing in the same building which showed that the condition of the building was not unsafe, hence, petition dismissed.
Title: Ram Parkash & Others Vs. Surinder Singh & Others Page-452

Indian Penal Code, 1860- Section 302- Accused armed with the Danda and Darat was seen running towards his house- when the witnesses went to the spot, they found that the deceased was sitting in the field with his hands on his head and there were deep wounds on his head- accused had assaulted the deceased as the deceased used to object to the beating given by the accused to his wife- held, that the Medical evidence proved that there was severe injury on the brain, leading to shock and death which could be caused by means of danda- case of the prosecution that the deceased used to object to the beating of the wife of the accused was not established by any cogent evidence- accused had danda and Darat and he had only used Danda, which showed that he had no intention to kill the deceased, therefore, accused convicted of the commission of offence punishable under Section 304 Part-II of IPC.
Title: Hans Raj Vs. State of H.P. Page-445

Indian Penal Code, 1860- Sections 363, 366 and 376- Prosecutrix aged 17 years left her home- matter was reported to the police- prosecutrix was recovered at the instance of the accused- the evidence showed that the prosecutrix had voluntarily gone to Pandoh Colony, which was thickly populated- she had crossed Mandi town in the bus- she admitted that she was writing letters to the accused and had handed over her photographs to him-held that, these circumstances, show that the prosecutrix was not kidnapped but she had voluntarily gone with the accused. (Para- 20 to 24)
Title: State of Himachal Pradesh Vs. Hans Raj alias Raja Page-421

Motor Vehicle Act, 1988- Section 149- Claimant had proved that the deceased had purchased steel, cement and binding wires from a shop and was travelling in the offending vehicle as owner of the goods - no evidence was led by the insurer to prove that the deceased was travelling as a gratuitous passenger- held, that the version of the insurance company that the deceased was travelling as a gratuitous passenger was not proved.

Title: Oriental Insurance Company Versus Smt. Prabha Devi & others
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Motor Vehicle Act, 1988- Section 149- Claimants pleaded that the deceased had embarked in the offending vehicle, loaded with cement, which met with the accident - the owner claimed that deceased was employed as a second driver/helper- held, that the deceased was not a gratuitious

passenger and the Insurance policy showed that the risk of six employees besides driver was covered under the policy – hence, the Insurance Company was rightly held liable to pay the compensation.
Title: United India Insurance Company Limited vs. Smt. Samitra Devi & others Page-532

Motor Vehicle Act, 1988- Section 149- Insurance Company contended that claim of pillion rider was not covered under the policy- held, that the policy showed that an amount of Rs.77/- was charged for legal liability to passenger and therefore, contention of the Insurance company that risk of pillion rider was not covered under the policy cannot be accepted.
Title: National Insurance Company Ltd. Vs. Raman Mittal & anr.
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Motor Vehicle Act, 1988- Section 149- MACT fastened the liability to pay the compensation upon the owner and driver due to the fact that driver had a license authorizing him to drive transport vehicle but he was driving heavy goods vehicle and the licence was not valid- held, that gross unladen weight of vehicle was more than 7500 kilograms and, therefore, it fell within the definition of heavy goods vehicle- finding recorded by MACT that driver did not possess the valid and effective driving license did not suffer from any infirmity.
Title: Manoj Kumar Vs. Sudarshana Kumari and others Page- 413

Motor Vehicle Act, 1988- Section 149- the owner deposed that she had checked the driving licence of the driver at the time of employment- licence was found fake on inquiry- held, that the owner had taken every possible steps to check the correctness of the driving licence- Insurance company had not led any evidence to prove that any breach was committed by the owner- Insurance Company held liable to indemnify the insured.

Title: Oriental Insurance Company Versus Smt. Prabha Devi & others
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Motor Vehicle Act, 1988- Section 166- Appellant contended that amount received by the claimant from the insurer should be deducted from the total compensation awarded to him- held, that the amount received by the claimant from the Insurance Company regarding the damage of his vehicle cannot be deducted from the total amount of compensation.
Title: H.R.T.C. Vs. Indus Hospital and another Page-519

Motor Vehicle Act, 1988- Section 166- Compensation is always higher in case of disablement than in case of death- bodily injury is to be treated as a deprivation, which entitles the victim to claim damages which vary according to the gravity of the injury- some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability are involved while determining compensation in an accident case but these have to be considered in an objective manner.

Motor Vehicle Act, 1988- Section 166- deceased was 51 years old- Tribunal had applied multiplier of 10- held, that the multiplier of 11 was to be applied- Tribunal had awarded interest @ 7.5% per annum- respondents were directed to pay interest @ 9% per annum from the date of the filing of the petition till realization.

Motor Vehicle Act, 1988- Section 166- Insurance Company contended that the accident was a result of contributory negligence- however no such plea was taken by the Insurance Company in its reply- it was stated that accident had taken place due to the negligence of the scooterist – no evidence was led to prove the same-held that the plea of the Insurance Company is not acceptable.

Motor Vehicle Act, 1988- Section 166- MACT had awarded compensation to the extent of ₹ 41,312/- along with interest at the rate of 9% per annum from the date of filing of the petition till realization- held, that no breach was committed by the insured and the Insurance Company was rightly held liable to pay the compensation- Appeal dismissed.

Motor Vehicle Act, 1988- Section 166- Merely because the FIR of the police report was not filed is not sufficient to hold that no accident had taken place-held on facts that father was driving the Scooter and son was sitting as pillion rider, therefore, in these circumstances, it was not reasonable to expect the son to lodge the FIR against his father.

Motor Vehicle Act, 1988- Section 166- Tribunal had awarded the compensation of ₹1,69,000/-, along with interest at the rate of 7.5% per annum from the date of filing of the claim petition - held, that the claimants had established that the driver had driven the vehicle in a rash and negligent manner and had hit the scooter on which the claimant was travelling as a pillion rider- amount awarded in favour of the claimant was inadequate but he had not questioned the award- hence award was upheld reluctantly.

Motor Vehicle Act, 1988- Section 168- Tribunal had held that the claimant was entitled to compensation of ₹ 6,63,600/- but awarded compensation to the extent of ₹ 5,00,000/- as compensation, which was the amount claimed in the petition- held, that there is no restriction in granting compensation in

excess of the compensation sought by the claimant.

Title: United India Insurance Company Limited vs. Smt. Samitra Devi & others Page-532

Motor Vehicle Act, 1988- Section 168- Tribunal had not given the details as to how the compensation of ₹ 3,65,000/- was awarded by it- findings recorded by the Tribunal are not based upon the correct appreciation of facts- however, the parties settled the matter at ₹ 2,50,000/- along with interest at the rate of 7% per annum from the date of filing of the claim petition till deposit.
Title: National Insurance Company Ltd. Vs. Neelam and others
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Motor Vehicle Act, 1988- Section 170- Claim petition was filed by the son against his father who was driving the scooter- held, that merely because petition was filed by the son cannot lead to an inference that the petition was collusive, when the Insurance Company had itself paid own damage to the owner thereby admitting that accident had taken place.
Title: National Insurance Company Ltd. Vs. Raman Mittal & anr.
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Motor Vehicle Act, 1988- Section 173- the insurer cannot question the award on the ground of adequacy of compensation- however, on facts it was held that the awarded compensation was just and adequate - Appeal dismissed.
Title: United India Insurance Company Ltd. Vs. Jai Krishan and others
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N.D.P.S. Act, 1985- Sections 42 and 50- Accused were travelling in the Maruti van, which was found to be containing 3.5 k.g of charas- accused were acquitted by trial Court due to non-compliance of Sections 42 and 50 of N.D.P.S. Act- held, that the charas was recovered from the vehicle in a chance recovery and not by conducting personal search of the accused, therefore, provision of Sections 42 and 50 are not applicable.
Title: State of H.P. Vs. Puran Chand & another Page-433

Protection of Women from Domestic Violence Act, 2005- Sections 2(s), 17, 18, 19 and 20 - Applicant filed an application under Protection of Women from Domestic Violence Act with the allegations that she and her minor child were staying in the matrimonial home which was in her possession prior to the death of her husband- family members of the deceased/husband started harassing the applicant after the death of her husband- Learned Sessions Judge allowed the appeal and held that the applicant is entitled to a shared accommodation consisting of one room, one kitchen and one bath room- held, that a woman cannot lay claim at every household where she lives or has lived at any stage in a domestic relationship and she is entitled to claim a right of residence in a house

belonging to or taken on rent by the husband or the house, which belongs to the joint family of which the husband is a member- in case house is self acquired property of her father-in-law then it cannot be called as shared household where she has a right of residence- however, family members of her deceased husband are liable to maintain the applicant.
Title: Gaji Ram & ors. Vs. Smt. Badalu Page- 499

Specific Relief Act, 1963- Section 34- Plaintiff claimed to be the daughter of one B -the property of B was mutated in favour of defendants on the ground that their predecessor-in-interest was real brother of B- held, that the version of the plaintiff that she is the daughter of B has been duly corroborated by Voter Identity Card which carried with it a presumption of correctness- hence, she was entitled to inherit the estate of her father- mutation attested in favour of the defendants is wrong.
Title: Thelu Vs. Lakhanu & ors. Page-495

Specific Relief Act, 1963- Section 34-Plaintiff filed a Civil Suit for declaration that defendant No. 1 was not the daughter of P- mutation was wrong and illegal- held, that name of the defendant No.1 was recorded as the daughter in the Parivar register – no evidence was led to show that the false entry was made in the Parivar register- therefore, the version of the plaintiff that defendant No. 1 is not the daughter of one P was not proved.

Title: Mahajan Vs. Basanti and others Page-458

Specific Relief Act, 1963- Section 34- Plaintiff filed a suit for declaration pleading that defendant had instituted a suit for foreclosure, which was compromised- plaintiff had orally relinquished the title and possession of some land in favour of the defendants and the defendants had relinquished the title of the suit land in favour of the plaintiff- plaintiff was in possession of the suit land- one of the plaintiffs filed an application for confirmation of the possession, which was allowed -the defendants resiled from the relinquishment and threatened to dispossess the plaintiffs- defendants denied the claim of the plaintiffs- held, that the plaintiffs had failed to prove that any demarcation was conducted on the spot- relinquishment deed was also not proved and the tatima was prepared without any demarcation, therefore, the version of the plaintiff could not be relied upon- Appeal dismissed.
Title: Thakur Dass & ors. Vs. Roshan Lal & ors. Page-409

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, JUDGE.

Randeep Singh. ...Petitioner.
Versus
State of H.P. and others. ...Respondents

Cr.MMO No. : 4040 of 2013
Decided on : 8.10. 2014

Bonded Labour System (Abolition) Act, 1976 – Section 25- An application was filed before District Magistrate regarding the bonded labour- he ordered inquiry by Sub Divisional Magistrate - Sub Divisional Magistrate recorded the statements of the parties and witnesses and concluded that the respondent No. 3 and her family members were working as bonded labourers- District Magistrate accepted the report and declared respondent No. 3 as bonded labour- the debt given by the petitioner to the respondent No. 3 was declared as bonded debt and was ordered to be extinguished- held, that the District Magistrate had rightly concluded that respondent No. 3 and her family members were working as bonded labourers for a sum of Rs. 73,000/- jurisdiction of the Court is barred under Section 25 of the Act- Petition dismissed. (Para-12)

For the Petitioner: Mr. Tek Chand Sharma, Advocate.

For the Respondents: Mr. Parmod Thakur, Addl. A.G. for respondents No.1 and 2.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

This petition is instituted against order dated 3.7.2013 rendered by District Magistrate, Sirmaur in case No. 1/2013.

2. "Key facts" necessary for the adjudication of this petition are that respondent No.3 moved an application before respondent No.2 regarding bonded labourer and wages on 6.4.2013. Respondent No. 2 ordered immediate inquiry to be conducted by Sub Divisional Magistrate, Sangrah vide office order dated 6.4.2013. He also directed to associate Station House Officer, Sangrah and District Labour Officer in the inquiry. Sub Divisional Magistrate, Sangrah submitted a report to the District Magistrate, Sirmaur. The District Magistrate, Sirmaur, on the basis of documents and evidence placed on the file and the opinion of the NHRC given in various instructions, concluded that there were sufficient evidence on record to establish that respondent No. 3 has been a bonded labourer of the petitioner, as defined in the Bonded Labour System (Abolition) Act, 1976 and the debt due from respondent No.3 was a bonded debt. Respondent No.3 was certified as a bonded labour. She was ordered to be released from bondage and declared that debt of Rs. 73,000/- given by the petitioner as bonded debt shall stand extinguished vide impugned order. Petitioner has challenged the order dated 3.7.2013.

3. Respondent No.3 has levelled the following three accusations against the petitioner:

1. **Randeep Singh has kept Smt. Kubja Devi, her late husband Jiwnoo and other family members as bonded labourers.**
2. **Randeep Singh used to abuse and threaten to do away with the life of Smt. Kubja Devi, her sons and daughter-in-law.**
3. **On the complaint of Randeep Singh, concerned Department stopped the pension of Smt. Kubja Devi.**

4. Statements of Kubja Devi, her son Dharampal, her daughter-in-law Kaushalya, Sant Ram and Randeep Singh were recorded on 8.4.2013. Both the parties were given ample opportunities to produce their witnesses and to lead evidence.

5. Respondent No. 3 in her statement made before the Sub Divisional Magistrate, Sangrah has deposed that earlier her husband and she worked for 5 years with the petitioner. She lost her husband in the year 2003. They were just provided with food for the work they used to do for the petitioner. They worked for another 5 years after the death of her husband with the petitioner. Her son Dharampal and daughter-in-law Kaushalya also worked with the petitioner. They were not paid any wages. They used to stay in the house of the petitioner. She left the house of the petitioner two years ago. She used to do agricultural work.

6. Version of respondent No.3 was supported by her son Dharampal. According to him, he was married to Kaushalya Devi about 15 years ago. He has 5 children. Even prior to his marriage they were just offered meals. However, no wages were paid to them. He had borrowed a sum of Rs.38,000/- from the petitioner. He has returned Rs.12,000/- in the year 2002. Thereafter, he returned Rs.6,000/- from the subsidy received under BPL Scheme in the year 2008. He was told in the year 2009 that a sum of Rs.73,000/- was due to the petitioner. He has also made a complaint to the Deputy Commissioner to this effect. He worked with the petitioner with effect from 2002 to December, 2006. No agreement was executed between him and the petitioner. He used to work in the fields of petitioner. He used to work from 6 A.M. to 7 P.M.

7. Smt. Kaushalya Devi wife of Dharampal, has deposed that her marriage was solemnized with Dharampal about 15 years ago. She used to work in the house of the petitioner with her father-in-law, mother-in-law and her husband. She used to work in the fields of the petitioner. She was offered only meals twice in the morning and evening.

8. Petitioner has deposed that he has never employed respondent No.3, her son Dharampal or daughter-in-law of respondent No. 3 and her husband late Jiwnoo. He has denied that Dharampal has taken a sum of Rs.38,000/- from him in the year 2002. He has never advanced a sum of Rs.38,000/- to the family of respondent No. 3. He had filed a case in the Court of Civil Judge, Rajgarh for the recovery of Rs. 73,000/-. The decree was passed on 31.8.2012.

9. Statements of Yashpal Singh and Tripta Devi were also recorded. They had no specific knowledge about the case.

10. Statement of Sant Ram was also recorded at the instance of respondent No. 3. According to him, respondent No. 3 and her husband used to work in the house of Randeep Singh. After the death of Jiwnoo, Dharampal and his wife used to work with the petitioner.

11. Sub Divisional Magistrate, Sangrah on the basis of statements as discussed herein above, has concluded that respondent No. 3 and her family members used to work as bonded labourers with the petitioner till 2008. When petitioner filed a case against respondent No. 3, thereafter they started residing in their house and they were not bonded labourers as of now.

12. District Magistrate, on the basis of the report, has declared respondent No. 3 as a bonded labourer. According to him, respondent No. 3 was forced to work in lieu of advance / financial obligations. They were paid nominal wages. The debt of Rs.73,000/- given by the petitioner was declared to be bonded debt. It was ordered to be extinguished. The District Magistrate has passed the order after receiving the report from the Sub Divisional Magistrate concerned. The District Magistrate has taken into consideration various mandatory provisions of the Bonded Labour System (Abolition) Act, 1976 before passing the order. District Magistrate has rightly concluded that respondent No.3 was kept as bonded labourer and her son was also working as bonded labourer with the petitioner. Family members of respondent No.3 were advanced loan of Rs.38,000/- and later on petitioner claimed a sum of Rs.73,000/- from them and in lieu of that respondent No.3 and her family members were working for the petitioner as bonded labourers. Moreover, the jurisdiction of the Civil Court is barred under section 25 of the Bonded Labour System (Abolition) Act, 1976 in respect of any matter to which any provision of the Act applies. There is neither any illegality nor any perversity in the order dated 3.7.2013 passed by the District Magistrate.

13. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stands disposed of. No costs.

****

BEFORE *HON'BLE MR. JUSTICE RAJIV SHARMA, J.*

Thakur Dass & ors. .....Appellants.

Versus

Roshan Lal & ors. .....Respondents.

RSA No. 124 of 2013.
Reserved on: October 07, 2014.
Decided on: October 15, 2014.

Specific Relief Act, 1963- Section 34- Plaintiff filed a suit for declaration pleading that defendant had instituted a suit for foreclosure, which was compromised- plaintiff had orally relinquished the title and possession of some land in favour of the defendants and the defendants had relinquished the title of the suit land in favour of the plaintiff- plaintiff was in possession of the suit land- one of the plaintiffs filed an application

for confirmation of the possession, which was allowed -the defendants resiled from the relinquishment and threatened to dispossess the plaintiffs- defendants denied the claim of the plaintiffs- held, that the plaintiffs had failed to prove that any demarcation was conducted on the spot- relinquishment deed was also not proved and the tatima was prepared without any demarcation, therefore, the version of the plaintiff could not be relied upon- Appeal dismissed. (Para-17)

For the appellant(s): Mr. G.D.Verma, Sr. Advocate with Mr. B.C.Verma, Advocate.
For the respondents: Mr. Ashwani Sharma, Advocate.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This regular second appeal is directed against the judgment and decree of the learned Addl. District Judge (Fast Track Court), Ghumarwin, Distt. Bilaspur, dated 31.10.2012 passed in Civil Appeal No. 57/13 of 2008.

2. Key facts, necessary for the adjudication of this appeal are that the predecessor-in-interest of the plaintiffs-appellants (hereinafter referred to as the plaintiffs, for the convenience sake), Sh. Ganga Ram filed a suit for declaration with prayer for consequential relief of permanent injunction against the respondents-defendants (hereinafter referred to as the defendants). The case of the plaintiffs, in a nut shell, is that the defendants had instituted a suit for foreclosure of land measuring 23.6 bighas comprised in Khasra No. 49, 65, 70, 71, 76, 70 and 87 situated in village Kyari, Pargana Tiun, Tehsil Ghumarwin, District Bilaspur, H.P. claiming the same to be in their possession since 26.7.1988. The litigation came up to this Court. Thereafter, the parties have arrived at amicable settlement on 20.8.2001, whereby the plaintiff Ganga Ram had orally relinquished the title and possession of the land measuring 2 bighas comprised in Kh. No. 71/3 and land measuring 8 biswas in Kh. No. 65/1 and land measuring 0.12 bighas out of Kh. No. 54 in favour of the defendants while defendants relinquished their title orally in favour of plaintiff of the rest of the suit land. The suit land was in the possession of the plaintiffs. Plaintiff- Ganga Ram, thereafter filed an application for the verification of the physical possession of the spot and Field Revenue Staff visited the spot. The possession of the parties was confirmed by the revenue staff. In the alternative, plaintiffs have asserted that the predecessor-in-interest of defendants No. 16 to 20 have left 1.13 bighas land in favour of plaintiff Ganga Ram on 30.11.1960. Thus, the entries in the revenue record are illegal. The plaintiffs deserves to be declared co-owners in joint possession to the extent of 2/3rd share of all the property of Sh. Kundan son of Sh. Laturia, on the basis of the registered 'Will' dated 5.7.1976. The cause of action arose to the plaintiffs on 25.9.2001 when the defendants resiled from the oral relinquishment/settlement dated 20.8.2001 and threatened to dispossess the plaintiffs. The plaintiffs have prayed for a declaration to the effect that the plaintiff No. 1 has become owner in possession of land measuring 20.18 bighas comprised in Khasra No. 65/2, 71/1, 71/2, 49, 76, 79, 70,

87, khata No. 3 min Khatoni No. 3 & 5 situated in Village Kyari, Pargna Tiun, Tehsil Ghumarwin, District Bilaspur, H.P on the basis of relinquishment dated 20.8.2001. The plaintiffs have further prayed that a decree of declaration be passed to the effect that plaintiffs are owner in possession over the suit land measuring 1.13 bighas comprised in Kh. No. 65/2 on the basis of compromise dated 30.11.1960 executed by Smt. Judhya Devi wife of Ruwalu Ram. It was also prayed that mutation No. 133 sanctioned on 31.5.1984 in favour of plaintiff Ganga Ram and defendant No. 21 Sant Ram be declared illegal and wrong. Plaintiffs have prayed for decree of permanent injunction restraining the defendants from dispossessing the plaintiffs and creating any charge or interfering in the suit land.

3. The suit was contested by the defendants. According to the defendants, the suit for foreclosure was filed by them which was decreed. The appeal filed by Ganga Ram, predecessor-in-interest of the plaintiffs was dismissed by the learned District Judge, Bilaspur, H.P. and Regular Second Appeal was also dismissed by the High Court. It was denied that the suit land remained in the possession of the plaintiffs. It was also denied that the parties have entered into amicable settlement or relinquishment dated 20.8.2001. There was no spot inspection made by the revenue officials. The plaintiffs were not entitled to the relief of declaration or any other alternative relief.

4. Replication was filed by the plaintiffs. Issues were framed by the learned Civil Judge (Jr. Divn.), Ghumarwin on 5.11.2007. The learned Civil judge (Jr. Divn.), Ghumarwin dismissed the suit on 22.10.2008. The plaintiffs preferred an appeal before the learned Addl. District Judge, Ghumarwin. He dismissed the same on 31.10.2012. Hence, this regular second appeal.

5. Mr. G.D.Verma, Sr. Advocate, on the basis of substantial questions of law framed, vehemently argued that both the Courts' below have misread and misconstrued the oral as well as documentary evidence. According to him, the plaintiffs have proved the relinquishment dated 20.8.2001. On the other hand, Mr. Ashwani Sharma, Advocate, has supported the judgments and decrees passed by both the Courts' below.

6. I have heard the learned Advocates for the parties and gone through the records of the case carefully.

7. Since all the questions of law are inter-related, hence in order to avoid repetition of evidence, these were taken up together for discussion.

8. The original plaintiff Sh. Ganga Ram died during the pendency of the suit before the learned Civil Judge (Jr. Divn.), Ghumarwin. His legal representatives were brought on record during the trial.

9. PW-1 Parkash Chand, Record Keeper, Tehsildar Office, Ghumarwin has produced his affidavit Ext. PW-1/A and produced the record of file No. 97/8 of 2001 titled as Ganga Ram versus Geetan Devi.

10. The plaintiff Thakur Dass has appeared as PW-2 and has led his evidence by filing affidavit Ext. PW-2/A. He has referred to the earlier

litigation between the parties. According to him, after the litigation, the parties arrived at an amicable settlement dated 20.8.2001. He filed an application for verification of physical possession. Revenue field staff visited the spot and confirmed the possession of the parties on the spot. The plaintiffs and defendants were entitled to possession as per the relinquishment. In the alternative, he has prayed that plaintiffs be declared co-owners in joint possession to the extent of 2/3rd share in the property of Sh. Kundan son of Sh. Laturia on the basis of the registered 'Will' dated 5.7.1976. According to him, the defendants have resiled from the oral relinquishment/settlement deed. PW-2 has produced the copy of Jamabandi Ext. PA, Will Mark-X, Jamabandi Ext. PB, Application Ext. PC, copy of mutation Ext. PD and Ext. PE pedigree table, Ext. PF compromise Mark 'Z', report of Kanungo Mark 'Y', copy of order dated 28.11.1988 Ext. PG and copy of Decree Sheet Ext. PH.

11. PW-3 Devinder Kumar, Patwari has led his evidence by filing affidavit Ext. PW-3/A. According to him, he was posted as Patwari in the year 2001 in Patwar Circle, Ghumarwin. Field Kanungo alongwith him demarcated the suit land. Tatima was prepared as per the demarcation. He has produced Tatima Ext. PW-3/B and *Itlahnama* Ext. PW-3/C.

12. PW-4 Gian Chand, retired Kanungo has led evidence by filing affidavit Ext. PW-4/A. According to him, he was posted as Field Kanungo at Kanungo Circle, Ghumarwin. On the basis of application of Sh. Ganga Ram, he visited the spot and in the presence of witnesses prepared report dated 13.9.2001. He recorded the statements of witnesses and prepared tatima on the basis of physical position on the spot. He has proved copy of report Ext. PW-4/B and Ext. PW-4/C.

13. PW-5 Jagar Nath has deposed that Field Kanungo alongwith the Patwari visited the spot in the presence of the number of witnesses and prepared the report.

14. PW-6 Gulabu Ram, deposed that revenue field staff visited the spot alongwith the witnesses. They recorded the statements of the witnesses and prepared the report.

15. PW-7 Duni Chand also deposed that Field Kanungo alongwith the Patwari visited the spot in the presence of number of witnesses.

16. Defendant, Sant Ram has appeared as DW-1. He led his evidence by filing affidavit Ext. DW-1/A. According to him, there was an earlier suit pending between the parties for the foreclosure which was decreed. The appeal was preferred before the learned District Judge, Bilaspur by the plaintiff which was dismissed. The judgment was assailed by filing Regular Second Appeal which was also dismissed. The plea of the plaintiffs with regard to the document dated 7.6.1958 was rejected by the Courts' below. The suit was filed by the plaintiffs to delay the proceedings. There was no compromise dated 20.8.2001. It was denied that the plaintiffs were in possession of the suit land.

17. According to PW-3 Devender Kumar, Patwari, he alongwith the Field Kanungo got demarcated the suit land and tatima was prepared. The demarcation report was prepared and verified by Kanungo. However, as per PW-4, no demarcation was carried out on the spot and the tatima was prepared merely on the basis of physical possession by the Patwari.

PW-4 Gian Chand has admitted in his cross-examination that he has not recorded any statement of the defendants. According to him, the defendants had run away from the spot. He has also admitted that on application Ext. PC, the word "*Va Moka"* have been added with different ink. PW-7 Duni Chand was unaware of the respective possession of the parties. The plaintiffs have failed to prove that any demarcation was carried out on the spot by the revenue staff. According to the revenue staff, Ganga Ram was present on the spot, however, PW-5 Jagar Nath has testified that Ganga Ram was expired and was not present on the spot at the time of preparation of the report. He also admitted that he did not inform the revenue officials about the possession of the parties and the possession was disclosed by the Patwari and Kanungo. The plaintiffs have miserably failed to prove relinquishment dated 20.8.2001. There is no tangible evidence placed on the record oral or documentary to establish the execution of relinquishment or settlement deed dated 20.8.2001. Tatima Ext. PW-3/B has been prepared without any demarcation. The defendants were never party to report Ext. PW-4/C. All the defendants were not properly served. Thus, no credence can be given to report Ext. PW-4/C. The 'Will' mark "X" has not been proved in accordance with law. The onus was on the plaintiffs to prove the same. The plaintiffs have failed to prove their possession over the suit land. The suit was also barred by *res judicata*. The defendants have earlier filed Civil Suit for foreclosure against the plaintiffs before the Civil Judge, Ghumarwin. The suit was decreed vide Ext. D-1. The judgment rendered in case No. 168 of 1984 and decree dated 28.11.1988 passed by the learned Sub Judge, Ghumarwin was upheld by the learned District Judge. The regular Second Appeal preferred against the judgment and decree of the learned District Judge, dated 27.3.2000 was dismissed by this Court in RSA No. 329 of 2000 on 13.7.2001. The judgment was implemented. Mutations were also attested and necessary entries were also made in the *jamabandis*. The substantial questions of law are answered accordingly.

18. Consequently, the learned Courts' below have correctly appreciated the oral as well as documentary evidence placed on record. The plaintiffs have miserably failed to prove the relinquishment/settlement deed dated 20.8.2001. There is no merit in this appeal, the same is dismissed.

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BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

FAO No. 4094 of 2013 along with FAO No. 4053 of 2013 and Cross Objections No. 4026 of 2013 in FAO No. 4094 of 2013.
Date of Decision : 17th October, 2014.

1. <u>FAO No. 4094 of 2013</u>

Manoj Kumar .....Appellant.

Versus

Sudarshana Kumari and others .....Respondents.

2. FAO No. 4053 of 2013.

Manoj Kumar .....Appellant.

Versus

Asha Devi and others .....Respondents.

3. Cross objections No. 4026 of 2013 in FAO No. 4094 of 2013.

Manoj Kumar .....Non objector/Appellant.

Versus

Sudarshana Kumar and others

....Cross objectors/Respondents.

Motor Vehicle Act, 1988- Section 149- MACT fastened the liability to pay the compensation upon the owner and driver due to the fact that driver had a license authorizing him to drive transport vehicle but he was driving heavy goods vehicle and the licence was not valid- held, that gross unladen weight of vehicle was more than 7500 kilograms and, therefore, it fell within the definition of heavy goods vehicle- finding recorded by MACT that driver did not possess the valid and effective driving license did not suffer from any infirmity. (Para-7)

Motor Vehicle Act, 1988- Section 166- deceased was 51 years old- Tribunal had applied multiplier of 10- held, that the multiplier of 11 was to be applied- Tribunal had awarded interest @ 7.5% per annum- respondents were directed to pay interest @ 9% per annum from the date of the filing of the petition till realization. (Para- 10 to 13)

Cases referred:

National Insurance Company Ltd. versus Annappa Irappa Nesaria alias Nesaragi (2008)3 SCC 464

Sarla Verma and others versus Delhi Transport Corporation and another, (2009)6 SCC 121

For the Appellant(s): Mr. Sunil Mohan Goel, Advocate.

For the Respondents: Mr. Dheeraj K. Vashist, Advocate, for respondents No. 1 to 3 in FAO No. 4094 of 2013.

Mr. Jagidsh Thakur, Advocate, respondent No.4 in FAO No. 4094 of 2013 and for respondent No.5 in FAO No. 4053 of 2013

Mr. Anil Kumar, Advocate vice Mr. Anup Rattan, Advocate, for respondents No. 1 to 4.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge

Both these appeals as also the cross-objections are being disposed of by a common order as common questions of fact and law are involved therein. Besides they arise out of the same accident.

2. These appeals are directed at the instance of the owner of the offending vehicle, who has been burdened with the liability to pay compensation to the respondents/claimants as assessed under awards of

21.03.2013 rendered in MACP No. 19 of 2011 and in MACP No. RBT 55/12/11 by the learned Motor Accident Claims Tribunal-II, Una, District Una, Himachal Pradesh.

3. The learned Motor Accident Claims Tribunal had proceeded to fasten the liability to defray compensation as assessed by it in favour of the claimants vicariously upon respondents No.1 and 3, on the score of the driver (respondent No.1 before the learned Tribunal) of the offending vehicle not holding a valid and effective driving licence to drive it, inasmuch, as though the registration certificate of the offending vehicle, comprised in Ex.RW1/B depicting it to be falling in the category of "heavy goods vehicle", yet the driving licence, comprised in Ex.RW1/A, authorizing its holder, who was respondent No.1 before the learned Tribunal, to drive a "transport vehicle", without an endorsement in it of his being authorized to drive a "heavy goods vehicle", hence the respondent No.1 was held not authorized at the relevant time to drive the offending vehicle i.e. "heavy goods vehicle".

4. The learned counsel appearing for the appellant has with force and vigour while relying upon a judgment of the Hon'ble Apex Court reported in ***National Insurance Company Ltd. versus Annappa Irappa Nesaria alias Nesaragi (2008)3 SCC 464*** canvassed before this Court that in the face of Form No. IV, which is extracted hereinafter contemplating three categories of vehicles i.e. Light Motor Vehicles, Transport Vehicle and Motor vehicle of the following description and the driving licence held by respondent No.1 bearing an endorsement of its holder being authorized to drive a "transport vehicle" constituted compliance with the mandate of the prescription envisaged in Form IV. In other words, the learned counsel for the appellant/owner has espoused before this Court that, hence, the non-revelation or non-enunciation in the driving licence held by respondent No.1 at the relevant time, of its holder being authorized to drive a "heavy goods vehicle" is dispensable as well as inconsequential. As a corollary he contends that the driving licence held by respondent NO.1 at the relevant time and its marking an endorsement of his being authorized to drive a "transport vehicle" was sufficient and did not debar him to drive a "heavy goods vehicle" as was the category of the offending vehicle. However, the said contention of the learned counsel appearing for the appellant has no succor or strength. The reason which constrains this Court to do so is comprised in the fact of the judgment as relied upon by the learned counsel appearing for the appellant when omits to divulge that the category of the vehicle as driven by the driver in the case relied upon was of a category analogous to the one as was being driver by the driver in the instant case, inasmuch, as it fell in the category of a heavy goods vehicle, rather the category of the vehicle as driven by the driver in the case relied upon the learned counsel appearing for the appellant was a Matadoor Van having an unladen weight of 3500 kilograms, hence constituted it to fall in the category of "Light Motor Vehicle", as such, when the offending in the instant case falls in the category of "heavy goods vehicle" the judgment relied upon by the learned counsel appearing for the appellant is inapplicable to the driving licence qua the vehicle at hand. Thereupon the Hon'ble Appex Court in the judgment relied upon construed that even in the absence of the driver of the offending vehicle in the case aforesaid having a driving licence to drive a "light motor vehicle" without an

endorsement in it of his being authorized to drive even a transport vehicle, it did not constitute any breach of the insurance policy. Form IV is extracted hereinabelow:-

> "Form 4
>
> * * * * *
>
> I apply for a licence to enable me to drive vehicles of the following description:
>
> * * * * *
>
> (d) Light motor vehicle
>
> (e) Medium goods vehicle
>
> * * * * *
>
> (J) Motor Vehicle of the following description."

After amendment the relevant portion of Form 4 reads as under:

> "Form 4
>
> I apply for a licence to enable me to drive vehicles of the following description:
>
> * * * *
>
> (d) Light motor vehicle
>
> (e) Transport vehicle
>
> * * * * *
>
> (J) Motor Vehicle fo the following description."

5. Reiteratedly, given the definition of "Light Motor Vehicle" as was the category of the offending vehicle driven by the driver in the judgment relied upon by the counsel appearing for the appellant and its divulging the fact that it encompasses both a "transport vehicle" as well as a "light motor vehicle" or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which does not exceed 7500 kilograms, as was the weight of the offending vehicle in the said case, that hence, even in the absence of an endorsement in the driving licence held by the driver in the said case or its not carrying any endorsement in it authorizing its holder to drive a "transport vehicle" that it was concluded that he was authorized to drive a "light motor vehicle" especially given the fact that its gross unladen weight did not exceed 7500 kg. Preponderantly the factum of its weight not exceeding 7500 kg was, hence, held sufficient in the face of the definition of the light motor vehicle, which is extracted herein after, to authorize him to drive it even as a "transport vehicle". However, for the reasons hereinafter mentioned, the gross unladen weight of a "heavy goods vehicle" is more than 7500 kilograms, as such, the judgment relied upon by the learned counsel for the appellant is inapplicable to the category of "heavy goods vehicle". Section 2(21) defines "light motor vehicle" as under:-

> "2. (21) 'light motor vehicle' means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7500 kilograms."

6. Furthermore, the learned counsel for the appellant has also proceeded to further urge that obviously when in the case at hand, the R.C. of the offending vehicle comprised in Ex.RW1/B is loudly communicative of the fact that the offending vehicle falls in the category of "heavy goods vehicle". However, the driving licence held by respondent No.1 while driving it as divulged by Ex.RW1/A, though does bear an endorsement authorizing its holder to drive a "transport vehicle", which authorization comprised in the driving licence, has been contended to be sufficient and adequate to empower respondent No.1 to drive even a "heavy goods vehicle" as was the category of the offending vehicle, yet it does not specifically carry any endorsement of its holder being authorized to drive a "heavy goods vehicle". The said argument is built upon the definition of "transport vehicle" occurring in Section 2(47) of The Motor Vehicles Act, 1988, which definition is extracted hereinafter inasmuch as while its encompassing even a "goods carriage vehicle" as was the category of the offending vehicle rendered the respondent No.1 fit and empowered to drive it even when the driving licence issued to him did not carry in it an apposite endorsement by the Authority concerned of its holder being fit to drive a "heavy goods vehicle". Nonetheless, the learned counsel for the appellant has remained oblivious to and aloof to the factum of a separate and distinct definition borne by the phrase "heavy goods vehicle" existing in Section 2(16) of The Motor Vehicles Act, 1988, which is extracted hereinafter, vis-à-vis the definition of a "Light Motor Vehicle" which distinct definitions borne by two separate categories of vehicles per se marks and voices the factum of the driver while driving any of the aforesaid categories of vehicle being enjoined to carry in the driving licence held by him an endorsement of his being fit to drive either a "light motor vehicle", a "transport vehicle" or a "heavy goods vehicle". However, the said endorsement is amiss. The definition of the "transport vehicle" defined in Section 2(47) of the Motor Vehicles Act, reads as under:

> "2(47). "transport vehicle" means a public service vehicle, a goods carrier, an educational institution bus or a private service vehicle;"

The definition of the "heavy goods vehicle" defined in Section 2(16) reads as under:

> "2(16). "heavy goods vehicle' means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;"

7. In the legislature while affording diverse and distinct definitions to distinct categories of vehicle did so, to mark the fact that the driving licences issued qua each of the distinct categories of the vehicle compatibly too, distinctly and lucidly voicing in them, besides being communicative of the fact of its holder being specifically authorized to drive each of the distinctly defined categories of the vehicles. The mere fact of an endorsement of "transport vehicle" occurring in the driving licence held by respondent No.1, in the absence of an endorsement in it authorizing him to drive a "Heavy Goods Vehicle", does not constitute the driving licence held by the respondent No.1 to be an effective and valid driving licence. The import of the phrase "transport vehicle", though encompassing within its amplitude even a "goods carriage", which even a "heavy goods vehicle" may be so as to foist a tenable inference that the

contention as raised by the learned counsel for the appellant to fasten it with legality may be tentatively vindicable. Nonetheless, the factum of a "transport vehicle" encompassing within its scope and amplitude a "goods carriage" is to be read in conjunction with a compatible phraseology occurring in the definition of a "light motor vehicle". Now given the fact that the phraseology "transport vehicle" occurs in the definition of a light motor vehicle, whereas, it does not occur in the definition of "transport vehicle". Hence, given its existence in the definition of light motor vehicle and its non reflection in the definition of "heavy goods vehicle", as a sequel its implication and import is to convey that the legislature while defining a "transport vehicle" in Section 2(47) of the Motor Vehicles Act, 1988 has proceeded to amplify the signification borne by the phraseology "transport vehicle" with its occurring only in the definition of a "light motor vehicle". The omission of the phrase "transport vehicle" in the definition of "heavy goods vehicle" is also with an obvious intention of the legislature to its signification being not carried forth or un-importable/un-introducible qua the definition of a "heavy goods vehicle". In other words, the amplitude, scope and import of the phrase "transport vehicle" is circumscribed to a "light motor vehicle' or it amplifies the scope of the definition of a light motor vehicle as also it further elucidates the fact that the import of a transport vehicle is to be restricted to its being a "goods carriage" bearing or carrying an unladen weight of 7500 kilogram. Obviously its import does not extend to or amplify the signification borne by words "goods carriage" occurring in the definition of "heavy goods vehicle" as a "heavy goods vehicle" is constituted by a "goods carriage" whose unladen weight exceeds 12000 kg. Consequently, the factum of a "transport vehicle" taking within its ambit a "goods carriage" as may be category of the offending vehicle driven by the respondent No.1 while its being a "heavy goods vehicle", nonetheless, when the weight of the different categories of the vehicle, inasmuch, as of vehicles constituting "heavy goods vehicles" and of vehicles constituting "light motor vehicles" too is also significant for testing the signification conveyed by the phrase "transport vehicle" especially when its amplitude is limited to the definition of a "light motor vehicle" wherein it occurs, as a corollary, the driver of each of the distinct categories of vehicles bearing different unladen weights was enjoined to possess diverse skills and proficiency, which skills and proficiency possessed by the driver driving a heavy goods vehicle was to be higher vis-à-vis the skills and proficiency possessed by a driver of a "light motor vehicle". Obviously, then the driving licence held by the respondent No.1 had to explicitly contain an expression of the driver being, prior to its issuance, tested for his possessing skill and proficiency to drive a "heavy goods vehicle" and its then carrying an endorsement in it of his being fit to drive it. Necessarily, then given the definition of a "transport vehicle" and its occurrence in the driving licence of its holder, is to be construed to be voicing the mere fact or it authorizing him only to drive a "light motor vehicle" and not a "heavy goods vehicle". Furthermore, the mere fact of Form No. IV as extracted hereinabove classifying three categories of vehicle and a transport vehicle being one of the categories enunciated in it and the driving licence held by respondent No.1 carrying an endorsement of his being authorized to drive a "transport vehicle", whereas the category of "heavy goods vehicle" not existing in it would not constrain this Court to conclude that there was no necessity of an endorsement in his driving licence of his being authorized to drive even a "heavy goods vehicle". The narration of the

category of vehicles in Form IV does not govern or regulate the purpose and objective of the legislature. Consequently, necessity is enjoined of its holder to held a licence specifically authorizing him to drive a separately and distinctly defined category of vehicle in the Statute.

8. Even otherwise the non occurrence of the term "heavy goods vehicle" in Form No. IV extracted hereinabove does not curtail the power of the Licensing Authority to issue a driving licence qua a vehicle specifically falling within the description or definition of "heavy goods vehicle". A perusal of Section 10(2) of the Motor Vehicles Act, which is extracted hereinafter when divulges that it enjoins a necessity upon the Licencing Authority while issuing a driving licence to communicate in it of its holder to be, besides his driving icence authorizing him to drive a "transport vehicle", his being also specifically authorized to drive a motor vehicle of a specified description. Consequently, since the category of "heavy goods vehicle" falls in the category of a motor vehicle of a specified description, hence, even if it is not explicitly enunciated in Section 10(2) of the Act, yet it being a statutory category of motor vehicle, concomitantly, the said expression had to be lucidly communicated in the driving licence held by respondent No.1, inasmuch as of his being authorized to drive the aforesaid statutorily specified/described category of a motor vehicle. Section 10(2) of the Motor Vehicles Act reads as under:

> "10(2). A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-
>
> (a) motor cycle without gear;
> (b) motor cuycle with gear;
> (c) invalid carriage;
> (d) light motor vehicle;
> (e) transport vehicle
> (i) road roller;
> (j) motor vehicle of a specified description."

9. For the foregoing reasons the findings of the learned Tribunal on the issue relating to the fact of respondent No.1 not holding a valid and effective driving licence do not suffer from any infirmity or absurdity rather are anvilled upon mature and balanced appreciation of the evidence and material before it and apposite application of law to it.

Cross Objection No. 4026 of 2013 in FAO No. 4094 of 2013.

10. Mr. Dheeraj Vashist, the learned counsel appearing for the claimants/respondents/cross-objector canvassed before this Court that the deceased Ram Swaroop at the time of the accident was 51 years of age as divulged by the post mortem report of deceased Ram Swaroop, hence, the learned Tribunal has erroneously applied a multiplier of 10 while assessing compensation payable under the head of the loss of dependency to the respondents/claimants. The contention of the learned counsel has succor as it is divulged by the post mortem report of the deceased that at the time of the accident he had attained the age of 51 years, hence, in the face of the principle laid down in judgment reported in ***Sarla Verma and others versus Delhi Transport Corporation and another, (2009)6***

SCC 121, of a multiplier of 11, hence, being applicable to the multiplicand, the learned tribunal has erroneously and inappropriately applied a multiplier of 10 while assessing compensation to the petitioner/claimants under the head of the loss of dependency, as such, the impugned award to this extent suffers from an infirmity. Accordingly, that portion of awarded passed by the Learned Motor Accident Claims Tribunal is set aside and this Court proceeds to apply a multiplier of 11 to the multiplicand while assessing the compensation payable to the claimants/respondents under the head of loss of dependency. While applying a multiplier of 11 to the annual income of the deceased as assessed by the learned Motor Accident Claims Tribunal, the total compensation payable to the respondents/claimants under the head of loss of dependency comes to {Rs.2,02,726/- (annual income) x 11}, Rs.22,29,986/-. Now adding a sum of Rs.10,000/- on account of loss of love and affection and another sum of Rs.10,000/- on account of funeral expenses and other conventional charges as assessed by the learned Motor Accident Claims Tribunal as compensation payable to the respondent/claimants under the head of loss dependency, the total compensation assessable in favour of the respondents/claimants is computed at Rs.22,49,986/-. Furthermore, the learned Tribunal has erroneously quantified interest payable at the rate of 7.5% whereas the rate of interest to be afforded is at a rate of 9% per annum from the date of the filing of the petition till the realization of compensation. Consequently, it is directed that the compensation as determined by this Court shall carry interest at the rate of 9% per annum from the date of filing of the petition till its realization.

11. Mr. Anil Kumar, learned counsel appearing for the respondents/claimants in FAO No. 4053 of 2013 submits that the learned Tribunal has erroneously afforded rate of interest at the rate of 7.5 % per annum from the date of filing of the petition whereas it has to afford the interest at the rate of 9% per annum from the date of filing of the petition and in support of his submission the learned counsel pressed into service the provisions of Order XLI, Rule 33 of the Code of Civil Procedure. The provisions of Order XLI, Rule 33 of the CPC clothe this Court with a plenary jurisdiction to pass or make such further and other decree or order as the case may require. The provisions of Order XLI, Rule 33 of the CPC reads as under:

> 33. Power of Court of Appeal- The Appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:"

12. The said power vested in this Court under the provisions of Order XLI, Rule 33 of the CPC extracted hereinabove are open to be exercisable by the Court of Appeal as this Court is, even in the

absence of any of the respondents in the memo of parties before the Appellate Court having omitted to file any cross appeal or cross-objections ventilating therein their grievance against the award impugned. Consequently, to afford parity of treatment to the respondents/claimants in FAO No. 4053 of 2013 with the respondents/claimants in FAO No. 4994 of 2013 in terms of provisions of Order XLI and Rule 33, even when the formers have not filed any cross-objections or appeal, as such, the impugned award passed in MACP No. RBT 55/12/11 by the learned Tribunal which is impugned in FAO No.4053 of 2013 before this Court is modified to the extent that the amount of compensation as assessed by the learned Tribunal shall carry interest at the rate of 9% per annum from the date of filing of the petition and till its realization.

13. For the foregoing reasons, I find no merits in the appeals preferred by the appellant(s)/owner, which are accordingly dismissed and the cross-objections No. 4026 of 2013 preferred by the respondents/claimants in FAO No. 4094 of 2013 are allowed and the award of the learned Tribunal in MACP No. 19 of 2011 is modified to the extent that the respondents/claimants are entitled to a total compensation of Rs.22,49,986/- which shall also carry interest at the rate of 9% per annum from the date of filing of the petition till its realization. Further, the award passed by the learned Tribunal in MACP No. RBT 55/12/11 which is impugned before this Court in FAO No. 4053 is also modified with the direction that the compensation as awarded by the Learned Motor Accident Claims Tribunal in its award shall carry interest at the rate of 9% per annum from the date of filing of the petition till its realization. No costs. All the pending application(s) also stand disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. & HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

State of Himachal Pradesh .....Appellant.
Versus
Hans Raj alias Raja .....Respondent.

Cr. Appeal No. 586 of 2008.
Reserved on: October 16, 2014.
Decided on: October 17, 2014.

Indian Penal Code, 1860- Sections 363, 366 and 376- Prosecutrix aged 17 years left her home- matter was reported to the police- prosecutrix was recovered at the instance of the accused- the evidence showed that the prosecutrix had voluntarily gone to Pandoh Colony, which was thickly populated- she had crossed Mandi town in the bus- she admitted that she was writing letters to the accused and had handed over her photographs to him-held that, these circumstances, show that the prosecutrix was not kidnapped but she had voluntarily gone with the accused. (Para- 20 to 24)

For the appellant: Mr. Parmod Thakur, Addl. Advocate General.
For the respondent: Mr. G.R.Palsra, Advocate.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment dated 31.5.2008 of the learned Presiding Officer, Fast Track Court, Mandi, H.P., rendered in Sessions Trial Nos. 39 of 2003 & 42 of 2004, whereby the respondent-accused (hereinafter referred to as the accused), who was charged with and tried for offences under Sections 363, 366 and 376 IPC, has been acquitted of the charges framed against him.

2. The case of the prosecution, in a nut shell, is that Sh. Durga Dass father of the prosecutrix reported the matter in Police Station, Sundernagar to the effect that he was posted in B.S.L. Security and Vigilance Department. He was residing with his family members in Quarter No.512-157, BBMB Colony, Sundernagar. On 30.6.2003, the prosecutrix, his daughter aged 17 years alongwith her cousin Kajal, daughter of Braham Dass, resident of Malori had left his quarter at about 1:30 PM. He inquired from his brother at about 7:00 PM. His *'Bhabhi'* Smt. Saroj Arya told him that at 4:00 PM his daughter and niece Kajal were seen going towards the side of Mandi Bazar. On the road at Pul Gharat the accused and Paramvir resident of Pandoh who were going on the motor cycle met them and stopped the motor cycle and talked with the prosecutrix. The prosecutrix told Kumari Kajal that she should go to the Bazar and she will go to her house. His daughter has not reached at his house on 30.6.2003. On 1.7.2003, he had gone to Pandoh to enquire from the friend of the prosecutrix about the whereabouts of the prosecutrix. He came to know that the prosecutrix was seen on 30.6.2003 and 1.7.2003 in the company of the accused in the quarter of Papu. On 30.6.2003 both have stayed in the quarter of Papu. On 1.7.2003, Babita who is studying in 10+1 class at Pandoh had seen the accused and the prosecutrix roaming near the School. On 2.7.2003 when he was at the bus stand Sundernagar, in the search of the prosecutrix, the accused met him at bus stand Sundernagar. He enquired from the accused regarding the prosecutrix and the accused refused to divulge anything. He and his brother Gopi Chand took the accused to the police Station, Sundernagar. The prosecutrix was recovered and custody was handed over to him on superdari. The investigation was completed and challan was put up after completing all the codal formalities. Initially, the FIR was registered under Section 363 IPC. Thereafter, the same was converted under Sections 363, 366 and 376 IPC.

3. The prosecution has examined as many as 16 witnesses. The statement of the accused under Section 313 Cr.P.C. was recorded. The accused has denied the entire version of the prosecution and pleaded innocence and claimed that he was falsely implicated. The learned Trial Court acquitted the accused, as stated hereinabove. Hence, this present appeal at the instance of the State.

4. Mr. Parmod Thakur, learned Addl. Advocate General has vehemently argued that the prosecution has proved the case against the

accused. On the other hand, Mr. G.R.Palsra, Advocate, has supported the judgment of the learned trial Court dated 31.5.2008.

5. We have heard learned counsel for both the sides and gone through the material available on record very carefully.

6. PW-1, Parvinder Kumar deposed that accused was his maternal Uncle from distant relation. His father was having a quarter at BBMB Colony at Pandoh. The accused had never asked him to give the key of the quarter of his father. He was declared hostile and cross-examined by the learned Public Prosecutor.

7. PW-2 Paramvir, deposed that he had gone to Pandoh on his motor cycle alongwith the accused. He has not seen the prosecutrix talking with the accused at Pul Gharat. He was also declared hostile and cross-examined by the learned Public Prosecutor.

8. PW-3 Gopi Chand, deposed that the prosecutrix was his niece. He was informed by his brother on 30.6.2003 at about 8:00 PM that his daughter was missing. He came to Sundernagar. They went in search of the prosecutrix at Pandoh. Paramvir met them at Pandoh. He told that the prosecutrix was seen with the accused. On 2.7.2003, Hans Raj met them at Sundernagar bus stand and they enquired from him about the prosecutrix. He did not divulge anything. Thereafter, he and his brother took him to Police Station. The personal search was carried out. One broken wrist watch, one leather purse, one photograph of his niece, one page of diary and one letter were found. These articles were taken into possession by the police vide memo Ext. PW-3/A. He had no personal knowledge regarding the staying of the prosecutrix with the accused as per his statement in the cross-examination. He did not know that the prosecutrix stayed at Kanaid with one Vijay Kumar alongwith his parents. In his presence, his brother has not told the police that the writing contained in Ext. P-1, P-2 and P-4 was in the hand of the prosecutrix.

9. PW-4 Simro Devi, is the mother of the prosecutrix. According to her, the prosecutrix had gone to the house of brother of her husband, namely, Braham Dass on 30.6.2003. On 30.6.2003, her husband telephonically asked his brother Braham Dass about the arrival of the prosecutrix and Kajal. He told that the prosecutrix had gone to bazaar alongwith Kajal. Kajal had gone to market but his daughter, the prosecutrix wanted to go to Sundernagar. When she reached at Pul Gharat, two persons, namely, Hans Raj and Paramvir took his daughter on the motorcycle to Pandoh. The prosecutrix and accused used to study together at Pandoh. On 4.7.2003, her daughter was recovered by the police. She was handed over to her husband in the presence of Gopi Chand vide recovery memo Ext. PW-3/B. Her daughter told them that the accused had taken her to his quarter and kept there and committed sexual intercourse with her. In her cross-examination, she admitted that she was deposing regarding the aforesaid fact for the first time in the Court. She had no personal knowledge regarding the incident. She also admitted that her daughter used to reside at Kanaid but did not disclose from which date she stayed there nor the police has investigated this fact.

10. PW-5 Saroj Arya, deposed that on 30.6.2003 at about 4:15 PM, she was going to her Village Malori. She saw her daughter Kajal and

her niece. After two hours, her daughter reached at home and told her that two persons, namely, Hans Raj alias Raja and one Paramvir met them in the Bazar. Kajal also told her that both the persons were compelling the prosecutrix to accompany them on their motor cycle. Her niece was recovered after about 3 days. In her cross-examination, she admitted that the prosecutrix had not told her anything about the incident. Her daughter Kajal has not told her that the persons sitting on the motor cycle had forcibly kidnapped the prosecutrix in her presence. Kajal also told her that the prosecutrix had told her that she will go to her house to Sundernagar and she may go to the Bazar for tuition. She admitted that there were many shops near the bridge at Pul Gharat and persons of the nearby locality might have seen the occurrence. She did not know that the prosecutrix used to reside in the house of Vijay Kumar at village Kanaid. She knew that the prosecutrix was in love with the accused.

11. PW-6 Devinder Kumar, deposed that he was owner of Vehicle No. HP-33-4069. He was called to Police Station by the father of the prosecutrix. Accused was known to him. He has not seen the prosecutrix alighting from the bus at Pandoh. The witness was declared hostile and cross-examined by the learned Public Prosecutor. He denied in his cross-examination that he has seen the prosecutrix at Jaral Colony while she was alighting from the bus.

12. PW-7 Durga Dass, is the father of the prosecutrix. He deposed that on 30.6.2003, his daughter had gone to his elder brother's house at Malori with his niece at 1:30 PM from Sundernagar. At about 7:30 PM he was told by his elder brother's wife about the arrival of the prosecutrix and Kajal that they were coming on foot to their house. They met two persons, who were riding in one motor cycle. One person started talking with the prosecutrix. Thereafter, his daughter told his niece Kajal that she may go to her house and she will go back to her house. She did not reach home. He kept on searching her and on 2.7.2003, he alongwith his younger brother Gopi Chand went to search the prosecutrix at Sundernagar. He found Hans Raj at bus stand Sundernagar. Hans Raj did not divulge anything. He was taken to the Police Station. Diary Ext. P-1, letter Ext. P-2, photographs Ext. P-3 and one paper diary Ext. P-4 were in the hand writing of his daughter, which were addressed to Hans Raj. He produced school certificate. In his cross-examination, he admitted that he had no personal knowledge regarding the incident and reported the matter at Police Station Sundernagar on the information of others. He came to know from the contents of Ext. P-1, P-2 and Ext. P-4 that his daughter was in love with accused Hans Raj.

13. PW-8, Saroj Abrol, is a formal witness.

14. PW-9 Dr. Sapna Sharma, has medically examined the prosecutrix. She has issued MLC Ext. PW-9/C. According to her, the prosecutrix was exposed to coitus. She did not say as to when the last coitus has taken place. She has sent the clothes of the prosecutrix to FSL, Junga. In her cross-examination, she admitted that there was no injury of any kind on her body and there was no possibility of rape.

15. PW-10 is the prosecutrix. She deposed that she was studying in 10+ 1 class in Girls School, Sundernagar, District Mandi. She had gone to the house of her father's brother with his daughter Kajal

on 30.6.2003. They left for Malori at 1:30 PM. When they reached at Pul Gharat at about 2:30 PM, they met accused Hans Raj and his friend Param Dev. Thereafter, accused asked her to come to Pandoh. On her refusal, the accused threatened her to do away with her life. Accused threatened her to visit Pandoh i.e. Jaryal Colony. When she was studying at Pandoh in 10+1 class, she had given one photo, one diary and letters to the accused Hans Raj. These were Ext . P-3, Ext. P-1 and Ext. P-2 and Ext. P-4. She had liking for the accused. The accused started blackmailing her. She had gone to Jaral Pandoh in a private bus. Paramvir told her that accused Hans Raj will meet her in Colony or at his residence. Accused Hans Raj had met her at Colony and asked her to wait. The accused left for bringing the key of a quarter of his sister's son (Bhanja). Parminder had brought the key and after sitting for some time in the quarter, he had left the quarter. Thereafter, they remained in the quarter. The accused asked her to sleep on the bed and he himself slept on the ground. The accused asked her that that as they are going to marry shortly and why don't she come to his bed. She refused. The accused forcibly entered into her bed and committed sexual intercourse with her. She could not make hue and cry as there was none to hear her cries. On the second day, the accused took her to Pandoh Bazar and they both were roaming in the Pandoh Bazar. At 5:00 PM, the accused asked her to go to her house and told her to see him on 4.7.2003. The accused compelled her to board the bus in order to go to home. She sat in the bus. The accused accompanied her to Sundernagar in the bus. She did not go to her house and had gone to the house of Nishant. She went back to Pandoh. On the way to Pandoh, one *Bhanja* of accused looked her and asked her to alight from the bus at Jaral Pandoh. He informed the Police Post, Pandoh and police brought her to the Police Station, Sadar Mandi. She was handed over to her father. She was medically examined on the same date at Zonal Hospital, Mandi. In her cross-examination, she admitted that on 30.6.2003, she did not reach at Malori village. Her statement portion A to A of Mark-X was incorrect. She has not given such statement to the police. Her statement portion B to B of Mark-X was also incorrect. She has not given such statement to the police. She and Kajol had not come from Village Malori to Pul Gharat. She also admitted that she has not disclosed to the police in her statement under Section 161 Cr.P.C that the accused had threatened her to do away with her life, if she will not go to Jaryal Colony at Pandoh according to his instructions. She has not disclosed this incident to anybody else and had given this statement for the first time in the Court. She also admitted that near Pul Gharat there are many shops and people were also present there. She also admitted that there are shops near the bridge. The accused and Paramvir never met them at Pul Gharat nor accused Hans Raj asked her to come to Pandoh at Pul Gharat. She had told the police that the accused Hans Raj and Paramvir met them 300 meters away on Malori road (confronted with her statement under Section 161 Cr.P.C. Mark-X wherein it is not so recorded). She also admitted that the accused never met her at Pul Gharat where shops were situated and her statement portion C to C of Mark-X is incorrect. She has not told to anybody that the accused met her on a motor cycle at Pul Gharat on Sundernagar road nor she has disclosed this fact to the police. She admitted that she boarded the bus to Jaryal Colony Pandoh of her own without any pressure from anybody at that time. Volunteered that, the accused had asked her to come and has pressurized her at village Malori.

She had disclosed the police in her statement under Section 161 Cr.P.C. that she was pressurized by the accused to come to Pandoh in a bus at Village Malori when he met her. (confronted with her statement under Section 161 Cr.P.C. Mark X, wherein it is not so recorded). She also admitted that Jaryal Colony is thickly populated and there is bazaar and people were coming and going at that time. She also admitted that there were many passengers in the bus going to Pandoh. She has not disclosed to anybody regarding the threats advanced by the accused. She knew that Police Station Sadar Mandi is situated at Paddal which is situated about 600-700 yards. She has not reported the matter to the police at that time though she could have reported the same to the police. She has not told the police that Parvinder brought the keys of the quarter where they stayed at night. She told this fact for the first time in the Court and had not disclosed the same to anybody else including her parents. She reached at Pandoh at 8:00 PM on 30.6.2003. There were lights in the neighbourhood. She did not disclose to anybody at that time that accused has asked her to come to Pandoh by pressurizing her. She has admitted that her father had asked the accused to marry her.

16. PW-11 Sh. Rajesh Kumar, has issued the birth certificate of the prosecutrix vide Ext. PW-11/A. In his cross-examination, he has admitted that there was no serial number of this entry in the birth register. There was no mention of the name of the informant at whose instance the entries were made. He also admitted that there was no signature of any Panchayat Secretary who had made these entries outside the column and the said entries were not signed by any Secretary and also not verified by any competent Officer. He also admitted that there was no mention in the register that on which date this entry was made in the register.

17. PW-12 Kumari Kajal, deposed that on 30.6.2003, she had come to her house at village Malori due to summer vacation in the School. While going to Mandi town, they met two persons namely Paramvir and Hans Raj coming on motorcycle from Mandi towards Sundernagar. They met them at Pul Gharat on Mandi Sundernagar road. The accused called the prosecutrix to talk with her. She went to talk with the accused and she waited for her. After some time, she came with the accused. She told her that the accused was her class fellow and was asking about some books. She left for the bazaar and the prosecutrix stayed there. She narrated the whole story to her mother. At about 7:30 PM her uncle Durga Dass rang up her mother and enquired about the prosecutrix. Her mother told him that she had gone to her house at Sundernagar. She was ready to go to Mandi town with her but after meeting with the accused Hans Raj the accused might have taken away the prosecutrix. In her cross-examination, she admitted that both of them were talking nicely. She has not disclosed to anybody that she was pressurized or threatened by the accused to go to Pandoh. She has not told her that if she would not go to Pandoh, the accused would do away with her life. She has not disclosed anything about the incident to her.

18. PW13 Inspector Brijesh Sood, PW-14 HHC Baldev Singh and PW-15 HC Tulsi Ram, are formal witnesses.

19. PW-16 Narender Kumar, SI, CID investigated the matter. Ext. P-1, P-2, P-3 & P-4 were recovered. The prosecutrix was recovered at

Pandoh while she was going to the quarter of the accused. She was handed over to her father on superdari. He obtained the report of FSL Ext. PW-16/B. The accused was also medically examined vide Ext. PW-16/C. The birth certificate Ext. PW-11/A was obtained from G.P. Kothuan. The statements of the witnesses were recorded. In his cross-examination, he admitted that he has not taken possession of the motor cycle.

20. What emerges from the evidence brought on record is that the prosecutrix was 17 years of age. The prosecution has failed to prove that the prosecutrix was forcibly taken by the accused to Pandoh. Rather, she has voluntarily gone to Pandoh Colony, which was thickly populated. She had gone in the bus. She had also crossed Mandi town. It has come in her statement that she knew where the Police Station, Sadar Mandi was but she has not got down to register the case. She also deposed that she had liking for the accused. She had been writing letters to the accused. She has also handed over her photograph to the accused. PW-1 Parvinder Kumar and PW-2 Paramvir were declared hostile. According to the prosecutrix, PW-1 Parvinder had brought the keys of the room but PW-2 Paramvir had denied the same.

21. The statement of the mother of the prosecutrix Smt. Simro Devi (PW-4) is only based upon hearsay. In her cross-examination, she has admitted that she was deposing regarding the incident for the first time in the Court. She has not seen the incident. PW-7 Durga Dass, the father of the prosecutrix has admitted in his cross-examination that he had no personal knowledge regarding the incident and he has reported the matter to the police at Police Station, Sundernagar on the basis of the information supplied by others. He had no personal knowledge whether his daughter was staying at Pandoh or Kanaid in the family of Vijay Kumar. He came to know about the love affair of his daughter with the accused after reading Ext. P-1, P-2 and P-4.

22. According to PW-9 Dr. Sapna Sharma, the prosecutrix was exposed to coitus. The duration could not be given as to when the last coitus has taken place. In her cross-examination, she has admitted that there was no injury of any kind on the body of the prosecutrix and there was no possibility of rape.

23. According to the prosecution case, the accused has met the prosecutrix and Kajal at Pul Gharat but according to PW-10, the prosecutrix, the accused met them 300 meters ahead of Pul Gharat. The prosecutrix has remained in the Pandoh Colony and thereafter she had come to the market place. She has admitted that she was roaming in the bazaar in the company of the accused. There are also contradictions in the statements of PW-10 prosecutrix and her cousin PW-12 Kajal. PW-16 S.I. Narender Kumar, has not even prepared the site plan of the spot.

24. The prosecution has miserably failed to prove the charge against the accused under Section 363 IPC. Similarly, charge under Section 366 IPC has also not been proved. In order to prove charge under Section 366 IPC, it is essential that the woman has been kidnapped or abducted and such kidnapping or abduction is with intent that she will be compelled to marry any person against her will or in order that she will be forced or seduced to illicit intercourse or by means of criminal intimidation or otherwise by inducing any woman to go from any place

with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse. In the instant case, the prosecutrix herself has gone to Pandoh voluntarily. She has stayed with the accused. The accused has not kidnapped her.

25. Consequently, in view of analysis and discussion made hereinabove, the prosecution has miserably failed to prove its case beyond reasonable doubt that the accused has committed rape upon the prosecutrix. The circumstances, as noticed hereinabove, create reasonable doubt in the version of prosecution.

26. Accordingly, there is no occasion for us to interfere with the well reasoned judgment of the trial Court and the appeal is dismissed. Bail bonds are discharged.

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BEFORE HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J.

CRMMO Nos.: 191 of 2014 and
192 of 2014.
Decided on: 20.10.2014.

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1. CRMMO No.191 of 2014.
   Shashi Pal. ... Petitioner.
   Versus
   State of Himachal Pradesh and others. ... Respondents.
2. CRMMO No.192 of 2014.
   Reshma Devi and others. ... Petitioners.
   Versus
   State of Himachal Pradesh and another. ... Respondents.

Code of Criminal Procedure, 1973- Section 482- Parties had entered into a compromise and had decided not to pursue the case- held, that when the matter has been compromised, and where wrong was done to the victim and not to the society, FIR can be quashed on the basis of compromise. (Para-4 to 7)

Cases referred:

Gian Singh Vs. State of Punjab and another, (2012) 10 SCC 303

Narinder Singh & Ors. v. State of Punjab & another, JT 2014(4) SC 573

For the Petitioners : Mr. Pawan Gautam, Advocate in CRMMO No.191 of 2014 and Mr. B.R. Sharma, Advocate in CRMMO No.192 of 2014.

For the Respondents : M/s D.S. Nainta, Virender Verma and Rupinder Singh, Additional Advocates General for respondent No.1 in both petitions.

Mr. B.R. Sharma, Advocate for respondents No.2 to 4 in CRMMO No.191 of 2014 and Mr. Pawan Gautam, Advocate for respondent No.2 in CRMMO NO.192 of 2014.

The following judgment of the Court was delivered:

Dharam Chand Chaudhary, J.(Oral)**:**

This judgment shall dispose of both petitions under Section 482 of the Code of Criminal Procedure filed with a prayer to quash the F.I.Rs. registered at the instance of the parties against each other in Police Station, Gagret, District Una.

2. Shashi Pal, the petitioner in CRMMO No.191 of 2014 is accused in FIR No.98 of 2011, registered against him at the instance of 2nd respondent, Smt. Reshma Devi under Sections 323 and 324 of Indian Penal Code. The police after investigation of the case has filed challan against him, which has been registered as Criminal Case No.6-1 of 2012/31-II of 2012 and pending disposal in the Court of Judicial Magistrate, Court No.2, Amb, District Una.

3. Similarly, a cross case vide FIR No.97 of 2011 has been registered at the instance of Shashi Pal, aforesaid against Smt. Reshma Devi, her husband Kishori Lal and son Anil Kumar, petitioners in CRMMO No.192 of 2014, under Sections 451 and 323 read with Section 34 of Indian Penal Code. Criminal Case No.8-1 of 2012 arising out of this FIR is also pending disposal in the Court of Judicial Magistrate, Court No.2, Amb, District Una. Both cases are presently at the initial stage, i.e. recording of prosecution evidence. The parties are neighbours. They belong to same community. It has come in their statements recorded separately that the occurrence took place at the spur of moment on account of some land dispute, trivial in nature. Therefore, in order to maintain friendly and cordial relations, they have decided not to prosecute the cases registered against each other at their instance. The deed of compromise duly signed by the parties on both sides in the presence of witnesses is Annexure P-2 to these petitions.

4. It is pertinent to note that an offence punishable under Sections 451 and 323 of Indian Penal Code is compoundable under Section 320 of the Code of Criminal Procedure. It is, however, the offence punishable under Section 324 of Indian Penal Code, is not compoundable. Since the petitioners in CRMMO No.192 of 2014 have allegedly committed the offence punishable under Sections 451 and 323 read with Section 34 of Indian Penal Code, therefore, the complainant in the said case, i.e. Shashi Pal could have compounded the offence in the trial Court itself. However, since the offence he allegedly committed under Section 324 of Indian Penal Code is not compoundable, therefore, both parties have approached this Court by filing these petitions under Section 482 of the Code of Criminal Procedure for quashing the proceedings against them.

5. The law on the issue is no more res-integra as the Apex Court in ***Gian Singh Vs. State of Punjab and another,*** **(2012) 10 SCC 303** has held that the High Court in exercise of inherent powers vested in

it under Section 482 of the Code of Criminal Procedure, may quash the FIR in such cases where the offence allegedly committed though is not compoundable, however, the victim and the accused have settled the dispute amicably, of course in appropriate cases having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions, matrimonial or relating to dowry etc. in which the wrong basically is done to the victim. However, as per this judgment, in the cases of serious nature like rape, dacoity and corruption cases etc. the practice of quashing FIR has been deprecated keeping in view that such offences have serious impact in the society at large. This judgment reads as follows:-

> *"58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed. "*

6. The Apex Court in ***Narinder Singh & Ors.*** v. ***State of Punjab & another,*** JT 2014(4) SC 573 has laid down the following guidelines for being considered in a case of this nature:

> *"(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not*

compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be

permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

7. It is seen that both cases arising out of the F.I.Rs. registered against each other at the instance of both parties, are presently at the stage of recording prosecution evidence. The Apex Court in ***Narinder Singh's*** case (supra) has held that in a case where the evidence is yet to start or the evidence is still at infancy stage, the High Court may exercise the powers to quash the proceedings, however, after prima-facie assessing the given facts and circumstances of the case.

8. In the case in hand, the petitioners in both the petitions are the victims. They have settled the dispute amongst them. Compromise deed, Annexure P-2 has been filed in both the cases. Therefore, at this stage, when an amicable and complete settlement is already arrived at between the parties, this Court feels that to allow the proceedings in criminal cases to continue may amount to abuse of process of law. Otherwise also, when the complainants in both F.I.Rs. have arrived at a compromise and made statements in the Court, the chances of conviction in both cases are very bleak. Being so, I accept these petitions and quash FIR Nos.97 of 2011 and 98 of 2011 registered under Sections 451 and 323 read with Section 34 of Indian Penal Code and Sections 323 and 324 of Indian Penal Code respectively against the petitioners in Police Station,

Gagret, District Una and also all the consequential proceedings, i.e. Criminal Cases No.6-1 of 2012/31-II of 2012 and 8-1 of 2012, pending disposal in the Court of learned Judicial Magistrate (2), Amb, District Una.

With the above observations, both petitions succeed. The same are accordingly allowed and stand finally disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. & HON'BLE MR. JUSTICE SURESHWAR THAKUR, J

State of H.P. .....Appellant.
Versus
Puran Chand & another .....Respondents.

Cr. Appeal No. 338 of 2008.
Reserved on: October 17, 2014.
Decided on: October 20, 2014.

N.D.P.S. Act, 1985- Sections 42 and 50- Accused were travelling in the Maruti van, which was found to be containing 3.5 k.g of charas- accused were acquitted by trial Court due to non-compliance of Sections 42 and 50 of N.D.P.S. Act- held, that the charas was recovered from the vehicle in a chance recovery and not by conducting personal search of the accused, therefore, provision of Sections 42 and 50 are not applicable.(Para-18)

For the petitioner(s): Mr. Ashok Chaudhary, Addl. Advocate General.
For the respondent: Mr. N.S.Chandel, Advocate, for respondent No. 1.
Mr. G.R.Palsra, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

The State has come up in appeal against the judgment dated 6.12.2007 rendered by the learned Addl. Sessions Judge, Fast Track Court, Dharamshala, in Sessions Case No. 26-B/VII/07, Sessions Trial No. 30/07, whereby the respondents-accused (hereinafter referred to as accused) who were charged with and tried for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, were acquitted.

2. The case of the prosecution, in a nut shell, is that on 11.8.2007, the accused were travelling in a Maruti Van bearing No. HP-01-M-0518. It was driven by Ranu Ram and co-accused Puran Chand was sitting on the front seat. When the vehicle crossed Kangra-Mandi boundary check post and reached at a distance of half kilometer towards Baijnath, it was signaled to be stopped by the police party headed by ASI Partap Singh. *'Naka'* was laid on the spot. Accused Ranu Ram did not stop the Van. He dashed the vehicle with a stone at a distance of 50 mts. from the place of occurrence towards Baijnath. The police immediately swung into action. It was found that near the hand break of the Van, in

between both the seats of the driver and co-accused, a bag was found. It was checked. It contained 3.700 kg charas in the shape of sticks. The police, after conducting search of the bag took two samples of 25 gms. each from the charas. The samples and the bulk of charas were packed and sealed in cloth parcels. The police also filled in the NCB forms in triplicate. The accused were arrested. The case property was deposited with the MHC who made entry in the register and thereafter one of the samples was sent for chemical analysis to FSL Junga. The report was received and thereafter, the challan was put up after completing all the codal formalities.

3. The prosecution has examined as many as 8 witnesses. The accused were also examined under Section 313 Cr.P.C. The accused have denied having committed any offence. Their defence was of complete denial. The learned trial Court acquitted both the accused, as noticed hereinabove. Hence, this appeal, at the instance of the State.

4. Mr. Ashok Chaudhary, learned Addl. Advocate, General has vehemently argued that the prosecution has proved its case against the accused. Mr. G.R.Palsra and Mr. N.S.Chandel, Advocates appearing for the respective accused have supported the judgment dated 6.12.2007 of the learned trial Court.

5. We have heard learned counsel for both the sides and gone through the records of the case carefully.

6. PW-1 HC Puni Chand deposed that on 11.8.2007**,** he alongwith other police officials accompanied ASI Partap Singh, HC Ajeet Kumar etc. on patrol. They intercepted Maruti Van which was coming from Mandi side. The vehicle was signaled to stop but the same dashed against a stone at a distance of 50 meters. The vehicle was taken into possession. On enquiry, the accused Ranu was found to be the driver of the vehicle. Puran Chand was travelling in that vehicle while sitting on the front seat. The search of the vehicle was conducted. It was a deserted place. Near the hand brake, one bag containing charas was found. It was weighed. It weighed 3.700 kgs. Two samples of 25 gms each were drawn out. The samples as well as the remaining bulk of charas were packed and sealed with seal 'P' at three places each in cloth parcel. Impression of seal 'P' were taken on two cloth pieces vide Ext. P-1 and P-2 and the same were taken into possession vide seizure memo Ext. PW-1/A. Seal after its use was handed over to Constable Ajit Kumar. NCB forms in triplicate were filled in. The codal formalities were completed and *'rukka'* was sent through HC Sampuran Singh to the Police Station. In his cross-examination, he deposed that barrier in between Mandi and Kangra was at village Ghatta, half kilometer away from where the accused were apprehended. They were on the Baijnath side. He admitted that there is a Forest Barrier and the forest officials remain on duty throughout day and night. Volunteered that, the barrier was 1 km. away from where they apprehended the accused. The *'naka'* was laid at about 5:00 PM.

7. PW-2 HC Sampuran Singh, also deposed the manner in which the accused have been apprehended and charas was recovered from the Van and samples were taken in accordance with law. He has taken the *'rukka'* Ext. PW-2/B to the Police Station. The vehicle was taken into possession alongwith charas vide seizure memo Ext. PW-1/A.

The FIR was registered vide Ext. PW-2/C. In his cross-examination, he deposed that the boundary of Kangra and Mandi is near village Ghatta. He was not aware that at that place there was forest check post. He left the spot at 7:30 PM.

8. PW-3 Const. Surinder Kumar, is a formal witness.

9. PW-4 Ravinder Kumar, deposed that his mother Smt. Dawarka Devi is the owner of Maruti Van No. HP-01-0518.

10. PW-5 HC Subhash Chand deposed that on 13.8.2007, Constable Surinder Kumar brought a sealed envelope containing special report Ext. PW-3/A. It was put by him before the Superintendent of Police.

11. PW-6 Const. Suresh Kumar, deposed that on 13.8.2007 vide R.C. No. 82/21, MHC handed over one sealed parcel and one NCB form and he deposited the same at FSL.

12. PW-7 ASI Partap Singh, also deposed the manner in which the Maruti Van was intercepted on 11.8.2007 and charas was recovered from it. The search and seizure processes were completed on the spot and *'rukka'* was sent through HC Sampooran Singh vide Ext. PW-2/B. FIR Ext. PW-2/C was registered. He prepared the site plan of the spot Ext. PW-7/B. He also prepared the arrest memos and handed over the case property to MHC alongwith NCB forms and impression of seal. Special report was sent on 13.8.2007 through Constable Surinder to the Superintendent of Police. On 14.8.2007, Ravinder produced RC Ext. PW-4/A and E.C. Ext. PW-4/B vide seizure memo Ext. PW-4/C. He recorded the statement of the witnesses. In his cross-examination, he deposed that Ghatta Chowki is at a distance of 1 km. from the place of occurrence. Ghatta village falls in Tehsil Jogindernagar.

13. PW-8 MHC Suresh Kumar, deposed that HC Sampuran Singh has brought *'rukka'* Ext. PW-2/B written by ASI Partap Singh to the Police Station. He recorded FIR Ext. PW-2/C. The file was sent to the spot. ASI-officiating SHO Partap Singh, handed over three parcels Ext. P-3 and P-6 and third sample was sent by him to FSL, Junga on 13.8.2007 vide R.C. No. 82/21 through Constable Suresh Kumar alongwith one copy of NCB form and one seal impression of seal 'P'. He has made entry in *Rapat Roznamcha* Ext. PW-8/C. The entry made is correct as per the original. The parcels of samples and bulk of charas Ext. P-5 were deposited by officiating SHO/ASI with him. He had made entry in the '*Malkhana Register*' at Sr. No. 57/07 alongwith NCB forms in triplicate and impressions of seal Ext. P-1 and P-2. The photocopy of '*Malkhana Register'* is Ext. PW-4/D.

14. According to the learned trial Court, the prosecution has not examined the independent witnesses. The forest check-post, as per the statements of PW-1 Puni Chand and PW-2 HC Sampuran Singh, was at a distance of half kilometer from the spot from where the vehicle was intercepted. PW-7 ASI Partap Singh has also deposed that Ghatta Chowki is at a distance of 1 km. from the place of occurrence. According to PW-1 Puni Chand, the spot was deserted. *'Naka'* was laid at about 5:00 PM. No vehicle had reached on the spot nor impounded by them during *'Naka'.* Normally, the police should associate the independent witnesses at the time of arrest, seizure and when the samples are drawn. However,

in the instant case, the independent witnesses were not available. The statements of official witnesses can be taken into consideration if the same are reliable and inspire confidence.

15. PW-7 ASI Partap Singh was officiating SHO, PS Baijnath. He has sealed the samples and bulk of charas on the spot. He has filled in the NCB forms in triplicate. The seal impression is 'P'. Since the SHO himself has seized the contraband, there was no requirement of re-sealing the same. He was only required to hand it over to the Police Station through MHC. PW-7 ASI Partap Singh has handed over the case property to MHC Suresh Kumar (PW-8). He has entered the same in '*Malkhana Register*'. The samples were sent to FSL Junga through Constable Suresh Kumar (PW-6). He deposited the same at FSL Junga. According to the FSL report, the contraband was found to be charas. The '*rukka*' was prepared on the spot by PW-7 ASI Partap Singh. He handed over the same to PW-2 HC Sampuran Singh. He has taken it to the Police Station on the basis of which, FIR Ext. PW-2/C was registered.

16. Mr. G.R.Palsra and Mr. N.S.Chandel, Advocates for the respective accused have vehemently argued that the prosecution has failed to prove the ownership of the vehicle. The vehicle was owned by one Smt. Dawarka Devi. In order to prove the case against the accused under Section 20 of the Act, it was not necessary to prove the ownership of the vehicle as argued by both the Advocates. PW-4 Ravinder Kumar is the son of Dawarka Devi. He has admitted that the vehicle belongs to Dawarka Devi. The accused were found in exclusive and conscious possession of the charas. It was recovered from the van. It was lying between the driver and the co-accused near the hand brake.

17. Mr. N.S.Chandel, Advocate, has also argued that the vehicle has met with an accident but no independent witness has been cited by the prosecution to establish the accident. It was not at all necessary for the prosecution to cite an independent witness to prove that the accident has taken place. PW-1 Puni Chand and PW-2 Sampuran Singh have categorically deposed that the vehicle was signaled to stop by PW-7 ASI Partap Singh, however, the driver tried to take away the vehicle and the vehicle met with an accident 50 metres ahead.

18. The learned trial Court has gravely erred in relying upon non-compliance of Sections 42 and 50 of the Act by the prosecution. Neither Section 42 nor Section 50 of the Act was attracted in the present case. It was a case of chance recovery at "*Naka*". The charas has been recovered from the vehicle and not from the person of the accused.

19. Accordingly, the judgment of the learned trial Court dated 6.12.2007 is set aside. The accused are convicted under Section 20 of the ND & PS Act, for possessing 3.700 kg. charas. The accused be heard on quantum of sentence on **3.11.2014.**

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, JUDGE & HON'BLE MR. JUSTICE SURESHWAR THAKUR, JUDGE.

Devinder Singh. ...Petitioner.

Versus

State of Himachal Pradesh and others. ...Respondents.

CWP No. 658 of 2014-F
Reserved on : 18.10.2014
Decided on: 21.10. 2014

Constitution of India, 1950- Article 226- Deputy Commissioner, Mandi had sought names for training of Patwari from Director, Sainik Welfare, Himachal Pradesh- Director, Sainik Welfare, Himachal Pradesh conveyed that his office was busy in conducting the interview of various posts- no recommendation was sent by him- held, that the respondent No. 3 could not have refused to send the name of the petitioner on the pretext that he was busy in other selection process- respondents No. 3 and 4 directed to sponsor the name of the petitioner for training of the patwari, if found suitable. (Para- 4 to 6)

For the Petitioner: Mr. K.S. Banyal, Advocate.

For the Respondents: Mr. M.A. Khan with Mr. Anup Rattan, Addl. A.Gs. with Mr. Vivek Singh Attri, Dy. A.G, for the respondents-State.
None for other respondents.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

Petitioner's name was registered in Regional Employment Office, Mandi vide registration No. 2834/2010 N.C.O. No. 153.10 on the basis of educational qualification diploma in J.B.T. from AEC Training College and Centre, Panchmarhi for six months and 10+2. Respondent No.2 notified 154 posts of Patwari in Mandi District, out of which 23 posts were reserved for Ex-servicemen category, wherein 14 posts were for Ex-servicemen General category. Petitioner belongs to General category. Remaining 9 posts of Ex-servicemen category were for reserved categories i.e. S.C./S.T./ O.B.C./ Ex-servicemen category. Last date of receipt of application was 2.11.2013. Written test was held on 8.12.2013.

2. According to the reply filed by respondents No. 1 and 2, Deputy Commissioner, Mandi had sought requisition of eligible candidates of Ex-servicemen for the recruitment of Patwari candidates in Mandi District from respondent No.3, i.e. Director, Sainik Welfare, Himachal Pradesh. Respondent No.3 conveyed vide letter dated 29.10.2013, which was received in the office of respondent No. 2 on 13.11.2013 that their office was busy in conducting the interview of various posts. According to them, soon after the process was over their office would be able to screen and sponsor eligible Ex-servicemen for the post of Patwar training. However, no recommendation was received till the filing of the reply.

3. According to the reply filed by respondent No. 5, name of the petitioner in fact was sponsored vide letter No. OCD/49/2013-4138 dated

23.11.2013 in the list of General Ex-servicemen at Sr. No. 22. Petitioner's code was 153.10/X01.20 and 571.30 on the basis of educational qualification. Respondents No. 3 and 4 also filed reply to the petition. They have also contended that the candidates who had applied for the post under the NCO Code X01.20 against General vacancies or for particular post of Patwari were only called for interviews for the training by the State Selection Committee.

4. Name of the petitioner, as per reply filed by respondent No. 5, was for Code NCO 153.10/X01.20 and 571.30. It was incumbent upon respondents No.3 and 4 to sponsor the name of the petitioner after holding screening. Once the requisition had been sent by respondent No. 2, it was not open to respondent No. 3 to contend that they were busy in other selection process.

5. Mr. M.A. Khan has vehemently argued that petitioner could apply directly. However, the fact of the matter is that petitioner belongs to Ex-servicemen category. He was in possession of basic qualification. His code was 153.10/X01.20 and 571.30. The mode of recruitment for Ex-servicemen is separate from the routine selection process. Petitioner's name was to be screened by respondents No.3 and 4 and if found suitable his name was to be sponsored directly. He was fully eligible for the training of Patwari. The action of the respondents in not considering the case of the petitioner for the training of Patwari is declared invalid.

6. Accordingly, the writ petition is allowed. Respondents No. 3 and 4 are directed to sponsor the name of petitioner for the training of Patwari to respondent No. 2. Respondent No.2 shall take all the necessary steps towards the training of the petitioner. Pending application(s), if any, also stands disposed of. No costs.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. & HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Partap Singh Mehta. ...Petitioner.

Versus

The Himachal Fruit Growers Cooperative Marketing and Processing Society Limited. ...Respondents.

CWP No. 4874 of 2014-H
Reserved on : 18.10.2014
Decided on: 21.10. 2014

Constitution of India, 1950 - Article 226- Petitioner retired from the society and was paid a sum of Rs.3,32,454/- towards gratuity- remaining amount of Rs.1,27,766/- was not paid- leave encashment amounting to Rs.1,25,966/- was also not paid- held, that the petitioner had a right to get retiral benefits immediately on his superannuation- respondent directed to pay the balance gratuity amount and leave encashment.

(Para-2 to 4)

Case referred:
D.D. Tewari (D) through LRs vs. Uttar Haryana Bijli Vitran Nigam Limited and others, 2013 (3) S.L.J. 118

For the Petitioner: Mr. Ajit Saklani, Advocate.
For the Respondent: Nemo.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

Service is complete. None for the respondent.

Petitioner has retired from the respondent-society on 31.1.2013. He has been paid a sum of Rs. 3,32,454/- towards gratuity. The balance amount of gratuity to the tune of Rs.1,27,766/- has not been paid to the petitioner. Respondent-society has also not paid leave encashment to the petitioner amounting to Rs.1,25,966/-.

2. Petitioner has right to get the retiral benefits immediately on his superannuation. The respondent-society could not grant the gratuity in piecemeal initially by paying a sum of Rs.2,04,454/- and thereafter Rs. 1,28,000/-. Petitioner was also entitled to get the leave encashment on the date of retirement. Respondent-society cannot be oblivious to the difficulties faced by the person, who has retired from service after attaining the age of superannuation. Petitioner is entitled to balance amount of gratuity and leave encashment to plan his retired life.

3. Their Lordships of the Hon'ble Supreme Court in ***D.D. Tewari (D) through LRs*** vs. ***Uttar Haryana Bijli Vitran Nigam Limited and others***, 2013 (3) S.L.J. 118 have held that pension and gratuity are no longer any bounty and it is valuable rights and property in the hands of employee and the employee is entitled to interest for the wrongful detention of pension/gratuity. Their Lordships have held as under:

> **"3. The appellant was appointed to the post of Line Superintendent on 30.08.1968 with the Uttar Haryana Bijli Vitran Nigam Ltd. In the year 1990, he was promoted to the post of Junior Engineer-I. During his service, the appellant remained in charge of number of transformers after getting issued them from the stores and deposited a number of damaged transformers in the stores. While depositing the damaged transformers in the stores, some shortage in transformers oil and breakages of the parts of damaged transformers were erroneously debited to the account of the appellant and later on it was held that for the shortages and breakages there is no negligence on the part of the appellant. On attaining the age of superannuation, he retired from service on 31.10.2006. The retiral benefits of the appellant were withheld by the respondents on the alleged ground that some amount was due to the employer. The disciplinary proceedings were not pending against the appellant on the date of his**

retirement. Therefore, the appellant approached the High Court seeking for issuance of a direction to the respondents regarding payment of pension and release of the gratuity amount which are retiral benefits with an interest at the rate of 18% on the delayed payments. The learned single Judge has allowed the Writ Petition vide order dated 25.08.2010, after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in the case of State of Kerala & Ors. Vs. M. Padmanabhan Nair[1], wherein this Court reiterated its earlier view holding that the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but, have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be dealt with the penalty of payment of interest at the current market rate till actual payment to the employees. The said legal principle laid down by this Court still holds good in so far as awarding the interest on the delayed payments to the appellant is concerned. This aspect of the matter was adverted to in the judgment of the learned single Judge without assigning any reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned single Judge was aggrieved of by the appellant and he had filed L.P.A. before Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic order which is impugned in this appeal. It has adverted to the fact that there is no order passed by the learned single Judge with regard to the payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the judgment of the learned single Judge in the appeal and the Letters Patent Appeal was dismissed. The correctness of the order is under challenge in this appeal before this Court urging various legal grounds."

4. The action of the respondent-society not to release the gratuity and leave encashment to the petitioner has resulted in great miscarriage of justice.

5. Accordingly, the petition is allowed. Respondent-society is directed to pay the balance gratuity amount of Rs.1,27,766/- and Rs. 1,25,966/- towards leave encashment to the petitioner with interest @ 9% per annum within a period of eight weeks from today. Pending application(s), if any, also stands disposed of. No costs.

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BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Gayatri Devi & Ors. ...Appellants.
Versus
Bhawani Singh & Ors. ...Respondents.

RSA No. 303 of 2003
Date of Decision: 22.10.2014.

Code of Civil Procedure, 1908- Order 41 Rule 27- An application was filed for placing on record a judgment in the previous suit, which was not decided by the Appellate Court- held, that non adjudication of the application had prevented the plaintiff from claiming that defendants are estopped from asserting adverse possession, which has resulted in failure of justice, therefore, matter remanded to the Trial Court with the direction to decide the application filed under Order 41 Rule 27 CPC.

For the appellants : Mr.K.D.Sood, Senior Advocate with Mr.Rajnish K.Lal, Advocate.
For the respondents : Mr.R.K.Gautam, Senior Advocate with Mr.Mehar Chand, Advocate.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral):

1. The instant appeal is directed against the judgment and decree, rendered on 2.6.2003, in Civil Appeal No.102-B/XIII/2001, by the learned District Judge, Kangra at Dharamshala (H.P.), whereby, the learned First Appellate Court dismissed the appeal, preferred by the plaintiff/appellants.

2. Brief facts of the case are that the plaintiff is owner of the suit land entered in Khata No.11, Khatauni No.12, Khasra No. 208/2 old and 4 new measuring 0-38-46 hects. situated at Mohal Dharbaggi, Mauza and Tehsil Baijnath, District Kangra (H.P.). The suit land was Shamlat, which was vested in the Gram Panchayat Pandtehar, Tehsil Baijnath but in pursuance of Section 3 of H.P.Village Common Land (Vesting and Utilization) Act, 1974 the suit land was vested in the State of H.P. Lateron the State of H.P. allotted the suit land to the plaintiff through Patta dated 11.12.1976. The defendant Nos. 1 to 5 had filed Civil suit against the plaintiff etc. before the learned Sub Judge 1st Class, Palampur in the year 1989, claiming themselves to be the tenants in possession of the suit land with consequential relief of permanent prohibitory injunction to restrain the plaintiff from disturbing the possession. The said suit was dismissed qua claim of tenancy but the court restrained the plaintiff to oust defendant Nos. 1 to 5 forcibly from the suit land. It is claimed in the present suit by the plaintiff that during the pendency of that suit, defendants took forcible and unlawful possession of the suit land and are occupying it unauthorisedly. The plaintiff, being owner, entitled to be put in possession thereof.

3. In written statement defendant No.2 took plea that Sh.Nikka Ram, his father was inducted as a tenant by the Gram

Panchayat, Pandtehar on 20.11.1971 on payment of rent of Rs.10/- per annum vide receipt No. 93 dated 20.11.1971 in the land comprising Khata No.20 min, Khatauni No.21 min, Khasra No.2 measuring 0-41-09 hects vide Jamabandi for the year 1985-86 corresponding to Khata No.3 min, Khatauni No. 27, Khasra No.2 measuring 0-41-09 hects. vide Misal Haquiat Bandobast Jadid. It has been admitted that the suit land was earlier owned by the Gram Panchayat Pandtehar and it was vested in the State of H.P. lateron. It has been submitted that the father of the defendant No.2 Nikka Ram made the suit land fit for cultivation by spending Rs.10,000/- in the year 1971 and has also laid a plinth for the construction of a house in the suit land by spending Rs.8,000/- then. The said Nikka Ram died on 4.5.1982 and he had become owner of the suit land under Section 104 of the H.P.Tenancy and Land Reforms Act. After his death, the defendant No.2 and other legal heirs of deceased Nikka Ram are owners in possession of the suit land. Earlier Nikka Ram was in possession of the suit land and after his death his legal heirs including the defendant No.2 are in continuous possession of the suit land and they have never been evicted from the suit land. The suit land has been allotted wrongly to the plaintiff. It has been admitted that a civil suit was filed in the court which was partly decreed. It has further been submitted that if on technical defect this defendant is not held owner of the suit land by virtue of operation of the H.P.Tenancy and Land Reforms Act, then in the alternative the defendant has become owner of the suit land by way of adverse possession as the defendant No.2 is in open, continuous and hostile possession of the suit land for more than 12 years and it was well within the knowledge of the plaintiff. Therefore, dismissal of this suit is sought. No written statement on behalf of other defendants was filed, as they were proceeded against ex-parte.

4. Replication on behalf of the plaintiff was filed wherein the contents of the plaint were reaffirmed and reasserted and the allegations made in the written statement were denied and refuted.

5. On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties in contest:-

1. Whether the plaintiff is entitled to decree of possession, as prayed for? OPP.
2. Whether the suit in the present form is not maintainable, as alleged? OPD.
3. Whether the plaintiff has no locus standi to file the present suit, as alleged? OPD.
4. Whether the plaintiff has no cause of action against the defendants, as allegedOPD.
5. Whether this Court has no jurisdiction to try the present suit, as alleged? OPD.
6. Whether the defendant has become owner of the suit land by the operation of H.P.Tenancy and Land Reforms Act, as alleged? OPD.
7. Whether the suit is bad for non-joinder of necessary parties, as alleged? OPD.
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction, as alleged? OPD.

9. Whether the suit is not within limitation, as alleged?OPD.
10. Whether the plaintiff is estopped from filing the present suit, as alleged? OPD.
11. Whether the defendant No.2 has become owner of the suit land by way of adverse possession, as alleged? OPD.
12. Relief.

6. On appraisal of the evidence, adduced before the learned trial Court, the learned trial Court dismissed the suit of the plaintiff. In appeal, preferred before the learned first Appellate Court by the plaintiff/appellants, against the judgment and decree of the learned trial Court, the learned first Appellate Court also dismissed the appeal.

7. Now the plaintiff/appellants have instituted the instant Regular Second Appeal before this Court, assailing the findings, recorded in the impugned judgment and decree by the learned first Appellate Court. When the appeal came up for admission on 23.3.2004, this Court, admitted the appeal instituted by the plaintiff/appellants, against the judgment and decree, rendered by the learned first Appellate Court, on, the hereinafter extracted substantial questions of law:-

1. Whether on the proper construction of the provisions of the H.P.Village Common Land (Vesting and Utilisation) Act, whereby land in dispute vested free from encumbrances in favour of the State and the allotment thereof to the appellant, the plea of tenancy and adverse possession raised by the defendants was sustainable?
2. Whether the judgment of the Courts below are vitiated being not in accordance with the Order 20 Rule 5 CPC and the judgment of this Hon'ble Court reported in AIR 2001 HP 18, Om Parkash Vs. State of H.P. and thus not sustainable?

8. Admittedly, the plaintiff/appellants had filed a suit for possession against the defendants/respondents. Admittedly, the suit came to be dismissed by the learned trial court. In appeal, preferred before the learned first Appellate Court by the plaintiff/appellants against the judgment and decree rendered by the learned trial Court, the learned first Appellate Court affirmed the findings, recorded by the learned trial Court.

9. The limited submission addressed before this Court by the learned counsel for the appellants to render frail and feeble the judgment and decree rendered by the learned first appellate court, besides it being vitiated, is anvilled on the factum of the learned First Appellate Court having omitted to render an adjudication on an application filed before it by the plaintiff/appellants under Order 41 Rule 27 CPC for placing on record the judgment and decree of 31.7.1997 rendered in a previous suit *inter partes* the parties at *lis* herein. The plaintiff had claimed in the instant suit that he is an allottee of the suit land under a grant/patta made in his favour by the State of Himachal

Pradesh. The defendants/respondents claimed to be tenants therein, besides they claimed that they have acquired title as owners to the suit land by prescription arising from efflux of time, inasmuch as they carried the requisite *animus possidendi* for the prescribed statutory period for securing vestment of title in them qua the suit land. In the instant suit, an apposite issue qua theirs having acquired title by adverse possession qua the suit land was struck by the learned trial court. The learned trial court while considering the material available on record rendered findings in favour of the defendants on the said issue. However, the counsel for the plaintiff/appellants submits that he had concerted to repulse the factum of the defendants having acquired title to the suit property by way of adverse possession by his taking to institute an appropriate application under the provisions of Order 41 Rule 27 CPC for placing on record a judgment rendered in Civil Suit No.298/89, wherein it has been held that the defendants herein, who were the plaintiffs in the earlier suit were evictable from the suit land in accordance with law. Consequently, he hence contends that the plaintiff had a tenable right ensuing from a previous conclusive determination qua the suit land inter partes the parties at lis herein to claim possession of the suit property from the defendants. He further contends that an adjudication on his application under Order 41 Rule 27 CPC by the learned First Appellate Court would have hence facilitated the striking of an apposite issue, inasmuch as when in the previous suit, the defendants had omitted to raise the plea of theirs having acquired title qua the suit land by way of adverse possession, which is the manner in which they claim acquisition of title to the suit property in the instant suit, they for want of having raised the plea aforesaid in the earlier suit, theirs being barred/interdicted by order 2 Rule 2 CPC as well as by their acquiescence manifested by their omission to raise the said plea previously hence consequently theirs being estopped to raise the plea aforesaid in the instant suit. Only in the event of an adjudication having been rendered by the learned first appellate court on the application filed before it under Order 41 Rule 27 CPC and thereby on its adjudication in favour of the plaintiff, the plaintiff/appellants then being permitted to adduce into evidence the previous judgment aforesaid would have facilitated and equipped the learned first appellate court to take grip of the fact of the previous adjudication wherein the defendants, who were plaintiffs in the previous suit while having omitted to claim title to the suit land by way of adverse possession, being precluded by statutory estoppel to extantly claim title in the manner aforesaid to the suit property. Consequently, when as a natural corollary the learned first appellate court has been as such constrained not to strike an apposite issue ensuing from the legal bar contemplated/arising from Order 2 Rule 2 CPC as well as from their acquiescence portrayed by their omission to previously raise the said plea in their plaint, especially when its adduction would have facilitated the striking of an apposite issue and concomitant rendition of findings qua it. In sequel, thereto, the inference which fosters is that the non adjudication of the application under Order 41 Rule 27 CPC by the learned first appellate Court has besides precluded as well as prevented the plaintiff/appellants to canvass theirs now having a tenable right to claim possession of the suit property, inasmuch, as, theirs having a ripened legal right to estop the defendants from canvassing theirs having acquired title to the suit property by way of adverse possession.

Sequelly, when its non-adjudication has deterred a conclusive determination of the entire gamut of the controversy, hence, as a natural corollary miscarriage of justice has been occasioned. Therefore, for facilitating an effective adjudication of the entire gamut of controversy besetting the parties, it is deemed fit, just and expedient at this stage to hold that the omission of rendition of an adjudication by the learned first appellate court on an application under Order 41 Rule 27 CPC while precluding the plaintiffs to adduce into evidence the previous judgment *inter partes* has, hence, de-facilitated a clinching determination by the learned first Appellate Court qua the entire gamut of the controversy. Naturally then the impugned judgment and decree are set aside and the matter is remanded to the learned first appellate court to render a decision on the application filed by the plaintiff/appellants under Order 41 Rule 27 CPC. In case the learned first appellate court comes to on the application aforesaid record findings in favour of the plaintiffs, it shall proceed to strike an appropriate issue qua it against which all the parties shall be afforded an opportunity to contest and adduce evidence. On receipt of evidence on the apposite issue, the learned First Appellate Court shall record its findings thereon. The parties through counsel are directed to appear before the learned trial Court on 27.11.2014. The learned first appellate court is directed to complete the entire proceedings within six months. Records of the Courts below be sent back forthwith so as to reach there well before the said date.

10. With the aforesaid observations, the appeal is disposed of, without, at this stage, for the aforesaid reasons, answering the substantial questions of law. Pending application(s), if any, are also disposed of. No costs.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. & HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Hans Raj .....Appellant.
Versus
State of H.P. .....Respondent.

Cr. Appeal No. 51 of 2011.
Reserved on: October 21, 2014.
Decided on: October 22, 2014.

Indian Penal Code, 1860- Section 302- Accused armed with the Danda and Darat was seen running towards his house- when the witnesses went to the spot, they found that the deceased was sitting in the field with his hands on his head and there were deep wounds on his head- accused had assaulted the deceased as the deceased used to object to the beating given by the accused to his wife- held, that the Medical evidence proved that there was severe injury on the brain, leading to shock and death which could be caused by means of danda- case of the prosecution that the deceased used to object to the beating of the wife of the accused was not established by any cogent evidence- accused had danda and Darat and he had only used Danda, which showed that he had no intention to

kill the deceased, therefore, accused convicted of the commission of offence punishable under Section 304 Part-II of IPC. (Para- 23 to 26)

For the appellant: Mr. Praneet Gupta, Advocate.

For the respondent: Mr. M.A.Khan, Addl. Advocate General.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment dated 29.11.2010 and consequent order dated 30.11.2010, of the learned Addl. Sessions Judge (I), Kangra at Dharamshala, rendered in Sessions Case No. 7-P/2009, whereby the appellant-accused (hereinafter referred to as the accused), who was charged with and tried for offence under Section 302 IPC, was convicted and sentenced with rigorous imprisonment for life and to pay fine of Rs. 20,000/- and in default of payment of fine, the accused was sentenced to undergo further simple imprisonment for six months.

2. The case of the prosecution, in a nut shell, is that on 18.11.2008, at around 4:00 PM, at Village Punder Dakrair, Seema Devi alongwith Anju Devi and Kirna Devi were sitting in 'varandah' and peeling the 'PAITHA'. The father-in-law of PW-2 Seema, namely Parkash Chand went to bring sheep which were grazing near the cow shed. When PW-2 Anju Devi and PW-6 Seema Devi heard three sounds of *danda* blows given to their father-in-law Parkash Chand, they screamed. PW-1 Kamla Devi, PW-2 Anju Devi and PW-6 Seema Devi, later saw the accused armed with Danda and Darat. He was running towards his house. PW-1 Kamla Devi, PW-2 Anju Devi and PW-6 Seema Devi went to the spot and found that Parkash Chand was sitting in the field with his hands on his head and there were deep wounds on his head. He was lifted by PW-2 and PW-6 and brought to the Verandah of their house. Thereafter PW-6 Seema Devi went to the clinic of Navjiwan Sharma (PW-7), the Pradhan of the Gram Panchayat. He was informed about the incident. PW-7 further informed the police. Rapat Ext. PW-11/A was entered at Police Post Bhawarna. The accused had allegedly assaulted Parkash Chand since he used to object to the beatings given by the accused to his wife. The accused has also picked up a quarrel with his wife who was working in the fields before assaulting deceased Prakash Chand. The spot was visited by the police. The police forcibly entered the room of the accused. The accused was taken to Police Post Bhawarna. The spot was photographed. The inquest reports Ext. PW-18/C and Ext. PW-18/D were prepared. The I.O. also took into possession the blood stained leaf Ext. P-4 and pair of chappal Ext. P-5 of the deceased. Darat Ext. P-1 and Danda of '*Banna*' Ext. P-2 were recovered from the room of the accused. The shirt of the accused Ext. P-3 was also taken into possession. The I.O. prepared the spot map. The port mortem of the dead body was got conducted by ASI Braham Dass (PW-9). Dr. S.K.Sud PW-12 of C.H. Palampur conducted the post mortem. According to PW-12 Dr. S.K.Sud, the cause of death was severe injury to vital organ i.e. brain, leading to shock and death. The injuries were sufficient in the ordinary course of

events to cause death. The doctor also sealed the clothes of the deceased and handed over to ASI PW-9 Braham Dass. He deposited the same with MC Trilok Raj (PW-11). The same were sent to FSL. The matter was investigated and challan was put up after completing all the codal formalities.

3. The prosecution has examined as many as 18 witnesses. The statement of the accused under Section 313 Cr.P.C. was recorded. The accused has denied the case of the prosecution. According to him, he was innocent and falsely implicated in the present case. The learned Trial Court convicted and sentenced the accused, as stated hereinabove.

4. Mr. Praneet Gupta, Advocate, has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. M.A.Khan, learned Addl. Advocate General, has supported the judgment of the learned Addl. Sessions Judge, (I), Kangra at Dharamshala, H.P., dated 29.11.2010 and consequent order dated 30.11.2010.

5. We have heard learned counsel for both the sides and gone through the material available on record carefully.

6. PW-1 Kamla Devi testified that she returned back to home at about 4:00 PM. When she reached home, she found her daughter-in-law Seema Devi and Anju alongwith Kirna Devi crushing '*Paitha*'. Her husband was in the ground floor. He asked her to give him jacket. She threw the same from the upper storey. After wearing the jacket, he went towards the cow shed to bring sheep which were grazing in the nearby fields. After some time, she heard three sounds of beating with *danda*. She came down alongwith her daughter-in-law and Kirna and saw from the Verandah accused running towards his house. He was armed with Danda and Darat. She went to the fields. She saw her husband sitting and putting his face in his hands. The blood was also oozing from his head. Her daughter-in-law lifted her husband to Verandah. Her younger daughter-in-law went to the house of Surinder Pal, Pradhan Punder. After some time, her husband died. Her husband was beaten by the accused because he used to object the beatings given by the accused to his wife. The accused had stopped talking with her husband near about four-five months. The wife of the accused was working in the nearby field. The accused had also picked up a quarrel with his wife before the incident. The police visited the spot. Her statement under Section 154 Cr.P.C. was registered vide statement Ext. PW-1/A. The accused had bolted the door from inside. The police had broken the door. The *darat* was kept above the Almirah and Danda was kept on the floor. When the police visited the house of the accused, wife of the accused alongwith Ruko Devi were also present. *Darat* and *Danda* were put in separate parcels and seals were affixed upon them. These were taken into possession by the police vide memo Ext. PW-1/B. She identified the *danda* Ext. P-1 and *darat* Ext. P-2. In her cross-examination, she admitted that no quarrel had taken place between her husband and the accused. Volunteered that, prior to this incident, no such fighting had taken place. She was not aware about the cause of beatings given to the wife by the accused. The matter was never reported by her husband that accused used to beat his wife. Her husband used to advise the accused not to beat his wife. She has not seen the accused beating her husband.

Volunteered that she heard the sound of beatings given by *danda* but her daughter-in-law had seen him beating the deceased with *danda.*

7. PW-2 Anju Devi, is the daughter-in-law of the deceased. According to her, she heard three sounds of the *danda* blows. She saw the accused giving *danda* blows to her father-in-law. PW-6, Seema screamed. They all went down. The accused was carrying *darat* and *danda* in his hands. He was running towards his house. Her father-in-law was sitting. He had put his head in his hands. The blood was oozing from the head and there was a deep wound. She alongwith Seema Devi lifted him to the Verandah. Then Seema went to the house of Pardhan in order to inform him about the incident. After some time, her father-in-law died. The police visited the spot. In her cross-examination, she admitted that no quarrel had taken place between her father-in-law and the accused. She did not know that any complaint was lodged by the wife of the accused against the accused regarding beating. She also admitted that when the incident took place, her face was towards the wall side. After hearing the sound of one blow given with *danda*, they saw towards that place and found that the accused had given two more blows. There are only two houses at the spot.

8. PW-3 Ram Parkash, deposed that he was associated by the police on 18.11.2008 when police came on the spot. The police took photographs of the spot and blood was found on the leaves. One of the said leaves was put in a parcel and sealed with seal "D". This was taken into possession vide memo Ext. PW-3/A. One pair of *Chappal* Ext. P-5 was taken into possession vide memo Ext. PW-3/B.

9. PW-4 Ashwani Kumar, deposed that MHC handed over six parcels and one sample seal to him. He deposited the same at FSL Junga on 10.12.2008. As long as the case property remained in his possession, it was not tampered with. On 18.11.2008, he also went with SHO Baldev, ASI Brahm Dass and HC Gian Chand to Dakrair Punder. The accused was found inside the room and he had bolted the room from inside. The accused did not open the door. They forcibly entered into the room after breaking the door. He and Gian Chand caught the accused after entering the room. He was taken to the Police Chowki. *Danda* was in the Almirah. Volunteered that *danda* was kept above the Almirah. *Danda* and *Darat* were sealed in the parcels.

10. PW-5 HC Gian Chand, deposed that he remained posted as I.O. in Police Post Bhawarna. On 18.11.2008, he alongwith SI Baldev Singh, ASI Brahm Dass, HHC Ashwani Kumar, HHG Ravinder, HHC Madan Kumar reached the spot at about 4:30 PM. The accused had locked himself inside the room. He was asked to open the door but he threatened to commit suicide. The door was broken with the help of the hammer. The accused was arrested. The stains of blood were found on the shirt of the accused. The shirt was the same which he wore at the time of incident.

11. PW-6 Seema Devi, deposed that on 18.11.2008, she alongwith Anju Devi and Kirna Devi were peeling the '*Paitha'* in the verandah on the upper storey. Her mother-in-law had gone to Bazar. She returned back at about 4:30 PM. Her father-in-law after wearing the jacket went to bring sheep near the cow shed. She heard sound of *danda*

blow and then they saw towards the spot from where the sound came. The accused was giving *danda* blows on the head of her father-in-law. She screamed. When she reached in the Courtyard, the accused rushed towards his house. The accused was carrying *danda* in one hand and *darat* in the other. When they reached at the spot, her father-in-law had kept his face in his hands. The blood was oozing out from the head. She informed the Pardhan. The Pardhan informed the police. The police visited the spot. The spot was investigated. The accused also identified the place where the *danda* and *darat* were kept and memo to that effect Ext. PW-6/B was prepared. It was signed by her. The accused had grudge against her father-in-law because latter used to advise him not to beat his wife. On the date of the incident, the accused quarreled with his wife just before the occurrence.

12. PW-7 Navjivan Sharma, deposed that on 18.11.2008 at about 4:30 PM, Seema Devi daughter-in-law of the deceased Parkash Chand came to his clinic. She was weeping. He enquired as to why she was weeping. She told that Hans Raj had given *danda* blows to her father-in-law. He informed the police.

13. PW-8 Surjeet Singh, has taken the photographs.

14. PW-9 ASI Brahm Dass, deposed that he was posted as I.O. in Police Station Bhawarna. On 18.11.2008, he alongwith SHO Gian Chand, MHC Madan, HHG Ravinder Singh and HHC Ashwani Kumar went to Village Decrehar. They reached there at about 6:00 PM. The accused had locked himself inside the room. The door was broken. The accused was caught by them. The spot was inspected. The post mortem of the deceased was got conducted by him.

15. PW-10 HHC Madan Singh, deposed that the statement of Kamla Devi was recorded under Section 154 Cr.P.C vide memo Ext. PW-1/A, on the basis of which FIR was registered.

16. PW-11 HHC Trilok Raj, deposed that on 18.11.2008, a telephonic information was received from Pardhan Gram Panchayat Malnoo to the effect that Parkash Chand was beaten up by the accused. He made entry Ext. PW-11/A. At about 6:10 PM, HHC Gian Chand and HHC Ashwani Kumar went to the Police Chowki alongwith the accused. He was handed over to him for safe custody. At 11:00 PM, on the same day, S.I. Baldev Singh handed over four *pulindas* sealed with seal "D" alongwith sample seal. On 19.11.2008, S.I. Baldev Singh handed over one *pulinda* which was sealed with five seals of impression "T" alongwith sample seal. He handed over all the *pulindas* except that of *chappal* to HHC Ashwani Kumar for depositing the same at FSL, Junga.

17. PW-12 Dr. S.K.Sud, has conducted the post mortem on the body of the deceased. He issued post mortem report Ext. PW-12/A. In his opinion, the cause of death was severe injury to vital organ i.e. brain, leading to shock and death. The injuries were *ante mortem* in nature. According to him, the injuries could be caused with *danda* Ext. P-1, if struck with force. The injuries were sufficient to cause the death in the ordinary course of events.

18. Statements of PW-13 Ramesh Chand, PW-14 HHC Om Parkash and PW-15 Inspector Sohan Lal Thakur, are formal in nature.

19. PW-16 Rukko Devi, deposed that she was associated by the police alongwith Ram Parkash. In her presence photographs of the spot were taken. The place was identified by Kamla Devi. Blood stained leaf was found lying on the spot. It was sealed and three impressions of seal D were affixed on it. Memo Ext. PW-3/A was prepared. The police took into possession *darat* and *danda* vide memo Ext. PW-1/B. The *chappal* is Ext. P-5. They went to the house of accused Hans Raj. The wife of Ram Parkash and Hans Raj were also present. *Darat* and *danda* were taken into possession in separate *pulindas*. There were blood stains on the *danda*.

20. PW-17 Ramesh Chand, is a formal witness.

21. PW-18 SI Baldev Singh, deposed that on the basis of information received from the Pardhan Navjiwan Sharma, rapat Ext. PW-11/A was registered. He found the accused inside the house. The door was broken. He recorded statement Ext. PW-1/A under Section 154 Cr.P.C. of Kamla Devi. It was sent to the Police Station. FIR Ext. PW-18/B was registered. He prepared inquest reports vide memo Ext. PW-18/C and PW-18/D. He got the photographs of the spot. *Danda* and darat were recovered. These were taken into possession vide memo Ext. PW-3/B. He prepared the site plan Ext. PW-18/G. The blood stained leaf was recovered and taken into possession vide memo Ext. PW-3/A. The shirt is Ext. P-3. In his cross-examination, he deposed that he reached the spot at about 4:30 PM. Later said that at 4:45 PM. The dead body was kept in the verandah by his relatives.

22. PW-1 Kamla Devi, has not seen the accused giving beatings to her husband. She has only heard three sounds of *danda* blows. Thereafter, she went down with her daughter-in-law. PW-1 Kamla Devi also saw the accused running with *danda* and *darat*. She has deposed in her cross-examination that she has not seen the accused beating her husband. She has admitted that no quarrel had taken place between her husband and the accused. PW-2 Anju Devi, deposed that she heard three sounds of *danda* blows and when she saw, the accused was giving the blows with *danda* to her father-in-law and PW-6 Seema Devi screamed. She had seen the accused running with *danda* and *darat*. In her cross-examination, PW-2 Anju Devi admitted that when the incident took place, her face was towards the wall side. In her cross-examination, she also admitted that no quarrel had taken place between her father-in-law and the accused. She did not know the reason of giving beatings by accused to his wife. She did not know that any complaint was lodged against the accused by his wife or not. PW-6 Seema Devi, has deposed that she heard the sound of *danda* blow. She saw towards the spot from where sound came. She saw the accused giving *danda* blows on the head of her father-in-law. She informed the Pradhan PW-7 Navjiwan Sharma. According to her, the accused had grudge against her father-in-law because latter used to advise him not to beat his wife.

23. The cause of death, as per PW-12 Dr. S.K.Sud was severe injury on the vital organ i.e. brain leading to shock and death. The injuries were *ante mortem*. These were sufficient to cause death in the ordinary course of events. The injury could be inflicted with Ext. P-1 *danda*, if struck with force. According to the prosecution case, the accused was seen running away with *danda* and *darat* in his hands. He

has locked himself inside the room. He refused to open the door. The door was opened and accused was taken by the police after arrest.

24. It is duly established from the statements of PW-1 Kamla Devi, PW-2 Anju Devi and PW-6 Seema Devi that the accused had given *danda* blows on the head of the deceased. It is in conformity with the post mortem report Ext. PW-12/A. The motive attributed for beating the deceased is that he used to stop the accused from beating his wife. PW-1 Kamla Devi has admitted in her cross-examination that no quarrel had taken place between her husband and the accused and volunteered that prior to this incident, no such fighting had taken place. She was not even aware of the fact that the accused used to beat his wife. The matter was never reported by her husband with the police that the accused used to beat his wife.

25. There are only two houses in the vicinity of the house of the deceased. In case, the accused had been beating his wife, all of them would have known this incident. PW-2 Anju Devi did not know the reason of beating the wife by the accused. She did not know that complaint was ever lodged by the deceased regarding the beating. According to her, no quarrel has taken place between her father-in-law and the accused. PW-6 Seema Devi, as noticed by us hereinabove, has deposed that the accused had grudge against her father-in-law because he used to ask the accused not to beat his wife.

26. The prosecution has not led any cogent evidence that the accused used to beat his wife. The motive attributed to the accused for giving beatings to the deceased is not convincing. However, on the basis of the evidence produced on record, it can not be gathered that the accused had intention to kill the accused. He was carrying *darat* and *danda*, as per the statements of PW-1 Kamla Devi, PW-2 Anju Devi, in his hands. If he had the intention to kill the deceased, he would have given fatal blows on the body of the deceased with *darat*. The *darat* is a very dangerous weapon, vis-à-vis *danda*. However, the fact of the matter is that the accused had the knowledge that the *danda* blows given on the vital organs of the deceased would result in his death. Consequently, the prosecution has failed to prove the charge under Section 302 IPC against the accused. The charge has been proved against the accused under Section 304 Part II IPC.

27. Accordingly, the appeal is partly allowed. The judgment of conviction under Section 302 IPC is set aside. The accused is convicted under Section 304 Part II of the Indian Penal Code. He be produced before this Court on 30.10.2014 for hearing on the quantum of sentence.

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BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Ram Parkash & Others .....Petitioners.
Versus
Surinder Singh & Others. ....Respondents.

Civil Revision No. 68/2012
Reserved on : 16.10.2014
Decided on : 22.10.2014

H.P. Urban Rent Control Act, 1987- Section 14- Landlord sought the eviction of the tenant on the ground that the demised premises is in dilapidated condition - door of the shop is rotten and is hanging in air, the ceiling of the shop is damaged which requires replacement, building is totally unsafe for human dwelling and can collapse at any time but the tenant denied this fact- held, that the witnesses of the petitioner had admitted that the shop was in good condition and there was no possibility of the shop collapsing- it did not require any immediate repair- further, landlord was residing in the same building which showed that the condition of the building was not unsafe, hence, petition dismissed.
(Para-11 to 15)

For the Petitioners: Mr. R.K Gautam, Sr. Advocate with Mr. Anil Kumar, Advocate.

For the Respondents: Mr. Ramesh Sharma, Advocate.

The following judgment of the Court was delivered:

Sureshwar Thakur (Judge)

The instant Civil Revision is directed against the impugned judgment, rendered, on, 5.5.2012, by the learned Appellate Authority, Chamba, District Chamba, in Rent Appeal No. 1/2012, whereby, the learned Appellate Authority set aside the order rendered on 21.12.2011, by the learned Rent Controller, Chamba, District Chamba H.P, in Rent Petition Case No. 2 of 2006 and ordered the eviction of the petitioners/tenants from the demised premises.

2. The landlords are owners of one shop comprised in Khata Khatouni No. 1061/1352 khasra No. 3957 situated in Mohalla Dogra Bazar, Chamba town, District Chamba. The shop had been let out to tenant Prithi Singh in the years 1987-88. The respondents have preferred an eviction petition seeking the eviction of tenants/petitioners on the ground that the demised premises is in dilapidated condition owing to regular hammering of cobbler machine the flooring planks and wooden joints have been damaged. The door of the shop is rotten and is hanging in air and the ceiling of the shop is totally damaged and requires replacement. Besides this, the flooring of the first floor (Residential portion) has got cracks and requires immediate repairs. The residential building in which the landlords are residing is totally unsafe for human

dwelling and can give way at any time. It requires reconstruction by dismantling the same. It is further pleaded that the landlords have sufficient funds to dismantle and reconstruct the demised premises. Further the eviction of tenants from the demised premises was sought on the grounds of theirs being in the arrears of rent.

3. The tenants have contested the petition and raised preliminary objections inter-alia maintability, cause of action and the landlords-respondents having not come to the Court with clean hands. They have averred that demised premises are in a good and proper condition and the landlords are living in the adjoining and by the side of the demised premises. They further averred that there is no danger to the building and it does not require any repair. The landlords are harassing the tenants on false pretext.

4. In the rejoinder the landlords controverted the allegations of the tenants and re-affirmed their case.

5. On the pleadings of the parties, the following issues were framed by the learned Rent Controller:-

> 1. Whether the respondent is in arrears of rent of demised premises since 1990 till date? OPP
>
> 2. Whether the demised premises is required for reconstruction after dismantling the same as alleged? OPP
>
> 3. Whether the petition is not maintanble in the present form? OPR
>
> 4. Whether the petitioners have not come to the Court with clean hands? OPR.
>
> 5. Relief.

6. On an appraisal of the evidence, adduced before the learned Rent Controller, the learned Rent Controller partly allowed the petition of the landlords. In appeal, preferred against the order of the learned Rent Controller by the landlords before the learned Appellate Authority, the learned Appellate Authority allowed the appeal and set aside the findings recorded by the learned Rent Controller.

7. Now the tenants/petitioners have instituted the instant Civil Revision before this Court, assailing the findings, recorded by the learned Appellate Authority in its impugned judgment.

8. The landlords/respondents had sought eviction of the revisionists/tenants from the demised premises, on the pleadings, comprised in the relevant paragraph of the petition, which are extracted hereinafter, as their reproduction is imperative for efficaciously adjudicating the controversy besetting the parties at contest:-

> *"18 (i) That the demised premises is in dilapidated condition due to regular hammering of cobbler machine the flooring planks and wooden joints have been damaged. The door of the shop is rotten and is hanging in air and is unsafe the ceiling of the shop is totally damaged and its*

ceiling rafter requires replacement. Besides this the flooring of the first floor (Residential portion) has got cracks and require immediate repairs. The residential building in which the petitioners are residing is totally unsafe for human dwelling and can give way at any time. It require reconstruction by dismantling the same. It is pertinent to mention here that the petitioners have got sufficient funds to dismantle and reconstruct the demised premises."

9. On the pleaded fact enunciated in the relevant part of the eviction petition, which fact in-extenso has been extracted hereinabove, the learned trial Court formulated an apposite issue qua it, which is extracted hereinafter:-

> 2. *Whether the demised premise is required for reconstruction after dismantling the same as alleged? OPP.*

10. The learned Rent Controller, on, appraisal or appreciation of the evidence on record, adduced by the landlords qua it, had construed it to be neither sufficient nor satisfactory, to constrain it, to, record a finding that the onus as cast upon them on the said issue had come to be discharged by them. In sequel, the learned Rent Controller rendered findings against the landlords on issue No.2.

11. The reasons which had prevailed upon and had overwhelmed the learned Rent Controller to do so are comprised in the deposition of PW-2, wherein she admitted the fact that she resides above the demised premises, besides her admission in her examination-in-chief of one shop adjacent to the demised premises being in a good condition and there being no possibility of the shops caving in, tenably sequelled an inference that the demised premises were neither in a dilapidated condition nor were unsafe for human habitation. Moreover, with PW-2 having also deposed that there is no possibility of the demised premises collapsing and theirs not requiring any immediate repair, which deposition having remained unscathed, by an inexorable cross-examination, leads to an apt and tenable conclusion that the condition of the demised premises had not deteriorated or waned to a magnitude so as to render them unsafe for human habitation. More especially, when the factum of the landlords admittedly residing above the demised premises, dispelled the factum of it being in dire necessity of immediate repairs, in as much, as, given its purported immense deterioration and condition, it would not have facilitated the habitation of the landlords therein. Moreover, the deposition comprised in the cross-examination of PW-2, wherein there is an admission of the demised premises requiring only minor repairs, ousts an inference that the condition of the building has reached the stage of dilapidation or un-safeness and also when it had remained un-pleaded by the landlords in the relevant part of the eviction petition that reconstruction or repair work cannot be carried out without the tenants being evicted therefrom. Consequently, the ready and apt concomitant sequel is that the dilapidation or damage as has accrued to the demised premises necessitates only minor repairs, also then an inevitable inference is that the demised premises is neither in a dilapidated condition nor unfit for human habitation so as to necessitate

the eviction of the tenants therefrom for the effectuation of or carrying out of any major repairs so as to render it habitable on its being rebuild.

12. Preeminently, the absence of the report of an expert pronouncing upon the fact of a severe dilapidation in the building having accrued, rendering it, extremely hazardous for human habitation, as a natural corollary prods this Court to conclude that there was dearth of or want of best and cogent evidence before the learned Rent Controller for depicting the factum of its being required for begetting its reconstruction after its dismantling having been carried out.

13. The learned counsel appearing for the respondents/landlords has argued that the deposition of RW-3 portraying the factum of the condition of the demised premises being not good and likely to fall, conveys his communicating evidence qua the factum of the deteriorated condition of the building. However the aforesaid fragmentary part of his deposition ought not to be solitarily borne in mind to conclude that, as such, his deposition comprises cogent evidence qua the factum of un-safeness of the building or its suffering from dilapidation, hence, necessitating major repairs, which cannot be carried out without the tenants residing therein being evicted therefrom. The deposition of RW-3 of the condition of the demised premises being not good is overcome by the factum of PW-2 having deposed in her deposition that there is no possibility of the demised premises caving in or giving way, which deposition when has for the reasons, already adverted to hereinbefore, has been construed to be acquiring credibility, especially for want of its impeachment by way of an efficacious cross-examination, also then constitutes fortifying admission of the landlords qua the condition of the demised premises, hence being neither unsafe nor dilapidated nor likely to give way. Moreover, the deposition of RW-3 is also not sufficient to be constituting the deposition of an expert, in as much, as, he has orally deposed in Court about the condition of the building. He has during the course of his deposition neither tendered into evidence any document prepared by him, as, an expert portraying the unsafeness or uninhabitable condition of the building, sequelled by its deteriorated form, as such, his oral deposition when unaccompanied by any report prepared, tendered and proved by him, in consequence to his having carried out an incisive inspection of the building thereupon his having on its in-depth analysis prepared a report with a precise depiction therein qua the condition of the building accompanied by reasons, does not constitute a credible deposition qua the condition of the building. As a natural corollary, then the best evidence comprised in the expert opinion is amiss. In sequel, the invincible conclusion which is to be formed is that especially when it is not pleaded that the reconstruction work or repair work cannot be carried out without the eviction of the tenant therefrom which absence of the apposite pleaded fact construed in conjunction with the factum of the condition of the building not having been proved to be unfit or unsafe for human habitation, fosters a conclusion that hence neither its dismantling when its condition has not been proved to be demonstrated to be necessitating dismantling, is necessary nor hence it requires reconstruction on eviction of the tenants therefrom.

14. Moreover the factum pleaded in the apposite paragraph of the petition, which paragraph is extracted hereinabove, also portraying in it, that owing to regular hammering of cobbler machine, the flooring planks and wooden joints have been damaged, has been falsified by the admission in the cross-examination of PW-2, of the flooring of the demised premises being cemented. The said fact has also been admitted by PW-3 in his cross-examination. However when his statement has remained un-eroded, it acquires truth and dispels the factum of a cemented flooring having been fixed upon wooden planks, hence owing to regular hammering of cobbler machine the flooring comprising wooden planks and wooden joints having come to be damaged and likely to give way.

15. The Appellate Authority without assigning cogent and weighty reasons for disconcurring with the findings recorded by the Rent Controller on issue No. 2, which was the apposite issue besetting the parties at contest and onus whereof was cast upon the landlords has only while reading the testimony of RW-3 in an unwholesome manner, recorded findings that given his statement that the condition of the building was not good besides when the premises were bonafide required by the landlords for making it a profitable venture, as such tenants residing therein are evictable, has hence, traversed, even beyond the scope and amplitude of the pleadings as also has travelled beyond the scope of the apposite issue cast qua it. Further more, as such, then it untenably formed an inference that the preponderant fact, which necessitated proof, was not the dilapidated condition of the building nor proof of dilapidated condition of the building was a pre condition for the landlord to seek the eviction of the tenant residing in the demised premises, rather with the landlords having proved the factum of theirs bonafide requiring it in as much as given its location in the thicket of a commercial locality theirs rearing a bonafide requirement/desire qua it, to reconstruct it for making it on its being rebuilt a more profitable venture, hence the eviction of the petitioners/tenants was necessary. The reasons as afforded by the Appellate Authority in reversing and unsettling the tenable and well recorded findings of the learned Rent Controller are perverse as well absurd in as much as (a): A perusal of the grounds of eviction pleaded by the landlord in the apposite and relevant paragraph of the Rent Petition unequivocally bespeak the factum of it being unsafe for human habitation, hence requiring reconstruction after its dismantling being carried out. Each of the averments enunciated in it comprising the factum of the demised premises having acquired a dilapidated or deteriorated condition rendering it unsafe for human habitation, is overcome by evidence, which has been adverted to hereinabove benumbing the fact of either its dilapidated condition or its being unsafe for human habitation, more especially in the absence of adduction of the best evidence comprised in the report tendered and proved by RW-1 enunciating therein, an opinion on an incisive analysis qua the condition of the building having been carried out by him. Its non-adduction hence, sequels an inference that the condition of the building, is, neither deteriorated nor, is, unsafe for human habitation. Besides when rather evidence pronouncing its necessitating only minor repairs which were possible to be carried out, even without the eviction of the tenants, therefrom. As a corollary, the eviction of the tenants from the demised premises on score of it being rendered unfit for human habitation

remained un-established or unproved by adduction of satisfactory evidence

(b) There is no iota of any fact pleaded in the relevant part of the eviction petition portraying the factum of the landlords requiring it bonafide for their personal requirement nor they have ventilated therein a desire that given the imminent fact of its being located in the thicket of a commercial hub, they intend to re-raise it or rebuild it with modern facilities, for, making it a profitable venture in as much as its then generating a handsome income for them. In absence thereof, it was insagacious for the learned Appellate Authority, to, conclude that the unsafeness or the deteriorated condition of the demised premises was overlookable rather the bonafide requirement of the landlords for rebuilding it or re-raising it for so that on its being reconstructed, it generates a profitable income to them, was the factum probandum.

16. It is trite law that any grounds of eviction are to be pleaded with exactitude and with precision. The ground of the land-lord requiring the demised premises for rebuilding it, so that on its being rebuilt, it would generate a handsome income to them remained un-pleaded either impliedly or explicitly with precision. Consequently, it was leally inappropriate for the learned Appellate Authority to introduce evidence or to import evidence qua it. Even though when under an order rendered by the learned Rent Controller, on the opposite issue qua it, formulated by it, which issue remained acquiesced to by the parties at contest. Therefore given the scope and amplitude of the apposite issue and its not encompassing the factum of the landlords bonafide requiring the same for rebuilding it so that on its being reconstructed after its demolition, it would generate a handsome income for them, as a sequel it was both impermissible for the landlords to lead evidence qua the factum of his bonafide requiring it for rebuilding it so that on its being rebuilt it generates a handsome income to them nor also it was permissible for the learned Appellate Authority to widen/extend its scope and amplitude so as to encompass the aforesaid fact within its ambit and then proceed to untenably record a finding that its unsafe condition or dilapidated condition was over-emphasized by the Rent Controller, rather theirs bonafide requiring it for its being rebuilt, when proved necessarily entailed the eviction of the tenants therefrom. In the learned Appellate Authority traversing beyond the scope and amplitude of issue No. 2 as also it coming to read discardable/un-readable evidence, hence had committed a grave illegality and impropriety and its judgment is hence vitiated.

17. The summum bonum of the above discussion is that the learned Appellate Authority has committed a legal misdemeanor which necessitates interference by this Court. Accordingly, the judgment rendered by the learned Appellate Authority is set aside and the Order rendered by the learned Rent Controller, is maintained and affirmed. Revision Petition stands allowed. No costs. All pending applications stand disposed of accordingly.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, JUDGE.

Mahajan. …Appellant.
Versus
Basanti and others. …Respondents.

RSA No. :294 of 2001
Reserved on: 19.9.2014
Decided on: 27.10.2014

Specific Relief Act, 1963- Section 34-Plaintiff filed a Civil Suit for declaration that defendant No. 1 was not the daughter of P- mutation was wrong and illegal- held, that name of the defendant No.1 was recorded as the daughter in the Parivar register – no evidence was led to show that the false entry was made in the Parivar register- therefore, the version of the plaintiff that defendant No. 1 is not the daughter of one P was not proved. (Para-17)

For the Appellant : Mr. C.P. Sood, Advocate.
For the Respondents: Mr. J.R. Thakur, Advocate for respondent No.1 and 2.
None for other respondents.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

This Regular Second Appeal is directed against the judgment and decree dated 20.3.2001 rendered by the learned District Judge, Chamba in Civil Appeal No.38 of 2000.

2. "Key facts" necessary for the adjudication of this Regular Second Appeal are that appellant-plaintiff (hereinafter referred to as 'plaintiff' for convenience sake) filed a suit for declaration against the respondent-defendant (hereinafter referred to as the "defendant" for convenience sake) to the effect that defendant No.1 Smt. Basanti was not the daughter of Purshotam and mutation dated 6.4.1996 of the land detailed in the plaint situated in Mohal Dauni Pargana Tissa, District Chamba was wrong, illegal and inoperative. The relief of permanent prohibitory injunction was also claimed for restraining defendant No.1 from interfering with the possession of the plaintiff over the suit land. The suit land was recorded in the revenue record in joint ownership and possession of the plaintiff and proforma defendants together with Purshotam son of Dharam Dass, who was the real brother of the plaintiff and proforma defendants. Purshotam died issueless on 18.3.1995. Defendant Nos. 1 and 2, namely, Basanti and Gopala in connivance with the Secretary Panchayat and the revenue officials got prepared a false Pariwar register of house No.77 of village Sagloga. They also got the suit land mutated in favour of defendant No.1. Defendant No.1 was not the daughter of Purshotam. Mutation qua inheritance of Purshotam could not be attested in her favour. Plaintiff has also claimed ownership and possession of the suit land as heir of Purshotam deceased. Purshotam has left the possession of the suit land since the year 1964. The land was

in possession of the plaintiff and proforma defendants. They have become owners by acquiring title by way of adverse possession.

3. Suit was contested by defendant Nos. 1 and 2. They have admitted Purshotam to be son of Dharam Dass. However, it is denied that plaintiff and proforma defendants were the only legal heirs of Purshotam. It is stated that Purshotam was father of defendant No. 1 and she being only legal heir, was entitled to succeed to the share of Purshotam in the suit land. It is denied that the suit land ever remained in adverse possession of the plaintiff. Proforma defendants No. 3 to 5 have admitted the claim of the plaintiff.

4. Issues were framed by the Sub Judge on 26.2.1998. He dismissed the suit on 28.3.2000. Plaintiff preferred an appeal before the District Judge, Chamba. He also dismissed the appeal on 20.3.2001. Hence, the present Regular Second Appeal. It was admitted on the following substantial questions of law on 7.12.2001:

> **1. Whether the judgment of the first appellate court is perverse being based on misreading of the pleadings and the evidence of parties and for want of non consideration of the material evidence and pleadings of the parties.**
> **2. Whether the copy of Parivar Register, not maintained in accordance with rule 5 of H.P. Gram Panchayat rules, is admissible in evidence or is relevant to prove the fact in issue.**

5. Mr. C.P. Sood, has vehemently argued that both the Courts below have misread the pleadings and evidence. According to him, Pariwar register was not maintained in accordance with Rule 5 of the H.P. Gram Panchayati Rules.

6. Mr. J.R. Thakur has supported the judgments and decrees passed by both the Courts below.

7. I have heard the learned counsel for the parties and have perused the record and pleadings carefully.

8. Since both the substantial questions of law are interconnected and interlinked, the same are taken up together for determination to avoid repetition of discussion of evidence.

9. Plaintiff Mahajan has appeared as PW-1. According to him, his father Dharam Dass had four sons, namely, Kanthu, Puran and Purshotam. Purshotam has died. He used to reside in Pargana Sei village Messa. He was married to one Rinku. No issues were born out of wedlock. Defendants No. 1 and 2 were children of Ram Ditta. Purshotam went to village Messa in the year 1964. He was in possession of his share. In the year 1987, Purshotam's wife died. He came back to Patogan. He started residing with the plaintiff. Purshotam was not in possession of the disputed land. From the year 1964 onwards he was in possession of the suit land. Purshotam was registered as member of his family after 1987. He never resided in village Sagloga. In his cross examination, he has admitted that the whole property was joint. He has denied that he was married to one Kesari and Parma and Basanti were born out of the marriage between Purshotam and Kesari.

10. PW-2 Krishna Mahajan has deposed that Purshotam was brother of plaintiff. Purshotam has died. She has never seen children of Purshotam. She has shown her ignorance that Purshotam had married. He came back to village Patogan. She has also shown her ignorance about the entries of defendant No. 1 in the Pariwar Register. She has admitted that she was residing in village Bhanjraru. She has no landed property in village Patogan. She has shown her ignorance about the marriage of Purshotam and Kesari.

11. PW-3 Asdulla has deposed that he knew Purshotam. He was brother of plaintiff. Purshotam was living in village Messa. He remained in village Messa for 34-35 years. He returned back to village Patogan after the death of Purshotam. He remained in village Patogan for 7-8 years. He has not seen defendants as Purshotam's children. Plaintiff used to cultivate the land of Purshotam in his absence. In his cross-examination he has admitted that there are 15-20 families of Hindus. He has admitted that disputed land was jointly owned by 4 brothers. He has shown his ignorance about the marriage of Purshotam and Kesari and their children.

12. Defendant Basanti has appeared as DW-1. She has deposed that plaintiff Kesari was her mother. Purshotam was her father. Parma died at tender age. She was married at village Messa by her father Purshotam. She was in possession of the suit land. Kesari was first married to Ram Ditta but after the death of Ram Ditta, she married Purshotam. She has admitted that Purshotam was married to one Rinku and used to cultivate the land of Rinku. She was born to Kesari at village Patogan.

13. DW-2 Devi Chand has supported the version of DW-1. According to him, defendant No.1 was daughter of Purhsotam. Purhostam had married Basanti. Purshotam married of Basanti at village Sagloga. She was also given dowry by Purshotam. She was married in his presence. There was no Barat. It was a simple marriage.

14. DW-3 Lal Chand has deposed that Kesari was married to Purshotam. Purshotam had two children, namely, Basanti and Parma. Parma died at tender age. He has admitted in his cross-examination that marriage of Purshotam and Kesari took place in his presence. He was 15-16 years old at that time.

15. Plaintiff has produced Ext. P-1 and Ex.P-2 copies of Jamabandis for year 1990-91, Ext. P-3 copy of mutation, Ext. P-4, entry of Pariwar Register, Ext. P-5 certificate of pariwar register of the plaintiff, Ext. P-6 certificate of pariwar register of Purshotam, Ext. P-7, Pariwar register of defendant No.1 after marriage and Ext. P-8 certificate of pariwar register of plaintiff's family.

16. PW-2 Krishna Mahajan does not belong to village Patogan. Similarly, PW-3 Asdulla is the resident of village Patogan. Plaintiff has not examined any witness from village Messa where Purshotam resided for more than 30-35 years. DW-1 has categorically deposed that she was married by her father Purshotam. This fact has been corroborated by DW-2 Devi Chand. DW-2 Devi Chand is an independent witness. DW-3 Gulab Chand uncle of defendant No.1 has deposed that Kesari was married to

Purshotam. According to him, he was present at the time of marriage of Purshotam and Kesari.

17. Now, as far as Pariwar register is concerned, PW-1 in his statement has not deposed that how entry in the pariwar register was made. Plaintiff has failed to prove that defendant in connivance with the Secretary Panchayat and revenue officers has got a false entry made in the Pariwar register. Ext. P-4 may not be strictly as per the prescribed form. However, the Court has to see the substance and not the form. Moreover, the plaintiff has not placed any independent witness to rebut the entries made in the Parivar register.

18. Now, as far as mutation dated 6.4.1996 is concerned, the plaintiff was issued notice at the time of mutation. He was not present at that time. Plaintiff though has taken a plea of adverse possession but he has not proved the same. According to the plaintiff, suit land was shown in joint possession of plaintiff and Purshotam. In case of joint possession, adverse possession cannot be exercised unless plea of ouster is taken specifically. However, this plea has not been taken by the plaintiff. Plea of adverse possession has not been supported by any of the witness of the plaintiff. The Court has already noticed that PW-2 Krishna Mahajan and PW-3 Asdulla were not residents of village Messa. They have not stated that plaintiff was in exclusive possession of suit land. Defendant has led sufficient evidence that she was daughter of Purshotam. Plaintiff could not prove that the entries made in the Pariwar register Ex.P-4 were wrong. Plaintiff has also failed to prove his adverse possession over the suit land.

19. Both the courts below have correctly appreciated the oral as well as documentary evidence led by the parties. The substantial questions of law are answered accordingly.

20. Consequently, in view of the observations and discussion made hereinabove, there is no merit in the Regular Second Appeal and the same is dismissed. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.

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BEFORE HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

National Insurance Company Ltd. ..... Petitioner.

Vs.

Raman Mittal & anr. .... Respondents.

CWP No. 7171 of 2010-H.
Judgement reserved on: 8.10.2014.
Date of decision: 27.10.2014.

Constitution of India, 1950- Article 227- Claim Petition was filed by the claimant before MACT, Nahan, pleading that he had sustained injury while sitting as a pillion rider- petition was allowed- Insurance Company filed a Writ Petition challenging the Award pleading that the claim petition was filed after more than 7 years of the accident- no police report was lodged regarding the accident- Insurance Company was not afforded any

opportunity to verify the veracity of the accident and the application of the Insurance Company under Section 170 of M.V. Act was wrongly dismissed- held, that Writ Petition challenging the award would be maintainable only in those cases where the award on its face is perverse or is based upon fraud and Insurance Company has no remedy under Motor Vehicle Act for challenging the award- award cannot be challenged on the ground that compensation is high, excessive or unreasonable- the mere fact that the Claim Petition was filed after 7 years is not sufficient to view the claim petition with suspicion as there is no limitation for filing the claim petition. (Para- 8 to 10)

Motor Vehicle Act, 1988- Section 166- Merely because the FIR of the police report was not filed is not sufficient to hold that no accident had taken place-held on facts that father was driving the Scooter and son was sitting as pillion rider, therefore, in these circumstances, it was not reasonable to expect the son to lodge the FIR against his father.

(Para-12 to 14)

Motor Vehicle Act, 1988- Section 170- Claim petition was filed by the son against his father who was driving the scooter- held, that merely because petition was filed by the son cannot lead to an inference that the petition was collusive, when the Insurance Company had itself paid own damage to the owner thereby admitting that accident had taken place.

(Para-16)

Motor Vehicle Act, 1988- Section 166- Compensation is always higher in case of disablement than in case of death- bodily injury is to be treated as a deprivation, which entitles the victim to claim damages which vary according to the gravity of the injury- some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability are involved while determining compensation in an accident case but these have to be considered in an objective manner.

(Para-20)

Motor Vehicle Act, 1988- Section 149- Insurance Company contended that claim of pillion rider was not covered under the policy- held, that the policy showed that an amount of Rs.77/- was charged for legal liability to passenger and therefore, contention of the Insurance company that risk of pillion rider was not covered under the policy cannot be accepted.

(Para-27)

Cases referred:

National Insurance Co. vs. Soma Devi & others Latest HLJ 2003 (HP) (FB) 982

Ravi vs. Badrinarayan & ors 2011(4) SCC 693

Raj Kumar vs. Ajay Kumar and another (2011) 1 SCC 343

Himachal Road Transport Corporation and another vs. Smt. Sangeeta 2013(2) T.A.C. 686(H.P.)

R. Venkata Ramana and another vs. United India Insurance Co.Ltd. and others 2013 (4) T.A.C. 376 (S.C.)

Syed Sadiq and others vs. Divisional Manager, United India Insurance Company Limited (2014) 2 SCC 735

United India Insurance Co. Ltd. vs. Prem Singh and others 2001 ACJ 1445

Ramesh Chand Tripathi vs. Lily Joshi 2008 ACJ 785
United India Insurance Co. Ltd. vs. Tilak Singh and others 2006 ACJ 1441 S.C.

For the petitioner : Mr. Ashwani K. Sharma, Advocate.
For the respondents : Mr. Ashok K. Tyagi, Advocate, for respondent No.1.

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge:

The petitioner is aggrieved by the award passed by the learned Motor Accident Claims Tribunal-II, Sirmour District at Nahan whereby a sum of Rs.10,74,000/- alongwith interest at the rate of 7.5% per annum from the date of filing of petition uptil final realization of the amount has been awarded to the claimant- respondent No. 1.

2. Briefly the case of the claimant-respondent No.1, as set out in the claim petition is that on 5.7.2000 at about 7.00 p.m. on way back from Nahan while riding pillion of scooter bearing registration No. HP-17-4072 owned and being driven by his father (respondent No.2) near village Sainwala in Tehsil Paonta Sahib due to sudden appearance of buffalo on the road in front of the scooter, his father who was driving the scooter in a rash and negligent manner could not control the same and he fell down and sustained injuries on his spinal cord, which was fractured resulting in his permanent disability to the extent of 100%. The claimant alleged that his entire lower part of the body below the belly had become completely useless and he could not independently attend to his daily routine. He was on wheel chair ever since the accident and had to employ an attendant for help and assistance. The injuries sustained had completely marred his future and career as he was totally crippled. That apart even his marriage prospects were totally diminished and the claimant had now become a liability on his parents. On the aforesaid allegations, he claimed compensation of Rs.50,00,000/- from the owner/ insured and or insurance company on the basis of insurance policy.

3. The claim petition was resisted and contested by the owner of the scooter, who in his reply while conceding the factum of accident contested that he was not driving the scooter in a rash and negligent manner as alleged. The respondent No. 2 opposed the grant of compensation to the claimant on the ground that he was not at fault in any manner in the accident of scooter as the same had occurred because of sudden appearance of buffalo on the road in front of the scooter which resulted in the accident.

4. The petitioner- insurance company also contested the claim petition by filing the reply, wherein it was specifically contended that there was collusion between the claimant and the owner/ driver/ insured of the scooter as they being related as son and father respectively. It was also alleged that claimant was not covered by the policy of the insurance as no premium was paid for coverage of risk of pillion rider. It was further contended that a false claim was lodged by the claimant that too

after seven years of the alleged accident. It was further contended that theory of accident is totally improbable as no FIR was lodged qua the alleged accident. It was also contended that scooter was being plied by respondent No. 2 in violation of terms and conditions of the insurance policy. Once it was maintained that accident did not occur due to rash and negligent driving by respondent No. 2, therefore, the claim petition was not maintainable and deserved to be dismissed.

5. The learned Tribunal after framing issues and recording evidence passed the aforesaid award, which has been impugned before this court on the ground that same is illegal, arbitrary and totally unjustified and cannot sustain the test of judicial scrutiny. It is further alleged that learned Tribunal has not appreciated in proper perspective important factual aspect of the case like (i) the claim petition being preferred after more than seven years of the accident; (ii) no police report or FIR have been lodged qua the alleged accident; (iii) insurance company having not been afforded an opportunity to verify mode and manner as also the veracity of the alleged accident after such a long period of time; (iv) the application of the insurance company under section 170 of the Motor Vehicles Act have been illegally rejected by the learned Tribunal below, as prima facie, there was collusion between the owner and claimant, who were closely related to each other being father and son. The claim being ex-facie appears to be fraudulent with an intention to hoodwink the insurance company in an attempt to get huge compensation.

6. It was also contended that the learned Tribunal below could have only passed the award if rashness and negligence on the part of the driver of the vehicle is established or proved on record. Once respondent No. 2 denied and in fact specifically maintained that he was not in any manner rash or negligent, there was no question of awarding any claim. It was also contended that claimant was not covered by the insurance policy and above all the compensation awarded was highly excessive and the impugned award was liable to be suitably modified as the same suffers from vice of perversity.

7. The petition has been contested by the claimant, who in his reply has raised preliminary objection as to the very maintainability of the petition on the ground that there was suppression of material facts, which had been made with malafide intention in order to deprive the respondent No.1-claimant of the award passed in his favour. It is claimed that petitioner despite having knowledge with respect to the insurance policy, which was admittedly a comprehensive policy was still denying its liability when it was amply proved that a sum of Rs.77/- had been paid as additional premium towards legal liability of the passenger/ pillion rider. The respondent has further contended that serious injuries had been sustained by him during the course of accident, which have been noticed by the learned Tribunal below and it is on this basis that a just and legal award has been passed in his favour. The respondent has also highlighted the fact that after the accident in which the respondent had sustained serious injuries, the respondent No. 2 had filed claim for damages of scooter in the aforesaid accident. The petitioner-insurance company after verifying the factum of accident had itself granted the respondent No. 2 a sum of Rs.2930/- as ODI claim Ex. PW 5/B. Once the respondents themselves had not disputed the factum of accident and in

fact had paid the aforesaid compensation, it cannot turn around and question the factum of accident.

I have heard the learned counsel for the parties and gone through the records of the case.

8. At the very out set it may be observed that writ petition challenging the award would only be maintainable in cases where the award on the face of it is perverse or is based on fraud and the insurance company has no remedy under the Motor Vehicles Act of either challenging the award in appeal or being either to have it recalled or reviewed by the Tribunal itself and further that such exercise of extra ordinary jurisdiction under Articles 226, 227 of the Constitution of India becomes imperative in dispensing justice to the parties. It was so held by the learned Full Bench of this court in **National Insurance Co.** vs. **Soma Devi & others Latest HLJ 2003 (HP) (FB) 982** in the following terms:

> *"It, therefore, becomes abundantly clear that in all such like cases where the Award on the face of it is a perversity, or is based on fraud, and the Insurance Company has no remedy under the Motor Vehicles Act of either challenging the Award in appeal or being either to have it recalled or reviewed by the Tribunal itself, the power of judicial review by this Court in the exercise of its extra-ordinary jurisdiction under Articles 226/227 of the Constitution can always be invoked and exercised by this Court in dispensing justice to the parties."*

9. In the aforesaid judgement, it has further been clarified that the order passed by the Motor Accident Claims Tribunal cannot be challenged only on the ground of compensation being high, excessive or unreasonable in view of express provisions contained in section 173 of Motor Vehicles Act.

10. Now, I proceed to determine the point-wise contention raised by the petitioner.

(i). <u>Delay:</u>

11. No doubt, the petition has been filed after more than seven years of the alleged accident, but then taking into consideration the nature of injuries and also the fact that claimant was a minor at the time of accident, the mere fact that petition has been filed after seven years of the alleged accident cannot be viewed with suspicion particularly when the statute now does not prescribe any period of limitation.

(ii) <u>No police report or FIR:</u>

12. The learned counsel for the petitioner has vehemently argued that in absence of any police report or FIR having been lodged qua alleged accident, the petitioner could not be held entitled to any compensation, since the accident in question had not been proved. I am afraid that mere fact that an FIR or police report have not been registered cannot be taken to be a ground to hold that no accident had taken place.

13. The learned counsel for the petitioner has relied upon the following observations of the Hon'ble Supreme Court in **Ravi** vs.

Badrinarayan & ors 2011(4) SCC 693, wherein it has been held as follows:-

> *"19. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."*

14. The ratio of aforesaid judgement is not applicable to the facts of the present case because in that case there had been a delay in lodging the FIR and the Hon'ble Supreme Court even then had categorically held that this could not be a ground to doubt the claimant's case. While in the present case admittedly no FIR has been lodged. Would that *ipso-facto* means that the claim set up by the claimant is altogether false. Before proceeding, it has to be remembered that here was a case where the father was driving the scooter, while the son who is the claimant, was the pillion rider. Would the son lodge an FIR against his father for rash and negligent driving simply in order to claim the benefit of insurance. I think this is too far fetched. No son would risk the task of lodging an FIR and seeing the father being not only harassed by the police but even being put behind the bar. Even otherwise, it is settled law that an FIR is not a substantive piece of evidence and can only be used for the purpose of corroboration. Above all, it has to be remembered that the claimant had sustained such severe and serious injuries that it was not possible for him to have even contemplated or thought of lodging the FIR and above all it has to be remembered that the claimant was a minor at that point of time and would be presumed to have no knowledge regarding intricacies of law.

15. The learned counsel for the petitioner has strenuously argued that on account of delay in filing of the claim petition, the petitioner has been deprived of an opportunity to verify the mode and manner as also the veracity of the alleged accident. I am afraid this ground is equally untenable. Once the Motor Vehicles Act does not lay down any limitation for filing of claim petition, the petitioner cannot be heard to complain in these matters. The other reason for rejecting this contention of the petitioner is that admittedly the insurance company has granted a sum of Rs.2930/- as ODI claim vide Ext. PW 5/B to respondent No.2 and therefore, was well aware of the accident. In case there was no accident then where was the question of petitioner's paying ODI claim. In addition to this, it may be observed that petitioner have led no evidence in this case and therefore, cannot be heard to complain in this matter.

(iii) <u>Section 170 of Motor Vehicles Act application</u>

16. Application under section 170 of Motor Vehicles Act rejected. The petitioner has vehemently argued that there was collusion between the owner and the claimant being father and son and therefore, the claim *ex-facie* fraudulently made with a sheer intention of grabbing compensation from the insurance company. I am afraid that such plea is not available to the petitioner particularly when as already observed earlier the petitioner itself paid ODI of Rs.2930/- to respondent No. 2 vide Ex. PW 5/B thereby admitting the accident in question or else this payment would not have been made to respondent No.2, who was the owner of the scooter. The mere fact that the claimant happened to be the son of the owner cannot be a ground to uphold the contention of collusion as raised by the petitioner. After all, a scooter is not a commercial vehicle and is a vehicle meant for a family.

(iv) <u>Award being excessive:</u>

17. The learned counsel for the petitioner would then contend that award of Rs.10,74,000/- alongwith interest at the rate of 7.5% was highly excessive. It is well settled law that in disablement cases compensation is always higher than even in cases of death since it is given to the living victim of the accident. It cannot be disputed that bodily injury is to be treated as a deprivation which entitles the victim to claim damages which vary according to the gravity of the injury. In this case, the claimant has proved on record that he had sustained serious injuries and was treated at PGI, Chandigarh several times and had remained admitted there for several days. As per his statement, he spent about Rs.12,00,000/- on his treatment, traveling and for expenses incurred on his relatives and friends. It has come in evidence that he could not be cured due to spinal cord fracture and had been assessed to be suffering from 100% permanent disability. His lower body below the stomach had been rendered totally useless and now he has crippled, leading his vegetative life on a wheel chair. He was unable to do his matters of daily routine and would depend upon the attendant engaged by his parents on a payment of Rs.3,000/- per month. He was unable to walk or do any work and his chances of getting married had completely come to an end and not only this, by sustaining spinal cord injury, he had to abandon his studies though he wanted to become an engineer.

18. The claimant was treated at Nahan hospital and examined by the Board of doctors, who assessed 100% permanent disability and issued certificate Ex. P-1. The certificate has not been disputed before the Tribunal by the petitioner, and, therefore, it can be safely held that petitioner had sustained permanent disability to the extent of 100%. The petitioner was born on 28.12.1983 and accident had occurred when he was hardly 17 years old. The learned tribunal below after applying the multiplier of 18 and assessing his life long future income at Rs.3,000/- per month awarded the following compensation:-

"35. Thus, the petitioner is entitled to compensation as per details given herein below:-

i)	*Treatment charges*	=	*Rs.20,000.00*
ii)	*Attendant charges*	=	*Rs.2,16,000.00*
iii)	*Estimated future loss of income*	=	*Rs.6,48,000.00*
iv)	*Special diet*	=	*Rs.5,000.00*

v)	*Transportation charges*	=	*Rs.5,000,00*
vi)	*Future treatment charges*	=	*Rs.30,000.00*
vii)	*Pain & sufferings*	=	*Rs.50,000.00*
viii)	*Loss of amenities, Discomfort and disability*	=	*Rs.1,00,000.00*
	Total	=	*Rs.10,74,000.00*

19. Can the amount as awarded to the claimant be termed to be excessive? It has to be remembered that while determining the compensation in accident cases some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability are involved, but these elements are required to be considered in an objective manner. In **Raj Kumar** vs. **Ajay Kumar and another (2011) 1 SCC 343,** the Hon'ble Supreme Court after considering a large number of precedents, laid down the following principles for awarding damages and compensation in accident cases:-

"General principles relating to compensation in injury cases

5. The provision of the Motor Vehicles Act, 1988 (`Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi vs. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

6. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case."

20. In light of the aforesaid principles, it has to be remembered that while determining the quantum of compensation payable to the victims of accidents, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injuries and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which he would have enjoyed, but for the disability caused due to accident. The amount awarded under the head of "loss of earning capacity" are distinct and separate and do not overlap with the amount awarded for pains and suffering and loss of enjoyment of life or the amount awarded for medical expenses.

21. This court in **Himachal Road Transport Corporation and another** vs. **Smt. Sangeeta 2013(2) T.A.C. 686(H.P.)** was dealing with a case where the claimant had suffered injuries in an accident on 16.11.2009 and had been rendered totally crippled and the award had been challenged on the ground as being excessive. The tribunal therein had awarded a sum of Rs.15,42,000/- to the claimant, who was aged about 37 years and had become absolutely helpless and dependant on

others. While upholding the order passed by the tribunal, this court held as follows:-

> *"4. The appellant challenges the award as inadequate, non award of interest which according to the appellant should and ought to have been granted from the date of institution of the claim petition paltry charges for attendant which she would require for the rest of her life, pain and suffering and loss of normal amenities in life. Parties have placed reliance on the evidence as also on the law. I first advert to the law. In Neelam Anand Vs. Manmohan Singh and others 2007 ACJ 1386 this Court awarded a sum of Rs.18,85,000/- to the claimant, who had suffered injuries on the spine as a result of which the whole body became totally paralyzed. The facts noticed by this Court were:*
>
> > *"2. The appellant suffered injury in the spine as a result of which her whole body below neck became totally paralysed. She is confined to a wheelchair. She has no sensation in the lower part of the body. She needs assistance and constant attendance. She cannot perform he r daily ablutions without the assistance of other person. She cannot stand. She cannot move. She cannot write. She can only thumb mark documents, that too with the help of somebody who lifts her hand to put/move her thumb. She is, however, mentally totally alert. She understands everything. Above neck, she is all there. Her fate is worse than that of the dead.*
>
> *5. Adverting to the principle applicable for assessment of damages and the evidence on record, this Court awarded a sum of Rs.18,85,000/- holding that there was sufficient evidence to show the nature of disability suffered by the claimant, was fatal.*
>
> *6. In National Insurance Company Ltd. Vs. Hamnawaz and others, 2011 ACJ 456, the High Court of Jammu and Kashmir awarded a sum of Rs. 18,01,484/- to the claimant, who had suffered from paraplegia due to which both his lower limbs and sphincter muscles became non-functional. The Court holds:*
>
> > *"9 . On account of paraplegia, claimant is unable to move like a normal man and is also not capable to earn anything in future also. The future loss of income assessed by the Tribunal at the rate of Rs.4,000/- and applied the multiplier of 18 has also been rightly done.*
> >
> > *10. The petitioner being of 28-29 years at the time when the*
> >
> > *award was passed, the multiplier of 18 has rightly been applied in this case. In respect of medical expenses incurred, the actual bills produced and proved by the claimant/petitioner has been worked out to be Rs.3,55,484/- for which there is no dispute and the compensation has been rightly assessed".*
>
> *7. On the evidence produced on record which included medical expenses, loss of income during the trial as also future income, pain and suffering, loss of amenity of her life and future income, a sum of Rs. 15,42,000/- was awarded.*

8. In New India Assurance Company Ltd. Vs. Shweta Dilip Mehta and others, 2011 ACJ 489, a Division Bench of High Court of Bombay awarded a sum of Rs. 49,48,848/- to the claimant who was aged about 11 years. The facts noticed by this Court were:

> *"1..... The facts in brief are that one Dilip Shah was proceeding to Kohlapur along with his family and the family of his close friend, Dilip Mehta, in a Maruti 800 car bearing Registration No. MH-01-A/122. In all, 6 persons were travelling in the car. On 2.5.1993, at about 6- 30 a.m., the car met with an accident near Itkari Phata when a truck, bearing Registration No. MHF-6469, which was travelling in the opposite direction, collided with it. As a result, the driver, Mr. Dilip Shah, died instantaneously, while the other passengers were severely injured. Ms. Shweta Dilip Mehta (hereinafter referred to as the "appellant"), aged 11 years at the time, was rendered paraplegic i.e. her entire body from waist - down is paralysed since the day of the accident and doctors assess her permanent disablement to an extent of 80 - 90 per cent".*

9. The Court holds:

> *23. In the present case, the appellant was only 11 years of age at the time of the accident. However, the aforementioned table, laid down in Sarla's case, 2009 ACJ 1298 (SC), does not specify the multiplier to be applied in such a case, i.e. where the victim is below 15 years of age. We feel that this is an inadvertence rather than an intended exclusion. The Second Schedule of the Motor Vehicles Act itself specifies a multiplier of '15' to be applied for victims who are under 15 years of age. It cannot be said that victims below the age of 15 years are to be excluded from receiving compensation under the head of 'loss of future income' merely because a multiplier has not been specified for such age group. It is obvious that 'loss of future income' as a head of compensation applies to all persons, whether earning or not at the time. A child who is rendered permanently disabled due to an accident loses the capacity to earn for himself and his family, in the same manner as a working adult, and in fact, often loses such capacity for a longer period than such adult. Courts have merely sought to interpret and clarify the Second Schedule, on account of the several errors in it, and in the interests of justice. However, no judgment of the Supreme Court explicitly suggests excluding a category or age group from receiving compensation under this head. We hence find no reason to exclude calculating compensation under this head for the victim in the present matter.*
>
> *24. We note the mathematical progression of the multiplier values, in the aforementioned schedule, as explained in Sarla Verma's case, 2009 ACJ 1298:*
>
> > *"We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok*

> *Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 - 20 and 20 - 25 years), reduced by one unit every five years, that is M - 17 for 26 to 30 years, M -16 for 31 to 35 years, M - 15 for 36 to 40 years, M - 14 for 41 to 45 years and M - 13 for 46 to 50 years, then reduced by two units for every five years, that is, M - 11 for 51 to 55 years, M - 9 for 56 - 60 years, M - 7 for 61 to 65 years and M - 5 for 66 to 70 years."*

As per this progression, the multiplier in the present case, for a victim below 15 years of age ought to have been 19. However, we are also bound by the judgment in Trilok Chandra's case, 1996 ACJ 831 (SC), where the Hon'ble Apex Court held that even in cases under section 166 of the Act, the maximum multiplier to be applied is 18, which was an increase from the existing maximum value of 16 that was laid down earlier in Susamma Thomas's case, 1994 ACJ 1 (SC). The cap of '18' as the maximum multiplier that may be applied in any case has been reiterated in Sarla's case, as well. Hence we conclude that irrespective of the mathematical progression in the schedule, the maximum multiplier that may be applied is 18, even if the victim is below 15 years. Thus, in the present case, the multiplier to be applied for computing 'loss of future income' for the victim is 18.

25. To compute the compensation, we will have to assume an annual income in this case, as the appellant did not work at the time of the accident, being only 11 years old. The Second Schedule specifies Rs. 15, 000/- per annum to be assumed as income in case of non - earning victims. However, we find this sum wholly inadequate in the present time. Moreover, the appellant was a bright student who seemed to be set for a successful future, prior to the accident. In fact, inspite of the accident, the appellant has manage d to complete her M. Com. which itself is testimony to her potential. We feel that taking all contingencies, calamities and disadvantages that may have occurred in the appellant's normal future into account, to consider an annual income of 1, 00, 000/- is reasonable. Applying the multiplier of 18 to this amount, the appellant is entitled to Rs. 18, 00, 000/- as compensation towards loss of future income, which, if deposited at standard interest rates, would accrue an interest approximately equal to the assumed annual income.

(emphasis supplied).

10. In National Insurance Company Ltd. Vs. Geeta Nagpal and others, 2012 ACJ 611, the High Court of Jammu and Kashmir awarded a sum of Rs.88,66,000/- to the claimant. The Court noticed the facts:

> *"45. The claimant Kewal Nagpal has been disabled 100 per cent because of the spinal cord injuries of D-2 level. He is,*

therefore, dependent for his daily chores on others. He has, therefore, lost his earning capacity.

46. To determine compensation for loss of his earning capacity, the Tribunal has taken into consideration the annual loss of Rs.11,96,540/- to his profits, which he would otherwise, on an average, earn from his business in partnership with others in Kashmir Walnut Trading Company and Rajan Trading Co. before the accident. Deducting 1/3rd there from as his personal expenses, Rs.7,97,694/- has been taken as annual loss of income to the claimant.

47. There does not appear any justification in treating the claimant's disability, though 100 per cent, as total loss to his income from the two firms, in that, even if the claimant was 100 per cent disabled to personally participate in the business of the two firms, yet the profit, which he would otherwise earn from his capital investments in the two firms, even as a sleeping partner, cannot be lost sight of while determining loss of income.

11. The assessment of damages is no longer res integra. In Raj Kumar Vs. Ajay Kumar and another, 2011 ACJ 1, the Supreme Court while considering this aspect in detail, holds:

"7. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60 per cent permanent disability of the right hand and 80 per cent permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140 per cent (that is 80 per cent plus 60 per cent). If different parts of the body have suffered different percentage of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100 per cent.

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a

corresponding loss of earning capacity, and consequently, if the evidence produced show 45 per cent as the permanent disability, will hold that there is 45 percent loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may, however, note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case of course, Tribunal will adopt the said percentage for determination of compensation. {See for example, the decisions of this Court in Arvind Kumar Mishra V. New India Assurance Co. Ltd., 2010 ACJ 2867: 2010 (1) T.A.C. 385 (S.C.) and Yadava Kumar V. Divisional Manager, National Insurance Co. Ltd., 2010 ACJ 2713: 2010(4) T.A.C. 10 (SC}.

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so, the extent of such permanent disability. This means that Tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement; (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. We may now summarize the principles discussed above:

> *(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
>
> *(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently , the percentage of loss of earning capacity is not the same as the percentage of*

permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different person, depending upon the nature of profession, occupation or job, age, education and other factors."

12. This principle was later on reiterated in Govind Yadav Vs. New India Assurance Co. Ltd., 2012 ACJ 28, holding:

"10. The personal sufferings of the survivors and disabled persons are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term `compensation' used in Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident. A very large number of people involved in motor accidents are pedestrians, children, women and illiterate persons. Majority of them cannot, due to sheer ignorance, poverty and other disabilities, engage competent lawyers for proving negligence of the wrongdoer in adequate measure. The insurance companies with whom the vehicles involved in the accident are insured usually have battery of lawyers on their panel. They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liabilities minimized. This results in prolonging the proceedings before the Tribunal. Sometimes the delay and litigation expenses' make the award passed by the Tribunal and even by the High Court (in appeal) meaningless. It is, therefore, imperative that the officers, who preside over the Motor Accident Claims Tribunal adopt a proactive approach and ensure that the claims filed under Sections 166 of the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure. The amount of compensation in such cases should invariably include pecuniary and non-pecuniary damages. In R.D. Hattangadi v. Pest Control (India) Private Limited (1995) 1

SCC 551, this Court while dealing with a case involving claim of compensation under the Motor Vehicles Act, 1939, referred to the judgment of the Court of Appeal in Ward v. James (1965) 1 All ER 563, Halsbury's Laws of England, 4th Edition, Volume 12 (page 446) and observed:

> *"(9) Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages*
>
> *are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life".*

In the same case, the Court further observed:

> *"(12) In its very nature when ever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."*

13. The principles which stand settled are that the injured has to be compensated for not only the pain and suffering but also for reasonable requirement of an attendant, physiotherapy, medication for life. But what must not be lost sight of the fact that a young lady of 37 years has been totally crippled for the rest of her life. The injuries as described in Ext.PW4/A are telling. When coupled with the evidence of PW4 Dr. Manoj Thakur, there is no doubt in my mind that the injured would require assistance through out her life i.e. an attendant to look after, wheel chair and specialized bed."

22. In **R. Venkata Ramana and another** vs. **United India Insurance Co.Ltd. and others 2013 (4) T.A.C. 376 (S.C.)** the Hon'ble Supreme Court upheld the award of Rs.18,75,800/- awarded by the tribunal, which had been reduced by the High Court to Rs.12,45,800/-.

Therein, the claimant was suffering from 80% permanent disability and the Neurologist had opined that there were no changes of any improvement in the health of the injured. The Hon'ble Supreme Court then held as follows:-

> *"10. We have considered the facts and the injuries suffered by Rajanala Ravi Krishna, who was hardly 17 years old student at the time of the accident. We need not go into the negligence part of the driver because even in the criminal proceedings it had been held that the driver of the vehicle was guilty of rash and negligent driving. Upon perusal of the evidence, we find that the condition of Rajanala Ravi Krishna, after the accident has become very pathetic. Evidence adduced by the Neurologist and other evidence also reveal that Rajanala Ravi Krishna shall not be in a position to speak for his life and shall not be in a position to do anything except breathing for his life, unless a miracle happens. He would require care of a person every day so as to see that he is given food, bath etc. and so as to enable him even in the matter of answering natural call. It would be worth producing the reaction of the Tribunal after appreciating evidence of the doctor and the said portion of the Tribunal's order has been even reproduced by the High Court in its judgment:*
>
> > *"It is not in dispute that because of this accident the injured petitioner who appears to be an active and bright student from Exs.A.481 to A.487, he lost all the function of his all four limbs on account of the severe injuries sustained by him. I have myself questioned PW.2 to find out the graveness of the injuries that are sustained by the injured third petitioner. It has been the evidence of PW.2 that there is no possibility of the injured petitioner regaining normal power of all the four limbs inspite of any amount of treatment. The patient require physio therapy throughout his life and assistance of some person for all his activities. PW.2 has also stated that it is difficult to say even by the time he was giving evidence whether the patient could regain his voice, PW.2 further stated that the patient requires regular medication of at least Rs.500/- per day for his subsistence. PW.2 also stated the patient requires some bodies assistance even for taking food and finally PW.2 stated that the patient is medically described as in a "vegitiative state" and patient is called as "spastic quadric paresys".*
>
> *11. Looking at the aforestated facts which even the High Court had noticed, we feel that the Tribunal can not be said to have awarded more amount by way of compensation.*
>
> *12. From the order of the tribunal, we find that the appellants had in fact proved that they had spent Rs.3,49,128/- towards medical expenses for treating their son. They had to purchase certain instruments worth Rs.58,642/- for making life of their son comfortable and Rs.31,000/- had been spent towards nursing and Rs.1,37,000/- had to be spent for Physiotherapist. Looking at the fact that Rajanala Ravi Krishna will have to remain dependant for his whole life on someone and looking at the observations made by*

the Tribunal, which have been reproduced hereinabove, in our opinion, his life is very miserable and there would be substantial financial burden on the appellants for the entire life of their injured son. At times it is not possible to award compensation strictly in accordance with the law laid down as in a particular case it may not be just also. We are hesitant to say that it is a reality of life that at times life of an injured or sick person becomes more miserable for the person and for the family members than the death. Here is one such case where the appellants, even during their retired life will have to take care of their son like a child especially when they would have expected the son to take their care.

13. Though, the High Court has rightly followed the principle laid down in the case of Sarla Verma (supra), in our opinion, the amount of compensation awarded by the Tribunal is more just. The Tribunal awarded a lump sum of Rs.10 lacs and the amount of expenditure incurred by the appellants for treating their son. The total amount awarded by the Tribunal was Rs.18,75,800/- which, in our opinion, is not too much and in our opinion, the said amount should be awarded to the appellants."

23. It has to be borne in mind that the claimant here has suffered 100% disability. What is "disability" has been lucidly explained with impeccable erudition by the Hon'ble Supreme Court in **Raj Kumar's** case (supra), in the following terms:-

"Assessment of future loss of earnings due to permanent disability

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (`Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation."

24. Now, how the disability has to be assessed has been further dealt with in the following manner:-

> *"10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.*
>
> *11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567).*
>
> *12. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:*
>
> > *(i) whether the disablement is permanent or temporary;*
> >
> > *(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,*
> >
> > *(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.*
>
> *If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of*

the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

25. The Hon'ble Supreme Court recently in **Syed Sadiq and others** vs. **Divisional Manager, United India Insurance Company Limited (2014) 2 SCC 735** held the claimant therein to be entitled to a compensation of Rs.21,65,100/- with interest at the rate of 9% per annum even though there was no proof of income. The claimant therein was a vegetable vendor and had suffered functional disability estimated at 85% and held as follows:-

"6. This Court in the case of Mohan Soni v. Ram Avtar Tomar & Ors. (2012) 2 SCC 267, has elaborately discussed upon the factors which determine the loss of income of the claimant more objectively. The relevant paragraph reads as under:

"11. In a more recent decision in Raj Kumar v. Ajay Kumar and another, (2011) 1 SCC 343, this Court considered in great detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it. In paragraphs 10, 11 and 13 of the judgment in Raj Kumar, this Court made the following observations: (SCC pp.349-50)

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of

the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Company Ltd. (2010) 10 SCC 254 and Yadava Kumar v. National Insurance Company Ltd. (2010) 10 SCC 341).

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood". (emphasis in original)

7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the whole-sale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant/claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant/claimant is still capable to fend for his livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income.

8. The appellant/claimant in his appeal further claimed that he had been earning Rs.10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs.3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in the case of Ramchandrappa v. Manager, Royal Sundaram Alliance Company Limited (2011) 13 SCC 236, has held as under: (SCC pp.242-43, paras 13-15)

> *"13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.*
>
> *14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.*
>
> *15 In the present case, Appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to Rs.150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs. 4500/-."*

9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are

inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.

10. Further, it is evident from the material evidence on record that the appellant/claimant was 24 years old at the time of occurrence of the accident. It is also established on record that he was earning his livelihood by vending vegetables. The issue regarding calculation of prospective increment of income in the future of self employed people, came up in Santosh Devi v. National Insurance Company Limited (2012) 6 SCC 421, wherein this Court has held as under: (SCC pp. 428-29, paras 14-18)

> *14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma vs. D.T.C. (2009) 6 SCC 121 case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.*
>
> *15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.*
>
> *16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac.*
>
> *17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-*

> *employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.*
>
> *18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self- employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."*

Therefore, considering that the appellant/ claimant was self employed and was 24 years of age, we hold that he is entitled to 50% increment in the future prospect of income based upon the principle laid down in the Santosh Devi case.

11. Further, regarding the use of multiplier, it was held in the Sarla Verma v. DTC which was upheld in Santosh Devi case (supra), as under: (Sarla Verma case, SCC p.140, para42)

> *42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.*

Therefore, applying the principle of Sarla Verma in the present case, we hold that the High Court was correct in applying the multiplier of 18 and we uphold the same for the purpose for calculating the amount of compensation to which the appellant/ claimant is entitled to.

12. With respect to the medical expenses incurred by the appellant/claimant, he has produced medical bills and incidental charges bills marked as Exts. P-25 to P-201 and prescriptions at Exts. P-202 to P-217 on the basis of which the Tribunal awarded a

compensation of Rs.60,000/- under the head. However, considering that the appellant might have to change his artificial leg from time to time, we shall allot an amount of Rs.1,00,000/- under the head of medical cost and incidental expenses to include future medical costs.

13. Thus, the total amount which is awarded under the head of "loss of future income" including the 50% increment in the future, works out to be Rs. 17,90,100/- [(Rs.65,00/- x 85/100 + 50/100 x 85/100 x Rs.6,500/-) x 12 x 18].

14. Further, along with compensation under conventional heads, the appellant/claimant is also entitled to the cost of litigation as per the legal principle laid down by this Court in the case of Balram Prasad v. Kunal Saha (2014) 1 SCC 384. Therefore, under this head, we find it just and proper to allow Rs.25,000/- .

15. Hence, the appellant/claimant is entitled to the compensation under the following heads:

Towards cost of artificial leg	*Rs.50,000/-*
Towards pain and suffering	*Rs.75,000/-*
Towards loss of marriage prospects	*Rs.50,000/-*
Towards loss of amenities	*Rs.75,000/-*
Towards medical and incidental cost	*Rs.1,00,000/-*
Towards cost of litigation	*Rs.25,000/-*

16. Also, by relying upon the principle laid down by this Court in the case of Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481, we find it just and proper to allow interest at the rate of 9% per annum.

17. Hence, the total amount of claim the appellant/claimant becomes entitled to is Rs. 21,65,100/- with interest @ 9% per annum from the date of application till the date of payment."

26. Viewed in the light of the aforesaid exposition of law, the award in no manner can be said to be excessive. The tribunal below has not awarded any litigation expenses and moreover the interest awarded is only at 7.5% per annum when compared with 9% interest awarded by the Hon'ble Supreme Court in **Syed Sadiq's** case (supra).

(v) Claim of pillion rider not covered:

27. The petitioner would then contend that since the claimant was admittedly a pillion rider, therefore, his claim was not covered under the insurance policy as no additional premium for the risk of pillion rider had been paid so as to cover such liability. The petitioner has relied upon the statement of PW 5 Ranjit Kumar, Clerk of National Insurance Company, who in his cross-examination has stated that an amount of R. 343/- had been paid towards own damages, Rs.15/- for accessories and Rs.77/- for act liability to cover the risk of third party. Apart from this, no other risk was covered under the policy. He also stated that the risk of pillion rider was not covered under the policy of insurance because no

premium qua the same was paid. However, on being further re-examined by the learned counsel for the claimant, he has categorically stated that Rs.77/- was received as against legal liability of passengers. He volunteered to state that it was an Act liability, but further explained that under the Act liability the third party claim is covered.

28. In this backdrop, in case the policy of insurance Ext. P-14 is seen then it is clear that an amount of Rs. 77/- has in fact been paid towards the legal liability to passenger/ MRPP and thus the insurance company cannot wriggle out of its liability to pay the insurance amount.

29. That apart this court in **United India Insurance Co. Ltd.** vs. **Prem Singh and others 2001 ACJ 1445** has specifically held that even in case of Act policy, the pillion rider is covered and hence insurance company is liable to indemnify the insured. This judgement in turn has been followed by the High Court of Delhi in **Ramesh Chand Tripathi** vs. **Lily Joshi 2008 ACJ 785** wherein it has been held that irrespective of the fact that whether it is an Act policy or a comprehensive policy, the notification of Tariff Advisory Committee clearly mandates that death or bodily injury to a pillion rider would be at par with a claim of third party.

30. At this stage, the learned counsel for the petitioner would rely upon the judgement of the Hon'ble Supreme Court in **United India Insurance Co. Ltd.** vs. **Tilak Singh and others 2006 ACJ 1441 S.C.** to claim that the insurance company was not liable for the injuries sustained to the pillion rider. I have gone through the judgement in the aforesaid case and find that scooter therein was insured under the Act policy only and did not contain any endorsement of payment of additional premium. While in the present case, it has been clearly proved that an amount of Rs.77/- was charged for legal liability to passenger and therefore, the risk of pillion rider stood covered under the insurance policy.

31. The upshot of the above discussion is that there is no perversity on the face of the award passed by the learned tribunal below nor can it be said that the petition filed by the claimant is based on fraud. Accordingly, there no merit in this petition and the same is dismissed, leaving the parties to bear their own costs.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. & HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Sant Ram Badhan ...Appellant.
Versus
The Senior Deputy Accountant General (A & E) & others ...Respondents.

LPA No. 131 of 2014
Decided on: 27.10.2014

Constitution of India, 1950- Article 226- Petitioner was dismissed from the service for entering into second marriage during subsistence of his first marriage- his compassionate allowance was fixed with effect from 1.9.1979- initially petitioner accepted the allowance, however, he filed an

application after 26 years, which was dismissed- held, that in view of Rule 41 of the Central Civil Services (Pension) Rules, 1972, a person who is dismissed from the service forfeits his pension and gratuity but is entitled to Compassionate Allowance- Writ Petition dismissed.

(Para-4 and 5)

For the appellant: Mr. H.S. Rangra, Advocate.

For the respondents: Mr. Ashok Sharma, Assistant Solicitor General of India, for respondent No. 1.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh Verma & Mr. V.S. Chauhan, Additional Advocate Generals, and Mr. J.K. Verma & Mr. Kush Sharma, Deputy Advocate Generals, for respondents No. 2 and 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Appellant-writ petitioner came to be dismissed from service on account of entering into second marriage during subsistence of his first marriage, being misconduct. His compassionate allowance was fixed with effect from 1st September, 1979, accepted the same and after lapse of 26 years, filed an Original Application before the erstwhile H.P. State Administrative Tribunal, which was transferred to this Court and came to be registered as CWP (T) No. 12637 of 2008, was dismissed vide judgment and order, dated 9th March, 2012, feeling aggrieved, questioned the same by the medium of LPA No. 569 of 2012, was partly allowed vide judgment, dated 6th August, 2013, by setting aside the judgment to the extent it has rejected prayer clause (a) of the writ petition, the writ petition was revived so far it relates to prayer clause (a) and the Writ Court was requested to reconsider the matter and pass orders afresh.

2. It is apt to reproduce para 5 of the judgment passed by this Court in LPA No. 569 of 2012, herein:

> *"5. We are, therefore, in agreement with the grievance made by the appellant in this behalf, for which reason we partly allow this appeal and set aside the impugned judgment to the extent it has rejected prayer clause (a) of the writ petition. That prayer clause will have to be reconsidered by the learned Single Judge afresh on its own merits."*

3. The Writ Court considered the matter, made discussions and dismissed the writ petition in terms of para 3 of the impugned judgment.

4. It is also apt to mention herein that Rule 41 of the Central Civil Services (Pension) Rules, 1972, governs the field, is reproduced herein:

> ***"41. Compassionate Allowance.***
>
> *(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:*

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a Compassionate Allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.
……."

5. While going through the said Rule, one comes to an inescapable conclusion that the competent authority has rightly granted the compassionate allowance in the year 1979.

6. Having said so, no case for interference is made out. Accordingly, the appeal is dismissed alongwith pending applications, if any.

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BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, JUDGE.

Cr.MP(M) No. 1159 of 2014 along with Cr.MP(M) Nos. 1160 of 2014, 1161 of 2014 and 1175 of 2014.
Date of Decision : 28th October, 2014.

1. Cr.MP(M) No. 1159 of 2014.
Balbir Singh **.....Petitioner.**
Versus
State of H.P. **.....Respondent.**

2. Cr.MP(M) No. 1160 of 2014.
Charan Singh **.....Petitioner.**
Versus
State of H.P. **.....Respondent.**

3. Cr.MP(M) No. 1161 of 2014.
Ghuman Singh **.....Petitioner.**
Versus
State of H.P. **.....Respondent.**

4. Cr.MP(M) No. 1175 of 2014.
Prithvi Singh **.....Petitioner.**
Versus
State of H.P. **.....Respondent.**

Code of Criminal Procedure- Section 493- An FIR was registered against the bail applicants for the commission of offences punishable under Sections 313, 376, 354-B of the IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act- the age of the prosecutrix at the time of incident was 18 ½ years and she is alleged to have conceived a child from accused P – however, accused P and C forcibly aborted the child carried by her - matter was reported to the

police belatedly- held, that the delay in reporting the matter would show that the allegations made by her were not true and she was a consenting party- prima facie, no offence is constituted against the applicants P and C- Bail granted. (Para-4)

For the Petitioner(s): Mr. B.C. Negi, Advocate.
For the Respondent(s): Mr. Vivek Singh Attri, Deputy Advocate General.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral)

All these petitions are being disposed of by a common order as they arise out of the same FIR No. 36 of 2014 of 24.09.2014 registered at Police Station, Shillai.

2. The present applications have been filed by the bail applicants under Section 439 of the Code of Criminal Procedure for enlarging them on bail for theirs allegedly having committed offences punishable under Sections 313, 376, 354-B of the IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, recorded in FIR No.36 of 2014 of 24.9.2014, registered at Police Station, Shillai, Distt. Sirmour, H.P.

3. On the previous dates all the bail applicants surrendered themselves to the jurisdiction of this Court and today too they have surrendered to the jurisdiction of this Court, which comprises and constitutes 'deemed custody' within the meaning and ambit of Section 439 of the Cr.P.C., so as to render the instant petitions maintainable under the aforesaid provisions of law, there being a statutory bar under The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act against the preferment of a petition under Section 438 of the Cr.P.C. Age of the prosecutrix at the time of the occurrence, as disclosed by the Investigating Officer, was 18 ½ years, hence, she at the time of occurrence had acquired the age of consent.

4. The allegations against bail applicant Prithvi Singh are of his initially in November, 2013 having perpetrated forcible sexual intercourse on the person of the prosecutrix/victim and his having continuously for five months thereafter, too done likewise. She is also alleged to have conceived a child from the loins of the bail applicant Prithvi Singh besides, both Prithvi Singh and bail applicant Charan Singh are alleged to have forcibly aborted the child carried by the prosecutrix/victim in her womb. However, the complaint/FIR at the instance of the victim/prosecutrix came to be belatedly lodged against the co-bail applicant Prithvi Singh on 24.09.2014. The delay in its lodging is inordinate. The protracted delay in the filing/lodging of the FIR against the co-bail applicant Prithvi Singh does surge forth an inference of its institution being begotten by premeditation and concoction. Obviously then the allegations comprised in the FIR against Prithvi Singh may prima facie be construable to be tainted with the vice of prevarication. Moreover, the concomitant inference of sexual intercourses, if any, of the

bail applicant Prithvi Singh with the prosecutrix/victim being consensual also arises. What aggravates the inference aforesaid is comprised in the factum of hers having conceived a child from the loins of bail applicant Prithvi Singh. Even if the child carried by the prosecutrix/victim in her womb as purportedly begotten from the loins of bail applicant Prithvi Singh was allegedly forcibly aborted, yet the factum of its abortion having been sequeled by force having remained un-complained to the police or to the Gram Panchayat, leaves open an inference that she too consented to its abortion. Consequently, even if, the learned Deputy Advocate General submits that she is working as a bonded labourer in the lands of co-bail applicant Tota Ram son of Shri Tulsi Ram which factum dissuaded her from promptly lodging a complaint before the quarter concerned articulating therein the grievances which have been belatedly conveyed by her in the month of September, 2014, nonetheless, the said submission looses its force in the face of the bail applicant Tota Ram bearing the parentage of Tulsi Ram whereas with the disclosure in the status report of the victim/prosecutrix working in the fields of Tota Ram son of Shri Bhup Singh, hence, with the latter bearing a parentage contradistinct to the one born by the bail applicant Tota Ram belies not only the factum of hers working as a bonded labour in the lands of bail applicant Tota Ram but also benumbs the said factum constituting a dissuasive factor for the victim to omit to promptly lodge a complaint with the quarter concerned. As a sequel with delay having remained unexplained, concomitantly shears the allegations in the FIR of any vestige of truth. Nonetheless, even if, she was assumingly, purportedly working as a bonded labourer in the fields of Tota Ram son of Shri Tulsi Ram, she could have complained the matter to the quarter concerned at the earliest. The inordinate prolonged reticence of the victim/prosecutrix does convey her consensuality to the acts, if any, of the bail applicants Prithvi Singh and Charan Singh. In aftermath, prima facie at this stage, it is apparent that no offence is constituted against the bail applicants Prithvi Singh and Charan Singh.

5. In so far as the other co-accused Ghuman Singh and Balbir Singh are concerned, they are alleged to have outraged her modesty on 14.09.2014. The said act was purportedly carried out by the bail applicants in a jungle. The act as alleged against the aforesaid bail applicants also remained un-complained on 14.09.2014. The reticence of the victim/prosecutrix qua the said act is also enigmatic. Even though an explanation has emanated from the learned Deputy Advocate General that given the factum of hers working as a bonded labourer in the lands of bail applicant Tota Ram dissuaded her to promptly lodge the complaint. Nonetheless when for reasons attributed hereinabove while dispelling the said contention qua bail applicants Charan Singh and Prithvi Singh, it has been held to be carrying no force, as a sequel for para materia reasons the purported reticence of the victim/prosecutrix for 10 days arising from the purported dissuasive factor gains no leverage, rather boosts an inference of the FIR being tainted with the vice of concoctions and premeditations. Consequently, the allegations comprised therein are prima facie rendered at this stage to be unfounded. It is settled law that prompt lodging of the complaint to the quarters concerned has its own virtues, inasmuch as it fosters an inference of the genesis of the occurrence being ingrained with truth. Belated lodging of the complaint affects and vitiates the truth qua the genesis of the occurrence, besides a

concomitant inference of the genesis of the occurrence being concocted and conjectured gains momentum. As a natural corollary when the delay is immense and remains unexplained by cogent reasons, the vitiatory factors aforesaid infect the truth qua the genesis of the occurrence. Accordingly, the bail applications are allowed and order of 8th October, 2014 rendered in Cr.MP(M) Nos. 1159 of 2014, 1160 of 2014 and 1161 of 2014 and order of 10th October, 2014 rendered in Cr.MP(M) No.1175 of 2014 are made absolute subject to the compliance of further conditions:

(i) that they shall not leave India without the previous permission of the Court ;

(ii) that they shall deposit their pass port, if any, with police station concerned;

(iii) that they shall apply for bail afresh when the challan is filed before the trial Court and

(iv) that in case of violation of any of these conditions, the bail granted to the petitioners shall be forfeited and they shall be liable to be taken into custody;

However, it is made clear that the findings rendered by this Court hereinabove shall have no bearing on the merits of the case. Dasti copy.

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BEFORE HON'BLE MR.JUSTICE P.S.RANA, J.

Sh Ramesh son of Sh Dil Bahadur .....Petitioner.
Versus
State of HP and others. .....Respondents.

CWP No. 9203 of 2011
Order reserved on: 21.10.2014.
Date of Order: October 28, 2014

Constitution of India, 1950- Article 226- Petitioner pleaded that he had completed 8 years of service as daily wager and is entitled for regularization of his services- held, that regularization depends upon the vacancy and can be made on the recommendation of the selection committee constituted by Appointing authority- respondent specifically pleaded that no vacancy for mason was available against which petitioner could be regularized- petitioner had also not mentioned that any vacant post was available, therefore, respondent could not be directed to regularize the services of the petitioner- however, respondent directed to regularize the service of the petitioner as and when any vacancy would arise. (Para-5 & 6)

For the petitioner: Mr.P.D.Nanda, Advocate
For Respondent-1. Mr. M.L.Chauhan, Addl. Advocate General with Mr.Pushpinder Singh Jaswal, Dy Advocate General.

For respondents 2&3: Mr. Ashwani Sharma and Mr. Pranay Pratap Singh, Advocates.

The following judgment of the Court was delivered:

P.S.Rana, Judge.

Present Civil Writ Petition is filed under Article 226 of the Constitution of India. It is pleaded that Sh Ramesh petitioner is the Nepali citizen and is employed in HP State Forest Development Corporation on daily wages as mason on dated 1.4.1994. It is pleaded that on 31.3.2002 petitioner completed eight years of daily wage service and is legally entitled for regularization of his service. It is further pleaded that petitioner is legally entitled for work charge status in view of the order passed by High Court of HP in CWP No. 4866 of 2010 titled Kharak Singh Vs. State of HP decided on 6.10.2010. It is further pleaded that eligibility certificate was issued on 10.06.2011 but till date petitioner is not regularized. It is further pleaded that respondents be directed to consider the case of the petitioner to regularize the services of the petitioner. It is further pleaded that even option given by the petitioner for regularization of his service as un-skilled worker but till date petitioner is not regularized. Prayer for regularization of service as mason sought from 01.04.1994 with all consequential benefits. In alternative regularization of services of petitioner as mason sought like other 1030 daily wagers in various government departments.

2. Per contra reply filed on behalf of respondents pleaded therein that present petitioner is Nepali citizen and is employed as daily wager in the HP State Forest Development Corporation. It is pleaded that dispute is covered under Industrial Disputes Act. It is further pleaded that as per Recruitment and Promotion Rules of the Government of HP as amended and conveyed vide memorandum No. PER AP-11 0 A (3) 2/80 dated 11.7.2000 only Indian citizen are entitled for employment under the Government of Himachal Pradesh. It is further pleaded that petitioner is a Nepali citizen and is not Indian and he is not legally entitled for regularization of his service. It is further pleaded that eligibility certificate was issued from the competent authority as per Recruitment and Promotion Rules. It is further pleaded that earlier Nepalese were entitled to government service on production of eligibility certificate. It is further pleaded that according to amended rules only Indian citizens are entitled for regularization of service. It is further pleaded that merely issuance of eligibility certificate did not entitle the petitioner for regularization of his service. It is further pleaded that regularization of service in public post is based upon as per terms and conditions of Recruitment and Promotion Rules and as per availability of vacancy. It is further pleaded that as of today there is no regular post of mason in the HP State Forest Development Corporation. It is further pleaded that HP State Forest Development Corporation is making efforts to adjust the petitioner as unskilled worker against the vacancy and matter has been taken with the State Government. It is further pleaded that petitioner has given offer for regularization of his service as unskilled worker. It is further pleaded that petitioner will be appointed on the post of unskilled worker after the approval received from the Government. It is further pleaded that as of today there is no regular post of mason available with the HP State Forest Development Corporation. It is further pleaded that although respondent

Corporation has initiated a process of offering alternate regularization as a unskilled worker in its Rosin & Turpentine Factories at Bilaspur/Nahan against vacancy and petitioner has also opted for such regularization but petitioner did not fulfill requisite qualification for the post of unskilled worker as per Recruitment and Promotion Rules being illiterate. It is admitted that petitioner is working as mason with the respondent-Corporation w.e.f. 1.8.1998. It is denied that petitioner is working on daily wages since 01.04.1994. It is well settled law that as per ruling of the Apex Court of India regularization of the service of daily wager is possible only when regular vacancy is available. Prayer for dismissal of writ petition sought. Petitioner also filed rejoinder and re-asserted the allegation pleaded in the civil writ petition.

3. Court heard learned Advocate appearing on behalf of the petitioner and learned Additional Advocate General appearing on behalf of the State and learned Advocate appearing on behalf of respondent-Corporation and also perused entire records carefully.

4. Following points arise for determination in the present writ petition:

(1) Whether petitioner is entitled for regularization of his service as mason as alleged?

(2) Whether in alternative respondents are liable to regularize the service of petitioner as mason like other 1030 daily wagers in various government departments subject to availability of regular vacancy of mason as alleged?

(3) Final Order.

Finding upon Point No.1.

5. Submission of learned Advocate appearing on behalf of the petitioner that petitioner be regularized as mason on completion of eight years of service with all consequential benefits is rejected being devoid of any force for the reason hereinafter mentioned. It is well settled law that regularization of employee is depend upon the vacancy. Respondents have specifically pleaded in the reply that no vacancy of mason is available in the HP State Forrest Development Corporation Limited as of today. It is well settled law that regularization of employee is based upon recommendation of selection committee appointed by the appointing authority. It is proved on record that petitioner is a Nepali citizen. It is also proved on record that petitioner has obtained eligibility certificate from competent authority of law. However at this stage due to non-availability of post of mason respondents could not be directed to regularize the service of petitioner upon the regular post of mason which is not available in the HP State Forest Development Corporation. Point No.1 is decided against the petitioner.

Finding upon Point No.2

6. Submission of learned Advocate appearing on behalf of the petitioner that in the alternative respondents be directed to regularize the service of the petitioner as mason like other 1030 daily wagers in various government departments subject to availability of regular vacancy is accepted for the reason hereinafter mentioned. Respondents have

admitted in their reply that some of the daily wagers of respondent-Corporation have been regularized in government department in equivalent post against the vacancies. It is held that on the concept of equality under Article 14 of the Constitution of India petitioner is legally entitled to be regularized in government department in equivalent post subject to availability of regular vacancy of mason because petitioner has obtained eligibility certificate from the competent authority of law as of today and in view of ruling reported in 1994 Supp (2) SCC 316 titled Mool Raj Upadhyaya Vs. State of HP and others and in view of ruling reported in 2007 (12) SCC 43 titled State of HP and others Vs. Gehar Singh and in view of ruling given by Hon'ble High Court of HP in CWP No. 4866 of 2010 titled Kharak Singh Vs. State of HP and others decided on 6.10.2010.

7. Submission of learned Advocate appearing on behalf of the respondents that petitioner has himself opted for unskilled post and on this ground petitioner is not legally entitled to be adjusted as mason in the government department is rejected for the reason hereinafter mentioned. Petitioner has specifically mentioned in rejoinder that consent of the petitioner regarding adjustment upon unskilled post was obtained with coercion. It is held that any consent obtained under coercion is void ab initio. Point No.2 is decided accordingly.

Final Order

8. In view of the above stated facts it is held (1) That petitioner cannot be regularized as a mason in the HP State Forest Development Corporation due to non availability of regular post of mason as of today. (2) It is held that in alternative case of the petitioner will be considered for regularization upon the post of mason in other government department subject to availability of regular post of mason in other department similar to other 1030 daily wagers adjusted in various departments strictly in accordance with law after obtaining recommendation of the selection committee appointed by the appointing authority. It is clarified that if the vacancy of mason is available in the HP State Forest Development Corporation as of today then the case of the petitioner for regularization of his service as mason in the HP State Forest Development Corporation will be considered strictly in accordance with law. Writ petition is accordingly disposed of with no order as to costs. All miscellaneous application(s) are also disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, JUDGE.

Thelu .....Appellant.
Vs.
Smt. Lakhanu & ors. .....Respondents.

RSA No. 190 of 2012.
Reserved on: October 20, 2014.
Decided on: October 28, 2014.

Specific Relief Act, 1963- Section 34- Plaintiff claimed to be the daughter of one B -the property of B was mutated in favour of defendants

on the ground that their predecessor-in-interest was real brother of B- held, that the version of the plaintiff that she is the daughter of B has been duly corroborated by Voter Identity Card which carried with it a presumption of correctness- hence, she was entitled to inherit the estate of her father- mutation attested in favour of the defendants is wrong.

(Para-15)

For the appellant(s):	Mr. N.K.Thakur, Sr. Advocate, with Mr. Ramesh Sharma, Advocate.
For the respondents:	Mr. Neel Kamal Sharma, Advocate, for respondent No. 1. None for respondents No. 2 to 12.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This regular second appeal is directed against the judgment and decree passed by the learned Addl. District Judge, (Fast Track Court), Chamba, dated 30.11.2011, passed in Civil Appeal No. 18 of 2010.

2. Key facts, necessary for the adjudication of this regular second appeal are that the respondent-plaintiff (hereinafter referred to as the plaintiff, for the convenience sake), has filed a suit for declaration, possession and permanent prohibitory injunction against the appellants-defendants as well as the proforma defendants (hereinafter referred to as the defendants for the convenience sake).

3. The plaintiff is deaf and dumb by birth. She was under the guardianship of Punnu Ram after the death of her father Bali Ram. Punu Ram after the death of Bali Ram was looking after her. He was maintaining her. The interest of the next friend was not adverse in any manner. The father of the plaintiff was owner-in-possession of the suit land, as detailed in the plaint. Sh. Bali Ram expired leaving behind plaintiff as sole legal heir, being daughter of the deceased. Gangu was real Uncle of the plaintiff, who in connivance with the revenue officials, got mutation No. 153 dated 19.10.1980, sanctioned and attested in his favour at the back of the plaintiff. The plaintiff was minor. She was never served. After the death of Gangu, mutation No. 212 dated 13.2.1990 was sanctioned and attested in favour of the contesting defendants. She being the sole legal heir of deceased Bali Ram was owner in possession of the suit land. The contesting defendants forcibly in the month of May, 2000, took the possession of the suit land except Khasra Nos. 76 & 80. She obtained the revenue papers in the month of June, 2000 only then she came to know for the first time that the suit land has been mutated in favour of the contesting defendants. She was in peaceful possession of the suit land comprised in Kh. Nos. 76 & 80 as owner being heir of deceased Bali Ram. The defendants on the basis of the revenue entry took the forcible possession of land measuring 13.4. bighas out of the entire land of 18.18 bighas situated at Mauza Dalla and cultivated maize crop.

4. The suit was resisted by the defendants. According to them, the plaintiff was not daughter of Bali Ram. It was admitted that Bali Ram was owner-in-possession of the suit land. The contesting defendants are legal heirs of deceased Bali Ram. Gangu Ram was real brother of deceased Bali Ram and after the death of Gangu Ram, the contesting defendants are the legal heirs. Gangu Ram was in physical possession of the suit land. The plaintiff has no right, title or interest over the suit land. The mutations were legal and valid.

5. The plaintiff filed replication. The legal heirs of defendant Pan Chand were brought on record vide order dated 1.5.2010. The learned Civil Judge (Sr. Divn.) Chamba, framed the issues on 7.1.2003 and 20.8.2004. The learned Civil Judge (Sr. Divn.), Chamba, decreed the suit on 1.6.2010. Defendants No. 2, 3 & 4, as arrayed in the suit and one of the legal heirs Khem Raj of deceased Paan Chand filed an appeal before the learned Addl. District Judge, Fast Track Court, Chamba. The learned Addl. District Judge, Fast Track Court, Chamba, dismissed the same on 30.11.2011. Hence, this regular second appeal. There was no representation on behalf of respondents No. 2 to 12. They were proceeded against ex parte.

6. Mr. Naresh Thakur, learned Senior Advocate, on the basis of the substantial questions of law, has vehemently argued that both the Courts' below have misread and misconstrued the oral as well as documentary evidence. According to him, the plaintiff has miserably failed to prove that she was daughter of Bali Ram. He further contended that the suit is barred by limitation. On the other hand, Mr. Neel Kamal Sharma, Advocate appearing for defendant No. 1 has supported the judgments and decrees passed by both the Courts' below.

7. Since all the substantial questions of law are interconnected, these were taken up and decided together to avoid repetition and discussion of evidence.

8. The learned Appellate Court has framed the following issues for determination:

> "1. Whether the plaintiff is not daughter and sole legal heir of deceased Bali Ram?
>
> 2. Whether the plaintiff is not deaf and dumb and being so, Punnu Ram was not competent to file and maintain the suit on behalf of plaintiff as her next friend?
>
> 3. Whether the impugned judgment and decree dated 1-6-2010 passed by the learned Civil Judge (Senior Division) Chamba in Civil Suit No. 131/2000 titled as Lakhanu Versus Paan Chand deceased through LRs and others is legally sustainable in the eyes of law and facts?
>
> 4. Final order."

9. It was not in dispute that Bali Ram was owner of the suit land to the extent of ½ share as per Jamabandi Ext. P5, for the year 1977-78. He was shown as joint owner-in-possession over the suit land.

10. The plaintiff has appeared as PW-1. She deposed that she is the daughter of the deceased Bali Ram. She was in possession of 4

bighas of land out of the suit land and defendants have no concern with deceased Bali Ram. The plaintiff has placed on record the copy of Parivar Register Ext. P1. In Ext.P1, plaintiff is shown as daughter of deceased Bali Ram. She has also placed on record identity card issued by the Election Commission of India.

11. PW-2 Hira Lal has deposed that plaintiff was known to him. The name of the father of the plaintiff was Bali Ram. The name of the mother of plaintiff was Molku. The defendants have not placed any evidence to establish that Bali Ram had any other class-I heir.

12. According to DW-1, Lakhnu was not daughter of Bali Ram. The defendant has not examined even a single witness to rebut the copy of Parivar Register Ext. P1. A suggestion was put to PW-1 that Molku was wife of Nirmal and she has 5 children including the plaintiff. PW-1 has shown ignorance. DW-1 has clearly admitted in his cross-examination that Molku was wife of Bali Ram. He has also admitted that Molku died before Bali Ram. Bali Ram died on 31.3.1980. In his cross-examination, DW-1 has admitted that plaintiff was residing at the house of Bali Ram as his daughter. Defendants have not placed any tangible evidence on record to establish that Molku was married to Nirmal.

13. Now, as far as copy of Parivar Register Ext. P1 is concerned, the mother's name of plaintiff has not been mentioned. However, the fact of the matter is that plaintiff's mother died before the death of her father. It is for this reason that the name was not recorded in Ext. P1. In Voter Identity Card Ext. P2, Bali Ram has been shown as the father of the plaintiff, these documents have been prepared by the public servants in discharge of their lawful duties. There is presumption of truth attached to them. Nothing contrary has been placed on record by the defendants to disapprove Ext. P-1 and P-2.

14. PW-2 Hira Lal is an independent witness. He is resident of the same area. Both the Courts' below have rightly come to the conclusion that plaintiff was daughter of Bali Ram on the basis of oral as well as documentary evidence. PW-1 Punnu Ram is the next friend of the plaintiff. According to him, the plaintiff is unable to hear and speak. Even DW-1, Thelu Ram has admitted in his cross-examination that plaintiff was deaf and dumb. DW-2 Paras Ram has admitted that plaintiff only understands through signs and is hard of hearing. PW-3 Dr. S.K. Mahajan has also deposed that Medical Board was constituted to examine the plaintiff on 16.10.2004. They issued certificate Ext. PW-3/A. The disability of the plaintiff was to the extent of 80%, permanent in nature. It was a case of profound deafness and disability was in relation to hearing and speech. PW-1 has moved an application under Order 32 Rule 4 CPC. The learned trial Court has framed two more issues on 20.8.2004, vide issue Nos. 10(a) and 10(b), including whether the plaintiff was deaf and dumb.

15. The findings that plaintiff is deaf and dumb are duly supported by evidence. The plaintiff was deaf and dumb. There is nothing on record to suggest that she was able to watch her interest. The suit was filed during her disability. She has applied for revenue papers only in the month of June, 2000, when she was forcibly evicted. She being the class-I heir, was entitled to inherit the estate of Bali Ram. Gangu Ram, being brother was not entitled to inherit the estate of Bali

Ram. Mutation No.153 dated 19.10.1980 was illegal and Mutation No. 212 attested on 13.2.1990 has rightly been declared null and void by both the Courts' below. Plaintiff has been correctly declared owner of the suit land as per the decree. The Courts' below have correctly appreciated the oral as well as documentary evidence. The plaintiff has conclusively proved that she is the daughter of Bali Ram. The suit was filed within the limitation. The substantial questions of law are answered accordingly.

16. Consequently, there is no merit in the appeal and the same is dismissed.

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BEFORE HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE.

Gaji Ram & ors. ..... Petitioners.
Vs.
Smt. Badalu ..... Respondent

Cr. Revision No. 215 of 2014.
Date of decision: 29.10.2014.

Protection of Women from Domestic Violence Act, 2005- Sections 2(s), 17, 18, 19 and 20 - Applicant filed an application under Protection of Women from Domestic Violence Act with the allegations that she and her minor child were staying in the matrimonial home which was in her possession prior to the death of her husband- family members of the deceased/husband started harassing the applicant after the death of her husband- Learned Sessions Judge allowed the appeal and held that the applicant is entitled to a shared accommodation consisting of one room, one kitchen and one bath room- held, that a woman cannot lay claim at every household where she lives or has lived at any stage in a domestic relationship and she is entitled to claim a right of residence in a house belonging to or taken on rent by the husband or the house, which belongs to the joint family of which the husband is a member- in case house is self acquired property of her father-in-law then it cannot be called as shared household where she has a right of residence- however, family members of her deceased husband are liable to maintain the applicant.

(Para- 11 to 15)

Cases referred:

S.R.Batra and another vs. Taruna Batra (Smt.) (2007) 3 SCC 169

Kota Varaprasada Rao and another vs. Kota China Venkaiah and others AIR 1992 AP 1

For the petitioners : Mr. Parveen Chauhan, Advocate.
For the respondent : Mr. Naveen K. Bhardwaj, Advocate.

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge (Oral):

This criminal revision under sections 397, 401 of the Code of Criminal Procedure is directed against the judgement dated 30.6.2014

passed by the learned Sessions Judge, Chamba in Criminal Appeal No. 11 of 2013, whereby he set-aside the order passed by the learned Judicial Magistrate Ist Class, Chamba on an application moved by the respondent under section 12 read with sections 17, 18, 19 and 20 of Protection of Women from Domestic Violence Act, 2005 (43 of 2005) (for short, the Act) and directed the petitioners to provide accommodation to the respondent and till then to pay Rs.2,000/- to the respondent from the date of filing of the complaint.

2. The allegation set out by the respondent in the complaint was that her marriage had been solemnized with Doli Ram in the year 1988 as per Hindu rites and customs and one girl was born out of the said wedlock. Doli Ram died in the year 1993 and thereafter the respondent alongwith her minor child was staying in the matrimonial home, which was in her possession prior to the death of her husband. Further allegations were that after the death of her husband, his family members, who were petitioners herein started maltreating, misbehaving and abusing her with a view to compel her to leave the room and kitchen which were in her possession and thereafter about two years back, she had been thrown out of the house.

3. The petitioners filed their reply taking preliminary objections regarding maintainability, estoppel and that the respondent has suppressed material facts. On merits, it was averred that after the death of her husband, the respondent started residing at her parents house alongwith her daughter and did not reside in the matrimonial home.

4. The parties led evidence and the learned Magistrate vide order dated 24.8.2013 dismissed the application on the ground that it was very unlikely that respondent was residing in the same house after the death of her husband and therefore, her remedy lies before the civil court and no case of domestic violence was made out.

5. Against the aforesaid judgement, the respondent preferred an appeal in the court of learned Sessions Judge, who vide his order dated 30.6.2014 allowed the appeal and held the respondent to be entitled to a shared accommodation consisting of one room, one kitchen and one bath room with all ancillary facilities in the house, which was in possession of the petitioners and till such accommodation is not made available to the respondent, she was held entitled to a monthly maintenance of Rs.2,000/-.

6. The order passed by the learned Sessions Judge has been assailed before this court on the ground that the order passed by the learned Sessions Judge is based on surmises and conjectures without taking into consideration that respondent had during the life time of her husband filed a divorce petition in the year 1993 and it was during the pendency of that petition that her husband died. Therefore, it was not a case to which the provisions of the Act would apply.

7. The learned counsel for the petitioners also argued that a wife is entitled to accommodation only in the house, which is joint family property, while in the present case the house was owned by her father-in-law and was his separate property in which shared accommodation could not have been granted. It was further claimed that respondent- petitioner

No. 1 is 80 years old man having no source of income and is unable to pay such huge amount of maintenance.

8. In response thereto the learned counsel for the respondent has supported the order passed by the learned Sessions Judge and has claimed that respondent is a total destitute and it is not only moral duty but a legal obligation of the family members of the petitioners to maintain and provide residence to the respondent.

I have heard the learned counsel for the parties and have gone through the records.

9. The learned Sessions Judge in support of his conclusion that the respondent is entitled to a shared accommodation has accorded the following reasons:-

> *"15. After analyzing the entire matter, I find force in the contentions raised by the appellant, which are fully corroborated by the oral evidence produced by her. It may be relevant to refer to the judgement of the Hon'ble Bombay High Court reported as Karim Khan vs. State and anr. 2011 (4) Crimes 425 (Bom.), in which the Hon'ble Bombay High Court has held that 'continued deprivation of economic or financial resources and continued prohibition or denial of access for he shared household to the aggrieved person is a domestic violence and the protection under the Act of 2005 will be available to the respondent/ wife who was driven out from her husband's shared household prior to coming into effect of the Act of 2005, but the deprivation continued even after the Act came into force.' Similarly, Hon'ble Orissa High Court in Gangadhar Pradhan vs. Rashmibala Pradhan 2012(4) Crimes 580 (Ori.) has held that 'Protection of Domestic Violence Act, 2005 provides for a higher right in favour of the wife who not only acquires a right to be maintained but also thereunder acquires a right of residence. However, said right as per the legislation extends only to joint properties in which the husband has a share.' The Hon'ble Allahabad High Court in Nishan Sharma and Ors. Vs. State of U.P. and others 2013(1) Crimes 245 (All.) has held that 'where the husband was residing as a part of joint family in a house, which belonged to his father, it being shared household the wife aggrieved person would be entitled to claim right of residence in such house.'*
>
> *16. In view of the law cited supra, which is squarely applicable to the facts of this case, I am of the view that appellant- aggrieved person being wife of Shri Doli Ram, who had a share in joint family property, which is now in the possession of the respondents, has got right to a shared accommodation consisting of one room one kitchen and one bath room with all ancillary facilities in the house, which is presently in the possession of the respondents. Till such accommodation is made available to the appellant by the respondents, the appellant is held entitled to a monthly maintenance of Rs.2000/- from the date of this judgement."*

10. Section 2(s) of the Act describes shared household thus:-

"2. (s) 'shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a

household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;"

11. No doubt, the definition of "shared household" aforesaid is not happily worded, but then the same cannot mean that a women can lay claim at every household where she lives or has lived at any stage in a domestic relationship. The wife is only entitled to claim a right of residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband or the house which belongs to the joint family of which the husband is a member. In case it is the self acquired property of the father-in-law as is contended in the present case, then it cannot be called as shared household.

12. A similar question came up for consideration before the Hon'ble Supreme Court in **S.R.Batra and another** vs. **Taruna Batra (Smt.) (2007) 3 SCC 169,** wherein the Hon'ble Supreme Court has held as follows:-

"24. Learned counsel for the respondent Smt Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.

25. We cannot agree with this submission.

26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. If the interpretation canvassed by the learned counsel' for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. It is well settled that any interpretation which leads to absurdity should not be accepted.

28. Learned counsel for the respondent Smt Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's (sic) in-laws or other relatives.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint

family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of Appellant 2, mother of Amit Batra. Hence it cannot be called a "shared household".

30. No doubt, the definition of "shared household" in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

13. But would that mean that respondent cannot be held entitled to a monthly rent of Rs.2,000/- in lieu of a right to a shared accommodation? To my mind, the respondent would still be entitled to maintenance from the petitioners who are none other than the family members of her deceased husband. The petitioner No.1 is her father-in-law and petitioner No. 2 is her mother-in-law and petitioners No. 3 to 5 are her brother-in-laws. Since the factum of marriage has not been denied the petitioners owe not only a moral obligation but a legal duty to maintain the respondent by providing her basic amenities of life i.e. food, clothing and shelter, if not anything more.

14. The law on the subject has been elaborately dealt in **Kota Varaprasada Rao and another** vs. **Kota China Venkaiah and others AIR 1992 AP 1**, it has been held as follows:-

"8. The oldest case decided on the subject is one in Khetramani Dasi v. Kashinath Das, (1868) 2 Bengal LR 15. There, the father-in-law was sued by a Hindu widow for maintenance. Deciding the right of the widow for maintenance, the Calcutta High Court referred to the Shastric law as under:

"The duty of maintaining one's family is, however, clearly laid down in the Dayabhaga, Chapter II, Section XXIII, in these words:

'The maintenance of the family is an indispensable obligation, as Manu positively declares.' Sir Thomas Strange in his work on Hindu Law Vol. I page 67, says:

'Maintenance by a man of his dependants is, with the Hindus, a primary duty. They hold that he must be just, before he is generous, his charity beginning at home; and that even sacrifice is mockery, if to the injury of those whom he is bound to maintain. Nor of his duty in this respect are his children the only objects, co-extensive as it is with the family whatever be its composition, as consisting of other relations and connexions, including (it may be) illegitimate offspring. It extends according to Manu and Yajnavalkya to the outcast, if not to the adulterous wife; not to mention such as are excluded from the inheritance, whether through their fault, or their misfortune; all being entitled to be maintained with food and raiment."

At page 21, the learned Judges have also referred to a situation where there is nothing absolutely for the Hindu widow to maintain

herself from the parents-in-law's branch by referring to the following texts from NARADA:

"In Book IV, Chapter I Section I, Art. XIII of Celebrooke's Digest, are the following texts from NARADA:

'After the death of her husband, the nearest kinsman on his side has authority over a woman who has no son; in regard to the expenditurte of wealth, the government of herself, and her maintenance, he has full dominion. If the husband's family be extinct, or the kinsman be unmanly, or destitute of means to support her, or if there is no Sapindas, a kinsman on the father's side shall have authority over the woman; and the comment on this passage is : "'Kinsman on the husband's side; of his father's or mother's race in the order of proximity. 'Maintenance' means subsistence. Thus, without his consent, she may not give away anything to any person, nor indulge herself in matters of shape, taste, small, or the like, and if the means of subsistence be wanting he must provide her maintenance. But if the kinsman be unmanly (defecient in manly capacity to discriminate right from wrong) or destitute of means to support her, if there be no such person able to provide the means of subsistence, or if there be no SAPINDAS, then any how, determining from her own judgment on the means of preserving life and duty, let her announce her affinity in this mode : 'I am the wife of such a man's uncle; 'and if that be ineffectual, let her revert to her father's kindred; or in failure of this, recourse may be had even to her mother's kindered" (Emphasis supplied.)

In Book III, Chapter II, Section II, Art. CXXII, of Colebrooke's Digest, we have the following texts and comments:

"She who is deprived of her husband should not reside apart from her father, mother, son, or brother, from her husband's father or mother, or from her maternal uncle; else she becomes infamous."

As per the above texts and comments, a Hindu widow if the parents-in-law's branch is unmanly or destitute of means to support her is entitled to be with the father or the kinsman on the father's side.

9. In Janki v. Nand Ram, (1889) ILR 11 All 194 (FB), a Hindu widow after the death of her father-in-law sued her brother-in-law and her father-in-law's widow. The Full Bench of the Allahabad High Court held that the father-in-law was under a moral, though not legal, obligation not only to maintain his widowed daughter-in-law during his life time, but also to make provision out of his self-acquired property for her maintenance after his death; and that such moral obligation in the father became by reason of his self-acquired property having come by inheritance into the hands of his surviving son, a legal obligation enforceable by a suit against the son and against the property in question. While so deciding, the learned Judges at page 210 made a reference to a passage from Dr. Gurudas Banerjee's Tagore Law Lectures, thus:

"We have hitherto been considering the claim of a widow for maintenance against the person inheriting her husband's estate. The question next arises how far she is entitled to be maintained by the heir when her husband leaves no property and how far she can claim maintenance from other relatives. The Hindu sages emphatically enjoin upon every person the duty of maintaining the dependant members of his family. The following are a few of the many texts on the subject:--

MANU: 'The ample support of those who are entitled to maintenance is rewarded with bliss in heaven; but hell is the portion of that man whose family is afflicted with pain by his neglect: therefore let him maintain his family with the utmost care.'

NARADA: 'Even they who are born, or yet unborn and they who exist in the womb, require funds for subsistence; deprivation of the means of subsistence is reprehended.'

BRIHASPATI: 'A man may give what remains after the food and clothing of his family, the giver of more who leaves his family naked and unfed, may taste honey at first, but still afterwards find it poison.' "

The text of MANU as added reads:

"He who bestows gifts on strangers, with a view to worldly fame, while he suffers his family to live in distress, though he has power to support them, touches his lips with honey, but swallows poison; such virtue is counterfeit: even what he does for the sake of his future spiritual body, to the injury of those whom he is found to maintain, shall bring him ultimate misery both in this life and in the next."

Having so quoted the texts, the Full Bench based its judgment on the proposition:

> *".....under the Hindu law purely moral obligations imposed by religious precepts upon the father ripen into legally enforceable obligations as against the son who inherits his father's property."*

10. In Kamini Dassee v. Chandra Pode Handle, (1890) ILR 17 Cal 373, it is held by the Calcutta High Court that the principle that an heir succeeding to the property takes it for the spiritual benefit of the late proprietor, and is, therefore, under a legal obligation to maintain persons whom the late proprietor was morally bound to support, has ample basis in the Hindu law of the Bengal School and accordingly decreed the suit for maintenance laid by a widowed brother against her husband's brothers.

11. In Devi Prasad v. Gunvati Koer, (1894) ILR 22 Cal 410, deciding an action brought for maintenance by a Hindu widow against the brothers and nephew of her deceased husband after the

death of her father-in-law, the Calcutta High Court held that the plaintiff's husband had a vested interest in the ancestral property, and could have, even during his father's life time, enforced partition of that property, and as the Hindu law provides that the surviving coparceners should maintain the widow of a deceased coparcener, the plaintiff was entitled to maintenance.

12. In Bai Mangal v. Bai Rukmini, (1899) ILR 23 Bom 291, the statement of law of MAYNE that

> *"After marriage, her (meaning the daughter's) maintenance is a charge upon her husband's family, but if they are unable to support her, she must be provided for by the., family of her father."*

was understood to have been one of monetary character than laying down any general legal obligation. The learned Judge, Ranede, J., after examining all the authorities has broadly laid down the law, as he understood, thus:

> *"In fact, all the text writers appear to be in agreement on this point, namely, that it is only the unmarried daughters who have a legal claim for maintenance from the husband's family. If this provision fails, and the widowed daughter returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right by which her maintenance can be claimed as a charge on her father's estate in the hands of his heirs." (page 295).*

13. However, the same learned Judge, Ranede, J., in a later case in Yamuna Bai v. Manubai, (1899) ILR 23 Bom 608, expressed his absolute concurrence with the law laid down by the Allahabad High Court in Janaki's case, (1889 ILR 11 All 194) (supra), as regards the right of the widow of a predeceased son to maintenance against the estate of the deceased father-in-law in the hands of his heirs.

14. The view of Ranede, J., in Bai Man-gal's case, (1899 ILR 23 Bom 291) (supra), was further conditioned by Ammer Ali, J., in Mokhoda Dassee v. Nundo Lall Haldar, (1900) ILR 27 Cal 555, by holding that the right of maintenance is again subject to the satisfaction of the fact that the widowed sonless daughter must have been at the time of her father's death maintained by him as a dependant member of the family.

15. But, both the views of Ranede, J., in Bai Mangal's case, (1899 ILR 23 Bom 291) (supra), and Ameer Ali, J., in Mokhode Dassee's case, (1900 ILR 27 Cal 555) (supra), did not find acceptance of A. K. Sinha, J., of the Calcutta High Court in Khanta Moni v. Shyam Chand, . The learned Judge held that a widowed daughter to sustain her claim for maintenance need not be a destitute nor need be actually maintained by the father during his life time... All that she is required to prove to get such maintenance,

the learned Judge held, is that at the material time she is a destitute and she could not get any maintenance from her husband's family."

"19. In Appavu Udayan v. Nallamrnal, AIR 1949 Madras 24, the Madras High Court has to deal with the rights of daughter-in-law against her father-in-law and his estate in the hands of his heirs. There it is held that the father-in-law is under a moral obligation to maintain his widowed daughter-in-law out of his self-acquired property and that on his death if his self-acquired property descends by inheritance to his heirs, the moral liability of the father-in-law ripens into a legal one against his heirs.

20. A Full Bench of this High Court in T. A. Lakshmi Narasamba v. T. Sundaramma, AIR 1981 Andh Pra 88 held:

"The moral obligation of a father-in-law possessed of separate or self-acquired property to maintain the widowed daughter-in-law ripens into a legal obligation in the hands of persons to whom he has either bequeathed or made a gift of his property.

Under the Hindu law there is a moral obligation on the father-in-law to maintain the daughter-in-law and the heirs who inherit the property are liable to maintain the dependants. It is the duty of the Hindu heirs to provide for the bodily and mental or spiritual needs of their immediate and nearer ancestors to relieve them from bodily and mental discomfort and to protect their souls from the consequences of sin. They should maintain the dependants pf the persons of property they succeeded. Merely because the property is transferred by gift or by will in favour of the heirs the obligation is not extinct. When there is property in the hands of the heirs belonging to the deceased who had a moral duty to provide maintenance, it becomes a legal duty on the heirs. It makes no difference whether the property is received either by way of succession or by way of gift or will, the principle being common in either case."

21. It is rather pertinent to notice here that the view of Ranede, J., in Bai Mangal's case, (1899 ILR 23 Bom 291) (supra) has been dissented from specifically by the Full Bench of this High Court."

15. In view of aforesaid exposition of law, the respondent being a destitute widow can definitely enforce her claim of maintenance including residence against her in-laws and her brother-in-laws. In so far as the plea regarding petitioner No. 1 being an old aged and infirm person of 80 years having no independent source of income is concerned, the same is merit less because it is not the petitioner No. 1 alone who has been fastened with the liability to pay monthly maintenance of Rs.2000/-, but it is petitioners jointly who have been fastened with the liability.

16. With these modification, the petition is disposed of, leaving the parties to bear their own costs.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Sh. Jitender Singh ....Petitioner
Versus
State of H.P. & others ....Respondents

CWP No. 3773 of 2014 a/w Ors.
Date of decision: 29.10.2014

Constitution of India, 1950- Article 226 - **Himachal Pradesh Motor Vehicles Taxation Act, 1972**- Section 50- Petitioner filed a petition challenging the order passed by the Competent Authority under Himachal Pradesh Motor Vehicles Taxation Act, 1972- held, that Section 50 of Himachal Pradesh Motor Vehicles Taxation Act, 1972 provides remedy of appeal, therefore, Writ Petition is not maintainable. (Para- 9 to 10)

For the petitioner(s) : Mr. Varun Thakur, Advocate.
For the respondents: Mr. Shrawan Dogra, Advocate General with Mr. Romesh Verma, Additional Advocate General, Mr. J.K. Verma and Mr. Kush Sharma, Deputy Advocate Generals.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

In all these writ petitions, the petitioners have called in question the orders made by the competent authority, in terms of the Himachal Pradesh Motor Vehicles Taxation Act, 1972 read with the Revenue Recovery Act, 1980, whereby the District Collector-cum-Deputy Commissioner, Sirmour at Nahan, Himachal Pradesh, was asked to effect the recovery as land revenue.

2. We deem it proper to dispose of all these writ petitions by this common judgment for the reason that similar questions are involved.

3. The moot question is-whether these writ petitions are maintainable?

4. We had an occasion to hear and decide a batch of writ petitions, the lead case of which was CWP No. 4779/2014, titled as M/s Indian Technomac Company Ltd. versus State of Himachal Pradesh and others, decided on 4th August, 2014, whereby it was held that the writ petitions were not maintainable and came to be dismissed by providing that the writ petitioners are at liberty to seek appropriate remedy for the reason that the writ petitioners had an alternative remedy available, i.e. the remedy of appeal.

5. Feeling aggrieved by the aforesaid judgment, the petitioners filed the Special Leave to Appeal (C) No. 22626-22641/2014, before the Apex Court, was dismissed vide judgment and order, dated 22nd August, 2014 and the judgment, *supra,* passed by this Court came to be upheld.

6. It is apt to reproduce Section 15 of the Himachal Pradesh Motor Vehicles Taxation Act, 1972, herein:

"(1) An appeal shall lie to the appellate authority appointed by the State Government in this behalf, against any original order passed under this Act, within thirty days of the passing of such order or within such period as the appellate authority may, for sufficient cause allow:

Provided that no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed and penalty imposed has been paid;

Provided further that such authority, if satisfied that an owner is unable to make such payment, may, for reasons to be recorded in writing entertain an appeal without such payment having been made"

7. While going through the aforesaid Section, one comes to an inescapable conclusion that the petitioners have right of appeal, thus are having alternative remedy available.

8. We have taken note of the Apex Court judgments in the judgment passed in CWP No. 4779/2014, *supra.* It is apt to reproduce paras 12 to 16 of the said judgment herein:-

12. The Apex Court in **Union of India and another vs. Guwahati Carbon Limited, (2012) 11 SCC 651,** while dealing with the similar question, has observed in paragraphs 8, 9, 10, 11, 14 and 15 as under:

"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta, AIR 1979 SC 1250. In the said decision, this Court was pleased to observe that: (SCC p.88, para 23)

"23. ..... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner and all the -other forums and modes of seeking remedy are excluded."

9. A Bench of three learned Judges of as Court, in Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433, held: (SCC p.440, para 11)

"11.....The Act provides for a complete-machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognized that where right or liability is created by a statute which gives a special remedy for 1 enforcing it, the remedy provided by that statute must be availed...."

10. In other words, existence of an adequate alternate remedy is a factor to be considered by the writ court before exercising its writ jurisdiction (See Rashid Ahmed v. Municipal Board, Kairana, 1950 SCR 566).

11. In Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1, this Court held:

> *"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of the Fundamental Rights or where there has been a violation of the principle of natural justices or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged....."*
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> *14. Having said so, we have gone through the orders passed by the Tribunal. The only determination made by the Tribunal is with regard to the assessable value of the commodity in question by excluding the freight/ transportation charges and the insurance charges from the assessable value of the commodity in question. Since what was done by the Tribunal is the determination of the assessable value of the commodity in question for the purpose of the levy of duty under the Act, in our opinion, the assessee ought to have carried the matter by way of an appeal before this Court under Section 35L of the Central Excise Act, 1944.*
>
> *15. In our opinion, the assessee ought not to have filed a writ petition before the High Court questioning the correctness or otherwise of the orders passed by the Tribunal. The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution. Therefore, the learned Single Judge was justified in observing that since the assessee has a remedy in the form of a right of appeal under the statute, that remedy must be exhausted first. The order passed by the learned Single Judge, in our opinion, ought not to have been interfered with by the Division Bench of the High Court in the appeal filed by the respondent/assessee."*

13. The Apex Court in **Nivedita Sharma vs. Cellular OperatorsAssociation of India and others, (2011) 14 SCC 337,** after discussing its various earlier decisions, held that the High Court had committed error in entertaining the writ petition without noticing and referring to the relevant provisions of law applicable in that case, which contained statutory remedy of appeal and accordingly set aside the order of the High Court in terms of which the writ petition was entertained. It is apt to reproduce paragraphs 24 and 25 hereunder:

> *"24. Section 19 provides for remedy of appeal against an order made by the State Commission in exercise of its powers under*

sub-clause (i) of Clause (a) of Section 17. If Sections 11, 17 and 21 of the 1986 Act which relate to the jurisdiction of the District Forum, the State Commission and the National Commission, there does not appear any plausible reason to interpret the same in a manner which would frustrate the object of legislation.

25. What has surprised us is that the High Court has not even referred to Sections 17 and 19 of the 1986 Act and the law laid down in various judgments of this Court and yet it has declared that the directions given by the State Commission are without jurisdiction and

that too by overlooking the availability of statutory remedy of appeal to the respondents."

14. The Apex Court in a recent decision in **Commissioner of Income Tax and others vs. Chhabil Dass Agarwal, (2014) 1 SCC 603,** has discussed the law, on the subject, right from the year 1859 till the date of judgment i.e. 8th August, 2013. We deem it proper to reproduce paragraphs 12, 13, 15, 16 and 17 hereunder:

"12. The Constitution Benches of this Court in K.S. Rashid and Sons vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089, have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. (See: N.T. Veluswami Thevar vs. G. Raja Nainar, AIR 1959 SC 422; Municipal Council, Khurai vs. Kamal Kumar, (1965) 2 SCR 653; Siliguri Municipality vs. Amalendu Das, (1984) 2 SCC 436; S.T. Muthusami vs. K. Natarajan, (1988) 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, (1995) 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan, (2000) 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., (2001) 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj); Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra, (2001) 8 SCC 509; Pratap Singh vs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, (2003) 1SCC 72).

13. In Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: (SCC pp.343-45 paras 12-14)

"12. In Thansingh Nathmal v. Supdt. of Taxes, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

'7. … The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.'

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11)

'11. … It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford, 141 ER 486 in the following passage: (ER p. 495)

"… There are three classes of cases in which a liability may be established founded upon a statute. … But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. … The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd., 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney General of

Trinidad and Tobago v. Gordon Grant and Co. Ltd., 1935 AC 532 (PC) and Secy. of State v. Mask and Co., AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.'

14. In Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

'77. … So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.'" (See: G. Veerappa Pillai v. Raman & Raman Ltd., AIR 1952 SC 192; CCE v. Dunlop India Ltd., (1985) 1 SCC 260; Ramendra Kishore Biswas v. State of Tripura, (1999) 1 SCC 472; Shivgonda Anna Patil v. State of Maharashtra, (1999) 3 SCC 5; C.A. Abraham v. ITO, (1961) 2 SCR 765; Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433; H.B. Gandhi v. Gopi Nath and Sons, 1992 Supp (2) SCC 312; Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1; Tin Plate Co. of India Ltd. v. State of Bihar, (1998) 8 SCC 272; Sheela Devi v. Jaspal Singh, (1999) 1 SCC 209 and Punjab National Bank v. O.C. Krishnan, (2001) 6 SCC 569)

14. In Union of India vs. Guwahati Carbon Ltd., (2012) 11 SCC 651, this Court has reiterated the aforesaid principle and observed: (SCC p.653, para 8)

"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

'23. … when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.'"

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15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case AIR 1964 SC 1419, Titagarh Paper Mills case 1983 SCC (Tax) 131 and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by

law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case. In light of the same, we are of the considered opinion that the Writ Court ought not to have entertained the Writ Petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the re-assessment orders passed and the consequentialdemand notices issued thereon."

15. The decisions referred to by the learned counsel for the petitioners have been discussed by the Apex Court in the decisions of **Union of India and another vs. Guwahati Carbon Limited, Nivedita Sharma vs. Cellular Operators Association of India and others** and **Commissioner of Income Tax and others vs. Chhabil Dass Agarwal**, referred to hereinabove.

16. The sum and substance of the above discussion is that the writ petitioners-Company have remedies of appeal(s), before approaching the High Court by way of the writ petitions, for the redressal of their grievances. The petitioners ought to have exhausted the remedy of appeal before the Deputy Excise and Taxation Commissioner or Additional Excise and Taxation Commissioner or the Excise Commissioner, as the case may be, and if the petitioners were not successful in those appeal proceedings, another remedy available to them was to challenge the said order(s) by the medium of appeal before the Tribunal, and again, if they were unsuccessful, they could have availed the remedy of revision before the High Court in terms of Section 48 of the HP VAT Act, 2005. Keeping in view the above discussion, read with the fact that the dispute raised in these writ petitions relates

to revenue/tax matters, it can safely be concluded that the petitioners have sufficient efficacious remedy(ies) available."

9. In view of the ratio laid down by the Apex Court in the aforesaid judgments, the writ petitions are not maintainable.

10. These writ petitions are also to be dismissed on the ground that the petitioners have not questioned the main order, whereby the tax liability stands determined and the writ petitioners were held liable to pay tax.

11. With these observations, all these writ petitions are dismissed, alongwith pending applications. However, the petitioners are at liberty to seek appropriate remedy within three weeks. Till then, the interim order dated 28.05.2014 to continue.

12. It is also provided that the period spent by the petitioners for prosecuting these writ petitions shall be excluded by the Appellate Authority while computing the period of limitation.

13. A copy of this judgment be placed on each file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.
HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J.

Ashwani Kumar ...Petitioner.

Versus

Himachal Pradesh State Electricity Board & others ...Respondents.

CWP No. 811 of 2011 a/w Ors.
Decided on: 30.10.2014

Constitution of India, 1950- Article 226- Petitioners, who were appointed against the disability quota, claimed that they should be considered for appointment on regular basis from the date of their appointment on contractual basis- held, that in view of mandate of Supreme Court of India of granting reservation to persons with disability, direction issued to the opposite party to consider the case of the petitioners and to take action within 8 weeks. (Para-5)

Case referred:

Union of India & Anr. versus National Federation of the Blind & Ors., (2013) 10 SCC 772

For the petitioner(s): Mr. Ankush Dass Sood & Ms. Shweta Joolka, Advocates.

For the respondents: Mr. Satyen Vaidya & Mr. Rajpal Thakur, Advocates.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Petitioners have sought writ of mandamus commanding the respondents to consider them as having been appointed on regular basis

from the date(s) of their appointment on contractual basis and to pay all emoluments to the petitioners to which they are entitled as regular employees, on the grounds taken in the memo of respective writ petitions.

2. Learned counsel for the petitioners stated that State has already complied with the mandate of the Apex Court judgments and the Rules occupying the field as per the averments contained in the writ petitions but only the Electricity Board has wrongly made appointment of the handicapped candidates/persons on contract basis, which is not in tune with the judgments of the Apex Court and this Court.

3. Learned counsel for the petitioners has placed reliance on the judgments rendered by the Apex Court in the case tiled as **Union of India & Anr. versus National Federation of the Blind & Ors.,** reported in **(2013) 10 SCC 772; Union of India and others versus National Confederation for Development of Disabled and Anr.,** being **SLP (C) No. 13344 of 2014,** decided on 12th September, 2014; and by this Court in **CWP No. 192 of 2004,** titled as **Ankush Dass Sood versus State of H.P. and others,** decided on 22nd June, 2007.

4. On the last date of hearing, Mr. Satyen Vaidya, Advocate, was asked to seek instructions. He has sought instructions and stated that it is a fact that the respondents have not complied with the mandate of law.

5. Keeping in view the averments contained in the writ petition, the law laid down by the Apex Court and this Court read with the mandate of granting reservation to the handicapped persons/candidates, we deem it proper to direct the respondents to consider the case of the petitioners in light of the judgments (supra), make a decision and pass follow up orders within eight weeks enabling them to reap all the fruits.

6. The writ petitions are disposed of, as indicated hereinabove, alongwith all pending applications.

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BEFORE HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE.

UCO Bank .....Decree-holder/Non applicant.
Vs.
Smt. Sandhya Devi and others .... Judgement Debtors.

OMP Nos. 331 of 2014 and 520 of 2011
in Ex.P. No.2 of 2004.
Date of decision: 30.10.2014.

Code of Civil Procedure, 1908- Section 50- Properties of the applicant, legal representative of original Judgment Debtor, were ordered to be attached - he filed an application for releasing the properties from attachment on the ground that the properties were self acquired by him

and could not have been attached- the fact that the properties were self acquired was not disputed by the decree holder- held, that the legal representatives of the judgment debtor are liable for the debts of the deceased only to the extent of estate acquired by them- once the decree holder does not dispute that the properties are self acquired and that the applicant is the legal representative of the original judgment debtor, properties of applicant could not be attached and put to sale.

(Para- 2 to 5)

For the decree holder : Mr. J.L. Kashyap, Advocate.
For the judgement-debtors: Mr. Anirudh Shrma, Advocate vice Mr. OC. Sharma, Advocate, for JD Nos. 1 & 2.
Mr. Neeraj Gupta, Advocate, for JD Nos.3 to 5/ JD No.2(v)-applicant.

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge.

This order shall dispose of an application preferred by the judgement-debtor No.2(v) (hereinafter referred to as the applicant) under Order 21 Rule 58 (1) & 2 read with section 151 CPC for releasing his following properties (hereinafter referred to as the properties) from attachment:-

> "(a) Immovable property comprised in Khata Khatauni No. 194min/497, Khasra No. 2301/520 measuring 88 sq. mtrs situated in Mauja Basal, Patti Khas, Tehsil and District Solan (HP) as entered in the jamabandi for the year 1999-2000.
>
> (b) Immovable property comprised in Khata Khatauni No. 194min/496, Khasra No. 2300/520 measuring 84 sq. mtrs situated in Mauja Basal, Patti Khas, Tehsil and District Solan (HP) mortgaged with the Baghat Cooperative Bank Solan for Rs.1,00,000/-. Against such property it was mentioned by the decree holder that this property be sold subject to the mortgage in which case the decree holder-non applicant bank prayed that it would be a second charge over the property."

2. Indisputedly, the applicant is not the original judgement-debtor and is only the legal-representative of original judgement-debtor No.2 Rama Nand, who expired during the pendency of the execution and his legal-representatives were ordered to be brought on record vide order dated 3.1.2005 passed in OMP No. 266 of 2004. The applicant has sought removal of the attachment on the grounds that the properties mentioned above are his self acquired property and had not been inherited from his late father Rama Nand, and therefore, in terms of Section 50 of the Code of Civil Procedure, the same could not be attached. How the properties in question are his personal/ self acquired properties

has been set out in detail in paragraphs-5 and 6 of the application, which reads thus:-

> "5. That it may be submitted that the aforesaid property attached pursuant to the orders passed by the Hon'ble Court is the personal property/self-acquired property of Shri Harinder Pal son of Late Shri Rama Nand judgment debtor No.2 (v), hence could not be attached in execution towards satisfaction of the decree. It is settled law that the legal heirs of the judgment debtors would be liable only to the extent they inherit the estate of deceased and not beyond that. It is submitted that the property mentioned at Sl. No.(a) above was purchased by the applicant vide Sale Deed No.221 dated 23.4.1996 from one Shri Sarnia for a sum of Rs.45,000/-. Pursuant to the sale made in favour of the judgment debtor-applicant Mutation No.1179 was attested in his favour on 15.6.1996 by the Assistant Collector Second Grade Solan. Copy of which is annexed as Annexure R-1.
>
> 6. That similarly in respect of property mentioned at Sr.No.(b) above, the said property was purchased by Shri Harinder Pal son of Late Shri Rama Nand judgment debtor No.2(v) on the basis of Relinquishment Deed as per Rapat No.608 dated 14.3.2003. On the basis of the aforesaid transaction Mutation No.2151 was attested in favour of the judgment debtor-applicant on 15.3.2003, copy of which is annexed herewith and marked as Annexure R-2."

3. The decree holder filed his reply to this application, wherein it has not been denied that the aforesaid properties are the self acquired properties of the applicant, but it is stated that these properties can still be attached and sold in realization of the amount of decree and there is no illegality by putting these properties to sale.

4. Section 50 of Code of Civil Procedure reads thus:-

> **"S. 50. Legal Representative.-** (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.
>
> (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit."

5. Now in case sub-section (2) of Section 50 of the Code of Civil Procedure is seen, it leaves no manner of doubt that legal representatives of judgement-debtor are liable for the debts of the deceased only to the extent of estate acquired by these legal-representatives. The liability of such legal representatives in execution proceedings is therefore confined to the properties of the deceased which has actually come into their hands. Once the decree holder does not dispute the "properties" to be the self acquired properties of the applicant and further does not dispute that the applicant is not the original judgement debtor and is only one of the legal representatives of the

original judgement debtor, then the properties of applicant No. 2 cannot be attached and put to sale.

6. From the records, it appears that though the decree holder has sought the attachment of the properties of the judgement debtor by filing OMP No. 520 of 2011, however, no orders have been passed in this application. But, then this court need not wait for the attachment orders because once it is proved on record that he is not the original judgement debtor and has come on record as one of the legal representatives of the original judgement-debtor No.2 and once it is proved on record that properties in his hand are self acquired/ individual property, therefore, these cannot be attached and put to sale.

7. Accordingly, application, being OMP No. 331 of 2014, is allowed in the aforesaid terms and consequently OMP No. 520 of 2011 seeking attachment of the properties of the judgement debtor No. 2 is dismissed.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

H.R.T.C. ...Appellant.
Vs.
Indus Hospital and another ...Respondents.

FAO No. 408 of 2007
Decided on: 31.10.2014

Motor Vehicle Act, 1988- Section 166- Appellant contended that amount received by the claimant from the insurer should be deducted from the total compensation awarded to him- held, that the amount received by the claimant from the Insurance Company regarding the damage of his vehicle cannot be deducted from the total amount of compensation. (Para-4 to 7)

Case referred:
Oriental Insurance Co. versus K.P. Kapur & Ors., I (1997) SCC 138

For the appellant: Mr. H.S. Rawat, Advocate.
For the respondents: Mr. V.S. Chauhan, Advocate, for respondent No. 1.
Mr. H.S. Rangra, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

This appeal is directed against the award, dated 4th July, 2007, made by the Motor Accident Claims Tribunal, Fast Track Court, Shimla, Himachal Pradesh, (hereinafter referred to as "the Tribunal) in M.A.C. No. 116-S/2 of 2005, titled as Indus Hospital versus Himachal Road Transport Corporation and another, whereby compensation to the tune of Rs. 60,000/- came to be awarded in favour of the claimant

(hereinafter referred to as "the impugned award") on the grounds taken in the memo of appeal.

2. The claimants and the driver have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Only the appellant-HRTC has questioned the same on the grounds taken in the memo of appeal.

4. Learned counsel for the appellant argued that the claimant has received Rs. 28,198/- from the insurer of its vehicle; that amount should be deducted from the total compensation awarded and the appellant should be fastened with liability to pay the rest of the amount.

5. The Tribunal has considered this argument and the same has been replied in para 20 of the impugned award.

6. I have gone through the judgment relied upon by the Tribunal in the case titled as **Oriental Insurance Co. versus K.P. Kapur & Ors.,** reported in **I (1997) SCC 138.** I deem it proper to reproduce para 5 and relevant portion of para 6 of the judgment herein:

> *"5. As regards the contention of Mr. Kishore Rawat that even if it was a total loss, the salvage value has to be deducted. I am afraid this argument is of no substance because this issue was not raised before the Tribunal nor the claimant had been given any opportunity to rebut the same. He cannot be taken by surprise with this new argument at appellate stage.*
>
> *6. .....There is no reason or justification in setting off what the appellant being entitled to receive under his contract with his Insurance company i.e., a third party. He had bargained for the payment of a sum of money in the event of accident happening and his car being damaged. Appellant insured his car with the Insurance Company and bargained for the payment of a sum of money on the clear stipulation that in the event of accident happening to his car he would be reimbursed. He did not receive the amount of Rs. 36,000/- from his Insurance Company because of this accident but because of the contract entered into by him with his Insurance Company. The pre-condition was the happening of an accident. The said Insurance Company on the happening of the accident was to reimburse him for the damage of his car. Therefore, it cannot be said that by claiming damages under the Act because of the rash and negligent driving of the driver of the DTC bus and due to damage of his car he would be debarred from claiming compensation under the Act, nor claiming such a compensation under the Act would amount to unjust enrichment."*

7. Applying the test to the instant case, I am of the considered view that the Tribunal has rightly considered the plea and rejected the same.

8. Viewed thus, the appeal merits to be dismissed. Accordingly, the appeal is dismissed and the impugned award is upheld.

9. The awarded amount be released in favour of the claimant strictly in terms of the impugned award through payee's account cheque.

10. Send down the records after placing copy of the judgment on Tribunals' file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Company Ltd. ...Appellant
Vs.
Neelam and others. ...Respondents.

FAO No.448 of 2007
Decided on: October 31, 2014.

Motor Vehicle Act, 1988- Section 168- Tribunal had not given the details as to how the compensation of ₹ 3,65,000/- was awarded by it- findings recorded by the Tribunal are not based upon the correct appreciation of facts- however, the parties settled the matter at ₹ 2,50,000/- along with interest at the rate of 7% per annum from the date of filing of the claim petition till deposit. (Para- 3 to 6)

For the Appellant: M.Ashwani Sharma, Advocate.
For the Respondents: Mr.J.R. Poswal, Advocate, for respondents No.1 and 2.
Mr.Ramakant Sharma, Advocate, for respondents No.3 and 4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (oral):

This appeal is directed against the award, dated 21st May, 2007, passed by Motor Accident Claims Tribunal, Fast Track Court, Solan, Camp at Nalaharh, H.P., (hereinafter referred to as the Tribunal), in Claim Petition No.14FTN/2 of 2005, titled Neelam and another vs. Gurnam Singh and others, whereby compensation to the tune of Rs.3,65,000/-, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till deposit of the amount, was awarded in favour of the claimants (respondents No.1 and 2 herein) and the insurer was directed to satisfy the same, (for short, the impugned award).

2. The claimants, the owner and the driver have not questioned the impugned award, thus, the same has attained finality so far as it relates to them.

3. During the course of hearing, the learned counsel for the insurer-appellant only challenged the findings recorded by the Tribunal in

paragraph 11 of the impugned award and submitted that the amount awarded by the Tribunal is excessive and that it is not known as to how the Tribunal assessed the compensation to the tune of Rs.3,65,000/-. Thus, the challenge to the impugned award is only on the ground that the same is excessive. No other point was urged by the learned counsel for the appellant during the course of hearing.

4. The only question is whether the Tribunal has rightly awarded the compensation. I have gone through the impugned award. The findings recorded by the Tribunal in paragraph 11 appears to be not based upon correct appreciation of facts for the reason that the Tribunal has not assigned any reason as to how the Tribunal assessed the compensation and awarded the amount.

5. On noticing the above, the learned counsel for the claimants stated that the claimants would be satisfied if an amount of Rs.2,50,000/-, in lump sum, with interest at the rate of 7.5% per annum, is awarded in favour of the claimants. The learned counsel for the appellant has no objection in settling the claim, in the aforesaid terms. Learned counsel for the driver and the owner also made the same statement. Their statements are taken on record.

6. In view of the above, with the consent of the learned counsel for the parties, the impugned award is modified and the claimants (respondents No.1 and 2) are held entitled to compensation to the tune of Rs.2,50,000/-, in lump sum, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till deposit and the excess amount, in any, alongwith interest, be released in favour of the insurer-appellant through payee's account cheque.

7. The appeal stands disposed of accordingly.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Oriental Insurance Company ...Appellant.
Versus
Smt. Prabha Devi & others ...Respondents.

FAO No. 435 of 2007
Decided on: 31.10.2014

Motor Vehicle Act, 1988- Section 149- the owner deposed that she had checked the driving licence of the driver at the time of employment- licence was found fake on inquiry- held, that the owner had taken every possible steps to check the correctness of the driving licence- Insurance company had not led any evidence to prove that any breach was committed by the owner- Insurance Company held liable to indemnify the insured. (Para 10-14)

Motor Vehicle Act, 1988- Section 149- Claimant had proved that the deceased had purchased steel, cement and binding wires from a shop and was travelling in the offending vehicle as owner of the goods - no evidence

was led by the insurer to prove that the deceased was travelling as a gratuitous passenger- held, that the version of the insurance company that the deceased was travelling as a gratuitous passenger was not proved. (Para 16)

Cases referred:
National Insurance Co. Ltd. versus Swaran Singh and others, AIR 2004 Supreme Court 1531
Pepsu Road Transport Corporation versus National Insurance Company, (2013) 10 Supreme Court Cases 217

For the appellant: Mr. Lalit K. Sharma, Advocate.
For the respondents: Mr. B.S. Chauhan, Advocate, for respondents No. 1 and 2.
Mr. Shashi Sirshoo, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Challenge in this appeal is to the award, dated 4th August, 2007, made by the Motor Accident Claims Tribunal (II), Shimla, H.P. (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 14-S/2 of 2003, titled as Smt. Prabha Devi and another versus Smt. Krishna Shail and another, whereby compensation to the tune of ` 3,00,000/- with interest @ 7.5% per annum from the date of the petition came to be awarded in favour of the claimants (hereinafter referred to as "the impugned award), on the grounds taken in the memo of appeal.

Brief Facts:

2. The claimants have sought compensation to the tune of ` eleven lacs, as per the break-ups given in the claim petition, on the ground that deceased, Shri Sanjeev, became victim of motor vehicular accident caused by the driver, namely Shri Ajeet Pundeer, on 24th January, 2003, at Jhal-Nullah, while driving the truck, bearing registration No. HP-51-1556, rashly and negligently.

3. The owner and the insurer have resisted the claim petition on the grounds taken in the respective memo of objections.

4. Following issues came to be framed by the Tribunal on 7th March, 2006:

> *"1. Whether on 24.1.2003 at 10 PM at Tihana, the driver of truck No. HP-51-1556 rashly and negligently and as such caused death of Sh. Sanjeev? OPP*
>
> *2. If issue No. 1 is proved in affirmative, to what amount of compensation the petitioners are entitled and from whom? OPP*
>
> *3. Whether the driver of truck No. HP-51-1556 was not holding a valid and effective driving licence? OPR*

4. Whether the deceased was an unauthorized passenger in the truck? OPR

5. Whether the vehicle was being driven without fitness certificate and route permit?OPR

6. Relief."

5. The claimants examined Dr. Ashok Chauhan as PW-2, Shri Sumesh Thakur as PW-3, Shri Rajinder Singh as PW-4, HC Vijay Kumar as PW-5 and one of the claimants, namely Smt. Prabha Devi, appeared in the witness box as PW-1. The owner-insured, namely Smt. Krishana Shail, herself appeared in the witness box as RW-1. The insurer has examined Shri Vikas Wig as RW-2 and Shri Naresh Kumar as RW-3.

6. The Tribunal, after scanning the evidence, oral as well as documentary, held that the driver had driven the offending vehicle rashly and negligently on 23rd January, 2004, and had caused the accident, in which Shri Sanjeev, son of the claimants, died. The findings returned by the Tribunal on issue No. 1 are not in dispute, thus, are accordingly upheld.

7. Before I deal with issue No. 2, I deem it proper to determine issues No. 3 to 5.

Issue No. 3:

8. The appellant-insurer had to discharge the onus to prove this issue, had led evidence to the effect that the driving licence of the driver was fake.

9. Learned counsel for the appellant-insurer argued that the driver of the offending vehicle was not having a valid and effective driving licence, thus, the appellant-insurer was not liable to pay the compensation.

10. The appellant-insurer has not proved that the owner-insured had committed any willful breach in terms of the mandate of Section 149 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") read with the terms and conditions of the insurance policy. In fact, it has not led any evidence to the effect that the owner-insured has not discharged her duty.

11. The owner-insured, namely Smt. Krishna Shail, while appearing as RW-1, has specifically stated that she has examined the driving licence before engaging Shri Ajeet Pundeer as driver. In her cross-examination, she has refuted the suggestion that she had not verified that Ajeet Pundeer was having driving licence or not. It is apt to reproduce relevant portion of the cross-examination of the owner-insured herein:

".....It is incorrect that I did not see and verify whether Ajeet Pundeer was having driving licence or not. It is incorrect that I did not see his driving licence. It is incorrect that I have made a wrong statement in this context."

12. The Apex Court in a case titled as **National Insurance Co. Ltd. versus Swaran Singh and others,** reported in **AIR 2004 Supreme Court 1531,** has laid down principles, how insurer can avoid its liability. It is apt to reproduce relevant portion of para 105 of the judgment in **Swaran Singh's case (supra):**

> *"105. .....*
>
> *(i) .....*
>
> *(ii) .....*
>
> *(iii) .....*
>
> *(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.*
>
> *(v).....*
>
> *(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."*

13. It would also be profitable to reproduce para 10 of the judgment rendered by the Apex Court in **Pepsu Road Transport Corporation versus National Insurance Company,** reported in **(2013) 10 Supreme Court Cases 217,** hereinbelow:

> *"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the*

> *extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."*

14. Having said so, I am of the considered view that the insurer has failed to prove that the owner-insured has committed any willful breach. The owner-insured has discharged her duty by examining the driving licence before employing the driver. Thus, the Tribunal has rightly recorded the findings on issue No. 3 and has not committed any error in saddling the appellant-insurer with liability. Accordingly, findings returned on issue No. 3 are upheld.

Issue No. 4:

15. Learned counsel for the appellant-insurer argued that the deceased was travelling as a gratuitous passenger in the offending vehicle. The appellant-insurer has not led any evidence to this effect, thus, has failed to discharge the onus.

16. The claimants have examined Shri Sumesh Thakur as PW-3 to prove that the deceased had purchased steel, cement and binding wires from his shop and was travelling in the offending vehicle as owner of the said goods. Thus, issue No. 4 came to be rightly decided in favour of the claimants and against the appellant-insurer and the findings are accordingly upheld.

Issue No. 5:

17. The appellant-insurer has not led any evidence to prove that the offending vehicle was being driven without fitness certificate and route permit. The Tribunal has rightly decided this issue against the appellant-insurer and is accordingly upheld.

Issue No. 2:

18. The adequacy of compensation is not in dispute. The findings returned on issue No. 2 are upheld.

19. Having said so, the appeal merits to be dismissed. Accordingly, the appeal is dismissed and the impugned award is upheld.

20. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee's account cheque.

21. Send down the records after placing copy of the judgment on Tribunal's file.

****

BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C. J.

Pr.Chief Conservator of Forests and Anr. ...Appellant
Vs.
Banita Kumari and Anr. ...Respondents.

FAO No.452 of 2007
Decided on: October 31, 2014.

Motor Vehicle Act, 1988- Section 166- Tribunal had awarded the compensation of ₹1,69,000/-, along with interest at the rate of 7.5% per annum from the date of filing of the claim petition - held, that the claimants had established that the driver had driven the vehicle in a rash and negligent manner and had hit the scooter on which the claimant was travelling as a pillion rider- amount awarded in favour of the claimant was inadequate but he had not questioned the award- hence award was upheld reluctantly. (Para- 7 to 11)

For the Appellants: Mr.M.A. Khan, Addl.A.G. and Mr.J.K. Verma, Dy.A.G.
For the Respondents: Mr.G.R. Palsara, Advocate, for respondent No.1.
Mr.Vinod Gupta, Advocate, for respondent No.2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (oral):

The appellants-State has questioned the award, dated 25th July, 2007, passed by Motor Accident Claims Tribunal (II), Mandi, H.P., (hereinafter referred to as the Tribunal), in Claim Petition No.52 of 2003, titled Banita Kumari vs. The Principal Chief Conservator of Forest and others, whereby compensation to the tune of Rs.1,69,000/-, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimant (respondent No.1 herein) and against the respondents i.e. appellants herein, (for short, the impugned award).

Brief facts:

2. Claimant became the victim of a vehicular accident, which was caused on 2nd March, 2003, by the driver, namely, Sohan Lal, while driving Ambassador Car No.HP-03-2335, rashly and negligently and

hit the scooter bearing No.HP-33-4902, at Salah in Sundernagar, on which the claimant was traveling as pillion rider, as a result of which the claimant sustained injuries. The said scooter was being driven by the husband of the claimant. The claimant sought compensation to the tune of Rs.5.00 lacs, as per the break-ups given in the claim petition.

3. Appellants and the driver of the offending Car resisted the Claim Petition.

4. On the pleadings of the parties, the following issues were framed by the Tribunal:

> *"1. Whether the petitioner sustained injuries due to the rash and negligent driving of Car No.HP-03-2335 on 2.3.2004 at place Salah (Sundernagar) being driven by respondent No.2 as alleged? OPP*
>
> *2. If issue No.1 is proved in affirmative, to what amount of compensation, the petitioners are entitled to and from whom? OPP*
>
> *3. Relief."*

5. The claimant, in order to prove her claim, examined as many as five witnesses, including herself and also produced on record documents i.e. Ext.PW-3/A (discharge slip), Ext.PW-3/B (copy of MLC) and Exts.PW-5/A-1 to PW-5/A-36 (copies of medical bills).

6. The appellants and the driver of the offending vehicle examined three witnesses.

7. After scanning the entire evidence, the Tribunal held that the claimant had proved that the driver had driven the offending vehicle rashly and negligently and accordingly decided issue No.1 in favour of the claimant.

8. The findings recorded by the Tribunal under issue No.1 are not under challenge before this Court. The only dispute is that the amount of compensation awarded by the Tribunal is excessive. However, I have gone through the record of the case. The claimant has established that the driver had driven the offending vehicle rashly and negligently and hit the scooter on which the claimant was traveling as pillion rider, as a result of which the claimant sustained injuries. Therefore, the findings recorded under Issue No.1 are upheld.

Issue No.2:

9. Onus to prove this issue was upon the petitioner and in order to discharge the same, the claimant examined PW-1 Dr.Sanjeev Kapoor, who has proved the disability certificate Ext.PA and stated that the claimant had suffered 20% permanent disability, which has also affected the earning capacity of the claimant. The Claimant also examined Chander Gopal, Chief Pharmacist, Civil Hospital, Sundernagar, as PW-3, who has proved that the claimant was admitted in the Hospital on 2nd March, 2003 and was discharged on 7th March, 2003. He has also proved the discharge slip as Ext.PW-3/A and the MLC as Ext.PW-3/B.

10. The Tribunal recorded reasons in paragraphs 22 to 26 and 29 of the impugned award, while holding the claimant entitled to compensation to the tune of Rs.1,69,000/-.

11. After going through the impugned award and the record of the case, I am of the opinion that the amount awarded in favour of the claimant is inadequate. However, since the claimant has not questioned the impugned award, the same is reluctantly upheld.

12. Accordingly, the appeal is dismissed. The Registry is directed to release the amount in favour of the claimant strictly in terms of the impugned award.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

United India Insurance Company Ltd. .....Appellant.
Versus
Sh. Jai Krishan and others ...Respondents.

FAO (MVA) No. 315 of 2007.
Date of decision: 31st October, 2014.

Motor Vehicle Act, 1988- Section 173- the insurer cannot question the award on the ground of adequacy of compensation- however, on facts it was held that the awarded compensation was just and adequate - Appeal dismissed. (Para-4 and 5)

Case referred:
Josphine James vs. United Insurance Company Ltd. and anr., 2013 AIR (SCW) 6633

For the appellant: Mr. P.S. Chandel, Advocate.
For the respondents: Mr.Aman Sood, Advocate,, for respondent No. 1.
Mr.G.R.Palsara, Advocate, for respondents No. 2 and 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice, *(Oral).*

The insurer-appellant has questioned the judgment and award dated 2.3.2007, passed by the Motor Accident Claims Tribunal, Mandi, H.P., for short "The Tribunal" in Claim Petition No. 37 of 2004, titled *Jai Krishan vs. Sh. Narender Singh and others,* whereby compensation to the tune of Rs.3,54,800/-, with 6% interest per annum came to be awarded in favour of the claimant and against the respondents, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal.

2. The insured, driver, owner and claimant have not questioned the impugned award on any grounds, thus it has attained finality so far it relates to them.

3. The insurer-appellant has questioned the impugned award only on the ground of adequacy of compensation. No other ground is urged.

4. The moot question is whether the insurer can question the impugned award on the ground of quantum. The question stands replied by the apex Court in a recent judgment titled ***Josphine James vs. United Insurance Company Ltd. and anr.***, reported in **2013 AIR (SCW) 6633,** wherein it has been held that the insurer cannot question the award on the ground of quantum of compensation. It is apt to reproduce paras 8, 17 and 18 of the said judgment herein:

> *"8. Aggrieved by the impugned judgment and award passed by the High Court in MAC Appeal No. 433/2005 and the review petition, the present appeal is filed by the appellant urging certain grounds and assailing the impugned judgment in allowing the appeal of the Insurance Company without following the law laid down by this Court in Nicolletta Rohtagi's case (supra) and instead, placing reliance upon the Bhushan Sachdeva's case (supra). Nicolletta Rohtagi's case was exhaustively discussed by a three judge bench in the case of United India Insurance Company Vs. Shila Datta. Though the Court has expressed its reservations against the correctness of the legal position in Nicolletta Rohtagi decision on various aspects, the same has been referred to higher bench and has not been overruled as yet. Hence, the ratio of Nicolletta Rohtagi's case will be still applicable in the present case. The appellant claimed that interference by the High Court with the quantum of compensation awarded by the Tribunal in favour of appellant and considerably reducing the same by modifying the judgment of the Tribunal is vitiated in law. Therefore, the impugned judgments and awards are liable to be set aside.*
>
> *17. The said order was reviewed by the High Court at the instance of the appellant in view of the aforesaid decision on the question of maintainability of the appeal of the Insurance Company. The High Court, in the review petition, has further reduced the compensation to Rs. 4,20,000/- from Rs. 6,75,000/- which was earlier awarded by it. This approach is contrary to the facts and law laid down by this Court. The High Court, in reducing the quantum of compensation under the heading of loss of dependency of the appellant, was required to follow the decision rendered by three judge Bench of this Court in Nicolletta Rohtagi case (supra)and earlier decisions wherein this Court after interpreting Section 170 (b) of the M. V. Act, has rightly held that in the absence of permission obtained by the Insurance Company from the Tribunal to avail the defence of the insured, it is not permitted to contest the case on merits. The aforesaid legal principle is applicable to the fact situation in view of the three judge bench decision referred to supra though the correctness of the aforesaid decision is referred to larger bench. This important aspect of the*

matter has been overlooked by the High Court while passing the impugned judgment and the said approach is contrary to law laid down by this Court.

18. In view of the aforesaid reasons, the Insurance Company is not entitled to file appeal questioning the quantum of compensation awarded in favour of the appellant for the reasons stated supra. In the absence of the same, the Insurance Company had only limited defence to contest in the proceedings as provided under Section 149 (2) of the M.V. Act. Therefore, the impugned judgment passed by the High Court on 13.1.2012 reducing the compensation to 4,20,000/- under the heading of loss of dependency by deducting 50% from the monthly income of the deceased of Rs. 5,000/- and applying 14 multiplier, is factually and legally incorrect. The High Court has erroneously arrived at this amount by applying the principle of law laid down in Sarla Verma v. Delhi Transport Corporation instead of applying the principle laid down in Baby Radhika Gupta's case (supra) regarding the multiplier applied to the fact situation and also contrary to the law applicable regarding the maintainability of appeal of the Insurance Company on the question of quantum of compensation in the absence of permission to be obtained by it from the Tribunal under Section 170 (b) of the M.V. Act. In view of the aforesaid reason, the High Court should not have allowed the appeal of the Insurance Company as it has got limited defence as provided under section 149(2) of the M.V. Act. Therefore, the impugned judgment and award is vitiated in law and hence, is liable to be set aside by allowing the appeal of the appellant."

5. Having said so, the appeal on this ground is not maintainable. However, I have gone through the impugned award. The impugned award appears to be just and adequate for the reason that the claimant being the victim of a vehicular accident suffered injury and the Tribunal, after examining the entire evidence on the record has given the break-ups that how the claimant is entitled to compensation in para 24 of the impugned judgment. I deem it proper to reproduce para 24 of the impugned judgment herein:

"24.Keeping in view the fact that the petitioner has to carry the disability throughout his life and he would not be able to do any kind of hard work, as such, an amount of Rs.30,000/- and an equal amount for loss of amenities of life appears to be just and reasonable. The Tribunal cannot ignore the fact that petitioner is unmarried and disability has certainly reduced marital prospects of the petitioner. As such, the petitioner is awarded the amount of compensation under different heads as under:-

1.	*Medical expenses:*	*=Rs.52,000.00*
2.	*Attendant charges:*	*=Rs.15,000.00*
3.	*Taxi fare:*	*=Rs.23,800.00*
4.	*Loss of income:*	*=Rs.2,04,000.00*
5.	*Pain and suffering:*	*=Rs.30,000.00*
6.	*Loss of amenities of*	*=Rs.30,000.00*
	Total	*=Rs.3,54,800.00"*

6. As a corollary to the aforesaid discussion, the appeal merits dismissal and is accordingly dismissed and the impugned award is upheld. CMP No. 721 of 2007, is dismissed as not pressed.

7. Send down the record, forthwith.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

FAO No. 325 of 2006
a/w FAO No. 24 of 2008
Reserved on : 17.10.2014
Decided on: 31.10.2014

FAO No. 325 of 2006

United India Insurance Company Limited ...Appellant.
Versus
Smt. Samitra Devi & others ...Respondents.

FAO No. 24 of 2008

Samitra Devi & others ...Appellants.
Versus
Smt. Kusum Sood & another ...Respondents.

Motor Vehicle Act, 1988- Section 149- Claimants pleaded that the deceased had embarked in the offending vehicle, loaded with cement, which met with the accident - the owner claimed that deceased was employed as a second driver/helper- held, that the deceased was not a gratuitious passenger and the Insurance policy showed that the risk of six employees besides driver was covered under the policy – hence, the Insurance Company was rightly held liable to pay the compensation. (Para- 12 to 21)

Motor Vehicle Act, 1988- Section 168- Tribunal had held that the claimant was entitled to compensation of ₹ 6,63,600/- but awarded compensation to the extent of ₹ 5,00,000/- as compensation, which was the amount claimed in the petition- held, that there is no restriction in granting compensation in excess of the compensation sought by the claimant. (Para-26 to 35)

Cases referred:

Sarla Verma (Smt) and others versus Delhi Transport Corporation and another, (2009) 6 Supreme Court Cases 121

Reshma Kumari & Ors. versus Madan Mohan & Anr., 2013 AIR SCW 3120

Nagappa versus Gurudayal Singh and others, AIR 2003 Supreme Court 674

A.P.S.R.T.C. & another versus M. Ramadevi & others, 2008 AIR SCW 1213

Ningamma & another versus United India Insurance Co. Ltd., 2009 AIR SCW 4916

Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service, 2013 AIR SCW 5800

FAO No. 325 of 2006

For the appellant: Mr. Ashwani K. Sharma, Advocate, with Ms. Monika Shukla, Advocate.

For the respondents: Mr. Ravinder Thakur, Advocate, for respondents No. 1 to 5.
Mr. Suneet Goel, Advocate, for respondent No. 6.

FAO No. 24 of 2008

For the appellants: Mr. Ravinder Thakur, Advocate.

For the respondents: Mr. Suneet Goel, Advocate, for respondent No. 1.
Mr. Ashwani K. Sharma, Advocate, with Ms. Monika Shukla, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice

Award, dated 28th July, 2007, made by the Motor Accident Claims Tribunal-II (Fast Track), Kullu, H.P. (hereinafter referred to as "the Tribunal") in Claim Petition No. 106 of 2004, RBT. Cl. Pet. No. 40 of 2005, titled as Samitra Devi & others versus Smt. Kusum Sood & another, whereby compensation to the tune of Rs. 5,00,000/- with interest @ 9% per annum from the date of institution of the claim petition till realization of the same came to be awarded in favour of the claimants and against the insurer (hereinafter referred to as "the impugned award"), has given birth to both these appeals. Thus, I deem it proper to decide both these appeals by this common judgment.

2. The insurer has questioned the impugned award by the medium of FAO No. 325 of 2006 on the ground that the Tribunal has fallen in error in saddling it with liability.

3. The claimants have questioned the impugned award by the medium of FAO No. 24 of 2008 on the ground that the amount awarded is inadequate.

Brief facts:

4. The claimants, being the legal representatives of deceased Govind Ram, have claimed compensation as damages by the medium of

Claim Petition No. 106 of 2004, RBT. Cl. Pet. No. 40 of 2005, titled as Samitra Devi & others versus Smt. Kusum Sood & another, on the ground that Govind Ram, their bread earner, became the victim of motor vehicular accident, which was caused by the driver, namely Sunil Kumar, while driving truck, bearing registration No. HP-34-4265, rashly and negligently, on 2nd October, 2004, at about 1.20 a.m. near village Jamli, District Bilaspur. Further contended that deceased-Govind Ram was driver by profession, was working with Saiyla Motors Serwari Bazar, Kullu, was earning Rs.5,000/- as a driver and Rs.5,000/- from agricultural and horticultural vocations. Driver-Sunil Kumar has also lost his life in the said accident.

5. The owner-insured and the insurer have resisted the claim petition on the grounds taken in the respective memo of objections.

6. Following issues came to be framed by the Tribunal on 19th April, 2005:

> *"1. Whether Govind Ram died due to rash and negligent driving of truck No. HP-34-4265 driven by Sunil Kumar, its driver, who also died in the accident? OPP*
>
> *2. If issue-1 is proved in affirmative, to what amount of compensation the petitioners are entitled to and from whom? OPP*
>
> *3. Whether Sunil Kumar the driver of truck No. HP-34-4265 was not holding valid and effective driving licence at the time of accident? OPR-2*
>
> *4. Whether the petitioners are not legal representatives of deceased Govind Ram? OPR-2*
>
> *5. Whether deceased Govind Ram was a gratuitous passenger in the vehicle in question at the time of accident. If so, its effect? OPR-2*
>
> *6. Relief."*

7. The claimants have examined Dr. Savita Mehta as PW-1, Shri Mohar Singh as PW-2, ASI Mohinder Singh as PW-3, Shri Sanjay Sood as PW-5 and one of the claimants, Smt. Samitra Devi, has stepped into the witness box as PW-4. The owner-insured has examined Shri Vidya Sagar as RW-2. The insurer has examined Shri Diler Singh, Motor Licence Clerk, as RW-1 and Shri D.S. Suangla as RW-3 in support of its case.

Issue No. 1:

8. The Tribunal, after scanning the evidence, held that the claimants have proved by leading oral as well as documentary evidence that Sunil Kumar had driven the offending vehicle on the said date rashly and negligently and caused the accident, in which deceased-Govind Ram, the bread earner of the claimants, and the said driver-Sunil Kumar lost

their lives. The parties to the lis have not questioned the findings returned on issue No. 1 by the medium of both the appeals. Hence, the findings returned by the Tribunal on issue No. 1 are upheld.

9. Before I deal with issue No. 2, I deem it proper to deal with issues No. 3 and 4.

Issues No. 3 and 4:

10. The insurer had to prove both these issues, has not led any evidence to that effect and the findings returned on both these issues are also not questioned by the insurer or any other party. Accordingly, the findings returned on issues No. 3 and 4 are also upheld.

Issues No. 2 and 5:

11. Both these issues are interlinked. Thus, I deem it proper to determine both these issues together, which are also the subject matter of both the appeals.

12. The claimants have claimed in the claim petition that deceased-Govind Ram had gone to Chandigarh with his brother, who was to be admitted in hospital and after admitting him in PGI, Chandigarh, embarked in the offending vehicle, which was loaded with cement, met with the accident at Jamli, District Bilaspur, which was caused by the driver, namely Shri Sunil Kumar, who had lost control over the same.

13. The owner-insured has pleaded in the reply that deceased-Govind Ram was employed as a second driver/helper and was travelling, on the said day, as a helper in the said vehicle. It is apt to reproduce para 24 (i) of the reply filed by the owner-insured herein:

> *"24. i) that this sub-para of the claim petition is correct only to the extent that petitioner was travelling in truck no. HP-34-4265 which was loaded with cement and the truck met with an accident near Jamli in Distt. Bilaspur. Rest of the para is wrong and therefore denied. The allegations that the accident took place due to rash and negligent driving of the driver of the truck are totally false and baseless therefore specifically denied. It is also denied that the deceased Govind Ram had hired the truck from Chandigarh.*
>
> *In fact, Sh. Govind Ram deceased was employed as driver by the respondent on 30-09-2004 and was sent alongwith the truck no. HP-34-4265 on trial basis as helper to the original driver of the truck."*

14. The claimants have led evidence, but they have not disputed the said fact. However, claimant No. 1, Smt. Samitra Devi, widow of deceased-Govind Ram has deposed that deceased-Govind Ram was employed with Saiyla Motors Serwari Bazar, Kullu. PW-5, Shri Sanjay Sood, proprietor of Saiyla Motors, Serwari Bazar, Kullu, has also deposed that Govind Ram was engaged as driver in the said firm but had left the job on 25.09.2004. The said fact has not been disputed in the cross-examination.

15. The owner-insured, Smt. Kusum Sood, has examined Shri Vidya Sagar Sharma as RW-2, who has deposed that Govind Ram was engaged as driver by Smt. Kusum Sood on 30th September, 2004, was sent to Chandigarh on 1st October, 2004 with the offending vehicle as a helper, was under the employment of Smt. Kusum Sood on the date of accident.

16. The insurer had not led any evidence on this count. Thus, the evidence led by the claimants and the owner-insured has remained unrebutted.

17. Claimant No. 1-Smt. Samitra Devi, who is an illiterate woman, belongs to remote area, is a rustic villager, may not be knowing whether her husband had left job from one firm/company, was employed with Smt. Kusum Sood. She has also not disputed the factum of employment of the deceased by Smt. Kusum Sood at the relevant point of time.

18. Having said so, the owner-insured has specifically pleaded and proved by leading evidence that deceased-Govind Ram was engaged as helper/second driver with the offending vehicle at the relevant point of time and risk was covered.

19. The insurer has not led any evidence to prove that deceased-Govind Ram was travelling as a gratuitous passenger in the offending vehicle at the time of accident. Thus, it can be safely held that deceased-Govind Ram was not a gratuitous passenger.

20. Learned counsel for the insurer argued that risk of the second driver is not covered. I have gone through the insurance policy, Ext. RW-3/A, which covers the risk of six employees.

21. It is worthwhile to mention herein that the schedule appended with the insurance policy do disclose that in addition to risk of the owner and driver, the risk of six employees is also covered. Thus, risk of helper/second driver is also covered. In the given circumstances, the Tribunal has rightly saddled the insurer with liability.

22. Viewed thus, the appeal filed by the insurer, i.e. FAO No. 325 of 2006, merits dismissal.

23. The second point to be determined is – whether the amount of compensation awarded is just and appropriate?

24. Admittedly, the age of the deceased was 29 years at the relevant point of time. The Tribunal has applied the multiplier of '16', which is just and proper in view of the ratio laid down by the Apex Court in the case titled as **Sarla Verma (Smt) and others versus Delhi Transport Corporation and another,** reported in **(2009) 6 Supreme Court Cases 121,** which was upheld by a larger Bench of the Apex Court in **Reshma Kumari & Ors. versus Madan Mohan & Anr.,** reported in **2013 AIR SCW 3120.**

25. The claimants have pleaded that the income of the deceased was Rs.10,000/- per month, i.e. Rs. 5,000/- from the salary as a driver and Rs.5,000/- from other vocations. The claimants have proved that the salary of the deceased as driver was Rs.5,000/- per month. The Tribunal has fallen in error in deducting one third towards his personal expenses

for the reason that the claimants are five in number and one fourth was to be deducted in view of the mandate of **Sarla Verma's case (supra),** upheld by the Larger Bench of the Apex Court in **Reshma Kumari's case (supra).** Accordingly, it is held that the claimants have lost source of dependency, while deducting one fourth, to the tune of Rs.3,800/- per month, instead of Rs. 3,300/- as held by the Tribunal.

26. The Tribunal has held that the claimants are entitled to compensation to the tune of Rs. 6,63,600/-, but has awarded only Rs. 5,00,000/- including no fault liability on the ground that the claimants have claimed only Rs. 5,00,000/-, as per the break-ups given in the claim petition.

27. The Tribunal has also fallen in error in making such a finding. It is beaten law of land that compensation should be just and proper and claim petition cannot be scuttled away enroute on the ground that the claimants have not claimed the amount to which they are entitled to.

28. I believe that the Tribunal has lost sight of the mandate of Section 158 (6) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") read with Section 166 (4) of the MV Act.

29. The MV Act has gone through a sea change in the year 1994 and sub-section (6) has been added to Section 158 of the MV Act, which reads as under:

> ***"158. Production of certain certificates, licence and permit in certain cases. -***
>
> *.....*
>
> *(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."*

In terms of this provision, the report is to be submitted to the Tribunal having the jurisdiction.

30. Also, an amendment has been carried out in Section 166 of the MV Act and sub-section (4) stands added. It is apt to reproduce sub-section (4) of Section 166 of the MV Act herein:

> ***"166. Application for compensation. -***
>
> *.....*
>
> *(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of*

Section 158 as an application for compensation under this Act."

It mandates that a Tribunal has to treat report under Section 158 (6) (supra) of the MV Act as a claim petition. Thus, there is no handicap or restriction in granting compensation in excess of the amount claimed by the claimant in the claim petition.

31. My this view is fortified by the judgment of the Apex Court in the case of **Nagappa versus Gurudayal Singh and others,** reported in **AIR 2003 Supreme Court 674.** It is apt to reproduce paras 7, 9 and 10 of the judgment herein:

"7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is – it should be 'Just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

8. .....

9. It appears that due importance is not given to sub-section (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of Section 158, as an application for compensation under this Act.

> *10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."*

32. The Apex Court in a case titled as **A.P.S.R.T.C. & another versus M. Ramadevi & others,** reported in **2008 AIR SCW 1213,** held that the Appellate Court was within its jurisdiction and powers in enhancing the compensation despite the fact that the claimants had not questioned the adequacy of the compensation.

33. The Apex Court in another case titled as **Ningamma & another versus United India Insurance Co. Ltd.,** reported in **2009 AIR SCW 4916,** held that the Court is duty bound to award just compensation to which the claimants are entitled to. It is profitable to reproduce para 25 of the judgment herein:

> *"25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."*

34. The Apex Court in a latest judgment in a case titled **Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service,** reported in **2013 AIR SCW 5800,** has specifically held that compensation can be enhanced while deciding the appeal, even though prayer for enhancing the compensation is not made by way of appeal or cross appeal/objections. It is apt to reproduce para 9 of the judgment herein:

> *"9. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for*

the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants."

35. This Court in **FAO No. 226 of 2006,** titled as **United India Insurance Company Limited versus Smt. Kulwant Kaur & another,** decided on 28th March, 2014, has laid down the same principle.

36. Having said so, it is held that the claimants have lost their source of dependency to the tune of Rs.3,800 x 12 = Rs. 4,56,000/- x 16 = Rs. 7,29,600/-. The claimants are also held entitled to Rs.10,000/- under the head 'funeral expenses' and Rs. 20,000/- under the heads 'loss of consortium', 'loss of love & affection' and 'loss of estate'. Hence, the claimants are entitled to total compensation to the tune of Rs. 7,59,600/- (i.e. Rs. 7,29,600/- + Rs. 10,000/- + Rs. 20,000/-), including the interim compensation, i.e. Rs. 50,000/-, with interest @ 9% per annum.

37. The insurer is directed to deposit the enhanced amount of compensation before the Registry within eight weeks. On deposition, Rs. 50,000/- be paid to claimant No. 5, i.e. father of the deceased out of the total amount of compensation. Out of the remaining amount of Rs.6,59,600/- (i.e. Rs.7,59,600/- - Rs. 50,000/- - Rs. 50,000/- {interim award amount}), one third is to be paid to claimant No. 1, i.e. widow of the deceased, after proper identification and the remaining amount is to be deposited in the name of claimants No. 2 to 4 in Fixed Deposits in equal shares till they attain the age of majority.

38. Having glance of the above discussions, the appeal filed by the insurer, i.e. FAO No. 325 of 2006, is dismissed; the appeal filed by the claimants, i.e. FAO No. 24 of 2008, is allowed and the impugned award is modified, as indicated hereinabove.

39. Send down the record after placing copy of the judgment on each of the files.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

The United India Insurance Company Ltd. ...Appellant
Versus
Sh. Sunil Kumar & others ...Respondents

FAO (MVA) No. 349 of 2007
Decided on : 31.10.2014

Motor Vehicle Act, 1988- Section 166- Insurance Company contended that the accident was a result of contributory negligence- however no such plea was taken by the Insurance Company in its reply- it was stated that accident had taken place due to the negligence of the scooterist – no evidence was led to prove the same-held that the plea of the Insurance Company is not acceptable. (Para-12 to 13)

For the appellant : Mr. Sanjeev Kuthiala, Advocate.

For the respondents : Mr. Hoshiyar Kaushal, Advocate vice Mr. Bimal Gupta, Advocate, for respondent No.1.
Mr. Lokender Thakur, Advocate, for respondent No. 2.
Mr. Vivek Thakur, Advocate vice Mr. Vikram Thakur, Advocate, for respondents No. 3 & 4.
Mr. J.S. Bagga, Advocate, for respondent No. 5.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

By the medium of this appeal, the appellant-the United India Insurance Company Limited has questioned the award, dated 14th May, 2007, passed by the Motor Accidents Claims Tribunal (II), Fast Track Court, Solan, H.P. (hereinafter referred to as "the Tribunal") in MAC Petition No. 19 FTC/2 of 05/06, whereby compensation to the tune of Rs.2,45,000/- with interest at the rate of 7½% per annum from the date of filing of the claim petition till its realization, came to be awarded in favour of the claimant-respondent 1 herein, (for short, the "impugned award"), on the grounds taken in the memo of appeal.

2. Claimant Sunil Kumar filed the claim petition before the Tribunal and claimed compensation to the tune of Rs.10,00,000/-, as per the break-ups given in the claim petition.

3. Only the insurer of the scooter, i.e. the United India Insurance Company Limited, has questioned the impugned award, on the ground of saddling it with liability.

4. The other respondents, i.e. the claimant, the driver-cum-owner of the scooter, the driver, the owner and the insurer of the Mahindra Jeep, have not questioned the impugned award, on any count, thus it has attained finality, so far as it relates to them.

Brief Facts:

5. Claimant Sunil Kumar filed the claim petition for grant of compensation to the tune of Rs.10,00,000/-, on the ground that he was pillion rider on the scooter bearing engine No. 030271, chassis No. 464196 (not registered), which was being driven by driver, namely, Vinay Kumar, rashly and negligently, on 20th May, 2005, at about 11.15. a.m., near Sabji Mandi, Police Line, Solan; sustained injuries and became permanently disabled.

6. The claim petition was resisted and contested by all the respondents, on the grounds taken in their memo of objections.

7. Following issues came to be framed by the Tribunal on 21.01.2005:

> *"1. Whether the petitioner has sustained injuries on account of rash/negligent driving of scooter by respondent No. 1? .....OPP*
>
> *2. If issue No. 1 is proved in affirmative to what amount of compensation the petitioner is entitled and from whom?...OPP*
>
> *3. Whether the accident has taken place on account of rash/negligent driving of the jeep by respondent No. 3?..OPR-2*
>
> *4. Whether respondent No. 2 is not liable to indemnify respondent No. 1 as alleged?...OPR-2*
>
> *5. Whether respondent No. 3 did not possess a valid or effective driving licence? ...OPR-5*
>
> *6. Whether the vehicle was being plied without any valid documents? ...OPR-5*
>
> *7. Whether the petitioner has no cause of action against the respondents? ...OPR-5*
>
> *8. Relief."*

8. Claimant examined Dr. Sandeep Jain (PW-1), H.C. Ram Nath (PW-2) and Shri Jia Lal (PW-3). Claimant Shri Sunil Kumar also appeared in the witness box as PW-4. Shri Vinay Thakur, owner-cum-driver of the scooter appeared himself in the witness box as RW-1. The National Insurance Company Limited examined Arun Aluwalia as RW-2.

9. The Tribunal, after scanning the entire evidence, held that driver Vinay Kumar was driving the offending vehicle, rashly and negligently, claimant Sunil Kumar sustained injuries and became permanently disabled.

10. Vinay Kumar, driver-cum-owner of the scooter has not questioned the findings returned by the Tribunal.

11. I have gone through the evidence and the record. I am of the considered view that the Tribunal has rightly recorded the said findings.

12. The learned Counsel for the appellant argued that the accident was outcome of contributory negligence. This argument is

devoid of any force for the reason that no such plea has been taken by the United India Insurance Company in its reply and has specifically pleaded that the accident had taken place due the rash and negligent driving of the driver of the scooter and issue No. 3 was framed to this effect. It was asked to lead evidence to this effect.

13. Admittedly, the appellant-The United India Insurance Company Limited has not led any evidence, thus has failed to discharge the same.

14. The other issues are not in dispute. Accordingly, the findings returned by the Tribunal on the said issues are upheld.

15. Having said so, the appeal merits dismissal. The same is accordingly dismissed and the impugned award is upheld.

16. The Registry is directed to release the awarded amount in favour of the claimant, strictly in terms of the conditions contained in the impugned award, through payees account cheque.

17. Send down the records after placing copy of the judgment on record.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

United India Insurance Company Ltd. .....Appellant.

Versus

Sh. Tulsi Ram and others ...Respondents.

FAO (MVA) No. 278 of 2007.
Date of decision: 31st October, 2014.

Motor Vehicle Act, 1988- Section 166- MACT had awarded compensation to the extent of ₹ 41,312/- along with interest at the rate of 9% per annum from the date of filing of the petition till realization- held, that no breach was committed by the insured and the Insurance Company was rightly held liable to pay the compensation- Appeal dismissed. (Para- 2 to 5)

For the appellant: Mr. Ashwani K. Sharma, Advocate.

For the respondents: Mr.Vinod Chauhan, proxy counsel, for respondent No. 1.

Mr. Jagdish Thakur, Advocate, for respondents No. 2 and 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice, *(Oral).*

The subject matter of this appeal is the judgment and award dated 29.5.2007, passed by the Motor Accident Claims Tribunal, Hamirpur, H.P. , for short "The Tribunal" in MAC Petition No. 7 of 2006 titled *Shri Tulsi Ram vs. Anju Thakur and others,* whereby compensation

to the tune of Rs.41312/- with 9% interest came to be awarded in favour of the claimant and against respondent No.3, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal.

2. Shri Tulsi Ram claimant-respondent herein had filed claim petition being the victim of a vehicular accident for the grant of compensation to the tune of Rs.7 lacs, as per the break ups given in the claim petition.

3. The claim petition was resisted and contested by the insurer, owner and driver.

4. The Tribunal awarded the compensation to the tune of Rs.41312/- with 9% interest per annum from the date of filing the petition till its realization. Feeling aggrieved, the insurer has questioned the impugned award on the ground that the offending vehicle was not being driven in terms of the route permit, the quantum of compensation and also on other grounds.

5. I have gone through the record. The route permit was valid and no breach is committed by the owner/insured. The impugned award is well reasoned. I wonder why the insurer has filed the appeal.

6. Having said so, the appeal is dismissed and the impugned award is upheld. Pending applications, if any also stand disposed of.

7. Send down the record, forthwith.

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