Regd.No.PRAKASAM/13/2015-2017 R.N.I.No.APENG/2004/15906

Pages:1 to 84

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

2017 Vol.(3) Date of Publication 31-10-2017 PART - 20

Editor:
A.R.K.MURTHY, Advocate
Associate Editors:
ALAPATI VIVEKANANDA, Advocate
ALAPATI SAHITHYA KRISHNA, Advocate

APPEAL TO SUBSCRIBERS

SUBSCRIPTION FOR THE YEAR, 2018 Rs.3,000/-

Dear Subscriber,

On account of increase in the Cost of Paper, Electricity, Postage and Printing charges, the absorption of loss has become unberable and consequently this year a very reasonable increase in the Subscription to **Rs.3000/-.**

We have endeavoured to serve you in the best possible manner. Hope it had been upto your expectations. However, we sincerely apologize for any lapse that may have put you in inconvenience.

Your Subscription for the year 2017 is expiring in December, 2017 and as such **we request you to remit your subscription before 31-12-2017 for the year 2018 to ensure your supply without interruption.** The payments should be made by M.O/D.D/Cheque in favour of "**LAW SUMMARY PUBLICATIONS, ONGOLE".** For outstation Cheques please add Rs.50/- as Bank Collection charges.

PUBLISHER

MODE OF CITATION: 2017 (3) L.S

LAW SUMMARY PUBLICATIONS

SANTHAPETA EXT., 2ND LINE, ANNAVARAPPADU , (☎:08592 - 228357)

ONGOLE - 523 001 (A.P.) INDIA,

URL : www.lawsummary.com E-mail: lawsummary@rediffmail.com

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

PART - 20 (31ST OCTOBER 2017)

Table Of Contents

Journal Section .... 19 to 22

Reports of A.P. High Court .... 133 to 150

Reports of Madras High Court .... 33 to 56

Reports of Supreme Court .... 39 to 68

Interested Subscribers can mail their Articles to

lawsummary@rediffmail.com

NOMINAL - INDEX

A.P.Lay Vs. Gurram Rama Rao (Hyd.) 139
M.Maheswaran Vs. The Govt., of Tamilnadu & Ors., (Madras.) 33
Malisetti Subba Rao Vs. Kanneti Siva Parvathi Devi (Hyd.) 133
National Insurance Co., Ltd., Vs. Pranay Sethi & Ors., (S.C.) 44

SUBJECT - INDEX

CIVIL PROCEDURE CODE, Sec.20(c) - **NEGOTIABLE INSTRUMENTS ACT,** Sec. 70 - Revision – Challenging the decree passed by the appellate court, whereby the Order passed by the trial court was confirmed for returning the plaint for presentation in proper court.

Held – Where the right of the plaintiff depends upon the assignment of a promissory note in his favour, the assignment would constitute part of cause of action and the court within whose jurisdiction the assignment took place, would have jurisdiction to entertain the suit on the promissory note – Trial court has the jurisdiction to try the suit in question – Revision petition is allowed. **(Hyd.) 133**

CIVIL PROCEDURE CODE, Or. 13 Rules 3 and 4 - **INDIAN STAMP ACT,** Sec. 2(5)(b), Articles.6(A) and 13 of Schedule I(A) – Whether it is open to a party who raised the objection or not with regard to admissibility of document to file a petition for de-exhibition of the said document at a later stage ?

In the Trial court, Suit was filed for recovery of money on the basis of a hand letter which was marked as an exhibit and treated as an agreement - At the stage of arguments, respondents filed an I.A. contending that said exhibit is not an agreement and it is a bond that is liable to be stamped under Article 13 of Schedule I(A) of the Indian Stamp Act – Respondent further contended that though said document was marked as an exhibit, it does not amount to admission and sought to de-exhibit the document.

Held – Court has got right to de-exhibit a document when its attention was drawn as to the inadmissibility of the document, as it has got duty to decide the admissibility of a document and eschew irrelevant and inadmissible evidence – Even assuming that a Court decides to admit a document in evidence, there is nothing in C.P.C prohibiting the court from recalling such an Order – I.A. filed by the respondent

at the Trial court is maintainable – Civil revision petition is accordingly dismissed.
(Hyd.) ***139***

CONSTITUTION OF INDIA - Compassionate Appointment - Writ petition – Petitioner seeking direction to quash the order of rejection, in respect of the claim of the petitioner for compassionate appointment.

Father of the writ petitioner was serving in the Department and passed away while he was in service - At the time of demise of his father, the writ petitioner was seven years old and his younger brother was two years old - When the petitioner attained age of majority , he submitted an application, seeking appointment on compassionate grounds.

Held - Compassionate appointment, being an exception, cannot be extended in a routine manner and administration of the Scheme to be adhered to strictly and without any deviation - Mere death of a Government employee in his harness, it does not entitle the family to claim compassionate employment -Compassionate appointment scheme as a special one necessarily to be restricted to the extent possible, so as to provide appointment only to the genuine and warranting families - Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority - The scheme of compassionate appointment cannot be granted after a reasonable period - Writ petition stands dismissed.
(Madras) ***33***

MOTOR VEHICLES ACT, 1988, Secs.163-A & 166 – Methodology for computation of future prospects – Calculation of compensation suffer from several defects –Compensation cannot be a pittance - Necessary to state the correct legal position as Courts and Tribunals are using higher multiplier.

Following Conclusions were made by the Constitutional Bench of the Supreme Court of India :

* While determining the income, an addition of 50% of actual salary to the income of deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should me made. The addition should be 30%, if the age of deceased between 40 to 50 years. In case the deceased was between age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

* In case the deceased was self- employed or on a fixed salary, an addition of 40% of established income should be the warrant where the deceased was

below the age of 40 years. An addition of 25% where the deceased was between age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

* Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

* The age of the deceased should be the basis for applying the multiplier.

(S.C.) 44

–X–

ADDUCING ELECTRONIC EVIDENCE IN COURTS OF LAW

By
Kamalakara Rao Gattupalli,B.A L., LL.B,
Advocate, Guntur, A.P.

The Information Technology in India made amendments in the Indian Evidence Act,1872.The most important amendments were made in Indian Evidence Act, 1872 being Section 65A and Section 65B relating to electronic records and it's admissibility.

The amendments made in Indian Evidence Act,1872 being Sections 85A, 85B and 85C as regards to the presumption as to the electronic record and digital signature, electronic agreement, digital signature certificate are also vital importance for appreciating the evidence in cyber world and the amendments being Section 81A-presumption as to the Gazettes in electronic form, Section 67A as regards to the proof of digital signature, Section 90A as regards to the presumption for the electronic records five years old are also relevant and vital provisions to appreciate the evidence through electronic and cyber world.

According to the definition of the word "Evidence" as per Section 3 of the Indian Evidence Act and Section 2 of the Information Technology Act, the electronic record is included in document and may be produced as evidence.

As per AAS ZUCKER MAN (in the Principles of Criminal Justice 1989)- computer can act as a reservoir of evidence for enforcement agencies, if only one knows how to and where to look for it.

Justice STEPHEN BREYER of the US Supreme Court told on "Science in the Court Room", "In this age of science, science should expect to find a warm welcome, perhaps a permanent home, in our court rooms. Our decisions should reflect a proper scientific and technical understanding so that the law can respond to the needs of the public".

The nature of computer based electronic evidence is such that it poses unique challenges to ensure it's admissibility in court.In the land mark decision in DaubertMerrel Dow Pharmaceuticals Inc, the American Supreme court has however sounded a note of warning in the matter of the Courts placing reliance on conclusions of science. The Hon'ble court observed: "there are important differences between the quest for truth in the court room and the quest for truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law on the other hand, must resolve disputes finally and quickly". This view was referred by our Hon'ble Supreme Court in AP Pollution Control Board Vs Prof. MV Naidu.

In State of Maharashtra VsPrafulB.Desai case (AIR 2003 SC 2053), the Hon'ble Supreme Court has observed that advancement in science and technology has also helped the process of law, in administration of justice.In United States of America and other parts of the developed world the Email as evidence has helped judiciary to adjudicate different cases, famous among them isthe Monica LewnskyVs Bill Clinton (Former President of USA) case in 1999.

Conjoint reading of Information Technology Act and the amended Indian Evidence Act, in terms of definition of electronic record and document, it is now settle law that computer images, text and sound stored, whether on a computer file, blog, web-site, emails are all documents. Now the amended definition of "evidence" includes the electronic records as documentary evidence.

The process of leading Electronic Evidence:

1. Admissibility and relevancy of evidence,

2.Proof of electronic records: Section 4 of the Information Technology Act and Section 65B of the Indian Evidence Act,

3. Authorship of electronic records,

4. Proof of E-mail: Section 88 A of the Indian Evidence Act and Section 12 of the Information Technology Act are relevant in this field.Section45A of the Indian Evidence Act read with Section 79A of the IT Amended Act,2008 provide when the court will form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form and the opinion of the Examiner of the Electronic Evidence are relevant.

5. Proof of Electronic Signatures: The relevant provisions are Sections 3,47A 67A 85A,85B,85C and 90A of the Indian Evidence Act.

6.Proof of Computer Processes and value of Electronic Evidence.

Due to their pervasiveness in our day to day life computer, mobile phone and Internet has become the hubs of evidence of acts, events, communication, conduct motive and intent.

Digital or Electronic Evidence:

Jagjit Singh Vs State of Haryana case (2006 11 SCC1): The speaker of the Legislative Assembly of the State of Haryana disqualified a member for defection. When hearing the matter, the Supreme Court considered the appreciation of digital evidence in the form of interview transcripts from the Zee News Television Channel, the AajTak Television Channel and the Haryana News of Punjab Today Television Channel.

The court determined that the electronic evidence placed on record was admissible and upheld the reliance placed by the speaker on the recorded interview.

The comments in this case indicate a trend emerging in Indian Courts. Courts are beginning to recognize and appreciate the importance of digital evidence in legal proceedings.

Electronic Record:

Any data that is recorded or preserved on any medium in,or by a computer system or other similar device.It includes a display, print out or other out put of thatdata.

Electronic evidence can be classified in to the following categories:

a)Computer and electronic hardware,

b) Computer software,

c) Processing in the computer system,

d) Electronic communication through E-mail, on line chat and Internet telephony,

e) Blogs,

f) Web- sites,

g) Electronic content such as text, images and sound.

Admissibility and Relevancy of Electronic Evidence:

Admissibility and relevant are different legal requirements. Admissibility of evidence implies the legal permissibility to adduce the same. Evidence that is barred under the Indian Evidence Act can be said to be inadmissible.

Legal Recognition of Electronic Record and E- Contract:According to Section 4 of the Information Technology Act: Legal recognition of electronic record-

Where any law provides that information or any other matter shall be in writing or in the type written or printed form, then notwithstanding any thing contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is –a) recorded or made available in an electronic form, and b) accessible so as to be usable for a subsequent reference.

As per Section 10 A of the Information Technology Act, validity of contracts formed through electronic means :

Where in a contract formation, the communication of proposals, the revocation of proposals

and acceptances, as the record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

Affidavit under Section 65B, Indian Evidence Act is not absolute:

The mandate to file an affidavit under Section 65B is not always absolute. The Hon'ble Supreme Court made observation in the case of **State VsNavajotSandhu, 2005 11 SCC 600**- print outs s from the computers by mechanical process and certified by a responsible official of the service providing company can be led in to evidence through a witness who can identify the signatures of the certifying officer or otherwisespeak to the facts based on his personal knowledge.

In State VsNavajotSingh , (2005) 11 SC 600 & P PadmanabhVs Syndicate Bank Ltd., Banglore-AIR 2008 Kant.42 ,it was held that the non compliance of Section 65B , Indian Evidence Act, 1872 is not always fatal if secondary evidence can be given in any circumstances.

The evidence relating to electronic record, as noted herein before, being no special provision , the general law under Section 63 read with Section 65 of the Indian Evidence Act shall yield to the same GeneraliaSpecialibus non derogant, special law will always prevail over the general law.Sections 59 and Section 65A dealing with the admissibility of electronic record.Sections 63 and 65 of Indian Evidence Act,1872 have no application in the case of secondary evidence by way of electronic record, the same is wholly governed by Section 65 A and Section 65B. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus in the case of CD, VCD, Chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which the secondary evidence relating to that electronic record is inadmissible as observed by the highest court of the land in **ANVAR PV Vs PK BASHEER & OTHERS in Civil Appeal No.4226 of 2012.**

Interested Subscribers can E-mail their Articles to

lawsummary@rediffmail.com

2017(3) L.S. 133 (D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
Suresh Kumar Kait &
The Hon'ble Mr.Justice
N.Balayogi

Malisetti Subba Rao ..Petitioner
Vs.
Kanneti Siva Parvathi Devi ..Respondent

CIVIL PROCEDURE CODE, Sec.20(c) - NEGOTIABLE INSTRUMENTS ACT, Sec. 70 - Revision – Challenging the decree passed by the appellate court, whereby the Order passed by the trial court was confirmed for returning the plaint for presentation in proper court.

Held – Where the right of the plaintiff depends upon the assignment of a promissory note in his favour, the assignment would constitute part of cause of action and the court within whose jurisdiction the assignment took place, would have jurisdiction to entertain the suit on the promissory note – Trial court has the jurisdiction to try the suit in question – Revision petition is allowed.

C.R.P.No.3700/2006 Date:5-9-2017

Cases Referred:
1.AIR 2011 SC 421
2.1966 An.W.R. 282
3.1969 An.W.R. 222
4. 2004(5) ALD 57

Mr.N. Sreerama Murthy, Advocate for the Petitioner.

J U D G M E N T
(per the Hon'ble Mr.Justice Suresh Kumar Kait)

This Civil Revision Petition is filed to challenge the decree and order dated 19.04.2006 made in C.M.A.No. 12 of 2005 by the Additional Senior Civil Judge, Tenali by confirming the order dated 12.04.2005 made in C.R.F.No. 12208 of 2004 on the file of I Additional Junior Civil Judge, Tenali for returning the plaint for presentation in proper Court.

2. We have heard the learned counsel for the petitioner.

3. The learned counsel for the petitioner submits that when this Court laid the proposition of law in 1996 An.W.R. 282 and 1969 An.W.R. 222 to the effect that Assignment would constitute a part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit, the appellate Court should have held that the trial Court has got territorial jurisdiction to try the suit.

4. The learned counsel for the petitioner further submits that both the Courts below gravely erred in relying on decisions cited 2004(2) L.S. 510 = 2004(5) ALD 57 and

in negating the contention of the petitioner-plaintiff to the effect that the trial Court at Tenali has got territorial jurisdiction to entertain the suit pursuant to the assignment deed. Accordingly, the Courts below should have held that the aforesaid decision is not applicable to the facts of the case and the trial Court at Tenali has territorial jurisdiction to try the suit.

5. It is pertinent to mention here that in the instant petition the respondent has refused to receive the notice sent to him, as such, it is deemed that notice is served on him under law.

6. It is further pertinent to mention here that when the present Civil Revision Petition was listed on 08.02.2012 before the learned Single Judge, the said Court passed the following order:-

> A perusal of the order of the lower appellate Court would show that divergent views were expressed by this Court on the aspect of jurisdiction in such cases. While the learned single Judges in the Judgments in Chittaruvu Radhakrishnamurthy (1966 An.W.R.282) and P.S.Kothandarama Gupta v. Sidamsetty Vasant Kumar (1969 An.W.R. 222) have taken the view that the transferee can institute the suit in the Court within whose jurisdiction the endorsement of transfer was made, another learned single Judge in S.S.V.Prasad v. Y. Suresh Kumar [2004(2) L.S. 510] has taken a contra view. In my opinion, in view of these conflicting views and to have an authoritative pronouncement on this aspect, it is appropriate that the issue is decided by a Division Bench. The case is accordingly referred to the Division Bench.

The Registry shall place the papers before the Honourable Chief Justice for appropriate orders in this regard.

Accordingly, this matter is placed before this Court.

7. In case of SAFIYA BEE V. MOHD. VAJAHATH HUSSAIN(1) the Supreme Court has held as under:

> The learned Judges were not right in overruling the statement of the law by a Co-ordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well accepted and desirable practice is that the later Bench would refer the case to a larger Bench.

8. The brief facts of the case are that the petitioner- plaintiff filed the plaint and the same was returned for want of jurisdiction by the Junior Civil Judges Court, Tenali. Being aggrieved, he filed C.M.A.No. 12 of 2005 and the same was dismissed vide order dated 19.04.2006.

9. The trial Court returned the plaint on the

1.AIR 2011 SC 421

ground that the respondent is the resident of Amudalapalli, R/o.Komaravolu village, Nizampatnam Mandal and the promissory note was executed in favour of one Malisetty Raghava Rao of Nizampatnam Mandal. Even though the wife of the original promisee assigned the promissory note herein in favour of the plaintiff at Tenali to collect and enjoy the amount due under the promissory note, the trial Court, relying upon the ruling 2004(2) L.S. 510 in Mr.S.S.V.Prasad V. Y. Suresh Kumar and other, held that the Court at Tenali cannot have jurisdiction on the strength of the alleged assignment of the promissory note at Tenali and ordered to return the plaint to be represented in proper Court having jurisdiction.

10. Being aggrieved, the petitioner-plaintiff preferred C.M.A. urging in the grounds that the word assignment itself means that it is for consideration and not for collection and it is not a restrictive assignment. The wording in the assignment deed regarding the assignment is as follows:

English Version:

You have to collect and enjoy. This Promissory Note Debt Assignment Deed is written on my consent.

11. In Chittaruvu Radhakrishna Murthy v. Bollapalli Chandrasekhara Rao [1966 An.W.R. 282], it is held as follows:

> Where the rights of the plaintiff depends upon the assignment of a promissory note in his favour the assignment would constitute part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit on the promissory note though it was executed at place where the original parties to it were residing and over which place a different Court had jurisdiction:.

In that ruling, it is held :

> According to Section 20(c) C.P.C., it cannot be in doubt that a suit can be instituted in a Court within the local limits of whose jurisdiction the cause of action has arisen either wholly or in part. It is no doubt true that the promissory note was executed at Guntur and that the original parties to the promissory note were also residents of Guntur. It cannot however be forgotten that the transfer of the suit promissory note has taken place at Vijayawada. Not only the endorsement was made at Vijayawada but the assignment also took place there. The question therefore which arises is whether such a transfer provides a cause of action in part at Vijayawada. I have no doubt that the endorsement of the suit promissory note and the assignment of it does give rise to a part of the cause of action at Vijayawada where admittedly the endorsement and the assignment have taken place. The endorsement and the assignment would therefore provide in part a cause of action

12. In the ruling reported in 1969 An.W.R.

222 in P.S.Kothandarama Gupta v. Sidamsetty Vasant Kumar, it is reiterated that;

> Assignment would constitute a part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit. Section 70 of the N.I.Act is not a specific provision which can override the provisions contained in Section 20 CPC. Section 70 of the Act does not lay down the place where the suit has to be filed. Further, it does not deal with the case of assignment which has been held to constitute a part of the cause of action. Therefore, the Court has jurisdiction to entertain the suit.

> Both the rulings i.e. 1966 An.W.R. 282 and 1969 An.W.R. 222 cited above are considered in part 22 of the ruling 2004(2) L.S. 510, wherein held that;

> Most of the decisions touching on the subject turned on the meaning assigned to the expression cause of action from a reading of the observation of Lord Esher, referred to above. It is evident that way-back in the year 1889, there was a strong claim from deviation from what was observed in COOKE V. GILI. The question as to whether the endorsements or the assignments, as the case may be, in those cases were made with the participation or knowledge of the makers of the promissory notes, or the original debtors, is not clear. The hardship caused to the makers of promissory notes, in being sued at a place unrelated to the making of the promissory note, was taken note of by the Calcutta High Court in Harnatharai Binjraj V. Churamoni Shah (AIR 1934 Calcutta 175) and it was observed therein as follows:

It might have been more satisfactory if the rule were otherwise i.e. that an assignee in taking an assignment of a debt should take such assignment with only such right of suing as the assignor had and could sue where the assignor could sue and nowhere else. I do see difficulties in the present system under which an assignor can create jurisdiction in any place where the Civil Procedure Code applies but I do not think it would be right for me to attempt to change it.

13. In case of CH. RADHAKRISHNA MURTHY V. B. CHANDRASEKHARA RAO(2) this Court held as under:

It will thus be clear that where the right of the plaintiff depends upon the assignment of a promissory note in his favour the assignment would constitute part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit on the promissory note. The lower Court, therefore, was obviously wrong in stating that Section 20(c), as stated above, applies. In the view which I have taken it is not necessary to consider in this case whether the common

2.1966 An.W.R. 282

law principle that the debtor must seek the creditor applies to a negotiable document or not. Consequently, the case cited in the judgment of the Court below, S.Eshwarayya v. Devi Singh, need not be considered. That case decides that the principle that the debtor must seek the creditor does not apply to a negotiable document. Since I have held that a part of the cause of action because of transfer arose at Vijayawada, it is unnecessary to consider that principle in this case. In any case, the lower Court was wrong in dismissing the suit. Even assuming the Court at Vijayawada had no jurisdiction, the Court ought to have returned the plaint for its presentation to the proper Court. The suit could not be dismissed on that ground.

For the reasons stated above, I would allow this revision petition and remit the case to the Subordinate Judges Court at Vijayawada for the disposal of the suit on merits. The costs of this revision will depend upon the result of the suit.

14. In another case of P.S.KOTHANDARAMA GUPTA V. S.VASANT KUMAR(3) this Court observed as under:

> What constitutes cause of action has been the subject matter of numerous cases, the leading case is Read v. Brown, which has been frequently referred to in various cases of this Court. It has been held therein that the assignment would constitute a part of the cause of action and the Court within whose jurisdiction the assignment took place would have jurisdiction to entertain the suit.
>
> The learned counsel for the petitioner contends that as per Section 70 of the Negotiable Instruments Act, the suit is not entertainable by the Court at Hyderabad. Section 70 of the Negotiable Instruments Act reads as hereunder:- A promissory note or bill of exchange not made payable as mentioned in Sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence of the maker, drawee or accepter thereof, as the case may be.
>
> With reference to the Section it is urged that it is a specific provision which over-rides the provisions contained in Section 20 CPC. I am not inclined to accept this argument. Section 70 of the N.I.Act does not lay down the place where the suit has to be filed. Further, it does not deal with the case of assignment which has been held to constitute a part of the cause of action. I think, the lower Court was justified in holding that it had jurisdiction to entertain the suit. The revision is accordingly dismissed with costs.

15. In addition to above, this Court, in the case of MR.S.S.V.PRASAD V. MR.Y.SURESH KUMAR & ANR.(4) , observed as under:

Therefore, it is held that the holder in due

3.1969 An.W.R. 222

4. 2004(5) ALD 57

course of a negotiable instrument can present a suit to recover the amount covered by it, only in a Court within whose territorial jurisdiction the defendants therein reside or carry on business, or in a Court within whose territorial jurisdiction, the place at which such negotiable instrument, can be presented, under Sections 68 to 70 of the N.I.Act is situated.

16. According to Section 20 (c) C.P.C., it cannot be disputed that a suit can be instituted in a Court within the local limits of whose jurisdiction the cause of action has arisen either wholly or in part. It is not in dispute that the respondent/defendant is the resident of Amudalapalli of Nizampatnam Mandal and promissory note was executed in favour of one Malisetty Raghava Rao of Nizampatnam Mandal. Even though the wife of original promisee assigned the promissory note in question in favour of the appellant/ plaintiff at Tenali to collect and enjoy the amount due under the promissory note, the question therefore, which arises is, whether such a transfer provides a cause of action in part at Tenali.

17. As decided in the case of P.S.Kothandarama Gupta (supra 3), the assignment would constitute a part of the cause of action and the Court within whose jurisdiction the assignment took place, would have jurisdiction to entertain the suit.

18. Section 70 of the Negotiable Instruments Act is not a specific provision which can over-ride the provisions contained in Section 20 CPC. Section 70 of N.I. Act does not lay down the place where the suit has to be filed. More over, it does not deal with the case of assignment which has been held to constitute a part of the cause of action. It will thus be clear that where the right of the plaintiff depends upon the assignment of a promissory note in his favour, the assignment would constitute part of the cause of action and the Court within whose jurisdiction the assignment took place, would have jurisdiction to entertain the suit on the promissory note.

19. In view of above discussion and the legal position, we are of the considered view that the learned Court has gravely erred in relying on the decision in the case of S.S.V.Prasad v. Y.Suresh Kumar (supra 4).

20. Accordingly, we hold that the Court at Tenali has jurisdiction to try the suit in question. Consequently, the decree and decretal order dated 19.04.2006 made in C.M.A.No.12 of 2005 passed by the Additional Senior Civil Judge, Tenali, confirming the order dated 12.04.2005 made in C.F.R.No.12208 of 2004 passed by I-Additional Junior Civil Judge, Tenali for returning the plaint for presenting in proper Court, is hereby set aside. Accordingly, the petitioner is at liberty to present the suit before the Court at Tenali, upon which, the said Court is directed to try the suit after giving proper opportunity to both the parties.

21. Revision petition is accordingly allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

–X–

2017(3) L.S. 139(D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
A.Ramalingeswara Rao

A.P.Lay ..Petitioner
Vs.
Gurram Rama Rao ..Respondent

CIVIL PROCEDURE CODE, Or. 13 Rules 3 and 4 - INDIAN STAMP ACT, Sec. 2(5)(b), Articles.6(A) and 13 of Schedule I(A) – Whether it is open to a party who raised the objection or not with regard to admissibility of document to file a petition for de-exhibition of the said document at a later stage ?

In the Trial court, Suit was filed for recovery of money on the basis of a hand letter which was marked as an exhibit and treated as an agreement - At the stage of arguments, respondents filed an I.A. contending that said exhibit is not an agreement and it is a bond that is liable to be stamped under Article 13 of Schedule I(A) of the Indian Stamp Act – Respondent further contended that though said document was marked as an exhibit, it does not amount to admission and sought to de-exhibit the document.

Held – Court has got right to de-exhibit a document when its attention was drawn as to the inadmissibility of the document, as it has got duty to decide the admissibility of a document and eschew irrelevant and inadmissible evidence – Even assuming that a Court decides to admit a document in evidence, there is nothing in C.P.C prohibiting the court from recalling such an Order – I.A. filed by the respondent at the Trial court is maintainable – Civil revision petition is accordingly dismissed.

CRP.No.1863/17 Date: 19-9-2017

Cases referred

1.1996(1) ALT 917 (FB)
2.AIR 1956 SC 12
3. AIR 1960 AP 155
4. AIR 1961 SC 1655
5. AIR 1972 SC 608
6. 1997(5) ALT 628
7. 2002(5) ALD 660
8. 2004(2) AndhWR 189
9. (2006) 11 SCC 331
10. 2016(3) ALD 235
11. 2016(2) ALT 321
12. AIR 1916 PC 27
13. (1955) 1 Mad LJ 457
14. AIR 1956 Mad 250
15. AIR 1962 AP 398
16. AIR 1966 Allahabad 392 (FB)
17. (2003) 8 SCC 752
18. 2017(5) ALD 228

O R D E R

Heard learned counsel for the petitioner and learned counsel for the respondent.

The plaintiff is the petitioner herein. She filed O.S.No.6 of 2014 on the file of

VI Additional District Judge, Markapur for recovery of an amount of Rs.18,92,000/- from the defendant. The suit was filed on the basis of a hand letter executed on 14.02.2011. The evidence of the parties was completed. During the course of evidence of PW.1, the said hand letter was marked as Ex.A1 and was treated as an agreement under Article 6(A) of Schedule I(A) of the Indian Stamp Act (for short the Act). PW.1 was cross-examined. When the case was posted for arguments on defendants side, the defendant filed I.A.No.490 of 2016 stating that the said document is not an agreement but it is a bond within the meaning of Section 2(5)(b) of the Act as laid down by the Full Bench of this Court in B. BHAVANNARAYANA V. KOMMURU VULLAKKI CLOTH MERCHANT FIRM (1), and it is liable to be stamped under Article 13 of Schedule I(A) of the Act and not under Article 6(A) (iv) of Schedule I(A) of the Act. It was stated that it happened by inadvertence. Though the said document was marked as exhibit, it does not amount to admission and he has got a right to challenge the admissibility of the said document. Accordingly, he sought to de-exhibit the said document.

A counter was filed stating that the said application was filed only to drag on the matter. It is further stated that the plaintiff paid an amount of Rs.1100/- towards stamp duty and penalty on the above said hand letter at the time of filing of the suit on 25.03.2014 and the same was endorsed on the back side of the hand letter.

On the above averments, the trial Court framed the following points for determination:

1. What is the nature of the document marked under Ex.A1?

2. Whether the document marked as Ex.A1 can be de- exhibited, if so to what result?

The trial Court, by its order dated 17.02.2017, held that the plaintiff has to pay the stamp duty and penalty and, accordingly, allowed the application in part directing the plaintiff to pay the remaining stamp duty and penalty under Article 13 of Schedule IA of the Act after deducting the stamp duty already paid under Article 6A(iv) of Schedule I(A) of the Act with the following observations:

11. In the instant case on hand, for better appreciation, this Court reiterating the recitals of Ex.A1 as it is:

> MAHARAJASRI A.P LALY, W/O BUSHAN GAARIKI MARKAPUR GRAMAMU GURRAM RAMA RAO, S/O SUBBAIAH GAARU WRAASI/WRAINCHI ICHINA CHEUTTARAM LOGA TEECHAVALASINA BAAKI VUNDAGA, E DINAMU NAA AVASARA/VYAPARA NIMITTAMU NEETAHAVUNA NEENU APPUGA TEESUKUNNA ROKKAM RS.11,00,000/- LU AKSHARALA ELEVEN LAKHS ONLY ECCHINARU GAANA MUTTINADI. INDUKU VADDI NELA 1 KI 100KI RS.2-00 PRAKARAM SAALUSARI COMPOUND VADDITO MEEKU EVVAGALAVAADANU.

1.1996(1) ALT 917 (FB)

INDUKU AYYE PENALTY KARCHULU NEENE BARINCHAGALAVADANU
RS.11,00,000/- G.RAMA RAO

> 12. In the instant case on hand, the document in question would show that it consists of two parts and is not attested. The first part reads as follows E DINAMU NAA AVASARA/ VYAPARA NIMITTAMU NEETAHAVUNA NEENU APPUGA TEESUKUNNA ROKKAM RS.11,00,000/- LU AKSHARALA ELEVEN LAKHS ONLY ECCHINARU GAANA MUTTINADI. The second part reads as follows INDUKU VADDI NELA 1 KI 100KI RS.2-00 PRAKARAM SAALUSARI COMPOUND VADDITO MEEKU EVVAGALAVAADANU. INDUKU AYYE PENALTY KARCHULU NEENE BARINCHAGALAVADANU.
>
> 13. The maker of document has obliged himself to pay money with interest to the person named at the top of document. As per the decision referred supra, it is therefore, to be seen the document marked as Ex.A1 can be said to be a bond. Now it has to be decided what is the stamp duty and penalty collected for a bond. During the course of evidence of PW.1 the said document i.e., Ex.A1 was treated as an agreement under Art.6(A) of Schedule I(A) of the Indian Stamp Act and marked as Ex.A1. In fact the said document marked as Ex.A1 is a bond within the meaning of Sec.2(5) of the Indian Stamp Act as laid down by the full bench decision of Honble A.P. High Court in 1996(1) ALT 917(F.B) and not an agreement and it is liable to be stamped under Article 13 of Schedule I(A) of Indian Stamp Act and not under Art.6(A)(iv) of Schedule I(A) of the Stamp Act. Therefore, this Court is of considered view that respondent/ plaintiff has to pay the stamp duty and penalty under Article 13 of Schedule I(A) of Indian Stamp Act for Ex.A1.

Learned counsel for the petitioner did not contest the finding recorded by the trial Court that Ex.A1 is not an agreement and it is a bond, but strenuously argued the maintainability of the application for de-exhibiting the document which was already admitted in evidence. He relied on the decisions reported in V.E.A. ANNAMALAI CHETTIAR V. S.V.V.S. VEERAPPA CHETTIR(2), SREE RAMA VARAPRASADA RICE MILL V. TAKURDAS TOPANDAS(3) , JAVER CHAND V. PUKHRAJ SURANA (4), P.C. PURUSHOTHAMA REDDIAR V. S. PERUMAL (5), DOKKA JOGANNA V. UPADRASTA CHAYADEVI (6), ISRA FATIMA V. BISMILLAH BEGUM (7), SUNKARI SRUJANA V. CHIKKALA BHAVANI SHANKAR(8) AND SHYAMAL

2.AIR 1956 SC 12
3. AIR 1960 AP 155
4. AIR 1961 SC 1655
5. AIR 1972 SC 608
6. 1997(5) ALT 628
7. 2002(5) ALD 660
8. 2004(2) AndhWR 189

KUMAR ROY V. SUSHIL KUMAR AGARWAL(9), in support of his submissions.

Learned counsel for the respondent submitted that the document is inadmissible in evidence and an appropriate application can be filed under Order 13 Rule 3 of CPC and relied on the decisions reported in SYED YOUSUF ALI V. MOHD. YOUSUF (10)AND SRINIVASA BUILDERS V. A. JANGA REDDY (DIED) PER LRS(11) , the latter of which was decided by me.

The decision in Syed Yousuf Alis case (supra) was decided on 05.02.2016, whereas Srinivasa Builderss case (supra) was decided by me on 08.02.2016. These two decisions agree on the point of maintainability of an application under Order 13 Rule 3 CPC, even after a document was admitted in evidence. But, after hearing the learned counsel for the petitioner, I was attracted by his arguments and relooked the matter once again from the perspective of the arguments advanced by the learned counsel for the petitioner. Though, they are attractive on their face, on a deeper study, it is noticed that the decisions cited by him and the argument advanced by him based on Section 36 of the Act are not absolute principles applicable to all cases. Those decisions were rendered without considering the effect of the principle laid down under Order 13 Rule 3 CPC.

The point involved in the present case is whether it is open to a party who raised the objection or not with regard to admissibility of document to file a petition for de-exhibition of the said document at a later stage either in the same proceedings or at appellate stage.

Order 13 deals with production, impounding and return of documents. Rules 1 and 2 provide for production of documents and effect of non-production. Rules 4 and 5 deal with endorsements on documents and Rules 3 and 6 to 9 contain provisions relating to return of documents, impounding of documents and rejection of documents. In the present case we are concerned with admission of a document and rejection thereof. As stated above, Rule 4 deals with endorsements on documents admitted in evidence and Rule 3 deals with rejection of irrelevant or inadmissible documents and they read as follows:

> 4. Endorsements on documents admitted in evidence.-(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:-
>
> (a) the number and title of the suit,
> (b) the name of the person producing the documents,
> (c) the date on which it was produced, and
> (d) a statement of its having been so admitted, and the endorsement shall be signed or initialed by the Judge.

9. (2006) 11 SCC 331
10. 2016(3) ALD 235
11. 2016(2) ALT 321

> (2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialed by the Judge.
>
> 3. Rejection of irrelevant or inadmissible documents.- The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Rule 6 provides for an endorsement on documents rejected as inadmissible in evidence. Rule 7 provides that every document which was admitted in evidence shall form part of record of the suit. Rule 8 empowers the Court to impound any document. Now comes Rule 3 which deals with rejection of inadmissible or irrelevant documents.

At this stage it is also necessary to extract Sections 35 and 36 of the Act. They read as under.

> 35. Instruments not duly stamped inadmissible in evidence, etc - No Instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that:
>
> (a) Any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of fifteen rupees or, when ten times the amount of the proper duty or deficient portion thereof exceeds fifteen rupees of a sum equal to ten times such duty or portion;
>
> (b) Where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him then such receipt shall be admitted in evidence against him, on payment of a penalty of three rupee by the person tendering it;
>
> (c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp the contract or agreement shall be deemed to be duly stamped;
>
> (d) Nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of

Criminal Procedure, 1898;

[Now Chapter IX and XD of Cr.P.C., 1973;]

(e) Nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act.

36. Admission of instrument, where not to be questioned - Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

In SADIK HUSSAIN KHAN V. HASHIM ALI KHAN(12) , the Privy Council deprecated the practice of not making endorsement on the document exhibited in evidence and refused to read or permit to be used any document which was not endorsed in the manner required under the Code of Civil Procedure. The relevant observations are as follows:

Finally, their Lordships feel bound to criticize adversely a practice followed in these two cases, which is as illegal as it is slovenly and embarrassing. By the 141st section of C.P.C., 1877, repeated in C.P.C. 1882 and practically re-enacted in Order XIII, Rule 4, of the Rules and Orders passed under the Code of Civil Procedure of 1908, it is provided that a presiding Judge shall endorse with his own hand a statement that it (i.e. a document proved or admitted in evidence) was proved against or admitted by the person against whom it was used. That course was in many instances not followed at the hearing of these two cases, with the result that embarrassing and perplexing controversies arose on the hearing of these appeals as to whether or not certain documents, prints of which were bound up in the record, had been given in evidence. There is no possible excuse for the neglect, in this manner, of the duty imposed by the Statutes, since, so long ago as the 3rd March, 1884, a circular was addressed by the then Registrar of the Privy Council to the Registrar of the High Court of Calcutta calling attention to the requirements of the then existing law and the necessity of observing them. A copy of this circular was sent not only to the High Courts of Madras, Bombay and Allahabad, but, in addition, to the Judicial Commissioner of Oudh and other Judicial Commissioners. Their Lordships, with a view of insisting on the observance of the wholesome provisions of these Statutes, will, in order to prevent injustice, be obliged in future on the hearing of Indian appeals to refuse to read or permit to be used any document not

12. AIR 1916 PC 27

endorsed in the manner required.

His Lordship P.V. Rajamannar, the then Chief Justice of Madras High Court in A. DEVASIKAMANI GOUNDAR V. M.A. ANDAMUTHU GOUNDAR(13) observed that if an objection is taken to the admissibility of a document for want of stamp and registration, the Court should decide both the questions at once. If the Court finds that the document is unregistered, when it requires registration, it has to reject the document itself. It cannot ask the document to be stamped first and thereafter decide whether it would require registration.

This gives guidance to the Courts dealing with the documents which require payment of proper stamp duty as well as registration fee.

In KUPPAMMAL V. MU.VE.PETHANNA CHETTY(14) the Madras High Court considered the objection relating to the admissibility of a document subsequent to endorsement and the effect of stamping endorsement on document. The said decision has a bearing in the present case and hence it is necessary to notice the facts in the said case. The suit was filed for recovery of money on the basis of pronote executed by the defendant. The stamp portion of the pronote was torn. The plaintiff stated that she entrusted the pronote to her brother for safe custody and when the same was handed over to her prior to filing the suit she found that a portion of the pronote bearing the signature of the defendant on the stamps was torn out. The defence of the defendant was that the suit pronote was executed nominally and at a settlement effected between the parties the pronote was discharged and the stamp was torn in the presence of the mediators, but was left with the defendant (sic. plaintiff) in connection with the settlement of the dispute with a third party. An issue was framed with regard to maintainability of the suit when the pronote did not bear the revenue stamps. The trial Court held that the pronote was insufficiently stamped and it cannot be used in evidence for any purpose and accordingly dismissed the suit. The appeal was dismissed. The Second Appeal was preferred to the High Court. It was contended before the High Court that the pronote was admitted under order 13 Rule 4 CPC and was marked as Ex.A1 and when it was so admitted and marked as exhibit its admissibility could not be reopened or questioned on the ground that the document not having been duly stamped having regard to the provisions of Section 36 of the Act. The case in Alimane Sahiba v. Subbarayudu (AIR 1932 Mad 693) was relied on. In those circumstances, the High Court considered the meaning of Admitted in evidence occurring in Section 36 of the Act. It considered the observations of the Division Bench of the same High Court in Venkanna v. Parasuram (AIR 1929 Mad 522), wherein it was held as follows:

If a trial Judge had not considered the admissibility of a document proved before him the mere endorsement thereon under Order 13, Rule 4 C.P.C., does not preclude him from considering its admissibility at a later stage of the case.

13. (1955) 1 Mad LJ 457
14. AIR 1956 Mad 250

The Division Bench followed the views taken by the Bombay, Punjab and Nagpur Courts in Chunilal v. Mula Bai (6 Ind Cas 903 (Bom), Sundardas v. Peoples Bank of India Ltd., (16 Ind Cas 834 (Lah) and Sitaram v. Thakurdas (AIR 1919 Nag 141). The learned single Judge considered various decisions of Madras High Court on the point and ultimately held that the mere fact that the endorsement on the document as required under Order 13 Rule 4 CPC has been made should not in every case be considered sufficient to hold that the document has been admitted. In cases where no objection has been raised as to the admissibility on the ground of insufficiency of stamps and an endorsement of admission under Order 13, Rule 4 is made and objection to such admissibility is not taken even at any stage of the trial of the suit, it will not be open to any party to raise the objection in appeal, before any other forum to which the matter might be taken up. He also held that by mere mechanical act of stamping the endorsement under Order 13 Rule 4 the Court has applied its mind as to the admissibility of the document. So long as the objection has not been considered by the Court, the endorsement under Order 13 Rule 4 could be considered only to be a mechanical act and not the result of the exercise of the judicial mind as to its admissibility. He further held as follows:

> Much significance cannot therefore be given to the procedural provision under Order 13, Rule 4, which prescribes the method to be followed if a document is admitted in evidence by having the same endorsed with the particulars required under the rule. The observance of the procedure under Order 13, Rule 4 presupposes an admission of the document in evidence, which again should be based on such admission being directed to be made by Court. But if the Court had not applied its mind but allowed it to be endorsed under Order 13, Rule 4 that would not however deprive the Court of the right of rejecting it if, on the consideration of any objection raised as to its admissibility, the Court comes to the conclusion that the document is inadmissible.

The same phrase Admitted in evidence occurring in Section 36 of the Act was considered by a learned single Judge of this Court in MANTRALA SIMHADRI V. PALLI VARALAKSHMI (15). The learned single Judge held that the question as to whether a document has been admitted or not depends upon the facts of each case. He did not decide the true meaning of the words Admitted in evidence, but on the facts of that case held that no objection should be taken with regard to admissibility of a document at a subsequent stage of the proceeding when no objection was taken earlier.

A Full Bench of Allahabad High Court in JAGESHAR NAIK V. COLLECTOR OF JAUNPUR(16) by majority held that mere endorsement on Instrument is sufficient and

15. AIR 1962 AP 398
16. AIR 1966 Allahabad 392 (FB)

no order is necessary within the meaning of Section 61 of the Act. The majority of the Full Bench differed from the contra view taken in Emperor v. Gian Chand (AIR 1946 Lah 265) and Ramchand v. Moti Thad (AIR 1962 All 353) and ultimately held as follows:

Then even if an express order is required, an express order admitting an instrument in evidence is enough even though it does not recite the fact that the instrument is duly stamped (or does not require to be stamped or is admissible on payment of a certain sum of money by way of deficit and penalty). "Order" used in the Code of Civil Procedure is what is known as formal order and the definition of "order" contained in Section 2(14) of the Code of Civil Procedure does not apply to the word "order" used in the Stamp Act. Section 2 of the Code makes it clear that the definitions contained in it are merely for the purposes of the Code. There is a provision in the Code, the Evidence Act and the Stamp Act for an order, as defined in Section 2(14) of the Code, admitting an instrument in evidence and in practice such an order is not passed. An endorsement on an instrument is an order within the meaning of Section 61 as pointed out by Iqbal Ahmad and Bajpai, JJ. in Lodhi, AIR 1939 All 588. The view taken by N.U. Beg and S.D. Singh, JJ. in this regard is in conflict with the view taken in the case of Lodhi, AIR 1939 All 588. As regards the rule of strict interpretation, I have already given reasons for not applying the rule of strict interpretation of a taxing statute to the interpretation of the words, "makes any order admitting an instrument in evidence as duly stamped". A trial Court's order can be taken into consideration by a superior Court even though it does not contain reasons; see Milkhiram (India) Private Ltd. v. Chamanlal Bros., AIR 1965 SC 1698. I think the law laid down in Ramchand, 1962 All LJ 435: (AIR 1962 All 353), is not correct.

But the Bench did not disfavour the view that there should be conscious decision with regard to admission of a document.

Now, in the present case we are concerned with the document which was not properly stamped, but marked as an exhibit. There is no evidence on record to show whether the said document was properly admitted in evidence. Even if it is otherwise admitted in evidence, the point still remains whether such a document can be asked to be de-exhibited by the party objecting to it as happened in this case.

In R.V.E. VENKATACHALA GOUNDER V. ARULMIGU VISWESARASWAMI & V.P. TEMPLE(17) , the law laid down was that the objections as to admissibility of documents in evidence falls in two cases

(i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. It was held, that in the first case, the objection can be raised even at a later stage or even in appeal or revision. But, in the latter case, the objection

17. (2003) 8 SCC 752

should be taken when the evidence is tendered and when once the document is admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The case of insufficiently stamped document falls under category

(i) as such a document cannot be admitted in evidence under Section 35 of the Act. In spite of the said pronouncement of the Honble Supreme Court, learned counsel for the petitioner in the present case drew the attention of this Court to the above decisions and submitted that when the parties went ahead with the process of evidence on the basis of an exhibited document it is not open to the defendant to file the present application seeking to de-exhibit the document at this stage and it is contrary to Section 36 of the Act.

The case of V.E.A. Annamalai Chettiar (supra) does not explain the position properly, but merely states that an objection with regard to improperly stamped document cannot be raised at any stage of the proceedings in view of the bar contained under Section 36 of the Act, as no such objection was taken initially.

In Sree Rama Varaprasada Rice Mills case (supra) also, reliance was placed on Section 36 of the Act and held that the admission of the document becomes final and shall not be called in question at a later stage. The observations are as follows:

23..

This provision does not take away the finality provided for in Section 36 of the Stamp Act as to the admission of instruments by the Trial Court. In Venkata Reddi v. Hussain Setti (AIR 1934 Mad 383), a bench of the Madras High Court has held that when once a document has been admitted in evidence after levying penalty on the foot of its being a bond, even though it may be a debatable point, the matter must be deemed to have been concluded and the admission of the instrument by the trial court in evidence cannot be questioned.

It was urged in that case by the learned Advocate General that Section 36 would not apply to cases where a document in question forms the foundation of the suit. That argument was, if I may say so with great respect, rightly rejected. To the similar effect are the decisions in Ramaswami v. Ramas-wami (ILR 5 Mad 220), Venkatrama Aiyar v. Chella Pillai (AIR 1921 Mad 413) and Venkateswara Iyer v. Ramanatha Dheekshitar (AIR 1929 Mad 622). Following the said authorities, I hold that inasmuch these Instruments have been admitted in evidence, it is no longer open to the appellants to raise the question as to the insufficiency of the stamp duty paid on the instruments.

A four Judge Bench of the Honble Supreme Court in Javer Chands case (supra) also held to the same effect, but the same decision was based on the endorsement made on the document as admitted in evidence under the signature of the Court. The observations of the Supreme Court are as follows:

That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognized by the section is the class of cases contemplated by S.61 which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped it has to be decided then and there when the document is tendered in evidence. Once the Court rightly or wrongly, decides to admit the document in evidence so far as the parties are concerned the matter is closed. Section 35 is in the nature of a penal provision and has far- reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exs.P1 and P2 and bore the endorsement 'admitted in evidence' under the signature of the Court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the Court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, S.36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.

(underlining mine) The underlined observations are crucial and important as they indicate that if a document was inadvertently admitted without the Court applying its mind about the admissibility, such admission of the document can be challenged.

The decision in P.C. Purushothama Reddiars case (supra) is not relevant.

In Dokka Jogannas case (supra), a learned single Judge of this Court, by relying on the above judgments observed that it is necessary to decide the admissibility of the document in evidence at the stage of raising objection itself and cannot be left open to be decided at a later stage.

In Isra Fatimas case (supra), Javer Chands case (supra) was followed and underlined portion in Javer Chands case (supra) was not considered nor an attempt was made

to examine the scope of Section 36 of the Act in the light of Rule 3 of Order 13 CPC.

In Sunkari Srujanas case (supra), the said Isra Fatimas case (supra) was cited to be decision of the Supreme Court which in fact was not of the Supreme Court judgment.

In Shyamal Kumar Roys case (supra) it was held that when no objection was taken for marking a document as an exhibit he cannot at a later stage raise an objection. In the said case also it was held that there should be a decision on the admissibility of the document.

Thus, in the absence of consideration of application of Rule 3 of Order 13 to the cases of improperly admitted documents, the arguments advanced on the basis of such decisions is of no avail. I am of the opinion that the decisions of this Court in Syed Yousuf Ali (supra) and Srinivasa Builders (supra) do not require any elaboration or clarification. It is also relevant to notice that a learned single Judge of this Court, who rendered the decision in Syed Yousuf Alis case (supra), rendered another decision in S. MOHAN KRISHNA V. V. VARALAKSHMAMMA(18) to the same effect. The Court has got right to de-exhibit a document when its attention was drawn as to the inadmissibility of the document, as it has got duty to decide the admissibility of a document and eschew irrelevant and inadmissible evidence. The Code of Civil Procedure deals with the procedure in dealing with the suits, whereas the provisions of the Indian Stamp Act deal with the provisions for collection of proper stamp duty on the documents. When a document which was not properly stamped was admitted in evidence and when the Courts attention was drawn, the objection of the party under Section 36 of the Act pales into insignificance and the duty of the Court comes to the forefront to decide with regard to admissibility of such a document. It is for the Court to decide whether a particular document is admissible or not. If it is inadmissible it can de-exhibit such a document. It is the decision of the Court, but not that of the objector. The role of the objector is only to bring it to the notice of the Court. Even assuming that a Court decides to admit a document in evidence, there is nothing in the Code of Civil Procedure prohibiting the Court from recalling such an order.

In view of the above position, in the absence of any evidence as to the availability of a decision of the trial Court with regard to document in question as to its admission, the application as filed by the defendant is maintainable and it is open to the plaintiff to pay the stamp duty and penalty as per the Rules and make a request to admit the same in evidence and it is for the Court to admit the document and mark the same.

In view of the above legal position, the order under revision cannot be held to be erroneous and the Civil Revision Petition is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

–X–

18. 2017(5) ALD 228

2017(3) L.S. (Madras) 33

IN THE HIGH COURT OF MADRAS

Present:
The Hon'ble Mr. Justice
S.M.Subramaniam

M.Maheswaran ..Petitioner
Vs.
The Govt., of Tamilnadu
& Ors., ..Respondents

CONSTITUTION OF INDIA - Compassionate Appointment - Writ petition – Petitioner seeking direction to quash the order of rejection, in respect of the claim of the petitioner for compassionate appointment.

Father of the writ petitioner was serving in the Department and passed away while he was in service - At the time of demise of his father, the writ petitioner was seven years old and his younger brother was two years old - When the petitioner attained age of majority , he submitted an application, seeking appointment on compassionate grounds.

Held - Compassionate appointment, being an exception, cannot be extended in a routine manner and administration of the Scheme to be adhered to strictly and without any deviation - Mere death of a Government employee in his harness, it does not entitle the family to claim compassionate employment - Compassionate appointment scheme as a special one necessarily to be restricted to the extent possible, so as to provide appointment only to the genuine and warranting families - Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority - The scheme of compassionate appointment cannot be granted after a reasonable period - Writ petition stands dismissed.

Ma. P.Thangavel, Advocate for the Petitioner.
Mr.R.Vijaykumar, Addl.Govt.Pleader for Respondents.

J U D G M E N T

1. The relief sought for in this writ petition is for a direction to quash the order of rejection dated 19.11.2010 in respect of the claim of the writ petitioner for compassionate appointment.

2. The learned counsel for the writ petitioner made a submission that the father of the writ petitioner was serving in the Department and passed away on 4.11.1999, while he was in service. At the time of demise of the father of the writ petitioner, the petitioner was seven years old and his younger brother was two years old. The writ petitioner attained the age of majority only in the year 2010. On attaining the age of majority, the

---

CRP(MD)No.145/08 Dt:12-9-2017

petitioner submitted an application, seeking appointment on compassionate grounds on 25.10.2000.

3. Thus, it is clear that the application seeking compassionate appointment was submitted first time after a lapse of about 12 years from the date of death of the deceased. The fourth respondent rejected the request made by the writ petitioner in proceedings dated 19.11.2010.

4. On perusal of the order impugned in this writ petition, it is stated that the writ petitioner has not submitted the application, seeking compassionate appointment within a period of three years from the date of the death of the deceased employee. Further, the writ petitioner during the relevant point of time was a minor and therefore, his claim for compassionate appointment cannot be considered.

5. However, this Court has to consider the legal principles in the matter of extending the benefit of the Scheme of compassionate appointment. Compassionate appointment, being an exception, cannot be extended in a routine manner and administration of the Scheme to be adhered to strictly and without any deviation. Compassionate appointment, being a special Scheme, cannot be stretched out further, so as to provide appointment after a lapse of many years from the date of death of the deceased employee. In the case on hand, the deceased employee passed away on 4.11.1999. Thus, after a lapse of about 17 years, the question of providing compassionate appointment does not arise at all.

6. This Court is of the opinion that consideration for appointment on compassionate ground is to be construed as violation of Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore does not create a vested right in favour of the claimant. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding. A compassionate appointment is justified when it is granted to provide immediate succor to the deceased employee. Mere death of a Government employee in his harness, it does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family of the deceased employee.

7. The concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an

exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

8. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of sole breadwinner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the parameters of the scheme.

9. It is pertinent to note the fact that in a liberalized world as of today, there are plenty of avenues of employment available to the general public. Most of the people are not entirely dependent on the income of a single member of the family. Keeping this new social structure in mind, it would be seemingly right for the Courts to ensure that there is no abuse of the scheme of compassionate appointment either by the employer or by the applicant/claimant.

10. The million dollar question is 'Whether offering 'appointment' on compassionate ground (i.e., sympathy) is the only option/ solution to mitigate 'hardship and distress of the family of an employee dying in-harness? The answer is an emphatic 'No'. Firstly, the Rules, as such, contain no provision to ensure that the dependent who gets appointment shall continue to maintain other dependents.

11. A 'welfare state' like ours is free to initiate effective welfare scheme/s- and no one will be in a position to oppose. It is well settled that sympathy cannot be allowed to override statutory or Constitutional provisions, particularly when it is quality of the question of Welfare of the entire society and/or question of Governance. State like ours is free to wed the 'solemn object' to serve the society at large, purely according to the mandate under the Constitution of India. State cannot be allowed to look after 'welfare' of its own employees and their families alone.

12. In this view of the matter, this Court has to examine the scope of the scheme. The scheme being an exception, the authorities competent has to implement it in its strict terms. Equal opportunity in a public employment is a Constitution mandate.

13. All the recruitment process under the rules are made by the Competent Authorities by implementing the rules of reservation under the Constitution of India. This apart the regular competitive process has got a method of screening the candidates on merits even for the reserved categories. These two aspects are vital in regular recruitment process:

- First is adherence of the Rules of Reservation under the Constitution of India;

• Second is the comparative merit amongst the candidates who are participating in the regular open competitive process.”

14. In case of compassionate appointments, no such constitutional mandated requirements have been followed. Thus, very scheme itself is an exception and not in accord with the constitutional scheme. Compassionate appointment scheme as a special one necessarily to be restricted to the extent possible, so as to provide appointment only to the genuine and warranting families. This apart, the overall strength of the compassionate appointees should not exceed more than the restricted level and if such a kind of special appointments are increased in the public posts, this Court is of the view that the efficiency level in the public administration will certainly be affected.

15. In respect of the Rules of Reservation, the same has not been followed in compassionate appointment. Thus large number of compassionate appointments will have certain implication on the Rules of Reservation and the same will certainly have an impact on the Constitution of India, more specifically, on the principles of reservation. In respect of the merit aspect, no competitive examination or interview are conducted for compassionate appointees. Thus the very capability of the candidates in performing the administrative duties itself will be in question. Certain amount of merit assessment is certainly required for appointing a candidate in any public posts.

16. Thus, the concept of compassionate appointment itself is to be reconsidered by the Government and it should be restricted so as to provide appointment only to the legal heirs of the deceased in genuine circumstances. Otherwise, the scheme of compassionate appointment will have a negative impacts on the good governance and further, it will affect the chances of the meritorious candidates, who can participate in the public administration in the better manner.

17. Rules of Reservation being a constitutional mandate any scheme violating the same has to be implemented cautiously and restrictedly. Thus, genuineness of the claim made by the person on compassionate grounds to be strictly in accordance with the terms and conditions and further, the State cannot be going on extending the scope of compassionate appointment so as to dilute the principles of reservation under the Constitution.

18. Such being the scope of the scheme, Courts are also to be cautious, while extending the benefit of compassionate appointment in favour of the legal heirs of the deceased employee and the legal presumption in this regard is that the indigent circumstances certainly vanishes after a lapse of long years.

19. The learned counsel appearing for the writ petitioner in this regard relied on the orders passed by the Hon'ble Division Bench in Writ Appeal No. 205 of 2017 on

15.09.2017. The Hon'ble Division Bench in a case, where the deceased employee died on 28.08.1986, held that the legal heirs who was aged about 10 years at the time of death of the employee, on attaining the majority, submitted an application on 11.12.1995. The Hon'ble Division Bench in the said case allowed the claim of the writ petitioner. It is pertinent to note that the legal principles in relation to the scheme of compassionate appointment settled by the Hon'ble Supreme Court of India in various judgments have not been brought to the notice of the Hon'ble Division Bench. Thus, the above said case the Hon'ble Division Bench has dismissed the appeal filed by the Chennai Metropolitan Water Supply and Sewerage Board on the facts of the case. If the legal principles are not discussed or settled in an order passed in appeal, the same need not be followed in a routine manner.

20. The Judicial discipline require that all the Courts have to follow the legal principles and the judgments delivered by the higher forum. So also this Court has to follow the legal precedents laid down both by the Hon'ble Division Bench, Full Bench and the Hon'ble Supreme Court of India. However, a fine distinction is to be drawn between the ''orders'' and the ''judgments'' passed by the Constitutional Courts. If any order is passed based on certain factual circumstances or by showing some leniency or sympathy, such orders need not be followed. Contrarily, if the legal principles and the law relating to the particular subject has been settled by the Hon'ble Supreme Court, certainly this Court is bound to follow the legal principles formulated and settled by the Hon'ble Supreme Court of India.

21. Further, the Advanced Law Lexicon provides the meaning for Judgment and Order, " An order is a decision made during the progress of the cause, either prior or subsequent to final judgment, settling some point of practice or some point collateral to the main issue presented by the pleadings, and necessary to be disposed of before such issue can be passed upon by the Court, or necessary to be determined in carrying into execution of the final judgment.

22. An order is the mandate or determination of the Court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings and it has not the qualities or consequence of a judgment".

23. "Judgment" is a decision which affects the merits of the question between the parties by determining some right of liability, and does not include a mere formal order, or an order regulating the procedure in a suit.

24. Judgment is a faculty of deciding the matter with wisdom, truly, legally, skillfully, or accurately. Final judgments are such as one put an end to the action by determining the right and fixing the amount in dispute.

25. In respect of judgment, discretion, prudence.

“Judgment acts by a fixed rule; it admits of no question or variation; discretion acts according to circumstances and is its own rule. Judgment determines in the choice of what is good; discretion sometimes only guards against error or direct mistakes; it chooses what is nearest to the truth. Judgment requires knowledge and actual experience; discretion requires reflection and consideration; a general exercise is judgment in the disposition of his army, and in the mode of attact; whilst it is following the rules of military or it exercise its discretion in the choice of officers of different posts, in the in the treatment of men, in its negotiation with its enemy and various other measures which depend upon contingencies.”

26. The learned counsel appearing on behalf of the writ petitioner repeatedly emphasized that the Hon’ble Division Bench has allowed the writ appeal on 15.09.2017 in W.A. No. 205 of 2017, and therefore, this Court also should allow the claim of the writ petitioner in this writ petition. However, this Court has to follow the legal principles settled by the Hon’ble Supreme Court of India in relation to the scheme of compassionate appointment.

27. Yet another judgment also is brought to the knowledge of this Court by the learned counsel appearing for the writ petitioner passed in W.A. No. 44 of 2016 on 20.10.2016. In this case also the application was submitted on 29.04.2002 seeking compassionate appointment of the deceased employee, who died on 02.01.1995. However, the Hon’ble Division Bench has not discussed and adjudicated the entire legal principles with regard to the scheme of compassionate appointment, contrarily the order was passed based on factual aspects.

28. The Hon’ble Supreme Court in the matter of compassionate appointment has rendered a judgment setting out the principles, the guidelines and the scope of providing appointment on compassionate ground. Compassionate ground being an exception to that of the general recruitment, the same should be provided with all caution taking note of the fact that compassionate appointment will certainly deprive the eligible meritorious youths and citizens of the country to get public employment. When the Courts are providing an exceptional scheme of compassionate appointment to the individual, it is equally relevant to keep in mind that such facilities provided should not affect the rights of other citizens, who are otherwise qualified, meritorious and aspiring to participate in the open competitive process. The granting of relief, if it affects the Constitutional rights of other citizens, then the Courts must be slow in granting such relief.

29. The consequences, impacts and the denial of rights to other citizens are also to be considered while extending relief under such an exceptional scheme of

compassionate appointment. It is not the case as if the Courts should stretch off the scope of compassionate appointment based on an unwarranted sympathy or leniency. No doubt, the Court of Justice has to consider the factual circumstances and if necessary, certain relief can be provided. However, any such sympathy or leniency shown to a particular person should not have any adverse effect of affecting the rights of other eligible citizens, who are waiting and longing for public employment in this great Nation.

30. Thus, this Court is of the view that a striking balance ought to have been adopted in such circumstances and Court in its wisdom has to analyze the possible direct and indirect impacts in this regard, in order to provide equal opportunity in public employment to all the citizens. The Courts are bound to borne in mind that equality clause also to be weighed before stretching the scope of such an exceptional scheme of compassionate appointment. Thus, this Court cannot consider the orders produced by the learned counsel for the writ petitioner and this Court has to follow legal principles and the precedents settled by another Division Bench of this Court in the case of Inspector General of Prisons v. Marimuthu (MANU/TN/0700/2016 : 2016 5 CTC 125) and all other judgments of the Hon'ble Supreme Court of India in this regard.

31. The learned counsel appearing on behalf of the writ petitioner cited the Judgment of the Hon'ble Supreme Court of India in the case of VijayaUkardaAthor (Athawale) v. State of Maharashtra and Others reported in [MANU/SC/0036/2015 : (2015) 3 Supreme Court Cases 399]. On a reading of the above judgment, the order passed by the High Court in Review Application and in the writ petition are set aside by the Hon'ble Supreme Court of India and the matter was remitted back to the High Court for consideration of the matter afresh. Thus, the Hon'ble Supreme Court left open the issue in respect of the facts and circumstances of the legal principles and directed the High Court to decide the matter afresh. Such a judgment rendered by the Hon'ble Supreme Court in respect of the particular facts and circumstances of that case cannot be considered in respect of the facts of the present writ petition on hand.

32. The Hon'ble Supreme Court time and again emphasized that the facts and circumstances of each case has to be considered and the legal principles are to be considered only with relevant to the facts of the particular case. The above case cited by the learned counsel for the petitioner cannot have any relevance in respect of the facts and circumstances of the present case, since in the above case the Hon'ble Supreme Court remitted the matter back for consideration. For all these reasons, no consideration is required in this writ petition.

33. In Sanjay Kumar v. State of Bihar and Others {MANU/SC/0541/2000 : (2000) 7 SCC 192}, wherein the Hon'ble Supreme Court, in paragraph-3 of its judgment, held

as under:-

"3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education and another v. Pushpendra Kumar and others (supra). It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

34. In Umesh Kumar Nagpal v. State of Haryana and Others {MANU/SC/0701/1994 : (1994) 4 SCC 138}, the Hon'ble Supreme Court, in paragraph 6 of its judgment, held as under:-

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread-winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

35. In State of Manipur v. Md. Rajaodin {MANU/SC/0635/2003 : (2003) 7 SCC 511}, wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. SushmaGosain and others v. Union of India and others (MANU/SC/0519/1989 : 1989 (4) SCC 468) it was observed that in all claims of appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated in Phoolwati (Smt.) v. Union of India and others MANU/SC/0123/1991 : (1991) Supp. (2) SCC 689) and Union of India and others v. Bhagwan Singh (MANU/SC/0817/1995 : 1995 (6) SCC 476). In Director of Education (Secondary) and Anr. v. Pushpendra Kumar and others (MANU/SC/0373/1998 : 1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for

a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends, meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and there nullity the main provision by taking away completely the right conferred by the main provision."

36. In Steel Authority of India Limited v. Madhusudan Das and Others {MANU/SC/8196/2008 : (2008) 15 SCC 560}, wherein the Hon'ble Supreme Court, in paragraph 15 of its judgment, held as under:-

"This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. [See General Manager, State Bank of India and Others v. Anju Jain MANU/SC/3729/2008 : (2008) 8 SCC 475, para 33]"

37. In MGB Gramin Bank v. Chakrawarti Singh {MANU/SC/0792/2013 : (2014) 13 SCC 583}, the Hon'ble Supreme Court, in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of its judgment, held as under:-

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The

consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

7. In Umesh Kumar Nagpal v State of Haryana &Ors., MANU/SC/0701/1994 : (1994) 4 SCC 138, this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:-

“2.... The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased..... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.

4.... The only ground which can justify compassionate employment is the penurious condition of the deceased’s family.

* * * *

6.... The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis..... “

(Emphasis added)

8. An ‘ameliorating relief’ should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

9. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

10. In A. Umarani v Registrar, Co-operative Societies &Ors., MANU/SC/0571/2004 : AIR 2004 SC 4504, while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

11. The word ‘vested’ is defined in Black’s

Law Dictionary (6th Edition) at page 1563, as:

"vested.——fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute "vested rights".

12. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: BibiSayeeda v State of Bihar MANU/SC/0125/1996 : AIR 1996 SC 516; and J.S. Yadav v State of Uttar Pradesh MANU/SC/0435/2011 : (2011) 6 SCC 570)

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldip Singh v Government, NCT Delhi MANU/SC/8215/2006 : AIR 2006 SC 2652).

14. A scheme containing an in parimateria clause, as is involved in this case was considered by this Court in State Bank of India &Anr. v. Raj Kumar MANU/SC/1192/2010 : (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

"14. Date of effect of the scheme and disposal of pending applications.—The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."

15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India &Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered."

38. This Court in a judgment in W.P. No. 8773 of 2015 dated 27.07.2017 held as follows:-

“11. India being a socialistic republic, keeps evolving various schemes to further the objectives enshrined in Part IV of our Constitution. It is relevant to take note of the fact that State is required to endeavour for promoting the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political should prevail. The State is also required to make effective provisions for securing the right to work and to public assistance in case of unemployment, old age, sickness, disablement and any other causes of undeserved want. As a part of promotion of the welfare of those recruited by the State to various services established by it, the necessity to provide for employment opportunities to the members of the family of the deceased Government servants has arisen.

12. A Government servant is expected to give his full time attention and energy and render his very best of attention for securing faithful implementation of various schemes and welfare measures brought in place by the State Government, he is termed as a round the clock servant of the State and he should devote and dedicate himself for providing good quality services to the citizens. Should, unfortunately, any such employee die in harness, his family members cannot be left behind in distressful conditions, unattended to and uncared for. With the sudden departure of a breadwinner, we should be alive to the fact that most of the Indian families lose the very source of their sustenance. It is not at all difficult for us to imagine that inspite of rapid strides of progress, the country has been making in all Sectors, still there are several lakhs of families having a single breadwinner and on an average 4 or 5 hungry persons depend on him for their sustenance and survival. In such a scenario, if that breadwinner vanishes suddenly, it is not at all difficult for us to visualise the harrowing plight to which the family would be reduced to overnight. The savings made by the public servant would be hardly enough to see them through the next six months, at best. During the best days of a man, he might have contributed meaningfully, given the fact that whatever marginally that would make a difference, to the States ‘Service and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them, by those servants including the deceased employee’.

13. Apart from the civil servant enjoying the status as such, upon his death, if his family members who are surviving are not to be taken care of by the State, the prospects are such that a negative image can be spread in the Society that the State never bothers for the well being of the dependents of the Government servants. It is to avoid any such negative image gaining ground, the State Government as a socio welfare measure, has put in place a mechanism for providing employment to one of the eligible

dependents of the family of the deceased Government servant. Several meaningful conditions are attached to be complied with beforehand for securing the benefit of the said scheme. The reason being that opportunities of public employment have to be thrown open to competition for one and all. All members who are eligible to be so recruited should be permitted to compete and the best amongst them found suitable can alone get employment. Therefore, an exception is sought to be carved out from this constitutionally assured mechanism of filling up public employment while providing for making appointments on compassionate grounds. Possibly, conditions can be stipulated such as that at the time of death, the left over service of the deceased employee before he attains the age of superannuation should not be less than a reasonable period, say three years or at best five years. Similarly, a stipulation that appointment on compassionate grounds should be claimed as quickly as possible after the death of the civil servant, a duration in this regard can be prescribed not to exceed by a reasonable length of time of say three years or at best five years. If the surviving members of the civil servant who died, can get along and carry on their show for considerable length of time after the departure of the breadwinner, by far, in a reasonable manner, interference can be drawn from that the family of the deceased civil servant is able to feed for itself, notwithstanding the loss of the breadwinner. The period of endurance of such a family holds out an assurance that the family has got over the trauma caused by the departure of the breadwinner, and it has the necessary social resources to carry on with the show in his absence as well.

14. In these set of circumstances, the State Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

15. When we keep these factors in mind and also in view of the fact that making appointments on compassionate grounds is not one of the identified/marked sources of recruitment to civil service—rather it is an exception to the normal constitutional norm of allowing all people to contest and compete-appointments on compassionate grounds cannot be made after long years gave gone by, from the date of the death of the civil servant.

16. It may be a different matter if the employee concerned died in service while trying to protect the property of the Court/ State Government as the case may be and while trying to save it from any accidental hazards such as fire, flooding, etc., or while trying to save the record or property of the Court/Government from the hands of miscreants who are trying to destroy the same, as those cases, require greater

amount of compassion to be shown as the individual concerned has made the highest sacrifice of his own life, for the cause of the State. In such cases, perhaps a longer duration of even ten or fifteen years can be considered as reasonable. Those, who lay down their lives while trying to save/ protect the interest of the State Government/ Court, stand on a lofty pedestal in comparison to those who met with either natural or self inflicted unnatural death. In no case, the time limit prescribed for entertaining the claims for compassionate appointment should be kept open like in the instant case for more than two decades. Any attempt to entertain any such claim, would convert the scheme of making compassionate appointments into a different form of hereditary employment. It would also tend to convert the scheme of compassionate appointments into a source of recruitment altogether and both the aforementioned factors are not the pursuits, which should be allowed to be undertaken or encouraged by the State Government and its organs."

39. This apart, the Hon'ble Division Bench of this Court in The Inspector General of Prisons v. P. Marimuthu {MANU/TN/0700/ 2016 : 2016 (5) CTC 125}, in paragraphs 35 to 41, held as follows:

"35. With due respect, decisions made in V. Jaya's case and J. Jeba Mary's case, cannot be considered to be precedents, on the specific issue, as to whether, a minor is eligible to seek for employment assistance on compassionate grounds, on attaining majority, after a long number of years, after the death of the Government servant, de hors the condition that it has to be submitted within three years from the date of death of the Government servant, and when the scheme of employment assistance on compassionate grounds, is to tide over the financial constraint of the deceased family. The issue to be considered is when the scheme provides for a limitation or a specific period within which, an application for employment assistance has to be made, and how the said period of three years from the date of death of the Government Servant has to be computed, whether a person, who is otherwise not eligible to apply within the said period, on account of age or not satisfying the required qualifications for any post in the service, in which the employee died, can make an application, on attaining majority and whether such application has to be considered irrespective of the period of limitation? On this aspect, this Court deems fit to consider few decisions of the Hon'ble Apex Court.

(i) In Union of India (UOI) and Others v. Bhagwan Singh, reported in MANU/SC/ 0817/1995 : 1995(6) SCC 476, a Senior Clerk in Railways died on September 12, 1972, leaving behind his wife, two major sons and the respondent (before the Hon'ble Supreme Court), who was a minor, aged about 12 years. He passed Higher Secondary Examination in 1983. Stating that he had attained majority only in 1980/ 1981, he sought appointment on compassionate grounds. The same was

rejected. The authorities took the view that the application was beyond the period of limitation (five years) and that the case of the respondent was not covered by the relevant rules, at the time of the demise of Ram Singh. Besides, there were two other major sons of the deceased, who did not seek for employment and that the family was not in financial distress. The Central Administrative Tribunal, held that the order of rejection as unjustified and directed Union of India to reconsider the case of the respondent therein, if he was otherwise qualified. Testing the correctness of the order of the Central Administrative Tribunal and taking note of the object behind the grant of special concession of employment assistance on compassionate grounds to provide immediate financial assistance to the family of a Government Servant who dies in harness, the Hon'ble Supreme Court, at paragraph No. 8, held as follows:

"8. It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on September 12, 1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated February 22, 1993. The appeal is allowed."

(ii) In Haryana State Electricity Board and another v. Hakim Singh, reported in MANU/SC/0964/1997 : 1997 (8) SCC 85, Haryana Electricity Board challenged an order of the High Court of Punjab and Haryana contending inter-alia that the respondent therein was not entitled to be considered for appointment in the Board on compassionate grounds. In the reported case, father of the respondent therein was a Lineman in employment of the Board. He died on 24.8.1974 in harness, leaving behind him, his widow and minor children, including the respondent. About 14 years, after the death of the said Lineman, widow applied for appointment to her son in the Board, on compassionate grounds, based on two circulars. As per the said circulars, one member of the family of the deceased employee could be considered for employment in the service of the Board, as a goodwill gesture, provided the request for such employment is made within one year of the death of the employee. The respondent filed a writ petition in the High Court contending inter-alia that when his father died, he was only four years old and therefore, his mother could make an application in the prescribed form and when he attained majority, he made a request. The Board did not give any favourable response to the repeated representations made in the matter. The Board took a stand

that as the application was not made within the period specified in the circulars, the Board was unable to entertain the request for appointment on compassionate grounds. The High Court ordered the Board to consider the case of the respondent therein for compassionate appointment on the ground that, even if the dependents happened to be a minor child, at the time of death of the employee, the policy mandates his case to be considered by an extended period i.e., the time till the defendant attained majority. The Board's appeal was negatived by the Hon'ble Division Bench, with a direction to comply with the orders of the Single Judge, within a time frame. When the correctness of the above said orders was tested, at paragraph No. 8 of the judgment, the Hon'ble Supreme Court held as follows:

"8. The rule of appointment to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

As regards the extended period, on attaining majority, the Hon'ble Supreme Court at paragraph Nos. 14 and 15, held as follows:

"14. In that case widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate ground. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court one in Umesh Kumar Nagpal v. State of Haryana and Ors. [MANU/SC/0701/1994 : 1994 (3) SCR 893], the other in Jagdish Prasad v. State of Bihar and Anr. MANU/SC/0996/1996 : 1996 (1) SCC 301. In the former, a Bench of two Judges has pointed out that "the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for the post held by the deceased". In the latter decision which also was rendered by a Bench of two judges, it was observed that "the very object of appointment of dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of earning member of the family". The learned Judges pointed out that if the claim of the dependent which was preferred long after the death of the deceased employee is to be countenanced it would

amount to another mode of recruitment of the dependent of the deceased government servant "which cannot be encouraged, dehors the recruitment rules."

15. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the Board dated 1.10.1986. Respondent, if he is interested in getting employment in the Board has to pass through the normal route now."

Ultimately, the Hon'ble Supreme Court set aside the impugned orders of the High Court.

(iii) In Sanjay Kumar v. The State of Bihar and Others, reported in MANU/SC/0541/2000 : 2000 (7) SCC 192, the petitioner was 10 years old, and his mother working as a Excise Constable, died. He made an application on 02.06.1988, soon after the death of his mother, seeking appointment on compassionate grounds. The said application was rejected on 10.12.1996. Fresh application subsequently made was also rejected on 21.04.1997. Being aggrieved by the same, he preferred a writ petition before the High Court. A learned Single Judge dismissed the writ petition and that the same was also confirmed by the Hon'ble Division Bench. On appeal, the Hon'ble Supreme Court, at paragraph No. 3, held as follows:

"3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood: In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education and Anr. v. Pushpendra Kumar and Ors. (Supra). It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

(iv) In SushmaGosain v. Union of India reported in MANU/SC/0519/1989 : 1989 (4) SCC 468, it was observed that in all the claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was

reiterated in Phoolwati v. Union of India [MANU/SC/0123/1991 : 1991 Supp (2) SCC 689] and Union of India v. Bhagwan Singh [MANU/SC/0817/1995 : 1995 (6) SCC 476].

(v) In Director of Education (Secondary) v. Pushphendra Kumar reported in MANU/SC/0373/1998 : 1998 (5) SCC 192, it was observed that in the matter of compassionate appointment, there cannot be insistence for a particular post. Out of purely humanitarian consideration, and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

(vi) In Director, Defence Metal Research Laboratory v. G. Murali, reported in 2003(9) SCC 247, the applicant was aged about two years, at the time of death of his father and that his application for compassionate ground appointment made, on attainment of majority was rejected, on the ground of non-availability of posts. The Central Administrative Tribunal, rejected the challenge. However, the High Court directed appointment on compassionate grounds, with a direction to the respondent's therein to create a post to accommodate him. The Civil appeal filed by the Director (Defense) and another, was allowed and at paragraph No. 4, the Hon'ble Supreme Court opined as follows:

"4. We do not find any flimsy ground or technicalities in the Tribunal's order. In fact, we find the High Court's order to be unsustainable. There has been a failure to appreciate what the Tribunal had rightly taken into account, namely, that the writ petitioner and his family had coped without the compassionate appointment for about eighteen years. There was no warrant in such circumstances for directing the writ petitioner's appointment on compassionate grounds and that too with the direction to the respondents to the writ petition to create a post to accommodate him"

(vii) In National Hydroelectric Power Corporation and Anr. v. Nanak Chand and Anr., reported in MANU/SC/0909/2004 : 2004 (12) SCC 487, father of the respondent was working under Hydro Electric Project of Government of India and died on 10.12.1976. The project was handed over to the appellant Corporation in 1978. The respondent, after attaining majority in 1986 applied for compassionate appointment which was rejected on the ground that the

application was made after 10 years and that Corporation had surplus staff. Placing reliance on the instructions issued by the Government, contained in Swamy's Complete Manual and Establishment and Administration, the High Court granted the relief in favour of the respondent/dependent. Setting aside the said order, the Hon'ble Supreme Court, after referring to a catena of decisions held that the impugned judgment therein, as unsustainable. The Apex Court further held that the fact that the ward was a minor at the time of death of his father, was no ground to grant compassionate ground appointment, unless the Scheme itself envisages.

(viii) In State Bank of India v. Somvir Singh, reported in MANU/SC/7095/2007 : 2007 (4) SCC 778, at Paragraphs 7 and 10, the Hon'ble Apex Court held as follows:

"7. Article 16(1) of the Constitution of India guarantees to al its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16 (2) Protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

10. There is no dispute whatsoever that the appellant bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be." The Hon'ble Supreme Court further held that it is well settled that the hardship of the dependent does not entitle one, to compassionate appointment, dehors the scheme or the statutory provisions, as the case may be.

(ix) In S. Venkateswaran v. The Additional Director, Land Survey and Records Department [W.P.(MD) No. 9086 of 2011, dated 14.09.2011], it is held as follows:

"The principles enunciated in the above said judgments would makes it clear that

compassionate appointment is not a vested right which can be exercised at any time, in future. Compassionate employment cannot be claimed after a lapse of time, after the crisis is over. On the facts and circumstances of the above case, the Apex Court proceeded to observe that the employee died in harness in the year 1981 and after a long squabble by the dependents of the deceased, they have arrived at a settlement that the son-in-law (husband of the second daughter) who was unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personal Manager of the Company subject to the approval of the Director of the Company. The Director (P), who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so called dependent of the deceased employee. The Supreme Court held that the decision of the employer was in consonance with Umesh Kumar Nagpal's case and the same should not have been interfered with by the High Court.?"

(x) In Local Administration Department v. M. Selvanayagam reported in MANU/SC/0339/2011 : 2011 AIR SCW 2198, an application was made by the son of the deceased, after 7 1/2 years, from the date of death of his father, who died as a Watchman in Karaikal Municipality on 22.11.1988, leaving behind, his wife and two sons, including the respondent therein. At the time of his death, the respondent therein was aged 11 years. After about 5 1/2 years from the date of his father's death, the respondent therein passed S.S.L.C. examination in April, 1993. Thereafter, for the first time on July, 29, 1993, the respondent's mother therein made an application for his appointment on compassionate grounds. No action was taken on the application, since the respondent therein was still a minor. A learned Single Judge directed the authorities to consider his claim for appointment on compassionate grounds, afresh and to pass an order on his application, within four months, from the date of passing of the order. As the same was not complied with, a contempt proceeding was initiated. The Municipality rejected the respondent's claim therein, for compassionate appointment. Once again, a writ petition was filed and this time, a learned Single Judge rejected the same. The Hon'ble Division Bench, which considered the correctness of the said order, allowed the writ appeal and that the same was challenged before the Hon'ble Apex Court. After considering the scheme of employment assistance on compassionate grounds, at Paragraphs 7 to 9, the Hon'ble Apex Court, held as follows:

"7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering from anemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality

which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganized way. But, apart from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

9. In this case the Respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the Respondent did not come under the scheme of compassionate appointments."

36. In National Institute of Technology v. Niraj Kumar Singh reported in MANU/SC/0687/2007 : 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was

appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

"21. The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well- known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P., v. L.V.A. Dixitulu, MANU/SC/0416/1978 : 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) by LRs. And Ors., MANU/SC/0549/2005 : (2005) 12 SCC 1]"

37. Though learned counsel for the writ petitioner submitted that under the existing

scheme, and the Government orders issued from time to time, on the aspect of considering the right of the minors, at the time of death of breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to subserve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee, the applicant should be an adult member irrespective of the period prescribed for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government orders issued from time to time, makes it clear that though indigent circumstance is one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government orders issued from time to time, that the application should be submitted within three years from the date of death, cannot be ignored. A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/ Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any

post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor, aged about 12 years. Reference can also be made to a decision made in SushmaGosain v. Union of India reported in MANU/SC/0519/1989 : 1989 (4) SCC 468.

41. In the result, the Writ Appeal is allowed. No costs. Order made in W.P(MD) No. 6538 of 2009 dated 22.04.2014 is set aside. Consequently, connected Miscellaneous Petition is closed."

40. In view of the discussions made above in relation to the facts of the case as well as the legal precedents settled by the Hon'ble Supreme Court of India and by the Hon'ble Division Bench, this Court is of the opinion that the scope of compassionate appointment is to be restricted to the terms and conditions of scheme itself and the same cannot be stretched by the Courts, so as to provide appointment on compassionate ground. This apart, the delay is also a vital factor. The scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court of India in respect of the scheme, the grounds raised in this writ petition deserve no further consideration.

41. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

–X–

10. Again, this Court considered the matter in J.V. Baharuni and Anr. etc. versus State of Gujarat and Anr etc.(2014) 10 SCC 494 and observed that the procedure prescribed for cases under Section 138 of the Act was flexible and applicability of Section 326(3) of the Cr.P.C. in not acting on the evidence already recorded in a summary trial did not strictly apply to the scheme of Section 143 of the Act Para 43 of J.V. Baharuni (2014) 10 SCC 494 This Court observed that the procedure being followed by the Magistrates was not commensurate with the summary trial provisions and a successor Magistrate ought not to mechanically order de novo trial. This Court observed that the Court should make endeavour to expedite hearing of cases in a time bound manner. The Magistrate should make attempts to encourage compounding of offence at an early stage of litigation. The compensatory aspect of remedy should be given priority over the punitive aspect.

11. While it is true that in Subramanium Sethuraman versus State of Maharashtra (2004)13 SCC 324. this Court observed that once the plea of the accused is recorded under Section 252 of the Cr.P.C., the procedure contemplated under Chapter XX of the Cr.P.C. has to be followed to take the trial to its logical conclusion, the said judgment was rendered as per statutory provisions prior to 2002 amendment. The statutory scheme post 2002 amendment as considered in Mandvi Cooperative Bank and J.V. Baharuni (supra) has brought about a change in law and it needs to be recognised. After 2002 amendment, Section 143 of the Act confers implied power on the Magistrate to discharge the accused if the complainant is compensated to the satisfaction of the Court, where the accused tenders the cheque amount with interest and reasonable cost of litigation as assessed by the Court. Such an interpretation was consistent with the intention of legislature. The court has to balance the rights of the complainant and the accused and also to enhance access to justice. Basic object of the law is to enhance credibility of the cheque transactions by providing speedy remedy to the complainant without intending to punish the drawer of the cheque whose conduct is reasonable or where compensation to the complainant meets the ends of justice. Appropriate order can be passed by the Court in exercise of its inherent power under Section 143 of the Act which is different from compounding by consent of parties. Thus, Section 258 Cr.P.C. which enables proceedings to be stopped in a summons case, even though strictly speaking is not applicable to complaint cases, since the provisions of the Cr.P.C. are applicable “so far as may be”, the principle of the said provision is applicable to a complaint case covered by Section 143 of the Act which contemplates applicability of summary trial provisions, as far as possible, i.e. with such deviation as may be necessary for speedy trial in the context.

12. The sentence prescribed under Section 138 of the Act is upto two years or with fine which may extend to twice the amount or with both. What needs to be noted is the fact that power under Section 357(3) Cr.P.C. to direct payment of compensation is in addition to the said prescribed sentence, if sentence of fine is not imposed.

The amount of compensation can be fixed having regard to the extent of loss suffered by the action of the accused as assessed by the Court. The direction to pay compensation can be enforced by default sentence under Section 64 IPC and by recovery procedure prescribed under Section 431 Cr.P.C. Hari Kishan v. Sukhbir Singh (1988) 4 SCC 551; Suganthi Suresh Kumar v. Jagdeeshan (2002) 2 SCC 420; K.A. Abbas H.S.A. v. Sabu Joseph (2010) 6 SCC 230; R. Mohan v. A.K. Vijaya Kumar (2012) 8 SCC 721; and Kumaran v. State of Kerala (2017) 7 SCC 471

13. This Court in Indian Bank Association and Ors. versus Union of India and Ors.(2014) 5 SCC 590 approved the directions of the Bombay High Court, Calcutta High Court and Delhi High Court in KSL and Industries Ltd. v. Mannalal Khandelwal 2005 Cri LJ 1201 (Bom), Indo International Ltd. versus State of Maharashtra2006 Cri LJ 208: (2005) 44 Civil CC (Bom) , Harishchandra Biyani versus Stock Holding Corporation of India Ltd. (2006) 4 Mah LJ 381, Magma Leasing Ltd. versus State of W.B. (2007) 3 CHN 574 and Rajesh Agarwal versus StateILR (2010) 6 Del 610 laying down simpler procedure for disposal of cases under Section 138 of the Act. This Court directed as follows:

“23. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the criminal courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given:

23.1. The Metropolitan Magistrate/ Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinise the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

23.2. The MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken.

23.3. The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.

23.4. The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 CrPC to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for

recalling a witness for cross-examination.

23.5. The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court.

24. We, therefore, direct all the criminal courts in the country dealing with Section 138 cases to follow the abovementioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act. The writ petition is, accordingly, disposed of, as above."

14. We may, however, note that this Court held that general directions ought not to be issued which may deprive the Magistrate to exercise power under Section 205 Cr.P.C. 26 TGN Kumar v. State of Kerala (2011) 2 SCC 772 We need to clarify that the judgment of this Court is not a bar to issue directions which do not affect the exercise of power under Section 205, to require personal attendance wherever necessary. Needless to say that the judgment cannot be read as affecting the power of the High Court under Article 225 of the Constitution read with Articles 227 and 235 to issue directions to subordinate courts without affecting the prevailing statutory scheme.

15. In Bhaskar Industries Ltd. versus Bhiwani Denim & Apparels Ltd.27 (2001) 7 SCC 401 , this Court considered the issue of hardship caused in personal attendance by an accused particularly where accused is located far away from the jurisdiction of the Court where the complaint is filed. This Court held that even in absence of accused, evidence can be recorded in presence of counsel under Section 273 Cr.P.C. and Section 317 Cr.P.C. permitted trial to be held in absence of accused. Section 205 Cr.P.C. specifically enabled the Magistrate to dispense with the personal appearance. Having regard to the nature of offence under Section 138, this Court held that the Magistrates ought to consider exercise of the jurisdiction under Section 205 Cr.P.C. to relieve accused of the hardship without prejudice to the prosecution proceedings. It was observed :

"15. These are days when prosecutions for the offence under Section 138 are galloping up in criminal courts. Due to the increase of inter-State transactions through the facilities of the banks it is not uncommon that when prosecutions are instituted in one State the accused might belong to a different State, sometimes a far distant State. Not very rarely such accused would be ladies also. For prosecution under Section 138 of the NI Act the trial should be that of summons case. When a magistrate feels that insistence of personal attendance of the accused in a summons case, in a particular situation, would inflict enormous hardship and cost to a particular accused, it is open to the magistrate to

consider how he can relieve such an accused of the great hardships, without causing prejudice to the prosecution proceedings."

16. It is, thus, clear that the trials under Chapter XVII of the Act are expected normally to be summary trial. Once the complaint is filed which is accompanied by the dishonored cheque and the bank's slip and the affidavit, the Court ought to issue summons. The service of summons can be by post/e-mail/courier and ought to be properly monitored. The summons ought to indicate that the accused could make specified payment by deposit in a particular account before the specified date and inform the court and the complainant by e-mail. In such a situation, he may not be required to appear if the court is satisfied that the payment has not been duly made and if the complainant has no valid objection. If the accused is required to appear, his statement ought to be recorded forthwith and the case fixed for defence evidence, unless complaintant's witnesses are recalled for examination.

17. Having regard to magnitude of challenge posed by cases filed under Section 138 of the Act, which constitute about 20% of the total number of cases filed in the Courts (as per 213 th Report of the Law Commission) and earlier directions of this Court in this regard, it appears to be necessary that the situation is reviewed by the High Courts and updated directions are issued. Interactions, action plans and monitoring are continuing steps mandated by Articles 39A and 21 of the Constitution to achieve the goal of access to justice 28. Use of modern technology needs to be considered not only for paperless courts but also to reduce overcrowding of courts. There appears to be need to consider categories of cases which can be partly or entirely concluded "online" without physical presence of the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated. Traffic challans may perhaps be one such category. Atleast some number of Section 138 cases can be decided online. If complaint with affidavits and documents can be filed online, process issued online and accused pays the specified 28 Hussain vs. Union of India (2017)5 SCC 702 amount online, it may obviate the need for personal appearance of the complainant or the accused. Only if the accused contests, need for appearance of parties may arise which may be through counsel and wherever viable, video conferencing can be used. Personal appearances can be dispensed with on suitable self operating conditions. This is a matter to be considered by the High Courts and wherever viable, appropriate directions can be issued.

18. From the above discussion following aspects emerge:

i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest

is paid and if there is no reason to proceed with the punitive aspect.

ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.

19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr.P.C. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) Cr.P.C. with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

20. In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the Bank where the accused has an account, such Bank, on being required, should furnish such e-mail ID to the payee of the cheque. In every summons, issued to the accused, it may be indicated that if the accused deposits

the specified amount, which should be assessed by the Court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant . If the accused complies with such summons and informs the Court and the complainant by e-mail, the Court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the Court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the Court to explore the possibility of settlement. It will also be open to the Court to consider the provisions of plea bargaining. Subject to this, the trial can be on day to day basis and endeavour must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily.

21. It will be open to the High Courts to consider and lay down category of cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts may also consider issuing any further updated directions for dealing with Section 138 cases in the light of judgments of this Court.

The appeals are disposed of. It will be open to the appellants to move the Trial Court afresh for any further order in the light of this judgment.

–X–

2017 (3) L.S. 44 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Chief Justice of India
Dipak Misra
The Hon'ble Mr.Justice
A.K.Sikri
The Hon'ble Mr.Justice
A.M.Khanwilkar
The Hon'ble Dr.Justice
D.Y.Chandrachud &
The Hon'ble Mr.Justice
Ashok Bhushan

National Insurance Co., Ltd., ..Petitioner
Vs.
Pranay Sethi & Ors., ..Respondents

MOTOR VEHICLES ACT, 1988, Secs.163-A & 166 – Methodology for computation of future prospects – Calculation of compensation suffer from several defects –Compensation cannot be a pittance - Necessary to state the correct legal position as Courts and Tribunals are using higher multiplier.

Following Conclusions were made by the Constitutional Bench of the Supreme Court of India :

SLP.(Civil)No.25590/14 Date:31-10-2017

* **While determining the income, an addition of 50% of actual salary to the income of deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should me made. The addition should be 30%, if the age of deceased between 40 to 50 years. In case the deceased was between age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.**

* **In case the deceased was self- employed or on a fixed salary, an addition of 40% of established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.**

* **Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.**

* **The age of the deceased should be the basis for applying the multiplier.**

J U D G M E N T

(per the Hon'ble Mr.Chief Justice of India) DipakMisra, CJI.

Perceiving cleavage of opinion between ReshmaKumari and others v. Madan Mohan and another (2013) 9 SCC 65 and Rajesh and others v. Rajbir Singh and others[(2013) 9 SCC 54], both three-Judge Bench decisions, a two-Judge Bench of this Court in National Insurance Company Limited v. Pushpa and others[(2015) 9 SCC 166] thought it appropriate to refer the matter to a larger Bench for an authoritative pronouncement, and that is how the matters have been placed before us.

2. In the course of deliberation we will be required to travel backwards covering a span of two decades and three years and may be slightly more and thereafter focus on the axis of the controversy, that is, the decision in SarlaVerma and others v. Delhi Transport Corporation and another[(2009) 6 SCC 121] wherein the two- Judge Bench made a sanguine endeavour to simplify the determination of claims by specifying certain parameters.

3. Before we penetrate into the past, it is necessary to note what has been stated in ReshmaKumari (supra) and Rajesh's case. In ReshmaKumari the three-Judge Bench was answering the reference made in ReshmaKumari and others v. Madan

Mohan and another[(2009) 13 SCC 422]. The reference judgment noted divergence of opinion with regard to the computation under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for brevity, "the Act") and the methodology for computation of future prospects. Dealing with determination of future prospects, the Court referred to the decisions in Sarla Dixit v. Balwant Yadav Abati Bezbaruah v. Dy. Director General, Geological Survey of India[(2003) 3 SCC 148] and the principle stated by Lord Diplock in Mallett v. McMonagle[1970 AC 166: (1969) 2 WLR 767] and further referring to the statement of law in Wells v. Wells[(1999) 1 AC 345] observed:-

> "46. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in Oriental Insurance Co. Ltd. v. Jashuben [(2008) 4 SCC 162] held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.
>
> 47. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor.
>
> 48. A large number of English decisions have been placed before us by Mr Nanda to contend that inflation may not be taken into consideration at all. While the reasonings adopted by the English courts and its decisions may not be of much dispute, we cannot blindly follow the same ignoring ground realities.
>
> 49. We have noticed the precedents operating in the field as also the rival contentions raised before us by the learned counsel for the parties with a view to show that law is required to be laid down in clearer terms."

4. In the said case, the Court considered the common questions that arose for consideration. They are:-

"(1) Whether the multiplier specified in the Second Schedule appended to the Act should be scrupulously applied in all the cases?

(2) Whether for determination of the

multiplicand, the Act provides for any criterion, particularly as regards determination of future prospects?"

5. Analyzing further the rationale in determining the laws under Sections 163-A and 166, the Court had stated thus:-

> "58. We are not unmindful of the Statement of Objects and Reasons to Act 54 of 1994 for introducing Section 163-A so as to provide for a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational. That may be so, but it defies logic as to why in a similar situation, the injured claimant or his heirs/legal representatives, in the case of death, on proof of negligence on the part of the driver of a motor vehicle would get a lesser amount than the one specified in the Second Schedule. The courts, in our opinion, should also bear that factor in mind."

6. Noticing the divergence of opinion and absence of any clarification from Parliament despite the recommendations by this Court, it was thought appropriate that the controversy should be decided by the larger Bench and accordingly it directed to place the matter before Hon'ble the Chief Justice of India for appropriate orders for constituting a larger Bench.

7. The three-Judge Bench answering the reference referred to the Scheme under Sections 163-A and 166 of the Act and took note of the view expressed by this Court in U.P. State Road Transport Corporation and others v. Trilok Chandra and others[(1996) 4 SCC 362], wherein the Court had stated:-

> "17. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163-A and 163-B in Chapter XI entitled 'Insurance of motor vehicles against third-party risks'.
>
> Section 163-A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a Table fixing the mode of calculation of compensation for thirdparty accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this Table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in Susamma Thomas case[(1994) 2 SCC 176].

18. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in Item 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs 3000. The total should be 3000 × 15 = 45,000 but the same is worked out at Rs 60,000. Similarly, in the second item the multiplier is 16 and the annual income is Rs 9000; the total should have been Rs 1,44,000 but is shown to be Rs 1,71,000. To put it briefly, the Table abounds in such mistakes. Neither the tribunals nor the courts can go by the ready reckoner.

It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16.

We thought it necessary to state the correct legal position as courts and tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies case." [Underlining is ours]

8. The Court also referred to Supe Dei v. National Insurance Company Limited[(2009) 4 SCC 513] wherein it has been opined that the position is well settled that the Second Schedule under Section 163-A to the Act which gives the amount of compensation to be determined for the purpose of claim under the section can be taken as a guideline while determining the compensation under Section 166 of the Act.

9. After so observing, the Court also noted the authorities in United India Insurance Co. Ltd v. Patricia Jean Mahajan[(2002) 6 SCC 281], DeepalGirishbhaiSoni v. United India Insurance Co. Ltd.[(2004) 5 SCC 385], and Jashuben (supra). It is perceivable from the pronouncement by the three-Judge Bench that it has referred to SarlaVerma and observed that the said decision reiterated what had been stated in earlier decisions that the principles relating to determination of liability and quantum of compensation were different for claims made under Section 163-A and claims made under Section 166. It was further observed that Section 163-A and the Second Schedule in terms did not apply to determination of compensation in applications under Section 166.

In SarlaVerma (supra), as has been noticed further in ReshmaKumari (supra), the Court found discrepancies/errors in the multiplier

scale given in the Second Schedule Table and also observed that application of Table may result in incongruities.

10. The three-Judge Bench further apprised itself that in SarlaVerma (supra) the Court had undertaken the exercise of comparing the multiplier indicated in Susamma Thomas (supra), Trilok Chandra (supra), and New India Assurance Co. Ltd v. Charlie and another[(2005) 10 SCC 720] for claims under Section 166 of the Act with the multiplier mentioned in the Second Schedule for claims under Section 163-A and compared the formula and held that the multiplier shall be used in a given case in the following manner:-

> "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."

11. After elaborately analyzing what has been stated in SarlaVerma (supra), the three-Judge Bench referred to the language employed in Section 168 of the Act which uses the expression "just". Elucidating the said term, the Court held that it conveys that the amount so determined is fair, reasonable and equitable by accepted legal standard and not on forensic lottery.

The Court observed "just compensation" does not mean "perfect" or "absolute compensation" and the concept of just compensation principle requires examination of the particular situation obtaining uniquely in an individual case. In that context, it referred to Taff Vale Railway Co. v. Jenkins[1913 AC 1 : (1911-13) All ER Rep 160 (HL)] and held:-

> "36. In SarlaVerma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in SarlaVerma that the claimants in case of death claim for the purposes of compensation must establish
>
> (a) age of the deceased;
>
> (b) income of the deceased; and
>
> (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider
>
> (i) additions/deductions to be made for arriving at the income;
>
> (ii) the deductions to be made towards the personal living expenses of the deceased; and
>
> (iii) the multiplier to be applied with reference to the age of the deceased.

> We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in SarlaVerma."

[Emphasis is added]

12. And further:-

> "It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in SarlaVerma for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the Table in SarlaVerma is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A.

As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in SarlaVerma should be followed. This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the Table in SarlaVerma should be followed." This is how the first question the Court had posed stood answered.

13. With regard to the addition of income for future prospects, this Court in ReshmaKumari (supra) adverted to Para 24 of the SarlaVerma's case and held:-

> "39. The standardisation of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years.

Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was selfemployed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases." The aforesaid analysis vividly exposits that standardization of addition to income for future prospects

is helpful in achieving certainty in arriving at appropriate compensation. Thus, the larger Bench has concurred with the view expressed by SarlaVerma (supra) as per the determination of future income.

14. It is interesting to note here that while the reference was pending, the judgment in Santosh Devi v. National Insurance Company Limited and others[(2012) 6 SCC 421] was delivered by a two-Judge Bench which commented on the principle stated in SarlaVerma.

It said:-

> "14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in SarlaVerma 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 naïve to say that the wages or total emoluments/ income of a person who is selfemployed 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 in 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 lakh.

17. Although the wages/income of those employed in unorganised 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 clothes.

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 para 24 of SarlaVerma 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 selfemployed 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% increase in his total income over a period of time and if he/she becomes victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

15. The aforesaid analysis in Santosh Devi (supra) may prima facie show that the two-Judge Bench has distinguished the observation made in SarlaVerma's case but on a studied scrutiny, it becomes clear that it has really expressed a different view than what has been laid down in SarlaVerma (supra). If we permit ourselves to say so, the different view has been expressed in a distinctive tone, for the two-Judge Bench had stated that it was extremely difficult to fathom any rationale for the observations made in para 24 of the judgment in SarlaVerma's case in respect of self-employed or a person on fixed salary without provision for annual increment, etc.

This is a clear disagreement with the earlier view, and we have no hesitation in saying that it is absolutely impermissible keeping in view the concept of binding precedents.

16. Presently, we may refer to certain decisions which deal with the concept of binding precedent.

17. In State of Bihar v. KalikaKuer alias Kalika Singh and others[(2003) 5 SCC 448], it has been held:- "10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the 19 (2003) 5 SCC 448 16 decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ..."

The Court has further ruled:-

> "10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways - either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

18. In G.L. Batra v. State of Haryana and others[(2014) 13 SCC 759], the Court has accepted the said principle on the basis of judgments of this Court rendered in Union of India v. Godfrey Philips India Ltd.[(1985) 4 SCC 369]SundarjasKanyalalBhatija v. Collector, Thane, Maharashtra[(1989) 3 SCC 396] and Tribhovand as

PurshottamdasThakkar v. RatilalMotilal Patel [AIR 1968 SC 372] .

It may be noted here that the Constitution Bench in Madras Bar Association v. Union of India and another [(2015) 8 SCC 583] has clearly stated that the prior Constitution Bench judgment in Union of India v. Madras Bar Association[(2010) 11 SCC 1] is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by latter Constitution Bench.

19. In this regard, we may refer to a passage from JaisriSahu v. Rajdewan Dubey[AIR 1962 SC 83]:-

> "11. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench.

The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in Seshamma v. VenkataNarasimharao that the decision of a court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, 3rd Edn., Vol. 22, para 1687, pp. 799-800: "The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."

In Virayya v. VenkataSubbayya it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in Bilimoria v. Central Bank of India. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."

20. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforestated pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a

precedent which is the fundamental norm of judicial discipline.

21. In the context, we may fruitfully note what has been stated in Pradip Chandra Parija and others v. Pramod Chandra Patnaik and others[(2002) 1 SCC 1]. In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench disagreeing with the three-Judge Bench decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated:-

> "6. ... In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of \three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. ..."

22. In Chandra Prakash and others v. State of U.P. and another[(2002) 4 SCC 234], another Constitution Bench dealing with the concept of precedents stated thus:-

> "22. ... The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.

It is in the above context, this Court in the case of Raghubir Singh[(1989) 2 SCC 754] held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. ..."

23. Be it noted, Chandra Prakash concurred with the view expressed in Raghubir Singh and Pradip Chandra Parija.

24.In Sandhya Educational Society and another v. Union of India and others [(2014) 7 SCC 701], it has been observed that judicial decorum and discipline is paramount and, therefore, a coordinate Bench has to respect the judgments and orders passed by another coordinate Bench. In Rattiram and others v. State of Madhya Pradesh[(2012) 4 SCC 516], the Court dwelt upon the issue what would be the consequent effect of the latter decision which had been rendered without noticing the earlier decisions.

The Court noted the observations in Raghubir Singh (supra) and reproduced a passage from Indian Oil Corporation Ltd. v. Municipal Corporation[(1995) 4 SCC 96] which is to the following effect:-

> "8. ... The Division Bench of the High Court in Municipal Corpn., Indore v. RatnaprabhaDhanda was clearly in error in taking the view that the decision of this Court in Ratnaprabha was not binding on it. In doing so, the Division Bench of the High Court

did something which even a later coequal Bench of this Court did not and could not do. ..."

25. It also stated what has been expressed in Raghubir Singh (supra) by R.S. Pathak, C.J. It is as follows:-

> "28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, 30 (2014) it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. ..."

26. In Rajesh (supra) the three-Judge Bench had delivered the judgment on 12.04.2013. The purpose of stating the date is that it has been delivered after the pronouncement made in ReshmaKumari's case. On a perusal of the decision in Rajesh (supra), we find that an attempt has been made to explain what the two- Judge Bench had stated in Santosh Devi (supra). The relevant passages read as follows:-

> "8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in SarlaVerma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects.

Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In SarlaVerma case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so 22 as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

27. At this juncture, it is necessitous to advert to another three- Judge Bench decision in MunnaLal Jain and another v. Vipin Kumar Sharma and others [(2015) 6 SCC 347]. In the said case, the three-Judge Bench commenting on the judgments stated thus:-

> "2. In the absence of any statutory and a straitjacket formula, there are bound to be grey areas despite several attempts made by this Court to lay down the guidelines. Compensation would basically depend on the evidence available in a case and the formulas shown by the courts are only guidelines for the computation of the compensation.

> That precisely is the reason the courts lodge a caveat stating "ordinarily", "normally", "exceptional circumstances", etc., while suggesting the formula."

28. After so stating, the Court followed the principle stated in Rajesh. We think it appropriate to reproduce what has been stated by the three-Judge Bench:-

> "10. As far as future prospects are concerned, in Rajesh v. Rajbir Singh, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects."

29. We are compelled to state here that in MunnaLal Jain (supra), the three-Judge Bench should have been guided by the 33 (2015) 6 SCC 347 23 principle stated in ReshmaKumari which has concurred with the view expressed in Sarla Devi or in case of disagreement, it should have been well advised to refer the case to a larger Bench. We say so, as we have already expressed the opinion that the dicta laid down in ReshmaKumari being earlier in point of time would be a binding precedent and not the decision in Rajesh.

30. In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra and another[(2014) 16 SCC 623] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court.

A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a coequal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh's case was delivered on a later date, it had not apprised itself of the law stated in ReshmaKumari (supra) but had been guided by Santosh Devi (supra). We have no hesitation that it is not a binding precedent on the co-equal Bench.

31. At this stage, a detailed analysis of SarlaVerma (supra) is necessary. In the said case, the Court recapitulated the relevant principles relating to assessment of compensation in case of death and also took note of the fact that there had been considerable variation and inconsistency in the decision for Courts and Tribunals on account of adopting the method stated in Nance v. British Columbia Electric Railway Co. Ltd. [1951 SC 601 : (1951) 2 All ER 448 (PC)]and the method in Davies v. Powell Duffryn Associated Collieries Ltd.[36 1942 AC 601 : (1942) 1 All ER 657 (HL)] It also analysed the difference between the considerations of the two different methods by this Court in Susamma Thomas (supra) wherein preference was given to Davies method to the Nance method. Various paragraphs from Susamma Thomas (supra)

and Trilok Chandra (supra) have been reproduced and thereafter it has been observed that lack of uniformity and consistency in awarding the compensation has been a matter of grave concern. It has stated that when different tribunals calculate compensation differently on the same facts, the claimant, the litigant and the common man are bound to be confused, perplexed and bewildered. It adverted to the observations made in Trilok Chandra (supra) which are to the following effect:-

> "15. We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the awards made by tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/ court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. ..."

32. While adverting to the addition of income for future prospects, it stated thus:- "24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in AbatiBezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be 26 only 30% if the age of the deceased was 40 to 50 years.

There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

33. Though we have devoted some space in analyzing the precedential value of the judgments, that is not the thrust of the controversy. We are required to keenly dwell upon the heart of the issue that emerges for consideration. The seminal controversy before us relates to the issue where the deceased was self-employed or was a person on fixed salary without provision for annual increment, etc., what should be the addition as regards the future prospects. In SarlaVerma, the Court has made it as a rule that 50% of actual salary could be added if the deceased had a permanent job and if the age of the deceased is between 40 - 50 years and no addition to be made

if the deceased was more than 50 years.

It is further ruled that where deceased was self-employed or had a fixed salary (without provision for annual increment, etc.) the Courts will usually take only the actual income at the time of death and the departure is permissible only in rare and exceptional cases involving special circumstances.

34. First, we shall deal with the reasoning of straitjacket demarcation between the permanent employed persons within the taxable range and the other category where deceased was self-employed or employed on fixed salary sans annual increments, etc.

35. The submission, as has been advanced on behalf of the insurers, is that the distinction between the stable jobs at one end of the spectrum and self-employed at the other end of the spectrum with the benefit of future prospects being extended to the legal representatives of the deceased having a permanent job is not difficult to visualize, for a comparison between the two categories is a necessary ground reality. It is contended that guaranteed/definite income every month has to be treated with a different parameter than the person who is self-employed inasmuch as the income does not remain constant and is likely to oscillate from time to time.

Emphasis has been laid on the date of expected superannuation and certainty in permanent job in contradistinction to the uncertainty on the part of a selfemployed person. Additionally, it is contended that the permanent jobs are generally stable and for an assessment the entity or the establishment where the deceased worked is identifiable since they do not suffer from the inconsistencies and vagaries of self-employed persons. It is canvassed that it may not be possible to introduce an element of standardization as submitted by the claimants because there are many a category in which a person can be self-employed and it is extremely difficult to assimilate entire range of self-employed categories or professionals in one compartment.

It is also asserted that in certain professions addition of future prospects to the income as a part of multiplicand would be totally an unacceptable concept. Examples are cited in respect of categories of professionals who are surgeons, sports persons, masons and carpenters, etc. It is also highlighted that the range of self-employed persons can include unskilled labourer to a skilled person and hence, they cannot be put in a holistic whole. That apart, it is propounded that experience of certain professionals brings in disparity in income and, therefore, the view expressed in SarlaVerma (supra) that has been concurred with ReshmaKumari (supra) should not be disturbed.

36. Quite apart from the above, it is contended that the principle of standardization that has been evolved in SarlaVerma (supra) has been criticized on the ground that it grants compensation without any nexus to the actual loss. It is also urged that even if it is conceded that the said view is correct, extension of the said principle to some of the self-employed persons will be absolutely unjustified and untenable. Learned counsel for the insurers further contended that the view expressed in Rajesh (supra) being not a precedent has

to be overruled and the methodology stood in SarlaVerma (supra) should be accepted.

37. On behalf of the claimants, emphasis is laid on the concept of "just compensation" and what should be included within the ambit of "just compensation". Learned counsel have emphasized on Davies method and urged that the grant of pecuniary advantage is bound to be included in the future pecuniary benefit.

It has also been put forth that in right to receive just compensation under the statute, when the method of standardization has been conceived and applied, there cannot be any discrimination between the person salaried or self-employed. It is highlighted that if evidence is not required to be adduced in 30 one category of cases, there is no necessity to compel the other category to adduce evidence to establish the foundation for addition of future prospects.

38. Stress is laid on reasonable expectation of pecuniary benefits relying on the decisions in Tafe Vale Railway Co. (supra) and the judgment of Singapore High Court in Nirumalan V KanapathiPillay v. TeoEngChuan. Lastly[(2003) 3 SLR (R) 601], it is urged that the standardization formula for awarding future income should be applied to self-employed persons and that would be a justifiable measure for computation of loss of dependency.

39. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from SarlaVerma, ReshmaKumari, Rajesh and MunnaLal Jain. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, SarlaVerma lays down:-

> "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra4, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this 37 (2003) 3 SLR (R) 601 31 Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.
>
> 31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically.

Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger nonearning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

40. In ReshmaKumari, the three-Judge Bench agreed with the multiplier determined in SarlaVerma and eventually held that the advantage of the Table prepared in SarlaVerma is that uniformity and consistency in selection of multiplier can be achieved.

It has observed:-

"35. ... The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a "multiplier" to arrive at the loss of dependency."

41. In ReshmaKumari, the three-Judge Bench, reproduced paragraphs 30, 31 and 32 of SarlaVerma and approved the same by stating thus:-

"41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

42. In our view, the standards fixed by this

Court in SarlaVerma on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out."

42. The conclusions that have been summed up in ReshmaKumari are as follows:-

> "43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in SarlaVerma read with para 42 of that judgment.
>
> 43.2. In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in SarlaVerma should be followed.
>
> 43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.
>
> 43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of SarlaVerma for determination of compensation in cases of death. 43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in SarlaVerma. 43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in SarlaVerma 34 subject to the observations made by us in para 41 above."

43. On a perusal of the analysis made in SarlaVerma which has been reconsidered in ReshmaKumari, we think it appropriate to state that as far as the guidance provided for appropriate deduction for personal and living expenses is concerned, the tribunals and courts should be guided by conclusion 43.6 of ReshmaKumari. We concur with the same as we have no hesitation in approving the method provided therein.

44. As far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of SarlaVerma read with paragraph 42 of the said judgment. For the sake of completeness, paragraph 42 is extracted below :-

> "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."

45. In ReshmaKumari, the aforesaid has been approved by stating, thus:-

"It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in SarlaVerma for the selection of multiplier in claim applications made under Section 166 in the cases of death.We do accordingly. If for the selection of multiplier, Column (4) of the Table in SarlaVerma is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in SarlaVerma should be followed.

This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the Table in SarlaVerma should be followed."

46. At this stage, we must immediately say that insofar as the aforesaid multiplicand/ multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be 36 added to the sum on the percentage basis and "income" means actual income less than the tax paid. The multiplier has already been fixed in SarlaVerma which has been approved in ReshmaKumari with which we concur.

47. In our considered opinion, if the same is followed, it shall subserve the cause of justice and the unnecessary contest before the tribunals and the courts would be avoided. 48. Another aspect which has created confusion pertains to grant of loss

of estate, loss of consortium and funeral expenses. In Santosh Devi (supra), the two-Judge Bench followed the traditional method and granted Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- as regards the loss of consortium. In SarlaVerma, the Court granted Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of Consortium.

In Rajesh, the Court granted Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. It also granted Rs. 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle 37 and ought to be periodically revisited as has been held in Santosh Devi (supra). On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard.

We quote:-

> "17. ... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of nonpecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement.
>
> By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

49. Be it noted,MunnaLal Jain (supra) did not deal with the same as the notice was confined to the issue of application of correct multiplier and deduction of the amount.

50. This aspect needs to be clarified and appositely stated. The conventional sum

has been provided in the Second Schedule of the Act. The said Schedule has been found to be defective as stated by the Court in Trilok Chandra (supra). Recently in Puttamma and others v. K.L. Narayana Reddy and another[(2013) 15 SCC 45] it has been reiterated by stating:-

> "... we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy."

51. As far as multiplier or multiplicand is concerned, the same has been put to rest by the judgments of this Court. Para 3 of the Second Schedule also provides for General Damages in case of death. It is as follows:- "3. General Damages (in case of death): The following General Damages shall be payable in addition to compensation outlined above:-

> (i) Funeral expenses - Rs. 2,000/-
>
> (ii) Loss of Consortium, if beneficiary is the spouse - Rs. 5,000/-
>
> (iii) Loss of Estate - Rs. 2,500/-
>
> (iv) Medical Expenses - actual expenses incurred before death supported by bills/vouchers but not exceeding - Rs. 15,000/-"

52. On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been followed starting from the decision in Trilok Chandra (supra) and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice, in different cases different amounts have been granted. A sum of Rs. 1,00,000/- was granted towards consortium in Rajesh. The justification for grant of consortium, as we find from Rajesh, is founded on the observation as we have reproduced hereinbefore.

53. On the aforesaid basis, the Court has revisited the practice of awarding compensation under conventional heads.
54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same.

The conventional and 40 traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and

unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided.

Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

55. Presently, we come to the issue of addition of future prospects to determine the multiplicand. 56. In Santosh Devi the Court has not accepted as a principle that a self-employed person remains on a fixed salary throughout his life. It has taken note of the rise in the cost of living which affects everyone without making any distinction between the rich and the poor. Emphasis has been laid on the extra efforts made by this category of persons to generate additional income. That apart, judicial notice has been taken of the fact that the salaries of those who are employed in private sectors also with the passage of time increase manifold. In Rajesh's case, the Court had added 15% in the case where the victim is between the age group of 15 to 60 years so as to make the compensation just, equitable, fair and reasonable. This addition has been made in respect of self-employed or engaged on fixed wages.

57. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and nonviolation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance.

Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in SarlaVerma (supra) and it has been approved in ReshmaKumari (supra). The age and income, as stated earlier, have to be

established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality.

It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. SarlaVerma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.

59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty.

But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance.

The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get

better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time.

Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality.

And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of 46 percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. SarlaVerma thinks it appropriate not to add any amount and the same has been approved in ReshmaKumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other.

To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of selfemployed or person on fixed salary, the addition should be 10% 47 between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated

in SarlaVerma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in ReshmaKumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was 48 between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of SarlaVerma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in SarlaVerma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

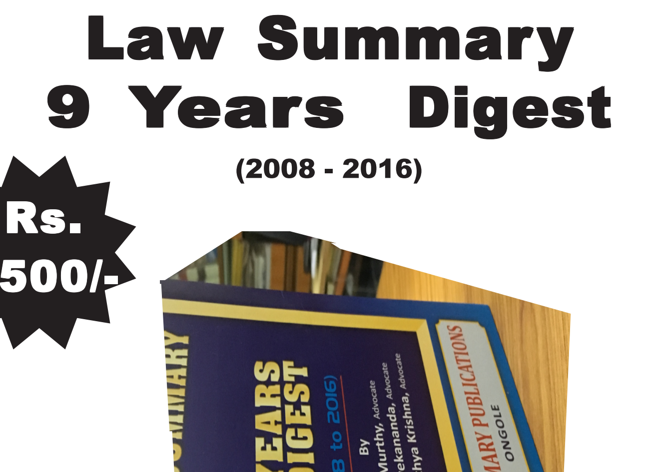
62. The reference is answered accordingly. Matters be placed before the appropriate Bench.

–X–

Law Summary
9 Years Digest

(2008 - 2016)

Rs. 1500/-



Printed, Published and owned by **Smt.Alapati Sunitha,**

Printed at: Law Summary Off-Set Printers,Santhapeta Ext., Ongole - 523001, Prakasam District. (AP)

Editor: **A.R.K. Murthy,** Advocate.