

CONTENTS

Advocates Association, Bangalore v. Union of India & Ors.	.....	813
Bhajan Singh v. State of Uttarakhand & Ors.	.....	825
Charanjit & Ors. v. State of Punjab & Anr.	.....	688
Gian Chand & Ors. v. State of Haryana	.....	728
Kashi Vishwanath v. State of Karnataka	.....	627
Kishan Gopal & Anr. v. Lala & Ors.	.....	793
Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors.	.....	847
Nana Keshav Lagad v. State of Maharashtra	.....	606
Rekha Jain & Anr. v. National Insurance Co. Ltd.	.....	750
Sondur Gopal v. Sondur Rajini	.....	706
Standard Chartered Bank v. V. Noble Kumar & Others	.....	762

State of Himachal Pradesh v. Jai Chand	.....	646
Swarn Kaur v. Gurmukh Singh and Ors.	.....	664
Veer Pal Singh v. Secretary, Ministry of Defence	.....	579

SUBJECT-INDEX**APPEAL:**

Appeal under SARFAESI Act - Scope and nature of.
(See under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 762

ARMED FORCES:

Pre-mature release/discharge of appellant from service for suffering from 'Schizophrenic Reaction' - Disability pension - Entitlement to - Expert opinion - Opinion of Medical Board - Scope of judicial review - Invaliding Medical Board simply endorsed the observation of Psychiatrist that the case of appellant was that of "Schizophrenic Reaction" - Conclusion recorded by the Invaliding Medical Board was not well founded and required review in the context of the observation made by the Psychiatrist herself that with treatment, the appellant had improved - In the peculiar facts, the tribunal should have ordered constitution of Review Medical Board for re-examination of appellant - However, the tribunal mechanically observed that it cannot sit in appeal over the opinion of the Medical Board - Respondents directed to refer the case of appellant to Review Medical Board for re-assessing his medical condition and find out whether at the time of discharge from service, he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension.

Veer Pal Singh v. Secretary, Ministry of Defence 579

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.313.
(See under: Evidence) 606

(2)(See under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 762

COMPENSATION:

Claim for compensation.
(See under: Motor Vehicles Act, 1988) 750, 793 and 847

CONSTITUTION OF INDIA, 1950:

(1) Art. 136.
(See under: Penal Code, 1860) 688

(2) Art. 136 - CBI investigation - Entrusting of - Prayer for - Tenability - Scuffle between advocates, police and media persons and simultaneous violence in the City Civil Court Complex - Lathi charge by police - Several persons injured - Number of vehicles also damaged and destroyed due to stone pelting and arson - Over 191 cases registered - Writ petitions before High Court - Special Investigation Team (SIT) constituted by High Court to investigate into the incident - Direction of Supreme Court modifying the composition of SIT - In spite of the modified order of Supreme Court, investigation did not commence due to non-formation of SIT - Held: Principles laid down in a Constitution Bench decision of Supreme Court in regard to entrusting of investigation to CBI, and the series of incidents in the instant case, make it clear that CBI inquiry is necessitated in the matter in issue - CBI directed to carry out the investigation and submit a report before the appropriate Court within six months - State/SIT to immediately hand

(v)

over all the records pertaining to the investigation to the CBI.

Advocates Association, Bangalore v. Union of India & Ors. 813

(3) Art. 245(2).
(See under: Hindu Marriage Act, 1955) 706

CRIME AGAINST WOMEN:

(See under: Penal Code, 1860) 688

EVIDENCE:

(1) Murder case - Defence plea with reference to bloodstains found on the clothes of the accused that the prosecution failed to satisfactorily establish the same through independent evidence - Held: Not tenable - It was for the accused to have explained as to how the clothes worn by them contained human blood - In s.313 questioning, no explanation was forthcoming from the accused - Code of Criminal Procedure, 1973 - s.313.

Nana Keshav Lagad v. State of Maharashtra 606

(2) (See under: Penal Code, 1860) 646

EVIDENCE ACT, 1872:

(1) ss.106 and 114.
(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) 728

(2) s.145.
(See under: Penal Code, 1860) 688

FATAL ACCIDENT:

(See under: Motor Vehicles Act, 1988) 750
and 793

HINDU MARRIAGE ACT, 1955:

ss.1(2), 2(1) and 10 - Extent and applicability of

(vi)

the Act - Extra-territorial operation - Wife's petition for judicial separation and custody of children - Maintainability of - Challenged by husband on ground that the parties had no domicile in India and, hence, were not governed by the Act - Held: The Act has extra-territorial operation and applies to Hindus domiciled in India even if they reside outside India - If the requirement of domicile in India is omitted altogether, the Act shall have no nexus with India which shall render the Act vulnerable on the ground that extra-territorial operation has no nexus with India - Domicile of origin prevails until not only another domicile is acquired but it must manifest intention of abandoning the domicile of origin - Unless proved, there is presumption against the change of domicile - Therefore, the person who alleges it has to prove that - Intention is always lodged in the mind, which can be inferred from any act, event or circumstance in the life of such person - On facts, no material to endorse the husband's claim of being domicile of Australia - The husband continued to have the domicile of origin i.e. India - Both the husband and wife being domicile of India, were covered by the provisions of the Act - Petition filed by wife, therefore, was maintainable - Constitution of India, 1950 - Art. 245(2).

Sondur Gopal v. Sondur Rajini 706

INVESTIGATION:

Entrustment of investigation to CBI.
(See under: Constitution of India, 1950) 813

JUDICIAL NOTICE:

(See under: Motor Vehicles Act, 1988) 847

JUDICIAL REVIEW:

Scope of.

(See under: Armed Forces) 579

MAXIMS:

"omnia praesumuntur rite it dowee probetur in contrarium solenniter esse acta".

(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) 728

MOTOR VEHICLES ACT, 1988:

(1) ss. 140, 166 and 163A - Fatal accident - Claim for compensation - By the parents of the deceased (a 10 year old boy) - Courts below denied compensation - Held: Claimants entitled to award of just and reasonable compensation - Compensation of Rs. 5 lakhs awarded with interest at the rate of 9% p.a. from the date of filing of claim petition.

Kishan Gopal & Anr. v. Lala & Ors. 793

(2) ss.149(2) and 170(b) - Fatal accident - Claim for compensation - Claims Tribunal awarded compensation of Rs.10,62,000/- after deducting 1/3rd of the income of the deceased towards her personal expenses and by applying multiplier of 11 - Appeal by the claimant as well as the insurer - High Court reduced the compensation to Rs.8,00,000/- - Held: High Court wrongly interfered with the quantum of compensation awarded by the Tribunal - Moreover, the insurance company had no right to challenge the quantum of compensation in absence of permission from the tribunal - Hence, judgment of tribunal is restored.

Rekha Jain & Anr. v. National Insurance Co. Ltd. 750

(3)(i)s.166 - Compensation claim - Head-on collision between a car and a truck - Driver of the

car died - Tribunal held that there was contributory negligence on the part of the deceased in causing the accident, therefore, his dependents i.e. the appellants were entitled to get dependency compensation only to the extent of 50% for the fault of the offending truck - Order affirmed by High Court - Held: 50% deduction out of the total loss of dependency compensation determined by the tribunal was not correct - In absence of rebuttal evidence, the Tribunal erroneously placed reliance upon the charge-sheet filed against the driver of the offending truck and deceased to hold there was contributory negligence on the part of deceased ignoring the fact that the criminal case against him had abated.

(ii) s.166 - Compensation claim - Head-on collision between a car and a truck - Husband of the first appellant, who was working as driver of the car, died - Deceased was 35 years of age - Dependents of the deceased i.e. the appellants claimed compensation - Tribunal awarded Rs.1,92,000/- towards loss of dependency and further Rs.5000/- and Rs.3000/- towards funeral expenses and loss of estate, love and affection respectively and thus in total, a compensation of Rs.2,00,000/- with interest @ 6% p.a - Compensation awarded by Tribunal approved by High Court - Justification - Held: Not justified - Appellants entitled to enhanced compensation - Judicial notice should have been taken of the fact that the post of a driver is a skilled job - Multiplier of 16 to be applied as deceased was aged 35 years - Appellants accordingly entitled to amount of Rs.9,98,400/- towards loss of dependency - Further, taking into consideration all the expenses incurred for the funeral and sudhi ceremonies and towards loss of love and affection

child and the first appellant wife, award of Rs.50,000/- is just and reasonable under the conventional heads - Total compensation thus amounting to Rs.10,48,400/- - Insurance Company liable to pay the same as the offending vehicle was insured with it alongwith interest @ 9% p.a., from the date of application till the date of payment.

Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. 847

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

ss.15, 20, 35 & 54 - Accused-appellants found carrying ten bags of contraband in a vehicle - Convicted by Courts below u/s.15 - Justification - Held: Justified - Evidence Act, 1872 - ss.106 and 114 - Maxims - "omnia praesumuntur rite it dowee probetur in contrarium solenniter esse acta".

Gian Chand & Ors. v. State of Haryana 728

NEGLIGENCE:

Contributory negligence.

(See under: Motor Vehicles Act, 1988) 847

PENAL CODE, 1860:

(1) s. 302 - Murder of wife - Conviction by trial court - Acquittal by High Court - Held: Order of High Court was unsustainable as the same was passed in disregard of the medical evidence and the material witnesses - In view of the medical evidence, evidence of the independent witness and the conduct of the accused, he is liable to be convicted - Order of conviction restored.

State of Himachal Pradesh v. Jai Chand 646

(2) s.302 r/w s.34 and s.324 r/w s.34 - Murder - Common intention - Dispute over land - Leading to assault with cycle chain and stone - Multiple

injuries to complainant (PW4) and death of his father - Conviction of accused-appellants - Justification - Held: Justified.

Nana Keshav Lagad v. State of Maharashtra 606

(3) s. 304 (Part II) - Conviction under ss. 302/34 and 201/34 by trial court - Acquittal by High Court - Held: Inflicting of injury by the accused and the ultimate death of the deceased due to the said injury has been proved without any iota of doubt - Conduct of the accused in deliberately failing to identify the dead-body of the deceased, lodging missing report of deceased and the conduct of negotiating with the wife of the deceased, go against the accused - They are guilty of causing death of the deceased - However, nature of injury and weapons used do not suggest intention of causing death - Hence, conviction altered to one u/s.304 (Part II) - Accused sentenced to 7 years RI and fine.

Swarn Kaur v. Gurmukh Singh and Ors. 664

(4) ss.323/34, 504/34, 376(2)(a) and 376(2)(g) - Appellant-police officials picked up PW3 for interrogation and detained her in the police station at night, and then tortured and raped her - PW3 was released only on the next day when the village panchayat intervened - Conviction of appellants by courts below - Justification - Held: Justified - Trial court and the High Court recorded concurrent findings of facts while holding the appellants guilty - Though powers of Supreme Court u/Article 136 of the Constitution are very wide, in criminal appeals the Supreme Court does not interfere with concurrent findings of facts, save in exceptional circumstances where there has been grave miscarriage of justice - In the case at hand.

(xi)

concurrent findings of facts recorded by the trial court and the High Court are based on legal evidence and there is no miscarriage of justice as such by the two courts while arriving at said findings - Impugned judgment of the High Court therefore not interfered with, in exercise of discretion under Article 136 of the Constitution - Constitution of India, 1950 - Article 136 - Evidence Act, 1872 - s.145.

Charanjit & Ors. v. State of Punjab & Anr. 688

(5) ss. 498A and 302 r/w s.34 - Married woman died due to burn injuries - Deceased gave three dying declarations - Three accused viz. deceased's husband, his mother and another woman ('L') with whom the deceased's husband allegedly had illicit relations - Trial court convicted the husband and 'L' u/ss.498A and 302 r/w 34 - High Court confirmed the conviction of appellant-husband but acquitted 'L' - Held: Comparison of the three dying declarations show glaring contradictions - Apart from the contradictions, credibility of the three dying declarations also doubtful -Prosecution also failed to state as to why the three dying declarations were recorded in Kannada, if the deceased was talking in Telugu - Not clear as to who amongst the Tehisldar, PSI or SI or the Doctors who signed the dying declaration had knowledge of Telugu and translated the same in Kannada for writing dying declarations - Doubt as to truthfulness of the contents of the dying declarations as possibility of the deceased being influenced by somebody in making the dying declarations not ruled out - Prosecution did not establish its case beyond reasonable doubt - Hence, conviction of appellant set aside.

Kashi Vishwanath v. State of Karnataka 627

(xii)

PENSION:

Disability pension - Entitlement to.
(See under: Armed Forces) 579

PRIVATE INTERNATIONAL LAW:

Domicile - Kinds of - Domicile of origin and domicile of choice - Discussed.

Sondur Gopal v. Sondur Rajini 706

PUBLIC CORPORATION:

Appointment in higher administrative positions.
(See under: Service Law) 825

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002:

(i) ss. 13(4) and 14 - Possession of secured assets - Method and manner of - Invocation of s. 14 - Without invoking provisions of s. 13(4) - And without following procedure contemplated u/r. 8 of Security Interest (Enforcement) Rules, 2002 - Permissibility - Held: It is not mandatory for the secured creditor to obtain possession on its own resorting to provision u/s. 13(4), before approaching the Magistrate u/s. 14 - Secured creditor is also not required to follow the procedure laid down u/r. 8 of 2002 Rules before invoking provisions u/s. 14 - Functioning of the Magistrate is structured by the provisions under Cr.P.C. - r.8 provides procedure to be followed when possession of the secured asset is taken without intervention of the Court - Security Interest (Enforcement) Rules, 2002 - r. 8 - Code of Criminal Procedure, 1973.

(ii) s. 17 - Appeal under - Scope and nature of - Held: A borrower is always entitled to prefer an 'appeal' under s.17 after losing possession of the property - It is immaterial whether such possession

(xiii)

is obtained either directly u/s. 13(4) or through the Magistrate u/s. 14 - Remedy u/s. 17 is essentially like filing a suit.

Standard Chartered Bank v. V. Noble Kumar & Others 762

SECURITY INTEREST (ENFORCEMENT) RULES, 2002:

r. 8.

(See under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 762

SERVICE LAW:

Selection - Of respondent No.4 as Managing Director of respondent no.2-State Water Supply Department - Manner and merits of - Challenge to, on ground of non-disclosure of pending charge-sheets against respondent no.4 to the Selection Committee - Held: Respondent no.3 was Chairman of Respondent no.2-Nigam and also a Member of the Selection Committee - He was fully aware that three charge sheets were pending against respondent No. 4 and had in fact also approved the same and yet he did not bring the same to the notice of the Selection Committee, which was in clear breach of the requirements of r.5 - Selection of respondent No.4 was clearly faulty and, therefore, set aside - Serious doubt about the integrity of Respondent no.3 - Respondent No.1-State to hold appropriate inquiry as to why Respondent no.3 did not place the relevant material before the Selection Committee and take necessary corrective measure - Uttarakhand Peyjal Sanshadhan Vikas Avam Nirman Nigam (The Post of the Managing Director) Rules, 2011 - rr. 3, 4 and 5 - Uttar Pradesh Water Supply and Sewerage Act as applicable to the

(xiv)

State of Uttarakhand - s.96 r/w s.4(2-A) - Public Corporation - Appointment in higher administrative positions.

Bhajan Singh v. State of Uttarakhand & Ors. 825

UTTARAKHAND PEYJAL SANSHADHAN VIKAS AVAM NIRMAN NIGAM (THE POST OF THE MANAGING DIRECTOR) RULES, 2011:

rr. 3, 4 and 5.

(See under: Service Law) 825

UTTAR PRADESH WATER SUPPLY AND SEWERAGE ACT:

s.96 r/w s.4(2-A).

(See under: Service Law) 825

WITNESSES:

(i) Appreciation of - Credibility - Murder case - Number of accused - In his oral evidence before the Court, PW4-complainant fully supported his version, barring the presence of two accused - PW4 admitted that those two accused were not present at the time of the incident and to that extent, his statement in the complaint was incorrect - Held: It cannot be held that the whole of the evidence of PW4 has to be rejected.

(ii) Panch witness - Appreciation - Held: Merely because the panch witness in question had tendered evidence in another case, it cannot be held that on that score alone his evidence should be rejected - Version of the said witness was truthfully and fully corroborated, and hence, was acceptable.

Nana Keshav Lagad v. State of Maharashtra 606