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Newsletter

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Applicable laws are attracted by choice of judicial seat

Appellant: Eitzen Bulk A/S Versus Respondent: Ashapura Minechem Ltd. and Another	Court: Supreme Court of India Date of Judgment: May 13, 2016 Case No.: Civil Appeal Nos. 5131-5133 Of 2016 with others
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The Supreme Court in this case has held that "As a matter of fact the mere choosing of the juridical seat of Arbitration attracts the law applicable to such location. In other words it would not be necessary to specify which law would apply to the Arbitration proceedings, since the law of the particular country would apply ipso jure." The question before the court in this matter was whether Part I of the Arbitration Act is excluded from its operation in case of a Foreign Award where the Arbitration is not held in India and is governed by foreign law.?

The Court added further that where the parties choose a juridical seat of Arbitration outside India and provide that the law which governs Arbitration will be a law other than Indian law, Part I of the Arbitration and Conciliation Act, 1996 would not have any application and, therefore, the award debtor would not be entitled to challenge the award by raising objections under Section 34 before a Court in India. A Court in India could not have jurisdiction to entertain such objections under Section 34 in such a case.

**Matter cannot be quashed after settlement between parties in a case of
“death by negligence”**

Petitioner: Baldev Singh Versus Respondent: State of Punjab & another	Court: High Court of Punjab and Haryana Date of Judgment: June 2, 2016 Case no: CRM No. M-40769 of 2014
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In the present case, the question brought before the court was whether a case of negligence causing death under Section 304A of the Indian Penal Code was a private matter that could, be quashed upon the settlement between both parties.

Analysing the relevant provision, several judgments on the matter and facts of the matter, the Bench observed that "It would indeed be paradoxical and incorrect to hold that the offence Under Section 304A is private in nature. Its serious impact on society is not subject to understatement. When a person or persons lose their life/lives due to the rash and negligent act of the accused, the question of *mens rea* or intention in such a situation pales into insignificance. The wrong cannot be termed to be private or personal in nature like offences arising out of matrimony, relating to dowry etc., family disputes or criminal cases having overwhelmingly and predominantly a civil flavor like commercial, financial, mercantile, civil or partnership matters."

The Court therefore held that criminal proceedings against an accused under Section 304A cannot be quashed by invoking inherent powers under Section 482 of Criminal Procedure Code on the basis of settlement/compromise arrived at between the accused and the legal heirs/representatives of the person who has lost his life in the accident.

**Person Cannot Claim Compensation Under Both Motor Vehicle Act As Well As
Workmen's Compensation Act**

Appellant: Dalbir Lal Versus Respondent: State and Another	Court: High Court of Uttarakhand Date of Judgment: June 3, 2016 Case No.: Appeal from Order No.344 of 2008
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The High Court in this case held that a person, who met with an accident, being an employee, can claim compensation under either Motor Vehicles Act or Workmen's Compensation Act, but he cannot do so under both. The Court held that Section 167 of the Motor Vehicles Act contemplates in so many words regarding claims for compensation of a person, who met with accident, in any manner, being an employee, then he may claim compensation under either Motor Vehicles Act or Workmen's Compensation Act but he cannot be at liberty to claim such compensation under both the Acts. The Court further added that "to reach at the workplace is the responsibility of the employee and it cannot be fastened upon the employer to fetch its employee from his residence and to ensure his safe arrival to his residence after working hours are over for the simple reason that such employee remains out of administrative discipline of the employer after leaving the premises of workplace and he may enjoy the liberty to reach his home after any length of time, as happened in the present case.

Compensation Under Motor Vehicle Act Not Subjected To TDS Or Income Tax

Petitioner: Tamil Nadu State Transport Corporation (Salem), Ltd. Versus Respondent: Chinnadurai	Court: High Court of Madras Date of Judgment: June 2, 2016 Case No: CRP (PD) No. 1343 of 2012 and M.P. No. 1 of 2012
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The Madras High Court recently arrived at the conclusion that compensation awarded by the Motor Vehicles Claims Tribunal to accident victims cannot be subjected to TDS and Income Tax.

The Court added that the Motor vehicles Act is a social welfare legislation and added that if there is a conflict between a social welfare legislation and a taxation legislation, then, this Court is of the view that former should prevail since it subserves larger public interest.

After placing reliance on judicial pronouncements on the matter, the Court held "Compensation cannot be categorized or even described as income as it has already been stated that the intention of the legislature in awarding compensation to the victims of Motor Accident cases is to reconstitute them and rehabilitate them."....."The Motor Vehicles Act has undergone a sea change and the purpose of granting compensation under the Motor Vehicles Act is to ameliorate the sufferings of the victims so that they may be saved from social evils and starvation, and that the victims get some sort of help as early as possible. It is just to save them from sufferings, agony and to rehabilitate them. We wonder how and under what provisions of law the Income Tax Authorities have treated the amount awarded or interest accrued on term deposits made in Motor Accident Claims Cases as income."The underlying basis behind this is that a person who suffers a loss cannot be asked to part with the solation he receives since it is the only remedy he has been provided with by the law."

Criminal Proceedings are not a short cut for other remedies

Applicant: K. L. Agarwal Versus Opposite Party: State of U.P. and Another	Court: High Court of Allahabad Date of Judgment: May 25, 2016 Case No.: APPLICATION U/S 482 No. - 39907 of 2013
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The Allahabad High Court in this case held that Criminal proceedings are not a short cut for other remedies.

The Bench quashed the Criminal proceedings and held as follows; "In the present case, looking at the allegations in the complaint quoted in the preceding paragraphs of the order, on the face of it, there appears a simple breach of trust of contract by either parties. The applicants and complainant were under an obligation by way of agreement entered into between them for which an effective remedy is to approach the Civil Courts for loss, if any caused due to breach of contract. In view of above, this court finds that no allegations are made attracting the ingredients of Section 405/406 of the IPC.

The Court added that, "To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the accused rather it must be shown that the accused dishonestly retained the same. The mere fact that the accused did not pay the money to the complainant does not amount to criminal breach of trust. In the present case it appears a matter of breach of agreement between the parties hence it cannot be termed as 'cheating' or 'misappropriation'. The opposite party No. 2/complainant may seek the remedy available for enforcement of contract or for realizing the money due to him or the loss if any suffered by him"....."Even if all the allegations in the complaint are taken at the face value, in my view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the accused persons under Sections 406/420 IPC, is liable to be quashed."

Legal Updates

- The Reserve Bank of India has now allowed payment of consideration in share transfer/purchase transaction between resident buyer and a non-resident seller or vice-versa on deferred basis. Deferred consideration shall not be more than 25% of total consideration and need to be paid within a period not exceeding 18 months from the date of share transfer agreement. Transferor and transferee may enter into escrow arrangement for such deferred consideration. [Notification No.FEMA.368/2016-RB dated 20-May-2016]
- Central Government constitutes the National Company Law Tribunal to exercise and discharge the powers and functions as are, or may be, conferred on it by or under the Companies Act, 2013 and also constitutes National Company Law Appellate Tribunal for hearing appeals against the orders of the National Company Law Tribunal with effect from the 1st day of June, 2016. [Notification No. S.O. 1932 (E) and 1933(E) dated 1st June 2016]
- Department of Industrial Policy and Promotion Ministry of Commerce and Industry Government of India issued consolidated FDI Policy w.e.f 07-June-2016.
- Reserve Bank of India has issued guidance Note on computation of the amount imposed under the Foreign Exchange (Compounding Proceedings) Rules 2000. [A.P. (DIR Series) Circular No.73 dated May 26, 2016]

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