Kishan Gopal & Anr vs Lala & Ors on 26 August, 2013

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Bench: V. Gopala Gowda, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7137 OF 2013
(Arising out of SLP(C) No.21139 of 2011)

KISHAN GOPAL & ANR. … APPELLANTS

Vs.

LALA & ORS. … RESPONDENTS

J U D G M E N T

V.Gopala Gowda, J.

This appeal has been filed by the appellants questioning the correctness of the judgment dated 15th March, 2011 passed in SBCMA No.1283 of 2000 by the High Court of Judicature at Rajasthan, Jaipur Bench, affirming the judgment and award dated 25.5.2000 of the Motor Accident Claims Tribunal, Tonk (for short 'the Tribunal') in MAC case No.7/93, urging various relevant facts and legal contentions in support of their claim made in this appeal.

2. Necessary relevant facts are stated hereunder to appreciate the case of the appellants and also to find out whether the appellants are entitled for the reliefs as prayed in this appeal.

The appellants are the parents of the deceased Tikaram, who died in a road accident on 19.07.1992 on account of rash and negligent driving of the motor vehicle tractor bearing registration No. RJX 5532 by the driver, as he was traveling in the trolley which was turned upside down and he fell down from the trolley and sustained grievous injuries and succumbed to the same. The FIR was registered with the Police Station Uniara, Tonk being case No.121/92. After investigation in the case, charge-sheet No.81/92 (Ex.2) was filed on 30.07.1992 against the first respondent, the driver of the offending vehicle and its owner the respondent No.2. A site map (Ex.3) was drawn up, post-mortem of the deceased was conducted and post-mortem Report was marked as Ex.7. The claimants, being the appellants- parents, who have lost their son at the age of 10 years in the motor vehicle accident and the vehicle was insured with respondent No.3 - the Insurance Company, preferred claim petition under Section 140 read with Section 166 of the Motor Vehicles Act, 1988 (in short the 'M.V. Act') claiming compensation for Rs.15,63,000/- under the headings of loss of dependency, mental agony, loss of love and affection, expenses incurred for carrying dead body and performing last rites of the deceased son as per Hindu customs. Further, they have, inter alia, pleaded that the son would have earned a sum of Rs.2000/- p.m. after the age of 18 years and he would have lived upto 70 years, therefore, multiplied by 52 for claiming the financial assistance that he could have rendered to the parents, the same is worked out to Rs.12,48,000/-.

3. Notices were served upon respondent Nos.1 and 2, the driver and the owner of the offending vehicle. Despite service of notice upon them they did not choose to appear and contest the proceedings and therefore, they were placed ex-parte in the claim proceedings before the Tribunal.

4. The Insurance Company appeared and filed its statement of counter denying the various averments of the claim petition and pleaded that the deceased son of the appellants was not studying and further disputed that there was possibility of earning Rs.2000/- p.m. by the deceased. It was further pleaded that in the FIR, it is mentioned that deceased boy was going in the tractor-trolley, fell down from it on account of rash and negligent driving of the offending vehicle by the first respondent, the deceased son sustained grievous injuries and succumbed to the same. It is further stated that the driver of the offending vehicle had no right to carry passenger in a tractor as it is exclusively required to be used for the agricultural operation and therefore, there is contravention of the terms and conditions of the insurance policy issued in favour of the owner of

the offending vehicle. It is further stated by the Insurance Company that the trolley was not registered and the driver of the offending vehicle did not have the valid licence and hence, it is not liable to pay compensation as claimed by the appellants. On the basis of the pleadings, five issues were framed by the Tribunal for its determination.

5. On behalf of the appellants, Kishan Gopal the father of the deceased was examined as AW-1. He has deposed in his evidence narrating the manner in which the accident took place and marked the documents produced by him viz. FIR, charge-sheet, Site Map, Notice under Section 174, Insurance cover note, Mechanical Inspection, post-mortem Report, Notice under Section 133 and the Registration Certificate as Exhs. 1 to 9 respectively. AW-2, who was cultivating in the adjoining field situated near the place of accident was examined on behalf of the appellants and he has spoken about the incident and deposed that the deceased boy was going in the tractor-trolley and the first respondent- driver was driving the tractor and the trolley turned down and he fell down as the driver drove the tractor with high speed negligently and he had sustained grievous injuries and succumbed to the same. The respondent Insurance Company have not adduced the rebuttal evidence in support of its pleaded case in its counter statement. In the counter statement of the Insurance Company, it is pleaded that the claim petition filed by the appellants is a fabricated one in collusion with the driver and the owner of the offending vehicle. It is not forthcoming from the judgment of Tribunal that the Insurance Company has filed the application under Section 170(b) of the M.V. Act seeking permission from the Tribunal in the proceedings to avail the defence available for the insured of the offending vehicle to contest the proceedings on merits. As could be seen from the record, the lawyer of the Insurance Company has cross-examined the appellants' witnesses before the Tribunal.

6. The Tribunal, on appreciation of pleadings and legal evidence on record, has answered the issue No.1, after adverting to the averments of the claim petition and evidence on record, and held that the appellants have not succeeded in proving that Tikaram died because of falling from the tractor-trolley which was driven rashly and negligently by the driver. Issue No.2 was also answered holding that the appellants are not entitled for the compensation as claimed by them for the reason that the finding recorded on the issue No.1 is in the negative.

7. Aggrieved by the judgment and award of the Tribunal, the appellants filed an appeal before the High Court questioning the correctness of the findings recorded on the contentious issue Nos.1 & 2 contending that rejection of the claim petition by it is not only erroneous in fact but also suffers from error in law. Therefore, they have approached the High Court by filing an appeal for grant of just and reasonable compensation to them setting aside the judgment and award of the Tribunal.

8. The learned Judge of the High Court has not exercised his appellate jurisdiction by reappreciating the pleadings and evidence on record and he had mechanically concurred with the findings and reasons recorded by the Tribunal on the contentious issues in its judgment and dismissed the appeal by passing a cryptic order without adverting to the pleadings, legal evidence and legal contentions urged on behalf of the parties.

9. The appellants are aggrieved by the impugned judgment and award passed by the High Court and they have filed this appeal urging various tenable grounds.

As per the Office Report dated 13th December, 2012, Notice was issued to all the respondents. M/s M.M. Kashyap and Aftab Ali Khan, Advocates have filed vakalatnama and memo of appearance on behalf of respondent Nos. 1 and 3 respectively and also filed counter affidavits on their behalf. Acknowledgement card duly signed by respondent No.2 has been received back in proof of the service of notice upon him but no one has entered appearance and filed vakalatnama or memo of appearance on his behalf, therefore, it is reported that the service of notice on him is complete.

10. This appeal was listed before this Court on 14.12.2012, when the Court was pleased to pass the following order:-

> "Send for the record of award dated 25.05.2000 passed by Motor Accident Claims Tribunal, Tonk, Rajasthan in MACT Case No.7/1993. The Registry is directed to send requisition to the Presiding Officer of the Tribunal. It is expected that the Presiding Officer will remit the record of the case without any delay. Put up after the receipt of the record."

11. This appeal was listed before the Court on 12th August, 2013. On behalf of the appellants we have heard Mr.Praveen Kumar Jain, Advocate. None appeared on behalf of the respondents and this Court granted leave. Though respondent Nos.1 & 3 have filed their counter affidavits reiterating the averments made in the counter statement filed by the Insurance Company before the Tribunal extracting certain portion from the FIR and Statements of Evidence of AW-1 – the father of the deceased and AW- 2 - the brother of the deceased and placed strong reliance upon the definition of 'trailer' as defined under Section 2(46) of the M.V. Act, and that the trolley of the tractor is not registered with the registering Authority. The tractor with trolley can be used only for agricultural purposes but not for carrying passengers which would be in contravention of the provisions of the M.V. Act and terms and conditions of the policy issued covering the Motor Vehicle Tracter. Therefore, it is stated by the Insurance Company that by allowing the deceased boy to travel in the trolley of the tractor, the driver has violated the terms & conditions of the insurance policy and law and it has also placed reliance upon the decision of this Court in National Insurance Co.Ltd. v. Baljit Kaur[1], in support of its defence wherein this Court has held that the passengers, who travel in the goods carriage and die in the accident are not entitled to get any compensation from the Insurance Company under the policy.

12. Respondent No.1 has filed counter affidavit, stating the following averments, the relevant paragraphs are extracted hereunder for our perusal:-

> "2...That there is contradiction in statement of Kishan Gopal AW1 and Babu AW2 as Babu stated that Tikaram deceased fell down due to rash and negligent driving of tractor by Lala the Deponent herewith. Whereas Kishan Gopal stated that Tikaram fell down due to rash and negligent driving of tractor by which tractor got turned.

3. That deceased Tikaram was not studying in School and there is no possibility of earning Rs.2000/- per month.

4. That as passenger cannot travel in tractor and death was caused sitting in trolly which is not allowed. The petitioner cannot claim any compensation for the negligence of Tikaram sitting in trolly. Tractor can only be used for agricultural purposes.

5. That driver had no valid licence.

6. That learned Tribunal in its award rightly gave finding that there is contradiction in statement of Kishan Gopal AW1 and Babu AW2 as Kishan Gopal stated that his son died as his son was hit by Lala driving the tractor fast and negligently. Whereas Babu stated that Lala was driving tractor rashly and negligently because of which the tractor got turned down and in the accident Tikaram died. As per the contradictions the case was not proved by the petitioner before the Tribunal. Further, there are contradictions in the statement of witnesses and FIR.

7. That the Insurance Company did not appear to prove the fact that Lala was not having valid licence to drive tractor.

8. That Insurance Company has to prove that driver has not got valid licence. The finding to this effect given by learned Tribunal is right.

9. That petitioner is not entitled for any compensation.

10. That the above special leave petition may kindly be dismissed."

13. The ground urged by the appellants in this appeal is that the High Court has erred in concurring with the finding of fact recorded by the Tribunal in its judgment on the contentious issue Nos.1 & 2. It is erroneous for the reason that the same is contrary to substantive evidence on record in favour of the appellants and no rebuttal evidence is adduced by the Insurance Company in the case to accept its defence pleas and record the finding on the contentious issue Nos.1 and 2 in its favour. Further, it is urged that both the Tribunal and the High Court have not taken into consideration the relevant indisputed fact that the criminal case is registered against respondent No.1-the driver and respondent no.2-the owner of the vehicle and the charge-sheet is filed against them. Both AW-1 and AW-2 adduced evidence before the Tribunal stating that the deceased son of the appellants was traveling in the trolley of the tractor, it was turned down on account of rash and negligent driving of the offending vehicle by respondent No.1 and he fell down from the trolley and the tractor tyre ran over the body and he sustained grievous injuries and succumbed to the same. Further, it is urged that in the absence of evidence of either the driver or the owner of the tractor and also in the absence of rebuttal evidence on behalf of the Insurance Company in support of its pleadings, the finding of fact recorded by the Tribunal stating that the accident did not take place on account of rash and negligent driving of the offending vehicle by the driver is erroneous, as it has failed to

consider the evidence on record in a proper perspective in favour of the appellants. The finding recorded by the Tribunal without appreciating the entire evidence of AW-1 and AW-2 on record, by picking bits and piece of certain sentences from evidence of the witnesses and FIR Exh.1 and answered the contentious issue No.1 against the appellants which approach of it is erroneous, which finding is erroneously affirmed by the High Court, mechanically without re- appreciating the evidence and assigning valid and cogent reasons in support of its conclusion in concurring with the Tribunal. Further, it is contended that the Tribunal has since answered the contentious issue No.1 holding that the death of Tikaram is not due to rash and negligent driving of the tractor by its driver is not proved, it has answered the contentious issue No.2 stating that the question of awarding compensation as claimed by the appellants does not arise and consequently, it has rejected the claim petition, which decision of it is not only erroneouos, but, also suffers from error in law. Therefore, the learned counsel for the appellants has requested this Court to award just and reasonable compensation in favour of the appellants by allowing this appeal.

14. On behalf of respondent Nos.1 and 3 counter affidavits have been filed but none appeared at the time of hearing. After hearing the learned counsel for the appellants, this appeal was reserved for judgment. On the basis of the factual and rival legal contentions urged on behalf of the appellants, the following points are framed for consideration of this Court:-

> I) Whether the findings of fact recorded on issue Nos.1 & 2 framed by the Tribunal, which finding is affirmed by the High Court in the impugned judgment is vitiated on account of erroneous reasoning? II) Whether the appellants are entitled for compensation, if so to what amount?
>
> III) What award?

15. The first point is required to be answered in favour of the appellants by assigning the following reasons:-

> The deceased son of the appellants died in an accident, while he was traveling in a trolley of the tractor bearing No.RJX-5532 on 19.07.1992, the trolley turned down on account of rash and negligent driving of the tractor by the driver-respondent No.1. In this regard, the FIR was registered being FIR No.121/92 with the Uniara Police Station, Tonk. On the basis of the said FIR, the investigation was made by the Investigation Officer and charge-sheet No.81/92 was filed on 30.07.1992 against the driver and the owner of the offending vehicle for the offences punishable under Sections 279 and 304-A IPC read with certain provisions of the M.V.Act. The FIR and the charge-sheet were produced in the evidence of the first appellant-the father of the deceased, who was examined as AW-1. He has also produced and marked the site map (Ex.3), action taken under Section 174 (Ex.4), Insurance cover note Ex.5, Mechanical inspection Ex.6 and post-mortem report Ex.7 as exhibits in the evidence to substantiate the case of the appellants to show that accident took place on account of rash and negligent driving of driver of the tractor. AW-2 - Babu s/o Kishan Gopal, r/o Bhat-Ka Nada, Tehsil Uniara, Dist. Tonk, who is an agriculturist by occupation, is

examined on behalf of the appellants, who has deposed before the Tribunal and he has stated that the deceased Tikaram was traveling in the trolley of the tractor, which was driven by the first respondent in a high speed, rashly and negligently on account of which the vehicle got turned down and the tyre of tractor ran over Tikaram on account of which, he sustained grievous injuries and succumbed to the same. The following evidence is elicited from AW-2 in his cross- examination by the lawyer of the Insurance Company to the following effect;

"that at the time of accident he was carrying paddy and he was one field away from the place of accident and he reached there by running. Before him, several other persons also reached the site of the accident and he was examined by the Investigating Officer and the same is accepted as true after understanding the same".

AW-1, the father of the deceased boy has also spoken about the manner in which accident took place and his son Tikaram died and had produced the documentary evidence referred to supra in justification of the case pleaded by the appellants. In his evidence, he has stated that Tikaram was sitting in the trolley of the tractor and the tractor was driven by its driver rashly and negligently on account of which the trolley turned down and his son sustained grievous injuries and died. The suggestion put to AW-1 in his cross-examination by the lawyer of the Insurance Company to the following effect "this is correct that when accident took place I was at home. It is the incident of 5 p.m. when my son had gone to graze cattle. My son was made to sit in the trolley by the tractor wala." The lawyer of the Insurance Company has not challenged the evidence of AW-2 that the deceased was traveling in the trolley of the tractor and accident took place on account of rash and negligent driving of the driver. Therefore, the fact of accident that took place on 19.07.1992 at 5.00 p.m. is not challenged by the lawyer of the Insurance Company at all. Apart from the said fact, no rebuttal evidence adduced by the Insurance Company before the Tribunal in the claim proceedings. It has also not obtained permission from the Tribunal under Section 170(b) of the M.V. Act to contest the case on the defence of the insured as the driver and the insured both remained ex-parte in the proceedings before the Tribunal and therefore, it could not have contested the case on merits as held by this Court in the case of National Insurance Company vs. Nicolletta Rohtagi reported in 2002(7) SCC 456. It is also not clear in the counter statement filed by the Insurance Company before the Tribunal that the claim petition was filed by the appellants on account of collusion between them and respondent Nos.1 and 2, the driver and the owner of the vehicle respectively.

16. In view of the aforesaid facts, the Tribunal should have considered both oral and documentary evidence referred to supra and appreciated the same in the proper perspective and recorded the finding on the contentious issue No. 1 & 2 in the affirmative. But it has recorded the finding in the negative on the above issues by adverting to certain statements of evidence of AW-1 and referring to certain alleged discrepancies in the FIR without appreciating entire evidence of AW-1 and AW-2 on record properly and also not assigned valid reasons in not accepting their testimony. The Tribunal

should have taken into consideration the pleadings of the parties and legal evidence on record in its entirety and held that the accident took place on 19.07.1992, due to which Tikaram sustained grievous injuries and succumbed to the same and the case was registered by the Uniara Police Station under Sections 279 and 304-A, IPC read with Sections 133 and 181 of the M.V. Act against the first and second respondents. The registration of FIR and filing of the charge-sheet against respondent Nos.1 & 2 are not in dispute, therefore, the Tribunal should have no option but to accept the entire evidence on record and recorded the finding on the contentious issue Nos.1 and 2 in favour of the appellants. Further, it should have held that the deceased son died in the tractor accident, driven by first respondent rashly and negligently, but it has answered the above contentious issue Nos. 1 & 2 in the negative and therefore, we have to set aside the said erroneous findings as the Tribunal has failed to appreciate the entire evidence both oral and documentary properly to answer the issue Nos.1 & 2 in the affirmative. From the perusal of the evidence elicited in the cross-examination of AW-1 – the father and AW-2 who reached the spot immediately after the accident, he had seen the accident and narrated that the deceased boy had sustained grievous injuries in the accident and succumbed to the same. The evidence on record proved that the deceased sustained grievous injuries in the accident on account of which he died. The Insurance Company by cross- examining the witness No. AW-2 has categorically admitted the accident, as its counsel had put the suggestion to him the relevant portion of which is extracted above, which portion of evidence clearly go to show that in the accident the deceased died, but the Tribunal has failed to appreciate the evidence of AW-2 and also the documentary evidence referred to supra, while recording the finding of fact on the contentious issue No.1. The counter affidavit of respondent No.1 filed in these proceedings cannot be relied upon by this Court at this stage as he did not choose to appear before the Tribunal, though he had filed statement of counter and neither he nor the Insurance Company adduced rebuttal evidence by obtaining permission from the Tribunal under Section 170(b) of M.V. Act to avail the defence of the insured respondent No.2, as the Insurance Company has limited defence as provided under Section 149(2) of the M.V. Act. But on the other hand, by reading the averments from the paragraphs extracted from the affidavit of respondent No.1, the driver would support the case of the appellants.

17. In our considered view, the Tribunal has ignored certain relevant facts and evidence on record while considering the case of the appellants. The High Court though it has got power to re-appreciate the pleadings and evidence on record, has declined to do so and mechanically endorsed the findings of fact on contentious issue Nos.1 & 2 after referring to certain stray sentences from the evidence of AW-1 and the FIR and it has erroneously held that there is a contradiction between the FIR, the claim petition and the evidence of the appellants. It has concurred with the finding of fact recorded on the contentious issues and accepted dismissal of the petition. The concurrent findings of fact are erroneous and invalid and therefore, the same call for our interference in this appeal. The approach of the High Court to the claim of the appellants is very casual as it did not advert to the oral and documentary evidence placed on record on behalf of the appellants, particularly, in the absence of rebuttal evidence adduced by the Insurance Company, hence the same is liable to set aside and accordingly we set aside the same.

18. Point Nos.2 and 3 are answered together in favour of the appellants for the following reasons:-

The Tribunal having answered the contentious issue No.1, against the appellants in its judgment the same is concurred with by the High Court by assigning erroneous reasons and it has affirmed dismissal of the claim petition of the appellants holding that the accident did not take place on account of the rash and negligent driving of the offending vehicle by the first respondent and therefore the contentious issue Nos.1 and 2 are answered in the negative against the appellants and it has not awarded compensation in favour of the appellants.

Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos.1 & 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10 year old son. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:

"6. Notional income for compensation to those who had no income prior to accident:

.....

(a) Non-earning persons – Rs.15,000/- p.a." The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of Lata Wadhwa & Ors. v.

State of Bihar & Ors.[2], while examining the tortuous liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower

side and held that the contribution of such children should be Rs.24,000/- p.a. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non- earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation[3], the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas[4], which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy[5], for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified.

19. Accordingly, we pass the following order:

> I) The appeal is allowed and the impugned judgments and awards of both the Tribunal and High Court are set aside.
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> II) The awarded amount of Rs.5,00,000/- with interest at the rate of 9% per annum should be paid to the appellants from the date of filing of the application till the date of payment. III) We direct the Insurance Company to issue the demand draft drawn on any Nationalized Bank by apportioning the compensation amount equally with proportionate interest and send it to the appellants within six weeks from the date of receipt of a copy of this judgment.

.....J. [G.S. SINGHVI] .....J [V. GOPALA GOWDA] New Delhi, August 26, 2013.

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[1] (2004) 2 SCC 1

[2] (2001) 8 SCC 197
[3] (2009) 6 SCC 121
[4] (1994) 2 SCC 176
[5] (2011) 14 SCC 481

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