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IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.15034 of 2024

Gulsan Bibi and others Petitioners

-Versus-

Swapan Kumar Ghos & others Opp. Parties

**For Petitioners : Mr. B. Mohanty,
Advocate**

**For Opp. Party No.2 : Mr. P.K. Mahali,
Advocate**

For Opp. Party Nos.1, 3 to 6 : None

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing: 02.08.2024 Date of Judgment: 28.08.2024

S.K. Mishra, J.

1. The present Writ Petition has been preferred by the Petitioners, who are the legal heirs of Late Sambhu Prasad Tripathy, who dies in a road accident, to tag MAC Case No.889 of 2021 pending in 1st M.A.C.T, Cuttack along with MAC Case No.60 of 2021, pending in 5th M.A.C.T, Khordha for



analogous hearing of both the cases either at Cuttack or in any other neutral place, convenient to both the set of Claimants.

2. The brief background facts, which led to filing of this Writ Petition, are that late Sambhu Prasad Tripathy died on 06.08.2021 in a motor vehicular accident involving a truck bearing Registration No.33-E-3747. Accordingly, Khordha Police Station registered P.S. Case No.305 of 2021 against the driver of the offending vehicle. On 24.08.2021, the Petitioners, who are the wife and two minor children of late Sambhu Prasad Tripathy, filed an application under section 166 of the Motor Vehicles Act, 1988 before the 1st M.A.C.T, Cuttack, claiming compensation of Rs.80,00,000/- from the owner as well as Insurer of the offending vehicle, with a joint and several liability, impleading both as Opposite Party Nos.3 & 4 respectively, which has been registered as MAC Case No.889 of 2021.

3. After filing of the said claim application, it came to the notice of the present Petitioner No.1 that the married daughter (present Opposite Party No.3) and major son (present Opposite Party No.4) of late Sambhu Prasad Tripathy



begotten from his first wife, who died much prior to the marriage of the present Petitioner No.1, have filed MAC Case No.60 of 2021 before the 5th M.A.C.T, Khordha as legal representatives claiming compensation of Rs.40,00,000/- without making the present Petitioners as Opposite Parties to the said proceeding by indicating their names and relationship with the deceased.

4. Knowing about the filing of the subsequent application vide MAC Case No.60 of 2021 before 5th M.A.C.T, Khordha on the self-same incident of motor vehicular death of late Sambhu Prasad Tripathy, the 1st M.A.C.T, Cuttack called for a report from the 5th M.A.C.T, Khordha vide order dated 07.02.2024 and received the same vide order dated 15.04.2024. Still the 1st M.A.C.T, Cuttack, instead of ordering for tagging of both the cases, simply adjourned the matter.

5. The case of the Petitioners is that, it is a settled principle of law that, major, married and settled son and daughter of the motor accident victim are not entitled to any compensation in presence of the widow and minor children of the deceased as observed by the Supreme Court in Civil Appeal No.5220 of 2022 (**Janabai widow of Dinkar Rao**



Gharpada and others Vs. M/s. ICICI Lombard Insurance Company Ltd.) and in SLP (Civil) No.7805 of 2022 (**New India Assurance Co. Ltd. Vs. Anand Pal**). Further, the present Opposite Party No.3 being a major married daughter of late Sambhu Prasad Tripathy, her inheritance to parental property is doubtful, as she embraced Islam religion by marrying to a Muslim man.

6. Though all the Opposite Parties, including the Claimants-Petitioners in MAC Case No.60 of 2021, were duly noticed, only the Opposite Party No.2-Insurance Company has appeared and the Opposite Party No.1, who is the owner of the offending vehicle and the Opposite Party Nos.3 & 4, who are the Claimants in MAC Case No.60 of 2021, now pending before the 5th M.A.C.T., Khordha, despite due notice, chose not to appear in this case to oppose the prayer made in the Writ Petition.

7. From the facts detailed above so also provisions enshrined under Section 166 of the Motor Vehicles Act, 1988, shortly, “M.V. Act”, though there is no prohibition in presenting the number of applications at the instance of each legal representative of the deceased before different Tribunals,



this Court is of the view that in order to avoid conflicting decision regarding determination of respective share/right of such legal representative, so also to avoid multiple payment of court fee for receiving a single award, a single claim application shall always be for the benefit of all legal representatives and the legal representatives, not so joined as claimants, should be given an opportunity of being heard by making them Respondents, if the claim application/s are not heard or decided by any of the Tribunals by a common order.

8. From the pleadings, as detailed above, though this Court feels that a case has been made out for transfer of proceeding from 5th M.A.C.T, Khordha to 1st M.A.C.T, Cuttack, as prayed for, Mr. Mahali, learned Counsel for the Opposite Party-Insurance Company made a submission before this Court that he has no objection to such prayer made in the Writ Petition, but raised a technical issue before this Court that the Writ Petition under Articles 226 and 227 of the Constitution of India for intrastate transfer of proceeding under the M.V. Act is not maintainable. His Contention is, the Petitioners ought to have preferred an application under



Section 24 of the Code of Civil Procedure, 1908, shortly hereinafter, “C.P.C”.

9. To substantiate such submission, Mr. Mahali, learned Counsel cited the orders of the Supreme Court in **(Kahlon Vs. K. Paramasivam)** reported in (2004) 13 SCC 564 and in **(Neha Arun Jugadar and another Vs. Kumari Palak Diwan Ji)** reported in (2015) 15 SCC 222. Mr. Mahali further submitted that in those cases, transfer petitions being filed under section 25 of the C.P.C, the Supreme Court ordered for interstate transfer of claim cases from one Claims Tribunal to the other Claims Tribunal.

10. Per contra, learned Counsel for the Petitioners submitted that those are mere orders passed by the Supreme Court exercising its power under section 25 of C.P.C for interstate transfer of the accident claim cases. The issue regarding applicability of section 24 of C.P.C. for intrastate transfer has not been decided vide those orders. Learned Counsel for the Petitioner further submitted that whether the Claims Tribunal is a Court subordinate to High Court for the purpose of applicability of section 24 of C.P.C was not the issue before the Supreme Court in those cases.



11. Learned Counsel for the Petitioners, relying on the judgments of this Court in **(Aurondhati Das and others Vs. New India Assurance Co. Ltd and others)** reported in 1994 (1) T.A.C. 654 and judgment dated 22.04.2024 passed in W.P.(C) No.19729 of 2022 **(Raimani Tudu and others Vs. Satyabrata Mohanty and others)** so also judgment of the High Court of Allahabad in **Shankar Lal Jaiswal Vs. Asha Devi and 10 others**, reported in 2018 SCC OnLine All 2545, submitted that the division bench of this Court in **Aurondhati Das**(supra) so also this Court in **Raimani Tudu**(supra) exercising of writ jurisdiction, ordered for transfer of proceeding from one Claims Tribunal to the other Claims Tribunal for analogous hearing.

12. Mr. Mohanty, learned Counsel for the Petitioners, in order to further fortify his submission, relying on the judgment in **Shankar Lal Jaiswal** (supra), submitted that in the said judgment, Allahabad High Court clearly held that the Claims Tribunal being created by a notification of the State Government under the provisions of M.V. Act, it cannot be said that such Tribunal is a Court subordinate to the High Court within the meaning of the term occurring in section 24



of C.P.C, despite the fact that an award of the Claims Tribunal is appealable to the High Court under section 173 of the M.V. Act.

While holding so, the Allahabad High Court held that transfer applications, under section 24 of C.P.C, seeking transfer of motor accident claim petitions pending before the Claims Tribunal, are not maintainable.

13. In view of said submission made by the learned Counsel for the Petitioners, it would be apt to extract below paragraph Nos.11 to 16, 19 & 20 of the said judgment:-

"11. Section 176 confers the Rule making power upon the State Government. It also provides that Rules can be framed regarding the powers of a Civil Court, which may be exercised by a Claims Tribunal.

12. In exercise of the aforementioned rule making power, the U.P. Motor Vehicle Rules, 1998 have been framed. Rule 221 thereof, reads as follows.-

"221. Code of Civil Procedure to apply in certain cases.- The following provisions of the First Schedule to the Code of Civil Procedure, 1908 shall so far as may be apply to proceedings before the Claims Tribunal, namely, Rules 9 to 13 and 15 to 30 of Order V; Order IX, Rules 3 to 10 of Order XIII, Rules 2 to 21 of Order XVI; Order XVII; and Rules 1 to 3 of Order XXIII."

13. From a conjoint reading of the provisions noticed above, it emerges that the Motor Vehicle Act is a complete code in itself. It is also clear from a bare



reading of Rule 221 that Section 24 of the Civil Procedure Code has no application to matters before the Motor Accident Claims Tribunal.

14. Section 24, Civil Procedure Code, which has been invoked in these transfer applications, confers a general power of transfer and withdrawal of a suit, appeal or proceeding upon the High Court or the District Judge, pending in any Court subordinate to them.

15. The words "subordinate to it" occurring in Section 24(1)(b) are, in my considered opinion, crucial for deciding the controversy at hand.

16. Since a Claims Tribunal is created by a notification of the State Government under the provisions of the Motor Vehicles Act, it cannot be said that such Tribunal is a Court subordinate to the High Court within the meaning of the term occurring in Section 24 CPC, despite the fact that an award of the Claims Tribunal is appealable to the High Court under Section 173.

19. In view of the above and since only certain provisions of the Civil Procedure Code have been made applicable to proceedings before the Claims Tribunals, constituted under the Motor Vehicles Act and Section 24 CPC is not one of them, the same, in my considered opinion, cannot be invoked for transfer of a claim petition, pending before a Claims Tribunal.

20. Accordingly, this Court is constrained to hold that these transfer applications, under Section 24 CPC, seeking transfer of Motor Accident Claims Petitions pending before the Claims Tribunal, are clearly, not maintainable."

(Emphasis Supplied)



14. In addition to same, learned Counsel for the Petitioners, drawing attention of this Court to the provisions under Rule 20 of the Odisha Motor Vehicles (Accident Claims Tribunal) Rules, 1960, shortly hereinafter, “Rules, 1960”, which is akin to Rule-221 of the U.P. Motor Vehicle Rules, 1998, submitted that under the said Rule it has been detailed as to which provisions of C.P.C, 1908 are applicable to the proceedings before the Claims Tribunal. The said rule is extracted below for ready reference.

“20. Code of Civil Procedure to apply in certain case.

The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall, so far as may be, apply to proceedings before the Claims Tribunals, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVIII and Order XXIII Rules 1 to 3.”

15. Further, referring to Rule 12 of Odisha Motor Vehicles (Accident Claims Tribunal) Rules, 2019, shortly hereinafter, “Rules, 2019”, Mr. Mohanty, learned Counsel submitted that in view of sub-rule (1) of Rule 12 under the Rules, 2019, empowers the District Judge of the concerned district to transfer an application for claim under the M.V. Act from the file of one Claims Tribunal, before whom the



application is pending, to any other Claims Tribunal, if Claims Tribunal is situated within the same district. Similarly, sub-rule (2) of Rule 12 of the Rules, 2019 empowers the High Court to transfer the claim application from the file of one Claims Tribunal of a district to the other Claims Tribunal beyond the district. Accordingly, a prayer has been made in the present Writ Petition for transferring the claim case from 5th M.A.C.T, Khordha to 1st M.A.C.T., Cuttack and the Petitioners have rightly approached the Writ Court for inter-district transfer of such proceeding and in view of the specific provisions under the Rules, 2019, section 24 of C.P.C, for transfer of proceeding pertaining to motor accident claim cases is not applicable.

16. In view of said submission made by Mr. Mohanty, it would be apt to reproduce below Rule 12 of the Motor Vehicles Accident Claims Tribunal Rules, 2019:-

“12. Transfer of claim cases:-

(1) The District Judge shall have the power to transfer an application for claim from the file of one Claims Tribunal, before whom the application is pending, to any other Claims Tribunal, if;

(a) the Claims Tribunal before whom the application is pending makes such a request on grounds, personal or otherwise, or



(b) upon consideration of the application for transfer by any party to the application, the District Judge is satisfied, for reasons to be recorded in writing, that there are sufficient grounds to do so.

(2) The High Court may transfer the application from the file of one Claims Tribunal to the other Claims Tribunal for any sufficient reasons.”

(Emphasis Supplied)

17. Admittedly, in the judgments of this Court, relied upon by the learned Counsel for the Petitioner, the point as to maintainability of the Writ Petition for transfer of proceeding under the M.V. Act was not an issue and no such point has been decided in those cases as to whether a Claims Tribunal is a Court subordinate to High Court and applicability of section 24 of C.P.C for the purpose of intrastate transfer of proceeding of claim cases filed under the M.V. Act.

18. However, in view of the legal point involved regarding maintainability of Writ Petition, it would be appropriate to deal with the judgment of division Bench of this Court in **(Orissa Co-operative Insurance Company Vs. Subashini Pradhan and others)** reported in 1977 ACJ 283: MANU/OR/0241/1977 so also coordinate Bench judgment in **(Sarat Kumar Moharana Vs. M. Rajsekhar Reddy and**



others) reported in 2000(I) OLR 494: 2000 (2) TAC 551. In **Subashini Pradhan** (supra), the division Bench of this Court, since the maintainability of such Revision Petition was challenged on the ground that the Claims Tribunal under the Act is not a 'Court' and, therefore, section 115 of the C.P.C, 1908 has no application, while dealing with the said issue, referring to various judgments of different High Courts, held as follows:-

“17. Mr. Patnaik in support of the preliminary objection, on the other hand, relies on a series of authorities. In the case of Khairunnissa A.K. Siddiki v. The Municipal Corporation, Bombay [1966 A.C.J. 37.] a Bench of the Bombay High Court was considering the question of maintainability of a claim without notice under section 527 of the Bombay Municipal Corporation Act, (corresponding to section 80 of the Civil Procedure Code) and incidentally held that the Tribunal was not a Court. In the case of Harbans Singh v. Atma Singh [1966 A.C.J. 172.] a learned Single Judge of the Punjab High Court came to hold that the Claims Tribunal was a persona designata notwithstanding the fact that it had been given a jurisdiction which has been taken away from an ordinary civil Court and it has been given some of the powers of a civil Court. The reasonings given by Narula, J. (as the learned Judge then was) in the Punjab High Court in the case of Ram Sarup v. Gurdev Singh [1966 A.C.J. 240.] , while examining whether the commissioner under the Workmen's Compensation



Act would be a 'court.' support the view that the Claims Tribunal would not be a 'Court'. The Allahabad High Court in the Case of Satish Chandra v. State of Uttar Pradesh [1971 A.C.J. 180.] , held that the Claims Tribunal was not a court and, therefore, its decision was not amenable to revisional jurisdiction of the High Court. The Rajasthan High Court in the case of Laxminarain Misra v. Kailash Narain Gupta [1974 A.C.J. 79.] , examined the question at some length and came to hold that the Claims Tribunal under the Act was a mere Tribunal and not a Court. A learned Single Judge in this Court in the case of Vanguard Insurance Company Ltd. v. Janki Amma [1971 C.W.R. 158.] , has held that the Claims Tribunal is not a Court. Though there is no reasoning given and the conclusion was reached mostly on concession of counsel, we are of the view that the conclusion is in accord with the law.

18. From the discussion made above, it follows that the Claims Tribunal is a persona designata and not a court. Therefore, the Claims Tribunal is not amenable to the revisional jurisdiction of this Court."

(Emphasis Supplied)

19. However, in **Sarat Kumar Moharana** (supra), the issue before the coordinate Bench was directly on the point as to whether an application under section 24 of the Code for transfer of proceeding under the Motor Vehicles Act is maintainable. The coordinate Bench, referring to the division



Bench judgment of this Court in **Subashini Pradhan** (supra), held that application under section 24 of C.P.C, 1908 for transfer of proceeding under the M.V. Act is not maintainable and appropriate remedy for the parties would be to approach the Writ Court under Article 227 of the Constitution of India. Paragraph Nos.2 to 4 of the said judgment, being relevant, are extracted below:

*“2. On the assertions made in the application Under Section 24 of the Code which have not been rebutted, prima facie, I feel that a case has been made out for transfer of the case. **However, I am unable to accede to such prayer for transfer in exercise of power under Section 24 of the Code, as according to me, the Claims Tribunal not being a "Court subordinate" to the High Court, within the meaning of Section 24 of the Code, such an application is not maintainable and the remedy, if any, of the petitioner is to approach the High Court in its supervisory jurisdiction under Article 227 of the Constitution of India.***

*3. The learned counsel for the petitioner has, however, placed reliance upon two decisions of the Supreme Court reported in 1979 ACJ 205 (**State of Haryana v. Darshana Devi and Ors.**) and 1983 ACJ 123 (**Bhagwati Devi and Ors. v. M/s. L.S. Goel and Ors.**). The first decision of the Supreme Court related to question of applicability of Order 33 of the Code to claim applications filed before the Claims Tribunal. In the said case, the Supreme Court observed as follows:*



"..... The reasoning of the High Court in holding that Order XXXIII will apply to tribunals which have the trappings of the Civil Court finds our approval. We affirm the decision."

I do not find anything directly or indirectly laid down in the said decision to hold that a Claims Tribunal under the Motor Vehicles Act is a "Court subordinate" to the High Court for the purpose of applying the provisions contained in Section 24 of the Code. The other decision of the Supreme Court reported in 1983 ACJ 123, however, on the face of it appears to be supporting the contention of the petitioner, though on closer scrutiny, in my opinion, is inapplicable. In the said decision, it was observed:

"In view of the observations of this Court in **State of Haryana v. Darshana Devi**, 1979 ACJ 205 (SC), we are of the view that the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act is a Civil Court for the purpose of Section 25 of the Code of Civil Procedure....."

(Emphasis supplied)

In the aforesaid decision, the Supreme Court purported to exercise its power Under Section 25 of the Code which in the first flush of reading may appear to be akin to provisions contained in Section 24. **However, on closer scrutiny, it appears that there is a significant difference in the sense that while under Section 24, the expression "a Court subordinate" has been used, in Section 25 of the Code, the expression "any Civil Court" has been incorporated.** As already noticed, in earlier decision of the Supreme Court reported in 1979 ACJ 205, it was observed that the Claims Tribunal had all the trappings of the Civil Court and in the context of Section 25 of the Code, following the said observation, it was observed that



*the Claims Tribunal is a Civil Court for the purpose of Section 25 of the Code. **The question whether a Claims Tribunal is a "Court subordinate" to the High Court for the purpose of Section 24 was not before the Supreme Court.***

4. *The expression "Court subordinate" has been used by the Legislature not only in Section 24, but also in Section 115 of the Code. **It appears that in the context of Section 25, the expression "Civil Court" has been utilised with a view to give wider jurisdiction, whereas, the expression "Court subordinate" as contained in Section 115 or Section 24 of the Code has necessarily a limited connotation.** It is well-known that when the same expression is used by the Legislature in the same Act at different places, ordinarily, the same meaning is to be ascribed to the expression given. All the High Courts are almost of the unanimous view that a Claims Tribunal is not a "Court" but a "persona designata", At least, so far as this Court is concerned, it has been well-settled that a Claims Tribunal is not a "Court subordinate" to High Court, but a "persona designata" not amenable to the civil revisional jurisdiction of the High Court under Section 115 of the Code. The said Division Bench decision of this Court reported in 1977 1 CWR 103 [**The Orissa Co-operative Insurance Company (New India Assurance Company Ltd.) v. Subhasini Pradhan and Ors.**] wherein it has been observed that a Claims Tribunal is a persona designata and is not a "Court subordinate" to the High Court and is not subjected to civil revisional jurisdiction, is still holding the field for over two decades. The meaning ascribed to the expression "Court subordinate" in the said decision in the context of Section 115 is also applicable to*



*Section 24 of the Code, as the same expression "Court, subordinate" has been used. **It cannot be said that the decision of the Supreme Court reported in 1983 ACJ 123, has the effect of overruling either expressly or impliedly the Division Bench decision of this Court. The Division Bench decision which has held the field for such a long period should be followed in applying the doctrine of stare decisis.***"

(Emphasis Supplied)

20. In view of the above observations, this Court is in respectful agreement with the views taken by the coordinate Bench in **Sarat Kumar Moharana**(supra) so also judgment of the Allahabad High Court in Shankar Lal Jaiswal (supra). Apart from the same, in view of the specific provision under Rule 12 of the amended Rules, 2019, as extracted above, where there is a specific provision for intradistrict so also interdistrict transfer of claim cases under the M.V. Act, this Court is of the view that section 24 of the C.P.C is not applicable for transfer of file from one Claims Tribunal to other Claims Tribunal. The party aggrieved, has to move before the concerned District Judge, seeking for intradistrict transfer of claim cases filed under the M.V. Act and for interdistrict transfer, the party aggrieved has to approach the



Writ Court under Article 227 of the Constitution of India. This Court is of the further view that the present Writ Petition under Article 227 is maintainable and the Petitioners have rightly approached Writ Court for interdistrict transfer of the claim case.

21. Accordingly, the Presiding Officer, 5th M.A.C.T., Khordha (Opposite Party No.6), is directed to transmit the record in MAC Case No.60 of 2021 to the Presiding Officer, 1st M.A.C.T., Cuttack (Opposite Party No.5), immediately for analogous hearing of the said claim case along with MAC Case No.889 of 2021.

22. It is further directed that on receiving the records in MAC Case No.60 of 2021 from the Presiding Officer, 5th M.A.C.T, Khordha (Opposite Party No.6), the Opposite Party No.5 i.e. Presiding Officer, 1st M.A.C.T., Cuttack, shall tag the said case record in MAC Case No.60 of 2021 to M.A.C case No.889 of 2021, which is pending before the said Tribunal, for analogous hearing of both the said cases and shall proceed further in accordance with law and try to conclude the said claim cases at the earliest.



23. With the said observation and direction, the Writ Petition stands allowed and disposed of. No order as to cost.

24. The Registry is directed to communicate a copy of this judgment to the Presiding Officer, 5th M.A.C.T, Khordha so also the Presiding Officer, 1st M.A.C.T, Cuttack in MAC Case No.60 of 2021.

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S.K. MISHRA, J.

Orissa High Court, Cuttack
Dated, 28th August, 2024/Kanhu