
(1993) 03 OHC CK 0020

In the Orissa High Court

Case No : Criminal Jurisdiction case No. 1371 of 1992

Aurondhati Das and Others

APPELLANT

Vs

New India Assurance Company and Others

RESPONDENT

Date of Decision : 12-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1994) ACJ 56 : (1993) 76 CLT 803 : (1993) 1 OLR 543

Hon'ble Judges : P.C. Misra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : R.K. Mohanty, for the Appellant; S. Roy, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—The claimants in an Accident Claim case pending before the Motor Accident Claims Tribunal, Balasore are petitioners in this writ application and have prayed for transfer of the said case to the Motor Accident Claims Tribunal, Cuttack. The petitioners are the legal heirs of one Satyabrata Das, who died in a motor accident. An application u/s 166 of the Motor Vehicles Act has been filed before the Motor Accident Claims Tribunal, Balasore registered as Misc. Case No. 18 (c) of 1991 claiming compensation against the owner of the vehicle and the insurer. The accident took place on 12-11-1990 while the deceased was travelling on the National Highway between Ranital and Charampa in his official car which met with an unfortunate accident. Petitioners are permanently residing at Cuttack. Petitioner No. 1 is the widow and petitioners 2 to 4 are the children of the deceased, out of whom petitioners 3 and 4 are minors. Petitioner No. 5 is the father of the deceased who is aged about 76 years. It has been alleged in the writ application that petitioner No.5, who is the only major male member among the claimants, is extremely old and for all practical purposes he is constantly bed-ridden. Petitioner No. 1, the widow of the deceased, is said to be in a state of depression and has not yet recovered from the shock on account of her husband's death. They claim that all the witnesses who are to be examined in

the case on their behalf are from Cuttack. The lawyer engaged by them is also of Cuttack and they have no contact at Balasore where the case has been filed. The sum total of their grievance is that they are completely helpless and would not be able to prosecute the case at Balasore. Their prayer is to transfer the case from Balasore to Cuttack. The opp. parties have been served with notice and opp. party No. 1 alone has entered appearance. The factual assertions made by the petitioners have not been disputed. The only question that was raised during the hearing of the writ application was as to whether the High Court would be competent to direct transfer of the case from Balasore to Cuttack.

2. Learned counsel appearing for opp. party No.1 has relied on a decision of Rajasthan High Court reported in 1974 A.C.J. 79 (Laxminarain Misra v. Kailash Narain Gupta) where his Lordship considering the power of the High Court in the matter of transfer of a case from the . Claims Tribunal held that though a Claims Tribunal is subordinate to High Court for purposes of appeal and High Court also exercises the powers of superintendence over all Tribunals under Article 227, yet the Tribunal is not a Court subordinate and High Court cannot transfer cases pending before a Claims Tribunal to another Claims Tribunal, applying the principles of Section 24 of the Code of Civil Procedure. Learned counsel for the petitioner has relied upon a decision of the Supreme Court reported in 1983 ACJ 123 (Bhagwati Devi and Ors. v. M/s I.S. Goel and Ors.) where their Lordships observed that Motor Accidents Claims Tribunal is a Civil Court for the purposes of Section 25 of the CPC and transferred a case pending before the Motor Accidents Claims Tribunal, Moradabad to the file of Motor Accidents Claims Tribunal, Delhi. The High Court of Madras in a case reported in Rajeswari Vs. United India Insurance Co., held that when the power of transfer of proceedings within its jurisdiction is part of High Court's supervisory jurisdiction, absence of any provision having been made in Motor Vehicles Act for transfer to be effected would not deprive the High Court of the power to transfer pending proceedings from one Tribunal to another if circumstances warrant the same. The Gauhati High Court in a case reported in Raju Das Vs. Sushil Kumar Das and Others, held that there is no distinction in the concept of "Civil Court" and "Court" subordinate to High Court in Section 24 of the CPC and the Motor Accidents Claims Tribunal is a Court subordinate to High Court within the meaning and for purpose of Section 24 and transfer of a Motor Accident Claims Case from one Tribunal to other by High Court is permissible. In this view of the matter we feel inclined to transfer the case from the Court of Motor Accidents Claims Tribunal, Balasore to the Court of Motor Accidents Claims Tribunal, Cuttack.

3. Learned counsel appearing for the Insurance Company then prayed for an observation that no interest should be allowed for the period when the writ application was pending in this Court, because the same was at the instance of the petitioners. We find no merit in this contention and order accordingly.

4. In the result, the writ application is allowed. Motor Accident Claim Case, Misc. Case No. 18 (c) of 1991, pending before the Motor Accidents Claims Tribunal,

Balasore be transferred to the Court of Motor Accidents Claims Tribunal at Cuttack. Both parties are directed to appear before the Motor Accidents Claims Tribunal, Cuttack on 29th March, 1993 on which date the learned Tribunal shall pass necessary orders for further progress of the case.

A.K. Padhi, J.

5. I agree.