

(1999) 02 P&H CK 0109
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5381 of 1998

Kumari Minakshi and Another	Vs	APPELLANT
Mrs. Harbans Kaur and Others		RESPONDENT

Date of Decision : 10-02-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (1999) 121 PLR 522 : (1999) 2 RCR(Civil) 535

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Narottam Kaushal, for the Appellant; A.K. Jaiswal, for Respondent Nos. 4 and 5 and Deepak Suri, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—This petition under Article 227 of the Constitution of India read with Section 24 of the CPC has been filed by Kumari Minakshi and her brother Robin, through their grandfather Ram Chand Bhatia, acting as their guardian and next friend.

2. In order to examine the merits of this petition reference to basic facts would be necessary. One Shri Mukesh Kumar Chopra was married to Smt. Savita. From this marriage petitioners Kumari Minakshi and Robin were born. Unfortunately, Smt. Savita pre-deceased Mr. Mukesh Chopra, who died in a road accident on 10.2.1998. On or about 11.3.1998 the two minor children through their grandfather filed a petition u/s 166 read with Section 140 of the Motor Vehicles Act for grant of compensation. The said petition was registered as No. 21 of 1998 and is stated to be pending in the Court of Motor Accidents Claims Tribunal, Karnal.

3. However, Smt. Harbans Kaur, Master Sandeep Singh and Ms. Naveep Kaur filed another petition claiming compensation as a result of death of Mukesh Chopra, before the Motor Accidents Claims Tribunal, Chandigarh. The said petition was filed on or before 17.3.1998 and was subsequently amended on

27.10.1998. This petition has been registered as case No. 40 of 1998 and is stated to be pending before the Chandigarh Tribunal. Mrs. Harbans Kaur has claimed that she is the wife of Mukesh Chopra as he had married her after the death of his first wife and two children were born from their marriage. Upon the death of Mukesh Chopra they claim to be entitled to receive the compensation.

4. Copies of both the petitions filed by the respective parties before the respective Tribunals have been placed on record. It is clear that the petitioners in one claim petition has not impleaded as party the petitioners in the other petition. However, the insurance company has taken up a preliminary objection in their reply filed before the Tribunal at Karnal, that in relation to the same accident and death of the same person two claim petitions have been presented and as such either of the petition by itself is not maintainable and they need to be consolidated. There is also no dispute to the fact that both the claim petitions arise from the same F.I.R. and death of one and the same person. In fact during the course of arguments learned counsel for the respondents in this petition did not even dispute the fact that the petitioners are the children of the deceased Mukesh Chopra. From the above narrated facts it is further clear that the "petition instituted by the minors through their grand-father at Karnal was in earlier point of time than the petition instituted by the alleged widow and the other minor children at Chandigarh.

5. It is a settled principle of law that a petition instituted prior in point of time raising the same controversy in relation to same subject matter should be permitted to proceed while subsequent petition should be stayed. But such an approach may not really meet the ends of justice as controversy between the parties would still subsist. In other words, it will add to multiplicity of litigation. The stand taken by the Insurance company certainly has serious consequences in law because the Insurance Company cannot be held responsible to pay compensation twice over for the same accident. It also needs to be noticed that either of the above two petitions would face the consequences of not impleading necessary parties in their respective petitions. Such an objection if ultimately decided against either of them is bound to cause serious prejudice to their claim.

6. It would be in the interest of both the parties that these avoidable prejudicial results should be prevented right at the initial stage. The Court has to adopt a more pragmatic and realistic approach in this case rather than following thumb rule of staying the proceedings of either of the petitioners. The prayer for transfer of the case pending before the Chandigarh Tribunal to the Karnal Tribunal and its being consolidated with case No. 21 of 1998 appears to be just, fair and in the interest of all concerned. It was conceded before me that the petitioners in the Chandigarh petition are doing business, while at Karnal there are just two minor children who are contesting the litigation through their maternal grand father. It would be fair and equitable that the minor children at Karnal who have lost both their parents at this young age are not subject to avoidable inconvenience and expense.

7. For the reasons afore-stated I allow this petition. While allowing the petition it is directed that MACT Case No. 40 of 1998 titled as Mrs. Harbans Kaur and Ors. v. Babu Ram and Ors., pending before the Motor Accidents Claims Tribunal, Chandigarh shall be transferred to the Court of Motor Accidents Claims Tribunal, Karnal and shall be consolidated and tried together with case No. 21 of 1998 titled as Kumari Meenakshi and Anr. v. Gujarat Ambuja Cement Ltd. and Ors. However, in the facts and circumstances of the case, there shall be no order as to costs.