

(2011) 09 BOM CK 0065

In the Bombay High Court

Case No : Misc. Civil Application No. 38 of 2010

Smt. Suraksha

APPELLANT

Vs

Neeta and Others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Hindu Marriage Act, 1955 — Section 13(1)(B)
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2012) 1 ALLMR 123 : (2012) 4 BomCR 764 : (2011) 113 BOMLR 3660 : (2012) 2 MhLj 334

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : A.M. Gholap, for the Appellant; P.N. Kalani and V.Y. Patil, for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. By consent of the Learned Counsel appearing for the parties, the present matter is taken up for final hearing and disposal at the stage of admission itself.

2. This Misc. Civil Application is filed praying for transfer of proceeding bearing MACP No. 317 of 2009, pending on the file of Motor Accident Claims Tribunal, Amravati, to the Court of Motor Accident Claims Tribunal, Jalgaon.

3. It is case of the applicant that, she is legally wedded wife of Premsing @ Dilip singh Rajput, who died on 21st June, 2009, in road accident of Niwasa Mozari road. The marriage of the applicant with deceased Presm singh was solemnized on 10th May, 1996 at Akola and the applicant is now issueless widow. It is case of the applicant that, during life time of Premsing, the applicant and the deceased Premsing moved an Hindu Marriage Petition u/s 13(1)(B) of the Hindu Marriage Act, 1955, on 22nd June, 2008, which was disposed of, as the same could not be materialized for non removal of office objection, and at the end it was assigned dispose of Application No. 35 of 2008.

4. It is case of the applicant that, applicant being wife of deceased Premsing was dependent on the income of Premsing, and therefore, she applied for compensation u/s 166 of the Motor Vehicles Act vide Motor Accident Claim Petition No. 423 of 2009, dated 03rd October, 2009, along with application u/s 140 of the Motor Vehicles Act for compensation on "No fault liability" basis.

In the said claim petition, Respondent No. 2 was arrayed as Respondent No. 4 being real mother of the deceased Premsing. Present Respondent Nos. 3 and 4 are arrayed as Respondent Nos. 2 and 3, while present Respondent No. 5 was arrayed as Respondent No. 1 and the said claim petition is pending for disposal according to law before Motor Accident Claims Tribunal, at Jalgaon.

5. It is further case of the applicant that, before institution of Motor Accident Claim Petition No. 423 of 2009 the applicant has moved the Court of Civil Judge Senior Division, Jalgaon vide Misc. Civil Application No. 285 of 2009 dated 24th August, 2009, and thereby prayed for heir ship/ succession certificate in respect of immovable and movable properties of deceased Premsing. Present Respondent Nos. 1 and 2 were also arrayed as Respondents in the said Misc. Civil Application No. 285 of 2009.

6. Learned Counsel for the applicant would submit that, in the aforesaid premises, present applicant got knowledge that present Respondent No. 1 filed Motor Accident Claim Petition No. 317 of 2009 before the Motor Accident Claims Tribunal at Amravati, whereby present Respondent No. 1 in collusion with present Respondent No. 2 projected she as legally wedded wife of deceased Premsing and thus made an attempt to get herself unduly and unlawfully enriched.

It is further argued that, in the said application filed by the Respondent Nos. 1 and 2, the applicant herein has filed an application below Exh.17 for adding the applicant as a party Respondent, in the said proceeding. It is submission of the Learned Counsel for applicant that, the Respondent No. 2 herein has filed an application for succession Certificate vides Misc. Civil Application No. 300 of 2009 dated 14th August, 2009, wherein she has arrayed present Respondent No. 1 as sole Respondent. It is submission of the Learned Counsel for the applicant that, Misc. Civil Application No. 300 of 2009 is also a collusive application filed by present Respondent Nos. 1 and 2 with an object to deprive the present applicant of her legal rights arising out of death of her husband.

7. Learned Counsel further submitted that, in view of the facts and circumstances, which are disclosed herein above, this is fit case in which this Court can exercise the jurisdiction u/s 24 of the Code of Civil Procedure.

Learned Counsel further submitted that, this Court has jurisdiction u/s 24 of the CPC and the issue of jurisdiction raised by the Respondents is misconceived. It is further submitted that, the issue raised in reply regarding competency of the proceeding u/s 24 of the CPC Code at the hands of applicant is misconnected, because two different proceedings for compensation arising out of the accidental death of one and same person cannot be allowed to go on before two different

Motor Accident Claims Tribunal.

8. Learned Counsel further submitted that, the proceeding for "Heir ship Certificate" regarding the deceased Premsing is admittedly going on at Jalgaon, wherein the Respondent Nos. 1 and 2 have participated and the Respondent No. 2 is admittedly getting nursing training at Chalisgaon, which is 70 Km away from Jalgaon, while Amaravati is 400 K.M. away from Jalgaon.

9. It is further submitted that, so far as in proceeding under Sections 166 and 140 of the Indian Motor Vehicles Act, 1988 are concerned, the place of accident has no any material bearing on the presentation of petition before any Tribunal, but the place of residence of the deceased and dependents are material. In the present case, Respondent No. 1 has absolutely failed to demonstrate that she is legally dependent on deceased, because the applicant alone is legally wedded wife of deceased Premsingh and prima facie proof is furnished by the deponent.

10. Learned Counsel appearing for the applicant invited my attention the following reported judgments of Hon"ble Supreme Court and this Court.

(i) Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, .

(ii) Kajetan Leo Vaz Vs. Jagdish Raghunath Mankar and Another, .

(iii) Sangamitra W/o Ramakant Royalwar v. Ramkant S/o Gangaram Royalwar reported in 2009 (1) Mh.L.J. 302.

(iv) Mrs. Chaya Barajdar Vs. Balaji Birajdar, .

In the light of aforementioned arguments it is submitted that application deserves to be allowed.

11. Learned Counsel appearing for Respondent No. 1 submitted that, the present application is not maintainable before this Hon"ble Court because the matter bearing Motor Accident Claim Petition No. 317 of 2009 pending before the Hon"ble Member, Motor Accident Claims Tribunal, Amravati filed by Respondents is sought to be transferred to the Court of Hon"ble Member, Motor Accident Claims Tribunal, at Jalgaon and as such the Hon"ble Nagpur Bench is empowered to deal with the matter. Learned Counsel further submitted that Respondent No. 1 is reserving her right about disputing the status of the applicant before the Competent Court and giving reply on merit only.

Learned Counsel further submitted that, Motor Accident Claim Petition No. 317 of 2009 filed by Respondent No. 1 is earlier in time, because those are filed on 3rd August, 2009, and Motor Accident Claim Petition No. 423 of 2009 appears to be filed by the applicant before Hon"ble Member, Motor Accident Claims Tribunal, at Jalgaon on 3rd October, 2009 as such the Motor Accident Claim Petition No. 423 of 2009 is required to be transferred to Hon"ble Member, Motor Accident Claims Tribunal, Amravati.

Learned Counsel further submitted that, not only this but the accident also took

place within the territorial jurisdiction of the Hon''ble Member, Motor Accident Claims Tribunal, Amravati and therefore, the Hon''ble Member, Motor Accident Claims Tribunal, Amravati can effectively decide the matter.

Learned Counsel further submitted that, as far as contentions about the pendency of other applications are concerned, the Court of Hon''ble Member, Motor Accident Claims Tribunal, Amravati is convenient to her as her mother is residing within the territorial jurisdiction of Hon''ble Member, Motor Accident Claims Tribunal, Amravati and she can also conveniently attend the Hon''ble Court. Even the mother of deceased Premsing Rajput is also Petitioner in Motor Accident Claim Petition No. 317 of 2009 pending before the Hon''ble Member, Motor Accident Claims Tribunal, Amravati. The Respondent No. 1 is taking education of nursing training at Chalisgaon, but very shortly said course would be completed by the Respondent No. 1.

Learned Counsel further submitted that, the application shows that, the applicant has filed Exhibit "E" below Page No. 30 to show that she has filed an application for addition of parties. As per the contention of applicant, the said application is pending for disposal. If on the date of filing of this misc. Civil Application, the applicant is not added as a party then the provisions of Section 24 of the CPC is not applicable to this application because the party to the proceeding only can file application for transfer of proceeding u/s 24 of the CPC and as such this is premature application liable to be rejected.

Learned Counsel further submitted that, the address of the applicant in Motor Accident Claims Tribunal No. 423 of 2009 and in the present application is shown to be of village Kaulkheda Tq. and District Akola and as such the Hon''ble Member, Motor Accident Claims Tribunal, Amravati is also convenient to applicant as appearing from the record.

12. Learned Counsel appearing for the Respondent placed reliance upon the following reported judgments of Hon''ble Supreme Court and this Court.

- (i) Sumita Singh Vs. Kumar Sanjay and Another, .
- (ii) Chitivalasa Jute Mills Vs. Jaypee Rewa Cement, .
- (iii) M/s Gupte Cardiac Care Centre and Hospital v. Olympic Pharma Care Pvt. Ltd. reported in 2004 (5) All MR(S.C.) 540.
- (iv) Durgesh Sharma v. Jayshree reported in 2009 (2) Bombay C.R. 763.
- (v) Neha Arun Jugadar and Anr. v. Kumari Palak Diwan Ji reported in AIR 2011 SCW 1214.
- (vi) Smt. Rekha Vs. Shivaji Bhimrao Sapate,

13. I have given due consideration to the rival submissions of the parties. It is not in dispute that the accident in question took place within the jurisdiction of the Member, Motor Accident Claims Tribunal at Amravati. It is admitted position

that Motor Accident Claim Petition No. 317 of 009 are filed by mother of the deceased Premsing and Respondent No. 1 herein before the Member, Motor Accident Claims Tribunal at Amravati. It is also not in dispute that the application filed by the applicant herein to join her as party Respondent in Motor Accident Claim Petition No. 317 of 2009 is allowed by the Member Motor Accident Claims Tribunal at Amravati, thereby during pendency of this Civil Application, the applicant herein has become Respondent in the said claim petition. Though, the Learned Counsel appearing for the applicant vehemently argued that other proceedings are pending at Jalgaon, however, it cannot be ignored that even mother of the deceased Premsing is joined as Petitioner in Motor Accident Claim Petition No. 317 of 2009 along with Respondent No. 1 before the Member, Motor Accident Claims Tribunal, Amravati. The accident has taken place within the jurisdiction of the Member, Motor Accident Claims Tribunal, Amravati. The status of the marriage cannot be gone into in this application. Since, the applicant herein has become party in Motor Accident Claim Petition No. 317 of 2009 to put forth his case, in my opinion, transfer of said proceeding at Jalgaon, is unwarranted. During the course of hearing, it has also brought to the notice of this Court that father of applicant herein is residing at Akola and this position is not disputed by the counsel for the applicant. The Counsel for the Respondent No. 1 vehemently argued that distance between Akola and Amravati is not too far. The Learned Counsel for the Respondent No. 1 also submitted that Respondent No. 1 would very shortly complete her course at Chailsgaon and would come to Amravati, therefore, in view of the aforesaid reasons, the prayer of the applicant cannot be granted. Hence, application for transfer of proceeding stands rejected. Rule stands discharged.