

(2017) 05 GAU CK 0011
In the Gauhati High Court
Case No : 39 of 2015

Smti. Rinarekha Mahanta

APPELLANT

Vs

Smti. Regia Begum, & Ors.

RESPONDENT

Date of Decision : 22-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 20](#),
[Section 24](#) - Other suits to be instituted where defendants
reside or cause of action arises - General power of transfer and withdrawal
[1](#)

Citation : (2017) 05 GAU CK 0011

Hon'ble Judges : Prasanta Kumar Deka

Bench : SINGLE BENCH

Advocate : KK Mahanta, K Sinha, AR Agarwala, RC Paul, BK Purkayastha

Final Decision : Dismissed

Judgement

1. Heard Mr. KK Mahanta, learned Senior counsel assisted by Mr. K Sinha, learned counsel for the petitioner, Mr. AR Agarwala, learned counsel for the respondents No. 1, 2 and 3, Mr. BK Purkayastha, learned counsel appearing on behalf of the respondent No. 5 and Mr. RC Paul, learned counsel for the respondent No. 4.

2. This is an application under Section 24 of the Code of Civil Procedure, 1908 for transfer of a proceeding, MAC Case No. 2212/2014 pending in the court of learned Additional District & Sessions Judge No. 2, Kamrup (M) at Guwahati to the court of learned Member, Motor Accident Claims Tribunal (MACT) at Jorhat.

3. The son of the petitioner while driving a motor cycle met with an accident at Jorhat being hit by another motor cycle coming from the opposite direction driven by one Rasidur Rahman (since deceased). The son of the petitioner received grievous injuries and died on the spot and Rasidur Rahman, the driver of the offending vehicle, also died on the spot. The Jorhat police station registered Jorhat P.S. Case No. 1609/2014. The petitioner filed a claim petition

before the learned Member, MACT, Jorhat which was registered as MAC Case No. 04/2015. The insurer of the offending vehicle, namely, National Insurance Company Limited and Oriental Insurance Company Limited were made parties. The said case is pending before the said learned Tribunal at Jorhat and the insurance companies had entered appearance and the matter is pending for filing written statement.

4. The petitioner received a notice from the court of learned Additional District & Sessions Judge No. 2, Kamrup (M) at Guwahati asking her to appear in MAC Case No. 2212/2014 and to file objection, if any. The said claim petition is preferred by the present respondents No. 1, 2 and 3 who are the legal heirs of Rasidur Rahman, the deceased driver of the offending motor cycle. By way of the said claim petition, the said respondents No. 1, 2 and 3 had claimed compensation for death of Rasidur Rahman who died in the same accident along with the son of the petitioner and the petitioner has been arrayed as one of the respondents in the said case bearing No. MAC Case No. 2212/2014.

5. The petitioner as per contention made in the present petition has prayed for transfer of the said MAC Case No. 2212/2014 from Guwahati to Jorhat as both the claim cases had arisen out of the same accident which occurred at Jorhat and as such the learned Member, MACT, Jorhat is the most appropriate tribunal to decide the claim of the respondents No. 1, 2 and 3. It is also submitted that the cause of action for filing the claim petition by the respondents No. 1, 2 and 3 arose at Jorhat and witnesses to the accident and all other material evidence are available at Jorhat and as such it would be more appropriate and convenient for the parties if both the pending claim petitions are decided by the said tribunal at Jorhat. It is also further contended that the trial of MAC Case No. 2212/2014 at Guwahati if allowed to continue, would result in inconvenience and hardship to the petitioner who is a permanent resident of Jorhat. The petitioner would face difficulties and hardship to defend the said case at Guwahati by bringing witnesses from Jorhat, the place of occurrence of the accident. For the said reason and for doing complete justice to the parties, MAC Case No. 2212/2014 and MAC Case No. 04/2015 be tried analogous before the tribunal at Jorhat.

6. The respondent No. 1 filed her affidavit objecting the prayer of the petitioner, both for her and on behalf of the respondents No. 2 and 3. It is submitted that two different claim petitions are filed by the legal heirs of the deceased persons for a single accident and both the cases were registered vide Jorhat P.S. Case No. 1495/2014 and 1609/2014 under Section 279/ 304(A) of the IPC and after enquiry/ investigation the police has submitted final report. It is also stated that the petitioner has filed an independent claim petition i.e. MAC Case No. 4/2015 for the death of her son and the respondents No. 1, 2 and 3 have nothing to say inasmuch as the learned Member, MACT, Jorhat has jurisdiction to decide the said claim petition on merit. Further it is contended by the said respondents No. 1, 2 and 3 that Section 166(2) of the M.V. Act, 1988 stipulates that the claim petition be filed at the option of the claimant, either to the claim tribunals having

jurisdiction over the area where the accident took place or to the claim tribunal within the local limits of whose jurisdiction the claimant resides or carries on business. The respondents No. 1, 2 and 3 on the basis of the provision under Section 166(2) of the MV Act have opted to file their claim petition at Guwahati having their residence within the district of Kamrup and as such they objected the prayer of the present petitioner in transferring the MAC Case No. 2212/2014 from Guwahati to the tribunal at Jorhat. It is also submitted that the present petitioner has no locus standi to seek such transfer as the owner/ opposite party in the MAC Case No. 2212/2014. It is also stated further that transfer from Guwahati to Jorhat of the claim petition preferred by the respondents No. 1, 2 and 3 would cause great hardship/ inconvenience to the respondents No. 1, 2 and 3 and as such, the petition is liable to be dismissed.

7. The respondent No. 5, National Insurance Company Limited by way of its affidavit-in-reply submits that as the case arose out of the same accident, it is necessary for the purpose of proper adjudication and to avoid contradictory findings that both the cases be decided and heard as analogous in the same tribunal.

8. Mr. Mahanta, the learned Senior counsel, submits that the accident took place at Jorhat which is under the territorial jurisdiction of the tribunal situated at Jorhat. It is also submitted by Mr. Mahanta that all the witnesses forming material piece of evidence are from Jorhat including the investigation report of the police and there would not be any inconvenience faced on the part of the respondents No. 1, 2 and 3 in conducting their claim petition at Jorhat. It is also argued that as both the claim petitions arose out of a single accident, there is every possibility of contradictory findings being given by two separate tribunals in the event of deciding the said two claim petitions independently and in order to avoid such contradictory findings and for the interest of justice of the petitioner, it would be proper to transfer the claim petition pending at Guwahati to the Motor Accident Claims Tribunal at Jorhat and both the petitions be decided as analogous. Mr. Mahanta pressing Section 20 of the Code of Civil Procedure (CPC), submits that the transfer of the claim petition pending at Guwahati would not mean that such transfer is beyond the purview of the CPC as the said Section 20 provides that suit can be filed where cause of action arose and/or where the defendants reside.

9. Mr. Agarwala, learned counsel for the respondents No. 1, 2 and 3, opposing the submission of the learned counsel for the petitioner, submits that the said respondents have preferred the claim petition in the tribunal having proper jurisdiction as defined under Section 166(2) of the MV Act, 1988. The respondents who are the residents under Hajo P.S. in Kamrup district would face tremendous hardship and inconvenience in the event of transfer of the claim petition from Guwahati to Jorhat as the said provision under Section 166(2) of the MV Act was purposefully amended to give due benefit to the claimants lessening the hardship that would be faced in the event of filing the same in the

tribunal under which the area of accident falls. Regarding bringing of witnesses from Jorhat to Guwahati in order to defend by the petitioner the claim of the respondents No. 1, 2 and 3, Mr. Agarwala submits that no stringent process / procedure is followed while deciding a claim petition by a tribunal under the MV Act, 1988 and as such production of certified copy and other material evidence is sufficient in a proceeding before the Motor Accident Claims Tribunal. Accordingly, Mr. Agarwala submits that there is no merit in the petition and the same be liable to be dismissed.

10. Mr. Purkayastha and Mr. Paul, learned counsel for the insurance companies i.e. respondents No. 5 and 4 respectively fairly submit that they have nothing to object inasmuch as the insurance companies represented by them have their offices at Jorhat.

11. Considered the submissions of learned counsel. Section 166(2) of the MV Act, 1988 is reproduced hereinbelow:-

"166(2). Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant."

The said Section 166(2) was introduced by Act 54 of 1994, Section 53 w.e.f. 14.11.1994. Prior to its substitution, sub-section 2 of Section 166 read as under:-

"(2). Every application under sub-section (1) shall be made to the claims tribunal having jurisdiction over the area in which the accident occurred and shall be in such form and shall contain such particulars as may be prescribed:

Provided that where any claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant."

12. In *Mantoo Sarkar v. Oriental Insurance Company Limited and others*, reported in (2009) 2 SCC 244, the Hon"ble Apex Court held in paragraphs 11 and 12 as follows:-

"11. Section 166(2) of the Act reads as under:

"166. Application for compensation. - * * *

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose

jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant."

The said Act is a special statute. The jurisdiction of the Tribunal having regard to the terminologies used therein must be held to be wider than the civil court."

"12. A Claimant has a wide option. Residence of the claimant also determines jurisdiction of the Tribunal. What would be a residence of a person would, however, depend upon the fact situation obtaining in each case."

13. From the ratio of the said decision coupled with the changes brought by the substitutions made in Section 166(2), it is very much clear that the claimant has a wide option in preferring the tribunal in filing a claim petition. In fact as held by the aforesaid decision, the jurisdiction of the tribunal with regard to the terminologies used in the MV Act, 1988 had been held to be much wider than the civil court. Thus, the claimants are given a substantive right to prefer claim petition in the tribunal under whose jurisdiction claimants are residing. Now, in order to overcome such substantive right of the claimant respondents No. 1, 2 and 3, the petitioner is supposed to show before this court to its full satisfaction as to how and in what manner the petitioner is prejudiced or would be prejudiced in the event of continuing the proceeding preferred by the respondents No. 1, 2 and 3 before the tribunal at Guwahati. From the perusal of the petition of the petitioner it is seen that except bringing of witnesses from Jorhat to Guwahati and the physical inconvenience and hardship that would be caused to the petitioner being a permanent resident of Jorhat, no such strong ground has been able to be substantiated before this court. Nothing with regard to any anticipated prejudice that may be caused to the petitioner has been placed before this court. Both the petitioner and the respondents No. 1, 2 and 3 had submitted that inconvenience would be caused to them in the event of non- transfer and transfer of the proceeding from Guwahati to Jorhat. Under the circumstances, this court holds that the continuation of the proceeding at Guwahati would not cause any prejudice to the petitioner.

14. The next contention of the learned counsel for the petitioner and the respondents No. 4 and 5 is that as both the claim petitions arose out of a single accident and in order to avoid contradictory findings of the court, the proceeding at Guwahati be transferred to Jorhat and decided as analogous by the same tribunal. In *Ranu Bala Paul and others v. Bani Chakraborty and others* reported in 1998 (3) GLT 85, this court held that in deciding a matter Tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accident Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt

and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim before the Motor Accident Claims Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case. No doubt before the Tribunal, there must be some material on the basis of which the Tribunal can arrive or decide things necessary to be decided for awarding compensation. But the Tribunal is not expected to take or to adopt the nicety of a civil or of a criminal case. After all, it is a summary enquiry and this is a legislation for the welfare of the society.

15. The ratio of the said case (*supra*) is sufficient to hold that the proceeding before the motor accident claims Tribunal is a summary one and any findings even if contradictory to one another as submitted by the learned counsel of the petitioner, the same cannot be the basis of forming a finding to be barred under the principles of *res-judicata*.

16. In *Bhagwan Din and others v. Gir Har Saroop and others* reported in (1939) 9 AWR (P.C.) 188, the Privy Council held in paragraph 2 as follows:-

"2. The first question is whether the order of the District Judge made under the Charitable and Religious Trusts Act, 1920, precludes the respondents from disputing that the temple is the subject of a public religious trust. That order was made in the presence of five members only of the family, and it is not shown that the other members are bound by it according to any principle of representation. Hence it is difficult to see how these other members can be prevented from claiming the property as belonging to their joint family. The Chief Court have refused for other reasons also to regard the District Judge's order as conclusive. In this they have followed the decisions of a Bench of the Lahore High Court in *Prem Nath v. Har Ram* (1934) A.I.R. (Lah.) 771, and a single judge of the Bombay High Court in *Haidarali Gulamali v. Saiyad Gulammohiuddin* (1934) I.L.R. 58 B. 623, and have agreed with the view of Niamutulla J. in *Mahadeo Bharthi v. Mahadeo Rai* (1929) I.L.R. 51 A. 805 in preference to the opinion of Mukerji J. in the case last mentioned. Their Lordships agree with the Chief Court. They hold that the decision of the District Judge under the Act of 1920 - a decision from which by Section 12 there is no appeal - is a decision in a summary proceeding which is not a suit or of the same character as a suit; that it has not been made final by any provision in the Act; and that the doctrine of *res judicata* does not apply so as to bar a regular suit even in the case of a person who was a party to the proceedings under the Act. The existence of a public trust is the foundation of the proceedings authorized by Section 3 of the Act; *prima facie* while the District Judge may have to come to a decision upon this point in order to satisfy himself on the question of his own jurisdiction, he cannot by an erroneous decision thereon give himself jurisdiction. To produce this result there must be some provision in the Act which requires a contrary construction. No matter how long or how peaceably an individual may have been in possession and enjoyment of property, it is always possible for persons claiming to be acting for the public to lay claim to the property as having been

impressed with a trust of a charitable or religious nature. It is readily intelligible that the District Judge should be required to stay proceedings under the Act in any case in which the person against whom they have been taken is willing to bring a suit. But it would be both drastic and anomalous to provide that a person in possession, if not willing to bring a suit to establish his own title affirmatively, must be content to abide without right of appeal by the decision of the District Judge in a proceeding of this character. The terms of Section 6 of the Act are intended, in their Lordships' view, to define the consequences of such an order as was made in this case by the District Judge on October 1, 1930, but the words "if a trustee without reasonable excuse fails to comply" cannot be read to exclude a contention in a regular suit that the plaintiff is not a trustee or to prevent a similar contention being raised by a defendant to a suit under Section 92 of the Code." (Emphasis supplied)

17. From the aforesaid ratio it can be inferred that any finding by the Motor Accident Claims Tribunal cannot be said to attain finality in order to attract the principle of res-judicata. Moreover, the MV Act, 1988 provides an appellate forum and in such a situation contradictory findings even if, assumed to be given by the said two tribunals while deciding the claim petitions of the petitioner and respondents No. 1, 2 and 3, the same can be set at rest by invoking the jurisdiction prescribed in the appellate forum by the said MV Act, 1988. Hence, this court also rejects the plea of the contradictory findings and its implications.

18. With regard to the submission of Mr. Mahanta, learned Senior counsel for the petitioner of invoking the provision of section 20 of the CPC, the same need not be resorted inasmuch as the MV Act, 1988 is a special statute and as held by the Hon'ble Apex Court reported herein above, the terminologies in the MV Act, 1988 is much wider than the civil court. Moreover, there is no dispute with regard to the jurisdiction of the learned Tribunal at Guwahati in deciding the claim petition filed by the respondents No. 1, 2 and 3. But it is a transfer petition by way of which the proceeding pending at Guwahati is sought to be transferred to the learned Tribunal at Jorhat wherein the claim petition preferred by the petitioner is pending. In such a situation this court is to look into the inconvenience of the petitioner giving due weightage to the convenience of the respondent Nos. 1, 2 and 3. As already held hereinabove, the petitioner has failed to satisfy this court with regard to the inconvenience that may be faced or with regard to any prejudice and/ or anticipated prejudice that may be caused to the petitioner in continuing the MAC Case No. 2212/2014 at Guwahati. This court finds no merit in this petition and accordingly dismissed the same.

19. Interim order passed earlier stands automatically vacated.