

Case No :CMAppl(FA) 0000096/2015

Party Name : UNITED INDIA INS. CO. LTD Vs SIKHA SARKAR (ROY)

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

This is an application for release of the amount.

The claim petition as filed was not properly constituted inasmuch as the claim petition is on behalf of a minor but the minor is not even a party to the petition and the claim petition has been filed by the mother.

This Court in **MAC APP. 01 of 2009 [Ranjan Deb & another vs. Sadhan Debnath & another]** while dealing with a similar situation held as follows:-

"3. At the outset, I may state that the claim petition as constituted is not properly constituted. Section 166(1) of the M.V. Act reads as follows:-

"166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

- (a) by the person who has sustained the injury; or*
- (b) by the owner of the property; or*
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*
- (d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:*

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application."

4. An application for compensation arising out of a motor vehicle accident can be filed (a) by the person who has suffered injuries, (b) by the owner of the property whose property has been damaged, (c) by the legal representative of the deceased where death has resulted from the accident and (d) lastly, any agent duly authorized by the person injured or by the legal representatives can file a case. However, there must be a proper and valid authorization.

5. In the case of a minor, the natural guardian or next friend may be entitled to file the case being the natural guardian and next friend of the minor. However, that case has to be filed in the name of the minor and the claimants cannot take away the compensation which is due and payable to the minor. In the present case, compensation, if any, awarded will be the property of the minor and not the property of his parents. The manner in which the claim petition has been drafted indicates as if the claimants, i.e. the parents of the injured are entitled to the compensation.

6. Though the Code of Civil Procedure (CPC) may not strictly apply to proceedings under the M.V. Act, the principles must and will apply. Rule 1 of Order XXXII reads as follows:-

"1. Minor to sue by next friend.—Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor."

It provides that a suit by a minor has to be instituted in his name by a person who should be called the next friend of the minor.

7. Rule 2 of Order XXXII reads as follows:-

"2. Where suit is instituted without next friend, plaint to be taken off the file.—(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit."

8. This rule provides that where a suit is instituted by or on behalf of a minor without a next friend, the same can be taken off the file. Therefore, where the plaintiff is a minor, the suit or proceedings have to be filed in the name of the minor. The proceeding may be filed through his next friend. However, the next friend cannot elevate himself to such a status that he becomes the claimant and the name of the minor is not even shown in the array of parties."

Therefore, the claim petition shall be deemed to have been filed by the minor and the claim petition as well as the appeal shall be deemed to be titled as "Binit Roy, S/O. Sri Biswajit Roy, a minor through his next friend and his mother Smt. Sikha Sarkar(Roy), W/O. Sri Biswajit Roy, East Dukli, P.O. East Pratapgarh, Dukli, P.S. East Agartala, District-West Tripura, Pin-799004." The title of the claim petition as well as the appeal shall be amended accordingly.

The claimant is a minor and out of the total amount of Rs.17,42,501/- awarded to the minor, Rs.2,16,501/- has been awarded in respect of the expenses incurred by the parents and the rest of the amount is for pain, suffering and future loss of income.

At this stage without going into the merits of the case, I direct that out of the awarded amount, a sum of Rs.2,50,000/- (rupees two lakh fifty thousand) be released in favour of Smt. Sikha Sarkar, mother of the minor to compensate for the expenses already incurred by her. The balance amount shall be kept in a fixed deposit for a period of 3(three) years at the first instance. The interest accruing on the amount shall be paid on quarterly basis to the claimant to meet the day to day expenses of the child.

CM Application stands disposed of.