

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 284 of 2015**

1. Pramila Bai W/o Late Jawahar Sahu Aged About 44 Years
2. Nandlal S/o Late Jawahar Sahu Aged About 22 Years
3. Ku. Nandini D/o Late Jawahar Sahu Aged About 16 Years
4. Roshan Kumar S/o Late Jawahar Sahu Aged About 12 Years
5. Ku. Rajni D/o Late Jawahar Sahu

Respondents 3 to 5 are Minor, Through The Natural Guardian, Mother Smt. Pramila Bai No. 1.

All R/o Village Pangaon, P.S./P.O./tahsil Pamgarh, District Janjgir-Champa, Chhattisgarh

---- Petitioners

Versus

1. Sanjay Kumar S/o Surender Singh R/o H.No. 3/17, Ward No. 9, Rishi Colony, District Sonapat, Hariyana
2. Ravinder Singh S/o Surender Pal Singh R/o Village Mohamadpur, P.S./P.O. Kabdi, District Panipat, Hariyana
3. United India Insurance Co. Ltd. Through Legal Manager, 801 G.T. Road, Panipat, Hariyana

---- Respondents

For Petitioners	: Shri Somnath Verma, Advocate
For Respondents 1 & 2	: Ms. Smita Jha, Advocate
For Respondent 3	: Shri Dashrath Gupta, Advocate

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**ORDER****01/12/2015**

1. Return has been filed on behalf of respondent No.3. Return has not been filed on behalf of respondents 1 and 2.
2. Heard on admission.
3. The petition is admitted for consideration.
4. With the consent of the parties, final arguments heard.

5. The petitioners have filed the instant Writ Petition (227) invoking authority of the High Court for the power of superintendence to the Court below.

6. As per facts of the case, initially on behalf of the petitioners MACT case No.269/2013 (Rajni & 6 Ors Vs. Sanjay Kumar & 2 Ors.) filed under Sections 166 and 140 of the Motor Vehicles Act, 1988 for compensation as Jawahir @ Jawahar succumbed to the injuries in a motor accident. The petitioners are the legal heirs of the said Jawahir @ Jawahar. The said Motor Accident Claim Case was dismissed in default for want of prosecution on 31.10.2014 by the trial Judge i.e. Additional District Judge, Sonipat (Haryana) as the applicants/petitioners failed to adduce evidence even after many opportunities to lead the evidence. Thereafter, on behalf of the petitioners, MACT No. 35/2014 (Pramila Bai & Ors. Vs. Sanjay Kumar & Ors.) has been filed under Section 166 of the Motor Vehicles Act for compensation before the Motor Accident Claims Tribunal, District Janjgir Champa (CG) on 26.8.2014. The same was registered before the Tribunal on a preliminary objection made on behalf of respondents 1 and 2/non-applicants. The Court below vide order dated 23.2.2015 dismissed the Claim Case and held that the petitioners have already filed a Claim Case before the MACT, Sonipat (Haryana) which was dismissed for want of prosecution on 31.10.2014 and the claimants/applicants concealing the same fact, filed the present Claim Case during the pendency of the Claim Case at Sonipat (Haryana). The Court below held that the Claim Case filed by the petitioners before the MACT, Janjgir Champa is not maintainable and hence it has dismissed the case. Against the impugned order, the petitioners

preferred the instant writ petition and submitted that as the petitioners were struggling to overcome their trauma after the death of Jawahir @ Jawahar, grief, agony and poverty, they gave signatures on papers as directed by the counsel of Sonipat and the Claim Case has been filed at Sonipat itself. The claimants are permanent residents of village Pangaon, Tehsil Pamgarh, District Janjgir Champa (CG). The head of the family i.e. Jawahir @ Jawahar was engaged in a labour job in Haryana. On account of poverty and other facts, the petitioners ultimately returned to their original destination and still struggling for their bread as they were not enough educated and not in a financial or other position to contest the case at Sonipat neither the counsel informed them regarding their evidence. They got advise from their counsel at Janjgir Champa, in whose jurisdiction, they are presently residing. They were not aware of the other facts and its necessity. On account of their ignorance, they have not brought these facts to the notice of their counsel in the matter pending before the MACT, Janjgir Champa and the aforementioned Claim Case was pending prior to filing of MACT Case No.35/2014 before the Claims Tribunal, Jangjir Champa. The Court below on hearing the preliminary objection made in this behalf, dismissed the suit as the claimants concealed this fact and also the subsequent suit not maintainable.

7. Return has not been filed on behalf of respondents 1 and 2. In reply/ objection filed on behalf of respondent 3, they have opposed the petition strongly and submitted that as the claimants have concealed the facts before the Claims Tribunal, Janjgir Champa and also the application under Section 10 of the Code of Civil Procedure, 1908 (hereinafter the C.P.C.), the suit is not maintainable, hence, it is prayed

that there is no scope for interference in the order passed by the MACT, Janjgir Champa and the petition may be dismissed.

8. Heard counsel for the parties.

9. On behalf of the petitioners it is submitted that as the petitioners are hardly educated and on account of their poverty and the head of the family was at that time within the jurisdiction of Sonipat (Haryana), who met with an accident and with a stage of overcoming of the trauma of the accident, grief and agony; they were not well educated, they made signatures on the papers and the matter was filed before the Sonipat Court for compensation. But as they do not find it easy to earn their bread at a place very very far away from their permanent residence with no option, they returned to their permanent residence and anyhow they are earning their bread. In between this period they had taken advise from a local counsel of Janjgir Champa and filed Claim Case No. 35/2014. They were not aware of the importance of the facts of earlier filing of the Claim Case and also they thought that they have never gave their appearance before the Sonipat Court to adduce evidence; they have not granted any compensation from the Sonipat court, they just missed to inform this fact to their counsel at Janjgir Champa and the Claim Case No.35/2014 has been filed. It is submitted on behalf of the petitioners that the claim arising out of the motor accident is a social legislation and looking to the other facts, mentioned in the petition and that Claim Case No.269/2013 before the MACT, Sonipat is not disposed of on merits, the applicants be given an opportunity to be heard on merits as they have lost their family head and they are residing in the jurisdiction of Janjgir Champa. A strict compliance of C.P.C. is not necessary for adjudication of the matter before the Claims

Tribunal, as it works on a procedure, hence the subsequent one can be heard on its merits by the Claims Tribunal of Janjgir Champa. It is further submitted that this is a fit case where jurisdiction of Article 227 of the Constitution of India be invoked and relief as claimed may be granted.

10. Learned counsel for the petitioner cited 2009 (I) D.M.P. 163 (Del.) (Boby Rinki and Others Versus Surendra Singh and Others) in para 1 and 2 the Delhi High Court has observed as under :

“(i) Motor Vehicles Act, 1988- Section 166- Motor accident- Claim for compensation- Two claim petitions arising from same accident filed- Fact of two claim petitions having been filed brought to notice of Tribunal-- Tribunal acting in most injudicious manner dismissed second claim petition – Fact of first claim petition being withdrawn was brought to the notice of Tribunal but fact of concealment on part of claimants overpowered rationale and conscience of Tribunal- Tribunal in such eagerness failed to realize that no motive could be attributed to claimants for filing two separate claim petitions- Impugned order of Tribunal dismissing claim petition set aside- Matter remanded to Tribunal de novo trial.

(ii) Motor accident claim- Two claim petitions filed arising from same accident- Some unscrupulous advocates approach victims or family members of accident to solicit filing claim petitions on their behalf- They are allowed of hefty amount given as compensation, sometimes unwary citizens get entrapped- The menace prevailing amongst handfull of advocates defames entire legal profession- To curb this menace Delhi Bar Council requested to issue guidelines.”

11. Learned counsel for the petitioners submitted that the cited case law is identical to the facts of the present case. Principles reiterated are applicable and the Court may allow his petition likewise.

12. On behalf of respondents 1 and 2 petition is opposed orally. Learned counsel supported the impugned order passed on 23.2.2015 by the MACT, Janjgir Champa and submitted that the petition may be dismissed.

13. To appreciate the arguments advanced and the facts mentioned, perused the record and the material available before the Court.

14. The facts mentioned in the petition regarding filing of the earlier claim case and its dismissal for want of prosecution on 31.10.2014 and before pending of the said claim case, filing of subsequent claim case No.35/2014 dated 26.8.2014, non-mentioning of the facts that already a claim case is pending before the Sonipat Court and subsequently the same was dismissed in default, is not disputed.

15. On close scrutiny it appears from the relevant provisions of the Motor Vehicles Act, 1988 regarding Section 169 that the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. Also though the Claims Tribunal shall have all powers of the Civil Court, but as per law Claims Tribunal may follow such summary procedure as it thinks fit. As per Chhattisgarh Motor Vehicles Rules 1994, Rule 240, certain provisions of C.P.C. as mentioned in Rule 240 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto. To conclude the strict compliance of the C.P.C. it is not required to be followed by the Claims Tribunal, if otherwise not applicable to the facts. It is also to note that the claim cases are social legislation where on

account of death of any person or bodily injury, the LR's are the persons concerned pray for adequate compensation. It is also to take note that by virtue of Article 227 of the Constitution of India, this Court may order accordingly. The case law cited on behalf of the petitioners is applicable to the present case in toto. The petitioners are hardly literate and they are poor persons. They were forced to leave their permanent residence in search of their livelihood and in a fateful incident they lost their head of the family and thereafter, further they were not in a position to earn their bread on a place much much far away from their residence. Hence, they forced to return back for their livelihood and on account of their not knowing the provisions and expectations of law they just missed to mention this fact before the Claims Tribunal, Janjgir Champa. In the larger interest of justice, this Court is of the view that application of Section 10 C.P.C. is not strictly applied as it is not required to be followed in the instant matter. Looking to the overall facts and circumstances and the above discussion, this Court agrees that the orders passed in similar situation by the Delhi High Court for de novo trial of the matter.

16. Consequently, upon agreeing with the facts and the arguments advanced in this behalf by the petitioner, the order passed by the Court below dated 23.2.2015 requires interference. Hence, same is set aside. It is held that the Claim Case filed on behalf of the petitioners be heard and disposed of in accordance with law and the same would not suffer any disqualification despite filing of the MACT Case No.269/2013 earlier and its dismissal for want of prosecution dated 31.10.2014.

17. The trial Court is directed to restore MACT Case No.35/2014 to its original number. Parties present before this Court are directed to

remain present before the Court below either in person or through their LRs on 20th January, 2016 for further proceedings in the matter. Trial Court is directed to proceed in the matter further and after giving opportunity to the parties for their pleadings, formulation of issues, adducing evidence, hear the the matter and dispose of it afresh. A copy of the order be sent to the Court below for compliance. Parties may also file the certified copy before the Court below for compliance.

18. The petition is allowed.

19. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE