

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.62 of 2017

Date of decision: 26.04.2017

Santro Devi and another

... Applicants

Vs.

Savita and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vivek Khatri, Advocate
for the applicants.

Mr. Yashveer Kharab, Advocate
for respondents No.1 & 2.

Mr. A.S. Sheoran, Advocate
for respondent No.3.

Mr. R.S. Sharma, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK, J. (ORAL)

Applicants, by way of instant transfer application under Section 24 of the Code of Civil Procedure (for short 'CPC'), seek transfer of claim petition filed by respondents No.1 and 2 under Section 166 of the Motor Vehicle Act titled as Smt. Savita etc. Vs. Ramesh Kumar etc. (Annexure P-2) from Sonapat to Hisar.

Notice of motion was issued.

Heard learned counsel for the parties.

Reply on behalf of respondents No.1 and 2 has been filed, pointing out that the averments taken on behalf of the applicants in para 8 of the instant transfer application are not only factually incorrect but the same are

misleading as well, because applicant No.2 Sh. Hans Ram is having sufficient agricultural land in his name.

It is also not in dispute that respondent No.1 is widow of deceased Ravinder and respondent No.2 is the minor son of deceased, who is living with his mother-respondent No.1. Respondent No.1 is not having any source of income. She is staying with her father at Sonapat. Under these undisputed facts and circumstances of the case, it can be safely concluded that present one has not been found to be a fit case for transferring the claim petition filed by respondents No.1 and 2 from Sonapat to Hisar. It is so said because transfer of claim petition of respondents No.1 and 2 from Sonapat to Hisar shall cause manifest injustice to a widow and her minor son, who are having no source of income.

The view that has been taken by this Court also finds support from a judgment of the Hon'ble Supreme Court in **Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4**. The relevant observations made by the Hon'ble Supreme Court in **Dr. Subramaniam Swamy's** case (supra), which can be gainfully followed in the present case, read as under: -

“The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the

exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has, therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude- for the ends of justice- have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone.

(emphasis supplied)”

No other argument was raised.

Faced with the above, learned counsel for the applicants submits that let the claim petition filed by the present applicants vide Annexure P-1 may be ordered to be transferred from Hisar to Sonapat and both the claim petitions filed by respondents No.1 and 2 as well as the one filed by the applicants at Hisar, vide Annexure P-2 may be ordered to be clubbed together, as both the claim petitions are arising out of same accident.

Learned counsel for the respondents have no objection in

transferring the claim petition filed by the applicants at Hisar to Sonapat and clubbing thereof.

In view of the abovesaid conceded position, instant transfer application is dismissed. The claim petition filed by the applicants vide Annexure P-1 is ordered to be transferred from Hisar to Sonapat and the same shall be clubbed with the claim petition filed by respondents No.1 and 2, vide Annexure P-2.

Accordingly, the learned District Judge, Hisar is directed to send complete record of the claim petition titled as Santro Devi and another Vs. Ramesh and others (Anenxure P-1) to the learned District Judge, Sonapat at an early date and in any case within a period of one month from the date of receipt of certified copy of this order.

The learned District Judge, Sonapat is also directed to club both the claim petitions filed by the parties vide Annexures P-1 and P-2 so that the learned MACT, Sonapat may decide both the claim petitions vide common order, as these are arising out of same accident.

With the abovesaid observations made and directions issued, present transfer application stands disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

26.04.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No