

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 684 OF 2017

ORDER:

This transfer civil miscellaneous petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw M.V.O.P.No.70 of 2016 pending on the file of the Chairman, Motor Accidents Claims Tribunal – cum – XVI Additional District Judge, Krishna at Nandigama and transfer the same to the Chairman, Motor Accidents Claims Tribunal – cum – VIII Additional District Judge at Miryalaguda to try along with O.P.No.104 of 2016.

The petitioner herein claiming to be the wife of deceased Kishore Naik filed O.P.No.104 of 2016 for compensation of Rs.30,00,000/- for untimely death of deceased Kishore Naik in a road accident on flyover in N.H.65 near Chillakallu village, whereas respondent Nos.4 and 5 also filed claim petition under Section 166 of the A.P. Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the untimely death of their son. Thus, the claim in both the petitions is for the death of Kishore Naik in the road accident that took place on 10.03.2016 at 11.00 p.m. on N.H.65 Road flyover in Chillakallu village.

The petitioner herein is contended that she is unable to appear before the Court at Nandigama as she is residing at Nalgonda by doing cooli work and she is not in a position meet the traveling expenses. The petitioner claiming compensation for the untimely death of Kishore Naik, her appearance on every date of adjournment is not required. Therefore, she may appear before the Court for recording of her evidence, except for that purpose she need not appear before the Court on any other date. Hence,

inability to meet the expenses for traveling etc. is not a ground to seek to withdrawal and transfer of the case.

These claim petitions are pending before two different tribunals for the same accident and if two claim petitions are disposed of by two different Tribunals, certainly it may lead to conflicting judgments in view of the claim made by the petitioner is for Rs.30,00,000/- and the claim made by the respondent Nos.4 and 5 herein is for Rs.5,00,000/- .

This Court cannot exercise its discretionary jurisdiction under Section 24 C.P.C on mere asking unless the Court satisfies that there is a possibility of conflicting decisions. However, the Apex Court in “**Kulwinder Kaur @ Kulwinder Gurcharan Singh v. Kandi Friends Educational Trust and others**”¹ held that Section 24 CPC confers comprehensive power on the court to transfer suits, appeals or other proceedings “at any stage” either on an application by any party or suo motu. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. It is true that normally while making an order of transfer, the court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the court and the circumstances which weighed in taking the action.

¹ 2008(3) SCC 659

It is further held that the following factors have to be taken into consideration in a situation in which it is duty of court to transfer the case:

- (i) balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;
- (ii) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;
- (iii) issues raised by the parties;
- (iv) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;
- (v) important questions of law involved or a considerable section of public interested in the litigation;
- (vi) “interest of justice” demanding for transfer of case, etc.

The above guidelines are illustrative, but not substantive guidelines.

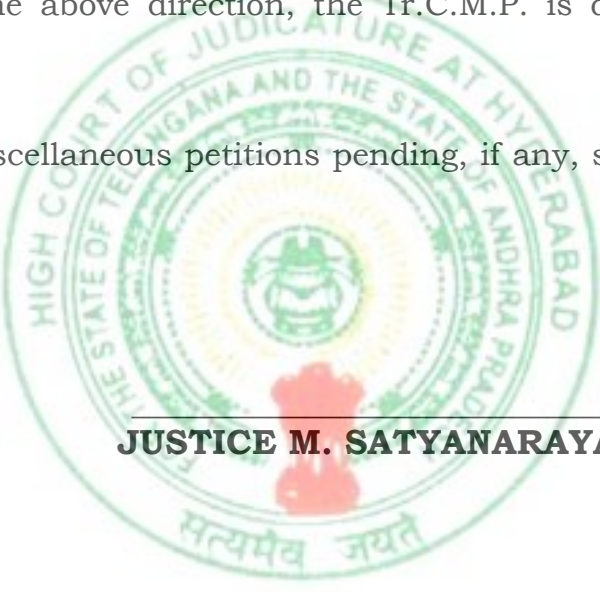
In view of the above guidelines, to avoid conflicting judgments as the cause of action in both the petitions is one and the same, I find that it is a fit case to withdraw the O.P.No.104 of 2016 pending on the file of Chairman, Motor Accidents Claims Tribunal – cum – VIII Additional District Judge, Miryalguda and transfer the same to the Chairman, Motor Accidents Claims Tribunal – cum – XVI Additional District Judge, Krishna at

Nandigama, where M.V.O.P.No.70 of 2016 is pending, to try and dispose of both the matters in accordance with law.

Accordingly, O.P.No.104 of 2016 pending on the file of Chairman, Motor Accidents Claims Tribunal – cum – VIII Additional District Judge, Miryalguda is withdrawn and transferred the same to the Chairman, Motor Accidents Claims Tribunal – cum – XVI Additional District Judge, Krishna at Nandigama, where M.V.O.P.No.70 of 2016 is pending, to try/enquire and dispose of both the matters in accordance with law.

With the above direction, the Tr.C.M.P. is disposed of. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.



JUSTICE M. SATYANARAYANA MURTHY

20.02.2018
Ksp