

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.825 OF 2018

Damayanti Sandha @ Sabar

....

Petitioner

Mr.J.K.Panda, Adv.

-versus-

Jamuna Sabar & ors.

....

Opposite Party(s)

Mr.S.K.Ghose, Adv. for O.P.4

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
12.10.2022**

Order No.

04.

1. Heard learned counsel for the Parties.

2. Even though copy of the notice has already been served on the private O.Ps. appearing as Claimants in MAC No.11 of 2015, none is appearing on their behalf. On perusal of both the claims of petitioner it appears both the claim cases arise out of the same cause of action involving an accident. One being filed by the Wife of the deceased and the second one is filed by the parents of the deceased. Both claim compensation involving the same cause of action. Issue here confined only in respect of common trial of both cases and at one common place.

3. In spite of service of notice, none is appearing for the private O.Ps. However, there is appearance of Mr.S.K.Ghose, learned counsel for the Insurance Company.

4. The Writ Petition involves a claim for trial of both MAC Nos.11 of 2015 and 69 of 2016 either at Bolangir or Bargarh for involvement of common issue. Further on the premises that the Wife is a resident of Bargarh and seeks relief from this Court for a direction for transfer of MAC No.11 of 2015 instituted in the district of Bolangir to be tried together with MAC No.69 of 2016 at Bargarh.

5. The Insurance Company being the common Party in both the Cases, learned counsel for the Insurance Company contended that it has filed an application challenging the maintainability of the subsequent proceeding but pending for consideration.

6. Considering the rival contentions of the Parties and the grounds seeking transfer of the proceeding at Bolangir to Bargarh, this Court finds, both the litigations; one at the instance of the Wife of the deceased aged about 31 years, whereas the first litigation appears to have been instituted by the Parents of the deceased appearing to be 57 & 61 years respectively by this time. Examining the claim application involving the above two Cases, this Court

again finds, when the wife has filed the claim application, though she did not make the father-in-law as party only making the mother-in-law as party. Similarly the claim petition filed by parents also did not involve the Daughter in law. Looking to the accident involved and entitlement of the Parties, there may not be any dispute that a question is ultimately required to be decided by the Tribunal on the insurance entitlement of the Wife and the Parents-in-law as well. In the interest of justice, both the matters should be heard at one place to avoid repetition and complication in evidence and creating confusion in ultimate trial of both the proceedings.

7. Considering the age of the Parents-in-law and the age of the daughter-in-law involving both the litigations, this Court finds, instead of asking the Parents-in-law, who are already aged enough to come to attend the trial involving their case at Bargarh, further as this Court finds, on parallel filing of claim case, there will also be requirement of visiting of both sets of claimants to visit to the other place for their evidence, it will be appropriate if the Wife since aged about 31 years will be asked to appear in the Court at Bolangir also to defend her case along with other case. As a consequence, this Court entertaining the request of the Petitioner for trial of both the cases together and while declining transfer of MAC Case No.11 of

2015 at the instance of the Parents to Bargarh, directs transfer of MAC Case No.69 of 2016 at the instance of the wife from the Court of District Judge-cum-MACT, Bargarh to the District Judge-cum-MACT(1), Bolangir and further directs the District Judge-cum-MACT, Bargarh to transmit the Case Records within ten days of service of copy of this order. This Court further directs the District Judge-cum-MACT, Bolangir to try both the Cases together with common set of evidence, to avoid confusion in defence and in deciding both the proceedings involved by the Claimants involved therein by framing common issues and will be at liberty to pass a common judgment but however at least within a period of four months. Petitioner here undertakes to cooperate with the trial court in the timely disposal of the proceedings involved.

8. As this Court finds, on the transfer of the proceeding to Bolangir, the widow Wife will be compelled to travel to the Tribunal at Bolangir on each date of posting and may be required to engage a Counsel at Bolangir or to meet the travel expenses of her Counsel at Bargarh for the purpose and keeping in view the unemployed status of the Party, this Court directs, the Secretary, Legal Services Authority at Bolangir to provide at least a sum of Rs.1500/- (rupees one thousand five hundred) to the Wife, Petitioner herein on each

date of posting of the case but not exceeding for four dates. The Secretary, Legal Services Authority at Bolangir is directed to deposit the amount as directed at least one day prior to the next date of posting and on filing of the appearance by the Advocate, the amount will be released in favour of the Wife-Claimant.

9. The Petitioner is directed to serve a certified copy of this order to the District Judge-cum-MACT, Bargarh and District Judge-cum-MACT, Bolangir for their necessary action.

10. The Writ Petition succeeds but with the above directions.

11. Issue urgent certified copy.

(Biswanath Rath)
Judge

M.K.Rout

