



IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.6144 of 2023

Kabita Nath

.....

Petitioner

-Versus-

National Insurance Co. Ltd.,
Cuttack and another

.....

Opp. Parties

**For Petitioner : Mr. D.K. Mohapatra,
Advocate**

**For Opp. Party No.1 : Mr. P.K. Mahali,
Advocate**

For Opp. Party No.2 : None

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Judgment: 24.12.2024

S.K. Mishra, J.

1. This writ petition has been preferred by the Petitioner, who is the married daughter and one of the legal representatives of Late Nilamani Nath, challenging the order dated 15.11.2022 so also dated 02.01.2023, under Annexure-1 Series, passed by the 3rd M.A.C.T-cum-A.D.J,



Jagatsinghpur, vide which the substitution petition was partly allowed and petition to recall the order dated 15.11.2022 stood rejected.

2. The factual matrix of the case, as detailed in the Writ Petition, is that Late Nilamani Nath and his wife, in an accident, sustained grievous injuries while travelling in a public service passenger bus bearing registration No.OD-04-6944. They were shifted to S.C.B Medical College and Hospital, Cuttack from Kendrapara District Government Hospital for better treatment, wherein the injured Nilamani Nath was declared as permanently disabled and treated as post hospitalized bedridden patient.

3. The Kendrapara Sadar Police registered P.S. Case No.61 of 2016 against the driver of the offending bus. Accordingly, charge-sheet was submitted under Section 279/337/338 of I.P.C. On 06.04.2022, the Court below, after hearing the parties, awarded a sum of Rs.3,60,400/- along with interest @ 7% per annum from the date of filing claim application till the date of payment to be made by the Opposite Party No.2 i.e. National Insurance Company Limited.



4. On 14.12.2021 i.e. before pronouncement of the Judgment, the injured Nilamani Nath, who is the Claimant/ Petitioner in MAC No. 136 of 2016, died leaving behind his injured wife i.e. the Petitioner in MAC No. 135/2016 as his legal heir, who also died on 23.07.2022. The elder married daughter of the deceased claimants namely, Banita Nath died on 30.05.2014 leaving behind the minor daughter namely, Subhalaxmi Nath as her legal heir. Accordingly, the legal heir certificate of the deceased claimants/ (Petitioners in MAC Case No.135/2016 and MAC Case No.136/2016), was issued by the office of the Tahasildar, Mahakalpada in favour of the surviving married daughter Kabita Nath and Subhalaxmi Nath, the minor daughter of Late Banita Nath. The Petitioner, being the younger married daughter of the deceased, filed a petition on 14.10.2022 for substituting the legal representatives in MAC No.135 of 2016 so also in MAC No.136 of 2016 and for disbursing the awarded compensation amount in favour of surviving legal heirs of the deceased. However, the Court below, vide order dated 15.11.2022 rejected the substitution petition in MAC No.136 of 2016 contrary to the provisions under Section 165 (c) of the Motor Vehicle Act,



1988, shortly, “M.V. Act, 1988”, so also Rule 20 of Orissa Motor Accident Claims Tribunal Rule, 1960, shortly, “The Rules, 1960” and also the provisions under Order XXII of CPC, 1908.

5. The case of the Petitioner is that before rejection of the substitution application filed by the writ petitioner the National Insurance Company Limited i.e. Opposite Party No.2, has already deposited the compensation amount before the Court below after deducting some amount towards income tax in the name of the deceased. On 02.01.2023 the writ petitioner again filed a petition before the Tribunal by executing a Vakalatnama signed by herself so also to represent the minor daughter of another deceased married daughter of Late Nilamani Nath, praying for necessary correction of the judgment dated 06.04.2022 by substituting the names of the legal heirs and to recall the order dated 15.11.2022. But the said recall petition was also rejected by the Court below on technical ground. Hence, this writ petition.

6. A Counter Affidavit has been filed by the Opposite Party No.2 challenging the maintainability of the writ petition. It has been stated that, after disposal of MACT Case No.136 of



2016 awarding Rs.3,60,400/- in favour of the Claimant, the Petitioner along with Subhalaxmi Nath (minor daughter of the deceased daughter of Late Nilamani Nath) filed a petition for substituting them as the legal representatives of the deceased Nilamani Nath, who died during pendency of MAC No.136 of 2016, suppressing the fact of his death from the Tribunal. Thus, the Court passed an award in favour of a dead person, which is a nullity in the eyes of law and the same cannot be enforced.

It is the stand of the Opposite Party No.2 that, when the injured died during the pendency of the claim case, the legal heirs of the deceased-injured are not entitled to compensation for pain and suffering.

It is also the stand of the Opposite Party No.2 that, after disposal of the claim case, the Claims Tribunal becomes functus officio and the award is appealable under section 173 of M.V Act, 1988 before High Court. Instead of preferring an appeal before this Court, filed a petition before the MACT for substitution and apportionment of the compensation amounts to review of its own order, which is not permissible in law.



It is further stand of the Opposite Party No.2 that, as per the settled principle of law, married daughters cannot be treated as legal dependants of the injured-deceased. Thus, they are only entitled to loss of love and affection and loss of estate. As the award includes pain and suffering of the injured, who subsequently died during the pendency of the claim, is wrong.

7. In response to the Counter-Affidavit filed by the Opposite Party No.2, a Rejoinder has been filed by the Petitioner disputing and denying the stand of the Opposite Party No.2 relying on the Judgment of the Supreme Court in **Melepurath Sankunni Ezhuthassan Vs. Thekittil Gopalankutty Nair** reported in AIR 1986 SC 411, so also Judgment of this Court in **Harihar Mohanty and Another Vs. Union of India and Others** reported in 1996 (1) TAC 321 (Ori) and Judgment of the Kerala High Court in **Kallidukkil Cheriyaikutty Mammi and Others Vs. Thoniyath Ummer Kutty and Others** reported in 1996 (2) T.A.C 232 (Ker).

It is the case of the Petitioner that, the Tribunal arrived at a wrong conclusion overlooking the statutory principles enumerated under section 166(1) (C) of the M.V.



Act, 1988 as well as against the provisions under Rule 20 of the Rules, 1960, which is a special code regarding procedures to be followed for motor vehicle accidents and the impugned order is contrary to law.

It is further case of the Petitioner that, as per the Judgment of the Supreme Court in **N. Jayasree & Ors Vs. Cholanmandalam M/S General Insurance Company Ltd.** reported in (2022) 14 SCC 712, the term 'legal representative' should be given a wider interpretation for the purpose of Chapter XII of MV Act, 1988 and it should not be confined to mean the spouse, parents and children of the deceased.

8. Learned Counsel for the Petitioner, reiterating the facts stated in the writ petition, submitted that the injured Nilamani Nath filed MAC Case No. 136 of 2016 so also his wife Ketaki Nath filed MAC Case No. 135 of 2016 under Section 166 of the M.V. Act, 1988 before the 1st MACT-Cum-ADJ, Jagatsinghpur, claiming compensation for injuries sustained in a road accident. During treatment, on 14.12.2021, the injured Nilamani Nath (Claimant in MAC 136 of 2016) died as post-hospitalized bed ridden patient. On 06.04.2022, the Court below awarded Rs.3,60,400/- with 7% interest in MAC



No. 136 of 2016 and Rs.92,000/- with 7% interest in MAC No. 135 of 2016, directing the National Insurance Company (Opposite Party No.2) to deposit the same within a period of 3 months from the date of the order.

While the matter stood thus, Ketaki Nath, the wife and sole dependant of the deceased Nilamani Nath, died on 22.07.2022 and the legal heirs of both the deceased filed a petition for substitution before the Claims Tribunal.

9. Learned Counsel for the Petitioner, drawing attention of this Court to the Legal Heirs Certificate issued by the Tahshildar-Mahakalapada dated 16.09.2022, as at Annexure-5, submitted that the married daughter of the deceased claimant, namely Kabita Nath and Subhalaxmi Nath, the minor daughter of late Banita Nath, who was another daughter of the deceased claimant, are the surviving legal heirs of the deceased Nilamani Nath.

It was further submitted that the substitution petition was rejected by the Tribunal on the ground that no power was filed by the legal heirs for proceeding along with the substitution petition. Further, on 02.01.2023, though a recall petition was filed along with Vakalatnama duly executed



by the legal heirs of deceased for recalling the Order dated 15.11.2022, but the same was also rejected by the Claims Tribunal on the ground that the father of the minor Petitioner (Subhalaxmi Nath) is still alive and she should be represented by him as the next guardian, instead of her aunt Kabita Nath.

10. Learned Counsel for the Petitioner, relying on the Judgment of the Supreme Court in **Melepurath Sankunni Ezhuthassan** (supra), submitted that the decretal debt forms part of the estate of the deceased. Appeal from the decree by the Defendant becomes question of benefit or detriment to the estate of the Plaintiff-Respondent which his legal representative is entitled to uphold and defend and is therefore entitled to be substituted in place of the deceased Respondent-Plaintiff.

11. To substantiate his submissions, learned Counsel for the Petitioner also relied on the judgments in **Naseeban and Another Vs. Surendra Pal and Others** reported in 1995 (2) TAC 251 (RAJ), and in **Parminder Malik Vs. New India Assurance Company**, reported in 2001 (3) TAC 515 (P & H).

12. Learned Counsel for the Opposite Party No.2 submitted that, though the accident took place on



18.02.2016, the injured Nilamani Nath died during the pendency of the claim case on 14.12.2021. The Award was obtained on 06.04.2022 from the Tribunal suppressing the fact of death of the Injured-Claimant. Thus, the Award is a nullity in the eyes of law. Further, a married daughter cannot be considered as a legal dependant of the injured-claimant. Therefore, she is only entitled to loss of love and affection and loss of estate, not for compensation.

13. To substantiate his submissions, learned Counsel for the Opposite Party No.2 relied on the Judgments of the Supreme Court in **Gurnam Singh(D) Thr.Lrs Vs. Gurbachan Kaur (D) by Lrs** reported in (2017) 13 SCC 414, **Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another** reported in (2007) 10 SCC 643 and **The New India Assurance Company Limited Vs. Anand Pal & Others** reported in 2024 (1) TAC 3(SC). Learned Counsel for the Opposite Party No.2 also relied on the Judgment of this Court in **Mandari Rewa and Others Vs. Jagabandhu Ghadei and Another** reported in (1987) 1 ACC 304 and also the Judgment of the Karnataka High Court in **Hussain Vs. Imtiyankhan** reported in (2017) ILR (K) 2031.



14. As is ascertained from the impugned order dated 15.11.2022, the Tribunal rejected the petition dated 14.10.2022 on the grounds that learned Counsel Mr. D.K. Mohapatra has not filed any Vakalatnama of the legal representatives of the deceased/Petitioner. That apart the legal representatives of the deceased Claimant Nilamani Nath have not come forward with an application for substitution or for payment of compensation to them. Further, their address is also not available in the legal heir certificate of the Claimant to suo motu send any notice to them. While rejecting the said application the Claims Tribunal also ordered to inform the Insurance Company regarding the death of the Petitioner.

15. On perusal of the other impugned Order dated 02.01.2023, it is ascertained that the Tribunal rejected the petition to recall the order dated 15.11.2022 on the ground that, proper steps for substitution were not taken by the legal representatives of the deceased claimant within the specific period of time so also the Counsel for the deceased claimant had no vakalatnama executed in his favour by the legal representatives of the deceased Claimant.



Further, though Vakalatnama executed by Kabita Nath (the present Petitioner) was accepted, but for the minor Subhalaxmi Nath was rejected with an observation that, as per the provision under Order 32 Rule 1 of CPC, if any of the legal representatives is a minor, he or she must sue through his or her next friend, not by any representative or guardian. However, Kabita Nath has signed the Vakalatnama for herself so also for the minor, Subhalaxmi Nath, irrespective of the fact that the father of the minor is still alive. Thus, in terms of the provisions under Order 32 Rule 4 of CPC, when the natural father is alive, the propriety of allowing any other person to be next friend involves the question of propriety and such other person should not have any interest adverse to that of the minor. The impugned order dated 02.01.2023 is extracted below for ready reference:-

“MAC No.136/2016

02.01.23

Sri Dillip Kumar Mohapatra, Advocate & his associate Sri S.S. Mohapatra file the vakalatnama of Kabita Nath and Subhalaxmi Nath executed in their favour. Kabita Nath is the daughter of the sole petitioner Nilamani Nath in this case. Subhalaxmi Nath is the daughter of Banita Nath who is the daughter of Nilamani Nath. The said learned counsels Mr. D.K.



Mohapatra has filed a petition U/s. 151 C.P.C. to recall the order dt. 15.11.2022.

Heard learned counsel & perused the record.

*Award has been passed on 06.04.2022 in favour of Nilamani Nath. Before the award he has expired on 14.12.2021. **Award in favour of a dead person is technically nonest in the eye of law. However, the provisions of the M.V. Act are beneficial in nature and I do not intend to nullify the award on this account.** But proper steps for substitution was not undertaken by the legal representatives of Nilamani Nath. If substitution is insisted upon in a case, it has to be initiated within a specific period of time, which was not adhered to in this case. Moreover, the learned counsel for Nilamani Nath had no vakalatnama in his favour executed by the legal representatives of Nilamani Nath. The petition dated 14.10.2022 was accordingly rejected on 15.11.2022.*

The petition dt.02.01.2023 filed by the learned counsel Mr. D.K. Mohapatra has the opening words “the humble petition of the petitioner above named” and in the cause title of the petition the petitioner is shown as Nilamani Nath who is dead since 14.12.2021. Such a petition on behalf of or by a dead person does not merit consideration.

If at all substitution is necessary in a disposal case, the petitioner must be substituted by his major legal representatives. If any of the legal representative is a minor, he or she must sue through his or her next friend and not by any representative or guardian, under



order 32, Rule 1 C.P.C. Kabita Nath has signed the vakalatnama for herself and for the minor Subhalaxmi Nath. She has not signed as the next friend. **The father of Subhalaxmi Nath is not claimed as dead. When the natural father is alive, the propriety of allowing any other person to be next friend involves the question of propriety. Such other person should not have any interest adverse to that of the minor, as required U/o. 32, Rule 4 C.P.C.**

In the above premises, the vakalatnama purported to have been executed on behalf of the minor Subhalaxmi Nath and the petition U/s. 151 C.P.C. purported to be for Kabita Nath & Subhalaxmi Nath are not acceptable.

The order dt. 15.11.2022 is without any illegality or impropriety and does not deserve a recall. The petition dated 02.01.2023 for such recall is hereby rejected. **The vakalatnama executed by Kabita Nath for herself is accepted and for the minor Subhalaxmi Nath is rejected.** The judgment dt. 06.04.2022 needs no correction & the prayer in the petition dt. 02.01.2023 in this respect is rejected.”

(Emphasis Supplied)

16. As it reveals from the paragraph No.5 of the Award dated 06.04.2022 passed in MAC Case No.136 of 2016, as at Annexure-2, the father of the present Petitioner , who was the Claimant in MAC Case No.136 of 2016, examined himself as



P.W.1 and also produced other witnesses, who were examined as P.W.2 & P.W.3 . Documents were marked as Exts.1 to 21 through the said witnesses and the present Opposite Party-Insurance Company (Opposite Party No.2 in MAC Case No.136 of 2016) did not examine any witness. Based on the said evidences on record, on conclusion of hearing, an Award was passed in MAC Case No.136 of 2016 on 06.04.2022 in favour of the deceased Claimant-Petitioner, as it could not be brought to the notice of the Claims Tribunal promptly regarding the death of the Claimant on 14.12.2021.

17. The Opposite Party-Insurance Company has already deposited the awarded amount with the Claims Tribunal. However, the Tribunal rejected the application of the Petitioner partly to represent Subhalaxmi Nath on the ground that if at all substitution is necessary in a disposal case, the Petitioner must be substituted by his major legal representatives. If any of the legal representatives is a minor, he or she must sue through his or her next friend and not by any representative or guardian. It was further observed that the father of Subhalaxmi Nath is not claimed as dead. When the



natural father is alive, the propriety of allowing any other person to be next friend involves the question of propriety.

18. While rejecting such prayer, though the Claims Tribunal observed that award in favour of a dead person is non-est in the eye of law, still held that the provisions of M.V Act , being beneficial in nature, does not intend to nullify the said award on the said account. Admittedly, the Opposite Party-Insurance Company has not challenged the said award on such ground, as has been urged before this Court, despite such observation made by the Court below.

19. As per Section 166 of the Motor Vehicle Act, 1988, 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 authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

(Emphasis supplied)

20. The term 'legal representative' has been interpreted by the Supreme Court in **N. Jayashree** (Supa). Paragraphs 13, 14, 16 & 19 of the said judgment, being relevant, are extracted below:

“13. Section 166 of the MV Act provides for filing of an application for compensation. The relevant portion of the said section is as under:

“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 authorised 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.”



14. *The MV Act does not define the term 'legal representative'. Generally, 'legal representative' means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A 'legal representative' may also include any person who intermeddles with the estate of the deceased. Such person does not necessarily have to be a legal heir. Legal Heirs are the persons who are entitled to inherit the surviving estate of the deceased. A legal heir may also be a legal representative.*

16. *In our view, the term 'legal representative' should be given a wider interpretation for the purpose of Chapter XII of Mv Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation."*

19. *In Hafizun Begum v. Mohd. Ikram Heque it was held that : (SCC p.718, para 7)*

"7. *'..... 12. As observed by this Court in Custodian of Branches of Banco National*



Ultramarino v. Nalinin Bai Naique the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, **it is not confined to legal heirs only. Instead, it stipulates that a person who may or may not be legal heir, competent to inherit the property of the deceased, can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression ‘legal representative’.** As observed in *Gujarat SRTC v. Ramanbhai Prabhatbhai* a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.’ [ED.: As observed in *Manjuri Bera v. Oriental Insurance Co. Ltd.*, (2007) 10 SCC 643, p. 648, para 12.]”

(Emphasis supplied)

21. In **Smt. Manjuri Bera** (*supra*), the Supreme Court, while deciding an issue as to whether a married daughter of the deceased could maintain a claim petition in terms of Section 166 of the M.V. Act, 1988 referring to Section 2(11) of C.P.C. held that ‘legal representative’ means a person, who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the



death of the party so suing or sued. It was further held that even a married daughter is a legal representative and she is certainly entitled to claim compensation.

22. In ***Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique***, reported in (1989) 2 SCC 275 Supp. : AIR 1989 SC 1589, it was held by the Supreme Court that the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide and is not confined to legal heirs only. Instead it stipulates that a person, who may or may not be a legal heir, who is competent to inherit the property of the deceased, can represent the estate of the deceased person. It includes heirs as well as persons, who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. Hence, all such persons would be covered by the expression 'legal representative'.

23. In ***Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another***, reported in (1987) 3 SCC 234: AIR 1987 SC 1690, it was held by the Supreme Court that a legal representative is one, who suffers on account of death of a person due to a motor vehicle



accident and need not necessarily be a wife, husband, parent and child.

24. Hence, this Court is of the view that the Petitioner, who is the married daughter of Late Nilamani Nath and her niece Subhalaxmi Nath, daughter of Late Banita Nath, both legal heirs of Late Nilamani Nath, are covered by the expression 'legal representative'.

25. Though the Opposite Party No.1-Insurance Company has raised many points in its Counter, as detailed above, but the limited point involved in the present lis is whether the provisions of CPC, more particularly Order 32, is applicable to the proceedings under the Motor Vehicles Act so also competency of the present Petitioner to represent Subhalaxmi Nath, who is the minor daughter of her deceased sister Banita Nath, in the capacity of 'next friend'.

26. Though the learned Counsel for the Petitioner relied on the provisions under Rule 20 of the Rules, 1960, the State Government, in exercise of powers conferred under Section 176 of the Motor Vehicles Act, 1988, made the Odisha Motor Vehicles (Accident Claims Tribunal) Rules, 2019, shortly hereinafter, 'M.V. Rules, 2019', amending the said Rules,



1960. Rules 32 of the M.V. Rules, 2019 mandates that, without prejudice to the provisions of Section 169 of the Motor Vehicles Act, every Claims Tribunal shall exercise all the powers of a Civil Court and in doing so for discharging its functions, shall follow the procedure laid down in CPC. The said Rule is extracted below for ready reference.

“32. Vesting of powers of Civil Court in the Claims Tribunal:-

*Without prejudice to the provisions of Section 169 of the Act, every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions, **it shall follow the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908).**”*

(Emphasis supplied)

27. In view of the said provision under Rule 32 of the M.V. Rules, 2019, so far as the procedure for trial of a claim case, the Claims Tribunal has to follow the provisions of CPC, including the provisions under Order 32 Rules 1 & 4, which are extracted below for ready reference.

“ORDER XXXII

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.**

[Explanation.- In this Order, “minor” means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875 (9 of 1875), where the suit relates to any of the matters mentioned in clauses (a) and



(b) of section 2 of that Act or to any other matter.]

4. Who may act as next friend or be appointed guardian for the suit.-

(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the Suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent [in writing] be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interest, [or out of the property of the minor] and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

(Emphasis supplied)

28. Order 32 Rule 1 of CPC mandates that 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.



Order 32 Rule 4 of CPC prescribes as to who may act as the “next friend” or be appointed as guardian for the suit.

Sub-rule (1) of Rule 4 prescribes that any person, who is of sound mind and has attained majority, may act as next friend of a minor or as his guardian for the suit; provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a Defendant, or, in the case of a guardian for the suit, a Plaintiff.

Hence, this Court is of the view that the next friend need not necessarily be a duly appointed guardian, as specified under sub-section (b) of Section 4 of Hindu Minority and Guardianship Act, 1956, shortly hereinafter, ‘Guardianship Act’. ‘Next friend’ acts for the benefit of the “minor” or other person who is unable to look after his or her own interest or manage his or her own law suit, without being a regularly appointed guardian as per the Guardianship Act. He or she acts as an officer of the Court, especially appearing to look after the interest of a minor or a disabled person, whom he/she represents in a particular matter. In cases,



where the suit is filed on behalf of the minor, no permission or leave of the Court is necessary for the next friend to institute the suit.

In terms of the provisions under Order 32 Rule 4 CPC, any person who is of sound mind, who has attained majority, who can represent and protect the interest of the minor, who is a resident of India and whose interest is not adverse to that of the minor, may represent the minor as his/her “next friend”. But such person, who is representing the minor Plaintiff as a next friend, shall not be party to the same suit as Defendant. The said view of this Court is supported by the judgment of the Supreme Court reported in (2018) 2 SCC 504 ***(Nagaiah and others Vs. Chowdamma (dead) by L.Rs. and others)***. Relevant paragraphs of the said judgment are extracted below.

“7. The High Court, while coming to the conclusion that the first plaintiff could not have acted as a guardian of the minor second plaintiff, has relied upon Section 4(b) of the Hindu Minority and Guardianship Act, 1956 (hereinafter called as “the Hindu Guardianship Act”). Clause (b) of Section 4 of the Hindu Guardianship Act reads as under:

“4. (b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—



- (i) a natural guardian,
- (ii) a guardian appointed by the will of the minor's father or mother,
- (iii) a guardian appointed or declared by court, and
- (iv) a person empowered to act as such by or under any enactment relating to any court of wards;”

8. As mentioned *supra*, the High Court has ruled that Defendant 1, being the father of minor Plaintiff 2, is the natural guardian of Plaintiff 2 and consequently Plaintiff 1 could not have acted as the guardian in the suit on behalf of the minor plaintiff, particularly when he was not appointed as a guardian by any competent court of law. In our considered opinion, the High Court has totally misdirected itself while concluding so.

9. There cannot be any dispute that Plaintiff 1 did not and does not come within the meaning of a “guardian” as specified in clause (b) of Section 4 of the Hindu Guardianship Act. But the present facts are not governed by the provisions of the Hindu Guardianship Act, **rather they are governed by Order 32 of the Code of Civil Procedure (hereinafter referred to as “the Code”)**. To decide the present controversy, it would be relevant to note the following provisions as contained in Order 32 Rules 1, 2, 3, 6, 7, 9, 12, 13 and 14 of the Code **(as amended in Karnataka State, since the matter is from Karnataka State)**:

“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.

Explanation.— In this order, “minor” means a person who has not attained his majority within the meaning of Section 3 of the Indian Majority Act, 1875 (9 of 1875), where the suit relates to any of the matters



(b) where the suit is filed against a minor.

In case, where the suit is filed on behalf of the minor, no permission or leave of the court is necessary for the next friend to institute the suit, whereas if the suit is filed against a minor, it is obligatory for the plaintiff to get the appropriate guardian ad litem appointed by the court for such minor. A “guardian ad litem” is a special guardian appointed by a court in which a particular litigation is pending to represent a minor/infant, etc. in that particular litigation and the status of guardian ad litem exists in that specific litigation in which appointment occurs.

14. Not only is there no provision for appointment of next friend by the court, but the permission of the court is also not necessary. However, even in respect of minor defendants, various High Courts are consistent in taking the view that the decree cannot be set aside even where certain formalities for the appointment of a guardian ad litem to represent the defendant have not been observed. The High Courts have observed in the case of minor defendants, where the permission of the court concerned under Order 32 Rule 3 of the Code is not taken, but the decree has been passed, in the absence of prejudice to the minor defendant, such decree cannot be set aside. The main test is that there has to be a prejudice to the minor defendant for setting aside the decree. For reference, see *Brij Kishore Lal v. Satnarain Lal*, *Anandram v. Madholal*, *Rangammal v. Apasami*, *Chater Bhuj Goel v. Gurpreet Singh & Mohd. Yusuf v. Rafiquddin Siddiqui*. In the matter on hand, the suit was filed on behalf of the minor and therefore the next friend was competent to represent the minor. Further, admittedly no prejudice was caused to Plaintiff 2.

17. It is by now well settled and as per the provisions of Order 32 of the Code that



any person who is of sound mind, who has attained majority, who can represent and protect the interest of the minor, who is a resident of India and whose interest is not adverse to that of the minor, may represent the minor as his next friend. Such person who is representing the minor plaintiff as a next friend shall not be party to the same suit as defendant. Rules 6 and 7 of Order 32 of the Code specifically provide that the next friend or guardian in the suit shall not without the leave of the court receive any money or immovable property and shall not without the leave of the court enter into any agreement or compromise. **The rights and restrictions of the natural guardian provided under the Hindu Guardianship Act do not conflict with the procedure for filing a suit by a next friend on behalf of the minor. Not only is there no express prohibition, but a reading of Order 32 of the Code would go to show that wherever the legislature thought it proper to restrict the right of the next friend, it has expressly provided for it in Rules 6 and 7 of Order 32 of the Code.** Rule 9 of Order 32, apart from other factors, clarifies that where a next friend is not a guardian appointed or declared by the authority competent in this behalf and an application is made by the guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the court shall remove the next friend unless it considers, for reasons to be recorded, that the guardian ought not to be appointed as the next friend of the minor.

19. The principles arising out of the Guardians and Wards Act, 1890 and the Hindu Guardianship Act may not be apposite to the next friend appointed under Order 32 of the Code. The appointment of a guardian ad litem to represent the defendant or a next friend to represent the plaintiff in a suit is limited only for the suit and after the discharge of that guardian ad litem/next friend, the right/duty of guardian as defined under clause (b) of Section 4 of the



Hindu Guardianship Act (if he has no adverse interest) automatically continues as guardian. In other words, a next friend representing the minor in the suit under Order 32 Rule 1 of the Code, will not take away the right of the duly appointed guardian under the Hindu Guardianship Act as long as such guardian does not have an adverse interest or such duly appointed guardian is not removed as per that Act.”

(Emphasis Supplied)

29. In view of the provisions under Rule 32 of Odisha Rules, 2019, read with Order 32 Rules 1 & 4 of CPC so also settled position of law, this Court is of further view that the present Petitioner, who is the aunt of Subhalaxmi Nath, the minor daughter of late Banita Nath, and also one of the legal heirs of the deceased Claimant in MAC Case No.136 of 2016, is competent to represent Subhalaxmi Nath as her “next friend”, for which no permission of the Court is required. Both of them are also covered by the expression “legal representative”. Hence, the Claims Tribunal was not justified to reject the prayer of the present Petitioner partly, she being competent to represent Subhalaxmi Nath as a ‘next friend’. Accordingly, the observation made by the Claims Tribunal vide order dated 02.01.2023 to the effect that when the natural father is alive, allowing any other person to be next friend involves the question of propriety so also rejection of



Vakalatnama of the Petitioner for the minor Subhalaxmi Nath is hereby set aside. The Claims Tribunal is directed to permit the present Petitioner to represent Subhalaxmi Nath, daughter of late Banita Nath in MAC Case No.136 of 2016 as a “next friend” and proceed further in accordance with law.

30. With the said observation and direction, the Writ Petition stands disposed of. No order as to cost.

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S.K. MISHRA, J.

Orissa High Court, Cuttack
Dated, 24th December, 2024/Kanhu

Signature Not Verified

Digitally Signed
Signed by: KANHU BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 03-Feb-2025 19:09:58

