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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

**&
HON'BLE SHRI JUSTICE VISHAL MISHRA**

ON THE 27th OF JANUARY, 2023

WRIT APPEAL No. 1660 of 2022

BETWEEN:-

**AMJAD KHAN @ MONU S/O SHRI MAHMOOD KHAN,
AGED ABOUT 35 YEARS, OCCUPATION: BUSINESS B-11
BRAJPURI APARTMENT, GARHA (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI MAHENDRA PATERIA - ADVOCATE)

AND

- 1. SMT. SAVITA BAI PRAJAPATI W/O LATE PRABHUDAYAL PRAJAPATI, AGED ABOUT 30 YEARS, HIRDEPUR DISTRICT DAMOH (MADHYA PRADESH)**
- 2. KU. PRIYANKA PRAJAPATI D/O LATE PRABHUDAYAL PRAJAPATI, AGED ABOUT 12 YEARS,**
- 3. KU. PUSHPA PRAJAPATI D/O LATE PRABHUDAYAL PRAJAPATI, AGED ABOUT 11 YEARS,**
- 4. ANKIT PRAJAPATI S/O LATE PRABHUDAYAL PRAJAPATI, AGED ABOUT 10 YEARS, RESPONDENTS NO.2 TO 4 MINORS, THROUGH NATURAL GUARDIAN MOTHER SMT. SAVITA BAI PRAJAPATI (RESPONDENT NO.1) R/O HIRDEPUR DISTRICT DAMOH (MADHYA PRADESH)**
- 5. UTTAM PRAJAPATI S/O TULSIRAM, AGED ABOUT 76 YEARS, R/O HIRDEPUR DISTRICT DAMOH (MADHYA PRADESH)**
- 6. RELIANCE GENERAL INSURANCE COMPANY LTD.**

JABALPUR BRANCH OFFICE KHANUJA TOWER
GROUND FLOOR B/H FULLERTON INDIA
STANDARD MARUTI JABALPUR M.P. AND
CHHATTISGARH

7. J.P. BIDI COMPANY DAMOH THROUGH ITS
MANAGER PATHARIYA FATAK NEAR RAILWAY
OVER BRIDGE DAMOH (MADHYA PRADESH)

.....RESPONDENTS

(SHRI SANJAY K. AGRAWAL - ADVOCATE FOR RESPONDENT NO.1
SHRI SIDDHANT KOCHAR - ADVOCATE FOR RESPONDENT NO.6)

*This appeal coming on for orders this day, Hon'ble Shri Justice Ravi
Malimath, Chief Justice passed the following:*

ORDER

Aggrieved by the order dated 12.10.2022 passed by the learned Single Judge in dismissing the Writ Petition No.13871 of 2014 while imposing cost, the petitioner is in appeal.

2. A dispute was pending before the Commissioner for Workmen's Compensation, Labour Court, Sagar in Case No.22/09 WC Fatal filed by respondents No.1 to 5 herein, who are the LR's of deceased employee. During the pendency of the proceedings, an application was moved by the writ petitioner seeking to implead one J.P. Bidi Company Pathariya Fatak, Damoh on the ground that it is a necessary party since they were employer of the deceased. The application was dismissed. Aggrieved by the same, the instant writ petition was filed. An interim order of stay of further proceedings was granted. Thereafter, the learned Single Judge by the impugned order came to the view that it is the plaintiff alone who can decide who is to be arrayed as respondents. Therefore, the petitioner has no right to implead anyone else in the proceedings. Since the matter was kept pending for 8 years by depriving the dependents of the deceased workman of the legitimate workman compensation,

a cost was also imposed while dismissing the petition. Aggrieved by the same, the instant appeal is filed.

3. During the course of the proceedings, we were of the view that it will be necessary to issue notice to the proposed respondent in order to adjudicate this appeal. Notices were issued by the order dated 13.01.2023. At request of appellant's counsel, he was also permitted to take out humdast notice on the proposed respondent. Notices have been served on 19.1.2023, which service of notice has also been mentioned in the affidavit of the appellant. Therefore, notice on the proposed respondent is deemed to have been served.

4. Learned counsel for the appellant contends that it is necessary to implead the proposed respondent, as they are a just and necessary party to the adjudication of the case. The same is disputed by the learned counsels appearing for the respondents No.1 and 6. Primarily they submit that the claim for compensation has been pending almost for a decade and therefore, it would serve no purpose in hearing the proposed respondent. Furthermore, there is a dispute as to whether the proposed respondent is the employer or whether it is the instant appellant herein.

5. Heard learned counsels.

6. Learned counsel submits that the application for impleading the proposed respondent contains the reasons why it requires to be impleaded.

7. On considering the same, we are of the view that the proposed respondent would be a necessary and proper party for the adjudication of the matter pending before the Commissioner for Workmen's Compensation. Whether the Commissioner comes to the conclusion with regard to the liability to pay compensation on the petitioner or the proposed respondent, is for the Commissioner to adjudicate the same. We do not think it appropriate, at this

stage itself, to reject an application of this nature. Even otherwise impleading the proposed respondent would not cause any loss or hardship so far as the claimants are concerned. It is ultimately their claim for compensation that requires to be adjudicated. Hence, we are of the view that it would be just and necessary to implead the proposed respondent by allowing the application filed before the Commissioner for Workmen's Compensation.

8. So far as the cost is concerned, the learned Single Judge directed the writ petitioner to deposit a sum of Rs.30,000/- in the bank accounts of respondents No.1 and 5 in equal proportion in view of the fact that the proceedings before the Commissioner were held up for the last 8 years depriving the dependents of deceased-workman of the legitimate workmen compensation. The order sheets would indicate that the interim order of stay of the proceedings was granted by the learned Single Judge on 16.12.2014. Therefore, the interim order has been granted by the Court. If at all the Court was concerned with regard to the interim order, the same should have been appropriately dealt with. When an interim order is granted by a court of law, we do not think that the disadvantage of the same could be held against a party. It is not his fault that the matter has been pending for 8 years. It is the discretion of the learned Single Judge to grant an interim order of stay, which continued for the next 8 years. The learned Single Judge probably did not even consider the fact that the respondents were not even aggrieved by such a delay and there was not even an application filed for vacating the stay. Such being the case, we do not think it is appropriate for the learned Single Judge to have directed for payment of cost of Rs.30,000/- to be paid by the petitioner only because an interim order of stay was granted. Hence, the direction to pay cost requires to

be set aside. Ordered accordingly.

9. For all these reasons, the appeal is allowed. The order dated 12.10.2022 passed by the learned Single in WP No.13871 of 2014 is set aside. The application filed by the appellant seeking to implead the proposed respondent- J.P. Bidi Company, Pathariya Fatak, Damoh is allowed. The proposed respondent is directed to be impleaded as respondent before the Commissioner for Workmen's Compensation, Labour Court, Sagar in Case No.22/09 WC Fatal. The Commissioner to proceed in accordance with law.

10. So far as the service of notice is concerned, primarily we feel that since notices have already been served on the proposed respondent, it would not be necessary for the Commissioner to once again take out fresh notice on the proposed respondent. However, as a matter of abundant caution, we direct the appellant herein to take out paper publication with regard to the impleadment of the proposed respondent before the Commissioner for Workmen's Compensation. The amount that has been directed to be paid to the respondents No.1 and 5 shall remain with them and shall be subject to the final orders to be passed by the Commissioner for Workmen's Compensation. The same shall be adjusted accordingly.

11. The parties to appear before the Commissioner, Workmen's Compensation on 22.02.2023.

12. The appeal is disposed off accordingly.

(RAVI MALIMATH)
CHIEF JUSTICE

SKM

(VISHAL MISHRA)
JUDGE