

**MAJEED  
vs  
NEW EASTERN BUS COMPANY LTD AND ANOTHER**

COURT OF APPEAL.  
WIJERATNE, J.  
CA 614/2006 (TRANSFER).  
DC AMPARAI 129/DAMAGES.  
OCTOBER 27, 2006.

*Judicature Act, No. 2 of 1978, sections, 46(1), 46(1)(d) - Application to transfer  
a case from District Court of Amparai to District Court of Colombo - Expedient?  
- Circumstances ?*

The plaintiff-petitioner instituted action in the District Court of Amparai claiming damages for injuries caused to him. The evidence of the Doctor and part of the evidence of the plaintiff-petitioner were recorded. The plaintiff-petitioner sought a transfer of the said case to the District Court of Colombo - On the grounds that (1) he finds it difficult to travel to Amparai from his residence in Colombo by reason of injuries to his right leg (2) that all witnesses are from Colombo (3) his Counsel is also from Colombo.

**HELD:**

- (1) The fact that almost all the witnesses for the plaintiff-petitioner have to travel from Colombo to Amparai cannot provide the sole ground of "expedience".
- (2) The respondents urge that all their witnesses are from Amparai and they will experience difficulties and hardship in travelling to Colombo. This court being obliged to address the interests of both is unable to accept the fact of witnesses having to travel as a ground that will be "expedient".
- (3) "Expedient" in the context of section 46(1)(d) means advisable in the "interest of justice". Nowhere in the judicial process is it held that to respond to the difficulties or inconvenience experienced by party litigants is advisable in the interest of justice.

*Per Wijeyaratne, J.*

"In my view the inconvenience or difficulty experienced by a party litigant due to poor health cannot be considered as a matter of interest of justice for the reason that health conditions of people are highly variable depending on times ages and various other factors and if the process of justice system is varied to suit such variable condition the system will lead to chaos"

**APPLICATION** for a transfer.

**Case referred to :**

(1) *Kurukulasuriya vs. M. M. Sahul* (1987) 1 CAR 564.

(2) *Perera and Others vs. Hasheed and Others* Vol Srikantha Law Reports 133.

*Romesh de Silva, P. C.* with Sugath Caldera for plaintiff-petitioner.

*Ronald Perera* with Chandimal Mendis for defendant-respondent.

*Cur. adv. vult.*

December 5, 2006.

**WIJEYARATNE, J.**

This is an application for the transfer of an action instituted by the petitioner in the District Court of Ampara against the two defendant-respondents seeking to recover damages consequent to a collision of the vehicle belonging to the 1st respondent and driven by the 2nd respondent causing injury to the petitioner. The trial of the case has commenced and proceedings of the evidence of the Medical Doctor and part of the evidence of the plaintiff-petitioner only were recorded and the further trial fixed not taken for various reasons like the negotiation for settlement and application for postponement by the petitioner. As grounds of transfer the petitioner urges that due to his having undergone several surgeries, he finds it difficult to travel to Ampara from his residence in Colombo. He further states that all the witnesses for the plaintiff are from Colombo who will be required to travel to Ampara to give evidence. The petitioner who states that even the counsel for the defendant-respondents travel from Colombo and seeks the transfer on the ground that it is expedient to transfer the case to the District Court of Colombo subject to his meeting the costs of the travel of respondents as well as their witnesses.

The two respondents object to the transfer on grounds that the petitioner has not established that such transfer would be in the interest of justice and any order for transfer would cause severe disruption of employment of the 2nd respondent and cause severe financial loss to both of them. It is their position that "interests of justice" would be served by continuance of the action in the District Court of Ampara.

When the matter came up for argument both parties agreed that the matter be disposed of by way of written submissions and tendered their respective submissions in writing.

Both parties concede that the application falls within the ambit of section 46(1) (d) of the Judicature Act No. 2 of 1978 as amended. Thus the burden lies on the petitioner to establish that it is so expedient to transfer this case from the District Court of Ampara to District Court of Colombo on grounds he urged in his application. The grounds so urged are that—

- 
- (a) the petitioner finds it difficult to travel long distances by reason of injuries to his right leg ; and
  - (b) the witnesses almost all, are from Colombo who will be required to travel to Amparai.

The Petitioner does not state that he is medically advised not to travel, he only states that he was advised to rest his right leg and he finds it difficult and inconvenient to travel more than five hours by car at a stretch. It is also an admitted fact that the plaintiff-petitioner's cross examination is towards the end with likelihood of it being concluded in one day. Do these circumstances render the transfer expedient is the question this Court has to now determine.

The Learned President's Counsel for the petitioner refers this Court to the decision of *R. C. Kurukulasuriya Vs. M. M. Shahu*<sup>(1)</sup> and submits that this Court considering the fact that most of the witnesses have to travel from Matara to Kalmunai held it as ground to make order to transfer the case from M. C. Kalmunai to M. C. Hambanthota. Perusal of the judgment reveals that the fact of matter of the witnesses having to travel from Matara to Kalmunai was found to be an additional or contributory factor in making the order for transfer on the main ground that the Magistrate Court of Kalmunai conducted its proceedings in the official language of Tamil and the permitted language of English without the facility of interpretation to Sinhalese the only language the accused understood. And it was considered expedient or in the interest of justice that the case be transferred to a Court where proceedings are conducted in a language the accused understood.

The fact that almost all the witnesses for the plaintiff-petitioner have to travel from Colombo to Amparai cannot therefore provide the sole ground of "expedience". The respondents urge that all their witnesses are from the locality of the Amparai Courts and they will experience difficulty and hardship in travelling to Colombo. This Court being obliged to address the interests of both parties, is unable to accept the fact of witnesses having to travel as a ground that will be "expedient".

The only other ground urged by the petitioner is the inconvenience or the difficulties he experiences in travelling from Colombo to Ampara due to his being required to rest his right leg. There is nothing to suggest that

---

movement of his leg or his traveling is totally ruled out or barred on medical advice. The question thus need be addressed is, whether" inconvenience or difficulty in travelling due to the poor health of a party could constitute 'expedience'. In *Perera and Others Vs. Hasheeb and Others* it was held that the expression "Expedient" in the context of section 46(1)(d) means "advisable in the interest of justice". Nowhere in the judicial process, is it held that to respond to the difficulties or inconvenience experienced by party litigant is "advisable in the interest of justice". In my view the inconvenience or difficulty experienced by a party litigant due to poor health cannot be considered as a matter of interest of justice for the reason that health conditions of people are highly variable depending on times, ages and various other factors. And if the process of justice system is varied to suit such variable conditions, the system will lead to chaos.

In all these circumstances, I am unable to hold that the petitioner has established grounds that will render an order to transfer the case 'expedient'.

Consequently the application is dismissed with costs.

*Application dismissed.*

---