

**JAISHAL JESHNEEL NAIDU by his next friend and father NARAYAN SAMI NAIDU v RAJENDRA PRASAD, DAYA NAND, SUN INSURANCE CO LTD (HBC0005 of 2011B)**

5 HIGH COURT — CIVIL JURISDICTION

BRITO-MUTUNAYAGAM J

12 August 2011, 19 January 2012

10 **Courts and Judicial System — jurisdiction — whether Magistrate’s Court is empowered to approve settlement on behalf of minor — damages for personal injuries — High Court Rules O 80 r 8 — Magistrates Courts Act s 46 — Magistrates Courts Rules O 3 r 8.**

15 The plaintiff’s claim for damages for personal injuries was settled and a discharge was signed by the plaintiff. The discharge provided that the plaintiff “agrees to accept the sum of \$9,000.00 subject to approval by the High Court.” The matter was transferred to the High Court for approval, and was referred back to the Magistrates’ Court. The magistrate issued a stay and ordered the plaintiff to make an application to the High Court for payment.

20 **Held –**

(1) The parties cannot confer jurisdiction on a Court.

(2) The Magistrates’ Court has the power to approve a settlement on behalf of a minor.

A court vested with jurisdiction to hear and determine a suit filed on behalf of a minor is empowered to approve a settlement entered therein.

25 *Mahadeo Sharma v Charisse Caldwell* (1975) 21 FLR 85, followed.

(3) The discharge was erroneous as it contained words founded on the misconception that any settlement in respect of a minor, irrespective of its monetary value, required the approval of the High Court.

30 Declaration granted that Resident Magistrate has power to approve compromise. Defendants ordered to pay costs of \$1000.

A. *Sen* for the Plaintiff.

*Adrian Ram* for the Defendants.

35 [1] **Brito-Mutunayagam J.** Jaishal Jeshneel Naidu had filed action in the Magistrates’ Court by his next friend and father claiming damages for personal injuries in a sum of \$ 25,000.

The matter had been settled and a discharge dated 29th April, 2010, was signed by the plaintiff. The discharge, as so far as material, provides that the plaintiff

40 “*agrees to accept the sum of \$9,000.00 subject to approval by the High Court.*”

The Learned Magistrate upon being advised that settlement had been reached had transferred the matter to the Master of the High Court for approval. The Master had referred it back to the Magistrates Court, which had stayed the proceedings and ordered the plaintiff to make an application to the High Court for

45 payment.

**2. The determination**

Both parties accept the discharge as the starting point. Thereafter, they diverge in this way.

50 Mr Sen contended the Magistrates’ Court has power to approve a settlement on behalf of a minor. Mr Ram persisted that the approval of the High Court has to be obtained.

The issue for determination thus falls within a very narrow compass.

Mr Sen placed, at the forefront of his case the decision in *Mahadeo Sharma v Charisse Caldwell* (1975) 21 FLR 85. In that case, it was held a Magistrate can approve a compromise on behalf of a minor. The reasoning of the Court of Appeal was that in the absence of a provision for the compromise of suits in the Magistrates' Court Rules, parties "*shall be guided by any relevant provision contained in the Supreme Court Rules*" in terms of O 3, r 8.

The argument advanced on behalf of the defendants was that the discharge under consideration, instructs that approval of the High Court has to be obtained. I need hardly state parties cannot confer jurisdiction on a court. It was also contended that O 80, r 8 of the High Court Rules applies. The scope of this provision is limited to "*proceedings*" in the High Court, as "*..must ordinarily be commenced in the High Court registry*" - O 4, r 1.

It would accord with legal common sense that a court vested with jurisdiction to hear and determine a suit filed on behalf of a minor is empowered to approve a settlement entered therein.

In my judgment, the fundamental error which underlies this case are the words contained in the discharge, founded as they are on the misconception, that any settlement in respect of a minor, irrespective of its monetary value, requires the approval of the High Court.

The conclusion I have reached following the Court of Appeal decision in *Mahadeo Sharma vs Charisse Caldwell* (*supra*) is, that the Magistrates' Court has power to approve a settlement, on behalf of a minor.

I proceed to consider the declaration sought by the plaintiff that the compromise be approved and be paid by the defendants, or alternatively, that an order be made for judgment in a sum of \$ 9000.

Section 46 of the Magistrates' Court Act provides:

"*The jurisdiction vested in magistrates shall be exercised (so far as regards practice and procedure) in the manner provided by this Act ... and in default thereof, in substantial conformity with the law and practice for the time being observed in England in the county courts and courts of summary jurisdiction*". (emphasis added)

*The Supreme Court Practice 1988*, (The White Book) Vol 1, page 1204, provides that usually the guardian is required to "*lodge an affidavit exhibiting counsel's opinion and agreeing thereto*".

The Magistrate is apprised of the facts and hence approval must be sought from the Magistrate Court. The parties are not in variance on this front. It was Mr Sen's submission that the stay issued by the Learned Magistrate restrained the plaintiff from seeking approval.

I find it unnecessary to deal with the other declarations sought. The plaintiff has not appealed from the order of the Resident Magistrate ordering the plaintiff to make an application to the High Court for payment. The order is not before this court and it is inappropriate to make any further comment.

### 3. Orders

The plaintiff is entitled to a declaration that the Resident Magistrate has power to approve the compromise.

I order costs in a sum of \$1000 summarily assessed to be paid by the defendants to the plaintiff.