

REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC. APP. 147/2010

MOHD ISRAIL MALIK & ANR Appellants

Through: Appellant No.1 in person

versus

NIRMAL SINGH & ORS Respondents

Through: Mr. K.L. Nandwani, Advocate
for the respondent No.3/United
India Assurance Co.

% Date of Decision : February 09, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T (ORAL)

: REVA KHETRAPAL, J.

1. By way of this appeal, the appellants seek to assail the judgment of the Motor Accident Claims Tribunal dated 20.01.2010.
2. The facts leading to the filing of the appeal are that in the year 1997 the appellants filed a petition for grant of compensation of

₹ 12,05,000/- on account of the death of their son in a road accident which took place on 02.10.1996 near Gopal Ganj G.T. Road, Police Station Nirsa, District Dhanbad, West Bengal. At the time of the filing of the aforesaid claim petition, the appellants were residents of Delhi where the appellant No.1 was working as an accountant (Munshi) with M/s. Jagdish Fruit Agency at C-51, New Subzi Mandi, Azadpur, Delhi. The learned Motor Accident Claims Tribunal by its judgment dated 15.11.2003 passed in Claim Petition No.266/2002 however held that no reliance could be placed on the ration card Ex.PW1/8 to hold that the petitioners were residents of Delhi, that it appeared that the petitioners were residents of Village Babhnour, P.O. Hasapur, District Nawadah, Bihar, and were not residing in Delhi at the time of the filing of the petition, and thus that the present petition was not maintainable in a Court in Delhi. The petition was accordingly ordered to be returned to the petitioners (the appellants herein) for presentation before the proper Court.

3. Aggrieved by the aforesaid order, the appellants filed a review application under Order 47 Rule 1 read with Section 151 CPC, but the

same was dismissed on 22.04.2004 by making the following observations:

“3. By means of the present application, the petitioners intend to place on record important evidence apart from the one already led during the course of the trial in order to show that they are residents of Delhi. This cannot be done by means of an application for review. It is not the case of the applicants that they had discovered any new or important matter of evidence or that the evidence now sought to be led was not within their knowledge. It is also not their case that they could not produce evidence or that the evidence now sought to be led was not within their knowledge. It is also not their case that they could not produce the evidence now sought to be led at the time when the award was passed in this case. In the grab of an application for review the court cannot be asked to reappraise evidence on a particular point and over rule its earlier findings. This can only be done in an appeal. In my considered opinion, therefore, the present application for review of the order dated 15.11.03 is misplaced and is hereby dismissed. File be consigned to record room.”

4. The appellants thereupon filed an appeal against the impugned orders dated 15.11.2003 and 22.04.2004, which came to be registered as MAC. APP. No.338/2004. The said appeal was, however, dismissed in default on 6th August, 2004. There again applications,

bearing CM Nos.6567, 6568 and 6569/2007 came to be filed for restoration of the appeal and for condonation of delay in filing the same. The aforesaid applications were disposed of by this Court by passing the following order:

% 09.05.2007

Present: Mr. R.S.Roy, for the appellant.

*+Cms. 6567, 6568, 6569/2007 in MAC. APP.
No. 338/2004*

1. Learned counsel for the appellant does not press the applications and states that the appellant would receive back the claim petition filed which was ordered to be returned vide impugned order for presentation before the proper court.

2. Applications are accordingly dismissed as not pressed.

3. Unfortunately for the appellants, due to wrong legal advise and further misconduct of the lawyer even in prosecuting the present appeal, valuable time has been lost for them.

4. It is hoped and expected that the court of competent jurisdiction where claim petition is re-filed would take note of the fact that the deceased son of the appellants died due to a road accident on 02.10.1996. Every endeavor would be made to decide the claim petition as expeditiously as possible.

5. No costs."

5. Pursuant to the order dated 09.05.2007, the appellants instead of receiving back the claim petition which was ordered to be returned for presentation before the proper Court filed a fresh petition before the Motor Accident Claims Tribunal, which came to be registered as MAC. APP. No.50/2008. In the said appeal, the Claims Tribunal after hearing the parties passed the following order:

“15.12.08

*Present: Petitioner with counsel
Sh. R.K. Gupta for United India
Insurance.*

I have heard them for considerable time. According to Mr. Gupta this court did not possess territorial jurisdiction. I have gone through the previous file. My Ld. Predecessor had ordered for returning of the petition on the ground that this court did not have territorial jurisdiction. Evidence had been led earlier. Today petitioner has filed photocopy of certified copy of proceedings before labour court. Secretary Labor had made a reference in matter involving petitioner Mohd. Israil on 03.07.1996. In the reference address of petitioner was given as F-251, Vijay Vihar, Delhi. Son of the petitioner died soon after. AS such, it cannot be said that petitioner was not resident of Delhi. Tribunals should adopt human view while dealing with such matters. Court cannot disregard copy of the reference order and as such I am of the opinion that this

court indeed had territorial jurisdiction to try the petition.

Notices which were issued to R-3 earlier had been received back with illegible endorsement of the postal authorities. Notice issued to other respondent had not been received back . While the matter was pending before my Ld. Predecessor, R-1 & 2 had not appeared. They were proceeded ex-parte. They had been served by way of publication.

I, therefore, direct petitioner to get the service effected on R-2 & 3 by way of publication in National Herald on PF charges for 09.02.09."

6. After the passing of the above order, pleadings were completed, issues were framed and evidence was adduced before the learned Claims Tribunal. The appellants having made a statement that they relied on the evidence of the two witnesses examined earlier, the case was listed for the respondents' evidence. Before the respondents could adduce their evidence, on 07.12.2009, the Motor Accident Claims Tribunal framed the following preliminary issue on the maintainability of the petition:

"Whether the petition is barred on the principle of res-judicata?"

7. Thereafter, on 20.01.2010, the Motor Accident Claims Tribunal dismissed the petition by passing the impugned order, which reads as under:

***“Findings on issue framed on 07.12.09 that
“whether petition is barred on the principles
of ‘res judicata’.***

1. *Earlier a petition on the same cause of action was filed on 30.01.97, which was dismissed by Sh. Rakesh Kapoor, the then LD. Judge, MACT, Delhi vide order dated 15.11.03 and it was held that Tribunal has no territorial jurisdiction and the petition should have been filed in Bihar.*

2. *After that, a review petition was filed u/O 47 Rule 1 CPC for the review of the said order but the said review petition was dismissed vide order dated 22.04.04. Thereafter petitioners filed MAC appeal before Hon’ble High Court against the said order and Ld. Counsel for appellants/petitioner had not pressed the applications and had stated before the Hon’ble High Court that the appellants would receive back the claim petition which was ordered to be returned vide impugned order for presentation before the proper court and applications were accordingly dismissed as not pressed.*

3. *Instead of receiving back the claim petition for presenting before proper court, this fresh petition was filed by petitioners and counsel for insurance company – R1 had pointed out all these facts to my Ld. Predecessor but it was observed vide order*

dated 09.02.2009 that this court, indeed, had jurisdiction to try the petition.

4. Since the MAC appeal was dismissed as not pressed at the request of counsel for appellants/petitioners by the Hon'ble High Court, the order dated 15.11.03 passed by Sh. Rakesh Kapoor, the then Ld. Judge, MACT had attained finality. In my view if the present petition is allowed to go on, there would be no sanctity of the orders dated 15.11.03 and 12.04.04 passed by Sh. Rakesh Kapoor, the then Ld. Judge, MACT, Delhi and of the order dated 09.05.07 passed by Hon'ble Justice Sh. Pradeep Nandrajog in MAC. APP. No. 338/2004. Therefore, I am of the considered opinion that the present petition is barred on the principles of 'res judicata' since the issue of territorial jurisdiction was already decided and hence the present petition is dismissed as barred on the principles of res-judicata. This issue is decided accordingly. File be consigned to record room."

8. The sole contention of the appellants is that this Court has territorial jurisdiction to entertain the petition and the impugned order is, therefore, liable to be set aside on this short ground alone. It is submitted that the learned Motor Accident Claims Tribunal having held in its order dated 15.12.2008 that this Court had the jurisdiction to entertain the petition and the case having been listed for the evidence of the respondents, it was not open to the Claims Tribunal to

again frame a preliminary issue on the aspect of jurisdiction and to throw out the claim petition on this ground. Reliance was placed in this regard upon the judgment of the Supreme Court in *Sheodan Singh vs. Smt. Daryao Kunwar* reported in *AIR 1966 SC 1332*, wherein it is held that for the principle of *res judicata* to apply, the matter must have been heard and finally decided by the trial court and in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on the merits. Where, for example, the former suit was dismissed by the trial court for want of jurisdiction, or for default of plaintiff's appearance, or on the ground of non-joinder of parties or misjoinder of parties or multifariousness or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to pay additional court fee on a plaint which was undervalued or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the

decision not being on the merits would not be *res judicata* in a subsequent suit.

9. Mr. K.L. Nandwani, the learned counsel for the respondent No.-3 – Insurance Company, on the other hand, placed strong reliance on the order dated 9th May, 2007 passed by this Court to buttress his contention that the present appeal was barred by the principles of *res judicata*.

10. After hearing the parties, I am afraid I find no substance in the contention of the counsel for the Insurance Company. The appellants, who have lost their young son in an accident which took place on 02.10.1996, and who filed a claim petition in the year 1997 for grant of compensation on account of his untimely demise, have been running from pillar to post for the last 14 years without respite. During the aforesaid period the various Motor Accident Claims Tribunals have adopted divergent views on the aspect of jurisdiction, and for this reason alone the award has yet to see the light of the day. This despite the fact that this court by virtue of the amendment effected in the Motor Vehicles Act clearly has juris to entertain the

claim petition. The provisions of Section 166(2), which came into effect on 14.11.1994, leave no manner of doubt that an application for compensation shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred *or to the Claims Tribunal within the local limits of whose jurisdiction* the defendant resides. Sub-section (2) of Section 166 reads as under:

“166. Application for compensation.–

(1)
(2) *Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:*

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.”

11. In the instant case, as noted in order dated 15.12.2008 passed by the Claims Tribunal, the address of the appellant No.1 was given

as F-251, Vijay Vihar, Delhi in the order of reference made by the Secretary, Labour in a matter involving the appellant, Mohd. Israil, on 03.07.1996. The appellant No.1 was working as an accountant (Munshi) at C-51, New Subzi Mandi, Azadpur, Delhi and had a saving banks account No.4244 with Bank of India, Azadpur Branch, Delhi since the year 1983. According to him, he was residing in rented accommodation since the year 1980 and is still residing in Delhi. Thus, this Court has the territorial jurisdiction to entertain the petition.

12. In a recent decision rendered in the case of *Mantoo Sarkar vs. Oriental Insurance Company Limited and Ors.*, (2009) 2 SCC 244, the Supreme Court while interpreting the provisions of sub-section (2) of Section 166 made the following pertinent observations at page 248 of the Report:

“The said Act is a special statute. The jurisdiction of the Tribunal having regard to the terminologies used therein must be held to be wider than the civil court.”

13. In the case of *Mantoo Sarkar (supra)*, the appellant was a seasonal migrant labourer working in Nainital (Uttaranchal), who met

with an accident in Faridpur (U.P.) while travelling in a bus of Madhya Pradesh Road Transport Corporation with a truck registered at Faridabad. The Claims Tribunal awarded a sum of ₹ 2,40,000/- to the claimant, but the High Court of Uttar Pradesh in appeal held that the Tribunal lacked territorial jurisdiction to pass the award. On appeal to the Supreme Court, the Supreme Court held that the residence of the claimant also determines the jurisdiction of the Tribunal and as the appellant was working in Nainital District and residing there during the period of the accident, the Court at Nainital could have entertained the claim petition and the High Court should not have, in the absence of any finding of sufferance of any prejudice on the part of the respondent, entertained the appeal.

14. In view of the aforesaid, it must be held that the appellants who were residents of Delhi at the time of the accident were entitled to present the claim petition at Delhi and this Court has the territorial jurisdiction to entertain the same. The principles of *res judicata* will have no application as held by the Supreme Court in the case of *Sheodan Singh (supra)*.

15. The appeal is accordingly allowed by setting aside the impugned order. The matter is remanded back to the Claims Tribunal for being decided on merits. The records be sent back to the Claims Tribunal forthwith.

16. In view of the fact that the matter pertains to an accident which occurred in the year 1996 and fourteen years have elapsed since the presentation of the Claim Petition without the appellants having received a single penny, the learned Tribunal is requested to dispose of the matter at the earliest and, in any case, not later than three months from the date of the receipt of this order. Notice shall be issued by the Tribunal to the parties for appearance and thereafter a convenient date be fixed for the respondents evidence.

The appeal stands disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

February 09, 2011
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