

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

OP (MAC).No. 1 of 2015 (O)

**(AGAINST THE ORDER DATED 16.12.2014 MADE IN UNNUMBERED O.P. ON THE FILE
OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR**

PETITIONER:

**E.I.SUGUNAN AGED 64 YEARS
S/O. ITTIKUNJI, RESIDING AT EDAKATTUPARAMBIL HOUSE
EDATHIRUTHY POST, EDATHIRUTHY VILLAGE, KODUNGALLUR
THRISSUR DISTRICT.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD**

RESPONDENTS:

- 1. P.M.RIYAS
S/O. MUHAMMED, RESIDING AT PADAVALAPPARAMBIL HOUSE
CHALINGAD POST KAIPAMANGALAM, KODUNGALLUR
THRISSUR DISTRICT, PIN-680 681.**
- 2. P.C. SANIL,
S/O. CHANDRAN, RESIDING AT PUTHUVEETIL HOUSE
KATTOOR POST, MUKUNDAPURAM, THRISSUR DISTRICT-680702.**
- 3. P.B. BIBIN,
S/O. P.K. BALAN, RESIDING AT PUTHUVEETIL HOUSE
KARANCHIRA, KATTOOR POST, MUKUNDAPURAM
THRISSUR DISTRICT-680702.**
- 4. NATIONAL INSURANCE COMPANY LIMITED,
FIRST FLOOR, MUKRIYATH SHOPPING COMPLEX
OPPOSITE KARUNA HOSPITAL, NH 17, VATANAPPILLY POST
THRISSUR DISTRICT-680614.**

**R2 & R3 BY ADVS. SRI.NOBLE MATHEW
SRI.JESTIN MATHEW
R4 BY ADV. SRI.M.A.GEORGE**

**THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 28-01-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (MAC).No. 1 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS

P1. TRUE COPY OF THE TREATMENT-CUM-WOUND CERTIFICATE ISSUED BY THE ELITE MISSION HOSPITAL, THRISSUR DATED 4-6-2014.

P2. TRUE COPY OF THE CLAIM PETITION PREFERRED BY THE PETITIONER BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR DATED 3-12-14.

P3. TRUE COPY OF THE INSURANCE POLICY DATED 1-4-2014.

P4. TRUE COPY OF THE ORDER PASSED BY THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR DATED 16-12-14.

RESPONDENTS' EXHIBITS

NIL

//True copy//

P.A. TO JUDGE

Shg/

K. VINOD CHANDRAN, J.

O.P.(MAC) No.1 of 2015

Dated this the 28th day of January, 2015

JUDGMENT

The petitioner is aggrieved with Ext.P4, wherein an unnumbered original petition, seeking compensation for injury arising out of a motor vehicle accident, was returned by the Motor Accident Claims Tribunal, Thrissur, for want of jurisdiction.

2. The admitted facts are that the petitioner was involved in a motor accident on 10.05.2014 wherein he has suffered serious injuries including amputation of 4 lateral toes. The accident occurred at Maniyath Padi, within the jurisdiction of Mathilakam Police Station and an FIR was registered. The petitioner resides in Kodungalloor. The 3rd respondent was the driver of the vehicle, whose registered owner is the 1st respondent and the 2nd respondent is the person in whose favour the insurance policy has been issued, all of whom reside in Kodungalloor.

3. The insurance policy is issued by the 4th respondent, from its branch office at Vatanapally, which is within the

jurisdiction of the Motor Accident Claims Tribunal, Thrissur. Admittedly, the petitioner and the respondents do not reside within the jurisdiction of the Motor Accident Claims Tribunal, Thrissur. The Tribunal returned the application, for want of jurisdiction, since the place of occurrence and residence of the claimant are not within the jurisdiction of the said Tribunal.

4. The learned counsel appearing for the petitioner would rely on Section 166(2) of the Motor Vehicles Act, 1988 to contend that the claim can also be filed before a Tribunal, within the local limits of whose jurisdiction, the defendant resides. In this case since the insurance company is one of the defendants, the same has to be read as 'the defendant carries on its business', is the contention urged.

5. I have heard the learned counsel appearing for the insurance company as also the learned counsel appearing for respondents 2 and 3. The 1st respondent has not appeared despite service of notice. None appearing, raise any objection with respect to the jurisdiction.

6. The learned counsel for the petitioner relies on a decision of the Andhra Pradesh High Court in **K.Lakshmi Devamma & Others Versus The Regional Manager,**

A.P.S.R.T.C, Kurnool [CDJ 2010 APHC 273] and a Division Bench decision of the High Court of Judicature at Calcutta reported in **New India Assurance Company Limited Versus Kutiswar Pramanik [CDJ 2009 Cal HC 671]**.

7. The Andhra Pradesh High Court found that a meticulous examination, of the jurisdictional issue arises only if an enquiry is made as to whether the filing of a claim petition at a particular place would be contrary to the provisions of the Act and also when it causes undue hardship to the respondents to defend their case. Therein the residence of the claimants, as also the office of the APSRTC, whose vehicle was involved in the accident, was situated in Kurnool; wherein the claim was filed. The return of the claim, for presentation before the proper forum, by the Tribunal, was inter alia on the ground that the Managing Director of the APSRTC, is the proper person to be sued. The finding that the claim petition was maintainable at Kurnool itself, will not be strictly of any help in the present case, since the High Court found the residence of the claimant to be in Kurnool.

8. Before the Calcutta High Court, the issue that came up before the Division Bench was on a conflict of opinion, with

respect to the maintainability of a claim petition, before the Tribunal which, had jurisdiction over the Regional Office of the Insurance Company. The Division Bench found that such an application would not be maintainable since the words 'carries on business' is absent in sub-section (2) of Section 166 insofar as the defendant was concerned. However, it was held that a claim would be maintainable before the Tribunal, which had the jurisdiction over the place where the branch office of the Insurance Company, which issued the subject policy is situated.

9. When referring to a corporate body, the residence was found to be where the business is carried on:

“(24) It is, of course, settled law that the residence of the artificial person is a place where the artificial person carries on business.

(25) P.Ramanatha Aiyar in Advanced Law Lexicon (3rd Edition, 2005) deals with the expression 'reside' in reference to the corporation as under: “Probably the only sense in which a corporation may be said to reside anywhere is with reference to its legal or statutory habitat, which is the jurisdiction of its incorporation. In this sense, to say that a corporation is a non-resident is to say that it is a non-domestic corporation, and all corporations, which are not domestic are foreign.”

On an interpretation of Section 166(2), it was held so:

(31) "In our view, the functional interpretation of the provisions of sub-section (2) of Section 166 would be that the claim application could be filed, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business and within the local limits of whose jurisdiction the defendant resides or to the Claims Tribunal within the local limits of whose jurisdiction the policy issuing office of the Insurance Company situates."

10. The jurisdictional aspect is very broadly worded and is intended at serving the convenience of the injured; who seeks compensation. The option to choose or elect an appropriate Tribunal, is also left to the injured/claimant. Technical considerations should be subservient to the intendment of the statute. A separate forum to decide on and quantify the tortuous liability arising from motor accidents, is contemplated; quite conscious of the increasing incidence of such accidents and in the context of the expanding population, as also the prevalence of motor vehicles. A Tribunal looking at the jurisdictional aspect has to be essentially and primarily be attuned to the hardship of the injured/claimant.

This Court is of the opinion that the subject claim petition filed before the Motor Accident Claims Tribunal, Thrissur, which admittedly has jurisdiction over the 4th respondent, who has issued the policy, is perfectly in sync with the intendment. The subject Tribunal hence would have jurisdiction to consider the claim application. In such circumstance, Ext.P4 is set aside. The Motor Accident Claims Tribunal, Thrissur is directed to restore the case to the files of the Tribunal, number it and proceed with it, in accordance with law.

Writ Petition is allowed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

JV