

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1010 of 2016

1. Smt. Chandrika Bai W/o Late Kaushal Das Manikpuri, aged about 25 years, R/o Village Mulmula Thana Pamgarh, District Janjgir Hall Mukam Kharripara Mungeli Thana and Tahsil Mungeli Bhanpuri, District Bilaspur, Chhattisgarh Now District Mungeli, Chhattisgarh
2. Bharat Das S/o Late Shri Mohan Das Manikpuri, aged about 52 years, R/o Village Mulmula Thana Pamgarh, District Janjgir Hall Mukam Kharripara Mungeli Thana and Tahsil Mungeli Bhanpuri, District Bilaspur, Chhattisgarh Now District Mungeli, Chhattisgarh
3. Meena Bai W/o Bharat Das Manikpuri, aged about 48 years, R/o Village Mulmula Thana Pamgarh, District Janjgir Hall Mukam Kharripara Mungeli Thana and Tahsil Mungeli Bhanpuri, District Bilaspur, Chhattisgarh Now District Mungeli, Chhattisgarh.....(Claimants)

---- Appellants

Versus

1. Narayan Das @ Naru S/o Gaumal Madhwani, aged about 44 years, Occupation Driver of the offending vehicle Mahendra Peakup No. M. P. 18 G. A. 1954, R/o Village Ward No. 7, Akaltara Janjgir Champa, District Janjgir Champa, Chhattisgarh.....(Driver)
2. Smt. Veena, W/o Narayan Das @ Naru Madhwani, aged about 40 years, Occupation Owner of the offending vehicle Mahendra Peakup No. M. P. 18 G. A. 1954, R/o Village Ward No. 7, Akaltara, Janjgir Champa, District Janjgir Champa, Chhattisgarh.....(Owner)
3. The Oriental Insurance Company Limited Near Bus Stand Divisional Office Bilaspur, Chhattisgarh.....(Insurer)

---- Respondents

For Appellants – Shri A.L.Singroul, Advocate.

For Respondents 1 and 2 – None, though served as per office note dated 06-10-2016.

For Respondent No.3 – Shri Nilkanth Malaviya, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

18/10/2016

Heard on I.A.No.1/2016 for condonation of delay in filing the instant MAC which is barred by limitation by 621 days.

I.A.No.1 is opposed on behalf of respondent No.3.

Learned counsel for the appellant submits that the delay caused is bonafide and unintentional. The appellants are villagers and not aware of limitation laws. After obtaining necessary documents and arranging funds for filing the instant appeal, the appellants had preferred the instant MAC against the impugned order passed by the Tribunal vide order dated 28-07-2014 whereby the claim of the claimants/appellants were denied merely on the ground of territorial jurisdiction. The matter was not disposed of by the concerned Tribunal on its merit. Hence, the delay of 621 days may be condoned.

Learned counsel for the appellant relied on the matter of **Imrat Lal and others Vs. Land Acquisition Collector and others** [(2014) 14 SCC 133] where the land acquisition proceedings were challenged by the land owners removed by their land praying for enhancement of compensation, examining the issue of delay of 1110 days in filing petition and the background of the petitioners therein, it was held by the Supreme Court, as under:-

11. We can take judicial notice of the fact that the villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half-baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the court should adopt a liberal approach and either grant time to the party to file a better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of

compensation by the Land Acquisition Officer or the Reference Court have been granted relief.

12. In Samiyathal v. Tahsildar decided on 5-7-2013, this Court took cognizance of the fact that many landowners may not have been able to seek intervention of this Court for grant of enhanced compensation due to illiteracy, poverty and ignorance and issued direction that those who have not filed special leave petition should be given enhanced compensation. The relevant portion of the judgment passed in that case is extracted below:

“we further direct the respondents and the State of Tamil Nadu to pay the same amount of compensation to other landowners whose land was acquired by the Notification dated 22-5-1991, but who may have on account of ignorance, poverty and other similar handicaps, not been able to approach the Reference Court or may not have been able to contest the matter before the High Court and this Court. The needful be done in respect of other landowners within a period of six months. This direction has been given in exercise of the power vested in this Court under Article 142 of the Constitution.”

On due consideration, looking to the entire facts and submission, this Court is of the considered view that the appellants have satisfactorily explained the delay caused in filing the instant MAC. Consequently, I.A.No.1/2016 is hereby allowed and the delay of 621 days in filing the instant MAC is hereby condoned.

1. Heard on admission. Also the matter heard finally with the consent of the parties present at the motion stage itself.
2. Learned counsel for the appellants prays that the Court below dismissed their claim petition on the basis of provision of Section 166 (2) of the Motor Vehicles Act, 1988 (in short ‘the Act, 1988) and reached to the conclusion that the

applicants/appellants failed to demonstrate the fact that for the time being they are residing at Kharripara, Mungeli, C.G., hence, the said claim case does not fall under the territorial jurisdiction of the concerned Tribunal and consequently, the Tribunal dismissed the claim petition being beyond jurisdiction. The learned counsel submits that though the applicants/appellants have not filed any document showing their temporary residence at Kharripara, Mungeli, as they are villagers earning their livelihood anyhow and upon their economic and social status and other facts they were not in a position to get their voter ID, ration card, electricity bill or other documentary proof for their temporary residence at Mungeli. Learned counsel for the appellants places reliance on the matter of **Malati Sardar Versus National Insurance Company Limited and others** [(2016) 3 SCC 43] wherein the Hon'ble Apex Court reiterated the principles laid down in *Mantoo Sarkar V. Oriental Insurance Co. Ltd.* [(2009) 2 SCC 244] and held in paras 11, 12, 13, 14, 15 and 16 that:-

11. In our view, the matter is fully covered by decisions of this Court in *Mantoo Sarkar* (supra). It will be worthwhile to quote the statutory provision of Section 166(2) of the Act :

“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.”

12. In *Mantoo Sarkar* (supra), the insurance company had a branch at Nainital. Accident took place outside the jurisdiction of Nainital Tribunal. The claimant remained in the hospital at Bareilly and thereafter shifted to Pilibhit where he was living for a long time. However, at the time of filing of the claim petition he was working as a labourer in Nainital District. The High Court took the view that Nainital Tribunal had no jurisdiction and reversed the view taken by the Tribunal to the effect that since the office of the insurance company was at Nainital, the Tribunal had the jurisdiction. This Court reversed the view of the High Court. It was held that the jurisdiction of the Tribunal was wider than the civil court. The Tribunal could follow the provisions of the Code of Civil Procedure (CPC). Having regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in absence of any prejudice. Distinction was required to be drawn between a jurisdiction with regard to subject matter on the one hand and that of territorial and pecuniary jurisdiction on the other. A judgment may be nullity in the former category, but not in the latter.

13. Reference was also made to earlier decision of this Court in *Kiran Singh vs. Chaman Paswan* (AIR 1954 SC 340) to the following effect :
(*Mantoo Sarkar case*, SCC p.250, para 21)

“21. ’17. “7. ...With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 CPC and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be

reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act.’ ” (*Kiran Singh case*, AIR p. 342, para 7)

14. We are thus of the view that in the face of judgment of this Court in *Mantoo Sarkar* (supra), the High Court was not justified in setting aside the award of the Tribunal in absence of any failure of justice even if there was merit in the plea of lack of territorial jurisdiction. Moreover, the fact remained that the Insurance Company which was the main contesting respondent had its business at Kolkata.

15. Reliance placed on decisions of this Court in *G.S.Grewal* [*Union of India v. G.S. Grewal*, (2014) 7 SCC 303] and *Jagmittar Sain Bhagat* [*Jagmittar Sain Bhagat v. Health Services, Haryana*, (2013) 10 SCC 136] is misplaced. In *G.S.Grewal*, the subject-matter of dispute was not covered by the definition of “service matters” under Section 3(o) of the Armed Forces Tribunal Act, 2007 and on that ground, it was held that the Armed Forces Tribunal had no jurisdiction in the matter. Thus, it was a case of inherent lack of jurisdiction over the subject-matter. Similarly in *Jagmittar Sain Bhagat*, the claimant before the Consumer Protection Forum was found not be a “consumer” under Section 2(1)(d) of the Consumer Protection Act, 1986 and on that ground the order of the consumer forum was held to be without jurisdiction. The said cases did not deal with the issue of territorial jurisdiction.

16. The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hypertechnical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. Moreover, in view of categorical decision of this Court in *Mantoo Sarkar (supra)*, contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC.”

It has been held that as the matter belongs to benevolent provision for the victims of accidents of negligent driving, the provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. It has been further held that hypertechnical approach in such matters can hardly be appreciated. Learned counsel for the appellants submits that on the basis of said pronouncement by the Apex Court, the impugned order may be set aside and the Tribunal be directed to hear the matter on its merit and dispose of the same on its merit.

3. Perused the impugned order passed by the Tribunal.

4. As held by the Apex Court in its entire spirit and also after observing the requirement as provided in Section 166(2) of the Act, 1988, this Court is of the considered view that said provisions are social legislations and at times someone is not in a position to obtain any documentation regarding their temporary stay in the said place, looking to their social and other economic, working condition regarding livelihood, this Court is of the considered view that the order passed by

the Tribunal by rejecting the claim of the appellants merely on the basis of non-filing of documentary proof of residence requires interference.

5. Consequently, the instant MAC is hereby allowed. The order passed by the Tribunal in Claim Case No.234/2011 (Smt. Chandrika Bai and two others Vs. Narayan Das @ Naru and two others) dated 28-07-2014 is hereby set aside. Said Claim Case is restored to its original number. Parties are directed to remain present before the Tribunal either in person or through their respective counsel on **14th of December, 2016**. The Tribunal is directed to proceed in accordance with law and dispose of the case in hand as expeditiously as possible preferably within six months from 14-12-2016.

6. Parties may file copy of this order before the Tribunal for compliance.

7. Registrar (Judicial) is directed to send copy of the order to the concerned Tribunal for compliance immediately through usual mode and fax mode.

8. Registrar General is directed to circulate copy of the order to all Motor Accidents Claims Tribunal for information and appreciation in the light of principles laid down by the Apex Court in relation to cases of Section 166 (2) of the Motor Vehicles Act, 1988 regarding appreciation on territorial jurisdiction.

9. The MAC disposed of.

10. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE