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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of Decision: 10.02.2016

The Oriental Insurance Co. Ltd.

... Petitioner

Versus

Krishana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be
allowed to see the judgment ? **YES**
- 2) To be referred to the Reporters or not ? **YES**
- 3) Whether the judgment should be reported in the Digest ? **YES**

Present: Ms. Vandana Malhotra, Advocate and
Mr. Rajneesh Malhotra, Advocate,
for the petitioners.

None for respondent Nos.3 and 4.

Paramjeet Singh Dhaliwal, J.

The instant civil revision arises from an order dated 14.10.2015 passed by learned Motor Accident Claims Tribunal, Chandigarh (in short, 'the Tribunal') whereby application under Order 7 Rule 10-A of the Code of Civil Procedure (in short, 'CPC') raising an objection of territorial jurisdiction, has been dismissed.

Brief facts of the case are to the effect that on 11.07.2015 Ajmer Singh (since deceased) son of claimants i.e. respondent No. 1 and 2 was going on a motorcycle from village Madanheri to Kharar District

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SAS Nagar Mohali, when he reached on Randhawa Kharar Road, he was hit by a motorcycle bearing registration number PB-65-AB-9734 coming from opposite direction being driven by Rajat Pal Singh-respondent No. 3 which is insured with the petitioner insurance company. As a result of accident Ajmer Singh fell down and suffered multiple injuries and later on died in the hospital. Respondent Nos. 1 and 2, claimants are parents of deceased-Ajmer Singh. They filed an application under Section 166 of Motor Vehicles Act (for short, 'the Act'). During the pendency of claim petition, petitioner-insurance company moved an application under Order 7 Rule 10-A CPC for return of the petition on the ground that court at Chandigarh has no jurisdiction to try the claim petition because neither the accident has taken place within territory of Chandigarh nor the claimants are residents of Chandigarh. The address given in the claim petition is incorrect and they are not residing at that place, they are residing at village Madanheri Tehsil Kharar District Mohali. It was prayed that the claim petition be returned for filing at Mohali. The claimants filed reply to the application stating that they are presently residents of village Palsora, Chandigarh. The Tribunal dismissed the application holding that the claimants are residing in village Palsora which falls within the territorial jurisdiction of Chandigarh and the said address has been given in the claim petition. Aggrieved against the impugned order, present petition has been preferred.

I have heard learned counsel for the petitioner and perused

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the record.

Learned counsel for the petitioner vehemently contended that territorial jurisdiction is governed by Section 166(2) of the Act. The reference to this section was made and it was contended that neither the claimants are residing at the given address nor the accident has occurred in the territorial jurisdiction of the Chandigarh. The accident had taken place in the jurisdiction of District Mohali, as such the Tribunal at Chandigarh has no jurisdiction to entertain the claim petition. He further contended that the dasti summons indicates that respondent Nos.1 and 2 are not residing at the address given in the claim petition. Reference to the report of process-server was made. The petition is liable to be returned for filing before the appropriate tribunal having territorial jurisdiction.

I have given thoughtful consideration to the contentions raised by the Ld. counsel for the petitioners.

Admitted facts are to the effect that Ajmer Singh died due to the injury suffered in a vehicular accident involving the motorcycle bearing registration number PB 65 AB 9734. Respondent No. 4 is the registered owner of the motorcycle which is insured with the petitioner-company. Respondent No. 3, brother of respondent No. 4, was driving the vehicle at the time of accident.

From bare perusal of sub-section (2) of [Section 166](#) of the Act, it is clear that the claimant is having four options, where he can file claim petitions. He can file it either before the Claims Tribunal having

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jurisdiction over "the area in which the accident occurred", or before 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". The language employed in sub-section (2) makes the intention of the legislature very clear. It confers the jurisdiction upon the Claims Tribunal within the local limits of whose jurisdiction "accident occurred", or "claimant resides" or "claimant carries on business" or "defendant resides".

The Hon'ble Supreme Court in ***Mantoo Sarkar vs. Oriental Insurance Company Ltd. and others*** (2009) 2 SCC 244 has held that since a branch office of the respondent-Insurance Company is in Bijapur, the Tribunal at Bijapur has a jurisdiction to entertain the claim petition, as contemplated by sub-Section (2) of [Section 166](#) of the Act. The contention of learned counsel appearing for the petitioner-Insurance Company cannot be accepted that the provisions contained in [Section 166\(2\)](#) of the Act do not permit filing of claim petitions within the local limits jurisdiction the respondent-Insurance Company carries on its business. The judgment rendered in ***Mantoo Sarkar's case (supra)*** has been relied upon by the Hon'ble Supreme Court in ***Malati Sardar vs National Insurance Company***, Civil Appeal No.10 of 2016, decided on 05.01.2016, while examining the identical issue and held as under:

“9. The question for consideration thus is whether the Tribunal at Kolkata had the jurisdiction to decide the claim application under Section 166 of the Act when the accident

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took place outside Kolkata jurisdiction and the claimant also resided outside Kolkata jurisdiction, but the respondent being a juristic person carried on business at Kolkata. Further question is whether in absence of failure of justice, the High Court could set aside the award of the Tribunal on the ground of lack of territorial jurisdiction.

10. 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.— * * **

(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 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 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 later. Reference was also made to earlier decision of this Court in Kiran Singh vs. Chaman Paswan⁴ to the following effect : “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 4 AIR 1954 SC 340 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.’ ”

12. We are thus of the view that in the face of judgment of this Court in MantooSarkar (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. 13. Reliance placed on decisions of this Court in G.S. Grewal and JagmittarSainBhagat 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

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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 JagmittarSainBhagat, 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.

14. 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. Hyper technical 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 parties 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 MantooSarkar (supra), contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC.”

Now coming to the facts of this case, it is clear that the claimants have given their address of Palsora which falls within the territorial jurisdiction of Chandigarh. The contention of the Ld. counsel for the petitioner that report of the process server indicates that claimants are not residing at the address given in the claim petition. This report of the process-server should be taken into consideration to record a finding that petitioners are not residing at the address given in the claim petition. The said contention is fallacious and devoid of merit because firstly the petitioner has not given the correct address of the claimants which was

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given by Hakam Ram claimant appearing as PW 2, when his statement was recorded on oath before the Tribunal. Vide order dated 03.02.2016 liberty was granted to the petitioner to serve respondent No. 1 and 2 through counsel, but instead of serving them through their counsel, the petitioner got the report from the process server. In the statement on oath before the Tribunal, respondent No.2 has given his address as House No. 164, Village and Post Office Palsora, U.T. Chandigarh, as is evident from Annexure P-3. It clearly indicates that claimants started residing in Palsora after the accident and to that effect, statement on oath has been given before the Tribunal. The petitioner had the opportunity to cross-examine PW 2 in whose statement, address of village Palsora is mentioned. which cannot be disbelieved. It needs to be mentioned that many times after the death of young son, parents usually leave their village and decide to reside elsewhere. Otherwise also, the petitioner-company in the present petition has given its address of Chandigarh. It means petitioner being a juristic person is deemed to be residing in Chandigarh as juristic person also does its business through officers who reside in Chandigarh and work in Chandigarh. The provisions of the Act being benevolent provisions for the victim of accidents caused by negligent driving, liberal interpretation should be given. The option has been given in Section 166(2) of the Act to the claimants to file claim petition where they reside. Otherwise also Chandigarh, Mohali and Panchkula are Tricity which have virtually emerged as one city. The Ld. counsel for the petitioner failed to show sufferance of any prejudice as a

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result of issue of territorial jurisdiction. The petitioner has not suffered any prejudice or otherwise no failure of justice has occurred. This court cannot lose sight of the fact that the questions of fact are required to be determined in the proceedings before the Tribunal. The Ld. counsel for the petitioners failed to point out any illegality or perversity in the impugned order passed by the Tribunal whereby application raising the objection of territorial jurisdiction has been dismissed.

In view of the above discussion, instant petition is dismissed.

No order as to costs.

10.02.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge