

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 795 of 2015**

Bailochan Pradhan S/o Late Shri Chintamani Pradhan,
Aged About 48 Years R/o Village Bhaleshwar, Police
Station Jonk, District Nuapada, Odisha

---- Petitioner**Versus**

1. Dhanurya Nial S/o Lakhi Niyal, Aged About 21 Years R/o Village Kureshwar, Police Station, komna, District Nuapada, Odisha
2. Sanjay Kumar Malik, S/o Late Gaganbihari, Malik, Aged About 35 Years R/o Village Udyanbandh, Police Station Komna, District Nuapada Odisha
3. National Insurance Co. Ltd. Through Divisional Manager, Division Office Mobin Mahal, G. E. Road, Raipur, District Raipur Chhattisgarh

---- Respondents**And****WP227 No. 793 Of 2015**

1. Bailochan Pradhan S/o Late Shri Chintamani Pradhan, Aged About 48 Years R/o Village Bhaleshwar, Police Station Jonk, District Nuapada, Odisha
2. Paresh Pradhan, S/o Bailochan Pradhan, Aged About 17 Years Minor Through Petitioner No. 1 Their Father R/o Village Bhaleshwar, Police Station Jonk, District Nuapada Odisha
3. Jayesh Pradhan, S/o Bailochan Pradhan, Aged About 14 Years Minor Through Petitioner No. 1 Their Father R/o Village Bhaleshwar, Police Station Jonk, District Nuapada Odisha

---- Petitioners**Vs**

1. Dhanurya Nial S/o Lakhi Niyal, Aged About 21 Years R/o Village Kureshwar, Police Station Komna, District Nuapada, Odisha

2. Sanjay Kumar Malik, S/o Late Gaganbihari, Malik, Aged About 35 Years R/o Village Udyanbandh, Police Station Komna, District Nuapada Odisha
3. National Insurance Co. Ltd. Through Divisional Manager, Division Office Mobin Mahal, G. E. Road, Raipur, District Raipur Chhattisgarh

---- Respondents

For Petitioners	: Shri Sunil Pillai, Advocate.
For Respondent No. 3	: Shir G.V.K. Rao, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/05/2017

(1) The petitioners are claimants. They are resident of village Bhaleshwar, District Nuapada (Odisha). They filed claim petition before the 1st Additional Motor Accident Claims Tribunal, Raipur claiming compensation under section 166 of the Motor Vehicles Act stating that claimant-Bailochan Pradhan suffered permanent disability on account of rash and negligent driving of respondent No.1 in the National Highway near Ganiyari, District Nuapada, Orissa and wife of claimant succumbed to the death in the said accident. The claimants further pleaded that since the vehicle is insured with respondent No. 3-National Insurance Company Limited and respondent No. 3 is carrying his business at Raipur having Divisional Office and, therefore, the Claims Tribunal, Raipur has territorial jurisdiction to hear the claim petition.

(2) Learned Claims Tribunal, Raipur by its impugned order dated 21.08.2015, decided preliminary issue on the question of territorial jurisdiction and relying upon the decision of Kolkata High Court in the matter of ***Nirmala Devi Agrawal Vs. I.C.I.C.I. Lombard General Insurance Company Limited***¹ held that the Claims Tribunal at Raipur has no territorial jurisdiction to entertain the claim case as it is not covered under Section 166(2) of the Motor Vehicles Act, 1998 as business address of the defendants/Insurance Company is not included in the option given to the claimants.

(3) Feeling aggrieved and dissatisfied with the order passed by the Claims Tribunal, instant writ petition under Article 227 of the Constitution of India has been filed questioning the same.

(4) Mr. Sunil Pillai, learned counsel appearing for the petitioners/claimant would submit that order passed by the Claims Tribunal is contrary to facts and law available on the record. He relying upon the decision of the Supreme Court in the matter of **Mantoo Sarkar v. Oriental Insurance Co. Ltd.**² would submit that since the respondent No. 3-Insurance Company has not shown to suffer any prejudice and not proved the prejudice, therefore, the learned Claims Tribunal should not have rejected the application filed under Section 166(2) of the Motor Vehicles Act filed by the petitioners/claimants. He would also submit that the respondent No. 3/Insurance Company carries on insurance

1 2015 ACJ 639

2 (2009) 2 SCC 244

business at Raipur and it has its divisional headquarter at Raipur, therefore, the Claims Tribunal, Raipur has jurisdiction to entertain the claim petition at Raipur.

(5) Per contra, counsel for respondent No. 3/Insurance Company would support the order impugned.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove with utmost circumspection.

(7) Section 166 (2) of the Motor Vehicles Act states as under :-

“166. Application for compensation.- (1) xx xx xx

(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.”

(8) Thus, a claimant has a wide option. Residence of the claimant as well as his place of business also determines jurisdiction of the Tribunal.

(9) The Supreme Court in the matter of **Mantoo Sarkar** (**supra**) while considering the provisions of Section 166(2) of the

Motor Vehicles Act with reference to objections relating to territorial jurisdiction has held as under:

“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 Section 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.”

(10) The aforesaid principle of law laid down by the Supreme Court in the matter of **Mantoo Sarkar Case** (supra) was subsequently reiterated and followed recently by the Supreme Court in the matter of **Malti Sardar Vs. National Insurance Company Limited**³ and held that in absence of any failure of justice even if there is merit in the plea of lack of territorial jurisdiction, award cannot be set aside and it has further been held that an application under Section 166 of the Motor Vehicle

3 (2016) 3 SCC 43

Act is maintainable where the main contested respondent had its business and observed as under :-

“14. We are thus of the view that in the face of the judgment of this Court in *Mantoo Sarkar* (supra), the High Court was not justified in setting aside the award of the Tribunal in the 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.

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 Sarka* (supra), contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21CPC.

(11) In view of above authoritative pronouncement of the judgments of the Supreme Court in the case of **Malti Sardar** (supra), it is quite vivid that in absence of prejudice and failure of justice to the other side, particularly, when the main contesting respondent No. 3- Insurance Company is carrying its business at

Raipur having located its Divisional Head Office, the Claims Tribunal, Raipur has territorial jurisdiction to hear the claim petition, and thus, it cannot be held that claim petition is not maintainable and it is held to be cognizable.

(12) Accordingly, the impugned is set aside. Claim Case No. 666/2014 is restored to its original file for hearing and disposal in accordance with law. Since the claim case is pending since 5.11.2014, the Claims Tribunal is directed to decide the same expeditiously and conclude it expeditiously preferably within a period of six months from the date of receipt of copy of this order.

(13) The parties are directed to appear before the Claims Tribunal on **19th June, 2017.**

Sd/-

(Sanjay K. Agrawal)
Judge

D/-