

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.2148 of 2015

Govindammal

... Appellant/Petitioner

..VS..

1. S.Kuppusamy
2. TATA AIG General Insurance,
No.403L Pantheon Road, 2nd Floor,
Samson Towers, Egmore, Chennai - 8 ... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the decree and Judgment, dated 05.01.2015, made in M.C.O.P.No.276 of 2013 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Poonamallee.

For Appellant : Mr. K.Varadha Kamaraj
For Respondents : Mr. C.Harini, for, M/s.
M.B.Gopalan, for R-2

J U D G M E N T

Challenging the dismissal of the claim petition, the claimant / appellant has filed this Civil Miscellaneous Appeal.

2. A perusal of the judgment passed by the Tribunal below would reveal that the dismissal is on the ground that the Court concerned has no territorial jurisdiction. The place of accident has been mentioned in the affidavit as Urapakkam, Chennai, which is a place located in between Tambaram and Guduvanchery, Near Pathuvanchery Samuthaya Koodam, Agaram Then Road.

3. It is mentioned in the judgment that neither the first respondent nor the second respondent are residing within the place where the accident took place. The appellant has given the address in the Claim Petition, as the person residing at No.4 Thillai Street, Poonamallee, Chennai 600 056. But the Tribunal did not believe the version of the appellant and has given a finding that there was no documentary evidence to show that the claimant was residing in the above address.

4. The grievance of the Tribunal is that, despite the second respondent / Insurance Company raising a specific objection with regard to the territorial jurisdiction, there is no evidence adduced by the claimant to show that the claimant had been residing in that particular place. It is the case of the claimant that she was residing along with one Sathya, at No.4, Thillai Street, Poonamallee, Chennai.

5. Sections 165 and 166 (2) of the Motor Vehicles Act, 1988, dealing with jurisdiction, reads thus:-

"165. Claims Tribunals-

(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation-For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 140 1[and section 163A].

(2) A Claims Tribunal shall consists of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is, qualified for appointment as a High Court Judge 2[or as a District Judge].

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

166. Application for compensation-

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of

section 165 may be made-

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representative of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representative of the deceased, as the case may be.

Provided that where all the legal representative of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representative of the deceased and the legal representative who have not so joined, shall be impleaded as respondents to the application.

3[(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...."

6. From a perusal of Section 165 of the Motor Vehicles Act, 1988, it is evident that an option has been given to the claimant / appellant to file the claim petition either to the Claims Tribunal, having jurisdiction over the area in which the accident had occurred or to the Tribunal within the local limits of whose jurisdiction the claimant resides or carries on the business or within the local limits of whose jurisdiction the respondent residents.

7. It is represented that the Insurance Company was functioning at Egmore, Chennai, in which case, the Small Causes Court, Chennai, alone will have the jurisdiction. Even assuming that the Small Causes Court, Chennai, will have the jurisdiction, the Claims Tribunal at Poonamallee, should have returned the petition for presentation to Small Causes Court,

Chennai, for disposal in accordance with law. Therefore, the dismissal order passed by the Claims Tribunal is set-aside.

8. Perhaps, because of the accident, the claimant would have chosen to reside in the house of her friend, in order to get either the financial support or moral support or physical support and that does not mean that she was not residing in that address. Obviously, there is no benefit available to the claimant when she changes the jurisdiction and file the Claim Petition at Poonamallee. No malafide has been alleged or attributed on the part of the claimant in filing such Claim Petition before some other Court. Therefore, instead of revolving around the technical aspect of the matter, it is better to assess the claim for compensation, especially when no prejudice is going to be caused to the respondents.

9. The claimant / appellant herein, at the time of accident, had been a pillion rider of the Motor Cycle. She had been aged 60, employed as a Coolie, earning a sum of Rs.400/- per day. Therefore, the monthly income can be safely taken at Rs.3,000/- per month and because of the injury sustained, the claimant would not have gone for avocation at least for a period of one month. Therefore, the loss of income is awarded at Rs.3,000/-; transport to hospital is awarded at Rs.5,000/-, extra nourishment is awarded at Rs.5,000/-, medical expenses, supported by Bills, is awarded at Rs.19,967/-; attendant charges is awarded at Rs.5,000/- and pain and sufferings is awarded at Rs.10,000/-.

10. The details of the injuries suffered and nature of treatment given is extracted hereunder:-

- "3. Clinical Examination - Dominat Sale
- Surgical Scar Right arm
 - Muscle wasting present
 - Deformity present.
4. Movements - Right elbow decreased by 40%
5. Muscle power - Right shoulder decreased by 30%
6. Stability component - Right elbow decreased by 20%
6. Stability component - Right shoulder decreased by 20%
- activities, - Difficulty in over head
- affected, - Lifting moderate heavy object.
- Activities of daily living
- Pain and stiffness present.
7. X-rays Shows (19.11.2014) - Malunion right humerus
- Interlocking nail with screws present."

11. Even though the Doctor has assessed the disability at 40%, as it is stated as partial permanent disability, the compensation awarded is at Rs.75,000/-.

12. In the result, the total amount of compensation is awarded at Rs.1,22,967/-. The total award amount shall be deposited by the second respondent / Insurance Company, less the amount already deposited, along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant / appellant herein is entitled to withdraw the same. This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

srk

To

1. Motor Accident Claims Tribunal
(III Additional District Judge), Poonamallee.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

+1cca to M/S.K.Varadha Kamaraj, Advocate Sr. 7666

+1cc to M/S.M.B.Gopalan, Advocate Sr. 8461

C.M.A.No.2148 of 2015

CNR (CO)
VR(15/5/2017)

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