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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 24th October, 2017

+ **MACA APP 641/2016**

PRAMILA SAHU & ORS.

..... Appellants

Through: Mr. C.M Patel, Adv.

versus

MADIYA DANGI & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 30th May, 2012, an accident took place in village Vaishali within the territorial jurisdiction of police station Dahej of district Bharuch, Gujarat which became the subject matter of the investigation of the First Information Report (FIR) No. 43/2012 under sections 279 and 304 of the Indian Penal Code, 1860 (IPC). It is stated that the accident involved two motor vehicles, one described as a truck bearing registration no. GJ 06 VV 8574 (the truck) and the other a dumper make Ashoka Leyland bearing registration no. GJ 06 TT 5608 (the dumper). It is alleged that it was the driver of the truck who was guilty of negligence, his vehicle having collided against the stationary dumper, this resulting in injuries being suffered by Ramesh Kumar

Sahu who died in the consequence. The appellants are the wife and the parents of the deceased, Ramesh Kumar Sahu. They admittedly are natives of village Pahari, police station Amiliya, Tehsil Sihawal of District Sidhi (Madhya Pradesh). They instituted accident claim case (petition no. 119/14) on 30th April, 2014 before the Motor Accident Claims Tribunal of South district, Saket Courts at New Delhi, seeking compensation, impleading the driver, owner and the insurer of the dumper as party respondents, they being the first to third respondents in the appeal. The tribunal took cognizance and issued notices on the claim petition which had indicated that the claimants were residing, on the date of filing of claim petition, in a house in village Shahpur Jat in New Delhi within the jurisdiction of police station, Hauz Khas.

2. The first respondent (driver) suffered the proceedings before the tribunal *ex-parte*. The second respondent (owner) and third respondent (the insurer), however, sought to resist the claim case by filing their respective written statements. While the second respondent wholly denied the liability to pay compensation attributing negligence on the part of the driver of the other vehicle, the insurance company, by its written statement, *inter alia* took preliminary objection of want of territorial jurisdiction referring in this context to the fact that the insurance cover had been issued from Ahmedabad (Gujarat).

3. The tribunal, by judgment dated 10th December, 2015, dismissed the claim petition, *inter alia* holding that the claimants had failed to show any negligence on the part of the driver of the offending vehicle, they having failed to examine the eye witness (Rajesh Kumar)

whose affidavit had been submitted earlier, the mechanical inspection report (Ex.PW1/D) indicating the sequence of events leading to the collision to be contrary to the version in the claim case. The tribunal also held that it had no territorial jurisdiction observing that the reliance had been placed on rent agreement dated 29th April, 2014 which showed that at the time of accident, the claimants were not residing within the territory of its jurisdiction. It was observed that the perusal of the insurance policy shows that the insurance cover had been issued and the registered office of the insurance company was located in Mumbai.

4. Aggrieved by the above fate of the claim petition, the present appeal was filed, it being pointed out that it was incorrect on the part of the tribunal to decline to exercise its jurisdiction on the ground that the claimants were not residents of Delhi on the date the cause of action arose referring, in this context, to the provision contained in section 166(2) of the Motor Vehicles Act, 1988. It is also the submission of the claimants that the opportunity for evidence was suddenly guillotined and that the tribunal had failed to give effective opportunity for the eye witness to be tendered in evidence.

5. The first and second respondents, inspite of notice, have failed to appear to assist in the appeal. The third respondent though having accepted notice through counsel, at the outset, has also failed to appear when the appeal was taken up for hearing.

6. Having heard the counsel for the claimants, this Court finds that the approach of the tribunal cannot be approved of. In the claim petition, the appellants had disclosed their present residential address,

it being of village Shahpur Jat within the jurisdiction of police station, Haus Khas, New Delhi. In terms of section 166 (2) of Motor Vehicle Act, 1988, an application seeking compensation can be brought before a claims tribunal having jurisdiction over the area in which the accident occurred or, in the alternative, before claims tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within local limits of whose jurisdiction the defendant resides. Admittedly, the accident had occurred in the State of Gujarat. Concededly, the claimants are ordinary residents of district Sidhi in Madhya Pradesh. But then, the fact remains that they had instituted the claim case before the claims tribunal at New Delhi stating having taken up residence here. It is not necessary that they should be permanent residents of Delhi, so that the claims tribunal having jurisdiction here may be approached for purposes of seeking compensation in an accident claim case under section 166 (2) of the Motor Vehicles Act, 1988. Noticeably, while cross-examining the third appellant, Rama Dhar Sahu (PW1) who was examined by the claimants on 1st October, 2015, there was not even a remote suggestion given about any fact having a bearing on the claim of residence in Delhi. Mere contention urged in the pleadings cannot be taken as facts proved. If the claim of the appellants about residence in Delhi was wrong, the contesting parties should have led some evidence, which opportunity was not availed of. In these circumstances, it was most improper on the part of the tribunal to throw the petition out on the question of territorial jurisdiction.

7. As mentioned earlier, the tribunal has also passed adverse comments on the failure of the claimants to examine the eye witness. The tribunal record shows that the affidavit of Rajesh Kumar sworn on 19th February, 2015 had been placed on record. Infact, the proceedings recorded on 7th May, 2015 take note of this fact. On 7th May, 2015, the claimants could not lead the evidence as the members of the Bar were on strike and there was no appearance on behalf of the respondents. On the two subsequent dates, the presiding officer was on leave of absence and therefore, the proceedings were adjourned by the reader. On 29th September, 2015 the situation remained the same and the reader adjourned the matter to 1st October, 2015. On the said date (1st October, 2015), the third appellant Rama Dhar Sahu was examined as PW1, and thereafter, the tribunal closed the opportunity. The proceedings do not show that it was the claimants who had submitted before the tribunal that they did not wish to examine any other witness. In these circumstances, it has to be construed as if the tribunal was closing the opportunity on its own. This was unfair and improper. Since the evidence of the eye witness was relied on by his affidavit being placed on record, the tribunal should have ascertained from the claimants as to whether they wished to examine the said witness or not.

8. For the foregoing reasons, the impugned judgment cannot be sustained. It is set aside. The claim case is revived and restored on the file of the tribunal, which shall hold further inquiry. During the course of further inquiry, the claimants would be given opportunity to lead further evidence including by examining the above mentioned eye

witness. The tribunal, after completion of the inquiry in accordance with law, shall pass a fresh judgment.

9. The parties are directed to appear before the tribunal on 23rd November, 2017.

10. The appeal is disposed of in above terms.

OCTOBER 24, 2017

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R.K.GAUBA, J.

