

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3324 OF 2016

FIROZKHAN KALLUKHAN PATHAN

Age: 40 Yrs. Occ. Nil

R/o Shamnagar, Ambajogai Road,
Latur, District Latur.

= APPELLANT
(Orig. Appellant)

VERSUS

1) DIMPAL KUMAR SHAH

Age: Major, occ. Busines

R/o B-48, Ranoli,
Commercial Complex Ranoli,
At Ranoli, Dist. Baroda
(Gujrat State)

2) The Branch Manager,
The National Insurance Company
Ltd., having office at
Hanuman Chowk, Latur.

= RESPONDENTS
(Orig. Respondents)

...

Mr. Rathi Swapnil S., Advocate for Appellant;

Respondent No.1 is duly served;

Mr. A B Gatne, Advocate For Respondent No.2

CORAM : P.R.BORA, J.

DATE : 29th August, 2018.

ORAL JUDGMENT:

1) Admit. Heard finally with consent of
learned counsel for parties.

2) Judgment and Order passed by the Commissioner for Employees compensation, Latur (hereinafter referred to as the Commissioner) in WCA No.160/2013 on 10th June, 2016 is challenged in the present appeal by the original applicant.

. For the sake of convenience, appellant is hereinafter referred to as the applicant.

3) The application has been rejected by the learned Commissioner, on the ground of jurisdiction.

4) As contended by the applicant, he met with an accident on 25th August, 2013 during the course of his employment as a driver with Respondent No.1 within the jurisdiction of Wadgaon-Mawal police station and suffered severe injuries. But he filed the application claiming compensation before the Commissioner at Latur since at the time of filing the claim application, he was residing at Latur. The learned Commissioner has held that the applicant has failed in establishing that he had ordinarily

resided within the local limits of the geographical jurisdiction of the court of the Commissioner at Latur and hence has dismissed his application for want of jurisdiction, with liberty to him to file the claim petition before the proper forum.

5) Shri Swapnil Rathi, learned counsel appearing for the applicant, criticized the impugned judgment to be erroneous. The learned counsel submitted that in order to prove that the applicant is residing at Latur, he examined Mrs. Gausiya Sherkhan Pathan, in whose house situated at Chandnagar, Latur, the applicant is residing as a tenant. The learned counsel submitted that the learned Commissioner has refused to rely upon the evidence of said Smt. Gausiya Pathan on the ground that she did not produce any document showing her ownership over the property, in question and for want of any rent receipt produced on record. The learned counsel further submitted that the Court has given undue

weightage to the facts which have come on record during the course of the cross-examination of the applicant to the effect that he was resident of Mumbai and that his children were taking education at Mumbai. The learned counsel further submitted that Respondent No.1, i.e. owner of the vehicle, admittedly, did not appear before the Commissioner. The learned counsel further submitted that Respondent No.2-insurance company though filed its written statement and contested the claim of the applicant on various grounds, did not dispute the averments made by the applicant in para 9 of his application to the effect that he was resident of Latur.

6) The learned counsel further submitted that the insurance company did not raise any objection as about the jurisdiction of the Latur court. The learned counsel further submitted that, in fact, since the fact averred by the applicant in his application that he was residing at Latur and hence Latur court was having

jurisdiction to entertain his claim, was not denied or disputed by the respondent – insurance company, obviously no issue in regard to the jurisdiction was framed by the court.

7) The learned counsel further submitted that after the evidence of both the sides was closed, the learned Commissioner did frame an additional issue as about jurisdiction and decided it against the applicant. The learned counsel submitted that the learned Commissioner has taken a hyper technical view and has misconstrued the provisions under The Employee's Compensation Act. The learned Counsel further submitted that the Commissioner has also misinterpreted the words 'ordinarily residing'. The learned counsel placed his reliance on the judgment of the Hon'ble Apex court in the case of Margina Begum Vs. Managing Director, Hanuma Plantation Ltd. - AIR 2008 SC 199. The learned counsel inviting my attention to the observations made and the conclusions recorded by the Hon'ble

Apex court in paras 8 and 9 of the said judgment, submitted that Section 21(1)(b) of The Employees' Compensation Act, 1923 (herein after referred to as the said Act) read with its proviso, is a beneficial legislation for the welfare of the workmen and it does not require that the claimant should produce the documents to show the place, where they are residing.

8) The learned counsel further submitted that no prejudice was likely to be caused to the respondent insurance company, who alone contested the application filed by the applicant since the insurance company was having its office within the jurisdiction of the Latur court. The learned counsel further submitted that the trial court has wrongly recorded a conclusion that there is no office of the respondent company within its territorial jurisdiction. To support his contention, the learned counsel relied upon the judgment of the Hon'ble Apex court in the case of Malati Sardar S. National Insurance Company Ltd.

and Ors. - AIR 2016 SC 247.

9) The learned counsel also relied upon the judgment of the Hon'ble Apex court in the case of Mantoo Sarkar Vs. Oriental Insurance company Ltd. And Anr. - AIR 2009 SC 1022, to urge that the ground of lack of territorial jurisdiction can be entertained only if party raising such objection is likely to be caused some prejudice. The learned counsel submitted that the insurance company, which only has contested the claim petition, has not made out any such ground that any prejudice was likely to be caused to the said insurance company, as because the claim application was filed by the applicant not in the court within whose jurisdiction the accident had taken place, but had filed it at the court where he has claimed to be residing at the time of filing of the claim petition.

10) The learned counsel further submitted that the expression 'ordinarily resides' used in Section 21 of the said Act, as interpreted by the

Division Bench of the Allahabad High Court in the case of The Oriental Insurance company Ltd. Vs. Smt. Gajendri Devi – 2011 (1)LLJ 745, means where the claimant normally residing at the time of filing the claim. The learned counsel submitted that in the claim application, the applicant has given his address where he was residing at the time of filing of the claim petition and to prove that he was residing at the same address, also examined PW 2 – Smt. Gausiya Pathan, as his witness. The learned counsel submitted that in view of the judgment of the Division Bench of the Allahabad High Court, it was immaterial that previously the children of the applicant were taking education at Mumbai and that driving license was having the address of Mumbai. The learned counsel submitted that the learned Commissioner has grossly erred in dismissing the application filed by the applicant on the ground of territorial jurisdiction and, therefore, prayed for setting aside the said order, seeking further direction to the Commissioner to decide

the application filed by the applicant on its own merits.

11) Shri A.B.Gatne, learned counsel appearing for Respondent No. 2- insurance company supported the impugned judgment. The learned Counsel submitted that if the entire evidence, as has come on record, is scrutinized, it reveals that the applicant was originally resident of Mumbai and was ordinarily residing at Mumbai and not at Latur. The learned counsel submitted that the fact admitted by the applicant in his cross-examination that he is originally resident of Mumbai and that his children are taking education in the schools at Mumbai, has been appropriately considered by the learned Commissioner in recording the conclusion that the applicant is resident of Mumbai. The learned counsel further submitted that the applicant failed in bringing on record any document to show that he was ordinarily residing at Latur. On the contrary, all the documents, which have come on record

including the driving license of the applicant, clearly demonstrate that he was the permanent resident of Mumbai and at the relevant time also was residing at Mumbai.

12) The learned counsel further submitted that though an attempt was made by the applicant to bring on record that he was residing at Latur in a house taken on rent by him belonging to PW 2 and also examined PW 2 – Smt. Gausiya for that purpose, the learned Commissioner has rightly rejected her evidence for the reason that no document showing the ownership of the said witness over the house in question was produced by the said witness and for want of any other document produced in that regard either by the applicant or by the said witness.

13) The learned counsel submitted that Section 21 of the Act has been incorporated in the Act with the specific purpose that no prejudice shall be caused to either of the

parties. The learned counsel submitted that the law insists for filing the claim application in jurisdiction where the employer has his registered office or the accident has taken place. The learned counsel submitted that the employer of the applicant is admittedly resident of Gujrat. The learned counsel further submitted that possibility that the employer might have deposited the amount of compensation in the court within whose jurisdiction the office of the respondent falls. In the circumstances, according to the learned counsel, if the claim application is not filed in the court in whose jurisdiction the office of the respondent falls, making out double payment to the applicant cannot be ruled out.

14) The learned counsel further submitted that the findings recorded by the learned Commissioner are based on the evidence brought on record before him. The learned counsel further submitted that the conclusions drawn by the

learned Commissioner on the basis of the said evidence in any case cannot be held to be perverse and in such circumstances, this Court may not cause any interference in the findings so recorded and the ultimate decision so rendered by the learned Commissioner.

15) The learned Counsel also referred to proviso to Section 21 of the Act and submitted that before entertaining the application filed by the appellant, the Commissioner must have carried out preliminary enquiry, which does not seem to be carried out and the procedure as has been laid down under Section 21 of the Act, has not been followed. According to the learned counsel, on that ground also, the application could not have been maintained by the Commissioner at Latur. The learned Counsel submitted that the impugned order is a well-reasoned order and no interference is warranted in the order so passed. The learned counsel ultimately prayed for dismissal of the appeal.

16) I have given due consideration to the submissions advanced by Shri Rathi, learned counsel appearing for the appellant and Shri Gatne, learned counsel appearing for the respondent insurance company. Respondent No.1 though has been duly served, has not entered appearance in the matter. I have also perused the impugned judgment and the evidence on record. Perusal of the impugned judgment reveals that the learned Commissioner has dismissed the claim application for want of jurisdiction and hence has not decided the other issues, though framed, with a remark that all the these issues do not survive in view of the finding recorded on the issue of jurisdiction.

17) Section 21 of the Act pertains to venue of proceedings and transfer. I deem it appropriate to reproduce herein below the relevant clause (1) of the said section, which reads thus, -

" 21(1) Where any matter under this Act is to be done by or before a

Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which -

(a) the accident took place which resulted in the injury; or

(b) the employee or in case of his death, the dependant claiming the compensation ordinarily resides;
or

(c) the employer has his registered office."

18) It is the case of the appellant that on the date of filing of the application, he was residing at Latur on the address given by him in the cause title of the application. In para 9 of his application, the applicant has averred that though the accident occurred on 25th August, 2013 under the jurisdiction of Wadgaon-Mawal police station, District Pune, but since the applicant is resident of Latur city, Latur Court has jurisdiction to entertain the application and award the compensation to the applicant. Admittedly, Respondent No.1, i.e. employer of the appellant/applicant did not cause appearance in

the matter and the application was proceeded ex parte against her. Respondent No. 2 – insurance company did file its written statement, wherein a general denial is made of the averments in the application stating that the averments made in paras 1 to 9 of the application are not true and correct. As about some of the contentions, the insurance company has recorded its specific denial and disputed the facts stated in the application. However, the contention of the applicant that he is resident of Latur, is not specifically denied or disputed by the insurance company, nor any further contention is raised as to where the applicant is residing if not at Latur.

19) It appears that perhaps that was the reason that the then Commissioner, who framed the issues on 24th June, 2014, did not find it necessary to frame the issue as about the jurisdiction of Latur court to entertain and decide the application. It is further

significant to note that on the basis of the issues framed on 24.6.2014, the matter was proceeded further and the applicant as well as Respondent No.2 adduced their respective oral and documentary evidence in order to substantiate their respective contentions to discharge the burden as cast upon them by the issues framed. The record further reveals that the parties had also advanced their final arguments by 16th April, 2016. The record further reveals that thereafter on 18th April, 2016, the then learned Commissioner suo motu framed an additional issue as about the jurisdiction. The record of the trial court does not transpire that after framing of the additional issue, any opportunity was given to the parties to lead any evidence on the said issue. The record also does not contain any pursis from either of the parties to the effect that they do not desire to adduce any additional evidence than already adduced after framing of the additional issue on the point of jurisdiction. According to me, the aforesaid is

the basic procedural flaw, which may be one of the reasons for not sustaining the impugned Award.

20) Moreover, after having considered the submissions advanced by the learned counsel appearing for the parties and on perusal of the entire material on record, apparently it is revealed that the impugned judgment would not sustain. As provided under Section 21 of the Act, the employee concerned can file an application claiming compensation before the Commissioner for the area in which the said employee ordinarily resides. As noted herein above, according to the applicant, he is the resident of Latur and he, therefore, preferred to file the application in the court at Latur though the accident did happen in jurisdiction of the court at Pune.

21) The evidence on record shows that in order to prove that he is residing at Latur, the applicant examined one Gausiya Sherkhan Pathan in

whose house the applicant claims to be residing as a tenant. From the discussion made by the learned Commissioner in the impugned judgment, it is revealed that the learned Commissioner has disbelieved the evidence of the said witness for the reason that she did not produce on record any document of ownership or title to the property of which she claims to be the owner and further that she or the applicant did not place on record any rent receipt evidencing that the applicant is residing as the tenant in the house belonging to the said witness.

22) The question arises whether on the ground, as aforesaid, the evidence of the said witness could have been discarded by the learned Commissioner?

23) Similar such issue was raised before the Hon'ble Apex court in the case of **Margina Begum** (cited supra), relied upon by Shri Rathi, learned counsel appearing for the applicant. In the said

matter, father and mother of deceased have clearly stated in their examination-in-chief that they were residing with their son-in-law at Tezpur for their livelihood. A suggestion was given to them by the respondents that they were residing at Nagaon. However, the suggestion was denied by both of them. The statements of the said witnesses were believed by the Commissioner, Workmen's Compensation, Tezpur. However, in an appeal, High Court of Gauhati held that, the Workmen's Compensation Commissioner, Tezpur had no jurisdiction to entertain the claim petition, and accordingly, the appeal was allowed. The High Court had upheld the contention of the respondents that mere statement of father and mother of the deceased, that they were residing at Tezpur, was not enough to prove their statements and they should have produced some documents showing that, in fact, they were residing at Tezpur. The applicants were, therefore, constrained to approach the Hon'ble Apex court and while allowing the appeal, the

Hon'ble Apex court held that the statements of father and mother of the deceased that they were residing at Tezpur could not have been disbelieved only for the reason that they did not produce on record any document to show the place where they were residing. The Hon'ble Apex court held that the Workmen's Compensation Commissioner, Tezpur was having jurisdiction to entertain the application. The law laid down by the Hon'ble Apex court in the aforesaid matter squarely applies to the facts of the present case.

24) Though in the present case the insurance company has attempted to bring on record that the applicant was previously residing at Mumbai and his permanent address on the driving license etc is also of Mumbai, I see no reason to disbelieve the statement on oath given by the applicant that at the time of filing of the application, he was residing at Latur. The learned Commissioner should not have disbelieved the evidence of the

appellant as well as his witness Gausiyakhan only for the reason that they did not produce on record any document pertaining to the house where the appellant is stated to be residing or the rent receipt or rent agreement between the appellant and his landlord.

25) It was the contention of Shri Gatne, learned counsel appearing for the respondent insurance company that considering the entire evidence of the applicant, the finding recorded by the learned Commissioner was correct. The learned counsel referred to the cross-examination of the applicant to urge that the facts, which have come on record through cross-examination of the applicant, undoubtedly establish that he is ordinarily residing at Mumbai and not at Latur. It was the contention of Shri Gatne that Section 21 of the Act requires that the applicant must be ordinarily residing in the area which comes under the jurisdiction of the Commissioner, where the application for compensation is filed. It was

the further contention of the learned counsel that the evidence of the applicant shows that his place of ordinary residence is Mumbai and not Latur since his children are taking education at Mumbai and his permanent address on his driving license is also of Mumbai. I am however not convinced with the argument so advanced by Shri Gatne.

26) The learned counsel for the applicant has cited the Division Bench judgment of Allahabad High Court in the case of Oriental Insurance company Ltd.(cited supra), wherein it is held that the expression '*ordinarily resides*' used in Section 21 of the Act means '*where the person claiming compensation normally resides at the time of filing the claim petition.*' Even the Hon'ble Apex court in the case of **Margina Begum** (cited supra) in para 6 of the said judgment has clearly held that, "*Section 21(1)(b) of the Act clearly provides that the claim petition may be filed by the claimant, where the claimant*

ordinarily resides. In our opinion, the expression 'ordinarily resides' means where the person claiming compensation normally resides at the time of filing the claim petition."

27) In the instant case, it is the specific plea of the applicant that at the time of filing the claim petition, he was residing at Latur. There was no reason for disbelieving his said version.

28) Most importantly without recording any finding of sufferance of any prejudice to the respondents, the learned Commissioner could not have rejected the application on the ground of territorial jurisdiction. Admittedly, Respondent No.1 though was duly served did not cause appearance in the matter. Respondent No.2 — insurance company has not taken any such plea in its written statement. Even otherwise, there is no possibility of sufferance of any prejudice or hardship to the insurance company since it has

its office at Latur.

29) The record of the case shows that following issues were framed by the then learned Commissioner on the basis of the pleadings of the parties on 24th June, 2014, -

ISSUES

"1) Whether applicant prove that he was in employment of Respondent No.1 and his accident occurred during course of his employment?

2) Whether applicant prove that he was having age and wages as pleaded in the relevant period of incident?

3) Whether applicant prove that he has sustained permanent physical disability and loss in his earning capacity as pleaded?

4) Whether applicant further prove that the Respondents are jointly and severally, liable and responsible to pay the compensation?

5) Is the applicant entitled for compensation as prayed?"

30) The record further shows that in order to substantiate his contentions raised in his claim application and to discharge the burden cast upon him, vide the issues framed, as

aforesaid, the appellant himself deposed before the Court. The appellant was elaborately cross-examined by Respondent No.2 insurance company. The appellant thereafter examined one Gausiya Pathan, in whose house he was residing as a tenant at the relevant time. The appellant had also examined Dr.Sudhakar Gulve, who had issued the permanent disability certificate in favour of the appellant.

31) The record further shows that relevant X-rays and MRI reports are also filed on record by the appellant and the same were referred by Dr. Gulve. The permanent Disability Certificate was issued by him was duly proved in the evidence of said Dr. Gulve. The record further shows that the said witness was thoroughly cross-examined by the learned counsel appearing for Respondent No. 2 – insurance company. The appellant has also examined one Sachin Shivaji Ghorpade, the employee from Max Neuro Hospital at Pimpri Chinchwad, Pune, so as to prove the hospital and

medical bills and the expenses incurred by the appellant on his treatment. The said witness was also cross-examined at length by learned counsel for the insurance company.

32) The record further shows that the appellant had placed on record the certified copies of all the relevant police papers pertaining to the accident, in question, in which he was injured and suffered various injuries resulting in causing permanent disability to him. The appellant has also placed on record the office copy of notice, which was sent by him to the employer as well as to the insurance company before filing of the claim application and its acknowledgement. After the evidence of the appellant was closed, Respondent No.2 – insurance company examined one Sachin Kashiram Hiwale, Jr.Clerk from RTO office at Mumbai so as to bring on record the driving license of the appellant showing that in the said driving license, the address as given by the appellant was of Mumbai.

It is thus evident that both the parties have adduced the necessary evidence in order to substantiate their respective pleas and to discharge the burden cast on them vide the issues framed on 24th June, 2014. It is also the matter of record that the learned counsel appearing for the respective parties also advanced their respective arguments. The record further shows that the learned counsel appearing for the Respondent No.2 insurance company also submitted the written notes of arguments on 16th April, 2016 running into 14 pages.

33) As noted by me herein before, at the fag end of the trial, the learned Commissioner, at his own, framed an additional issue as about the jurisdiction on 18th April, 2016 and ultimately rejected the application of the appellant on the ground of want of territorial jurisdiction without deciding the other issues on merits. The question arises whether such course was permissible for the learned Commissioner at that

stage; and whether the decision rendered by the Commissioner to dismiss the application on the ground of territorial jurisdiction can be sustained?

34) In the judgment relied upon by Shri Rathi, learned counsel appearing for the appellant in the case of **Mantoo Sarkar** (cited supra), the issue of territorial jurisdiction of Motor Accident Claims Tribunal had arisen for determination of the Hon'ble Apex court. In the said matter, the appellant therein was injured in a vehicular accident while travelling as a passenger in a bus since the bus colluded with one truck. The accident had occurred in the town of Faridpur in Uttar Pradesh. Obviously, FIR was lodged in relation to the said accident at Faridpur. The truck was registered at Faridabad. At the relevant time, the appellant was working at Nainital in Uttaranchal. However, he was stated to be the permanent resident of Pilibhit in the State of Uttarpradesh. The said appellant

filed a claim petition before Motor Accident Claims Tribunal at Nainital. The insurance company with which the offending truck was insured, was admittedly having its branch at Nainital. The insurance company had raised the only objection that of lack of territorial jurisdiction to the tribunal at Nainital. The learned Tribunal decided the claim petition inter alia on the premise that the jurisdiction conferred on it having regard to sub-section (2) of Section 166 of the Motor Vehicles Act, is wide and the insurance company is having branch office at Nainital. The respondent insurance company filed an appeal before the High Court of Uttaranchal. The High Court allowed the appeal filed by the insurance company and held that the tribunal at Nainital had no territorial jurisdiction to entertain the said claim petition with the following observations, -

“It is a well settled position of law that the claim petition can only be entertained and filed before a court having the territorial jurisdiction to hear

the matter. The claimant cannot take the matter to different States on the pretext that his case would be disposed of expeditiously in that State or District without having the territorial jurisdiction. The learned counsel for the claimants submitted that in case the Court comes to the conclusion that the Tribunal Nainital had got no territorial jurisdiction to dispose of the matter the claimants may be given liberty to file a fresh claim petition before the competent Tribunal."

35) The original claimant, therefore, approached the Hon'ble Apex court and the Hon'ble Apex court allowed the appeal filed by him. The observations made by the Hon'ble Apex court while allowing the said appeal are quite material for deciding the controversy arose in the present matter. I, therefore, deem it appropriate to reproduce the said observations, which are thus, -

"It is true that a decision rendered without jurisdiction would be coram non juris. Objection in regard to jurisdiction may be taken at any stage. A distinction, however, must be made between a jurisdiction with regard to subject-matter of the suit and that

of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject-matter of claim. As a matter of fact the civil Court had no jurisdiction to entertain the suit. If the Tribunal had the jurisdiction to entertain a claim petition, the Court should not have, in absence of any finding of sufferance of any prejudice on the part of the appellant entertained the appeal."

36) It appears to me that the observations so made and the law laid down by the Hon'ble Apex court would squarely apply to the facts of the present case. It was argued by Shri Gatne that the aforesaid case before the Hon'ble Apex court was under the provisions of the Motor Vehicles Act. I do not find any substance in the objection so raised by Shri Gatne. It does not matter whether the case before the Hon'ble Apex court was under the provisions of the Motor Vehicles Act since the principle laid down as about the territorial jurisdiction can very well be applied even to the facts of the present case.

What could be gathered from the law laid down by the Hon'ble Apex court is, the fact that the learned Tribunal at Latur, in absence of any finding of sufferance of any prejudice to the respondent insurance company, should not have dismissed the application on the ground of territorial jurisdiction.

37) Perusal of the written statement filed by the respondent insurance company reveals that it had not specifically raised any objection as about the territorial jurisdiction of the Court at Latur. The provisions under Section 21 of the Code of Civil Procedure, were referred by Shri Rathi, learned counsel appearing for the appellant. Section 21(1) of CPC provides that, no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless

there has been a consequent failure of justice.

38) The record of the case reveals that such objection came to be specifically raised by the respondent insurance company only in its written arguments submitted on 16th February, 2016. In the circumstances, in fact, the learned Commissioner ought not to have entertained the said objection at that stage. Moreover, I have carefully perused the written notes of arguments submitted on behalf of the respondent insurance company. In the entire said written arguments, it is nowhere whispered by the insurance company as to what prejudice can be said to have caused to the said insurance company or even to Respondent No.1, whose vehicle was insured with Respondent No.2 insurance company, as because the appellant filed the claim application in the court of Employee's Compensation Commissioner at Latur, claiming that at the time of filing of the claim application, he was residing at Latur.

39) In the aforesaid circumstances, as held

by the Hon'ble Apex court in the case of **Mantoo Sarkar** (cited supra), the learned Commissioner was not justified in dismissing the claim application for want of territorial jurisdiction when even otherwise, it was competent to entertain the said application. Even before this Court, nothing has been pointed out by the learned counsel for the insurance company as about any prejudice or hardship caused to the respondent insurance company because of filing of the claim application by the appellant in the court of Employee's Compensation Commissioner, at Latur.

40) I reiterate that it is also not the case of the respondent insurance company that the appellant had played any foul play or there was any ulterior motive on the part of the appellant in filing the claim application in the court of Employee's Compensation Commissioner at Latur. It has to be stated that even if the applicant had filed the application in the court of the

Employee's Compensation Commissioner at Pune, in whose jurisdiction the accident had occurred, the nature of evidence to be adduced by the appellant would have remained the same. The burden on the appellant to prove his contention raised in the claim petition would also not have changed even if the claim application would have filed by him before the Employee's Compensation Commissioner at Pune instead of Employee's Compensation Commissioner at Latur. Similarly, there was no likelihood of any change in the defence raised by the insurance company in its written statement had the claim application been filed before the Employee's Compensation Commissioner at Pune. No such case is made out by the respondent insurance company through cross-examination of the appellant and his witnesses as well as in the evidence adduced by the said insurance company that any prejudice or hardship was caused to the said insurance company as because the appellant has filed the claim application before the Employee's Compensation Commissioner at Latur.

41) In the aforesaid circumstances, when the entire evidence was there on record, the learned Employee's Compensation Commissioner at Latur must have preferred to decide the claim application on merits instead to reject it on the ground of territorial jurisdiction. Without noticing any malafides on the part of the appellant in filing the claim application at Latur the learned Employee's Compensation Commissioner at Latur should not have disbelieved the contention of the appellant that at the relevant time, he was residing at Latur and should not have dismissed the claim application on the ground of territorial jurisdiction.

42) In the foregoing circumstances and for the reasons stated above, the impugned Judgment and Award deserves to be set aside and the matter needs to be remitted back to the learned Commissioner for Employee's compensation, Latur for its decision in accordance with law, on all

the issues on merits. Hence, the following order, -

ORDER

i) Judgment and Award dated 10th June, 2016 passed by Commissioner for Employee's Compensation, Latur in W.C.A.No.160/2013, is quashed and set aside;

ii) It is held that the Employee's Compensation Commissioner at Latur has jurisdiction to try and entertain W.C.A.No. 160/2013

iii) W.C.A.No.160/2013 is remitted back to the said learned Commissioner with a direction to decide the remaining issues in accordance with law, on their merits and to pass the Award accordingly;

iv) The learned Commissioner shall comply with first proviso to Section 21(1) of Employee's Compensation Act, if not previously complied with;

v) The learned Commissioner shall give due opportunity to the parties to the application for adducing any additional evidence, if prayed by them;

v) Record and Proceedings be sent back to the learned Commissioner forthwith.

vi) The First Appeal stands allowed in the aforesaid terms. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/..