



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2018
(Reserved on 03.08.2018)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA (MD) No.1072 of 2015

Johnson

... Appellant/Petitioner

vs.

1) M.Raheem
P.Kabeer (died)

2) New India Assurance Co.Ltd.,
Represented by its Branch Manager,
Sreehari Bldgs, IInd Floor,
Near Bus Stand Jn, Main Road,
Neyyattinkarai-695 121,
Thiruvandram District,
Kerala State.

3) Noorjahan

4) Nazer

5) Ibnu

6) Shaji

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.11.2013 passed in MCOP.No.34 of 2007 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Padmanabhapuram.

For Appellant	: Mr.F.Deepak
R1	: Not known
For R2	: Mr.B.Rajesh Saravanan
R3	: Unclaimed
R4	: No appearance

JUDGMENT

This appeal has been filed against the order dismissing the claim petition for compensation under the Motor Vehicles Act, stating that the Tribunal has got no jurisdiction to deal with the matter.

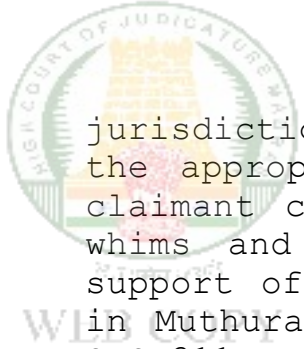


2.It is the case of the appellant/claimant that on 19.07.2001, the appellant along with his colleagues went to tour to Kodaikanal in a Mahindra Van bearing registration No.TN-74-C-3132 and on 20.07.2001 about 00.30 hours at Thalapathi Samudram in front of Mourmadam, he stopped the vehicle for purchasing goods from a shop. After purchase, while the appellant was returning to his Van on the left side of the road, a goods carrier bearing registration No.KL-01/J-8289 belonging to the 1st respondent, driven by him in a rash and negligent manner, without blowing any horn, dashed against him, as a result, the appellant sustained severe injuries on his head. He filed MCOP.No.34 of 2007 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Padmanabhapuram, claiming compensation of Rs.10,00,000/-. The 2nd respondent insurance company filed counter resisting the claim. Considering the oral and documentary evidence adduced on either side, the Tribunal dismissed the claim petition on the ground of territorial jurisdiction. As against the said order, the appellant has filed this appeal.

3.Learned counsel for the appellant would submit that the appellant is a resident of Kanyakumari District and as per Section 166(2) of the Motor Vehicles Act, the appellant can file the present claim petition where he resides or carries on business and therefore, the filing of the present claim petition at Padmanabhapuram, Kanyakumari District, is maintainable. Further, the Tribunal has failed to consider that the plea of territorial jurisdiction was never raised as a preliminary issue by the insurance company and after allowing for letting in evidences, only at the verge of judgment, it has been raised and therefore, the dismissal of the claim petition on the ground of territorial jurisdiction is liable to be set aside. In support of his contentions, learned counsel for the appellant relied on the following decisions:-

- i)Bithika Mazumdar and another vs. Sagar Pal and others reported in 2017 (1) TN MAC 464 (SC).
- ii)Malati Sardar vs. National Insurance Co.Ltd., & others reported in 2016 (1) TN MAC 1 (SC).
- iii)Oriental Insurance Co. Ltd., vs. Muthumeenal reported in 2016 (4) CTC 143.

4.Learned counsel for the 2nd respondent would submit that the claimant has to fulfill one of the three conditions to approach any particular Tribunal as enumerated in Section 166(2) viz., (1) place of accident, (2)place where he resides or carries on business or (3)place where respondent resides or carries on business by letting in evidence in order to maintain petition before a tribunal. He further submitted that the appellant after the decision of the Tribunal on the aspect of territorial



jurisdiction, should have chosen to file the claim petition before the appropriate court with the territorial jurisdiction and the claimant cannot be allowed to choose the court according to his whims and fancies as it would amount to forum shopping. In support of his contention, he relied on a judgment of this Court in Muthuraj @ Satyamurthy vs. V.M.Kandasamy reported in 2007 (1) CTC 311.

5. Heard the learned counsel for the appellant, 3rd respondent and perused the materials available on record.

6. The only issue to be decided in the above application is whether the learned Judge was right in dismissing the claim petition on the ground of territorial jurisdiction after allowing the parties to adduce evidence.

7. It is seen from the records that though the Tribunal after considering the evidences let in on either side, found that the accident occurred due to the rash and negligent driving of the 1st respondent's vehicle, it had dismissed the claim petition only on the ground of territorial jurisdiction. Though the 2nd respondent insurance company filed counter and participated in the proceedings, the issue of territorial jurisdiction had not been raised as a preliminary issue and only at the verge of judgment, the plea of territorial jurisdiction was raised by the 2nd respondent.

8. In Oriental Insurance Co. Ltd., vs. V. Muthumeenal reported in 2016 (4) CTC 143 relied on by the appellant, it has been held that claim petition cannot be rejected on the ground of lack of territorial jurisdiction unless it is shown that prejudice and hardship caused to the insurance company and the claim petition can be filed at a place where the insurance company having its administrative office.

9. In Malati Sardar vs. National Insurance Co. Ltd., and others reported in 2016 (1) TNMAC 1 (SC), relied on by the appellant, it has been held that where the insurance company is the main contesting party and when there is no prejudice to any party nor any failure of justice caused, the provision of territorial jurisdiction must be interpreted consistent with the object of facilitating remedies to accident victims and hyper-technical approach should be avoided.

10. In Bikash Bhushan Ghosh vs. Novartis India Ltd., reported in 2007 (5) SCC 591, it has been held as follows:-

'There is another aspect of the matter which cannot be lost sight of. If the provisions contained in the Code of Civil Procedure are given effect to, even if the



Third Industrial Tribunal, West Bengal had no jurisdiction, in view of the provisions contained in Section 21 of the Code of Civil Procedure, unless the respondent suffered any prejudice they could not have questioned the jurisdiction of the Court.'

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11. In the present case on hand, it is also seen that the point of jurisdiction has never been raised as an issue and only at the verge of judgment, it has been argued that the Court has got no jurisdiction. The learned Judge has not even returned the papers for filing it before the appropriate forum. Further, the entire evidence has been completed and the learned Judge has also found that the insurance company was liable to pay the compensation. The enactment of the Motor Vehicles Act is a welfare legislation and in the present case, no prejudice has been caused to the insurance company as the insurance company has very well participated in the proceedings. Therefore, the provision of territorial jurisdiction must be interpreted in this case consistent with the object of facilitating remedies to accident victims namely, the appellant. Besides, the Motor Vehicles Act is a special Statute. The jurisdiction of the Tribunal having regard to the terminologies used therein must be held to be wider than the Civil Court. A claimant has a wide option. The residence of the claimant also determines jurisdiction of the Tribunal.

12. In the present case, only on technical ground, the claim petition has been dismissed that too at the verge of judgment which is not proper in the light of the above judgments. Therefore, the impugned judgment and decree dated 14.11.2013 passed in MCOP.No.34 of 2007 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Padmanabhapuram, is set aside and the matter is remanded back to the learned Judge and the learned Judge is directed to pass final orders on the claim petition based on the evidence and the documents before it within a period of one month from the date of receipt of a copy of this judgment.

With the above direction, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)



The Subordinate Judge,
Motor Accidents Claims Tribunal,
Padmanabhapuram.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.B.RAJESH SARAVANAN, ADVOCATE IN SR No. 84218
+ 1 CC TO Mr.F.DEEPAK, ADVOCATE IN SR No. 84142

BALA
TE/SKN/SAR-1 : 05/10/2018 : 5P/6C

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