$~15

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

\+ **FAO 127/2018 & C.M.No. 13395/2018**

MOHAMMAD ARIF ..... Appellant

Through: Mr. R.K. Nain, Advocate.

Versus

M/S THE NEW INDIA ASSURANCE COMPANY LTD & ANR ..... Respondents

Through: Mr. Nitin Gupta, Advocate for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 28.05.2018

C.M.No. 13395/2018

For the reasons mentioned in the application, the delay in filing the appeal is condoned.

The application stands disposed off.

FAO 127/2018

The impugned order dated 27.09.2017 had rejected the appellant's claim petition on the ground of lack of jurisdiction because the offending vehicle was registered in Gurgaon, the claimant was ordinarily a resident of Uttar Pradesh and the accident occurred in West Bengal. The said order was passed on the basis of lack of jurisdiction of a Court under section 21 of the Employees' Compensation Act, 1923 (the Act).

It is the appellant's contention that the respondent No.2 –the employer is natural person and not a juristic entity; he has his place of business in Delhi at CW-153, Sanjay Gandhi Transport Nagar, Delhi-110042. Therefore, the requirement of a “registered office” under section 23(1)(c) of the Act would not be strictly applicable to him. Instead his place of business, as mentioned in his Bank Accounts, Income Tax Returns (ITRs), GST Number and PAN Number etc. ought to have been examined and accepted. He relies upon a judgment of this Court in FAO No. 128/2018, titled as ***Abdul Gaffur @ Abd. Gafur & Anr. vs. Sachit Bhagat,*** decided on 08.05.2018, which held that:-

> *“5. The Court is of the view that the Employees’ Compensation Act being a socially beneficial legislation, a more accommodative and liberal interpretation enhancing the objective of Act, has to be accorded to its provisions. Its Preamble encapsulates its objective, i.e. “to provide for the payment by certain classes of employers to their employees of compensation for injury by accident”. The types of employment covered under the Act are enumerated in Schedule II of the Act read with section 2(dd). These employees may be employed by persons who may not have a registered office. But in the event of an injury, they cannot be denied the benefits the statute secures for them. The stipulation regarding registered office would ordinarily be applicable only to juristic entities and not to an individual employee or natural persons, who may shift their place from one place to another and are not required by statute to have a registered office. The employer in the unorganized sector may not always have a registered office. Therefore, the expression ‘registered office’ would have to include the place of business of the employer who otherwise does not have a registered office.*
>
> *6. In the present case, the office of the sole proprietor/employer is not shown to be any place other than his place of residence. In the circumstances, the said address*

> *would be taken as the registered office of the employer. Accordingly, the claim petition would be maintainable in Delhi.*
>
> *7. It would be open for the Commissioner to examine the place of business of the employer by way of relevant data, such as, business transactions from that address, bank account details, income-tax returns, receipts and vouchers, GST registration, etc.”*

The respondent No.2, the alleged employer has filed an affidavit relying upon the aforesaid and related documents to the effect that his place of business has all along been in Delhi. The learned counsel for respondent No.2 states upon instructions that although he has filed a copy of the ITR for Assessment Year 2017-18 dated 31.03.2018, nevertheless he has been filing his ITRs from the said address in Delhi from 2010 onwards and would produce the relevant records, if so necessary or directed.

In view of the above, the appeal is allowed. The case is remanded to the Commissioner, Employees’ Compensation for adjudication on merits. The parties shall appear before the Commissioner on 27.07.2018.

NAJMI WAZIRI, J.

MAY 28, 2018
sb