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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd May, 2018

+ MAC.APP. 630/2017

RAJESH KUMAR JHA & ANR Appellants

Through: Mr. S.B. Pandey, Advocate

versus

**BAIJ NATH RAY & ORS (NATIONAL INSURANCE CO
LTD & ICICI LOMBARD))** Respondents

Through: Mr. Pankaj Seth, Adv. for R-3.
Mr. Sandeep Jha, Advocate for
R-4.

**CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA**

JUDGMENT (ORAL)

1. The appeal at hand assails the order dated 18.04.2017 of the motor accident claims tribunal passed in accident claim case (MACT No.14894/15) whereby the claim petition of the appellants was directed to be returned to be presented before a forum "*having jurisdiction*".

2. The appellants had instituted the accident claim case seeking compensation on account of death of their minor daughter Rupam Kumari in a motor vehicular accident that had occurred on 10.10.2012 in the area of Police Station Patory, District Samastipur, Bihar, due to

negligent driving of Mahindra tractor, bearing registration No.BR-33J-2046 and trailer bearing registration No.BR-33J-2047. The tractor concededly was insured against third party risk for the period in question with the third respondent, it being registered in the name of the second respondent and allegedly driven by the first respondent. The accident claim case, however, was presented invoking jurisdiction of the motor accident claims tribunal in North-East District of Delhi at Karkardooma Courts Complex primarily on the plea that the claimants then were residents of B-88/12, Gali No.20, near K-Block, Subhash Mohalla, North Ghonda, Delhi-110 053.

3. The claim case was contested by the respondents, *inter alia*, seemingly also taking exception to the jurisdiction of the tribunal for North-East District, Delhi. It appears that the claimants had led evidence in the course of which they had, *inter alia*, placed reliance on the documents in the nature of voter identity card, *aadhar* card and driving licence of the first appellant (the first claimant). The tribunal called upon the local police to verify. The verification report instead indicated that the claimants had never resided at the said address. It is against this backdrop that the claimants submitted that they had since shifted residence to A-1/108, Ram Gali, B Block, Subhash Mohalla, North Ghonda, Delhi. Fresh documents again in the nature of voter identity card, *aadhar* card and driving licence of the first claimant were submitted. The tribunal once again called upon the local police to verify the address. It appears from the impugned order dated 18.04.2017 that the report of the police was “*not specific*” as to the period when the claimants had resided at the new address. On perusal

of the said report, the tribunal observed that the report “*appears to be procured*”. It also observed that the claimants had not produced any document in support of the claim about such residence at the new address. This is refuted by the counsel for the claimants. The copies of the documents relating to the new address have been submitted with the paper book (pages 32 to 34) and it cannot be believed that the claimants would not have filed these fresh set of documents respecting the new address on record of the tribunal. At any rate, there is no reason why the tribunal could not have called for the said document to be filed and proved.

4. The statutory provision contained in Section 166 (2) of Motor Vehicles Act, 1988 provides guidance on the question of territorial jurisdiction in the following manner:-

“(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.”

5. It is clear that the claimant has the option of approaching the tribunal having territorial jurisdiction over the area where the accident occurs or the tribunal having territorial jurisdiction over the area where he “*resides or carries on business*” or, conversely, even the tribunal having jurisdiction over the area where “*the defendant*

resides”. In the present case, the claimants had come to the tribunal in North-East District of Delhi with the claim petition which was submitted on 01.03.2014. On that date, they claimed to be residents of B-88/12, Gali No.20, Near K Block, Subhash Mohalla, North-Ghonda, Delhi-110 053. They placed reliance in that context, *inter alia*, on *aadhar* card (Ex.PW-1/2) which appears to have been issued in respect of first claimant respecting such address as was declared. The claimants also submitted copy of the voter identity card (mark X-3) again issued on 21.02.2011 in the name of the first claimant with reference to said address. Additionally, reliance was also placed on the driving licence (page 24 of the paper book) which purports to have been issued on 20.04.2012.

6. There is no finding in the impugned order dated 18.04.2017 with regard to genuineness or otherwise of the aforesaid set of documents. Without such finding being returned, it was neither just nor fair for the tribunal to hold that the petitioners/appellants had not been able to substantiate the claim that they were residents of the said address on the date of filing of the petition. The report of the local police could not have been treated as clinching or conclusive in this regard.

7. The claimants had, in the meanwhile, shifted address to Subhash Mohalla, North-Ghonda, Delhi. They also claim to have submitted necessary documents in proof in such regard. It is most unfair and unjust on the part of the tribunal to reject such set of documents with a vague observation that the report of the police

appears to have been “*procured*”, this without even giving an opportunity to the claimants to prove the said fresh documents.

8. For the above reasons, the impugned order cannot be sustained. It is set aside. The claim case stands revived on the file of the tribunal, which is directed to take it up for further proceedings in accordance with law on 9th July, 2018, on which date the parties shall appear before the tribunal.

9. In the above facts and circumstances, it will be desirable that the appellants are given further opportunity to prove not only the additional documents respecting the address declared in the claim petition but also to prove the new address to which they claim to have since shifted their residence.

10. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

MAY 22, 2018

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