

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.206 of 2011

1. SUNITA DEVI, W/o Late Vijay Paswan
2. Kamani Devi, W/o Late Asho Paswan
3. Santosh Kumar
4. Santa Kumar
Both S/o Late Vijay Paswan under Guardianship of Sunita Devi, All
R/o Bhaganpur, P.S. Sadar, District, Muzaffarpur
... .. Appellant/s

Versus

1) THE STATE OF BIHAR
2) Divisional Manger, United India Insurance Company Ltd., Shurakasha
Bhawan, Akharaghat Road, District, Muzaffarpur
... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Dhannjay Kumar No 2
For the Respondent/s : Mr.Kinkar Kumar Sc2

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 19-04-2019

I.A. No.262 of 2018:

Heard.

This application has been filed for condoning the delay
of 7 months 27 days in filing miscellaneous appeal.

For the reasons stated in the interlocutory application, this
Court is satisfied that appellants were prevented for sufficient
cause in filing the appeal within time, as such, the delay in
filing the present appeal is condoned.

I.A. No.262 of 2018 stands allowed.

MA. No.206 of 2011:

Heard.

This miscellaneous appeal has been filed for setting
aside the judgement dated 13.01.2010 and Award dated



12.07.2010 passed by Motor Accident Claims Tribunal, Muzaffarpur which has dismissed the claim case No.215/2006 filed by the claimant on the ground of lack of territorial jurisdiction.

Briefly stated the facts of the case is that appellant/claimant had filed a petition under Section 166 of the Motor Vehicle Act for grant of compensation on the ground of death of her husband Vijay Paswan who died in motor accident on 06.10.2006 near Razwara Dhala situated in Garhara (O.P.) P.S., Distt. Begusarai. Barauni (Garhara) P.S. Case No.309/2006 was instituted against the driver of the offending vehicle.

In the claim petition, it is stated that deceased Vijay Paswan was a Mistry working in Building Construction on daily wages of Rs.150/-. He took a taxi from his village to go to Barauni to attend his work on 06.10.2006 on a commander jeep bearing registration No. BR-09D-2696 which turned turtle due to rash and negligent driving of the driver. He got seriously injured and was taken to hospital but he was declared as brought dead. Claimants prayed for compensation of Rs.2,99,500/-.

Respondent- United India Insurance Company Limited filed their written statement in which it was admitted that offending vehicle was insured. Three witnesses including



the claimant no.1, widow of the deceased, Vijay Paswan were examined. In support of her claim case, documentary evidences were also produced which have been marked as Exhibits by the Tribunal. Certified copy of F.I.R., Ext. 1, certified copy of charge-sheet, Ext. 2, certified copy of postmortem report, Ext.3.

The Tribunal has dismissed the claim case of the appellant on ground of lack of territorial jurisdiction. It has been held by the Tribunal that neither accident took place within territorial jurisdiction of Muzaffarpur nor any of the defendants reside within the said jurisdiction and claimants have also given their permanent address which does not lie within the territorial jurisdiction of Muzaffarpur, as such, Mother Vehicle Accident Claims Tribunal at Muzaffarpur lacks territorial jurisdiction and has dismissed the claim case of the appellants. The Tribunal has returned the claim petition of the appellants to be presented before the Claims Tribunal having territorial jurisdiction over the matter.

The appellants who are claimants before the Tribunal are the widow, minor children and mother of the deceased who in their claim petition, have given their address as resident of Bhagwan Chowk, Muzaffarpur and even in the deposition of widow of deceased who has been examined as witnesses has



stated her address as residing at Bhagwanpur chowk, Muzaffarpur, as such, on the basis of residential address, the Tribunal at Muzaffarpur had territorial jurisdiction over the matter. In the written statement filed by the respondents, no objection with respect to territorial jurisdiction was taken or any statement was made that claimants do not reside within territorial jurisdiction of Muzaffarpur. Objection to territorial jurisdiction has to be taken at the very initial stage of trial and cannot be taken after close of evidence, even otherwise there is bar under Section 21 A of CPC that no judgement can be set aside only on the ground that the Tribunal lacked territorial jurisdiction. Under Section 21 of CPC, lack of territorial jurisdiction as to place of suing has to be taken at the earliest and such objection is to be taken in the court of first instance at the earliest possible opportunity and in all cases before settlement of issue. No prejudice has been shown to be caused to defendants or there has been any failure of justice.

In the present case, accident took place on 06.10.2006 and at that time by Repealing and Amending Act, 2001 (Act 30 of 2001), Motor Vehicle Act, 1994 (Act 54 of 1994) was repealed and the statutory forum for filing claim case under Section 166 of the Act required to be disclosed the permanent



and temporary address of the claimant and same was disclosed by the claimants as Bhagwanpur Chowk, Muzaffarpur as such, there was no occasion for the Tribunal to return the claim petition to be presented before the Tribunal having territorial jurisdiction over the matter.

Learned counsel for the appellants has placed reliance upon a decision of this Court rendered in **Smt. Jaso Devi Versus Nihal Beg and another [2011(3)T.A.C. 785 (Pat)]**.

For the reasons as stated above, the judgement dated 13.01.2010 and Award dated 12.07.2010 passed by the Tribunal in Claim Case No.215/2006 by which the Tribunal has returned the plaint of appellants to be presented before the Claims Tribunal having territorial jurisdiction is set aside and Tribunal is directed to conclude the claim proceeding within 6 months from the date of receipt/production of a copy of this order passed by this Court.

This miscellaneous appeal is allowed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.06.2019
Transmission Date	NA

