

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 481 of 2019

1. Smt. Neeta Jain W/o Late Paritosh Jain, Aged About 34 Years
2. Avsan Jain S/o Late Paritosh Jain, Aged About 5 Years (Wrongly Mentioned Munna Ram S/o Late Budhram Aged About 5 Years)
3. Arthav Jain S/o Late Paritosh Jain, Aged About 1 Years
No. 2 & 3 are Minor through natural guardian mother Smt. Neeta Jain wife of late Paritosh Jain (Appellant No.1)
4. Narendra Jain S/o Late Hukumchand Jain, Aged About 54 Years
5. Smt. Anita W/o Naresh Jain, Aged About 52 Years
6. Pushank Jain S/o Naresh Jain Aged About 36 Years
All are R/o P.W.D. Colony Road, Ward No.6, Geedam, Post Geedam, District- Dantewada (C.G.)

----Appellants/Claimants

Versus

1. Ritesh Kumar Jain S/o Rajesh Kumar Jain, Aged About 35 Years R/o Main Road Geedam, District- Dantewada, (C.G.)
(Driver)
2. Virendra Kumar Jain S/o Bharat Jain R/o Village Mohli, Ward No.1, Tahsil Rahali, District- Sagar (M.P.)
(Owner)
3. The National Insurance Company Limited Through Branch Manager, Branch Office Sirasar Chowk, Jagdalpur, District- Bastar (C.G.)
(Insurer)

---- Respondents

For Appellants	:	Shri Praveen Kumar Dhurandhar, Advocate
For Respondents No.1 & 2	:	Ms. Jyoti Singh, Advocate
For Respondent No. 3	:	Shri Anil Gulati, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.04.2019

1. Being aggrieved by the order dated 12.02.2019 passed in Claim Case No. 143 of 2018 by the Motor Accident Claims Tribunal, Bastar at Jagdalpur (C.G.), the Appellants/Claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988. As per order dated 12.02.2019, the Tribunal has not accepted

the claim petition of the Claimants only on the ground that the Claimants were residing at Geedam, District Dantewada and therefore, it would be convenient for the Claimants to file the claim petition before Dantewada Tribunal with this observation, the Tribunal returned the claim petition of the Claimants to present it before the competent Tribunal under Order 7 Rule 10 of CPC.

2. It is not disputed by the parties that the claim petition is filed before the Motor Accident Claims Tribunal, Bastar at Jagdalpur and the Claimants were residing at Geedam, District Dantewada and have chosen the Motor Accident Claims Tribunal, Bastar at Jagdalpur because the office of Insurance Company/Respondent No. 3 is at Jagdalpur.

3. As per written statement of Insurance Company/non-applicant No.3, Insurance Company raised this question regarding territorial jurisdiction of Accident Claims Tribunal, Jagdalpur but no any issue framed by the Tribunal. When first time issues i.e. issues No. 1 to 4 were framed by the Tribunal on 15.01.2019, no any issue regarding territorial jurisdiction was framed by the concerned Tribunal. Thereafter, on 02.02.2019 one additional issue regarding territorial jurisdiction was framed by the Tribunal. Prior to framing of this additional issue by the Tribunal, three witnesses i.e. witness No.1 – Neeta Jain, witness No. 2- Dheeraj Singh and witness No. 3 – Ritesh Kumar Jain were examined on behalf of the Claimants and cross-examined by the non-applicants. Thereafter, the additional issue was framed and the claim petition was returned by Tribunal to file the same before appropriate Tribunal as order passed on 12.02.2019.

4. Learned counsel for the Appellants/Claimants have contended that the office of non-applicant No.3 is situated at Jagdalpur, District Bastar and therefore, they chose to file the claim petition before the Tribunal at Jagdalpur and evidence has already been adduced by the Claimants before the said Tribunal. Almost all the witnesses have been examined and cross-examined by the non-applicants. Thereafter, the Tribunal only on the ground of one oral objection raised by counsel

for non-applicant No.3 regarding territorial jurisdiction was not justified in returning the same for filing it before appropriate Tribunal vide order dated 12.02.2019. In support of above contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **Malati Sardar Vs. National Insurance Company Limited, (2016) 3 SCC 43**.

5. Learned counsel for Respondents oppose the contention made by the learned counsel for the Appellants. They submit that the Tribunal has rightly returned the claim petition of the Claimants because the said Tribunal has jurisdiction to entertain the claim petition of the Claimants as they reside at Geedam, District Dantewada.

6. Heard learned counsel for the parties and perused the material available on record.

7. In claim petition, the Tribunal has also discussed the judgment of *Malati Sardar* (supra) in its order but misinterpreted the same. It is the choice of the Claimants to file claim petition as per Section 166 (2) of the Motor Vehicles Act, 1988 which reads as under:

“166. Application for compensation. – (1) x x x

(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.

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.”

8. In the matter of *Malati Sardar* (supra), the Hon'ble Supreme Court while considering the territorial jurisdiction of the Tribunal under the Motor Vehicles Act, 1988 observed in paras 13 and 16 as under:

“13. Reference was also made to the earlier decisions of this Court in **Kiran Singh V. Chaman Paswan, AIR 1954 SC 340** to the

following effect: (*Mantoo Sarkar V. Oriental Insurance Co. Ltd. (2009) 2 SCC 244 p.250, para 21*):

“21. ... ‘17. ... “7. ... With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 CPC and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act” (*Kiran Singh case, AIR p. 342, para 7*)”

16. The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hypertechnical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. Moreover, in view of the categorical decision of this Court in *Mantoo Sarkar*, contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC.”

9. Looking to the proviso under Section 166 (2) of the Motor Vehicles Act, 1988 it is clear that where the defendant resides, the Claimants have a right to file the claim petition and also in the decision of the Hon'ble Supreme Court in the matter of *Malati Sardar* (supra), it was held that claim petition is maintainable before such Tribunal where the Insurance Company carries business within jurisdiction. Therefore, the Tribunal without considering the proviso of Section 166 (2) of the Motor Vehicles Act as its true perspective and the above decision of the Hon'ble Supreme Court, was not justified in passing impugned order. Therefore, the matter needs to be remanded to the Tribunal for deciding the claim petition afresh on merits in accordance with law.

10. Accordingly, the appeal is allowed, the order impugned is set aside and the matter is remitted to the concerned Tribunal to decide the claim petition afresh on its own merits on all the issues, in the light of observations made hereinabove, after affording full opportunity of hearing to the parties.

11. Needless to mention the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.

12. Records of the Tribunal be sent back forthwith. Parties are directed to appear before the concerned Claims Tribunal on 16th May, 2019.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge