

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1265 of 2016**

1. Durlabh Seth S/o Late Gahdal Seth, Aged About 65 Years,
2. Chitra Bai, W/o Durlabh Seth, Aged About 60 Years,
3. Pratima, D/o Durlabh Seth, Aged About 21 Years,

All are R/o- Village Gharjhara, P.S.- Sarsiva, Post- Gatadih, District- Balodabazar, Chhattisgarh, at present R/o- Dongaripali, Post Lambar, P.S. Saraipali, Tahsil Basna, District- Mahasamund, Chhattisgarh.

---- Appellants/Claimants

Versus

1. Raghuvir Jha S/o Ram Narayan Jha, Aged About 55 Years At Present R/o- F.C.I. Road Tarbahar, Bilaspur, C.G. Permanent R/o- Chougaya, Tahsil- Benipur, District- Darbhanga (Bihar). (Driver of Tanker No. CG-07, ZC- 0697)
2. Santosh Kumar Agrawal, S/o Gajanand Agrawal, Indu Chowk Blaspur, C.G., Temporary Address Ganj Bazar, Kharsiya, District- Raigarh, C.G. Mob. No. 98261907006. (Owner of Tanker No. CG-07 ZC-0697)
3. Megma General Insurance Company Limited, Branch Office Dainik Bhaskar Complex (4th Floor), Rajbandha Maidan, Raipur, District- Raipur, Chhattisgarh, (Insurer of Tanker No. CG-07, ZC- 0697).

---- Respondents

For Appellants	:	Shri Shikhar Sharma, Advocate.
Respondent No. 3	:	Shri Rohitashva Singh, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

28/03/2019

1. This appeal is filed by the claimants under section 173 of Motor Vehicles Act, 1988 against the order dated 20/06/2016 passed by learned Additional Motor Accident Claims Tribunal, Saraipali,

District Mahasamund (C.G.) in Claim Case No. 20/2015, whereby the claim petition has been dismissed for want of jurisdiction.

2. As per averment in the claimant petition on 11/12/2014 Om Prakash Seth, 25 years, was dashed by vehicle Tanker bearing No.CG07 ZC-0697 driven by the Non applicant No. 1 in a rash and negligent manner. The vehicle in question was owned by non-applicant No. 2 and insured with non-applicant No. 3 on the date of accident. As a result of this accident Om Prakash suffered grievous injuries and died on the spot itself.
3. On claim petition under section 166 of Motor Vehicles Act, 1988 being filed by the claimants, parents and sisters of the deceased, the Tribunal by impugned order dismissed the same for want of jurisdiction.
4. Learned Counsel for the appellants submits that the Tribunal was not justified in dismissing the claim petition on the ground of lack of jurisdiction; whereas the claim case was well within its jurisdiction in view of the provisions of the Motor Vehicles Act, 1988. He submits that as per order sheet dated 06/07/2015 the Tribunal after perusal of the inquiry report of the Reader, has mentioned the claim case to be within its jurisdiction and issued summons to the non-applicants. However, subsequently on objection being raised by Non-applicant No. 3, the Tribunal wrongly dismissed the claim petition for want of jurisdiction. He submits that appellants are living in the local jurisdiction of the Tribunal, a certificate to this effect has been given by the Sarpanch of the concerned Gram Panchayat, the evidence of the appellants have already been recorded and when the matter was fixed for evidence of respondents, on objection being raised by the respondent/Insurance Company regarding jurisdiction, the Tribunal was not justified in dismissing the claim petition on the ground of jurisdiction. He submits that the matter may be remanded to the Tribunal for decision afresh in accordance with

law.

5. On the other hand learned counsel for respondent No. 1 and 2 supports the impugned order and submits that the Tribunal considering all the relevant aspects of the matter has rightly dismissed the claim petition on the ground of lack of jurisdiction.
6. Heard learned counsel for the parties and perused the material available on record.
7. From the claim petition filed by the claimants, it is seen that they have mentioned themselves to be the resident of village Gharjhara, P.S.- Sarsiva, Post- Gatadih, District- Balodabazar, Chhattisgarh, and their present address as Dongaripali, Post Lambar, P.S. Saraipali, Tahsil Basna, District Mahasamund, Chhattisgarh. In the affidavit filed in support of the claim petition by claimant No.1, the same address has been mentioned. In the affidavit under Order 18, Rule 4 of C.P.C. filed by claimant No. 1 Durlabh Seth, he has also mentioned himself to be presently residing at village Dongaripali, Post Lambar, P.S. Saraipali, Tahsil Basna, District- Mahasamund, Chhattisgarh. One certificate issued by Sarpanch, Gram Panchayat Madhopali, Janpad Panchayat Basna, District Mahasamund available on record, though not exhibited, also goes to show that the claimants are resident of Gram Panchayat Madhopali, village Dongaripali, Post Lambar, P.S. Saraipali, Tahsil Basna, District- Mahasamund, Chhattisgarh.
8. At this juncture, it would be relevant to refer to the provisions of law in this regard. Section 166(2) of the Act states as under:

“166. Application for compensation.—(1) xxx xxx xxx

(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.”

9. The plain reading of the said provision itself clearly depicts that the intention of the law makers was that, the liberty or the option was given to the claimant to file a claim application at any of the options which are mentioned in the aforesaid provision. This by itself clearly indicates that the law makers intended to give a liberal interpretation to the jurisdiction of the Court hearing the motor accident claims. The Act and the said provision of compensation itself is a liberal legislation and it has to be interpreted and visualized more liberally.
10. At this juncture, it would also be relevant to refer to a recent decision of the Hon'ble Supreme Court rendered in the case of **Malati Sardar v. National Insurance Company Limited and others [2016 (3) SCC 43]** wherein in paragraph 16 it has been very categorically held as under:

“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. Hyper technical 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 categorical decision of this Court in *Mantoo Sarkar* (supra), contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC.”

11. The aforesaid decision of the Hon'ble Supreme Court has been made relying upon the decision of the Supreme Court itself in *Mantoo Sarkar v. Oriental Insurance Company Limited and others [2009 (2) SCC 244]* wherein also the Supreme Court dealing with the contention of the jurisdiction part in paragraphs, 12, 13 and 15 has held as follows:

“12. A claimant has a wide option. Residence of the claimant also determines jurisdiction of the Tribunal. What would be a residence of a person would, however, depend upon the fact situation obtaining in each case.

13. Appellant had been a resident of Pilibhit. It is in the State of Uttar Pradesh. He being a migrant labourer accepts job wherever he gets and resides there. He, admittedly, had been working in Nanital district and residing there during the period of accident. The fact that he was thus a resident of Nainital in the State of Uttaranchal is neither denied nor disputed.

14. xxx xxx xxx

15. No doubt the Tribunal must exercise jurisdiction having regard to the ingredients laid down under sub-section (2) of Section 166 of the Act. We are not unmindful of the fact that in terms of Section 169 of the Act, the Tribunal, subject to any rules, may follow a summary procedure and the provisions of the Code of Civil Procedure under the Act has a limited application but in terms of the rules “save and except” any specific provision made in that behalf, the provisions of the Code of Civil Procedure would apply. Even otherwise the principles laid down in the Code of Civil Procedure may be held to be applicable in a case of this nature.”

12. Keeping in view the pleading of the claimants, the evidence adduced by them in the light of the aforesaid judicial pronouncements and the manner in which the Tribunal dismissed the claim petition of the claimants, this court is of the opinion that the matter deserves to be remanded to the Tribunal to decide the claim case afresh, including the issue of jurisdiction, after providing sufficient opportunity of hearing to the parties.

13. In the result, the appeal is allowed, the impugned order is set aside and the matter is remanded to the concerned Tribunal to decide the claim petition afresh on its own merits after affording full opportunity of hearing to the parties, as expeditiously as possible preferably within a period of six months from the date of first appearance of the parties in accordance with law. Parties are directed to appear before the concerned Tribunal on 30/04/2019.

14. 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.
15. Record of the Tribunal be sent back forthwith.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant