

\$~4

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

Judgment dated: 23rd January, 2019

+ **MAC.APP. 880/2016**

CHAMPA & ORS

..... Appellants

Through: Mr.I.J.S.Mehra, Advocate with
Mr.Tabbassur Firdause, Mr.Sashant
Mehra, Mr.Rana and Ms.Archana,
Advocates

versus

**GAJENDER SAWHNEY & ORS (THE NEW INDIA ASSURANCE
COMPANY LIMITED)**

..... Respondents

Through: Mr.Dinesh Gaur, Advocate with
Mr.Roopak Gaur and Mr.Amrish
Kumar, Advocates for R-1 & R-2.
Mr.Ramesh Chandra, Advocate with
Mr.A.K.Pandey, Advocate for R-4 &
R-5.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

1. The appellant Champa claims herself to be the wife of deceased Sh.Santosh who died in a motor vehicle accident. It is alleged that the accident occurred as the offending truck bearing registration no. HR-55-K-7195 was allegedly driven by Sh.Gajender Sawhney (respondent No.1), in a

rash and negligent manner that took place on 19.09.2012 near Pulia of village Fazilpur, within the jurisdiction of Police Station – Badshahpur, District Gurgaon. Consequently, FIR No.224/2012 was registered under Section 279/304-A IPC. The deceased Sh.Santosh is survived by wife and three children (appellants herein).

2. A claim petition being 252/12 was filed by one Smt. Champa Devi claiming herself to be the wife of the deceased before the learned MACT, Gurgaon which was decided on 25.05.2013 granting compensation to the claimants. The appellants claim that they came to know from some reliable sources that Smt.Kusum w/o. Sh.Ghanshyam by impersonating herself as widow of deceased had filed the said claim petition at Gurgaon and succeeded in getting the compensation amount by playing fraud on the Court.

3. Learned counsel for the appellants submits that the act of fraud committed by Smt.Kusum was brought to the knowledge of learned District Judge, Gurgaon, who directed to investigate the matter. After completion of investigation an FIR was lodged and the accused persons are facing trial before the competent court of jurisdiction.

4. Learned counsel for the appellants submits that at present the appellants are residing in Delhi. He further submits that the impugned order dated 06.04.2016 passed by the learned tribunal is bad in law in view of the fact that the compensation awarded to the claimant in claim petition 252/12 was obtained by impersonation for which FIR No.1349/2015 has been lodged

with Police Station-Gurgaon City. He further submits that Section 11 CPC would be applicable only when final determination is between the same parties and on the same cause of action. He further submits that the claim petition was not even entertained and was rejected on the ground of jurisdiction. In support of his contention, learned counsel has relied upon a judgment of Hon'ble Apex Court in a case titled as ***Mantoo Sarkar v. Oriental Insurance Co. Ltd. & Anr.*** AIR 2009 SC 1022.

5. Having heard the learned counsel for the parties and after perusing the records, this Court is of the view that Section 11 CPC is not applicable in the present context. The claimant Champa i.e. the appellant herein is claiming the compensation for the first time and she has not filed petition seeking claim prior to filing the claim petition in Delhi. Therefore, the principle of *res judicata* is not applicable in the present context. The appellants are residing in Delhi. Accordingly, in view of the judgment of the Hon'ble Apex Court in ***Mantoo Sarkar (supra)***, the impugned order dated 06.04.2016 passed by the learned tribunal is set aside and the matter is remanded to the tribunal.

6. The parties are directed to appear before the tribunal for the above aspect on 11th February, 2019.

7. The appeal is disposed of accordingly. All pending application(s) (if any) also stand disposed of.

8. A copy of this order be sent to the Court below forthwith.

I.S.MEHTA, J

JANUARY 23, 2019

