GAHC010131752017

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/186/2017

MD. SUKKUR ALI BARBHUIYA
S/O- LATE TAJAMUL ALI BARBHUIYA OF VILL- VICHINGCHA PT-I, P.O- VICHINGCHA, P.S AND DIST- HAILAKANDI, ASSAM

VERSUS

MD. ZAKIR HUSSAIN BARBHUIYA and ANR.
S/O- A HAMID BARBHUIYA OF HAILAKANDI TOWN WARD NO.1, P.S- HAILAKANDI, DIST- HAILAKANDI, ASSAM, PIN- 788004

2:BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD

REP. BY THE BRANCH MANAGER
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
2ND FLOOR
HOLDING NO.94
WARD NO.23
ULLASKAR DUTTA SARANI
P.O- SILCHAR
P.S- SILCHAR
DIST- CACHAR
ASSAM
PIN- N-8800

Advocate for the Petitioner : MS.N MODI

Advocate for the Respondent :

BEFORE
THE HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA
ORDER

14.12.2020

Heard Mr. S. Dutta, the learned Senior Counsel assisted by Ms. M. Borchetia, the learned counsel for the petitioner. Notice was duly served on the respondent No. 1 and the respondent No. 2 refused to accept the notice as per the office notes. Accordingly, service of notice on the said respondent No. 1 was accepted and deemed to be served on the respondent No. 2. However there was no representation on behalf of respondent No. 1.

The claimant in MAC Case No. 1059/2010 is the petitioner in this Revision Petition challenging the order dated 24.08.2016 passed by the learned Member, Motor Accident Claims Tribunal, Cachar at Silchar holding that the Tribunal had no jurisdiction to entertain the claim petition of the petitioner. The claimant has filed a claim petition seeking compensation for injuries sustained by his minor son aged about 7 (seven) years, a student who met with a motor vehicular accident which took place on 22.04.2010. Notices were issued to the opposite parties in the said claim petition fixing 27.09.2010 but none of the opposite parties appeared.

The claim petition which was registered as MAC Case No. 1059/2010 was fixed for service report but the claimant petitioner did not take steps on the opposite parties. None of the opposite parties in the claim petition raised the issue of jurisdiction of the Tribunal, but the learned Member of the Tribunal while passing the impugned order dated 24.08.2016 on his own considered the statement made in the affidavit by the claimant which was filed in support of his claim of Rs.3,30,000/- as award for injuries sustained to his son. The learned Member of the Tribunal while passing the impugned order held that the claimant petitioner is a permanent resident of district-Hailakandi, the accident took place in the district of Hailakandi and the owner and driver are also residents of district – Hailakandi. Section 166 Sub Section 2 of the Motor Vehicles Act, 1988 was considered by the learned Member and held that a claim petition could be filed in a Claims Tribunal under whose jurisdiction the

claimant resides or carries on business, or where the accident took place or where the defendant resides. As none of the criteria under Section 166 Sub Section 2 of the Motor Vehicles Act, 1988 specified are satisfied from the factual matrix in the claim petition, the learned Member held that the MACT, Cachar at Silchar had no jurisdiction to entertain the claim petition. Further it held that though the office of the respondent Bajaj Allianz General Insurance Company Ltd. is situated at Silchar however, as no insurance policy was available on record and the insurance company also did not appear it could not be ascertained whether the insurance company has office at Sonai Road, Silchar in the district of Cachar.

Mr. Dutta, the learned Senior Counsel assailing the impugned order submits that no objection was raised by any one of the parties in the said proceeding before the learned Tribunal below in respect of the jurisdiction of the said Tribunal but even then the impugned order was passed. Though the Tribunal exercises its jurisdiction under Sub Section 2 of Section 166 of the Motor Vehicles Act, 1988 however, in view of the terms under Section 169 of the Motor Vehicles Act, 1988, the Tribunal subject to any rules, may follow a summary procedure and the provisions of the Code of Civil Procedure under the Act have the 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. Mr. Dutta relies the case law of ***Mantoo Sarkar –Vs- Oriental Insurance Company Limited and Others*** reported in ***(2009) 2 SCC 244*** and submits that the jurisdiction of the Tribunal is wider than the civil court. Any objection in respect of territorial jurisdiction under Section 21 of the CPC could not be entertained by a Tribunal in absence of any prejudice caused to any of the parties to the proceeding. Further Mr. Dutta relies another case law of ***Malati Sardar –Vs- National Insurance Company Limited and Others*** reported in ***(2016) 3 SCC 43*** and submits that the proceeding under the M.V. Act held under a benevolent provision for the victims of accidents of negligent driving. Accordingly, the provision for territorial jurisdiction is to be interpreted consistent with the object of facilitating remedies for the victims of accidents. With the said submission of Mr. Dutta, refers to the impugned order and submits that the learned Member failed to consider that there was no objection citing any prejudice caused to anyone if the proceeding is continued in the Tribunal at Silchar. For the said reason, the impugned order is liable to be set aside.

I have given due consideration to the submission made by the learned counsel. There is no dispute that the provisions of the Code of Civil Procedure is not applied with its full rigour in a proceeding under the M.V. Act. Section 169 of the Motor Vehicles Act stipulates the specific applicability of the provisions of the Code of Civil Procedure only in respect of evidence, the attendance of the witnesses and discoveries. In ***Mantoo Sarkar –Vs- Oriental Insurance Company Limited and Others*** (supra) it was held that the jurisdiction of the Tribunal was wider than the Civil Court. Even if the Tribunal follow the provision of the Code of Civil Procedure objection of lack of territorial jurisdiction could not be entertained by a Tribunal in absence of any prejudice. Further it was held that there is a vast difference in between the subject matter of a proceeding and that of territorial and pecuniary jurisdiction on the other. A judgment could not be a nullity due to wrong territorial and pecuniary jurisdiction by a court but the same is a nullity if the subject matter in a proceeding is beyond the territorial jurisdiction of a court. In ***Malati Sardar –Vs- National Insurance Company Limited and Others*** (Supra) it was held as follows:-

> "*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 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.*"

If we consider the aforesaid ratio, in my considered opinion, the learned court below passed the impugned order dated 24.08.2016 on wrong application of its jurisdiction inasmuch as none of the parties to the proceeding raised the issue of any prejudice caused to them due to the proceeding being initiated in the said Tribunal at Silchar. Further admittedly, there is an office of the Insurance Company i.e. Bajaj Allianz General Insurance Company Ltd. situated at Silchar having its business there. Upon the considerations, that the claimant petitioner is a permanent resident of district-Hailakandi, the accident took place in the district of Hailakandi and the owner and driver are also residents of district – Hailakandi, the learned

Tribunal refused to entertain the said MACT application which is in clear contradiction to the ratio laid down in ***Malati Sardar –Vs- National Insurance Company Limited and Others*** reported in ***(2016) 3 SCC 43*** inasmuch as admittedly the office of the Bajaj Allianz General Insurance Company Ltd. is situated at Silchar and having its business. Accordingly, this Revision Petition is allowed thereby setting aside the impugned order dated 24.08.2016 passed by the learned Member, Motor Accident Claims Tribunal, Cachar at Silchar in MAC Case No. 1059/2010 with a direction to accept the claim petition filed by the petitioner and decide the same as per law without further delay.

JUDGE

Comparing Assistant