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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1813 of 2011

M. Balamurugan ...Appellant/Petitioner

Versus

1.V. Thangarajan

2.The New India Assurance Co. Ltd.,
Rep.by its Divisional Office,
Saradha College Road,
Premier Complex, Salem - 16.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988, filed against the Judgment and decree dated 13.02.2008 made in M.C.O.P.No.1645 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court-I, Salem.

For Appellant : Mr.N. Manokaran

For Respondent-2 : Mrs. R. Sreevidhya
R1 - Ex-parte

J U D G M E N T

This appeal has been preferred by the appellant against the Judgment and Decree dated 13.02.2008 made in M.C.O.P.No.1645 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court-I, Salem.

2. On 15.08.2004, the appellant has sustained grievous injuries in the accident after having dashed by the rider Hero Honda Motor Cycle/1st respondent herein insured with the 2nd respondent herein. Hence, the appellant has filed claim petition under Section 166 of the Motor Vehicles Act, 1988, (for short "the Act") for compensation of Rs.3,00,000/- (Rupees Three Lakhs Only) in M.C.O.P.No.1645 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track



Court-I, Salem. After the Court below has taken the matter on its file and conducting trial, the Tribunal has come to the conclusion that the claimant/appellant herein has to approach the Court concerned for appropriate remedy since the territorial jurisdiction did not fall under the Tribunal and passed the Judgment as such.

3. Being aggrieved, the claimant/appellant herein has filed the present appeal seeking proper remedy to get compensation for the injury sustained in the aforesaid accident which was also confirmed during the trial before the Tribunal.

4. The learned counsel for the appellant would submit that during the trial, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P11 were marked on the side of the appellant and there was no witness and exhibit on the side of the respondent. After perusal of oral and documentary evidence, the Tribunal has confirmed the factum of the accident and manner of the accident being rash and negligent driving of the 1st respondent. However, the claim petition was directed to file before appropriate forum to get compensation for the injury sustained in the accident without passing award of compensation to the appellant, after having considered the fact that the territorial jurisdiction did not fall under it. Nevertheless the Tribunal has having jurisdiction where the appellant is residing at Salem and doing his avocation at Salem, the Tribunal has failed to pass award of compensation. To support of his argument, the learned counsel has placed reliance on Judgement in the case "Malati Sardar Vs. National Insurance Company Limited" reported in (2016) 3 SCC 43 wherein it is held in para 12 and 16 as follows:

"12... It was held that the jurisdiction of the Tribunal was wider than the civil Court. The Tribunal could follow the provisions of the Code of Civil Procedure(CPC). Having regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in the absence of any prejudice. Distinction was required to be drawn between a jurisdiction with regard to subject matter on the one hand that of territorial and pecuniary jurisdiction on the other. A judgment may be nullity in the former category, but not in the latter.

13 to 15

16. The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligence 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



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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."

In view of the aforesaid observation, the learned counsel seeks appropriate direction of this Court to the Court below for grant of relief to the claimant/appellant herein who had sustained injuries in the accident due to rash and negligent driving of the 1st respondent herein.

5. On perusal of the award, it is seen that the Tribunal has taken the decision after relying on the Judgment of this Court in the case "Muthuraj Vs. V.M.Kandasamy and another" reported in 2007(1) CTC 311, wherein, it was stated as under:

"Motor Vehicles Act, 1988, Section 166(2) Territorial Jurisdiction - Question of jurisdiction is not a technical ground and it is mandatory requirement and the claimant cannot choose forum he wants and it would amount to "forum shopping"- Claimant has to fulfill one of three conditions to approach any particular Tribunal as enumerated under Section 166(2) viz.

1. Place of accident
2. Place where he resides or carries on business
3. Place where respondent resides or carries on business by letting in evidence in order to maintain before a Tribunal."

6. Taking into consideration the place of the accident only, the Tribunal has come to the conclusion with regard to lack of territorial jurisdiction, but the Tribunal did not consider that the appellant is residing at Salem and doing his business at Salem.

7. In view of the aforesaid Judgment and having considered the facts and circumstances of the case, this Court is inclined to set aside the award passed by the Court below in M.C.O.P. No.1645 of 2004 and remand the matter back to the Court below where trial proceedings were conducted, for considering the matter afresh.

8. Accordingly, the appeal stands allowed and the matter is remanded back to the Trial Court to decide the matter afresh and pass award accordingly. Taking into consideration the facts



and circumstances of the case, the Trial Court is directed to dispose of the case within a period of six months, from the date of receipt of this Judgment. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
The Motor Accident Claims Tribunal,
Additional District Court, Fast Track Court-I, Salem.

2.The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.N.Manokaran, Advocate Sr.8470

C.M.A.No.1813 of 2011

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