

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2161 of 2009 (O&M)
DATE OF DECISION: 11.05.2020

Smt. Bina Garg and another

....Appellants

versus

Sushil Kumar and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. V.B. Aggarwal, Advocate for the
appellants

Mr. Lalit Garg, Advocate for the respondent/
Insurance Company

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ALKA SARIN, J.:

The present appeal has been filed by the claimants against the award dated 29.10.2008 passed by the Motor Accident Claims Tribunal, Chandigarh.

2. The short point in the present case is that the claim petition filed by the claimants was dismissed by the Tribunal on the ground of jurisdiction. The claimants are in appeal aggrieved by the said award. The brief facts relevant to the present case are that the son of the claimants, namely, Pranav Vishal Garg, had died in a motor vehicular accident which took place on 14.09.2004 at about 10.50 A.M. On the date of the accident, Pranav Vishal Garg and his friend Amrit Thapa

were going on separate motorcycles. Pranav Vishal Garg was going ahead of Amrit Thapa, who was going on his motorcycle bearing registration No.HR-02A-3775. When Pranav Vishal Garg took a turn, the offending vehicle bearing registration No.UP-14D-0475 came from the side of Dadri in a rash and negligent manner and hit his motorcycle from the back thereby crushing him and his motorcycle. Pranav Vishal Garg died on the spot. FIR No.18/2004 dated 14.09.2004 was recorded on the statement of Amrit Thapa.

3. The claim petition was contested by the respondents on the ground that the Tribunal did not have territorial jurisdiction to entertain and try the petition as the cause of action had not occurred at Chandigarh. Neither the accident took place in Chandigarh nor the claimants were residing in Chandigarh. On the basis of the pleadings of the parties and the evidence on the record, the Tribunal returned the finding that the Tribunal at Chandigarh did not have jurisdiction to try the petition and returned the same for presentation before the proper court in accordance with law. Aggrieved by the same, the present appellants have approached this Court.

4. I have heard the learned counsel for the parties.

5. It has been contended by the learned counsel for the appellants that appellant No.2 Prem Sagar Garg had stepped into the witness box and had stated that he was a resident of Chandigarh and that the Food &

Supplies Department, Chandigarh had also issued them a ration card to this effect, a copy of which was produced on the record as Ex.P3. A perusal of Ex.P3 clearly reveals that the names of both the appellants are mentioned in the said ration card, which was produced on the record by the appellants herein. It has further been submitted that though the ration card was made in the year 2007 yet the Tribunal would have jurisdiction in view of Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

6. *Per contra*, learned counsel for the respondent has contended that the Tribunal at Chandigarh had no jurisdiction to try the matter and petition had rightly been returned to file before the appropriate Tribunal in accordance with law.

7. Section 166 of the Act reads as under:-

*"166. Application for compensation.-(1)
An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made-*

- (a) by the person who has sustained the injury; or*
- (b) by the owner of the property; or*
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:*

Provided that where all the legal representatives of the deceased have not

joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application:

Provided further that where a person accepts compensation under Section 164 in accordance with the procedure provided under Section 149, his claims petition before the Claims Tribunal shall lapse.

(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:

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident."

A plain reading of sub-section (2) of Section 166 of the Act shows that the claim petition can be filed at either of the three places - one, the place within whose jurisdiction the accident had taken place; two, where the claimant resides or carries on business; or, three, where the defendant resides. Ordinarily, the Tribunal where the claimant has been normally residing or carries on business would be the place for determining the jurisdiction of the Tribunal. However, in case of change in the place of residence, after the death as in the present case, the place where the

claimants had been residing at the time of filing of the petition would also have jurisdiction. For the said proposition of law, reliance has been placed upon **2012 (1) PLR 131 (Kamlesh and others vs. Satish Kumar and others)**. The Supreme Court also in the case of **Mantoo Sarkar vs. Oriental Insurance Co. Ltd. & Ors.**, (2009) 2 SCC 244 has held as under:-

"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 have 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.

16. We say so because ordinarily an appellate court shall not, having regard to the provisions contained in sub-section (1) of Section 21 of the Code of Civil Procedure, entertain an appeal on the ground of lack of territorial jurisdiction on the part of the court below unless he has been prejudiced thereby. Other respondents did not raise any question of jurisdiction. Although one witness each had been examined on behalf of the truck owner and owner of the bus, neither a question of lack of territorial jurisdiction was raised nor the question of any prejudice had been argued. It is only the first respondent who raised the question of territorial jurisdiction. However, no prejudice was caused to the appellant by the claim petition being tried by MACT at Nainital.

17. The liability of the Insurance Company arises for the purpose of reimbursement of

the amount of compensation found to be payable by the owner of the vehicle insured. It is only in exceptional cases and as provided for under Section 170 of the Act, the Insurance Company can defend a claim petition. Only on limited grounds it may be permitted to question the quantum of compensation.

18. The Tribunal is a court subordinate to the High Court. An appeal against the Tribunal lies before the High Court. The High Court, while exercising its appellate power, would follow the provisions contained in the Code of Civil Procedure or akin thereto. In view of sub-section (1) of Section 21 of the Code of Civil Procedure, it was, therefore, obligatory on the part of the appellate court to pose unto itself the right question viz. whether the first respondent has been able to show sufferance of any prejudice. If it has not suffered any prejudice or otherwise no failure of justice had occurred, the High Court should not have entertained the appeal on that ground alone.

19. We, however, while taking that factor into consideration must place on record that we are not oblivious of the fact that a decision rendered without jurisdiction would be coram non juris. Objection in regard to jurisdiction may be taken at any stage. See Chief Engineer, Hydel Project v. Ravinder Nath [(2008) 2 SCC 350 : (2008) 1 SCC (L&S) 940] , wherein inter alia the decision of this Court in Kiran Singh v. Chaman Paswan [AIR 1954 SC 340] was followed, stating: (Ravinder case [(2008) 2 SCC 350 : (2008) 1 SCC (L&S) 940] , SCC p. 361, para 26)

"26. The Court also relied upon the decision in Kiran Singh v. Chaman Paswan [AIR 1954 SC 340] and quoted (in Harshad Chiman Lal case [Harshad Chiman Lal Modi v. DLF Universal Ltd., (2005) 7 SCC 791] , SCC pp. 804-05, para 33) therefrom: (Kiran Singh case [AIR 1954 SC 340] , AIR p. 342, para 6)

'6. ... It is a fundamental principle well established that

a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, ... strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.'

Though in the aforementioned decision these observations were made since the defendants before raising the objection to the territorial jurisdiction had admitted that the court had the jurisdiction, the force of this decision cannot be ignored and it has to be held that such a decree would continue to be a nullity."

20. A distinction, however, must be made between a jurisdiction with regard to the subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject-matter of claim. As a matter of fact the civil court had no jurisdiction to entertain the suit. If the Tribunal had the jurisdiction to entertain a claim petition under the Motor Vehicles Act, in our opinion, the court should not have, in the absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal."

Similar view, relying on the case of **Mantoo Sarkar** (supra), was taken by the Supreme Court in the case of **Malati Sardar v. National Insurance Company Limited and others** (2016) 3 SCC 43, wherein it was held as under:-

"12. In Mantoo Sarkar [Mantoo Sarkar v. Oriental Insurance Co. Ltd., (2009) 2

SCC 244: (2009) 1 SCC (Civ) 482: (2009) 1 SCC (Cri) 738] , the Insurance Company had a branch at Nainital. The accident took place outside the jurisdiction of Nainital Tribunal. The claimant remained in the hospital at Bareilly and thereafter shifted to Pilibhit where he was living for a long time. However, at the time of filing of the claim petition he was working as a labourer in Nainital District. The High Court took the view that Nainital Tribunal had no jurisdiction and reversed the view taken by the Tribunal to the effect that since the office of the Insurance Company was at Nainital, the Tribunal had the jurisdiction. This Court reversed the view of the High Court. 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 and that of territorial and pecuniary jurisdiction on the other. A judgment may be nullity in the former category, but not in the latter.

13. Reference was also made to the earlier decision of this Court in *Kiran Singh v. Chaman Paswan* [*Kiran Singh v. Chaman Paswan*, AIR 1954 SC 340] to the following effect: (*Mantoo Sarkar case* [*Mantoo Sarkar v. Oriental Insurance Co. Ltd.*, (2009) 2 SCC 244 : (2009) 1 SCC (Civ) 482 : (2009) 1 SCC (Cri) 738], SCC 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 be 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 [Kiran Singh v. Chaman Paswan, AIR 1954 SC 340] , AIR p. 342, para 7)' [Ed.: As observed in Bikash Bhushan Ghosh v. Novartis India Ltd., (2007) 5 SCC 591, p. 599, para 17 : (2007) 2 SCC (L&S) 242.]"

14. We are thus of the view that in the face of the judgment of this Court in Mantoo Sarkar [Mantoo Sarkar v. Oriental Insurance Co. Ltd., (2009) 2 SCC 244 : (2009) 1 SCC (Civ) 482 : (2009) 1 SCC (Cri) 738] , the High Court was not justified in setting aside the award of the Tribunal in the absence of any failure of justice even if there was merit in the plea of lack of territorial jurisdiction. Moreover, the fact remained that the Insurance Company which was the main contesting respondent had its business at Kolkata."

8. In view of the fact that the appellants had produced on the record the ration card which was issued in Chandigarh and also the fact that the Tribunal has not recorded any finding regarding any prejudice being caused to the respondent in case the matter is decided by the Tribunal at Chandigarh, the Tribunal fell in error in returning the petition mainly on the ground of jurisdiction.

9. The Motor Vehicles Act is a benevolent piece of legislation and the provision in question is a benevolent provision for the victims of accidents due to negligent driving. Hyper-technical approach in such matters can hardly be appreciated. There is absolutely no bar in filing a claim petition where the claimants reside at the time of filing of the petition. In such cases, there is absolutely no prejudice which is being caused to any party. There can be no failure of justice in remanding the present case for deciding it afresh in accordance with law. Moreover, in view of the dictum laid down by the Supreme Court in the cases of Mantoo Sarkar (*supra*) and Malati Sardar (*supra*), the award passed by the Tribunal cannot be sustained.

10. In view of the law laid down by the Supreme Court in Mantoo Sarkar (*supra*) and Malati Sardar (*supra*), the award passed by the Tribunal is set aside and the matter is remanded to the Tribunal for deciding afresh. Since the accident is of the year 2004, the Tribunal is requested to make an endeavour to decide the matter afresh in accordance with law within a

period of six months from the date of receipt of a
certified copy of this order.

(ALKA SARIN)
JUDGE

11.05.2020
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<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES
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