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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 4th February, 2021
+ **CM(M) 93/2021 & CM APPL. 4179/2021**

SAVITRI AND ORS

..... Petitioners

Through: Mr. Chunamani Patel, Advocate
(M-7683041412)

versus

KESHAV SINGH AND ORS

..... Respondents

Through: Mr. Pradeep Gaur, Advocate for R-3
(M: 9810081811)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

1. This hearing has been done through video conferencing.
2. The Petitioners have preferred the present petition challenging the impugned order dated 30th January 2020, passed by the Presiding Officer, Motor Accident Claims Tribunal (*hereinafter*, 'MACT') (South East), Saket Courts, by which the application for restoration of the claim petition filed before the MACT has been rejected.
3. The brief background to this petition is that the Petitioners preferred a claim petition before the MACT for grant of compensation in terms of Sections 166 and 140 of the Motor Vehicles Act, 1988. In the said petition, Respondent No. 3- The Oriental Insurance Company Ltd., had filed its written statement. One of the pleas raised by the company was lack of jurisdiction of courts in Delhi, given the accident, which was the subject matter of the claim petition, had taken place in Madhya Pradesh. Upon the said objection being taken, the Petitioners, on the basis of the legal advice that was received, sought permission to withdraw the suit with liberty to refile the same. The

same was permitted by the MACT, vide order dated 25th April, 2018. The relevant part of the said order reads as under:

“...
In view of the application made today, the application is dismissed as withdrawn, with liberty to the petitioners to seek their remedy at appropriate court having jurisdiction over their permanent place of residence ie, Village: Amiliya, PS: Amilia, Tehsil: Sihawal, District: Sidhi, Madhya Pradesh. With the aforesaid liberty, the petition is dismissed as withdrawn.”

4. Mr. Patel, ld. counsel for the Petitioners, submits that, thereafter, when the Petitioners checked up the law on this subject, they came to know of the judgment of the Supreme Court in ***Malati Sardar v. National Insurance Company Ltd., (2016) 3 SCC 43***, where the Supreme Court has held that there is no bar to file a claim where the insurance company is carrying on its business. In view of the said judgment and on legal advice, the Petitioner sought restoration of the claim petition that was withdrawn. The said application for restoration has however been dismissed vide the impugned order.

5. Mr. Gaur, ld. counsel for the Respondents, submits that the Petitioners are also residents of Madhya Pradesh and they can approach the Courts in Madhya Pradesh. Moreover, he submits that the delay which has been caused cannot be to the detriment of the insurance company.

6. Mr. Patel, ld. counsel for the Petitioners, submits that though the Petitioners are residents of Madhya Pradesh, in the claim petition before the MACT, pleadings had already completed and the petition was at an advance stage. Thus, he submits that the Petitioners would be put to sufficient prejudice if they are now asked to approach the Tribunal in Madhya Pradesh.

This position is disputed by the counsel for the Respondents.

7. Heard ld. counsels for the parties. In *Malati Sardar (supra)* the Supreme Court held as under:

“14. 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 parties in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice.”

8. Thus, the clear legal position is that the claims against the insurance company can be filed where the company has its office or carries on business. The petition need not be filed only at the place where the accident took place. The withdrawal of the petition was thus a genuine mistake, may be based on legal advice received the Petitioner.

9. It is the settled position of law that a mistake by a lawyer cannot work to the detriment of the client. A perusal of the order dated 25th April, 2018, passed by the MACT, clearly shows that the claim petition was withdrawn due to the preliminary objection, as to jurisdiction which was raised by the insurance company, and the said withdrawal may be under wrong legal advice.

10. Considering the fact that the written statement had already been filed before the MACT when the withdrawal of the petition took place and also the fact that The Oriental Insurance Company Ltd. has its registered office in

Delhi and is not inconvenienced in any manner, the impugned order dated 30th January, 2020 and order dated 25th April, 2018, passed by the MACT, are set aside. The petition is restored to its original number. However, the delay during this period cannot be the fault of the insurance company. Thus, if the claim of the Petitioner is allowed, for the period between 25th April, 2018 till today i.e., 4th February, 2021, no interest would be liable to be paid.

11. The MACT shall now proceed with the claim petition in accordance with law. List before the MACT on 1st March 2021. Copy of the order be communicated to Dr. Hardeep Kaur, Presiding Officer, MACT, South East District, Saket Courts.

12. With these observations, the present petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 4, 2021

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