

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

APPEAL FROM ORDER NO. 56 OF 2019

Navnath s/o Shripati Bhawar,
Age : 58 years, Occu. Agriculture,
R/o. T. V. Center, Aurangabad.

...Appellant
(Orig. Claimant)

Versus

1] Aditya s/o Vishnu Jayebhaye,
Age : 25 years, Occu. Driver,
R/o. A/p, A/F, Matsodari School,
Nutan Vasahat, Ambad, Tq. Ambad,
Dist. Jalna.

2] Vishnu s/o Bhagwanrao Jayebhaye,
Age : Major, Occu. Business,
R/o. A/p, A/F, Matsodari School,
Nutan Vasahat, Ambad, Tq. Ambad,
Dist. Jalna.

3] The Manager,
United India Insurance Company Ltd.,
Office at : New Osmanpura,
Aurangabad.

.....Respondents

.....
Mr. K. B. Jadhav, Advocate for the appellant
Mr. Swapnil A. Deshmukh, Advocate for respondent no. 1
Mr. S. R. Bodade, Advocate for respondent no. 3
.....

CORAM : RAJESH S. PATIL, J.

DATE OF RESERVING THE JUDGMENT : DECEMBER 01ST, 2022
DATE OF PRONOUNCING THE JUDGMENT : DECEMBER 06TH, 2022

JUDGMENT : -

1] This appeal from order is filed by appellant – original claimant, who has filed Claim Petition for compensation under Section 166 of the Motor Vehicles Act, 1988, which arises out of the vehicular sgp

accident which took place on 04.02.2013 at Ambad, Dist. Jalna.

2] The appellant filed Motor Accident Claim Petition No. 300/2013 before the Motor Accident Claims Tribunal at Aurangabad (hereinafter referred to as “MACT, Aurangabad”). In the said claim petition, the appellant has shown his address as Aurangabad so also the office address of Respondent no. 3 as New Osmanpura, Aurangabad. The respondents no. 1 and 2 filed their written statement so also respondent no. 3 – Insurance Company filed its written statement on 21.01.2016. The appellant filed his evidence in the form of affidavit of evidence on 06.02.2017 and was accordingly cross-examined. Thereafter, the appellant examined one more witness who is an Orthopedic Surgeon at Aurangabad. The said witness was also cross-examined on 20.09.2017.

3] Respondent nos. 1 and 2 i.e. driver and owner of the vehicle raised objection as to the territorial jurisdiction of the Tribunal. The said Application was treated as Exh. 1. The said Application was filed on the ground that accident had taken place at Ambad, Dist. Jalna, therefore, the MACT, Aurangabad, had no jurisdiction. The said Application was opposed by respondent nos. 1 and 2. After hearing both the sides, MACT, Aurangabad, held that the MACT Aurangabad has no jurisdiction to try and entertain the claim petition for compensation.

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4] The claimant has therefore filed this Appeal from Order challenging the order dated 16.05.2019. It is argued on behalf of the claimant that the claimant is residing at Aurangabad, which has been stated in the claim petition before MACT, Aurangabad. So also, defendant no. 3 has office at Aurangabad and, therefore, the MACT, Aurangabad would have jurisdiction.

5] Advocate for the claimant referred to the provision of Section 166 of the Motor Vehicle Act and argued that hence accordingly the place of residence of the claimant and the place of office of defendant no.3/respondent no. 3 will also have jurisdiction; otherwise the place where the untoward accident has occurred will also have jurisdiction. In the present case, even though the accident had taken place at Ambad, Dist. Jalna (which would have jurisdiction), the MACT, Aurangabad will have jurisdiction since the claimant is residing at Aurangabad and admittedly the defendant no. 3 has an office at Aurangabad.

6] The advocate for the claimant relied upon the following judgments, which read thus: Para no. 11 and 16 read as under :

- [i] **Malati Sardar Versus National Insurance Company Limited and others** reported in (2016) 3 SCC 43.

11. In our view, the matter is fully covered by decisions of this Court in *Mantoo Sarkar* (supra). It will be worthwhile to quote the statutory provision of Section 166(2) of the Act :

“166. Application for compensation.— (1)

(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:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.”

16. 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 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.

[ii] **Taillienkim Lushai and Ors. Versus State of Assam and Ors.** reported in (2022) 2 G.L.R. 733. Paragraph nos. 5 to 8, reads as under :

5. The question of territorial jurisdiction has to be decided in terms of Section 166 (2) of the Act of 1988 and for the sake of convenience, the said sub-section is quoted herein below:-

"Section 166(1).....

(2) Every application under sub-section (1) shall be made, at the opinion 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 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:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant."

6. A perusal of the said sub-section would go to show that an application seeking compensation shall be made at the option of the claimant either to the Claimant 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.
7. Admittedly, neither the claimant resides within the territorial jurisdiction of the Motor Accident Claims Tribunal, Silchar nor the accident occurred within the territorial jurisdiction of the said Tribunal. Parties who have been arrayed as defendants and the addresses showed therein also goes to show that the defendants addresses are not within the jurisdiction of the Motor Accident Claims Tribunal, Silchar. However, it is relevant herein to take note of that at that relevant point of time there was no Motor Accident Claims Tribunal for the district of Dima Hasao when the claim application was filed and as such the claimant approached the nearest Motor Accident Claims Tribunal.
8. The moot question therefore arises that although the Act of 1988, stipulates within which territorial jurisdiction the claim petition can be filed but can the claimant in absence of a Claims Tribunal being set up approached any other Claims Tribunal to file an application seeking compensation.

The Supreme Court had in the case of Malati Sardar vs. National Insurance Company Limited and Ors. reported in (2016) 3 SCC 43 had the occasion to deal with the question of territorial jurisdiction of the Motor Accident Claims Tribunal in so far as Section 166(2) of the Act of 1988. Paragraph 16 of the said judgment is quoted herein below:-

"16..... 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."

In terms with the said judgment, it was held that the Act of 1988 is a benevolent legislation for the victims of accidents of negligent driving and the provisions for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of the accidents. A hyper technical approach in such matters should not be taken.

[iii] **Faim Versus Commissioner, Employees Compensation and others** reported in 2022 SCC OnLine Del 3755. Paragraph nos. 7 and 11 read as under :

7. Before the learned Commissioner, reliance was placed by the petitioner on, inter alia, the judgment of the Supreme Court in *Malati Sardar v National Insurance Co. Ltd*¹. The said decision arose in the context of the Motor Vehicles Act, 1988, specifically Section 166(2)² thereof. The Supreme Court held, in para 16 of the report in *Malati Sardar*¹, as under:

"16. 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 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. Moreover, in view of categorical decision of this Court in *Mantoo Sarkar* (supra), contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC".

11. The ground on which the learned Commissioner has sought to distinguish the decision in *Malati Sardar*¹ does not commend itself to acceptance. The provision for compensation in Section 166(2) of the Motor Vehicles Act and the provisions in Section 22 of the EC Act are similar with respect to the factors on the basis of which territorial jurisdiction would be determined. The situs of the insurance company has not been treated as one of the relevant factors for determining territorial jurisdiction, under either of these legislations. Nonetheless, the Supreme Court, keeping in view the avowed objective, and the beneficial nature, of the EC Act, as a piece of a social welfare legislation, also held the Court/Commissioner within whose territorial jurisdiction the insurance company has a registered and business office to be competent to adjudicate on the claim of the injured workman.

[iv] **New India Assurance Co. Ltd. Versus Shyam Sunder and Ors.**
reported in 2022 SCC OnLine Del 3020. Paragraph nos. 21 to 27, read as under :

21. Relevant excerpt from the decision in *Malati Sardar* (Supra) is reproduced hereunder:-
- "10. The question for consideration thus is whether the Tribunal at Kolkata had the jurisdiction to decide the claim application under Section 166 of the Act when the accident took place outside Kolkata jurisdiction and the claimant also resided outside Kolkata jurisdiction, but the respondent being a juristic person carried on business at Kolkata. Further question is whether in absence of failure of justice, the High Court could set aside the award of the Tribunal on the ground of lack of territorial jurisdiction.
12. In *Mantoo Sarkar*, 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. ...It was held that the jurisdiction of the Tribunal was wider than the civil court. The Tribunal could follow the provisions of Code of Civil Procedure (CPC). Having regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in 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 later.
14. We are thus of the view that in the face of the judgment of this Court in *Mantoo Sarkar*, the High Court was not justified in setting aside the award of the Tribunal in 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.

16. 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."
22. Subsequently, the view taken in *Malati Sardar* (Supra) has been reiterated by the Supreme Court in *Kusum Devi* (Supra), as well as by a Co-ordinate Bench of this Court in *Savitri* (Supra), which cases arose out of accident claims filed under the Motor Vehicles Act, 1988.
23. At this stage, reference may be made to Section 166 of the Motor Vehicles Act, 1988, which 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:

[(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: ..."
24. A plain reading of Section 166 of the Motor Vehicles Act, 1988 would show that the same is akin to Section 21 of the EC Act. Both provisions stipulate places where claim petitions seeking compensation may be instituted under the respective Acts. The provisions are beneficial in nature and intended for the welfare of victims/their legal heirs. As such, even though the decisions referred to hereinabove were rendered in the context of the Motor Vehicles Act, the legal position set out therein applies squarely to the present case of EC Act.
25. Relying on the decision in *Malati Sardar* (Supra), objections to territorial jurisdiction have accordingly been thwarted by Single

Benches of the Karnataka High Court, the Rajasthan High Court and the Allahabad High Court in Smt. Mahabunni (Supra), Smt. Narendra Kaur (Supra) and Seema Devi (Supra) respectively.

26. It is noted that in Seema Devi (Supra), the objections to territorial jurisdiction of the Court at Gorakhpur were rejected as the insurance company had a regional office at the said place. Likewise, in Smt. Narendra Kaur (Supra), a case arising out of claimants' application for compensation under the EC Act, the insurance company had raised an issue with regard to territorial jurisdiction, which was decided by the Commissioner in favour of the claimants. In proceedings before the High Court, the learned Judge concurred with the view taken by the Commissioner and dismissed the appeal.
27. In fact, the issue of jurisdiction under EC Act had also arisen before Division Bench of the Andhra Pradesh High Court in Oriental Insurance Co. Ltd. v. Waheed Khan & Anr., reported as I (1998) ACC 456 (DB). In the captioned case, the appellant-insurance company disputed territorial jurisdiction by urging that the claim petitions ought to have been filed in Maharashtra as the accident took place there and the Commissioner in Hyderabad did not have territorial jurisdiction to decide the claims.

[v] **Nagmat Bai and Another Versus Vishram Prasad and Others** reported in 2021 SCC OnLine Chh 3773. Paragraphs 8 and 9 read thus :

8. The Supreme Court in the matter of Malati Sardar v. National Insurance Company Ltd. and others has held that the provisions of Section 166(2) of the Act of 1988 is a benevolent provision for the victims of accidents of negligent driving. It was further held that 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.
9. Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court in Malati Sardar (supra) and the provisions contained in Section 166(2) of the Act of 1988, it is quite vivid that the Claims Tribunal, Kabirdham had the jurisdiction to try the claim case as the claimants are residing within territorial jurisdiction of the Claims Tribunal, Kabirdham and as such, the Claims Tribunal, Kabirdham committed legal error in holding it had no jurisdiction.

[vi] **Firozkhan Kallukhan Pathan vs. Dimpal Kumar Shah and another** reported in 2019(1) Mh.L.J. 321. Relevant paragraphs no. 8, 36,

40 and 41 are reproduced as under :

- 8) The learned counsel further submitted that no prejudice was likely to be caused to the respondent insurance company, who alone contested the application filed by the applicant since the insurance company was having its office within the jurisdiction of the Latur court. The learned counsel further submitted that the trial court has wrongly recorded a conclusion that there is no office of the respondent company within its territorial jurisdiction. To support his contention, the learned counsel relied upon the judgment of the Hon'ble Apex court in the case of Malati Sardar S. National Insurance Company Ltd and Ors. AIR 2016 SC 247.
- 36) It appears to me that the observations so made and the law laid down by the Hon'ble Apex court would squarely apply to the facts of the present case. It was argued by Shri Gatne that the aforesaid case before the Hon'ble Apex court was under the provisions of the Motor Vehicles Act. I do not find any substance in the objection so raised by Shri Gatne. It does not matter whether the case before the Hon'ble Apex court was under the provisions of the Motor Vehicles Act since the principle laid down as about the territorial jurisdiction can very well be applied even to the facts of the present case. What could be gathered from the law laid down by the Hon'ble Apex court is, the fact that the learned Tribunal at Latur, in absence of any finding of sufferance of any prejudice to the respondent insurance company, should not have dismissed the application on the ground of territorial jurisdiction.
- 40) I reiterate that it is also not the case of the respondent insurance company that the appellant had played any foul play or there was any ulterior motive on the part of the appellant in filing the claim application in the court of Employee's Compensation Commissioner at Latur. It has to be stated that even if the applicant had filed the application in the court of the Employee's Compensation Commissioner at Pune, in whose jurisdiction the accident had occurred, the nature of evidence to be adduced by the appellant would have remained the same. The burden on the appellant to prove his contention raised in the claim petition would also not have changed even if the claim application would have filed by him before the Employee's Compensation Commissioner at Pune instead of Employee's Compensation Commissioner at Latur. Similarly, there was no likelihood of any change in the defence raised by the insurance company in its written statement had the claim application been filed before the Employee's Compensation Commissioner at Pune. No such case is made out by the respondent insurance company through cross-examination of the appellant and his witnesses as well as in the evidence adduced by the said insurance company that any prejudice or hardship was caused to the said insurance company as because the appellant has filed the claim application before the Employee's Compensation Commissioner at Latur.

- 41) In the aforesaid circumstances, when the entire evidence was there on record, the learned Employee's Compensation Commissioner at Latur must have preferred to decide the claim application on merits instead to reject it on the ground of territorial jurisdiction. Without noticing any malafides on the part of the appellant in filing the claim application at Latur the learned Employee's Compensation Commissioner at Latur should not have disbelieved the contention of the appellant that at the relevant time, he was residing at Latur and should not have dismissed the claim application on the ground of territorial jurisdiction.

7] Learned advocate for the respondents supported the impugned order passed by the MACT, Aurangabad, however, they were not able to distinguish the ratio laid down by the Supreme Court in the case of Malti Sardar (supra). The advocate for the respondents argued that enough opportunity was given to Appellant's advocate to produce proof of residence of Appellant before MACT, Aurangabad. However, Appellant did not produce any documentary proof of evidence of Appellant at Aurangabad.

8] Taking into consideration that the appellant claims that he is residing at Aurangabad as stated by him in the Claim Petition and respondent no. 3 (defendant no.3) having its office at Aurangabad which is not disputed, I am therefore of the view that the MACT, Aurangabad, under Section 166 of the Motor Vehicles Act has jurisdiction to try and entertain the claim petition. The submissions made by the advocate for the claimant are well supported by the view taken by the Supreme Court in the judgment of Malti Sardar (supra).

9] In view of the above, the present Appeal from Order is allowed and the order dated 16.05.2019 passed by the MACT, Aurangabad, below Exh. 1 in Motor Accident Claim Petition No. 300/2013 is set aside and the matter is remanded back to the MACT, Aurangabad, to be heard on merits.

10] In view of the fact that this is a Motor Accident Claim Petition and more than three years time has lapsed from the date of passing of the order by the MACT, Aurangabad, the hearing of the Motor Accident Claim Petition be expedited. The MACT, Aurangabad, should make an endeavour to dispose off the Motor Accident Claim Petition No. 300/2013 within a period of six (06) months from today.

11] Appeal from Order is accordingly disposed off.

[RAJESH S. PATIL]
JUDGE