

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.77 OF 2022**

Rahul Angad Kamble] ... Appellant

Vs.

Rekha Somnath Hiwale & Anr.] ... Respondents

**ALONG WITH
FIRST APPEAL NO.79 OF 2022**

Arun Shreemant Hiwale] ... Appellant

Vs.

Rekha Somnath Hiwale & Anr.] ... Respondents

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Mr. Amol Gatne with Mrs. Swati V. Mehta for the appellant.

Ms. Varsha Chavan for the respondents.

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CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 25TH MARCH, 2022.

PRONOUNCED ON : 01ST APRIL, 2022.

ORDER. :-

1. The two first appeals deserve a hearing together since they involve a common question of law arising out of common accident, revolving around similar facts. Both the appeals raise a challenge to the orders passed by the learned Commissioner for Employees Compensation / Judge, Third Labour Court, Mumbai, in the respective applications filed by the two appellants, resulting in rejection of their applications on the grounds of lack of territorial jurisdiction.

Being aggrieved by the rejection of the applications, the appellants preferred review application before the same authority, which came to be rejected on 29/10/2021, by reiterating provision contained in Section 21 of the Employees Compensation Act and, holding that the jurisdiction cannot be exercised, in the given facts and circumstances of the case.

2. Heard Mr. Amol Gatne, the learned counsel for the appellants and Ms. Varsha Chavan, the learned counsel for the respondent-ICICI Lombard General Insurance Company Limited. Since the appeals are argued finally at the stage of admission, issue Rule. Rule made returnable forthwith.

3. On 06/10/2017, one motor vehicle bearing No.MH-04-GC-4505 owned by respondent No.1 met with an accident at Sai Ghat, Mangaon, District Raigad and the two appellants got involved in

the accident; the appellant in First Appeal No.77 of 2022 - Rahul Kamble, being engaged as cleaner in the said vehicle whereas, the appellant in First Appeal No.79 of 2022, Arun Hiwale, who was driving the said vehicle. In the said accident, both the appellants sustained injuries and claimed, that the injuries were sustained by them during the course of their employment, when they were travelling in the vehicle owned by respondent No.1, which is insured with respondent No.2.

4. The appellant - Rahul claimed that he was 18 years old at the time, when he met with the accident and was earning salary of Rs.8,000/- per month whereas, the appellant – Arun claimed that he was aged 21 years and earning a salary of Rs.10,000/- per month.

5. The appellants claimed that the owner of the vehicle and the insurer were in knowledge of the accident and the appellants lodged their claim for compensation under the Employees Compensation Act, 1923 (for short, **“the 1923 Act”**), but there was refusal on their part to pay the compensation. The injuries sustained in the accident was the cause for the appellants to file the distinct applications for compensation before the learned Commissioner for Employees Compensation/Judge, Third Labour Court, Mumbai, and the compensation was claimed on the basis that the accident resulted into a disability, which has resulted into 100% loss of earning capacity and since they were required to

undergo treatment, a compensation to the tune of Rs.10,86,624/- and Rs.10,68,008/- respectively was claimed against respondent No.1 and the insurer i.e. respondent No.2, along with interest coupled with actual medical expenses and the amount of penalty.

6. The applications were entertained by the learned Commissioner and notice came to be issued, pursuant to which, respondent No.1 filed her written statement admitting that the appellants were working on her vehicle, which met with an accident, in which they sustained injuries. The amounts of wages paid to them, which formed the basis of their claims, was also admitted.

Even the Insurance Company, respondent No.2, appeared and filed its written statement and took a stand that it had appointed an investigator to locate the policy of the motor vehicle, but it was not traced. It disputed the employer-employee relationship and also disputed the salary projected, as earnings by the claimants, to claim compensation.

The Insurance Company denied receipt of any notice from the applicants and asserted that the claim is bad for want of notice under Section 10 of the 1923 Act. The claim of the appellants was, denied by the Insurance Company and dismissal of the applications was sought.

7. The learned Commissioner proceeded with the applications and recorded the oral evidence of the applicants before it, and also

exhibited the documents produced by them, which included the documents in relation to their claims. The applicants examined a doctor, in order to prove the disability and the disability certificates were also exhibited during the course of evidence of the medical practitioner.

8. Upon the examination of the said witness, the applicants closed their evidence. Thereafter, respondent No.1 – employer adduced her oral evidence and also brought on record the claim application made to the insurer. Even her evidence was closed by filing a *pursis*.

When it came to the stage of recording of the evidence of the Insurance Company, it filed an affidavit stating that the Insurance Company does not want to lead any oral evidence. The applicants and opponent No.1 filed their written arguments in support of their respective claims stated before the court. The Insurance Company, which filed the written arguments and, at this stage, requested for rejection of the applications, on the ground of jurisdiction and lack of necessary documents being produced in support of the employer-employee relationship and also questioned the existence of a valid permit in respect of the vehicle, on the date of the accident.

9. At this stage, the learned Commissioner was called upon to deal with the issue of jurisdiction; as to whether the learned Commissioner for Employees Compensation/Third Labour Court

at Mumbai can entertain the applications.

10. The facts involved reflected that the vehicle met with an accident and an FIR was registered at Sai Ghat, Mangaon, District Raigad and the applicants were admitted in the hospital at Kalva (West), Thane. The Aadhar cards of the applicants reflected that the applicants are the residents of Thane District. Respondent No.1 was also a resident of Thane as per the policy of insurance. By referring to the aforesaid necessary facts and by relying upon the decision of the Hon'ble Apex Court in the case of **Morgina Begum v. Managing Director, Hanuman Plantation Limited**, reported in **(2007) 11 SCC 616**, the learned Commissioner recorded his findings as under:

*“15. In the light of the ratio laid down by the Hon'ble Supreme Court in the matter of **Morgina Begum (Supra)**, it is clear that, the concerned court gets power to try and entertain the claim application under the provisions of Employees Compensation Act, 1923, only if the accident took place within the jurisdiction of the court or the claimants as well as opp. Parties residing within its jurisdiction. Consequently, in my opinion, this court has no jurisdiction to try and entertain the application filed by the applicant, since neither the accident is occurred nor the applicant or the opp. Party no.1 are residing within the jurisdiction of this court. Hence, issue no.1 is answered in the negative.”*

11. In the wake of the finding, about lack of jurisdiction to try and entertain the applications filed by the applicants, he aborted

the determination of the applications on merits and permitted the applicants to file appropriate proceedings before the Labour Court at Thane or Raigad, which would be a competent court to exercise the jurisdiction in terms of the Act. Resultantly, the applications for compensation filed by both the applicants (present appellants) were rejected on 11/02/2021.

12. The learned counsel Mr. Gatne for the appellants would submit, that the impugned orders amount to traversity of justice and particularly for the appellants, who had suffered injuries in the accident, which took place in the course of their employment and on account of the approach of the learned Commissioner, they are kept away from the compensation, which they are entitled to avail, merely on a technical ground, i.e. lack of jurisdiction. The learned counsel would further submit that the objection is taken by the Insurance Company about the jurisdiction, at the fag end, after the evidence in the applications was recorded and even the written notes of arguments were tendered before the court. He would submit that the objection raised at the fag end, was upheld and the applications filed by the appellants are dismissed without the Insurance Company pleading any prejudice to it, if the proceedings are tried at Mumbai, where the office of the Insurance Company is situated.

The learned counsel has relied upon the decision of the Hon'ble Apex Court in the case of **Mantoo Sarkar v. Oriental Insurance Company Limited & Ors.** reported in **(2009) 2 SCC**

244, in support of his submission that the objection of lack of territorial jurisdiction shall not be entertained unless prejudice is established to the party, who has raised the objection. He would also place reliance on the decision of the Hon'ble Apex Court in the case of **Malati Sarkar v. National Insurance Company Limited & Ors.** reported in **2016 ACJ 542**, wherein reference to the claim filed under Section 166 of the Motor Vehicles Act, 1988 as regards the territorial jurisdiction, the Hon'ble Apex Court has held that there is no bar to the claim application being filed at a place, where the Insurance Company has its business.

13. Per contra, the learned counsel for the respondent-Insurance Company, Ms. Chavan lays her hands on the decision of the Hon'ble Apex Court in the case of **Morgina Begum (supra)**, dealing with the question of territorial jurisdiction, as contemplated under Section 21 of the Workmen Compensation Act, 1923 and she would strongly oppose the submission of Mr. Gatne that the Insurance Company shall step into the shoes of the employer and, therefore, if the jurisdiction lies at a place, where the office of the employer is situated, as a necessary corollary, the place where the office of the Insurance Company is located shall also be relevant and be included in Section 21.

For the aforesaid purpose, she would submit that the liability of the insurer and the insured is co-extensive and co-terminus as that of the employer/insurer, but as regards the Workmen Compensation Act, where the liability of the 'insurer' is to

indemnify the insured ‘employer’ in certain cases, when the insured becomes liable, but not in all cases, unlike the liability under the Motor Vehicles Act. By relying upon the relevant portion of the judgment in the case of **Oriental Insurance Co. Ltd. v. Umesh Nath & Anr.** reported in **2006 ACJ 2348**, she would submit that had the intention of the legislature been to cover ‘the insurer’ with liability to indemnify ‘the employer’, then clause (d) would have, at least, been included in third proviso to Section 30, which provided for a remedy of appeal from the orders of the Commissioner. She would rely upon paragraph No.35 of the said judgment to mark a distinction, about the liability of the insurer under the Workmen Compensation Act and under the Motor Vehicles Act to the following effect:

“35. Thus, it is clear from the above that although the liability of the ‘insurer’ under the WC Act, primarily, flows from the MV Act, yet, on account of the fact that the damages under the two Acts are conceptually different and distinct and the grounds on which the ‘insurer’ can avoid liability under the MV Act are not always valid grounds for avoiding liability under the WC Act, the restrictions contained in Section 149(2) of the MV Act, for the purpose of defence of any claim under the MV Act, is not always applicable to the claims under the WC Act.”

14. After referring to the factual gamut as above and particularly by taking note of the stage at which the objection is raised about the jurisdiction, I must turn to the relevant provisions in the Act of 1923, which provides for the venue of proceedings under the Act. Section 21 is the relevant provision, which reads thus:

“21. Venue of proceedings and transfer. - [(1)

Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which-

(a) the accident took place which resulted in the injury; or

(b) the employee or in case of his death, the dependant claiming the compensation ordinarily resides; or

(c) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

(2) If a Commissioner is satisfied [that any matter arising out of any proceedings pending before him] can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

(3) The Commissioner to whom any matter is so

transferred shall, subject to rules made under this Act, inquire thereinto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

[(5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.]”

15. In the wake of Section 21, which determine the venue, an application for claiming compensation can be filed at a place, where the accident took place or at a place where the employee or in case of his death, the dependents claiming compensation ordinarily resides or where the employer has its registered office.

Applying the statutory provision to the present case, it is apparent that the accident took place in District Raigad and the employees/appellants are the residents of District Thane and the employer i.e. respondent No.1 also has her office in Thane whereas, the appellants approached the learned Commissioner at Mumbai, where the office of the Insurance Company is located.

16. The core issue that arises for consideration in the appeals before me is, if the learned Commissioner/Judge, Third Labour Court, Mumbai, has once entertained the applications, whether at

the fag end, can he reject the same on the ground of lack of territorial jurisdiction?

In case of **Morgina Begum (supra)**, the Hon'ble Apex Court laid emphasis on the amended Section 21(1)(b) of the Act, which permitted the claimant to apply before the Commissioner having jurisdiction over the area, where the claimant ordinarily resides, and has held that, it is not always necessary to prefer a claim petition at a place, where the accident has taken place.

Their Lordships of the Hon'ble Apex Court clearly noticed the legislative intention in amending the provision, being to ensure facility of the workmen and to advance the cause of their welfare. The proviso appended to Section 21(1) was also taken note of, which permits the learned Commissioner, other than the Commissioner having jurisdiction, over the area in which the accident took place to entertain the claim petition, by giving notice to the Commissioner, having jurisdiction over the area and the State Government concerned. Recording that the statements of objects and reasons (“**SOR**”) for amending the Act clearly spelt out, that the amendment has been brought for the benefit of the claimants, either the workmen or the dependents, the Hon'be Apex Court held that the provision in the beneficial statute shall be given a purposive interpretation and not the literal construction. The spirit of the amendment is encapsulated by the Hon'ble Apex Court in the following words:

“7. The idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claim not necessarily at the place where the accident took place but also at the place where they ordinarily reside. This amendment was introduced in the Act in 1995. This was done with a very laudable object, otherwise it could cause hardship to the claimant to claim compensation under the Act. It is not possible for poor workmen or their dependents who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of the accident for filing a claim petition. It may be very expensive for the claimants to pursue in such a claim petition because of the financial and other hardship. It would entail the poor claimant traveling from one place to another for getting compensation. Labour statutes are for the welfare of the workmen.”

17. Ideally, it was open for the appellants to institute their applications either in Raigad or in Thane District, but to their misfortune they have instituted the same before the Court in Mumbai and, though I am not convinced with the argument of Mr. Gatne that the insurer steps into the shoes of the employer and, therefore, if Section 21(1) determining the jurisdiction at a place, where the employer has its registered office and, therefore, it should be read to cover a situs, where the office of the Insurance Company is located. However, on a different ground, I agree with

the submission of Mr. Gatne, that the learned Commissioner at Mumbai has committed a grave error in rejecting the application, on account of lack of territorial jurisdiction.

18. It is a settled position of law that lack of territorial jurisdiction is not inherent lack of jurisdiction and only when the Court lacks jurisdiction, pertaining to “subject matter” that the suit is nullity and void and as such the suit is *coram non judice*. If a court lacks jurisdiction of pecuniary or territorial limits, then such suit is not void at first instance and the court has to satisfy, that such decision does not obviate fair judicial mechanism. However, such an objection must be taken at the earliest point of time and in the former case, a trial has to be commenced de-novo, in the latter, it could have avoided that but not necessarily. A defect in pecuniary or territorial jurisdiction does not make decree a nullity and if a court adjudicate on the suit lacking pecuniary or territorial jurisdiction, such decision is not a nullity. However, as per Section 21 of the CPC, if such objection is not raised at the earliest possible stage, failure of justice to any party, lack of jurisdiction will not turn a decree as nullity.

19. The word "jurisdiction" is derived from Latin words "juris" and "dico", meaning "I speak by the law" and does not relate to rights of parties as between each other but relates to the power of the court.

In case of **Mantoo Sarkar (supra)**, the Hon'ble Apex Court while dealing with the issue of territorial jurisdiction in respect of a claim made under Section 166 (2) of the Motor Vehicles Act, where the cause of action could lie in more than one State, has discerned the provision of Section 166(2) of the Motor Vehicles Act, which reads thus:

“166. Application for compensation.—

(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.”

The Hon'ble Apex Court made certain pertinent observations, which warrants a reproduction:

“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]) wherein *inter alia* the decision of this Court in *Kiran Singh v. Chaman Paswan*, [AIR 1954 SC 340] was followed, stating:

"26. The Court also relied upon the decision in *Kiran Singh v. Chaman Pawan* [AIR 1954 SC 340] and quoted (in *Harshad Chiman Lal case* [(2005) 7 SCC 791], SCC pp. 804-805, para 33} therefrom: {*Kiran Singh case* (*supra*), AIR p.342, para6 `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 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 absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal."

20. In the wake of the aforesaid observations, the principle which follows in determining the issue of lack of jurisdiction and lack of inherent jurisdiction is, that if there is no prejudice or failure of justice, lack of territorial jurisdiction would not amount to *coram non judice*. The objection as to the territorial jurisdiction are generally technical in nature and unless prejudice is shown, the same are not to be entertained. The Hon'ble Apex Court in **Church of South India Trust Association v. Telugu Church Council reported in 1996 2 SCC 520** has held as under:

“The concept of jurisdiction of a court comprehends: (I) pecuniary jurisdiction, (ii) territorial jurisdiction, and (iii) jurisdiction of the subject-matter. Having regard to the provisions of Section 21 of the Code, though the defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of subject-matter of the action, strikes at the very authority of the court to pass any decree and such a defect cannot be cured even by consent of parties, the policy of the Legislature has been to treat objections to territorial jurisdiction as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits.”

21. As far as the present two appeals are concerned, the contesting parties i.e. the owner of the vehicle and the Insurance Company never raised any objection to the jurisdiction of the learned Commissioner at the time of filing of written statements and adducing evidence and, hence, they chose to acquiesce to it's jurisdiction and participated in the proceedings filed by the appellants, claiming compensation on account of the injuries sustained in an accident, which was caused in the course of their employment.

22. The learned Commissioner, who has exercised the power and who claimed that he has no jurisdiction to decide the applications, is governed by Section 23 of the Act of 1923, which empowers him with the powers of the civil court under the Code of Civil Procedure and he is deemed to be a civil court for all purposes of Section 195 and Chapter XXVI of the Cr.P.C.

23. In the wake of the aforesaid provision and, particularly,

when the learned Commissioner is bound by the rules set out in the CPC, where Section 21 of the Code pertains to objections to jurisdiction, he is bound to adhere to the said provision, which reads thus:

“21. Objections to jurisdiction. - (1) *No objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues or settled at or before such settlement, and unless there has been a consequent failure of justice.*

(2) *No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.*

(3) *No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]*

24. Since the objection about the jurisdiction of the learned Commissioner at Mumbai was taken at the fag end, and unless it is reflected that on account of lack of territorial jurisdiction, the parties would suffer failure of justice, the impugned order suffers from gross illegality. The respondents have failed to demonstrate any prejudice, on the proceedings being tried by the learned

Commissioner at Mumbai. Further, Section 21 of the 1923 Act, which determines the venue of the proceedings permits transfer of proceedings to a Commissioner of another jurisdiction and even the State Government is competent to transfer any matter from any Commissioner appointed by it, making it clear that the territorial jurisdiction is not sacrosanct for deciding the applications under the 1923 Act.

25. Since in the present appeals, involving two applications, but for the pronouncing the judgment, the learned Commissioner has concluded the proceedings and at this stage, he declared to lack jurisdiction and granted liberty to the appellants to approach the competent court.

After a full fledged trial, at its culmination, the appellants are turned away. This surely is a gross injustice to them and though the Workmen Compensation Act intended to offer some solace to them by way of some compensation being paid, their misery can just be gauged, by shutting the doors on them and asking to enter through some other door. Let justice be done to them, which has eluded them long. The following order would, therefore, serve the cause of justice.

In order to be in conformity with the provisions of Section 21 of the 1923 Act, the learned Commissioner, Mumbai by giving notice to the Commissioner, Raigad or Thane shall pronounce his decision on the applications, within a period of eight weeks from today.

26. Since the Employees Compensation Act, 1923 being a special enactment to provide for payment of certain classes of employers to their employees towards compensation for injury by an accident, and since it is a welfare piece of legislation, the applicants, who are the victims of accident shall not be deprived of their rightful claim merely on the ground of technicalities, like lack of jurisdiction and particularly, when the lack of territorial jurisdiction does not amount to inherent lack of jurisdiction and will not render the decision void. Since no prejudice has been caused to any of the parties, on the applications being entertained by the learned Commissioner at Mumbai, the proceedings before the learned Commissioner shall be continued and concluded within the specified time.

27. The appeals are disposed off in the aforesaid terms.

[SMT. BHARATI DANGRE, J.]