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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 42/2021

FAIM @ FAHIM

..... Petitioner

Through: Mr. R. K. Nain, Adv.

versus

COMMISSIONER EMPLOYEES

COMPENSATION & ORS.

..... Respondents

Through: Mr. Satyakam, ASC with Mr.
Garvit Beywait, Adv. for Respondent 1

Mr. Ravi Bhushan, Adv. for Respondent 2

Mr. Rachit Biggha, Adv. for ICICI Home
Finance

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

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11.11.2022

1. This petition under Article 227 of the Constitution of India assails an order dated 8th December 2020, passed by the learned Commissioner, Employee's Compensation, District North-West, Ashok Vihar, Delhi, on a claim preferred by the petitioner, as the claimant, under Section 22 of the Employee's Compensation Act, 1923 ("the EC Act").

2. The petitioner, a resident of Village Garh, District Haridwar, Uttarakhand, was employed with Respondent 2 Shakil, also a resident of Village Badheri Rajputana, District Haridwar, Uttarakhand, as a cleaner on his vehicle No. UK-08CA-9577, which was duly insured with the Universal Sompo General Insurance Company Ltd. (Respondent 3 herein and referred to hereinafter as "USGIC"). While

on the road, in connection with a commercial operation, the vehicle met with an accident on 16th October 2019 in District Haridwar, during the course of which the petitioner sustained injuries, for which he had to be hospitalized. The injuries resulted, according to the petitioner, in his suffering 100% disability, which had rendered him impossible to continue working as a cleaner.

3. In these circumstances, the petitioner filed a claim under Section 22 of the EC Act against Shakil and USGIC, for compensation.

4. Inasmuch as the learned Commissioner, by the impugned order dated 8th December 2020, has rejected the claim of the petitioner for want of territorial jurisdiction, it is not necessary for this Court to enter into the specifics of the claim.

5. In rejecting the claim, the impugned order has adopted the following line of reasoning:

(i) The petitioner was a permanent resident of Village Garh, District Haridwar, Uttarakhand.

(ii) The petitioner was not “ordinarily resident” within the territorial jurisdiction of the learned Commissioner.

(iii) The accident had taken place at Haridwar, outside the territorial jurisdiction of the learned Commissioner.

(iv) Respondent 2 was also a resident of Village Badheri

Rajputana, District Haridwar, Uttarakhand, and had no registered/business office or residence within the territorial jurisdiction of the learned Commissioner.

Relying on the provisions of Section 21 of the EC Act and Rule 3 of the Workmen's Compensation (Venue of Proceedings) Rules, 1996, the learned Commissioner held that the claim was bad for want of territorial jurisdiction.

6. 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”

¹ 2016 (3) SCC 43

² 166. 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.

7. The impugned order of the learned Commissioner seeks to distinguish the decision in *Malati Sardar*¹ on the ground that *Malati Sardar*¹ arose in the context of Section 166 of the Motor Vehicles Act, 1988. The learned Commissioner has observed that, unlike the claim under the Motor Vehicles Act, in which the insurance company was the main defendant/contesting party, the employer was the main defendant/contesting party in claims under the EC Act. The insurance company, it is noted, was not the employer of the victim, unlike a case which arose under the Motor Vehicles Act. Observing that the petitioner was not ordinarily resident of any place within the territorial jurisdiction of the learned Commissioner, the learned Commissioner has, in the impugned order, held the claim to be bad for want of territorial jurisdiction.

8. The reasoning of the learned Commissioner cannot be sustained, in view of the decision of a coordinate Bench of this Court in *New India Assurance Co Ltd v. Shyam Sunder*³, which arose in the context of a claim for compensation under the EC Act. After considering, *inter alia*, various decisions including *Mantoo Sarkar v. Oriental Insurance Company Ltd*⁴ and other decisions, the coordinate Bench has, in para 29 of the report, held thus:

“29. In the present case, though the accident had occurred in Lucknow, Uttar Pradesh, the claim petition came to be filed in Delhi. The appellant insurance company has a regional office in Delhi. Barring a bald averment to the effect that the delay in filing of the claim petition has caused prejudice to the appellant, nothing has been brought on record by the appellant to show as to how it has been prejudiced by virtue of the concerned Commissioner entertaining the claim petition. In view of the judicial dicta noted above, I find the contention raised by the appellant with regard to the territorial jurisdiction to be meritless and the same is rejected.”

9. I am entirely in agreement with the decision of the coordinate Bench of this Court.

10. 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.

11. There is no dispute about the fact that the USGIC has a business office in Delhi. As such, the complaint preferred by the petitioner was within the territorial jurisdiction of the learned Commissioner. The impugned order passed by the learned Commissioner, which holds to the contrary cannot, therefore, sustain. It is accordingly set aside.

12. Resultantly, the present petition is allowed with no order as to costs. Needless to say, the learned Commissioner would proceed to decide on the petitioner's claim on merits after following the principles of natural justice and fair play and in accordance with the

procedure prescribed in that regard by the EC Act.

13. Both parties will appear before the learned Commissioner on 1st December 2022.

C.HARI SHANKAR, J

NOVEMBER 11, 2022

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