



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

+ **FAO 222/2021 & CM APPL. No.32891/2021**

Reserved on : 30.08.2022

Date of Decision: 20.09.2022

IN THE MATTER OF:

M/S NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Dinesh Sharma, Advocate.

Versus

SHYAM SUNDER AND ORS. Respondents
Through: Mr. R.K. Nain and Mr. Daksh
Nain, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. In the present proceedings instituted under Section 30(1)(a) of the Workmen's Compensation Act, 1923 (now Employees' Compensation Act, 1923 and hereinafter referred to as '*the EC Act*'), the appellant has assailed order dated 18.06.2021 passed by the Commissioner, Employee's Compensation in Case No.13/WC/DLC/NDD/2017/513, whereby the application filed on behalf of respondent No.1/claimant seeking injury compensation under Section 22 of the EC Act was allowed and an amount of Rs.4,24,994/- was directed to be deposited by the appellant (respondent No.1 therein) alongwith interest @ 12% p.a. w.e.f. 26.01.2007 till its realization and respondent No.2 was directed to deposit penalty amount to the tune of Rs.2,12,497/- in favour of the



Commissioner, Employee's Compensation.

2. Brief facts, as emerge from the record, are that the claimant was employed with respondent No.2 as a driver for about four years and was posted for the last one year on the vehicle bearing *No.UP-78-AT-8910* (Truck) owned by respondent No.2. On 27.01.2007, while driving the aforesaid truck, the claimant met with an accident at *Alam Nagar, Nahar Chowraha, Lucknow* by an over-speeding vehicle bearing *UP-32-BN-9444* which was coming from Kanpur side. The offending vehicle hit the claimant's truck on the driver's side twice. On account of the aforesaid accident, the claimant was grievously injured inasmuch as multiple injuries were received on both his legs. He was taken to *Trauma Centre, Lucknow* where he remained admitted for three days. Thereafter, the claimant was treated and underwent multiple surgeries at various hospitals where he remained hospitalised for more than a month. He had borne expenses not only for the surgeries but also incurred expenses for hospitalisation, which were paid by him by selling his 1.5 bighas agricultural land. It was averred that the claimant had suffered 100% disability and become incapable to drive a vehicle. It was further claimed that the aforesaid truck owned by respondent No.2 was insured with the appellant-insurance company and respondent No.2 had paid extra premium to the appellant under the EC Act.

3. Respondent No.2/employer had filed a written statement, wherein he admitted that the aforesaid truck was owned by him and it met with an accident while the claimant was driving the same on 27.01.2007. It was further admitted that in the accident, the claimant sustained injuries and the truck was also damaged. It was stated that respondent No.2 had raised a vehicle damage claim and the appellant-insurance company



carried out an investigation, whereafter, the vehicle damage claim was allowed and paid to respondent No.2.

4. The appellant-insurance company had also filed its written statement wherein it was admitted that vehicle bearing *No.UP-78-AT-8910* was insured with it and the relevant policy was valid from 01.06.2008 till 31.05.2009, however, the claim was denied. Further, objections to the claimant's claim relating to limitation and jurisdiction were also raised.

5. Learned counsel for the appellant-insurance company while assailing the impugned order raised three-fold objections. Firstly, it was contended that the claimant is guilty of filing a fraudulent claim. In this regard, learned counsel invited attention of this Court to a report dated 07.02.2020 submitted by the investigating officer appointed by the insurance company, wherein it is stated that registration number of the offending vehicle belongs to a motorcycle and not a truck.

Secondly, learned counsel disputed the jurisdiction of the Commissioner in dealing with the claim petition. It was contended that in the claim petition, the claimant has claimed himself and respondent No.2 to be residents of District Kanpur, U.P. and though the appellant had its registered head office in Mumbai, the claim petition was filed in Delhi. In support of his contention, learned counsel placed reliance on the decision of a Co-ordinate Bench of this Court in Reliance General Insurance Co. Ltd. v. Ashok Kumar & Anr. reported as **2017 SCC OnLine Del 11311**.

Thirdly, learned counsel contended that the claim petition was barred by limitation, as the same was not filed within a period of two years from the date of accident as required under Section 10 of the EC
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Act. It was submitted that the claim petition, in fact, was filed in 2017 i.e. after a delay of almost 10 years.

6. Learned counsel for claimant/respondent No.1, on the other hand, disputed the submissions made on behalf of the appellant. With respect to appellant's first contention, it was contended that the vehicle driven by the claimant was duly insured with the appellant- insurance company and the factum of claimant having met with an accident on 27.01.2007 was never disputed before the Commissioner. In support, he referred to the medical bills of hospitalisation and surgeries, which were placed on record before the Commissioner.

Learned counsel, while disputing the second contention raised on behalf of the appellant, argued in favour of Courts in Delhi having territorial jurisdiction to entertain and decide the claim petition and placed reliance on the following decisions:-

- (i) Malati Sardar v. National Insurance Company Limited and Others reported as **(2016) 3 SCC 43**;
- (ii) Kusum Devi and Anr. v. National Insurance Company Limited and Anr., **Special Leave to Appeal (C) No(s). 29326/2015**;
- (iii) Savitri and Others v. Keshav Singh and Others reported as **2021 SCC OnLine Del 1044**;
- (iv) National Insurance Co. Ltd. v. Smt. Seema Devi and ors., **FAO 459/2020** (Allahabad High Court);
- (v) United India Insurance Company Ltd. v. Smt. Narendra Kaur & Ors., **S.B. Civil Misc. Appeal No.993/2008** (Rajasthan High Court);
- (vi) The Divisional Manager, Oriental Insurance Co. Ltd. Bellary v. Smt. Mahabunni and Ors., **MFA No.20690/2011** (Karnataka



High Court); and
(vii) Naresh Kumar v. Jawahar Singh and Others, **LPA No.80/2009**
(Delhi High Court).

In response to the issue of limitation, learned counsel for the claimant submitted that the aspect of delay was considered by the Commissioner and vide order dated 02.09.2019, the delay in filing the claim petition was condoned, which order was not challenged by the appellant-insurance company and the same attained finality.

7. I have heard learned counsels for the parties and perused the material placed on record.

8. The appellant's first contention is that the claimant had filed a fraudulent claim. The contention is based entirely on the report of the investigating officer who was appointed by the appellant-insurance company itself. On the basis of the said report, the appellant's case is that the offending vehicle has been identified as a motorcycle, as opposed to the claimant's claim that the same was a truck.

9. In this regard, a perusal of the Commissioner's Record would show that on the date of the accident, a police complaint was submitted by the claimant, which was duly received in Police Station Krishna Nagar Kotwali and exhibited before the Commissioner as Ex.AW1/1. In the said complaint, the registration number of the offending vehicle was given as *UP-32-BN-9444*. The said document was not disputed in the proceedings before the Commissioner.

It is thus apparent that at the time of filing the claim petition, the claimant inadvertently mentioned registration number of the offending vehicle as *UP-32-AT-9444* instead of the correct registration number *UP-32-BN-9444*.



10. Further, it is noteworthy that after filing of the claim petition, the appellant appointed the investigating officer in the year 2017 to investigate and report on the averments made by the claimant relating to the accident, who submitted his report on 07.02.2020, i.e., after a gap of almost 13 years from the date of the accident. During the investigation, the investigating officer apparently found that the registration number of the offending vehicle belongs to a motorcycle and not a truck, but the report to that effect is based on the registration number incorrectly provided in the claim petition as UP-32-AT-9444, and not the correct registration number i.e., UP-32-BN-9444.

11. In this view of the matter and given the lack of any other contrary material placed on record, I find no merit in the first contention raised on behalf of the appellant.

12. The second and third contentions raised on behalf of the appellant in the present proceedings relate to the issues of jurisdiction and limitation. Before proceeding further, I deem it apposite to refer to Section 21 of the EC Act, which reads as under:-

“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:

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(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: ...”

13. There is no gainsaying that labour statutes such as the EC Act constitute ‘*beneficial legislation*’ for the welfare of workmen and should be liberally constituted in their favour. In this regard, the Supreme Court in Jaya Biswal and Others v. Branch Manager, IFFCO Tokio General Insurance Company Limited and Another reported as **(2016) 11 SCC 201** has opined thus:-

“20. The EC Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act which reads as under:

“An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.”

This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under:

“... The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.



An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects to such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workman may be expected.”

(emphasis supplied)

21. Thus, the EC Act is a social welfare legislation meant to benefit the workers and their dependents in case of death of workman due to accident caused during and in the course of employment should be construed as such.”

14. Insofar as territorial jurisdiction in accident claims is concerned, reference is profitably made to the decision of the Supreme Court in Malati Sardar (Supra). The said case related to a motor accident claim where the Tribunal passed the award in favour of the claimant. The insurance company challenged the territorial jurisdiction of the Tribunal before the Calcutta High Court. It claimed that since the accident had taken place at Hoogly and the claimant resided at Hoogly, jurisdiction of Tribunal at Kolkata was not made out. The High Court allowing the appeal held that the factum of the insurance company having an office address at Kolkata was not good enough to attract jurisdiction. The decision was challenged in appeal before the Supreme Court.

The Supreme Court, while relying on its earlier decision in Mantoo Sarkar v. Oriental Insurance Company Limited and Others reported as **(2009) 2 SCC 244**, observed that the provisions of territorial jurisdiction
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have to be interpreted consistently with the object of facilitating remedy for the victim of an accident. In such matters, a hyper-technical approach should not be taken and there exists no bar to a claim petition filed at a place where the insurance company has its place of business. The decision of the High Court was set aside and award of the Tribunal restored, while also noting that no prejudice had been caused to any party.

15. 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.

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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.

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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.

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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.”

16. 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.

17. 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:*

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[(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: ...”

18. 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.

19. 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.

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.



20. 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.

After considering rival submissions of the parties and observing that the EC Act is a socio-beneficiary legislation designed to reach out monetary compensation as a part of redeeming distress of the workmen or their dependents, the Court had held that entertainment of a claim application by a Commissioner in whose jurisdiction the accident did not occur may at best constitute an irregularity or illegality, but it does not take away the intrinsic competence to deal with the matter.

21. 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.

22. Further, though an issue regarding limitation has been raised, it is apparent from the material placed on record that the delay in filing of the



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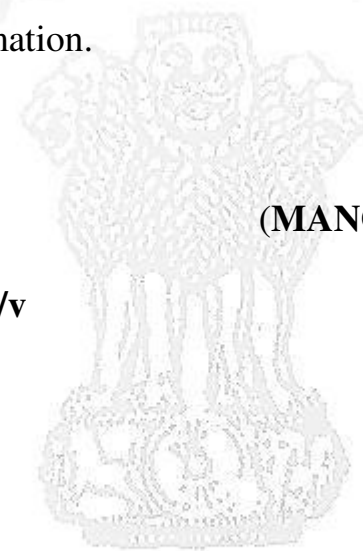
claim petition was condoned by the concerned Commissioner vide a detailed order, which was not challenged. The appellant has not assailed the order condoning delay in filing of the claim petition in the present proceedings either. In this backdrop, I find no ground to interfere with the same.

23. Accordingly, the present appeal is dismissed, alongwith the pending application. Let the concerned Commissioner release the amount deposited by the appellant to the claimant/respondent No.1 forthwith.

24. A copy of this judgment be forwarded to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 20, 2022/v



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