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C.M.A. No. 1075 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1075 of 2023

1.G. Kalpana
2.R. Gunasekaran
3.G. Nivetha

... Appellants

Vs.

1.R. Maruthamani

2.The National Insurance Company Limited,
Branch Office at
Sannathi Street Poonamallee,
Chennai – 600 056.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2023 made in M.A.C.T.O.P. No.564 of 2019 on the file of Motor Accident Claims Tribunal, Tiruvallur at Poonamallee (III Additional District & Sessions Court).



C.M.A. No. 1075 of 2023

For Appellants : Ms. A. Subadra

For Respondents : Mr. D. Bhaskaran, for R2
R1 – Ex parte

J U D G M E N T

The instant appeal has been filed by the claimants challenging the order of the Tribunal dismissing their claim petition.

2. The appellants had filed a claim petition before the Motor Accident Claims Tribunal, Tiruvallur at Poonamallee stating that the deceased, while riding his motorcycle on 14.06.2019 at about 07.45 am, a lorry which belonged to the first respondent and insured with the second respondent herein came in a rash and negligent manner and hit the vehicle of the deceased, as a result of which, the deceased sustained fatal injuries.

3. The first respondent / owner of the offending vehicle remained ex parte before the Tribunal.



C.M.A. No. 1075 of 2023

4. The second respondent filed a counter stating that the petition filed by the appellants amounted to “Forum shopping”; that the accident took place at Karapakkam at Chengalpattu District; that the appellants are residing in Dindigul; that the first respondent is residing at Navalure, Chengalpattu District and the policy was insured with the second respondent in its Valacherry Branch and therefore, prayed that the claim petition may be dismissed.

5. The appellants examined PW.1 to PW.3 and marked Ex.P1 to Ex.P19. The second respondent examined RW.1 and marked Ex.R1 to R3.

6. The Tribunal found that the claim petition is liable to be dismissed since the Tribunal did not have territorial jurisdiction to decide the claim petition. The Tribunal had also observed that the no part of cause of action has arisen within the jurisdiction of the Tribunal and neither the appellants nor the respondents were within the jurisdiction of the Tribunal.



C.M.A. No. 1075 of 2023

WEB COPY

7. The learned counsel for the appellants submitted that the Tribunal after having examined the witnesses adduced on the side of the appellants ought not to have adopted a hyper technical approach by holding that it lacked territorial jurisdiction and dismissed the claim petition. The learned counsel relied upon the judgment of this Court in ***Dhanalakshmi and Others vs. Sivanandham and Others*** reported in ***2018 (2) TN MAC 108***.

8. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants made an endorsement to dispense with notice to R1. Hence, notice to R1 is dispensed with.

9. Mr.D.Baskaran, the learned counsel for the second respondent per contra submitted that Section 166(2) of the Motor Vehicles Act makes it clear that the application under the Motor Vehicles Act for compensation 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



C.M.A. No. 1075 of 2023

carries on business or within the local limits of whose jurisdiction the defendant resides. In the instant case, the accident did not take place within the jurisdiction of the Tribunal. Neither the appellants nor the respondents reside or carry on business within the jurisdiction of the Tribunal. In such circumstances, the Tribunal was right in dismissing the claim petition and prayed for dismissal of the appeal.

10. The only question in the instant appeal is –

Whether the Tribunal was right in dismissing the claim petition on the ground that it lacked territorial jurisdiction to decide the claim petition?

11. On perusal of the records, it is seen that the accident took place at a place called Karappakkam which is admittedly not within the jurisdiction of the Tribunal. The appellants are not residing within the jurisdiction of the Tribunal. The first respondent, the owner of the offending vehicle also does not reside within the jurisdiction of the Tribunal. However, the branch office of the second respondent / Insurance Company is said to be within the



C.M.A. No. 1075 of 2023

jurisdiction of the Tribunal. It is also seen that the insurance policy of the first respondent was taken at the Velachery Branch of the second respondent.

This Court is of the view that the language of Section 166(2) is very clear and is intended to benefit the claimants. The option is given to the claimants to choose the claims Tribunal provided the accident took place within the jurisdiction or the claimants reside within the jurisdiction of the Tribunal or the respondents reside or carry on business within the jurisdiction of the Tribunal. However, such liberty to file the claim petition in any of the places, cannot be extended to a place where the Insurance Company's branch office is situated and the insurance policy was not taken from the said branch. There cannot be any dispute with the proposition that the Tribunal cannot adopt hyper technical approach as laid down in the judgment relied upon by the learned counsel for the appellants in *Dhanalakshmi's* case (supra). In that case, this Court held that instead of remitting the matter to the Tribunal having jurisdiction, the Court can award compensation based on the evidence adduced by the parties.



C.M.A. No. 1075 of 2023

WEB COPY

12. This Court is of the view that it cannot be said that the Tribunal had erroneously dismissed the claim petition for want of territorial jurisdiction. The second respondent's branch office which has nothing to do with the policy taken by the owner of the offending vehicle was shown as respondent for the purpose of bringing the claim petition within the territorial jurisdiction of the Tribunal. This cannot be accepted and it is contrary to the purpose and object of Section 166(2) of the Motor Vehicles Act.

13. However, this Court is of the view that the appellants are certainly entitled to compensation which has to be determined by one of the Tribunals which has jurisdiction as per Section 166(2) of Motor Vehicles Act. Since the insurance policy of the first respondent was taken in the Velachery Branch Office of the second respondent, this Court is of the view that the records of the M.C.O.P.No.564 of 2019 has to be transmitted to the learned Chief Judge, Small Causes, City Civil Court, Chennai for the purpose of determining just and reasonable compensation. It is seen that the parties have already adduced evidence before the Tribunal. It is open to the parties to adduce further



C.M.A. No. 1075 of 2023

evidence, if necessary. The records may be transmitted forthwith. The learned Chief Judge, Small Causes, City Civil Court, Chennai shall determine the compensation and pass an award within three months from the date of receipt of the records.

14. With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs.

21.09.2023

Index: Yes/No

Neutral Citation: Yes / No

AT

To

- 1.The Motor Accident Claims Tribunal,
Tiruvallur at Poonamallee (III Additional District & Sessions Court).
- 2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A. No. 1075 of 2023

SUNDER MOHAN, J.

AT

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21.09.2023