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C.R.P.No.38 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM:

THE HON'BLE MR.JUSTICE S.M. SUBRAMANIAM

C.R.P.No.38 of 2023

1.S.Mariammal

2.Kokila

3.S.Mohanraj

4.S.Soundarrajan

5.M.Solaiyyappan

6.S.Chellammal

... Petitioners

Versus

1.K.Meignanamoorthy

2.R.Indumathi

3.IFFCO TOKIO Insurance Company Ltd.,
JH Towers, 9/4, Advaita Ashram Road,
Salem – 636 004.

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the Docket Order passed by the Special District Judge for MCOP cases, Salem in Unnumbered MCOP on 09.11.2022 and to direct the lower court to take the case on file and proceed with the case according to law.

For Petitioners : Mr.C.Rajasekaran

For Respondents : No appearance



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ORDER

WEB COPY The Civil Revision Petition has been filed to set aside the docket order passed by the Motor Accidents Claims Tribunal, Salem in unnumbered M.C.O.P on 09.11.2022 and to direct the Tribunal to take the case on file and proceed with the case.

2.The revision petitioners have filed M.C.O.P. before the Court at Salem. The petition was presented under Section 166 of the Motor Vehicles Act seeking compensation on account of the death of one Mr.Selvarasu. The accident occurred on 10.05.2022 at 06.00 a.m. at Sankagiri to Salem National Highways. Magaudanchavadi Police Station registered the case in Crime No.145 of 2022.

3.The learned counsel for the revision petitioners mainly contended that the third respondent-Iffco Tokio Insurance Company Ltd. is the insurer and having office at Salem and therefore, the petitioners have chosen to file the claim before the Motor Accident Claims Tribunal at Salem. When the office of the Insurance Company is at Salem, there is no impediment for the revision petitioners to file the claim petition before the Court at Salem and thus, the returning of the case papers by the Salem Court is not in consonance with the



principles settled by the Hon'ble Supreme Court of India. The docket order passed by the Motor Accident Claims Tribunal, Salem reveals that the petitioners have not established the case, since the accident has occurred within the territorial jurisdiction of Sub Court, Sankagiri and the parties are also residing at Sankagiri.

4. In this regard, it is relevant to rely on the judgment of the Hon'ble Supreme Court in the case of ***Malati Sardar Vs. National Insurance Company Ltd. & ors.***, in S.L.P.(Civil).No.27243 of 2015. The Apex Court made the following observations :

11. In Mantoo Sarkar (supra), the insurance company had a branch at Nainital. 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. However, at the time of filing of the claim petition he was working as a labourer in Nainital District. The High Court took the view that Nainital Tribunal had no jurisdiction and reversed the view taken by the Tribunal to the effect that since the office of the insurance company was at Nainital, the Tribunal had the jurisdiction. This Court reversed the view of the High Court. 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. Reference was also made to earlier decision of this Court in Kiran Singh vs. Chaman Paswan to the following effect :



“With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same AIR 1954 SC 340 principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 CPC and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act.”

.....

14. 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 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.

5. In the present case, the third respondent-Insurance Company is having its office at Salem and therefore, it would not cause any prejudice to the



C.R.P.No.38 of 2023

Insurance Company. The Motor Accident Claim petition may not be returned

merely of hyper technical grounds and a pragmatic approach becomes necessary for the interest of justice. In the present case, the third respondent's office is at Salem and thus, there is no impediment for entertaining the claim petition filed by the revision petitioners. Accordingly, the docket order dated 09.11.2022 passed in unnumbered M.C.O.P.No. /2022 is set aside and the Motor Accident Claims Tribunal at Salem is directed to take the case on file and dispose of the same as expeditiously as possible.

6.Accordingly, the Civil Revision Petition is allowed. No costs.

11.01.2023

Index: Yes

Internet: Yes

Neutral Citation Case: Yes / No

sp/skr

To

1.The Special District Judge for MCOP cases,
Salem.

2.The Section Officer,
VR Section,
Madras High Court.



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S.M. SUBRAMANIAM, J.,

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