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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 01.02.2023

+ MAC.APP. 41/2023 & CM APPLs 3035/2023 (Exemption) & 3034/2023 (stay)

MS NATIONAL INSURANCE COMPANY LTD Appellant
Through: Ms. Hetu Arora Sethi, Adv.

versus

GUNJA RAI AND ORS Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act'), preferred by the insurer, seeks to assail the award dated 10.11.2022 passed by the learned Motor Accidents Claim Tribunal in MACT No. 299/2021. Vide the impugned award the learned Tribunal, while holding that the death of Shri Chandramohan Raiwas was the result of an accident which took place at Ahirauli Chatti, Ghaziabad due to rash and negligent driving of a truck insured by the appellant, driven by respondent no.6, has awarded a sum of Rs 59,00,000/- as compensation to the claimants.
2. This compensation awarded by the learned Tribunal includes a sum of Rs 56,70,000/- towards loss of dependency, by treating the monthly income of the deceased as Rs 30,000/-. While holding that the

monthly income of the deceased was required to be taken as Rs. 30,000/-, the learned Tribunal took into account the fact that the deceased was a qualified Homeopath holding a degree of Bachelor in Homeopathic medicine and Surgery with 10 years of practice. To arrive to this conclusion, the learned Tribunal relied on the uncontroverted testimony of PW1, the widow of the deceased, who, by producing the register of patients maintained by her late husband, stated that he was earning an amount of at least Rs. 50,000/- per month. The relevant findings of the learned Tribunal on this aspect read as under:

“17. PW-1, the wife of the deceased has categorically stated that at the time of accident, her husband was working as Homeopathic Doctor at Ghazipur, Uttar Pradesh. She deposed that her deceased husband has treated numerous patients of different types of diseases and he was well known to treat Paralytic patients. She deposed that he was earning Rs. 50,000/- per month. However, she has not placed on record any document in regard to the fact that her husband was earning Rs. 50,000/- per month. However, she has placed on record the Ex. PW 1/7 i.e., educational qualification documents, i.e., the degree of Bachelor of Homeopathic Medicine and Surgery qualified in the year 2009. Further he has been registered as Homeopathic doctor by the Registrar at Homeopathic Medicine Board, Lucknow, Uttar Pradesh. PW 1 has also placed on record Ex. PW 1/8 i.e., register of patients maintained by deceased whereby a number of entries have been mentioned of the patients treated by the deceased. This document has not been disputed by respondent except the bald suggestion given by the insurance company which has also been denied by the petitioner. Moreover, the fact has also not been denied by the insurance company that the deceased was a

doctor practicing as Homeopathic Doctor.

18. Further the insurance company has taken the plea that the court is inclined to grant the compensation, then court may take the minimum wages prevailed at the time of accident in Bihar for the assessment of the future loss of income. However, the plea of the insurance company is not tenable particularly when deceased was a certified Homeopathic doctor having the degree in Homeopathic Medicine and Surgery and this fact has not been denied by the insurance company. It cannot be said that person who is doctor by profession would have been earning @ minimum. wages. Register maintained by the deceased in ordinary course of nature of business of the patients treated by him has not been proved, yet in all probability it is presumed that the person having ten years practice in Homeopath would have earned at least Rs. 1000/- per day. Therefore, it is assumed that the deceased would have been earning Rs. 30,000/- per month being in this profession. Hence, the income of the deceased is taken as Rs. 30,000/- per month for the assessment of future loss of income.”

3. Being aggrieved, the present appeal has been preferred by the insurer on two grounds. The first and foremost being that the claim petition itself was not maintainable before the tribunal for want of territorial jurisdiction. The second being that the monthly income of the deceased ought to have been taken as the minimum wages of a skilled workman and not Rs. 30,000/-, as presumed by the learned Tribunal.
4. Learned counsel for the appellant submits that the learned Tribunal has erred in presuming that the monthly income of the deceased was Rs.30,000/-, as no reliable evidence was lead to prove the same. The Register produced by PW-1 in support of the monthly income of the

deceased did not clearly and specifically mention as to whether the same pertained to the deceased or to his father who was also a Homeopathic Doctor. It is, therefore, contended that in these circumstances, when no reliable evidence was placed on record to prove the income of the deceased, the learned Tribunal ought to have taken into account the minimum wages applicable to a skilled workman for computing the income of the deceased.

5. She further submits that the learned tribunal failed to appreciate that neither the accident took place within the territorial jurisdiction of Delhi nor were the claimants residents of Delhi. Furthermore, even the insurance policy was not issued from Delhi and, therefore, merely because the appellant/insurer has been carrying out business in Delhi, would not cloth the learned tribunal with territorial jurisdiction to adjudicate the claim petition of the claimants. She, therefore, contends that the claim petition ought to have been rejected on the ground of lack of territorial jurisdiction itself.
6. Having considered the submissions of learned counsel for the appellant and perused the record, I find that while the parties are *ad idem* regarding the cause of the death as also regarding the offending vehicle being insured with the appellant, the only questions which need to be determined are regarding the territorial jurisdiction of the learned Tribunal to entertain the claim as also regarding the monthly income of the deceased.
7. Even though, learned counsel for the appellant has vehemently contended that there was no material on record before the learned Tribunal to conclude that the deceased was earning Rs.30,000/- per

month, I find that the said conclusion of the learned Tribunal was based on the testimony of PW-1, the widow of the deceased, who had categorically deposed that her husband was earning more than Rs.50,000/- per month. Moreover, PW-3, who was a regular patient of the deceased, had also deposed that he was paying Rs.1,200/- per visit to the deceased. In these circumstances, I am unable to accept the appellant's plea that the yardstick of minimum wages ought to have been applied while computing the income of the deceased. This Court, therefore, finds absolutely no infirmity in the finding of the learned Tribunal that the income of the deceased was required to be taken as at least Rs.1,000/- per day, i.e., Rs.30,000/- per month.

8. Now coming to the appellants' plea that the claim petition was liable to be rejected on the ground of lack of territorial jurisdiction. In my view, even this ground is wholly unmerited. Once it is an admitted case that the appellant/insurer is carrying out business in Delhi, the learned Tribunal was, in the light of the settled legal position, justified in holding that the claim petition was maintainable. In this regard, reference may be made to the decision of the Apex Court in ***Malati Sardar v. National Insurance Company Limited and ors (2016)3 SCC 43***, wherein it was held as under:

“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 the absence of failure of justice, the High Court could set aside the

award of the Tribunal on the ground of lack of territorial jurisdiction.

11. In our view, the matter is fully covered by the decisions of this Court in Mantoo Sarkar [Mantoo Sarkar v. Oriental Insurance Co. Ltd., (2009) 2 SCC 244 : (2009) 1 SCC (Civ) 482 : (2009) 1 SCC (Cri) 738] . It will be worthwhile to quote the statutory provision of Section 166(2) of the Act:

“166.Application for compensation.—

*(1)****

(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.”

12. In Mantoo Sarkar [Mantoo Sarkar v. Oriental Insurance Co. Ltd., (2009) 2 SCC 244 : (2009) 1 SCC (Civ) 482 : (2009) 1 SCC (Cri) 738] , 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. 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 the Code of Civil Procedure (CPC). Having regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in the 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 latter.

13. Reference was also made to the earlier decision of this Court in Kiran Singh v. Chaman Paswan [Kiran Singh v. Chaman Paswan, AIR 1954 SC 340] to the following effect : (Mantoo Sarkar case [Mantoo Sarkar v. Oriental Insurance Co. Ltd., (2009) 2 SCC 244 : (2009) 1 SCC (Civ) 482 : (2009) 1 SCC (Cri) 738] , SCC p. 250, para 21)

“21. ... ‘17. ... “7. ... 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 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.” (Kiran Singh case [Kiran Singh v. Chaman Paswan, AIR 1954 SC 340] , AIR p. 342, para 7)’ [Ed. : As observed in Bikash Bhushan Ghosh v. Novartis India Ltd., (2007) 5 SCC 591, p. 599, para 17 : (2007) 2 SCC (L&S) 242.] ”

14. We are thus of the view that in the face of the judgment of this Court in Mantoo Sarkar [Mantoo Sarkar v. Oriental Insurance Co. Ltd., (2009) 2 SCC 244 : (2009) 1 SCC (Civ) 482 : (2009) 1 SCC (Cri) 738] , the High Court was not justified in setting aside the award of the Tribunal in the 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.”

9. In the light of the aforesaid, I find absolutely no reason to interfere with the impugned award. Even otherwise, as held in **Malati Sardar (Supra)**, unless any prejudice is shown to be caused, the High Court should not interfere with the award passed by the Tribunal on the ground of lack of territorial jurisdiction. Even otherwise, the provisions of the Motor Vehicles Act are benevolent in nature and,

therefore, ought to be interpreted in a manner so that the claimants, like in the present case, who lose of their sole bread earner are not made to run from pillar to post to seek compensation.

10. The appeal being meritless is, accordingly, dismissed alongwith pending applications.

(REKHA PALLI)
JUDGE

FEBRUARY 1, 2023

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