

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

+ **FAO 56/2019**

Date of Decision: 17.04.2023

IN THE MATTER OF:

SHYAMA DEVI & ORS.

..... Appellants

Through: Mr. R.K. Nain and Mr. Chandan
Prajapati, Advocates

versus

M/S NEW INDIA ASSURANCE CO LTD & ANR. Respondents

Through: Ms. Archana Gaur, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 6850/2019 (Delay)

1. The present application has been filed under Section 5 of the Limitation Act on behalf of the appellants seeking condonation of delay of 294 days in filing the present appeal.
2. Learned counsel for the appellants submits that after the death of deceased, the appellants being widow and minor children, had no source of income and had been facing financial hardship which caused the delay in their approaching the advocate for filing the present appeal.

3. It is worthwhile to note that in Mohsina & Ors. v. Union of India & Ors., reported as **MANU/DE/2465/2017** a delay of 804 days in filing of the appeal was condoned by a Co-ordinate Bench of this Court, taking into account poor economic status of the appellants/claimants. Relevant excerpt from the decision is reproduced hereunder:-

"4. The appellants are seeking condonation of delay of 804 days in filing the appeal on the ground that appellant no. 1 is an illiterate and poor lady; she lost her husband in the train accident; her father-in-law was pursuing the case before the Claims Tribunal; her father-in-law expired, whereupon her mother-in-law threw her out from the matrimonial home and she is residing with her father who is also handicapped; she was working as a maid servant to make both ends meet; her cousin came from abroad on 02nd May, 2013 and felt pity over her and made enquiries from the Claims Tribunal and thereafter, helped her in filing the appeal.

5. Considering the extreme poverty and illiteracy of the appellants, the application is allowed and the delay in filing the appeal is condoned subject to the condition that the appellants would not be entitled to interest for the delayed period of 804 days."

4. In view of the aforementioned submissions, the application is allowed and the delay of 294 days in filing the present appeal is condoned.

5. The application is disposed of.

FAO 56/2019

1. By way of present appeal filed under Section 30 of the Employee's Compensation Act, 1923, the appellants have assailed the order dated 16.02.2018 passed by learned Commissioner, Employees Compensation in Case No. WCD/2/NW/2016/852, titled as Smt. Shyama Devi & Ors. v. Ujjal Saha & Anr. whereby the appellants' claim petition was dismissed.

2. Mr. Chandan Prajapati, learned counsel for the appellants submits that the claim application was filed under Section 22 of the Employees Compensation Act, 1923 (hereinafter referred to as the 'Act') by the legal heirs of deceased i.e., late *Mr. Srawan Kumar Yadav @ Srawan Yadav*. It is contended that instead of considering the claim petition on merits, the same was dismissed on technical ground of jurisdiction.
3. Ms. Archana Gaur, learned counsel for the respondents, on the other hand, has supported the impugned order.
4. I have heard the learned counsels for the parties and perused the material placed on record.
5. The brief facts, as noted by the Trial Court in the impugned order are that the claimant had sought death compensation by claiming that the death of her husband occurred out and in the course of employment.
6. Learned counsel for the respondents submits that while the deceased was a permanent resident of District Darbangha, Bihar, the incident took place in West Bengal.
7. Before proceeding further, I deem it apposite to refer to Section 21 of the 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: ...”

8. 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.”

9. Insofar as territorial jurisdiction in accident claims is concerned, reference is profitably made to the decision of the Supreme Court in Malati Sardar v. National Insurance Company Limited and Others reported as **(2016) 3 SCC 43**. 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 is 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 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 was restored, while also noting that no prejudice had been caused to any party.

10. 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.”

11. Subsequently, the view taken in Malati Sardar (Supra) has been reiterated by the Supreme Court in Kusum Devi and Anr. v. National Insurance Company Limited and Anr., **Special Leave to Appeal (C) No(s). 29326/2015**, as well as by a Co-ordinate Bench of this Court in Savitri and Others v. Keshav Singh and Others reported as **2021 SCC OnLine Del 1044**, which cases arose out of accident claims filed under the Motor Vehicles Act, 1988.

12. 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: ...”

13. 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.

14. 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 The Divisional Manager, Oriental Insurance Co. Ltd. Bellary v. Smt. Mahabunni and Ors., **MFA No. 20690/2011**, United India Insurance Company Ltd. v. Smt. Narendra Kaur & Ors., **S.B. Civil Misc. Appeal No. 993/2008** and National Insurance Co. Ltd. v. Smt. Seema Devi and Ors., **FAO 459/2020** 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.

15. 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.

16. In the present case, not only the insurance company has its office in Delhi but even the claimants in their application have mentioned that they were residing at *House No. G-32, 1A, Janta Enclave, Near Kasiya Masjid, Delhi-110086*. In the considered opinion of this Court, learned Commissioner erred in dismissing the claim applications on the ground of lack of jurisdiction.

17. Accordingly, the appeal is allowed and the matter is remanded back to the Tribunal for deciding the same on merits, and for which

purpose it would be listed before the concerned Tribunal, at the first instance on 29.05.2023.

18. Appeal is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 17, 2023

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