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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 13.04.2023.

+ CM(M) 1127/2022

RIKI & ORS.

..... Petitioner

Through: Mr.Sameer Nandwani, Adv.

versus

VIKAS BABU & ORS.

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Section 173 of the Motor Vehicles Act preferred by the wife and the two minor sons of the deceased Sh. Krishna Kumar seeks to assail the order dated 29.08.2022 passed by the learned Motor Accidents Claims Tribunal in MACT No.529/2022. Vide the impugned order, the learned Tribunal has rejected the claim of the petitioners on the ground that since the fateful accident leading to the death of Shri Krishna Kumar had taken place at Ghaziabad, Uttar Pradesh, the Tribunal did not have territorial jurisdiction to entertain the claim petition.
2. Learned counsel for the petitioners submits that the learned Tribunal while rejecting the petitioner's claim has failed to appreciate that it was an admitted position that the office of the respondent insurer being in Delhi was within the territorial jurisdiction of Delhi. He submits that once the office of the insurer is in Delhi, the claim petition was, in the light of the decision of the Apex Court in *Malati Sardar vs. National Insurance*

Company Limited and ors. (2016) 3 SCC 43, very much maintainable before the Tribunal, which aspect the Tribunal has failed to appreciate.

3. Having considered the submissions of the learned counsel for the petitioners and perused the impugned order, I find that the learned Tribunal has failed to appreciate this aspect of the matter and has rejected the claim of the appellant merely because the accident took place in Ghaziabad, U.P. Once it was undisputed that the insurer is having an office at Delhi, the Tribunal ought to have entertained the petitioners' claim instead of rejecting the same on the ground of territorial jurisdiction.

4. At this stage, reference may also be made to a recent decision of this Court in '*M/s. National Insurance Company Ltd. vs. Gunja Rai and Ors. [(MAC.APP. 41/2023) decided on 01.02.2023]*' wherein the Court after noticing the decision of the Apex Court in *Malati Sardar (supra)* held as under:-

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 111Suits 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.*

5. In the light of the aforesaid, I have no hesitation in holding that the approach of the learned Tribunal in dealing with the claim petition was faulty. The learned Tribunal appears to have overlooked the fact that the office of the respondent insurer was within its jurisdiction and therefore, there was no reason to reject the petition for want of territorial jurisdiction.

6. The impugned order is, accordingly, set aside and the matter is remanded back to the learned Tribunal for adjudication of the claim petition on merits. The matter be listed before the learned Motor Accident Claim Tribunal-01, Central, Tis Hazari Courts, Delhi on 15.05.2023 for further proceedings as per law.

7. The petition is disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

APRIL 13, 2023/sr