

\$~

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

Date of decision: 16.03.2023

+ MAC.APP. 967/2018

FIROJ KHAN & ANR

..... Appellants

Through: Mr. Mahendra Kumar, Adv.

versus

MUKESH KUMAR & ORS (UNITED INDIA INSURANCE CO LTD)

..... Respondents

Through: Mr. Pradeep Gaur, Adv. for R-3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal preferred under Section 173 of the Motor Vehicles Act, 1988 by the claimant seeks to assail the award dated 28.08.2018 passed by the learned Motor Accidents Claims Tribunal. Vide the impugned award, the learned Tribunal after holding that it did not have territorial jurisdiction to deal with the appellants' claim petition has returned the petition for being presented before a Court having the appropriate territorial jurisdiction.

2. Learned counsel for the appellants submits that once it was an admitted position that the insurer has been carrying out business within the territorial jurisdiction of the learned Tribunal, the claim petition could not have been rejected. In support of his plea, he places reliance on the decision of Apex Court in *Malati Sardar v. National Insurance Company Limited and Ors.* (2016)3 SCC 43.

3. On the other hand, Mr. Pradeep Gaur, learned counsel for the respondent seeks to support the impugned award by contending that once the

accident took place at Ghaziabad in Uttar Pradesh, and the appellants had failed to show that the deceased was residing within the territorial jurisdiction of the learned Tribunal, the return of the claim petition for being filed before the appropriate Tribunal cannot be faulted. Furthermore, even the offending insured vehicle was registered with the Motor Vehicle Authorities in the State of Uttar Pradesh. He, therefore, prays that the appeal be dismissed.

4. Having considered the submissions of learned counsel for the parties, I find that the present case is squarely covered by the decision of the Apex Court in *Malati Sardar v. National Insurance Company Limited and Ors.* (2016)3 SCC 43. Once the respondent/insurance company does not dispute the fact that it is carrying out business at Delhi, it cannot be said that the Tribunal at Delhi did not have the jurisdiction to deal with the petition. Furthermore, I find that in the present case, the impugned award has been passed after the appellants had led their evidence and all the four witnesses of the appellants had been duly cross examined by the counsels of the respondent. In these circumstances, grave hardships would be caused to the appellants who have lost their sole bread earner if they are now compelled to file a petition in Uttar Pradesh.

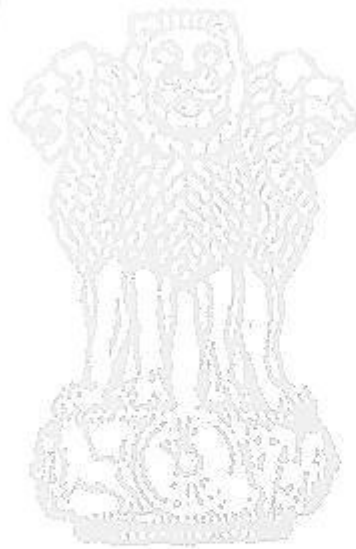
5. I am, therefore, inclined to accept the appellants' plea that the learned Tribunal has erred in returning the claim petition on the ground that it did not have the territorial jurisdiction. The impugned award is, therefore, not sustainable and is, accordingly, set aside. The matter is remanded back to the learned Tribunal for adjudication of the claim petition on merits, on the basis of the evidence already led by the parties.

6. The matter be listed before the learned Tribunal on 12.04.2023 for further proceedings in accordance with law.

(REKHA PALLI)
JUDGE

MARCH 16, 2023

al



सत्यमेव जयते