

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

+ **FAO 515/2018**

Date of Decision: 31.01.2023

IN THE MATTER OF:

THE NATIONAL INSURANCE CO LTD Appellant
Through: Mr. S. P. Jain and Mr. Narsingh,
Advocates

Versus

MUKHAN & ORS Respondents
Through: Mr. Rajveer Singh, Advocate for
respondents No.1 to 5

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

FAO 515/2018 & CM APPLs. 46215/2018 (stay), 46216/2018 (Delay)

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'EC Act'), the appellant/Insurance Company seeks setting aside of order dated 18.01.2017 passed by the learned Commissioner, Employees' Compensation in Case No.CEC/SD/D/45/2015/1147-1153, whereby the appellant was directed to deposit Rs,7,68,560/- on account of death compensation payable to respondent Nos.1 to 5/claimants alongwith interest @ 12% p.a. w.e.f. 03.05.2015 till its realization, as well as an

amount of Rs.8,00,000/- spent by the claimants on medical treatment of the deceased after the accident and prior to his death.

2. The appeal is accompanied by an application under Section 5 of the Limitation Act seeking condonation of delay of 565 days, wherein it is averred that the order on the claim petition was reserved by the learned Commissioner and the appellant only became aware of its passing later. The delay is sought to be explained by stating that the concerned counsel of the appellant did not inform it timely of the passing of the order.

3. From a perusal of the records, it is apparent that after the impugned order was announced by the learned Commissioner, an application was filed by the claimants seeking initiation of recovery proceedings against the appellant. Pursuant to the same, letters were repeatedly directed to be issued by the learned Commissioner to concerned authorities, however, the amount was not deposited. Considering the aforesaid and the mandate of Section 5 of the Limitation Act, I am of the opinion that the appellant has failed to make out any 'sufficient cause' to explain the delay occasioned in the present case. Be that as it may, as learned counsels appearing for the parties have addressed submissions on merits, I have heard the rival contentions and perused the material on record in entirety. In my considered view, no ground for interference with the impugned order is made out for the reasons discussed hereinafter.

4. The impugned order is sought to be assailed by the appellant on two grounds; first, that the learned Commissioner had no jurisdiction to entertain the claim petition, and second, that employer-employee relationship between respondent No.6 and deceased was not established.

5. There is no gainsaying that labour statutes such as the EC Act constitute '*beneficial legislation*' for the welfare of employees and should be liberally construed 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 as under:-

“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, alongwith 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.”

6. With regard to territorial jurisdiction of Commissioner, Employees' Compensation, it is profitable to refer to Section 21 of the EC Act, which stipulates thus:-

“21. Venue of proceeding 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:
...”

7. On the issue of territorial jurisdiction in accident claims, it is expedient to advert 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 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 restored, while also noting that no prejudice had been caused to any party.

8. 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. 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 party in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice.”

9. 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 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.

10. At this stage, it is apposite to refer 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: ...”

11. 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.

12. 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.

13. In Smt. 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 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.

14. 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.

15. Recently, this Court as well in New India Assurance Co. Ltd. v. Shyam Sunder and Others reported as **2022 SCC OnLine Del 3020**, after going through the entire conspectus of law on the subject, opined in favour of the territorial jurisdiction of the Commissioner despite the claimants not being residents of Delhi.

16. Coming back to the present case, the appellant has contested the jurisdiction of the learned Commissioner in deciding the claim petition by submitting that the accident in the present case had taken place in *Palwal, Haryana*, respondent No.6/employer is based in *Palwal, Haryana* and the claimants' permanent address is also of *Palwal, Haryana*.

On the other hand, the claimants have opposed the contention and argued that albeit permanent residents of Haryana, they are ordinarily resident in Delhi.

17. It is apparent that the appellant/Insurance Company has a regional office in Delhi. While filing the claim petition, the claimants had mentioned their present address as *E-7C-632, A/2 First Floor, Land Mark*

Opposite Nirankari Bhawan Ratiya Marg, New Delhi-110062 and permanent address as V.P.O Meesa, Tehsil and District Palwal, Haryana. In view of the same and the judicial dicta noted above, the contention raised by the appellant with regard to territorial jurisdiction is meritless and liable to be rejected.

18. Insofar as the appellant's contention regarding proving of employer-employee relationship is concerned, it is noteworthy that respondent No.6/employer had filed a written statement before the concerned Commissioner admitting the employer-employee relationship between himself and the deceased. Although the appellant has disputed the finding of the concerned Commissioner on the issue, the same being a question of fact need not be gone into at this stage [Refer: North East Karnataka Road Transport Corporation v. Sujatha reported as (2019) 11 SCC 514].

19. Accordingly, the appeal is dismissed. Let the *Branch Manager, Syndicate Bank, opposite Saraswati Mahila College, Bye Pass Road Palwal – 121102* release the amount deposited by the appellant to respondent Nos.1 to 5/claimants within three weeks from today. Pending applications stand disposed of.

20. A copy of this judgment be forwarded to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 31, 2023
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