

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

FAO 514/2018

Date of Decision: 20.01.2023

IN THE MATTER OF:

MUMTAZ BEGUM & ORS. Appellants
Through : Mr. Anshuman Bal, Advocate

Versus

SADDAM HUSSAIN & ANR. Respondents
Through : Mr. Sameer Nandwani, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

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 appellants/claimants have assailed order dated 30.08.2018 passed by the learned Commissioner, Employees' Compensation (North-East District), Delhi in Case No. CEC-D/NE/07/2013/674, whereby the claim petition filed by them was dismissed.

2. Briefly stated, facts of the case are that the claimants had filed an application under Section 22 of the EC Act seeking death compensation in respect of one *Tofik*/deceased, wherein it was stated that between 12:00-01:00 A.M. on 05.06.2013, he was driving a three-wheeler bearing No.UP-14-DT-1272, when the same was hit by an unknown vehicle. The accident resulted in serious injuries to *Tofik*. He was taken to GTB Hospital, where

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he was declared dead. The post-mortem was conducted and the case registered in P.S. Loni, Ghaziabad, U.P. vide FIR No.667/2013 under Sections 279/304-A IPC. It was claimed that *Tofiq* (aged about 24 years at the time) was working as a driver with respondent No.1 @ Rs.10,000/- per month and had died during the course of employment.

3. Learned counsel for the appellants submits that the learned Commissioner, in spite of the admission by respondent No.1/employer that the deceased was employed with him, rejected the claim petition in an illegal and arbitrary manner.

4. Learned counsel for respondent No.2/Insurance Company, on the other hand, has supported the impugned order. He submits that the claimants failed to establish that the deceased was an 'employee' of respondent No.1.

5. I have heard learned counsels for the parties and perused the material placed on record. Suffice it to note, respondent No.1 has been served but there has been no appearance on his behalf.

6. A perusal of the case records would show that initially, the claim petition in the present case was dismissed by the concerned Commissioner vide order dated 22.01.2016/25.01.2016, ostensibly on the ground that the three-wheeler in question was taken by the deceased on rent and he was not an 'employee' of respondent No.1.

7. The aforesaid order was assailed before this Court vide FAO 120/2016. On 10.08.2016, Co-ordinate Bench of this Court noted that respondent No.1 had admitted in his written statement that the deceased was working as a driver on his three-wheeler scooter and

earning Rs.8,500/- per month. Considering the dismissal of the claim petition to be unwarranted, the matter was remanded back to the learned Deputy Labour Commissioner and respondent No.2 was permitted to take permissible defences.

8. A plain reading of the impugned order would show that after the matter was remanded back, respondent No.1 remained unrepresented. Furthermore, respondent No.2 failed to lead any evidence despite multiple opportunities being given and imposition of costs. On the basis of the material on record and contrary to the import of the order passed by this Court, the claim petition of the appellants again came to be dismissed on the ground that the deceased was not an 'employee' of respondent No.1 at the relevant time. Notably, the claim petition was also dismissed on the ground of jurisdiction.

9. 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.”

10. Insofar as the issue of territorial jurisdiction of the learned Commissioner is concerned, it is deemed apposite to refer to Section 21 of the EC Act, which reads as under:-

“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: ... ”

11. With regard to territorial jurisdiction in accident claims, 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 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.

12. 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.”

13. 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.

14. 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: ...”

15. 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.

16. 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.

17. It is noted that 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.

18. 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.

19. 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.

20. Coming to the present case, it is observed that though the accident had occurred in *Uttar Pradesh*, the claim petition came to be filed in *Delhi*. Respondent No.2/Insurance Company has an office in Delhi. In view of the judicial dicta noted above, I am of the opinion that the learned Commissioner erred in deciding the issue of jurisdiction against the appellants.

21. So far as the second ground for dismissal of the claim petition is concerned, it is pertinent to refer to order dated 10.08.2016 passed by Co-ordinate Bench of this Court where, while remanding back the matter to the concerned Commissioner, it was opined and held thus:-

“Impugned order of 25th January, 2016 dismisses appellants' claim petition under the Employee's Compensation Act, 1923, by holding that the three-wheeler in question was taken on rent by the deceased and he was not the employee of the respondent No.1 and, so in the absence of employer-employee relationship, the claim petition does not survive.

Learned counsel for appellants submits that no relief is claimed against first respondent in this appeal and hence, issuance of notice to first respondent is dispensed with.

During the course of hearing, learned counsel for appellants had drawn the attention of this Court to the finding

given on issue No.1 in paragraph No.10 of the impugned order to point out that first respondent in his written statement had admitted that the deceased was working as a driver on his three-wheeler scooter on a salary of ₹8,500/- per month.

Learned counsel for appellants submits that in the face of the aforesaid admission, dismissal of appellants' claim petition is unwarranted.

Upon hearing and on perusal of the impugned order and the material on record, I find that where the fact of admission made by first respondent is recorded in the impugned order, it has been observed by the learned Commissioner that first respondent has failed to file any document in support of the admission. Judicial notice can be taken of the fact that in such kind of private employment, documentary proof is hard to find. In any case, dismissal of appellants' claim petition in the face of the admission of first respondent is wholly unwarranted.

(emphasis added)

22. From an overview of the material on record and the order dated 10.08.2016 passed by Co-ordinate Bench of this Court in FAO 120/2016, it is evident that respondent No.1 has admitted the employee-employer relationship between the deceased and himself. No evidence to the contrary has been placed on record by respondent No.2.

Moreover, in cases such as the present one, no formal contract of employment is ordinarily executed between the parties [Refer: Seema and Others v. HDFC Ergo Gen Ins. Co. Ltd. and Others reported as **2023 SCC OnLine Del 19**].

23. In view of the above, I find no ground to uphold the finding of the learned Commissioner that the deceased was not an 'employee' of respondent No.1 at the relevant time.

24. The appeal is allowed and the impugned order dated 30.08.2018 is set aside. The matter is remanded back to the learned Commissioner for awarding compensation to the appellants in terms of the EC Act within three weeks from today. Let the matter be listed at the first instance before the learned Commissioner on 06.02.2023 and the compensation amount be released to the appellants/claimants within four weeks thereafter.

25. The appeal is disposed of in the above terms.

26. The Registry shall communicate a copy of this judgment forthwith to the concerned Commissioner for information and necessary compliance.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 20, 2023

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