

(2014) 04 CAL CK 0081

In the Calcutta High Court

Case No : F.M.A. 1454 of 2013 with C.A.N. 1858 of 2014

National Insurance Co. Ltd.

APPELLANT

Vs

Alpana Jana and Others

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21

Citation : (2014) 04 CAL CK 0081

Hon'ble Judges : Sahidullah Munshi, J; Indira Banerjee, J

Bench : Division Bench

Advocate : Arabinda Kundu, Advocate for the Appellant; Saibalendu Bhowmik and Mr. Santosh Kumar Das, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. By consent of the parties, the appeal itself is taken up for hearing along with the connected application appearing in the list.
2. This appeal is against a Judgment and Award dated 29th November, 2011 passed by the Motor Accident Claims Tribunal, 9th Bench in the City Civil Court at Calcutta in M.J.C. No. 385 of 2008.
3. The appellant/insurer (National Insurance Company Ltd.) has filed this appeal contending that the learned Tribunal lacked territorial jurisdiction to entertain the claim application. It appears that the respondents/claimants are resident of Purba Midnapore. The respondent no. 5/owner of the offending vehicle is also a resident of Purba Midnapore. According to the appellant/insurer, the claim application should have been filed before the Motor Accident Claims Tribunal, Purba Midnapore and not in Kolkata. A claim application may be filed in the Tribunal within whose jurisdiction the accident takes place. The claim application may also be filed in the Tribunal within whose jurisdiction the claimants reside or alternatively the respondent and/or the owner resides. In the instant case, the National Insurance Company Ltd. being the appellant/insurer has its regional

office at 8, India Exchange Place, Kolkata-700001 within the jurisdiction of the learned Tribunal.

4. As such, the appeal fails. In any case, as held by the Supreme Court in *Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others*, .

14. No doubt the Tribunal must exercise jurisdiction having regard to the ingredients laid down under sub-section (2) of Section 166 of the Act. We are not unmindful of the fact that in terms of Section 169 of the Act, the Tribunal, subject to any rules, may follow a summary procedure and the provisions of the CPC under the Act has a limited application but in terms of the rules "save and except" any specific provision made in that behalf, the provisions of the CPC would apply. Even otherwise the principles laid down in the CPC may be held to be applicable in a case of this nature.

15. We say so because ordinarily an appellate court shall not, having regard to the provisions contained in sub-section (1) of Section 21 of the Code of Civil Procedure, entertain an appeal on the ground of lack of territorial jurisdiction on the part of the court below unless he has been prejudiced thereby.

17. The Tribunal is a court subordinate to the High Court. An appeal against the Tribunal lies before the High Court. The High Court, while exercising its appellate power, would follow the provisions contained in the CPC or akin thereto. In view of sub-section (1) of Section 21 of the Code of Civil Procedure, it was, therefore, obligatory on the part of the appellate court to pose unto itself the right question, viz., whether the first respondent has been able to show sufferance of any prejudice. If it has not suffered any prejudice or otherwise no failure of justice has occurred, the High Court should not have entertained the appeal on that ground alone.

5. In the instant case, the appellant/insurer has not been able to show any prejudice by reason of the proceedings being conducted in the learned Tribunal. Moreover, as observed above, the appellant/insurer has its regional office within the jurisdiction of this Court.

6. The respondents/claimants may withdraw the awarded amount which is lying in deposit with the learned Registrar General of this Court. The appellant/insurer shall compute interest as per reducing balance. The interest as awarded by the learned Tribunal and deposit the same with the learned Registrar General of this Court within four weeks from date. The learned Registrar General of this Court shall disburse the amount to the respondents/claimants.

7. The appeal is, thus, dismissed. The connected application accordingly, stands disposed of.

Re: C.O.T. 30 of 2013

Mr. Saibalendu Bhowmik, Mr. Santosh Kr. Das...

Cross-Objectors/Claimants

Mr. Arabinda Kundu

...Cross-Respondent

The cross-objection being C.O.T. 30 of 2013 is treated as on day's list.

8. The learned Advocate for the cross-objectors/claimants submits that his clients do not want to press the cross-objection.

9. Accordingly, the cross-objection filed by the cross-objectors/claimants is dismissed as not pressed. Urgent certified photostat copy of this order, if applied for, be supplied to the learned Advocates appearing for the parties, subject to compliance with all requisite formalities.