

(2017) 10 DEL CK 0081

In the Delhi High Court

Case No : MAC. Appeal No. 518 Of 2015, Civil Miscellaneous No. 38395 Of 2017

Shila & Anr

APPELLANT

Vs

Jitender & Anr

RESPONDENT

Date of Decision : 30-10-2017

Acts Referred:

Citation : (2017) 10 DEL CK 0081

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : Anshuman Bal, J.P.N. Shahi

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. The appellant had instituted accident case (suit no.261/14) on 16.07.2012 before the Motor Accident Claims Tribunal (Tribunal) at New Delhi district seeking compensation on account of death of Vikas Giri in a motor vehicular accident that statedly occurred on 19.04.2012 in the area of Sectors 60 & 61 of police station Sector 58, Noida, U.P. on account of the negligent driving of a bus bearing registration no. UP-16AT-6199 admittedly insured against third party risk with the second respondent (insurer) for the period in question. The appellants / claimants are concededly natives of District Mathura in U.P. They had instituted the accident claim case declaring their residential address to be House no.3, Block H, Sector-5, Dr. Ambedkar Nagar, Delhi-110 062. The address of the second respondent was given as Connaught Circus, New Delhi.

2. The tribunal issued notice to the respondents that included the driver and owner of the bus besides the insurance company. The name of the first respondent before the tribunal (driver) stood deleted since he had reportedly died. The tribunal framed issues on 10.05.2014, the first involving the question as to whether the death had occurred due to negligent driving of the bus and, the second, as to whether the claimants were entitled to compensation and, if so,

to what amount and who was to be held liable to pay the same, the third concerning relief. The claimants led evidence whereafter opportunity was given to the parties that were contesting to lead evidence in rebuttal and the tribunal rendered its judgment on 27.01.2015 observing that it had no territorial jurisdiction because the claimants had not mustered any proof regarding their residence in Delhi. The claim petition was, thus, directed to be returned to be presented before an appropriate tribunal having jurisdiction to decide the same.

3. The appeal was put in the list of regulars as per order dated 07.02.2017. On the application (CM 38395/2017) of the appellants for early hearing and, with the consent of counsel on both sides, it has been taken up for final hearing and disposal.

4. Having heard the learned counsel for the parties and having perused the record, this court is of the opinion that the approach of the tribunal to the matter was most unfair and inappropriate. No issue was framed on the question of territorial jurisdiction. The claimants were not even called upon to lead any evidence in that regard. Having concluded the inquiry into the issues framed, it was not fair to throw a surprise on the claimants by junking the petition out on the issue of jurisdiction. The least that the tribunal could have done was to frame an additional issue if it actually arose and then call upon the claimants to prove the propriety of the jurisdiction they had invoked.

5. In the given facts and circumstances where the inquiry had reached the conclusion and only the issue of involvement and negligent besides that of computation of compensation was required to be addressed, no case of prejudice having been agitated by the insurer, it undoubtedly having an office within the territorial jurisdiction of the tribunal, the view taken in the impugned judgment cannot be sustained.

6. The judgment of the tribunal holding want of territorial jurisdiction is set aside. The matter is remitted to the tribunal for fresh adjudication on the issues already framed, by a fresh judgment. For such purposes, the parties are directed to appear before the tribunal on 28.11.2017.

7. The appeal is disposed of in above terms.