

(2018) 04 KAR CK 0004

In the Karnataka High Court

Case No : Miscellaneous First Appeal No.43 OF 2016

Sri. Naveen Kumar @APPELLANT@Hash Sri A.Mohammed Saleem and Ors

Date of Decision : 05-04-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173(1)
Code of Civil Procedure, 1908 — Section 21

Citation : (2018) 04 KAR CK 0004

Hon'ble Judges : B.A. PATIL, J

Bench : Single Bench

Final Decision : allowed

Judgement

1. The present appeal has been preferred by the appellant-claimant assailing the judgment and award passed by the Court of Small Causes and

MACT, Bengaluru, in MVC No.699/2011 dated 22.8.2014, whereunder the Tribunal framed the preliminary issues and additional issue and by

answering the additional issue in the negative held that the Tribunal has got no jurisdiction to entertain the petition and dismissed the petition.

2. For the purpose of convenience, the parties are referred to as they are referred to before the Tribunal.

3. It is the case of the petitioner that on 23.10.2010 at about 8.15 p.m. when the petitioner was travelling in an autorickshaw bearing Registration

No.TN.23 AW.0768 as a passenger from Shoolagiri to Pedda Sigaralapalli near Seenappa House at Mylapalli, a tempo bearing Registration No.TN.29

AE.0145 came rashly and negligently and dashed to the said autorickshaw in which the petitioner was proceeding, as a result of the same, he

sustained injuries and after taking the treatment he filed the claim petition for claiming the compensation under Section 166 of the Motor Vehicles Act

before the Court of Small Causes and MACT, Bengaluru, for claiming the

compensation.

4. Respondent No.4 filed the objections to the main petition by denying the contents of the petition. It is contended that the Tribunal has not having any jurisdiction to entertain and try the petition as the accident has occurred outside the jurisdiction of the Tribunal and the petitioner and owners of the vehicles are not the residents of Bengaluru. On these grounds he prayed for dismissal of the said petition.

5. The Tribunal framed the following issues and additional issue as mentioned below:

1. Whether the petitioners prove that the injuries caused in the accident arising out of the use of the vehicle driver of the Tempo bearing No.TN.29

AE.0145 occurred on 23.10.2010 at about 8.15 p.m.?

2. Whether the petitioner is entitled to compensation? If so, how much and from whom?

3. What order?

ADDITIONAL ISSUE

Whether this Tribunal has got jurisdiction to entertain this petition?

6. After hearing the parties to the lis, the impugned judgment and award came to be passed, by dismissing the petition. Challenging the same, the appellant-claimant is before this Court.

7. The main grounds urged by the learned counsel for the appellant are that the Tribunal ought not to have dismissed the petition as the said legislation

is a benevolent legislation and even when the insurer is having its business and its Head Office, within the jurisdiction of the Tribunal, then under such

circumstances, the claim petition is maintainable before the said jurisdiction. In order to substantiate the said contention he relied upon a decision of the

Honorable Apex Court in the case of Malati Sardar Vs. National Insurance Company Limited and others reported in 2016 ACJ 542.

8. He further contended that the Court should not be hyper technical to adjudicate the benevolent legislation and in that light he contended that the impugned judgment and award passed by the Tribunal is not sustainable in law and the same is liable to be set aside.

9. Per contra, the learned counsel for the respondent-insurer vehemently argued by contending that the accident has taken place in Tamil Nadu and

even in spite of giving sufficient opportunity to the appellant to produce the records to show that they are the residents of Bengaluru, they have not produced any records and even the contention which has been raised now, has not been urged before the Tribunal. The Tribunal by keeping in view the ratio laid down in the case of Subhadra and others Vs. Pankaj and another reported in ILR 2013 Karnataka 102 has rightly decided and dismissed the petition. Hence, he prays for dismissal of the present appeal.

10. Keeping in view the above facts and circumstance and the submissions made by the learned counsel appearing for the parties and on perusal of the record it is an admitted fact that the alleged accident has taken place in Tamil Nadu and the petition came to be filed before the Court of Small Causes and MACT, Bengaluru and it is also an admitted fact that the Head Office of the respondent No.4 Insurance Company is situated in Sathi Complex, Bengaluru and it is doing its business in Bengaluru.

11. When the above said facts and circumstances are admitted, then Tribunal ought not to have dismissed the petition. In the decision of Malati Sardar quoted supra at paragraph 14 it has been held as under;

“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. Moreover, in view of categorical decision of this Court in Mantoo Sarkar, 2009 ACJ 564 (SC), contrary view taken by the High Court cannot be sustained. The High Court has failed to notice the provision of Section 21 of C.P.C.”

12. In the said decision the Hon’ble Apex Court has specifically observed that the provisions of accidents of negligent driving are benevolent provisions for the victim of the accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accident and court should not be hyper technical while approaching the matter in such cases and 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.

13. Admittedly, in the instant case on hand the respondent-insurance company is situated in Bengaluru, then under such circumstances, the Small

Causes Court before whom the petition has been filed was having jurisdiction to entertain the said petition, but however erroneously without looking

into the decision of the Honâ??ble Apex Court has dismissed the petition.

14. In the light of the ratio laid down by the Apex Court and for having admitted the fact that the insurance companyâ??s Head Office is situated

within Bengaluru City, I feel that the judgment and award passed by the Tribunal is liable to be set side and accordingly it is set aside.

15. Since the quantification of the compensation and other issues have not been decided by the Tribunal, I feel it just and proper to remit the matter

back to the Tribunal with a direction to decide the case on merits by giving full opportunity to both the parties.

16. Accordingly, the appeal is allowed and the matter is remitted back to the trial Court to decide it within a stipulated period.

Since all the parties are before this Court, they are directed to appear before the Tribunal without further notice on 28.5.2018.