

(2017) 04 CAL CK 0037
In the Calcutta High Court
Case No : 687 of 2015

Sukumar Jana @ Narayan Jana

APPELLANT

Vs

The New India Assurance Co. Ltd. & anr.

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Constitution of India, Article 141 - Law declared by Supreme Court to be binding on all courts
Motor Vehicles Act, 1988, Section 166,
Section 166

Citation : (2017) 04 CAL CK 0037

Hon'ble Judges : Dipankar Datta, Debi Prosad Dey

Bench : DIVISION BENCH

Advocate : Ashique Mondal, Sayanti Santra

Judgement

1. The claimant in M.A.C. Case No. 211 of 2014, arising out of an application under section 166 of the Motor Vehicles Act, 1988, is the appellant before us in this appeal under section 173 thereof. He has called in question the award dated August 29, 2014 passed by the Motor Accident Claims Tribunal presided over by the Additional District Judge, 9th Court, Alipore, District 24 Parganas (South) whereby the claim case was dismissed by the tribunal on the ground of lack of territorial jurisdiction.

2. Since the appeal involves short questions of law, as argued by Mr. Mondal, learned advocate for the appellant, we had heard him and Ms. Santra, learned advocate for the respondent no. 1/insurer on April 18, 2017 itself after condoning the delay in presentation of the appeal without insisting on preparation of paper books and we propose to dispose of this appeal by this judgment and order.

3. It appears that the claimant while riding a bicycle was dashed by a car bearing registration no. WB-30C/8070 (hereafter the offending vehicle) which, allegedly, was being driven in a rash and negligent manner, as a result whereof he suffered

multiple injuries. Despite the accident having occurred within the territorial limits of Tamluk Police Station and the insurance policy having been bought by the owner of the offending vehicle, respondent no. 2, from the Tamluk branch office of the respondent no. 1/insurer, the claimant had approached the Motor Accident Claims Tribunal in Alipore in the District of South 24-Parganas. The tribunal held that the mere fact of the respondent no. 1/insurer having a branch office at Gariahat Road, Calcutta - 700019 would not clothe it with the jurisdiction to grant relief to the appellant. The tribunal was also of the view that the claim application ought to have been presented either before the tribunal exercising jurisdiction over the territorial limits of Tamluk Police Station or before the tribunal within whose jurisdictional limits the registered/head office of the respondent no. 1/insurer was situated. Although the tribunal proceeded to determine the compensation that could be awarded to the appellant, it is on the ground of territorial jurisdiction that his claim was spurned.

4. We find from the impugned award that the decision of the Supreme Court reported in 2009 (1) T.A.C. 434 (S.C.) [Mantoo Sarkar v. Oriental Insurance Company Ltd. and others], was placed before the Tribunal but the ratio of the decision was not applied since in its perception the said decision was one rendered by the Court in exercise of its power conferred by Article 142 of the Constitution. The tribunal was further referred to an unreported decision of a coordinate Bench of this Court in F.M.A. 1454 of 2013 [National Insurance Co. Ltd. v. Alpana Jana & ors.]. Such decision was distinguished on the ground that in such case the insurer had its registered office within the jurisdiction of the Claims Tribunal, Calcutta, which was not the situation before it while deciding the claim application of the appellant. The decision reported in 2011 (2) T.A.C. 65 (Calcutta) [Sarif Md. Mullick v. National Insurance Co. Ltd. and anr.] that had been placed before the tribunal was also distinguished by observing that it has neither extraordinary jurisdiction nor is it concerned with the question as to whether the insurance company would suffer any prejudice or not; the tribunal was only concerned whether the insurance company which issued the policy has its office within the territorial limits of the tribunal or not, or in the alternative, whether the head office or the regional office of the insurance company is situated within its jurisdiction or not.

5. To our mind, the issue of territorial jurisdiction to receive an application under section 166 of the Act by any tribunal is no longer *res integra*. In its decision reported in 2016 (1) T.A.C. 337 (S.C.) [Malati Sardar v. National Insurance Company Ltd. and ors.], it has been held that the provisions contained in Chapter XII of the Act being benevolent in nature, the provision of territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents and that a hyper-technical approach in such matters could hardly be appreciated. It has also been held that there is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party, has its business. While reading the decision in Mantoo Sarkar (*supra*) as one laying down law under Article 141 of the Constitution

binding on all Courts, the decision of the coordinate Bench of this Court upholding the objection of territorial jurisdiction was reversed.

6. We have also been shown by Mr. Mondal a decision of recent origin dated February 2, 2017 of the Supreme Court in Civil Appeal No. 1342 of 2017 [Kusum Devi and anr. v. National Insurance Company Limited and anr.], whereby the award passed by the Motor Accident Claims Tribunal, 2nd Bench, City Civil Court, Calcutta, which had been reversed by a coordinate Bench of this Court on the ground of lack of territorial jurisdiction, was restored in view of the decision in *Malati Sardar* (supra).

7. We, accordingly, hold that the tribunal was in error in dismissing the claim application on the specious ground that it had no territorial jurisdiction to entertain and try it.

8. Turning to the merits, we find that the tribunal had determined Rs.4,46,619/- as compensation payable to the appellant under various heads. However, no amount was awarded for loss of amenities as well as for expenses to be incurred for future medical treatment. We are of the considered view, having regard to the nature and extent of injuries suffered by the appellant, that an additional sum of Rs.30,000/- would be just and reasonable on facts and in the circumstances and sufficiently serve the ends of justice.

9. We, accordingly, set aside the award of the tribunal under challenge. The appeal stands allowed with a direction upon the respondent no. 1/insurer to pay Rs.4,76,620/- (rounded off) together with interest @ 7.5% from date of lodging of the claim application till actual payment.

10. The compensation awarded by us shall be paid by the respondent no. 1/insurer by issuing an account payee cheque drawn in favour of the appellant, which must be deposited with the Registrar General of this Court within a month from date. Thereupon, the appellant shall be entitled to collect the same from the office of the Registrar General upon proving his identity.

11. There shall be no order as to costs. Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.