Balveer Batra vs The New India Assurance Company on 8 February, 2024

Author: C.T. Ravikumar

Bench: Rajesh Bindal, C.T. Ravikumar

2024 INSC 361

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.1842 of 2024
(Arising out of SLP(C) No. 396 of 2019)

Balveer Batra …Appellant (s)

Versus

The New India Assurance
Company & Anr. …Respondent(s)

JUDGMENT

C.T. RAVIKUMAR, J.

Leave granted.

1. This appeal by Special Leave is directed against the judgment and order dated 28.11.2016 passed by the High Court of Uttarakhand at Nainital in Appeal from Order No. 414 of 2010.

2. The appellant is the father of the victim of a motor Reason: unfortunate accident causing his death while underway on his motorcycle from Dineshpur to Gadarpur and stopped it in the midway to urinate. A tractor bearing number UP-02A-2213 being driven recklessly and negligently by the first respondent hit him and his motorcycle and he died instantaneously. The incident occurred on 07.03.2006 at about 07.30 pm. The appellant filed an application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act' only) for compensation before the Motor Accident Claims Tribunal at Nainital as MACP No.137/2006. The Tribunal dismissed the application for lack of territorial jurisdiction. Aggrieved by the same, the appellant herein preferred an appeal before the High Court and the same also met with the same fate. Hence, this appeal.

3. Heard learned counsel appearing for the appellant and the counsel appearing for the respondent-insurance company.

4. A brief reference to the facts which led to the concurrent, adverse decisions, as mentioned above, is required for an appropriate disposal of this appeal. As a matter of fact, respondent Nos. 2 and 3 herein / opposite parties 1 and 2 in the claim petition, filed a joint written statement, inter alia, raising the question of maintainability on the ground of lack of territorial jurisdiction. The averments therein, taken note of the Claims Tribunal in its award, would reveal that even while raising such objection they would admit the death of the appellant's son in the accident involving the aforementioned tractor though they disputed the nature of its occurrence. In paragraph 3 of the award of the Tribunal such averments are noted down thus:-

> "that on the day of alleged accident, the driver of Tractor was being driven the tractor in its side, but deceased himself hit by driving motorcycle rash and negligently, consequently he received injuries; that on the day of accident, they opposite party No.1 was driving the tractor with valid driving licence; that the Tractor in question is insured with O.P. No.3, the New India Insurance Company."

5. The first-respondent viz., the opposite party No.3 too, raised the objection of lack of territorial jurisdiction to adjudicate the claim petition and over and above in the written statement respondent No.1 herein stated thus, as can be seen from paragraph 4 of the award of the Tribunal:-

> "that the sole cause of accident is rash and negligent driving of the motor vehicle bearing registration No. UA06(A)-9229, which was also involved in the accident, that in case of involvement of two motor vehicles in the alleged accident, the tribunal has to determine the composite/contributory negligence of each driver thereof and its effects; that the answering party has not been given any information as provided under Section 158 (6) of the Motor Vehicle Act and the petition is bad for non-joinder of the party."

6. It is based on such pleadings that the Tribunal had framed seven issues as hereunder:-

> "1. Whether on 07.03.2006 at around 7.30 when deceased Rohit Batra on his Motorcycle No.UA06A9229 was going from Dineshpur to Gadarpur then near Village Varkheda, PS Gadarpur, District Udham Singh Nagar, Tractor No. UP2A-2213, being driven recklessly and negligently by the driver hit his motorcycle from behind, due to which the deceased suffered serious injuries and his death was caused due to such injuries, as has been stated in the claim petition?
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> 2. Whether the said accident was caused by the deceased himself driving his motorcycle No.UA6A 9229 recklessly and negligently, as has been stated by the Defendant No.1, 2 & 3 in their Written Statements?

> 3. Whether the said accident was caused due to contributory negligence of both the drivers as has been stated by Defendant No.3 in his written statement?
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> 4. Whether the claim is effective due to not making insurance company of the motorcycle No.UA06A-9229, which is a necessary party, a party in the case?
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> 5. Whether this Tribunal does not have the territorial jurisdiction to entertain the claim as has been stated by the Defendant No.1,2 & 3 in their written statement?
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> 6. Whether the tractor in question at the time of accident was insured with the defendant No.3, insurance company and whether it was being run in accordance with the terms and condition of the insurance policy?
>
> 7. Whether the claimants are entitled to any compensation and if yes, then how much and who is liable to be paid?"

7. After framing issues as above, the Tribunal firstly considered issue No.5, pertaining to the territorial jurisdiction, assigning the reason that the rest of the issues are dependent on the decision on issue No.5. Nonetheless, the indisputable position is that by that time four years, since filing of the claim petition, had lapsed and in the meanwhile both sides had also examined witnesses. While being examined as PW-1, the appellant deposed that at the time of accident in question he was a resident of Haldwani, District Nainital, and the accident had occurred within the limits of the adjoining district of Udham Singh Nagar. True that at the time of filing the claim petition he was not residing in Haldwani. The Tribunal, based on the said factual position of evidence, came to the conclusion that the claimant is not residing within its territorial jurisdiction. It also took note of the fact that the opposite party Nos. 1 and 2 are also not residing within its jurisdiction and proceeded to consider its territorial jurisdiction. In that regard, the Tribunal has also held that the mere fact that the insurance company got an office within the jurisdictional limits of the Tribunal could not confer jurisdiction on it. Based on such conclusions and findings, answered issue No.5 to the effect that it lacks territorial jurisdiction. Thereupon, as relates the other issues it was held thus:-

> "21. ISSUES NO.1, 2, 3, 4, 6 & 7:
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> At the main issue (issue no.5) for territorial jurisdiction of this tribunal has been decided against the claimants, hence there is no occasion to examine the other issues on merits. In view of above issue No.1, 2, 3, 4, 6 and 7 are also decided against the claimants and in favour of the opposite parties." (Underline supplied)

8. After answering the issues as above, the claim petition was dismissed. As noted above, the High Court confirmed the judgment/award solely considering the question of territorial jurisdiction of the Tribunal.

9. The core contention of the appellant revolves around the decision of this Court in Malati Sardar v. National Insurance Company Ltd.1 Though the same was relied on by the Appellant before the High

Court, it distinguished the decision on facts and held it inapplicable. A bare perusal of the said decision would reveal the very question formulated and answered by this Court in Malati Sardar's case (supra). The same assumes relevance in the context of the rival contentions and it reads as follows:-

> "The question raised in this appeal is whether the High Court was justified in setting aside the award of the Motor Accident Claims Tribunal, Kolkata only on the ground that the Tribunal did not have the territorial jurisdiction".

10. Paragraph 10 of the decision in Malati Sardar's case is also relevant for the purpose of knowing the factual position under which such a question was (2016) 3 SCC 43 formulated and answered. It reads thus-

"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 the 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." (underline supplied)

11. Noticeably, in that case the Tribunal entertained the claim petition and awarded compensation and the High Court, at the instance of the insurance company, considered and reversed the decision on the question of territorial jurisdiction. Consequently, the appeal of the insurance company was allowed and the party was directed to refund of the amount deposited / paid, if any, to the appellant insurance company. After framing the said question in the above factual backdrop, it was answered in Malati Sardar's case by placing reliance on the earlier decision of this Court in Kiran Singh v. Chaman Paswan2. This Court held that the provision in question is a benevolent provision for the victims of accidents of negligent driving and in such circumstances, it has to be interpreted with the object of facilitating remedies for the victims of accidents. Furthermore, it was held in paragraph 16 thereof, thus:-

> ".....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".
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> (underline supplied)

12. Malati Sardar's case was decided after referring to the decisions in Mantoo Sarkar v. Oriental Insurance Company Ltd.3 and in Kiran Singh's case (supra), as mentioned above. A bare perusal of the AIR 1954 SC 340 (2009) 2 SCC 244 decisions in Mantoo Sarkar's case (supra), Kiran Singh's case (supra) and Malati Sardar's case (supra) would reveal that in all those decisions the objection regarding territorial jurisdiction was overruled by the Tribunal concerned and thereafter compensation was awarded. It is only at the appellate stage that the respondents' objection as to the

territorial jurisdiction was upheld and the award was upturned. Evidently, in all those cases this Court referred to Section 21 of the Code of Civil Procedure (for short the 'CPC' only) and it reads thus:-

> "21. Objections to jurisdiction.— [(1)] No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice."

13. A bare perusal of Section 21, CPC would reveal that objection as to the place of suing is not to be entertained by any Appellate or Revisional Court if it was not taken in the Court of first instance at the earliest possible opportunity and unless there has been a consequent failure of justice. While looking into the object and reasons for the aforesaid provision it is very clear as to why lack of territorial jurisdiction by itself was not recognized under it as a reason to make a judgment/decree a nullity. It is to be noted that it is quite different and distinct from inherent lack of jurisdiction which would strike at the very authority of the Court to try a case and pass a judgment/decree and would make it a nullity. On a careful consideration of the provisions under Section 21, CPC, we are of the considered view that the provisions would undoubtedly make it clear though taking of an objection as to the lack of territorial jurisdiction before the Court of first instance at the earliest opportunity is a condition required to raise that objection before an appellate or revisional Court satisfaction of such condition by itself would not make an award granting compensation a nullity inasmuch as in such cases there would not be inherent lack of jurisdiction in Court in regard to the subject matter. Therefore, in such cases, correction by a Court is open, only if it occasions in failure of justice. The provision thus, reflects the legislative intention that all possible care should be taken to ensure that the time, energy and labour spent by a Court did not go in vain unless there has been a consequent failure of justice.

14. In the above view of the matter the decision in Mantoo Sarkar's case (supra) and Malati Sardar's case (supra) that objection of lack of territorial jurisdiction in an appeal against an award granting compensation could not be entertained in the absence of consequent failure of justice, according to us, should be followed with alacrity and promptitude.

15. The question in the instant case is, however, slightly different inasmuch as, here the Tribunal's decision itself is to the effect that it lacks territorial jurisdiction and it was that finding which obtained conformance under the impugned judgment of the High Court. A glance at the factual matrix is profitable for considering the moot point involved in the case on hand. Firstly, it is to be noted that the claim petition under Section 166 of the M.V. Act filed in the year 2006 was dismissed on the ground of lack of territorial jurisdiction only on 06.10.2010. Thus, it is evident that the Tribunal which was obliged to decide the question of jurisdiction at the threshold, finding it difficult to decide the same without letting the parties to adduce evidence permitted parties to adduce their evidence. The materials on record would reveal that before the Tribunal, on behalf of the claimants PW1 to PW3 were examined and on behalf of opposite party Nos. 1 and 2 viz., respondents 2 and 3 herein, opposite Party No. 1 Mr. Tula Singh was examined as DW1. Paragraph 7 of the Tribunal's

judgment would further reveal that the first respondent herein viz., the insurance company which was opposite party No. 3 therein, did not examine any witness in support of its pleadings, but cross-examined prosecution witnesses. Add to it, it is a fact that the first respondent-Insurance Company got its branch within the limits of the Tribunal where the subject claim petition was filed.

16. In the context of the question emerging for consideration it is apposite to refer to the relevant provisions prescribing the forum for adjudication of compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 of the M.V. Act and also the provision prescribing the options available to a claimant in regard to place(s) for suing for such compensation viz., sub-section (1) of Section 165 and sub-section (2) of Section 166 of the M.V. Act. They read thus:-

> "165. Claims Tribunals.—(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.
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> *** *** *** ***
> 166. (1).....
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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:
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> Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant."

17. The words 'at the option of the claimant' employed in Section 166(2) and the options available to a claimant in regard to places for suing for such compensation under Section 166 (2), assume relevance for consideration of the moot question. Indubitably, the statute indicates that option lies with the claimant to make application for compensation 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. There can be no doubt with respect to the position that if more than one Court has jurisdiction to adjudicate a dispute it will be open to the party concerned to choose one of the competent Courts to decide his dispute. Thus, it is obvious that merely because the claimant made the application for compensation not to the Claims Tribunal having jurisdiction over the area in which the accident occurred or not to the Claims Tribunal within the local limits of whose jurisdiction he resides or carries on business, is no reason to dismiss the application provided it is filed before a Claims Tribunal where it is otherwise maintainable. This aspect calls for consideration

not solely confining to strict construction of the rest of the provision under Section 166 (2) of the M.V. Act, but by looking into various other authorities, as well.

18. In the aforementioned context, it is not inappropriate to refer to the decision of this Court in United India Insurance Co. Ltd. v. Shila Datta4, wherein it was held that an award by Tribunal could not be seen as adversarial adjudication between litigating parties to a dispute and in troth, it is a statutory (2011) 10 SCC 509 determination of compensation on the occurrence of an accident, after due enquiry.

19. In the decision in Mantoo Sarkar's case (supra) after extracting sub-section (2) of Section 166, M.V. Act, in paragraph 11 thereof, this Court held that M.V. Act is a special statute and the jurisdiction of the Claims Tribunal having regard to the terminologies used therein must be held to be wider than the civil Court.

20. In the contextual situation it is relevant to note that in Mantoo Sarkar's case (supra) while considering predominantly the scope of appellate interference in view of Section 21, CPC, even after referring to Section 166 (2) of the M.V. Act, this Court made certain observations which could be, rather, should be attuned to the situation obtained in the case on hand. This Court held that a distinction must be made between the jurisdiction with regard to the subject matter of the suit and that of territorial and pecuniary jurisdiction and further that in the case falling within the former category the judgement would be in nullity and in the latter category it would not be. In paragraph 18 thereof, this Court held thus:-

> "18. 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 Code of Civil Procedure 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 had occurred, the High Court should not have entertained the appeal on that ground alone."
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> 21. Section 173 of the M.V. Act provides for filing appeal by any person aggrieved by an award by a Claims Tribunal. In the decision in Sharanamma and Others v. M.D., Divisional Contr. Nekrtc5, this Court held that a bare reading of Section 173 shows that there is no curtailment or limitations on the powers of the appellate court to consider the entire case on facts and law. When that be the position, indubitably, it could be said that consideration of the question of sufferance or prejudice in regard to a finding on territorial jurisdiction besides its correctness is required in appeals against awards declining compensation upholding the objection on territorial jurisdiction of the opposite parties. Since the provisions for grant of compensation under Section 166 is one of benevolence if an illegality resulting in failure of justice is discernable from the materials on record, even if in respect of which no specific

pleading is taken, the Court is bound to take it into consideration.

22. The further support of the above view can be taken from paragraph 16 of the decision in Malati (2013) 11 SCC 517 Sardar's case (supra), extracted hereinbefore, wherein this Court held that provision under Section 166 for grant of compensation in respect of an accident of the nature specified in Sub-section (1) of Section 165 being 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 accident. Furthermore, it was held in the said decision that hyper technical approach in such matters could hardly be appreciated and there would be 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.

23. In the aforementioned context, it is worthwhile to note the prejudice rather, failure of justice caused to the applicant in the case on hand, is evident from the very award of the Claims Tribunal though it escaped the attention of the High Court. The claim petition filed in the year 2006 was dismissed on the ground of lack of territorial jurisdiction not at the threshold, but only on 06.10.2010. Dismissal, simpliciter of a claim petition on the ground of lack of territorial jurisdiction would not and could not disable the claimant concerned to initiate another proceeding before the Claims Tribunal of competence. However, a bare perusal of the award passed by the Tribunal, to be precise paragraph 21 would reveal that after returning an adverse finding on the question of territorial jurisdiction against the claimant, the Tribunal proceeded further and decided all other issues framed for the consideration viz., issues No.1 to 4, 6 and 7 (extracted hereinbefore) against the claimant and in favour of the opposite parties, that too, after making it clear that it had no occasion to examine such issues on merits. Paragraph 21 of the award reads thus:-

"21. ISSUES NO.1, 2, 3, 4, 6 & 7:

At the main issue (issue no.5) for territorial jurisdiction of this tribunal has been decided against the claimants, hence there is no occasion to examine the other issues on merits. In view of above issue No.1, 2, 3, 4, 6 and 7 are also decided against the claimants and in favour of the opposite parties."

24. There cannot be any dispute with respect to the fact that when such a finding is entered in respect of those issues framed, may be after making an observation that the Tribunal got no occasion to examine such issues on merits, the claimant would not be in a position to initiate another proceeding before another Claims Tribunal having territorial jurisdiction.

In this regard it is to be noted that lacking territorial jurisdiction cannot be a reason, in view of Section 165 (1), M.V. Act, to say that Claims Tribunal was not having competence to adjudicate the

subject-matter of the claim petition. Since issues were framed and decided against the claimant and in favour of the opposite parties, whether or not such findings were returned after examining such issues on merits it would cause legal trammel in view of the principle of res judicata. We have already found that a decree dismissing a suit on the ground of lack of territorial jurisdiction is not a nullity. Though Section 168, M.V. Act, carrying the caption 'Award of the Claims Tribunal' on perusal, at the first blush may appear to mean only a decision of the Claims Tribunal granting compensation to the claimant concerned. However, that certainly is not the correct construction of the said provision. Section 169(2), M.V. Act, clothes a Claims Tribunal with all the powers of a Civil Court. In the decision in Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd.6 this Court observed and held that the expression 'award' has a distinct connotation and it envisages a binding decision of a judicial or a quasi-judicial authority. That apart, Section 173, M.V. Act, provides an appeal against (2006) 12 SCC 642 an award of a Claims Tribunal to the High Court subject to sub-Section (2) thereof, and it entitles any person aggrieved by an award of a Claims Tribunal to prefer it to the High Court.

25. We have already referred to the error, rather an illegality committed by the Claims Tribunal in deciding issues 1 to 4, 6 and 7 against the claimant and in favour of the opposite parties viz., the respondents herein even after making it clear it had no occasion to examine them on merits and solely because it returned a negative finding on the question of its territorial jurisdiction to maintain the subject claim petition. This error or mistake that resulted in great prejudice escaped the attention of the High Court while exercising the power under Section 173, M.V. Act, in the appeal filed by an appellant herein against the award of the Tribunal.

26. In this context, it is to be noted that the materials on record and the discussions of the evidence by the Claims Tribunal would reveal that there was no serious dispute regarding the occurrence of accident in question in which the appellant's son lost his life and also of the fact that in the said accident involving the vehicle insured with the first respondent-the insurance company. It is true that respondent Nos. 1 and 2 have disputed the nature of its occurrence. There seems to be no dispute regarding the fact that the deceased sustained injuries and succumbed to it instantaneously. We have already noted that it was after keeping the claim petition filed in 2006 for about 4 years i.e. only on 06.10.2010 that it was dismissed on the ground of lacking territorial jurisdiction and that the appeal filed against the same in the year 2010 was dismissed, confirming the award passed by the Tribunal, after about 6 years viz. on 28.11.2016. We have no hesitation to hold that in the totality of the circumstances, revealed from the indisputable factual position there was absolutely no justification for the High Court to confine its consideration only on the question of correctness of the finding on territorial jurisdiction and at the same time, to hold all the other issues against the claimant(s) and in favour of the opposite parties.

27. In the above context, it is to be noted that for the purpose of deciding the issue of territorial jurisdiction, the Tribunal permitted the parties to adduce evidence before it. The position obtained in the case would reveal that the Tribunal had actually proceeded with the claim petition despite holding the view that it got no territorial jurisdiction. In such indisputable position, it is only apposite to refer to Order XIV, Rule 2 of CPC which mandates a Court to pronounce a judgment on all the issues. The said provision reads thus:-

> "2. Court to pronounce judgment on all issues.—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.
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> (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—
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> (a) the jurisdiction of the Court, or
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> (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

28. True that in terms of the said provision, the issues regarding territorial jurisdiction ought to be tried as primary issues but when it is evident that the issue could not be decided solely based on the pleadings in the plaint (here claim petition) and when parties are permitted to adduce evidence upon finding that it is a mixed question of law and facts there was absolutely no justification for not pronouncing an award on all the issues framed besides the one pertaining to its territorial jurisdiction. There cannot be any doubt with respect to the fact that when evidence was permitted to be let in, may be for such issues the possibility of re- appreciation and consequent reversal of finding(s) of the Tribunal cannot be ruled out. But then, if the award was pronounced not at threshold, but after a very long lapse of time and confining consideration only on the issue of territorial jurisdiction and then, answering the other issues as well against the claimant without examining them on their own merits, but solely because of the negative finding on the issue of territorial jurisdiction, as occurred in the case on hand, it would defeat the very purpose of the benevolent legislation providing for grant of compensation under Section 166 of the M.V. Act. As noticed hereinbefore in this case, the question of territorial jurisdiction was decided by the Tribunal after about 4 years since the filing of the claim petition and the appeal filed in 2010 was dismissed, confirming the dismissal of the claim petition after about 6 years. We have also already noted that in the case on hand a great illegality or error has been committed by the Tribunal even after observing that it got no occasion to examine the other six issues but then deciding those six issues against the claimant and in favour of the opposite parties. Since a Claims Tribunal constituted under Section 165, M.V. Act even when lacking territorial jurisdiction cannot be said to be lacking jurisdiction on the subject matter in a claim petition and the award would not be a nullity and therefore, the findings on other issues would be binding on the parties. Hence, in the first instance, failure of justice occurred as the award of the Tribunal virtually rendered the claimant remediless. In cases of this nature, sometimes a remand may also be a futility as passage of such long period may make witnesses unavailable for examination or re-examination for various reasons. Such reasons may also include death of the witness(s). Since the present imbroglio is created because of a mistake or error on the part of the Tribunal, either in proceeding further after returning a negative finding on the question of territorial jurisdiction or in not pronouncing award on all issues, we are of the considered view that the said mistake not entering on merits and into a findings on issues No.1 to 4,

6 and 7 at paragraph 21 against the claimant and in favour of the opposite parties without examining them on merits and hence, they are liable to be set aside in the light of the salutary maxim 'Actus Curiae neminem gravabit', as no party shall be put to suffer for the mistake of a Court.

29. We have already referred to the provision under Order XIV, Rule 2, CPC, observed and held while in certain circumstances it would be inevitable to pronounce judgment/award on all issues as mandated thereunder. We are not oblivious of the provision under Section 169 of the M.V. Act. In this regard, it is apt to refer to paragraph 15 of the decision in Mantoo Sarkar's case (supra) where this Court held as under:-

> "15. 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 Code of Civil Procedure under the Act have a limited application but in terms of the rules "save and except" any specific provision made in that behalf, the provisions of the Code of Civil Procedure would apply. Even otherwise the principles laid down in the Code of Civil Procedure may be held to be applicable in a case of this nature."

30. Since, there is no specific provision to deal with a situation akin to the situation in the case on hand, the said observation in Mantoo Sarkar's case (supra) would apply to the case on hand with all its force.

31. In view of the nature of this case, as observed in Mantoo Sarkar's case (supra), we would have even exercised our extraordinary jurisdiction under Article 142 of the Constitution of India to do complete justice between the parties by determining the question of compensation as the accident in question occurred on 07.03.2006. Despite the death of the son of the appellant in the said accident the fact is that the claimant did not get compensation despite the passage of more than 18 years. We have already noted that all relevant issues were framed by the Tribunal for the purpose of determination of compensation. However, even after deciding to permit the parties to adduce evidence the Tribunal in the instant case, appears to have confined it for the purpose of deciding the only question of territorial jurisdiction and therefore, in the absence of evidence on necessary ingredients for determination of compensation payable, we are not in a position to determine the compensation as in view of the factual position obtained in the instant case sufficient to apply the decisions in Mantoo Sarkar's case (supra) as also Malati Sardar's case (supra) to reverse the finding on territorial jurisdiction. The High Court has fallen in error in not picking up the illegalities resulting in failure of justice and to resolve them appropriately. For the purpose of determining the compensation in respect of a case of this nature the relevant factors and dates necessary for computing ultimately the quantum of compensation, are not available on record, before us. Though, we are pained and peeved, we have no option, but to remand the matter after a long period of 18 years, which could have been avoided had the Tribunal followed Order XIV, Rule 2, CPC. Taking note of such circumstances and the prejudice already caused to the claimant(s) and further that directing the Motor Accident Claims Tribunal at Nainital to restore MACP No.137/2006 and fix a date for the appearance of the parties and then proceed to consider the question of grant of

compensation, ignoring its finding on territorial jurisdiction would have no prejudice to the parties as they had already examined witnesses before the Claims Tribunal, we are inclined to remand the matter to the Motor Accident Claims Tribunal at Nainital. We hold that it would not cause any prejudice to the opposite parties as they have already filed the written statements before the Tribunal despite objecting to the territorial jurisdiction and even thereafter have chosen to adduce oral evidence before the Tribunal, to some extent. It is also a fact that the first respondent-insurance company got its office in Nainital or in other words it is conducting its business within the limits of Motor Accident Claims Tribunal at Nainital and the fact is that cross- examination of witnesses were done on its behalf as well. There cannot be any doubt with respect to the fact that the subject matter of claim is within jurisdiction of the Claims Tribunal, at Nainital.

32. For all these reasons, we set aside the impugned judgment and order dated 28.11.2016 passed by the High Court of Uttarakhand at Nainital in appeal from order No.414 of 2010 arising from the Award in MACP No.137/2006 and also the award dated 06.10.2010 passed by the Motor Accident Claims Tribunal at Nainital. To enable the Tribunal to proceed further and to decide the claim petition on merits, MACP No.137/2006 is restored into its file and in view of the long lapse of time there will be a further direction that the Tribunal shall conclude the entire exercise after permitting parties to adduce further evidence, if any, within a period of six months from the date of receipt of a copy of this judgment.

33. The parties shall appear before the Tribunal either in person or through counsel on 20.05.2024 and thereupon, the Tribunal shall conclude the proceedings within the above stipulated time. In the peculiar circumstances to comply with the direction, the Registry shall forward copies of this judgment to all the parties. The appeal is disposed of as above.

.....J. (C.T. RAVIKUMAR) .....J. (RAJESH BINDAL) New Delhi;

February 08, 2024