

M/S New India Assurance Co Ltd vs Shyam Sunder And Ors on 21 September, 2021

Author: Sanjeev Sachdeva

Bench: Sanjeev Sachdeva

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IN THE HIGH COURT OF DELHI AT NEW DELHI
FAO 222/2021

M/S NEW INDIA ASSURANCE CO LTD

Through: Mr. Dinesh Sharma,

versus

SHYAM SUNDER AND ORS

Through:

Mr. R.K

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% 21.09.2021 CM APPL.32892/2021 (exemption) Exemption is allowed subject to all just exceptions.

FAO 222/2021 & CM APPL.32891/2021

1. The hearing was conducted through video conferencing.
2. Appellant impugns order dated 18.06.2021 whereby the application seeking compensation has been allowed and compensation awarded.
3. Learned counsel for the appellant submits that the claim petition was filed after a delay of over 10 years. He submits that the delay was condoned but the appellant has not impugned the order condoning the delay.
4. Learned counsel further submits that the Commissioner did not have the territorial jurisdiction to entertain the petition in view of the fact that neither the accident took place in Delhi nor the employee ordinarily resided in Delhi at the time of the accident or at the time of filing of the application Digitally Signed Digitally Signed By:KUNAL SACHDEVA MAGGU Signing Date:21.09.2021 Signing Date:22.09.2021 07:58:13 23:01 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

nor the employer had his registered office in Delhi.

5. Learned counsel submits that Section 21 of the Employee Compensation Act, 1923 prohibits a Commissioner not having jurisdiction to proceed with the matter.

6. Learned counsel submits that application for compensation had contended that the truck which was bring driven by the claimant was hit on the wrong side of the road by an over speeding vehicle because of which the claimant got trapped in his damaged truck and was grievously injured.

7. Learned counsel submits that the number of the over speeding vehicle which allegedly hit the truck of the appellant is a motorcycle. He submits that the claimant has not been able to provide the correct details of the accident and in view of the long delay prejudice has been caused to the appellant in defending the proceedings.

8. Learned counsel further submits that the Commissioner has erred in relying on the judgment of the Supreme Court in Malati Sardar vs. National Insurance Co. Ltd, (2016) 3 SCC page 43. He submits that the said judgment had interpreted Section 166 of the Motor Vehicles Act whereas the provision applicable is Section 21 of the Employees Compensation Act, 1925 which is completely different from Section 166 and no parity could have been drawn in the said judgment.

9. Learned counsel submits that the judgments relied on by the Commissioner have incorrectly applied the judgment of Malati Sardar (Supra) to Employees Compensation Act.

10. Issue notice. Notice is accepted by learned counsel appearing for the Digitally Signed Digitally Signed By:KUNAL SACHDEVA MAGGU Signing Date:21.09.2021 Signing Date:22.09.2021 07:58:13 23:01 This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

respondent No.1.

11. Learned counsel appearing for respondent No.1 submits that the Commissioner has correctly applied the judgment of Malati Sardar (Supra) as also the other judgments of the Allahabad High Court, Karnataka High Court and Rajasthan High Court.

12. Issue notice to respondent No.2, returnable on 10.03.2022.

13. Digital copy of the Commissioner's record be requisitioned.

14. In the meantime, the deposited amount shall not released by the Commissioner till the next date of hearing.

15. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SEPTEMBER 21, 2021
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