

Malati Sardar vs National Insurance Company Ltd on 5 January, 2016

Equivalent citations: AIR 2016 SUPREME COURT 247, 2016 (3) SCC 43, 2016 AAC 491 (SC), (2016) 114 ALL LR 701, (2016) 1 SCALE 133, (2016) 158 ALLINDCAS 200 (SC), (2016) 63 OCR 608, (2016) 1 UC 130, (2016) 1 ACC 1, (2016) 1 TAC 337, (2016) 1 WLC(SC)CVL 472, (2016) 1 JLJR 451, (2016) 1 CAL LJ 137, (2016) 2 CIVLJ 779, (2015) 4 TAC 566, (2016) 1 RECCIVR 908, (2016) 1 CURCC 24, (2016) 5 MAH LJ 488, (2016) 2 RAJ LW 898, (2016) 2 ANDHLD 99, (2016) 1 ALL WC 972, (2016) 1 LAB LN 1, (2016) 1 MAD LJ 525, (2016) 2 PUN LR 171, (2016) 1 CALLT 61, (2016) 4 MAD LW 810, (2016) 4 MPLJ 17, (2016) 2 UC 1130, (2016) 1 ACJ 542, (2016) 2 PAT LJR 53, (2016) 121 CUT LT 472, 2016 (1) SCC (CRI) 707, (2018) 2 CURCC 398

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Bench: Anil R. Dave, Adarsh Kumar Goel

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10 OF 2016
(ARISING OUT OF SLP (CIVIL) NO.27243 OF 2015)

MALATI SARDAR

...PETITIONER

VERSUS

NATIONAL INSURANCE COMPANY LIMITED
& ORS.

...RESPONDENTS

J U D G M E N T

ADARSH KUMAR GOEL, J.

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

2. On 7th May, 2008, the deceased Diganta Sardar, aged 26 years, a school teacher, unmarried son of the appellant was hit by Bus No.WB/15-A- 4959 insured with the respondent company at Hoogly, in the State of West Bengal and died. He was travelling on motor cycle of his colleague, Uttam Samui

as a pillion rider. The appellant filed an application under Section 166 of the Motor Vehicles Act, 1988 ("the Act") for compensation before the Tribunal at Kolkata.

3. Rash and negligent driving by the driver of the bus having been established, the Tribunal, applying the multiplier of 13 on account of age of the appellant being 47 years, and taking into account the income of the deceased and other relevant factors, fixed compensation of Rs.16,12,200/- with interest at the rate of 6% p.a. from the date of filing of claim petition vide its Award dated 7th February, 2012.

4. The respondent company preferred an appeal before the High Court on the only ground of lack of territorial jurisdiction of the Tribunal. The objection of the respondent was that the accident took place at Hoogly and the claimant resided at Hoogly. Office of the respondent being at Kolkata did not attract jurisdiction of the Kolkata Tribunal. Reliance was placed on the decisions of this Court in *Union of India vs. G.S. Grewal*[1] and *Jagmittar Sain Bhagat vs. Director, Health Services, Haryana*[2] apart from the High Court judgments. The appellant supported the award by placing reliance on judgment of this Court in *Mantoo Sarkar vs. Oriental Insurance Company Limited*[3] apart from other judgments.

5. The High Court upheld the objection of the respondent and allowed the appeal of the respondent company and directed refund of the amount deposited/paid, if any, to the respondent company. It was observed :

"In the instant case admittedly the accident took place in Hooghly. The claimant, as evident from the cause title, resides at Hooghly. The owner, the respondent, too resides at Hooghly. Hooghly, no doubt, is beyond the territorial jurisdiction of the Tribunal at Kolkata. The argument of the respondent-claimant that the Kolkata Tribunal exercises jurisdiction since the regional office of the insurance company is situated within its territorial limits cannot be accepted as the last option under section 166(2) cannot be construed to mean the residential address of the company as a company can have a business or an office address and not a residential address. Therefore, the Tribunal at Kolkata had no jurisdiction to entertain the claim petition. In this regard we follow the principles of law laid down in *New India Assurance Company Limited vs. Kustiswar Pramanik* (supra) [2010(1) T.A.C. 405 (Cal)], in *Nirmala Devi Agarwal* (supra) [2013 (3) CLJ (Cal)] and in the unreported judgment delivered on 18th July, 2012 in FMA 724 of 2008 with C.O.T. 22 of 2008 (*The New Indian Assurance Col.*

Ltd. vs. Silpi Dutta & Ors.) and we respectfully disagree with the judgment in FMA 1454 of 2013 (*National Insurance Company Ltd. vs. Alpana Jana & Ors.*)".

6. We have heard learned counsel for the parties.

7. Learned counsel for the appellant submitted that the High Court was in grave error in holding that the Kolkata Tribunal could not exercise jurisdiction on the ground that registered office of the

insurance company was within its territorial limits. Jurisdiction was available under Section 166(2) if the defendant/respondent in a claim petition was residing within the jurisdiction of the Tribunal. The residence in the case of juristic person included its Principal office. In any case, the view taken by the High Court is directly in conflict with the law laid down by this Court in Mantoo Sarkar (supra) under which the High Court could interfere in such cases only if there was failure of justice. The decisions of this Court in G.S. Grewal and Jagmittar Sain Bhagat have no application to the fact situation at hand.

8. Learned counsel for the respondent company on the other hand, supported the view taken by the High Court and submitted that the place of residence within the jurisdiction of the Tribunal under Section 166(2) of the Act could not mean the place of business. He sought to distinguish the view taken by this Court in Mantoo Sarkar (supra).

9. 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 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.

10. In our view, the matter is fully covered by decisions of this Court in Mantoo Sarkar (supra). It will be worthwhile to quote the statutory provision of Section 166(2) of the Act :

“166. Application for compensation.— * * * (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:

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.”

11. In Mantoo Sarkar (supra), the insurance company had a branch at Nainital. Accident took place outside the jurisdiction of Nainital Tribunal. The claimant remained in the hospital at Bareilly and thereafter shifted to Pilibhit where he was living for a long time. However, at the time of filing of the claim petition he was working as a labourer in Nainital District. The High Court took the view that Nainital Tribunal had no jurisdiction and reversed the view taken by the Tribunal to the effect that since the office of the insurance company was at Nainital, the Tribunal had the jurisdiction. This Court reversed the view of the High Court. It was held that the jurisdiction of the Tribunal was wider than the civil court. The Tribunal could follow the provisions of Code of Civil Procedure (CPC). Having regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in absence of any prejudice. Distinction was required to be drawn between a jurisdiction with regard

to subject matter on the one hand and that of territorial and pecuniary jurisdiction on the other. A judgment may be nullity in the former category, but not in the later. Reference was also made to earlier decision of this Court in Kiran Singh vs. Chaman Paswan[4] to the following effect :

“With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 CPC and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act.’ ”

12. We are thus of the view that in the face of judgment of this Court in Mantoo Sarkar (supra), the High Court was not justified in setting aside the award of the Tribunal in absence of any failure of justice even if there was merit in the plea of lack of territorial jurisdiction. Moreover, the fact remained that the insurance company which was the main contesting respondent had its business at Kolkata.

13. Reliance placed on decisions of this Court in G.S. Grewal and Jagmittar Sain Bhagat is misplaced. In G.S. Grewal, the subject matter of dispute was not covered by the definition of “service matters” under Section 3(o) of the Armed Forces Tribunal Act, 2007 and on that ground, it was held that the Armed Forces Tribunal had no jurisdiction in the matter. Thus, it was a case of inherent lack of jurisdiction over the subject matter. Similarly in Jagmittar Sain Bhagat, the claimant before the Consumer Protection Forum was found not be a “consumer” under Section 2(1)(d) of the Consumer Protection Act, 1986 and on that ground the order of the consumer forum was held to be without jurisdiction. The said cases did not deal with the issue of territorial jurisdiction.

14. 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 parties 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 (supra), contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC.

15. Accordingly, we allow this appeal, set aside the impugned judgment of the High Court and restore the award of the Tribunal.

.....J. [ANIL R. DAVE]J. [ADARSH KUMAR GOEL] NEW DELHI JANUARY 5, 2016

- [1] (2014) 7 SCC 303
- [2] (2013) 10 SCC 136
- [3] (2009) 2 SCC 244
- [4] AIR 1954 SC 340