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Court : Rajasthan

Decided On : Oct-05-2006

Reported in : 2008ACJ1709

Judge : Ajay Rastogi, J.

Appellant : Kusum Devi and ors.

Respondent : Dungaram and ors.

Disposition : Appeal allowed

Judgement :

Ajay Rastogi, J.

1. By instant appeal, claimants have assailed the award dated 9.5.2005 passed by the Motor Accidents Claims Tribunal [Spl. Judge (EC Act)], Jaipur City, whereby the Tribunal though computed the compensation after due adjudication but rejected Claim Petition No. 1071 of 2004 (No. 2050 of 2001) on the ground that it has no jurisdiction because the accident took place on National Highway 8 within Police Station, Dudu for which jurisdiction lies at the Motor Accidents Claims Tribunal, Sambhar Lake, Jaipur District.

2. Claimants are wife, minor son and mother of Avadhesh Kumar (deceased), aged 26 years who died in a motor accident which took place on 17.3.2001

opposite Rose Restaurant, Dudu, due to rash and negligent driving of offending truck (tanker) No. GJ 12-U 5083 by coming from the wrong side and collision with truck No. MH 04-FF 3634 being driven by the deceased.

3. As alleged, the deceased was a driver and holder of a licence to drive transport vehicle and was drawing Rs. 5,400 per month. The learned Tribunal after taking note of material on record, while deciding issue Nos. 4 and 5 considered income of the deceased for a sum of Rs. 5,400 per month as he was driver on a transport vehicle running on long route and after 1/3rd deduction towards his personal expenses and with the aid of multiplier of 16 keeping in view age of his mother as 40 years, in all awarded Rs. 7,41,200 (including Rs. 6,91,200 towards loss of income to the family and Rs. 50,000 as lump sum amount for conventional damages) vide impugned award holding negligence of the driver of offending vehicle, respondent No. 1, in course of his employment with the owner of offending vehicle, respondent Nos. 2 and 3, under issue Nos. 1 and 2.

4. However, while deciding issue No. 3 framed on the objection raised by the insurer, respondent No. 4, with respect to the jurisdiction, the learned Tribunal recorded a finding that in claim petition, the claimants have shown to be resident of Rampur, District Jaunpur (U.P.) but no documentary evidence has been produced on record to show that they used to reside presently at 41, Sidharath Colony, Ajmer Road, Sodala, Jaipur and contrarily Kusum Devi, AW 1, during her cross-examination admitted that she never resided in Jaipur and her mother-in-law used to reside in village Rampur (U.P.) and that apart, driving licence of the deceased issued at Mumbai did not show his residence at Jaipur and as such held that none of claimants are residing within the jurisdiction of the Tribunal, hence by virtue of Section 166(2) of the Motor Vehicles Act, 1988, the Tribunal has no jurisdiction to entertain the claim petition and accordingly rejected the same, with the liberty to the insurer for recovery of Rs. 50,000 paid to the claimants under no fault liability. Hence, this appeal with the prayer:

To allow this appeal, quash the decision on the point of jurisdiction and suitably modify the decision on issue No. 3 and award the amount of compensation assessed by the Tribunal in favour of claimants and against respondents jointly

and severally along with interest at suitable rate from the date of filing claim petition and costs throughout.

5. Counsel for appellants submits that not only in claim petition but also in an affidavit filed by claimant Kusum Devi, AW 1, it was specifically stated that they are permanently resident of Hajirpura, Nevda, Post Rampur, District Jaunpur (U.P.) and temporarily residing at plot No. 41, Sidharath Colony, Ajmer Road, Sodala, Jaipur, in support whereof, affidavit of Krishna Kumar Yadav s/o Hari Singh was also filed, stating that he is landlord of plot No. 41, Sidharath Colony, Sodala, Jaipur where claimant Kusum Devi along with her children was residing for last one year and all these facts showed that at the time of presentation of claim petition, claimants were residing at 41, Sidharath Colony, Sodala, Jaipur which was well within the jurisdiction of Tribunal at Jaipur City, but all these were completely overlooked by the Tribunal.

6. The counsel further submits that the Tribunal, itself, considered aforesaid facts at the very inception immediately after the objection about jurisdiction was raised by the respondent insurer and overruled this objection vide order dated 23.3.2002 and once Tribunal held that it has jurisdiction to entertain claim petition at Jaipur City, it was not justified in rejecting claim petition based on a mere technicality without taking note of its own order dated 23.3.2002.

7. Counsel submits that even otherwise jurisdiction to file claim petition as provided under Section 166 (2) of the Act has to be liberally construed especially after amendment made effective from 14.11.94 by virtue whereof, the claimants can file claim petition either at the place (1) where the accident took place or (2) within local limits of jurisdiction where claimants reside or carry on business or (3) within local limits under whose jurisdiction defendants reside, no doubt, the claimants are permanently resident of village Rampur, District Jaunpur (U.P.), however, the accident took place on National Highway 8 near Dudu (Jaipur District) and the defendants (owner of offending truck) are residing in Maharashtra where the vehicle is also registered, therefore, claimants had an option out of three (supra) to file instant claim petition either in Uttar Pradesh or Maharashtra or Rajasthan (Jaipur) and in such circumstances only objection which could be raised

and taken note of was that claimants could have filed claim petition within local limits of jurisdiction at Sambhar Lake within whose jurisdiction, place of accident Dudu lies, where the accident took place and thus rejecting claim petition on such a technical plea in fact frustrates the very object with which an amendment has been made under Section 166(2) of the Act.

8. Counsel also contends that even if the Tribunal was of the view on the issue of jurisdiction to file claim petition at Sambhar Lake, such an issue was to be decided at preliminary stage itself and once the claim petition has been finally adjudicated on merits, the Tribunal was not justified in rejecting the claim petition and that apart, provisions of Code of Civil Procedure are applicable for adjudication of disputes raised before the Tribunal and by virtue of provisions contained in the Code of Civil Procedure, instead of rejecting the claim petition, at best, plaint could have been returned for its presentation under Order 7, Rule 10, Code of Civil Procedure before Tribunal having jurisdiction and, as such, the Tribunal committed an error in rejecting the claim petition itself.

9. Lastly, learned Counsel contends that vide impugned award, while adjudicating the claim, learned Tribunal held that the claimants are entitled to compensation of Rs. 7,41,200 and overruled objections of the insurer about negligence as well as validity of driving licence of the driver of offending vehicle besides breach of policy while deciding issue No. 3 against the insurer which failed to discharge its burden and in this regard the finding recorded by learned Tribunal against the insurer has not been questioned nor cross-appeal/objection has been filed by either of parties and in such circumstances amount of compensation computed under impugned award holding the insurer liable to pay the same has not been disputed and in such circumstances rejection of claim petition is wholly unwarranted.

10. Per contra, counsel for the respondent insurer submits that once the learned Tribunal recorded a finding that it has no jurisdiction, adjudication of the dispute loses its legal consequence and this fact remained undisputed that the claimants are permanently resident of Rampur, District Jaunpur (U.P.) and the accident took place at National Highway 8 near Dudu, jurisdiction whereof lies at Sambhar Lake (Jaipur District) only to file claim petition but claimants have claimed themselves to

be resident of 41, Sidharath Colony, Sodala, Jaipur which was not accepted by Claims Tribunal under impugned award. Counsel further urged that once the Tribunal has no jurisdiction to entertain claim petition, very computation made for entitlement of compensation under such award is non est and in absence of jurisdiction, the very award is nullity in the eyes of law and no error was committed by the Tribunal in rejecting claim petition itself and there is no limitation provided, so claimants are always free to file claim petition before the Tribunal having jurisdiction under Section 166(2) of the Act.

11. I have considered contentions of the parties and with their assistance examined material on record. Before examining scope of Section 166(2) of the Act, I would like to compare provisions contained in Code of Civil Procedure with those under Section 166 of the Act. In none of sections 16 to 20, Code of Civil Procedure there is any provision that the plaintiff can file a suit where he resides, whereas sections 20 (a) and 20 (b), Code of Civil Procedure provide that certain suits can be filed at the place where defendants reside or carry on their business or personally work for gain and thus, Section 20 is applicable to any one of defendants. But there is clear departure from general provisions available under the Code of Civil Procedure for filing claim petition under Section 166 of the Act.

12. Prior to amendment made in Section 166 by substituting its Sub-section (2), the application could have been filed by the claimant to Claims Tribunal having jurisdiction over the area where the accident took place. But the legislature has made a complete departure from usual rule that the suit should ordinarily be filed where cause of action arose or part of cause of action arose or at the place where defendants reside. Section 166 (2) as it existed before the amendment was made effective from 14.11.1996 reads as under:

166. Application for compensation.- (2) Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred and shall be in such form and shall contain such particulars as may be prescribed:Provided that where any 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.

But the legislature considered to take a liberal view in providing jurisdiction to the claimants for filing application under Section 166 of the Act and hence considered to make the amendment by substituting Sub-section (2) to it vide Motor Vehicles (Amendment) Act, 1994 (54 of 1994), in view of following objects and reasons:

(4) The Law Commission in its 119th Report had recommended that every application for a claim be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides at the option of the claimant. The Bill also makes necessary provision to give effect to the said recommendation.

Thus, it appears that departure was made at the instance of 119th Report (supra) to the effect that a special provision be made in Section 166 (2) so that claimant can file his application where he resides. This was special concession made to the claimant looking to the circumstances that it would be most inconvenient to drive a claimant to place where the accident occurred, if the claimant does not normally reside or carry on his business within local limits of a Tribunal. Such an option was given to the claimant with a view to facilitate justice by way of departure from normal rule.

13. Sub-section (2) of Section 166 of the Act as inserted and made effective from 14.11.1994 reads:

166 (2). Every application under subsection (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.

A plain reading of Section 166(2) shows legislative intent to insert Sub-section (2) that making of claim application under Section 166 (1) has been left totally at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area where the accident took place, or to such Tribunal within local limits of whose jurisdiction the claimant resides or carries on business or within local limits of whose jurisdiction the defendant resides.

14. In other words, obviously claimant can file an application within the jurisdiction of the Claims Tribunal (1) where the accident occurred; or (2) before Tribunal within local limits of whose jurisdiction, he resides or carries on his business; or (3) within local limits of whose jurisdiction the defendant resides or carries on his business.

15. In view of the word 'or' which separates three clauses, the claimant can choose either of the three options and as per legislative intent, there are three options implied, whereby he has been given a right to pick one of three places for exercising his option.

16. In instant case, claimants exercised the option given in second clause, viz., before Claims Tribunal within local limits of whose jurisdiction they reside or carry on business, so the Tribunal was required to find out as to whether claimants resided or carried on business within territorial jurisdiction of Jaipur City and that being so, residence of claimants in instant case at 41, Sidharath Colony, Sodala, Jaipur is of consequence as the legislature gave them benefit of the option by going out of the way.

17. It is trite that expression 'reside' used in Section 166 (2) has to be given a liberal interpretation in taking note of the beneficial enactment protecting interest of the injured person or dependant of third party victim of an accident arising out of the use of motor vehicle or damage to any property or both.

18. The word 'resides' used in Section 166 (2) signifies dwelling in a place for a continuous and considerable period in contradistinction to a temporary residence. No doubt, span of a temporary residence may be considerable, but it cannot be ignored that when a person leaves a place where he had been residing as

permanent for good, viz., with no intention to come back and goes to some other place to live there, former place where he used to live ceased to be his ordinary place of residence and the latter becomes his ordinary place of residence. So, question of residence is largely a question of intention.

19. In instant case, learned Tribunal failed to take into consideration relevant facts brought on record to determine the place where the claimants resided. The word 'reside' has to be given import in contradistinction to the place of casual or temporary residence. In United India Insurance Co. Ltd. v. Om Prakash , the Division Bench of Allahabad High Court observed:

(14) It should not be lost sight of that the expression 'resides' and the place where the accident occurred cannot be treated to be synonymous as they stipulate different situations, which are not interchangeable. Expression 'resides' as used in the provision in question does not include in its ambit the places where the claimant might have been residing casually or while on some errand or for other purposes where the evidence indicate the said place and residence to be of purely temporary nature and casual residence and not a place where the claimant ordinarily resided.

It is true that in instant case, claimants in their application mentioned about their permanent residence at village Rampur, District Jaunpur (U.P.) and at some stages even in the course of cross-examination or their affidavits admitted to their permanent residence at village Rampur in Jaunpur District (U.P.) but I can also not lost sight of the fact as is apparent from a careful perusal of claim petition as well as their affidavits that while making reference of their permanent residence, they have also mentioned about their present residence at 41, Sidharath Colony, Sodala, Jaipur and to substantiate it, affidavit has also been filed of their landlord who stated that the claimants had been residing in a house situated at 41, Sidharath Colony, Sodala, Jaipur which is owned by him and rented to them for last one year.

20. Objection raised by the respondent insurer only relates to local jurisdiction and as per the insurer, claim petition ought to have been filed by claimants before Motor Accidents Claims Tribunal, Sambhar Lake, District Jaipur within local limits

of whose jurisdiction, the accident occurred, whereas claim petition was filed before the Motor Accidents Claims Tribunal, Jaipur City.

21. It is not the case that the Tribunal which passed impugned award has no jurisdiction over subject-matter under claim petition. An objection raised by the insurer at preliminary stage was considered by the learned Tribunal after having taken note of material including claim petition and the affidavits produced in support of plea of claimants about their residence in Jaipur and vide order dated 23.3.2002, Tribunal overruled this objection about jurisdiction and despite it, the Tribunal overlooked this significant aspect while deciding issue No. 3 while rejecting the claim petition under impugned order on the pretext of lack of jurisdiction.

22. As observed by Supreme Court in Harshad Chimanlal Modi v. DLF Universal Ltd. : AIR 2005 SC4446 , the jurisdiction of a court may be classified into several categories. The important categories are: (i) territorial or local jurisdiction, (ii) pecuniary jurisdiction, and (iii) jurisdiction over the subject-matter.

23. It is settled law that for territorial and pecuniary jurisdictions, objection has to be taken at the earliest possible opportunity and in any case at or before settlement of issues and if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. The Apex Court further observed:

Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.

In instant case, it was not the case of either of parties that Tribunal has no jurisdiction over the subject-matter and only question to be considered was as to whether the claim petition falls in the category (i) of local limits of the Tribunal in whose jurisdiction the claimants used to reside, either at Jaipur City or Sambhar Lake within whose local limits of jurisdiction the accident took place. However, in the absence whereof submission made by counsel for respondent that the award

passed by the Tribunal having no jurisdiction is nullity in the eyes of law, is bereft of any merit and deserves to be rejected.

24. In my considered opinion, once the Tribunal in instant case has overruled the preliminary objection raised at an earliest opportunity vide order dated 23.3.2002 and, thereafter, got the claim petition adjudicated on merits and holding claimants entitled of compensation computed, it was wholly erroneous on the part of the Tribunal to reject claim petition on the pretext of lack of jurisdiction by overlooking the order dated 23.3.2002 (supra).

25. Indisputably, as per sub-rule (b) of rule 10.28 of Rajasthan Motor Vehicles Rules, 1990, provisions contained in Order 7, rule 10, Code of Civil Procedure are applicable to the proceedings before the Claims Tribunal. Before parting with the judgment, 1 would like to observe that if any objection is raised by either of parties in relation to jurisdiction, adjudication whereof has always to be at preliminary stage and decided before claim petition is adjudicated upon merits; and in case Tribunal comes to the conclusion that it has no jurisdiction to entertain claim petition, the same be returned to the claimant in terms of Order 7, Rule 10, Code of Civil Procedure for its presentation before competent Tribunal. In absence of any finding recorded of having no jurisdiction over subject-matter, rejection of claim petition, itself, in my opinion is not at all justified and the Tribunal ought to have returned the claim petition for its presentation to the Tribunal having jurisdiction in terms of Section 166 (2) of the Act.

26. Consequently, this appeal is allowed and the finding recorded by Tribunal under impugned award dated 9.5.2005 for rejecting the Claim Petition No. 1071 of 2004 on the objection about jurisdiction is set aside and as a result whereof, claimants are entitled for compensation computed under aforesaid award. The compensation shall be deposited by insurer, respondent No. 4 through a/c payee pay order within one month before the Tribunal which is further directed to disburse the compensation to the claimants proportionately in accordance with law. To the above extent, impugned award stands modified. Record be returned back forthwith. No order as to costs.

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