

(2013) 03 CAL CK 0054

Calcutta High Court

Case No: F.M.A.T. No. 1038 of 2002

Nirmala Devi Agarwal and
Others

APPELLANT

Vs

ICICI Lombard General
Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision: March 25, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 10A, 21, 21(1)
- Motor Vehicles Act, 1988 - Section 140, 147, 166, 166(2), 17

Citation: (2013) 3 CHN 264 : (2013) 3 WBLR 132

Hon'ble Judges: Mrinal Kanti Sinha, J; Jyotirmay Bhattacharya, J

Bench: Division Bench

Advocate: Aniruddha Chatterjee and Biswajit Konar, for the Appellant; Parimal Kumar Pahari, for the Respondent

Final Decision: Disposed Off

Judgement

1. The claimants are the appellants before this Court. The claimants filed a claim petition u/s 166 of the Motor Vehicles Act. The owner of the offending vehicle did not appear in the said proceedings in spite of service of summons, upon him. The insurance company appears in the said proceeding and filed written statement therein, challenging the jurisdiction of the Tribunal to entertain the said claim petition for want of territorial jurisdiction. Though, several issues were framed by the Learned Tribunal in the said proceeding but the Issue regarding the lack of territorial jurisdiction of the Tribunal to entertain the said claim petition was ultimately taken up by the Learned Tribunal as a preliminary Issue and the said issue was decided by the Learned Tribunal in favour of the insurance company. The Learned Tribunal held that the said Tribunal lacks territorial jurisdiction to entertain the said claim petition and such claim petition was rejected, but at the same time, the Learned Tribunal observed that the claim petition was to be returned to the

petitioners on filing of the necessary application under Order 7 Rule 10A of the Code of Civil Procedure.

2. The legality and/or propriety of the said impugned order of the learned Tribunal passed on July 09, 2012 in MJC Case No. 897 of 2008 is under challenge in this appeal at the instance of the claimants.

3. Let us now consider as to how far, the Learned Tribunal was justified in passing the impugned order in the facts of the instant case.

4. For proper appreciation of the legality of the impugned order, certain basic facts which are required to be taken note of, are set out hereunder:--

iii) The claimants reside at Premises No. 126, Salkia School Road. Swapanalok Building, Flat No. 408. Howrah-711106 of Block-B which is within the territorial jurisdiction of the Tribunal at Howrah.

ii) The accident took place on Karman Border at Hodal in the State of Harayana.

iii) The address of the owner of the offending vehicle as disclosed in the claim petition is at House No.-105, Sector --29, Housing Board Colony, Faridabad, which is also within the State of Harayana.

iv) The insurance policy was issued by the branch office of the concerned insurance company, which is also situated at Faridabad within the State of Harayana. The regional office of the insurance company is situated at J.K. Millenium tower, 3rd Floor, 4h/D, Chowringhee Road, Kolkata-700071. This address of the regional office of the insurance company was disclosed in the claim petition. However, in the memorandum of appeal the present address of the insurance company was mentioned as 15, Park Street, (Appejay House), 7th Floor, Kolkatta - 700016.

5. These basic facts are necessary for the present purpose. The instant claim petition was filed in City Civil Court at Calcutta where neither the claimants reside, nor they carry on business, nor the accident occurred, nor the policy issuing office of the Insurance company is situated within the jurisdiction of City Civil Court at Calcutta, nor the owner of the offending vehicle resides within the jurisdiction of the City Civil Court at Calcutta.

6. However, the regional office of the Insurance company is situated within the territorial jurisdiction of City Civil Court at Calcutta. Now we will have to examine in the facts of the instant case as to whether the City Civil Court has territorial jurisdiction to entertain the said claim petition or not.

7. The jurisdiction of the claim Tribunal to entertain any claim petition under the Motor Vehicles Act, is dealt with in Section 166(2) of the Motor Vehicles Act, 1988. The said Provision runs as follows:

Section 166(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 other particulars as may be prescribed:

Provided, that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

8. Plain reading of the said provision makes it clear that three options are given to the claimants for choosing the Tribunal where such application can be filed. These options are as follows:--

(i) The claimants can file the claim petition in the claims Tribunal having jurisdiction over an area in which the accident occurred, i.e. with reference to the place of occurrence of the accident, or

(ii) The claim petition can be filed in the claims Tribunal within the local limits of whose jurisdiction the claimants reside or carries on business, or

(iii) The claim petition can be filed in the claims Tribunal within the local limits of whose jurisdiction the defendant resides.

9. If the facts of the present case as recorded above are scrutinized in the light of the provision contained in Section 166(2) of the said Act, then it goes without saying that the City Civil Court at Calcutta has no territorial jurisdiction to entertain the said claim petition as neither the accident occurred within the jurisdiction of the said Tribunal, nor any of the claimants resides and/or carries on business within the territorial jurisdiction of the said Tribunal, nor the defendant resides within the territorial jurisdiction of the said Tribunal.

10. Mr. Chatterjee, learned Advocate, appearing for the claimants submits that since the insurance company appeared in the instant case and filed written statement on all points, on merit of the claim petition, without taking any effective objection with regard to the lack of territorial jurisdiction of the Tribunal to entertain the said petition, the learned Tribunal ought not to have decided the said issue as a preliminary issue by extracting the same from the other issues in the said proceeding. By referring to the provision contained in Section 21 of the CPC he submits that since no specific objection with regard to the competence of the Court to entertain the said case due to lack of territorial jurisdiction was taken by the insurance company at the earliest opportunity before settlement of the issues in the said proceeding, it should have been presumed that the insurance company by filing written statement in the proceeding, submitted itself to jurisdiction of the Tribunal by waiving its objection as to the competence of the Tribunal to entertain

the claim petition due to lack of its territorial jurisdiction. He further submits that when the said Tribunal does not lack jurisdiction to entertain the claim petition inherently, the said Tribunal ought not to have refused to entertain the said claim petition, when the parties submitted to its jurisdiction without raising any objection as to its competence to entertain the said claim petition at the right time.

11. Mr. Chatterjee, further, submits that since the insurance company has its regional office within the territorial jurisdiction of the Tribunal, no prejudice will be caused if the said claim petition is tried by the said Tribunal. In support of his said submission, Mr. Chatterjee has relied upon a decision of the Hon"ble Supreme Court in the case of [Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others](#),

12. Mr. Chatterjee, thus, invites this Court to set aside the impugned judgment and/or order and for sending the same back to the learned Tribunal for trial of the claim petition on merit.

13. Mr. Pahari, learned Advocate, appearing for the insurance company refuted such submission of Mr. Chatterjee by drawing our attention to the Division Bench decision of this Court in the case of New India Assurance Company Limited. v. K. Pramanick A Ann, reported in (2010) 1 TAC 405 Cal : (2010)1 WBLR (Cal) 321, wherein it was held as follows:

In our view, the functional interpretation of the provisions of subsection (2) of Section 166 would be that the claim application could be filed, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business and within the local limits of whose jurisdiction the defendant resides or to the claims Tribunal within the local limits of whose jurisdiction the policy issuing office of the Insurance Company situates.

14. Mr. Pahari, thus, submits that dispute which is involved in this proceeding is no longer a res Integra in view of the said Division Bench decision of this Court. He, thus, invites this Court not to interfere with the impugned order.

15. Let us examine the respective submission of the learned Counsel of the parties in the present case.

16. The provision u/s 166(2) of the said Act is the only provision which deals with the jurisdiction of the Tribunal where the claim petition can be filed by the claimants. Of course, three options are given to the claimants for choosing a particular Tribunal for filing such claim petition before it.

17. We have examined the said provision minutely. So far as the first option is concerned, we have no hesitation to hold that the City Civil Court jurisdiction cannot be invoked as the accident did not occur within the territorial jurisdiction of the City Civil Court. So far as the second option is concerned, we have no hesitation to hold that the City Civil Court has no territorial jurisdiction to entertain the said claim

petition as none of the claimants resides, and/or carries on business within the territorial jurisdiction of the City Civil Court. Now, we have to examine as to whether the claimants can maintain this application in City Civil Court by exercising the last option which is provided in the said provision. The last option gives a right to the claimant to file an application to the claim Tribunal within the local limits of whose jurisdiction the defendant resides without making any reference as to the address where the defendant carries on business.

18. The language used in the last option is conspicuously different from the language used in the second option, so far as the business address of the parties are concerned. Though a comprehensive and/or inclusive provision was made in the second option by referring to both the residential and/or business address of the claimants yet no reference was made in the third option, as to the business address of defendants.

19. We all know that while interpreting any provision of any statute, the Court can neither add, nor can subtract anything from the provisions made in the statute, The Court has to interpret the provision of a statute, by reading the provision itself without any modification. If by applying the said principle, the provision contained in the third option is considered, then the business address of the defendant cannot be a relevant criteria for selection of the Tribunal for filing such a claim petition before it. Thus, we hold that while selecting the Tribunal for filing such claim petition in exercise of the third option, a tribunal can be selected with reference to the residential address of the defendant. We, further hold that the business address of the defendant cannot be a decisive factor for selection of the Tribunal for filing a claim petition before it.

20. Mr. Chatterjee, learned Advocate, however, submits that the expression "resides" which is used in the last option is an inclusive provision which includes, "carries on business" as the insurance company being the juristic person cannot reside but can carry on business at its business place.

21. We have considered his submission in the present context. So far as the claim petition is concerned, the owner of the offending vehicle is required to be added as the principal defendant. Of course in view of the provision contained in Section 17 of the Motor Vehicles Act, the insurance companies can also be added as parties In such proceeding because of the liability it undertakes in the policy u/s 147 of the Motor Vehicles Act. At the same time, we cannot be unmindful of the fact that a claim petition can also be maintained against the owner of the offending vehicle, without joining the insurance company. Joining the insurance company in the claim petition is optional. As such, the business address of the insurance company does not find any place in the third option given to the claimants for choosing the forum.

22. Thus we hold that if the owner of the offending vehicle resides within the territorial jurisdiction of the Tribunal, the jurisdiction of the said Tribunal can be

invoked in view of the last option available u/s 166(2) of the said Act.

23. We, thus, conclude that since the reference of the business address of the defendant is not given in the last option of the said provision, we cannot hold that the claimants can file an application in a Tribunal where the insurance company carries on business.

24. Even assuming that the City Civil Court's jurisdiction can be invoked with reference to the business address of the insurance company, as suggested by Mr. Chatterjee, still then we hold that City Civil Court lacks territorial jurisdiction to entertain the said claim petition as the policy issuing office of the insurance company situates beyond the territorial jurisdiction of the City Civil Court at Calcutta. If we have to accept the submission of Mr. Chatterjee that since the insurance office has its regional office within the territorial jurisdiction of the City Civil Court, the City Civil Court has jurisdiction to entertain the said petition then we will have to hold that whenever any accident occurs in any part of India, the claimants can file a claim petition by accepting the jurisdiction of any Tribunal of his own choice where the insurance company maintains either its regional office or a branch office, even though the policy issuing office is not situated within the territorial jurisdiction of the Tribunal. If we agree with such submission of Mr. Chatterjee, then it will necessarily follow that if an accident occurs at Delhi, a claimant residing at Delhi can file a claim petition at Calcutta by taking the jurisdiction of the Calcutta Tribunal as the Insurance company which issued the insurance policy at Delhi also maintains a branch office at Calcutta within the territorial jurisdiction of the concerned Tribunal at Calcutta. This is, in our view, impossible.

25. Certainly prejudice would be caused to the defendants, including the insurance company, inasmuch as if, in such a case an application is allowed to be filed in Calcutta, the policy issuing office of the insurance company will not feel it convenient to contest the said proceeding in Calcutta as the relevant papers relating to the insurance company are not maintained in its branch office at Calcutta. All papers relating to the insurance company are maintained in the branch office which issued the insurance policy.

26. Before concluding we feel it necessary to indicate here that principle which was laid down by the Hon"ble Supreme Court in the case of Mantoo Sarkar (supra) has no application in the facts of the instant case as that was a case where we find that undisputedly the victim had been working in the Nainital District and was residing there during the period of accident. Thus, the jurisdiction of the Tribunal at Nainital was rightly invoked in the said case, in exercise of the second option available to the claimants u/s 166(2) of the said Act. That apart, no objection relating to the jurisdiction of the said Tribunal to entertain the claim petition was raised by any of the defendants of the said case before the Tribunal. Such objection was raised for the first time before the High Court. In this context it was held therein that such an objection cannot be raised before the High Court for the first time, in view of Section

21(1) of the Civil Procedure Code, but in the present case, the facts are completely different. Here the insurance company appeared in the said proceeding before the Tribunal and raised an objection with regard to the jurisdiction of the said Tribunal to entertain the said claim petition in the written statement itself. Thus, before settlement of the claim, such an objection was raised by the defendant in the said proceeding before the Tribunal. As such, the principles which were laid down by the Hon'ble Supreme Court in the facts of the said case, cannot be applied in the instant case.

27. We, thus, hold that the learned Tribunal did not commit any Illegality by deciding the jurisdictional issue against the claimants. But at the same time we hold that when the learned Tribunal found that it was lacking territorial jurisdiction to entertain the said claim petition, the learned Tribunal, in our view, instead of rejecting the claim petition, ought to have returned the claim petition to the claimants by accepting the mode as prescribed under Order 7 Rule 10A of the Civil Procedure Code, as the contesting defendant has already entered appearance in the said proceeding.

28. Thus, we feel that some modifications of the impugned order is necessary.

29. The part of the order by which the claim petition was rejected by the learned Tribunal is thus, set aside. However, the later part of the Impugned order by which the liberty was given to the petitioners to file an application praying for necessary order in terms of the provision contained in Order 7 Rule 10A of the said Civil Procedure Code, remains undisturbed.

30. The learned Advocate appearing for the claimant submits that his clients want to present the claim petition before the claims Tribunal at Howrah as the claimants reside within the territorial jurisdiction of the said Tribunal.

31. Considering such submission of the learned Advocate for the claimants, we direct the learned Tribunal to return the claim petition to the claimants which may be presented by them to the claims Tribunal at Howrah, after specifying in the order the next date of appearance of the parties before the claim Tribunal at Howrah, as per the provision contained in Order 7 Rule 11IA of the Code of Civil Procedure.

32. The next date of appearance of the defendant in the proceeding before the learned Tribunal at Howrah should be notified to the defendant by the learned Tribunal in the order of returning the claim petition itself.

33. Since the insurance company has already entered appearance in the said proceeding, service of fresh summon upon the insurance company is dispensed with. However, we cannot dispense with the requirement of service of notice of summon upon the owner of the offending vehicle as the owner of the offending vehicle is not before us.

34. The appeal and the application both are disposed of. The impugned order is, thus, modified accordingly.