
Sakshi Ghosh Vs New India Assurance Ltd. and Another

C.O. No. 2137 of 2009

Court: Calcutta High Court

Date of Decision: April 7, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 7 Rule 11#Motor Vehicles Act, 1988 â€” Section 140, 149, 158, 165, 166#Penal Code, 1860 (IPC) â€” Section 279, 304A, 338

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Santosh Kr. Das and Sucharita Pal, for the Appellant;Animesh Das, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the claimant and is directed against the order No. 9 dated April 3, 2009 passed

by the learned Judge, Eleventh Bench, City Civil Court, Calcutta in Motor Accident Claim Case No. 431 of 2007 thereby returning the claim

application to the filing lawyer for presentation before the proper tribunal.

2. The claimant instituted a claim application u/s 166 of the Motor Vehicles Act, 1988 against the owner of the vehicle and the insurance company

before the learned Judge, City Civil Court, Calcutta contending, inter alia, that on March 6, 2007, the driver of the bus under registration No. WB-

53-1212 drove the said vehicle at a high speed, rash and negligent manner along the S.T.K.K. road and while it reached between Kumirpara and

Baragachia, driver of the said bus lost his control and as a result, the bus collided with a tree beside the road resulting in severe injury of the

passengers of the said bus including the claimant. The claimant was removed to Nabadwip S.G. Hospital and he was treated there and his

treatment is still continuing. For that reason, he claimed compensation to the tune of Rs. 2,00,000/-, medical expenses and interest thereon from

the date of filing of the application. The owner of the vehicle is not contesting but the New India Assurance Company Limited is contesting the said

application. They filed an application under Order 7 Rule 11 of the CPC contending, inter alia, that the Court has no jurisdiction to try the claim

case and hence the application should be returned to the learned lawyer for filing the same to the proper Court. That application was allowed by

the impugned order. Being aggrieved, this application has been preferred.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the following facts are not in dispute at

all:

1. On S.T.K.K. high road the accident took place on March 6, 2007 in between Kumirpara and Baragachia in the sub-division Katwa, District -

Burdwan.

2. The victim was injured at that place by the said accident and he was treated at S.G. Hospital, Nabadwip, District - Nadia. He is a resident

under Police Station - Katwa of the District of Burdwan.

3. The owner of the vehicle resides at village - Chaulpatty, Dubaparamore under Police Station -Katwa, District - Burdwan.

4. The claimant was examined and being examined at Nabadwip S.G. Hospital, District - Nadia and other private doctors at that place.

5. The insurance company, that is, New India Assurance Company Limited has a local office within the District of Burdwan and the offending bus

has been insured with such local office of the insurer.

6. Over the accident, a police case was lodged by Pubrasthali Police Station, District - Burdwan under F.I.R. No. 33 of 2007 dated March 6,

2007 under Sections 279/338/304A of the I.P.C. The witnesses to the accident are the residents of the locality, that is, within the District of

Burdwan.

7. The claim application has been filed before the City Civil Court, Calcutta, and

8. The New India Assurance Company Limited has its regional office at 4, Mangoe Lane, Kolkata - 700 001.

5. The owner of the vehicle is not contesting; but the insurance company is contesting the claim application by filing appropriate written statement.

The claimant has filed a claim application before the learned Judge, City Civil Court, Calcutta on March 6, 2008 contending, inter alia, that the

insurance company has the regional office at 4, Mangoe Lane, Kolkata - 700 001. As such, he has filed the said claim application before the

learned Judge, City Civil Court which has jurisdiction over the premises of the regional office of the opposite party/insurer. In order to consider the

jurisdiction of the City Civil Court, I think, it will be prudent to lay down the provision of Section 166 of the Motor Vehicles Act, 1988 for proper

appreciation:

166. Application for Compensation. (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of

Section 165 may be made-

(a) by the person who has sustained by injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be;

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be

made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be

impleaded as Respondents to the application.

(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 or 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 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.

***(3) * * ***

***(4) The Claims Tribunal shall treat any report of the accidents forwarded to it under Sub-section (6) of Section 158 as an application for**

compensation under this Act.

6. Thus, amongst other clauses as stated, the claimant has the option file a claim petition within the jurisdiction of the tribunal under which the

opposite party resides. As already stated, the owner /opposite party is not coming to contest this application. But the insurance company is

contesting the application as per provisions of Section 149 of the Motor Vehicles Act, 1988. It has contended that the City Civil Court has no

jurisdiction to entertain the claim application because the accident took place outside the jurisdiction of the City Civil Court and not only the place

of incident but witnesses, i.e., the other co-passengers and local residents cum witnesses reside within the jurisdiction of the District of Burdwan

and the case should have been filed in the appropriate tribunal in the District of Burdwan. Neither the owner of the vehicle nor the insurer resides in

Kolkata and the insurer being a juristic person cannot reside in Kolkata at all. Unlike in other cases, the clause that the Defendant carries on

business has been omitted from the clause of Section 166(2) of the Motor Vehicles Act signifying that unless the Defendant is a resident within the

jurisdiction of the Court or the tribunal wherein the claim application is filed, the said claim application is not maintainable.

7. Mr. Das, learned Advocate for the claimant, in this regard, has referred to the decision of Sarif Md. Mullick v. National Insurance Co. Ltd. and

Anr. reported in (2011) 1 WBLR (Cal) 670 and submits that this case has the similar circumstances as the present one and so the claim

application could well be filed in the City Civil Court. With due respect to Mr. Das, I hold, that this decision is not applicable because this decision

does not lay down the fact of the case and the details how the regional office of the insurer can be described as the factor to be considered under

the heading ""the Defendant resides"". The legislature has clearly omitted the clause to the effect that the claim application may be filed where the

Defendant carries on business. So, with a specific purpose, the provisions of Section 166 of the Motor Vehicles Act, 1988 have been couched

omitting the word ""carrying on business"". Since the decision of Sarif Md. Mullick (supra) being not clear, it should not be taken into consideration.

8. The appropriate decision that appears to me to be considered is the decision delivered by a Division Bench of this Court comprising Hon^{ble}

Justice Subhro Kamal Mukherjee and Partha Sakha Dutta (as His Lordship then was) in New India Assurance Company Limited v. Kutiswar

Pramanik and Anr. reported in (2010) 1 WBLR (Cal) 321 wherein it has been clearly stated that the claim case might be filed within the

jurisdiction of the tribunal under which the insurance policy was issued by the branch office of the insurer and that the provisions of Sections 15 to

20 shall not apply in the case of an application for claim for compensation under the provisions of the Motor Vehicles Act. For convenience, the 5

paragraph Nos. 27, 28, 29, 30 and 31 are quoted below:

27. In the case of Rajasthan State Road Transport Corporation, Jaipur Vs. Smt. Poonam Pahwa and others, 48th the Supreme Court of India holds

that the Motor Accident Claims Tribunal has been constituted under the said Act to adjudicate upon the disputes arising out of the claims on

account of motor accidents. Such Claim Tribunals have been constituted by giving exclusive jurisdiction to determine such disputes by excluding

the jurisdiction of the civil Courts.

28. Therefore, as a said Act was enacted as a special statute and for a special purpose, there is no scope to apply the provisions of the Code of

Civil Procedure, in particular Sections 15 to 20 thereof, with regard to filing of the claim application, for the purpose of regulating the forum of filing

the claim application.

29. In the present case the accident occurred in the district of Nadia, the victim and the owner of the offending vehicle were residing within the

district of Nadia. The insurance policy was issued by the branch office at Kalyani in the district of Nadia.

30. Sub-section (2) of Section 166 gives option to the claimant to file the claim application according to his convenience, but it is difficult to

comprehend that an application for compensation could be filed where the regional office of the Insurance Company situates when the insurance

policy was issued by a branch office at Kalyani.

31. In our view, the functional interpretation of the provisions of Sub-section (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.

9. Thus, I find that the accident claim may be placed in the Court / tribunal under which the insurance policy was issued by the branch office of the

insurer, that is, within the jurisdiction of the Katwa Court, District - Burdwan. This decision is very much applicable as observed above and above

discussions are very much explicit that the City Civil Court, Calcutta is not proper forum to entertain such claim application.

10. The insurance company has its own agency to make investigation about the genuineness of the claim of the Petitioner and so, in the instant case

the insurance company must have examined the claim application by its own machinery by holding inspection through the local office within whose

jurisdiction the accident took place. Therefore, if any man is to be examined on behalf of the insurance company that man should be from the local

office within whose jurisdiction the accident took place. So, also in respect of other witnesses to be examined on behalf of the claimant. In any

way, the City Civil Court has no jurisdiction to entertain the claim application.

11. Mr. Das has also referred to other decisions such as, Smt. Rina Mukherjee and Anr. v. New India Assurance Company Limited and Anr.

reported in (2008) 2 WBLR (Cal) 130 to show that the motor accident claims tribunal is empowered to exercise all the powers under the CPC

code and hence the tribunal can review its own order. Since the territorial jurisdiction has been clearly mentioned in Section 166(2) of the Motor

Vehicles Act and the decision of Smt. Rina Mukherjee (supra) relates to the power of review, this decision will not be helpful to the Petitioner.

12. The paragraph No. 27 of New India Assurance Company Limited (supra) clearly lays down where the claim application is to be filed.

13. Mr. Das has lastly submitted that if this Hon"ble Bench determines that the claim case is not triable by the City Civil Court as per provisions of

Section 166(2) of the Motor Vehicles Act, 1988, the case may be referred to a Larger Bench for passing appropriate orders. This submission, I

am of the view, cannot be accepted because the decision of New India Assurance Company Limited (Supra) is very much clear about the

territorial jurisdiction. So, the question of sending the matter to a Larger Bench for determination of the territorial jurisdiction does not arise at all.

14. Mr. Das has also referred to other decisions of Union of India (UOI) Vs. Budhlani Engineering Pvt. Ltd., and State of Uttaranchal and Anr. v.

Sunil Kumar Singh Negi reported in 2008 (3) WBLR (SC) 37 relating to precedent and reasons to be recorded in the impugned judgment

respectively. think these are not necessary at all for the purpose of disposal of this revisional application. The above observations are quite clear to

indicate that the City Civil Court has no jurisdiction to entertain the application.

15. In view of the above findings, I am of the view that the learned Trial Judge has rightly allowed the application of the insurer for return of the

claim application to the learned lawyer for presentation before the proper tribunal. There is nothing to interfere with the impugned order.

16. The revisional application, therefore, fails to succeed.

17. It is, therefore, dismissed.

18. Considering the circumstances, there will be no order as to costs.

19. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.