(2013) 04 DEL CK 0373

Delhi High Court

Case No: MAC. App. 424 of 2012

Sita Devi and Another	APPELLANT
Vs	
Munne and Others	RESPONDENT

Date of Decision: April 15, 2013

Acts Referred:

- Constitution of India, 1950 - Article 142
- Motor Vehicles Act, 1988 - Section 140, 166
- Penal Code, 1860 (IPC) - Section 279, 338, 427

Citation: (2013) 2 ACC 686 : (2014) ACJ 921

Hon'ble Judges: Suresh Kait, J

Bench: Single Bench

Advocate: Anshuman Bal, for the Appellant; Anurag Modi, Advocate for Respondent No. 1, Mr. S.L. Gupta, Advocate for Respondent No. 2, Mr. Pradyot Pravesh and Mr. Abhisek Kumar, Advocates, for the Respondent

Judgement

Suresh Kait, J.

Since the issues in both the aforementioned appeals and the order under challenge are same, except the fact that in MAC. Appeal No. 425/2012, the deceased had died at Haldwani, Uttrakhand, though the parents of the deceased/appellants are also staying at Delhi at the same address on which the appellants in MAC Appeal No. 424/2012 are residing, therefore, this Court has decided to dispose of both the appeals by this common judgment. The present appeals have been preferred against the impugned order dated 27.03.2012, whereby the claim petitions filed by the appellants were dismissed by the learned Tribunal on jurisdiction.

2. Admittedly, the accident took place on 06.02.2001 at Pant Nagar, Uttrakhand when Tractor bearing No. UP-25Z-0956 came from opposite direction at a very high speed, driven rashly and negligently, which hit the motorcycle of the deceased, as a result of which, both the occupants were fell down on the road and were grievously

injured.

3. The injured in MAC Appeal No. 424/2012 was firstly taken to the hospital at Pant Nagar itself. Thereafter, he was brought to AIIMS Trauma Centre, New Delhi, where he was declared dead and post-mortem examination was also conducted at the Centre mentioned above.

4. In MAC Appeal No. 425/2012, as stated earlier, the injured was also taken to the hospital at Pant Nagar, where he succumbed to his injuries and post-mortem examination was also conducted at that hospital.

5. On perusal of the claim petitions filed under Sections 166 and 140 of the Motor Vehicles Act, 1988, the addresses of the appellants/claimants have been given as T-721, Prem Nagar Road, Baljeet Nagar, New Delhi and the second address is mentioned as H. Nos. 250 and 184 (in MAC Appeal Nos. 424 and 425 of 2012 respectively), Village Mohalla Tiliya Puri, P.S. Sitarganj, District Udham Singh Nagar, Uttrakhand.

6. Learned counsel appearing on behalf of the appellants has submitted that the learned Tribunal has recorded in its impugned order dated 27.03.2012 that counsel for the claimants could not produce any documentary proof regarding residence of the appellants/claimants in Delhi and neither respondent No. 1 nor respondent No. 2 have their offices in Delhi. Moreover, accident in question occurred out of jurisdiction of Delhi, therefore, the learned Tribunal has dismissed the claim petitions filed by the appellants/claimants on jurisdiction.

7. Learned counsel has relied upon a case of Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others, , whereby the Apex Court has observed as under:-

3. Appellant had been travelling as a passenger in a bus, bearing registration No. MP-04-7915, belonging to Madhya Pradesh Road Transport Corporation. It met with an accident in the town of Faridpur in the District of Uttar Pradesh having collided with truck bearing No. HR-38-E-5554. Appellant suffered grievous injuries. A First Information Report was lodged against the driver of the said truck under Sections 279, 338 and 427 of the Indian Penal Code.

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10. The said Act is a special statute. The jurisdiction of the Tribunal having regard to the terminologies used therein must be held to be wider than the civil court.

A claimant has a wide option. Residence of the claimant also determines jurisdiction of the Tribunal.

11. What would be a residence of a person would, however, depend upon the fact situation obtaining in each case.

12. Appellant had been a resident of Pilibhit. It is in the State of Uttar Pradesh. He being a migrant labourer accepts job wherever he gets and resides there. He, admittedly, had been working in Nainital district and residing there during the period of accident. The fact that he was thus a resident of Nainital in the State of Uttaranchal is neither denied nor disputed.

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20. Reliance, however, has been placed on a decision of this Court in State of Punjab and Another Vs. Rajesh Syal, , to contend that this Court should not exercise its jurisdiction under Article 142 of the Constitution of India. Whether the extraordinary jurisdiction under Article 142 of the Constitution shall be exercised or not would depend upon the fact of the each matter. Law in this case does not come in the way of exercise of such jurisdiction.

21. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly and the order of the Tribunal is restored. The appeal is allowed with costs. Counsel''s fee assessed at Rs. 10,000/-.

8. On the other hand, learned counsel appearing on behalf of the respondents have submitted that the impugned order dated 27.03.2012 is a consent order as the counsel for the appellants/claimants withdrawn the claim petitions, therefore, the learned Tribunal has recorded the order as under:-

Under these circumstances, at the request of Ld. Counsel for the petitioners, this petition is dismissed as withdrawn with permission to file the same before the Court of appropriate jurisdiction.

9. Learned counsel for the respondents further submitted that the accident took place outside the jurisdiction of Delhi, the claimants are permanent residents of Uttrakhand and none of the cause of action arose in Delhi. Moreover, the office of the Insurance Company is also out of jurisdiction of Delhi, therefore, the learned Tribunal has rightly passed the impugned order dated 27.03.2012.

10. The deceased was a student of an ITI at Pant Nagar and was earning his expenses by giving tuitions; whereas his parents were residing at Delhi and were earning their livelihood. The Motor Vehicles Act is a welfare legislation. The jurisdiction of the Tribunal having regard to the terminologies used therein must be held to be wider than the civil court. Claimants have a wide option. Residence of the claimants also determines jurisdiction of the Tribunal. What would be the residence of the person would, however, depend upon the fact situation obtaining in each case. In the case in hand, the accident took place in Uttrakhand whereas the claimants are residing at Delhi.

11. On 27.03.2012 the case was listed for evidence of the appellants before the Id. Tribunal and their witnesses were present for recording their evidence. The Id. Tribunal instead of recording evidence of the appellants have passed the impugned

order on jurisdiction. Moreover, respondents No. 1 & 2 have filed their joint written statement before the Id. Tribunal wherein they stated that they were having valid and legal driving licences, registration certificate, fitness and permit of the said vehicle at the time of the accident in question. The New India Assurance Co. Ltd. is the insurance company of the offending vehicle who has its office in Delhi. By adjudicating the claim petition filed by the appellants at Delhi would not cause any prejudice to any of the respondent.

12. The appellants have filed the claim petitions under the Motor Vehicles Act, 1988, which is more a welfare Act, therefore, the learned Tribunal had to see either of the ground of jurisdiction, where the claimants are staying, i.e., at Delhi or their convenience to pursue the case.

13. The claimants have given their addresses of Delhi as is evident from the address given in the Memo of Parties, i.e., T-721, Prem Nagar Road, Baljeet Nagar, New Delhi and have given their second address of Uttrakhand. Therefore, the learned Tribunal should have conducted the inquiry, if there was any doubt about the addresses of the appellants/claimants. Only on the ground that the permanent address of the appellants are of Uttrakhand, the claim petitions filed under this Act could not have been dismissed, as has been done by the learned Tribunal in the present case.

14. In view of the above discussion, impugned order dated 27.03.2012 is set aside.

15. Consequently, the learned Tribunal is directed to conduct an inquiry on the claim petition and pass award as per law.

16. Accordingly, parties are directed to appear before the learned Tribunal on 01.05.2013 for directions. The Registry of this Court is directed to send the TCR along with a copy of this order to the learned Tribunal for compliance.