MANTOO SARKAR

v.

ORIENTAL INSURANCE CO. LTD. AND OTHERS

(Civil Appeal No. 7318 of 2008)

DECEMBER 16, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Motor Vehicles Act, 1988: s.166 – Territorial jurisdiction – Accident took place in Bareilly – Claimant, a migrant labourer, originally resident of Pilibhit, was working and residing in Nainital during relevant period – Claim petition filed before Tribunal, Nainital – Maintainability of – Held: Maintainable – Jurisdiction of tribunal is wider than the civil court – Residence of claimant relevant for determining jurisdiction of tribunal – Jurisdiction – Territorial jurisdiction.

Appeal – On the ground of lack of territorial jurisdiction of court below to pass the impugned order – Held: Not to be entertained unless the appellant was able to show sufferance of prejudice – Code of Civil Procedure, 1908 – s.21.

Appellant-claimant was travelling as a passenger in a bus belonging to Madhya Pradesh Road Transport Corporation. The bus collided with a truck in the town of Faridpur in the District of Uttar Pradesh and as a result, the appellant suffered grievous injuries. The truck belonged to respondent No. 2 and was registered at Faridabad. It was insured with respondent No. 1 Company, having branch office at Nainital. Appellant underwent several operations. Before the accident, appellant was working as a seasonal agricultural labourer and residing at Piliphit in the State of Uttar Pradesh. He filed a claim petition before MACT, Nainital, Uttranchal claiming Rs. 23.90 lakhs. The Tribunal held that since the Insurance Company had a branch Office at Nainital, it had territorial jurisdiction to determine the claim petition. Accordingly, it made an award of Rs. 2.40 lakhs. On

A appeal filed by respondent 1, High Court held that MACT, Nainital had no territorial jurisdiction to entertain the said claim petition. Hence the present appeal.

Allowing the appeal, the Court

B HELD: 1. The Motor Vehicles Act, 1988 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. What would be a residence of a person C would, however, depend upon the fact situation obtaining in each case. Appellant was a resident of Pilibhit, which is in the State of Uttar Pradesh. He being a migrant labourer accepted job wherever he got and resided there. He, admittedly, was working in Nainital D district and residing there during the period of accident. The fact that he was thus a resident of Nainital in the State of Uttaranchal was neither denied nor disputed. The High Court unfortunately in its judgment did not assign sufficient or cogent reason as to why the Tribunal, E Nainital committed illegality in holding that it had the jurisdiction to entertain the claim petition. [Paras 10 and 13] [760-C-F]

2.1. No doubt, the Tribunal must exercise jurisdiction having regard to the ingredients laid down under sub-F section (2) of s.166 of the Act. In terms of s.169 of the Act, the Tribunal, subject to any rules, may follow a summary procedure. The provisions of the Code of Civil Procedure under the Act has a limited application but in terms of the rules 'save and except' any specific provision made in that behalf, the provisions of the Code of Civil Procedure G would apply. Even otherwise, the principles laid down in the Code of Civil Procedure may be held to be applicable in a case of this nature. [Para 14] [760-G-H; 761-A]

2.2. Ordinarily an appellate Court shall not, having

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regard to the provisions contained in sub-section (1) of s.21 CPC, entertain an appeal on the ground of lack of territorial jurisdiction on the part of the court below unless he has been prejudiced thereby. Other respondents did not raise any question of jurisdiction. Although one witness each, had been examined on behalf of the truck owner and owner of the bus, neither a question of lack of territorial jurisdiction was raised nor the question of any prejudice had been argued. It is only the first respondent who raised the question of territorial jurisdiction. However, no prejudice was caused by the claim petition being tried by the MACT Nainital. [Para 15] [761-A-C]

2.3. The liability of the Insurance Company arises for the purpose of reimbursement of the amount of compensation, found to be payable by the owner of the vehicle insured. It is only in exceptional cases and as provided for under s.170 of the Act, that the insurance company can defend a claim petition. Only on limited grounds it may be permitted to question the quantum of compensation. The Tribunal is a court subordinate to the High Court. An appeal against the Tribunal lies before the High Court. The High Court, while exercising its appellate power, would follow the provisions contained in the Code of Civil Procedure or akin thereto. In view of sub-section (1) of s.21, CPC, it was, therefore, obligatory on the part of the appellate court to pose unto itself the right question, viz., whether the first respondent has been able to show sufferance of any prejudice. If it has not suffered any prejudice or otherwise no failure of justice had occurred, the High Court should not have entertained the appeal on that ground alone. [Paras 16 and 17] [761-D-G]

2.4. A decision rendered without jurisdiction would be coram non juris. Objection in regard to jurisdiction may be taken at any stage. A distinction, however, must be made between a jurisdiction with regard to subject

A matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject matter of claim. As
B a matter of fact the civil court had no jurisdiction to entertain the suit. If the Tribunal had the jurisdiction to entertain a claim petition under the Motor Vehicles Act, the Court should not have, in absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal. Furthermore in
C determining as to whether a part of cause of action has arisen within the territorial jurisdiction of the court *vis-a-vis* an appellate court a large number of factors may have to be taken in consideration. [Paras 19] [762-G-H]

D 2.5. The appellant was a labourer. The justness or otherwise of the amount of compensation has not been disputed. If the High Court judgment is to be complied with, appellant would again have to initiate another proceeding either at Bareilly or Gurgaon or at Delhi or at Jabalpur. The same evidence would have to be rendered
E once again. The question of fact which was required to be determined in the proceeding before the Tribunal, namely whether the driver of the truck or the driver of the bus had been driving their respective vehicles rashly and negligently would have to be determined afresh. The
F factual finding recorded is that the driver of the truck was driving the truck rashly and negligently. In a case of this nature, this court may even exercise extra ordinary jurisdiction under Article 142 of the Constitution of India. Whether the extraordinary jurisdiction under Article 142
G 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. [Paras 19 and 20] [765-D-F; 766-F-G]

Chief Engineer, Hydel Project v. Ravinder Nath (2008)
H 2 SCC 350; *Kiran Singh v. Chaman Paswan* AIR (1954) SC

340; *Bikash Bhushan Ghosh v. Novartis India Ltd.* **(2007) 5 SCC 591;** *Ambica Industries v. CCE* **(2007) 6 SCC 769;** *New India Insurance Company v. Darshana Devi and others* **(2008) 7 SCC 416 and** *State of Punjab v. Rajesh Syal* **(2002) 8 SCC 158, relied on.**

Case Law Reference:

(2008) 2 SCC 350	**relied on**	**Para 18**
AIR (1954) SC 340	**relied on**	**Para 18**
(2007) 5 SCC 591	**relied on**	**Para 19**
(2007) 6 SCC 769	**relied on**	**Para 19**
(2008) 7 SCC 416	**relied on**	**Para 19**
(2002) 8 SCC 158	**relied on**	**Para 20**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7318 of 2008.

From the Judgment and final Order dated 22.8.2006 of the High Court of Uttaranchal at Naintal in A.O. No. 442 of 2006.

Shailendra Singh, Kavita Sarin and Sudhir Nandrajog for the Appellant.

Ashish Wad, Jayashree Wad, Sameer Akhyenkar and Chirag Dave for M/s. J.S. Wad & Co.

Joy Basu and B.K. Satija for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Interpretation and/or application of Section 166 (2) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for the sake of brevity) in regard to territorial jurisdiction of a Tribunal is the question involved herein.

The said question arises in the following factual matrix.

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

A lodged against the driver of the said truck under Sections 279, 338 and 427 of the Indian Penal Code.

Indisputably the said truck belonged to respondent No.2 and was registered at Faridabad. It was insured with respondent No.1-company. Appellant was working as a skilled B migrant seasonal agricultural labourer. He had been earning his livelihood at the relevant time by performing his job as a labourer in the work of extracting sand gravel from a river named 'Hola River' near Beri Pada, Lalkuan, Distt. Nainital, Uttaranchal. He is said to have been living for a long time at Pilibhit in the State C of Uttar Pradesh. Indisputably, after he remained in the district Hospital at Bareilly as an indoor patient upto 28th July, 2003, he was shifted to Prabhakar Hospital in Pilibhit. He underwent several operations.

4. Appellant filed a claim petition before the Motor D Accident Claims Tribunal, Nainital (for short 'the Tribunal') claiming a sum of Rs.23,90,000/- (Rupees twenty three lakh ninety thousand only) alongwith interest @ 18% per annum from the date of the accident till the date of actual payment.

5. Respondent No.1 has a branch office at Nainital.

E The conductor of the bus and the driver of the truck examined themselves before the Tribunal as witnesses. No oral evidence was, however, adduced on behalf of the first respondent. One of the questions which, only the first respondent raised and no other, was lack of territorial F jurisdiction on the part of the Tribunal.

The learned Tribunal inter alia on the premise that the jurisdiction conferred on it, having regard to sub-section (2) of Section 166 of the Act is wide and the insurance company having a branch office at Nainital, it had territorial jurisdiction G to determine the claim petition. It made an Award of Rs.2,40,000/ (Rupees two lakh forty thousand only) in favour of the claimant.

6. The High Court, however, on an appeal preferred thereagaisnt by the first respondent, opined -

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"It is a well settled position of law that the claim petition can only be entertained and filed before a court having the territorial jurisdiction to hear the matter. The claimant cannot take the matter to different State on the pretext that his case would be disposed of expeditiously in that State or District without having the territorial jurisdiction. The learned counsel for the claimants submitted that in case the Court comes to the conclusion that the Tribunal, Nainital had got no territorial jurisdiction to dispose of the matter, the claimants may be given liberty to file a fresh claim petition before the competent Tribunal."

On the basis of the said finding it was held that Motor Accident Claims Tribunal, Nainital had no territorial jurisdiction to entertain the said claim petition.

7. Mr. Shailendra Singh, learned counsel appearing on behalf of the appellant would contend that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration the evidence of the appellant (PW-1) wherein he clearly stated that he had been working at Beri Pada, Lal Kuan in the District of Nainital, although he had not given his Lalkuan's address in his claim petition having been doing his work as a labourer. The evidence of the said witness having been accepted by the learned Tribunal, the High Court should not have interfered therewith.

8. Mr. Ashish Wad, learned counsel for the respondent, on the other hand, would contend that the accident having taken place at Bareilly, the bus belonging to Gwalior depot of the Madhya Pradesh Road Transport Corporation, the office of the owner of the truck being at Gurgaon, office of the insurance company being at Delhi, the Tribunal at Nainital did not have any territorial jurisdiction.

9. Section 166(2) of the Act reads as under :-

"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

A 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:

B 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."

10. The said Act is a special statute. The jurisdiction of C 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, D 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 Nanital district and residing there during the E period of accident. The fact that he was thus a resident of Nainital in the State of Uttaranchal is neither denied nor disputed.

13. The High Court unfortunately in its judgment did not assign sufficient or cogent reason as to why the Tribunal F committed any illegality in holding that he had the jurisdiction to entertain the claim petition.

14. No doubt the Tribunal must exercise jurisdiction having regard to the ingredients laid down under sub-section (2) of Section 166 of the Act. We are not unmindful of the fact that in G terms of Section 169 of the Act, the Tribunal, subject to any rules, may follow a summary procedure and the provisions of the Code of Civil Procedure under the Act has a limited application but in terms of the rules 'save and except' any specific provision made in that behalf, the provisions of the H Code of Civil Procedure would apply. Even otherwise the

principles laid down in the Code of Civil Procedure may be held to be applicable in a case of this nature.

15. We say so because ordinarily an appellate court shall not, having regard to the provisions contained in sub-section (1) of Section 21 of the Code of Civil Procedure, entertain an appeal on the ground of lack of territorial jurisdiction on the part of the court below unless he has been prejudiced thereby. Other respondents did not raise any question of jurisdiction. Although one witness each had been examined on behalf of the truck owner and owner of the bus, neither a question of lack of territorial jurisdiction was raised nor the question of any prejudice had been argued. It is only the first respondent who raised the question of territorial jurisdiction. However, no prejudice was caused to the appellant by the claim petition being tried by the MACT at Nainital.

16. The liability of the insurance company arises for the purpose of reimbursement of the amount of compensation found to be payable by the owner of the vehicle insured. It is only in exceptional cases and as provided for under Section 170 of the Act, the insurance company can defend a claim petition. Only on limited grounds it may be permitted to question the quantum of compensation.

17. The Tribunal is a court subordinate to the High Court. An appeal against the Tribunal lies before the High Court. The High Court, while exercising its appellate power, would follow the provisions contained in the Code of Civil Procedure or akin thereto. In view of sub-section (1) of Section 21 of the Code of Civil Procedure, it was, therefore, obligatory on the part of the appellate court to pose unto itself the right question, viz., whether the first respondent has been able to show sufferance of any prejudice. If it has not suffered any prejudice or otherwise no failure of justice had occurred, the High Court should not have entertained the appeal on that ground alone.

18. We, however, while taking that factor into consideration must place on record that we are not oblivious of the fact that a decision rendered without jurisdiction would be *coram non juris.* Objection in regard to jurisdiction may be taken at any

A stage. (See *Chief Engineer, Hydel Project v. Ravinder Nath* , [(2008) 2 SCC 350]) wherein inter alia the decision of this Court in *Kiran Singh v. Chaman Paswan,* [AIR 1954 SC 340] was followed, stating:

"26. The Court also relied upon the decision in *Kiran Singh* B *v. Chaman Pawan* [AIR 1954 SC 340] and quoted (in Harshad Chiman Lal case {[(2005) 7 SCC 791], SCC pp. 804-805, para 33} therefrom: {*Kiran Singh* case (supra), AIR p.342, para 6

'6. ...It is a fundamental principle well established C that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of D jurisdiction, ...strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

Though in the aforementioned decision these observations were made since the defendants before raising the E objection to the territorial jurisdiction had admitted that the court had the jurisdiction, the force of this decision cannot be ignored and it has to be held that such a decree would continue to be a nullity."

19. A distinction, however, must be made between a F jurisdiction with regard to subject matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject matter of claim. As a matter of fact the civil court had no jurisdiction to entertain the G suit. If the Tribunal had the jurisdiction to entertain a claim petition under the Motor Vehicles Act, in our opinion, the Court should not have, in absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal.

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In *Bikash Bhushan Ghosh v. Novartis India Ltd.,* [(2007) 5 SCC 591], this Court has held : A

"17. There is another aspect of the matter which cannot be lost sight of. If the provisions contained in the Code of Civil Procedure are given effect to, even if the Third Industrial Tribunal, West Bengal had no jurisdiction, in view of the provisions contained in Section 21 of the Code of Civil Procedure, unless the respondent suffered any prejudice, they could not have questioned the jurisdiction of the court. In *Kiran Singh v. Chaman Paswan* this Court held: (AIR p. 342, paras 6-7) B C

'6. ... If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was 'coram non judice' and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position. D

7. Section 11 enacts that notwithstanding anything in Section 578 of the Code of Civil Procedure an objection that a court which had no jurisdiction over a suit or appeal had exercised it by reason of overvaluation or undervaluation, should not be entertained by an appellate court, except as provided in the section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the section has come in-and deservedly-for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for overvaluation or undervaluation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on E F G H

overvaluation or undervaluation, should be dealt with under that section and not otherwise.

The reference to Section 578, now Section 99 CPC, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the courts which passed them lacked jurisdiction as a result of overvaluation or undervaluation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it.

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.' "

Furthermore in determining as to whether a part of cause of action has arisen within the territorial jurisdiction of the court *vis-a-vis* an appellate court a large number of factors may have to be taken in consideration. [See *Ambica Industries v. CCE,* (2007) 6 SCC 769].

We cannot also lose sight of the fact that the appellant herein was a labourer. The justness or otherwise of the amount of compensation has not been disputed before us. If the High Court judgment is to be complied with, appellant would again have to initiate another proceeding either at Bareilly or Gurgaon or at Delhi or at Jabalpur. The same evidence would have to be rendered once again. The question of fact which was required to be determined in the proceeding before the Tribunal, namely whether the driver of the truck or the driver of the bus had been driving their respective vehicles rashly and negligently would have to be determined afresh. The factual finding recorded in this case is that the driver of the truck was driving the truck rashly and negligently. In our opinion, in a case of this nature, we may even exercise our extra ordinary jurisdiction under Article 142 of the Constitution of India. In *New India Insurance Company v. Darshana Devi and others,* [(2008) 7 SCC 416], this Court held:

"20. Having said so, we must take notice of the fact that the deceased Baldev Singh was labourer. The Tribunal has found that besides being a labourer, he also used to deal in Safeda wood. He was the owner of the 'Safeda' wood which was being transported to the market for its sale. The first respondent, Darshana Devi, in her deposition, stated that the deceased used to purchase wood from the State of Himachal Pradesh on contract basis. Only Gurdial Singh

A and Ravinder Singh were accompanying him as labourer. His income was assessed only at Rs. 2,400 per month."

21. In this view of the matter, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the
B Constitution of India. Even in Brij Mohan this Court held: (SCC p. 64, paras 13-14)

"13. However, Respondent 1 is a poor labourer. He had suffered grievous injuries. He had become disabled to a great extent. The amount of compensation awarded in his
C favour appears to be on a lower side. In the aforementioned situation, although we reject the other contentions of Ms Indu Malhotra, we are inclined to exercise our extraordinary jurisdiction under Article 142 of the Constitution of India so as to direct that the award may be satisfied by the appellant but it would be entitled to
D realise the same from the owner of the tractor and the trolley wherefor it would not be necessary for it to initiate any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act.

E 14. It is well settled that in a situation of this nature this Court in exercise of its jurisdiction under Article 142 of the Constitution of India read with Article 136 thereof can issue suit directions for doing complete justice to the parties."

20. Reliance, however, has been placed on a decision of this Court in *State of Punjab v. Rajesh Syal,* [(2002) 8 SCC
F 158], 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
G 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/-.

H D.G. Appeal allowed.