

IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH

BEFORE

THE HON'BLE MR.JUSTICE G.NARENDAR

WRIT PETITION Nos.202514/2017

&

202561-202567/2017(GM-MA) DATED:03-12-2018

SHRI GANAPATI, SON OF DHAREPPA PUJARI AND OTHERS VS. SHRI VINOD SON OF RAJRATNA AATHWALE

ORDER

Heard the learned counsel appearing for the petitioners and the learned counsel for respondent-Insurer.\*\*\*\*.

2. The Written Submission filed by the petitioners is taken on record.

3. Petitioners are before this Court being aggrieved by the order dated 9.6.2017 (Annexure- E) passed in MVC.FR.No.416/2017.On perusal of Annexure- E, it is seen that the office raised objection regarding maintainability of the case on account of the order passed by this Court in MFA No.201210/15 and connected matters.In the said MFA, this Court, while pronouncing the Judgment on 15.11.2016 has issued instructions to the Principle District Judge, Vijaypur not to entertain the cases in the State of Karnataka where cause of action is in the accident that has occurred within the boundary of Maharashtra and that the petitions shall be filed only in that State.

4. A perusal of the said order discloses that petitions, where the cause of action arises outside the State of Karnataka, should not be entertained and parties should be directed to approach the jurisdictional Court where the cause of action arose.More particularly, in the said case it was canvassed before the Court that since cause of action arises in the State of Maharashtra in view of the fact that accident has occurred and the parties reside in the State of Maharashtra.

5. On 5.11.2018, the learned counsel for the petitioner has placed a copy of the order passed by the Hon'ble Apex Court in Civil Appeal No.21822/17 (arising out of SLP ( C) No. 14233/2017).In fact, Hon'ble Apex Court while allowing the appeal had set aside the Judgment of the High Court in MFA No.201210/15 and has at paragraph.6 held that the question of territorial jurisdiction cannot be raised by the parties at a belated stage.Thereafter, Hon'ble Apex Court was pleased to enhance the compensation awarded by the Tribunal by modifying the award.

6. In the instant case, the dispute pertains to and is with regard to the territorial jurisdiction of the Court to entertain the claim petition.In MFA 201210/15, it was contended that the accident had occurred outside the State of Karnataka i.e. in Maharashtra and no cause of action has arisen within the State of Karnataka.

7. A reading of sub-section ( 2) of Section 166 would demonstrate the fact that multiple jurisdictions are conferred on the claimants and the choice is vested with the claimant to choose the Tribunal before whom he desires to maintain his claim. The claimant has the choice of instituting it in the area where the accident has occurred or before a Court within whose jurisdiction he resides or where he carries on his business or within the local limits of the Tribunal where the respondent resides.

8. Thus, if the claimant resides in City ' A ' and carries on business in city, if respondent resides in City ' C ', and if the accident occurs in City ' D ' then, it is open for the claimant to institute the proceedings before the Tribunal situated in either of the four Cities and any other interpretation whittling down the scope of provision would be anathema to the very object of the Act and the provisions of S.166 ( 2).

It is to be borne in mind that the Legislation is a beneficial piece of legislation and subsection ( 2) of Section 166 is framed advancing the said objective and the scope and ambit of provisions cannot be read down or otherwise and interpreted in a manner to state that the claim petitions can be preferred only in the jurisdiction of the Court within whose local limits the accident has occurred.

9. In the instant case on hand, the Tribunal has seriously erred in holding that the accident has occurred within the State of Maharashtra and hence the jurisdiction momentary of the Court within whose area the accident has occurred only ought to be invoked. Further, the objection appears to be on account of a mis-reading of Judgment and order passed in MFA No.201210/15 (Annexure- D).

10. The learned Judge was constrained to observe that the Tribunal which entertained the claim petition had no jurisdiction on account of the fact that claimants had\* described themselves as residents of a village in Solapur Taluk and District which admittedly is within the territorial boundaries of the adjoining State i.e. Maharashtra. Further, the learned Single Judge was pleased to observe in para.7 as follows:

" 7. While doing so, copy of this judgment is marked to Principal District Judge, Vijaypur with a clear instruction to ensure that such kind of claim petitions where the cause of action has not taken within the jurisdiction of Karnataka State should not be entertained and where cause of action is taken within the boundary of Maharashtra, claim petitions filed in that behalf shall be filed only in that State. "

11. On reading of the same, what one could discern is that the learned Single Judge has cautioned the Tribunals with regard to the jurisdictional issue and the Tribunals are required to look into the issue of jurisdiction in all sincerity and apply their mind as and when required or called upon to do so.

12. The learned counsel for the petitioners has relied on the following decisions to substantiate his contention: i. Malati Sardar Vs. National Insurance Co.Ltd., (2016) 3 SCC 43

ii. Mantoo Sarkar Vs. Oriental Insurance Co. Ltd., & Others (2009) 2 SCC 244

13. Per contra, the learned counsel for respondent has also relied upon the following Judgments in support of her contention.

i. ILR 2013 KAR 102 in the case of Subhadra and Others Vs. Pankaj and another

ii. 2017 Kant.M.A.C 315 (Kant) Anita & other Vs. Ravindranath and another.

14. It is also pertinent to note that it would be out of context to adjudicate the issue regarding territorial jurisdiction here.

But, as stated supra, in view of the wide ambit and scope of the provision of sub-section ( 2), which confers multiple options on the claimant, it is incumbent upon the Tribunal to render a finding whenever objections pertaining to the jurisdiction of the Tribunal to entertain the claim is raised and the Tribunal shall afford an equal opportunity to the claimant to establish his case and demonstrate as to how he is entitled to invoke the jurisdiction of the said Tribunal. The Tribunal cannot reject the claim petition only on the ground that accident has occurred within the boundaries of the neighbouring or any other State. As detailed supra, it is also required that the Tribunal render a finding, that the claimant is neither a 'resident' nor carrying on business within its jurisdiction and nor is the defendant/respondent residing within its local limits and only thereafter, can the Tribunal pass an order returning the papers for representation as is done in the instant case.

15. On the contrary, the Tribunal at paragraph 5 has placed reliance on the observation of this Court in MFA 201210/15 and relying solely on the fact that accident has occurred within the territorial limits of the adjoining State has proceeded to return the papers for representation before the proper forum even without entering upon and adjudicating the facts as to whether the Petitioner resides or carries on business within its territory or if the defendant resides within its territory.

16. As stated supra and at the cost of being repetitive, it is reiterated that the claimant is not only entitled to institute the claim petition before the Tribunal within whose jurisdiction the accident occurred but, he or she is also entitled to institute the claim petition in the Tribunal within whose jurisdiction he resides or within whose local limits the respondent resides. It is also relevant to note that the provision also entitles the claimant to not only institute the claim where he resides but also even in place where he carries on business. Hence, the order impugned is vitiated by non-application of mind and being contrary to the provisions of sub-section ( 2) of Section 166, same is set aside. The Tribunal, as stated supra, shall apply its mind to the scope and ambit of sub-section ( 2) of Section 166 and thereafter, take appropriate decision after affording opportunity to demonstrate the maintainability of the petition.

The Writ Petitions are allowed. Impugned order is set aside. Matter is remitted back to the Court of Prl. Dist. & Sessions Judge, Vijayapura to reconsider the matter in the light of observations made by this Court supra. If any objection with regard to territorial jurisdiction or with regard to the fact as to if any cause of action has arisen within the jurisdiction of the Tribunal are raised by the respondent, the Tribunal shall consider the

same and dispose of it as a preliminary issue as it goes to the very root of the matter and thereafter shall proceed to adjudicate the matter on merits, as mandated under the Act.

The Writ Petitions are ordered accordingly.