

Before Harkesh Manuja, J.

CHOLAMANDLAM MS GEN. INSURANCE CO. LTD.—

Appellant

versus

MANINDER SINGH AND ANOTHER—Respondent

FAO No. 3623 of 2022 (O&M) & 5 others

December 05, 2022

Motor Vehicles Act, 1988—Civil Procedure Code, 1908—S. 21(1)—Territorial Jurisdiction—Objection regarding territorial jurisdiction not taken by insurance company before Tribunal nor issue pressed in this regard, there is no discussion or finding by the Tribunal on this aspect—Held, challenging the award passed by the Tribunal on the ground of territorial jurisdiction, in the absence of any such ground taken before the learned Tribunal, at stage of Appeal is liable to be discarded in the absence of chance having been given to the owner/driver to explain the same.

Held, that additional objection regarding the change of address of the owner has also been taken to show that the claim petitions were a case of collusion between claimants and owner/driver of the offending vehicle. However, there could be multitude of reasons for a person to change his address and merely on the basis of an address change, that too in a span of two years, which is a significantly large period, is not so improbable that it could raise any serious suspicion in the case of claimants. Had this plea been raised before the learned Tribunal and issue was framed in this regard, then it would have been obligatory for the driver/owner to come with a reasonable explanation.

(Para 25)

Punit Jain, Advocate, *for the appellant*/ Insurance Company.

Arvind Rajotia, Advocate, *for respondents*/ claimants.

HARKESH MANUJA, J.

(1) This is an application seeking condonation of delay of 32 days in re-filing the appeal.

(2) For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of arranging requisite documents from

lower court and bunching of all connected matters, thus, the same is allowed and delay of 32 days in re-filing the appeal is condoned.

CM-16162-CII-2022 in FAO-4976-2022:

(3) This is an application seeking condonation of delay of 114 days in re-filing the appeal.

(4) For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of ill health of the counsel of the appellant, thus, the same is allowed and delay of 114 days in re-filing the appeal is condoned.

CM-10780-CII-2022 in FAO-3635-2022:

(5) This is an application seeking condonation of delay of 22 days in filing the appeal.

(6) For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of IT Error in depositing statutory deposit amount of Rs. 25,000/- and bunching of all connected matters, thus, the same is allowed and delay of 22 days in filing the appeal is condoned.

CM-10774-CII-2022 in FAO-3632-2022:

(7) This is an application seeking condonation of delay of 22 days in filing the appeal.

(8) For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of IT Error in depositing statutory deposit amount of Rs. 25,000/- and bunching of all connected matters, thus, the same is allowed and delay of 22 days in filing the appeal is condoned.

CM-10741-CII-2022 in FAO-3625-2022:

(9) This is an application seeking condonation of delay of 63 days in filing the appeal.

(10) For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of IT Error in depositing statutory deposit amount of Rs. 25,000/- and bunching of all connected matters, thus, the same is allowed and delay of 63 days in filing the appeal is

condoned.

CM-16176-CII-2022 in FAO-4978-2022:

(11) This is an application seeking condonation of delay of 34 days in filing the appeal.

(12) For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account illness of the counsel, thus, the same is allowed and delay of 34 days in filing the appeal is condoned.

CM-10706-CII-2022 in FAO-3623-2022:

(13) This is an application seeking condonation of delay of 03 days in filing the appeal.

(14) For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of IT Error in depositing Rs. 25,000/-, thus, the same is allowed and delay of 3 days in filing the appeal is condoned.

CM-16163-CII-2022 in FAO-4976-2022:

(15) This is an application seeking condonation of delay of 05 days in filing the appeal.

(16) For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of bunching with the connected matters and delay in intra department communication, thus, the same is allowed and delay of 3 days in filing the appeal is condoned.

MAIN CASE:

(17) All these appeals have been filed by the Insurance Company challenging the awards passed by Motor Accident Claim Tribunal, Fatehgarh Sahib (hereinafter referred as learned Tribunal) arising out of the single accident dated 12.03.2011.

(18) Brief facts of the case are that on 12.03.2011, Lovejeet Singh alias Happy, Jagdev Singh @ Jaggi, Chetan Saxsena, Navdeep Singh and Maninder Singh were returning after attending a marriage function when their car was hit by a truck/canter bearing Registration No. PB-11-Y-8948 (hereinafter referred as Offending Vehicle). In this accident, Jagdev Singh alias Jaggi and Chetan Saxsena succumbed to their injuries, while Lovejeet Singh alias Happy, Navdeep Singh and

Maninder Singh suffered injuries.

(19) Multiple claim petitions were filed on behalf of all affected persons, which were allowed by the learned Tribunal after holding that the accident was caused due to the rash and negligent driving of the driver/owner Avatar Singh. On the issue of liability, it was held that driver/owner of the offending vehicle and insurance company both were jointly and severally liable to pay the compensation.

(20) Insurance company, by way of present appeals, has challenged all the awards passed by the learned Tribunal primarily on the issue of territorial jurisdiction and besides it has also raised the plea of false involvement of the offending vehicle in collusion with its owner/driver, however few other arguments have also been raised in individual appeals separately. Therefore on the question of maintainability, all these appeals will be taken together and individual arguments raised in specific appeal will be taken up separately.

A- MAINTAINABILITY / FASTENING OF LIABILITY:

FAO-3623-2022 (O&M):

FAO-3632-2022 (O&M):

FAO-3635-2022 (O&M):

FAO-3625-2022 (O&M):

FAO-4978-2022 (O&M):

and FAO-4976-2022 (O&M):

(21) First argument by learned counsel for the Insurance Company is regarding the territorial jurisdiction of the learned Tribunal. He contends that neither the claimants, nor respondent driver/owner were residents of Fatehgarh Sahib and even the place of accident also was not in Fatehgarh Sahib, therefore, learned Tribunal did not have the territorial jurisdiction to decide the claim petition. His second submission has been that claim petitions were result of a fraud, and in this regard he submits that offending vehicle was also involved in another claim petition before MACT, Rupanagar and in that claim petition, the address of driver/owner was shown in Rupanagar while in present claim petitions, his address has been shown in Patiala and no reason or explanation has come from him for changing the same, even the plea of collusion between the claimants & the driver/ owner has been raised.

(22) Per Contra, learned counsel of the claimants contend that

objection regarding the territorial jurisdiction was not taken by the insurance company before the learned Tribunal in the written statement nor any issue was pressed in this regard so it cannot be taken at this stage. He further contends that objection regarding the different addresses of the driver/owner in another claim petition was also not raised before the learned Tribunal, otherwise it could have been explained by him.

(23) I have heard learned counsel of both the parties and gone through the paper book of the cases. A perusal of the impugned award shows that no such plea regarding territorial jurisdiction was taken by the insurance company in its written statement nor any issue was framed to this effect, even there is no discussion or finding as well by the learned Tribunal on this aspect. I find force in the argument raised by learned counsel for the claimants that as no objection regarding the territorial jurisdiction was taken by the insurance company before the learned Tribunal, it cannot be allowed to take this objection at this stage and even otherwise, address of appellant / Insurance Company given is of Fatehgarh Sahib. Though, learned Tribunal is entitled to follow such summary procedure as it deems fit, however, in general, its procedure and powers are governed by the Civil Procedure Code, 1908 and in view of section 21 (1) also, appellant insurance company cannot be allowed to take this objection at this stage as they did not take this objection before the tribunal at the earliest possible opportunity and they have not been able to show whether any prejudice has been caused to them or there has been a failure of justice. Reliance in this regard can be placed on the judgement of Hon'ble Apex Court in *Mantoo Sarkar versus Oriental insurance Co. Ltd. and others* in Civil Appeal No. 7318 of 2007 decided on 16.12.2008 in which Hon'ble Court observed that:

“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.”

(24) Therefore, in my considered opinion, challenge by the Insurance Company to all the awards passed by the learned Tribunal on the ground of territorial jurisdiction is untenable.

(25) With respect to the second plea of the appellant insurance company that as the address of the owner of the offending vehicle in some previous claim petition was different, therefore claim petitions were result of a fraud, I do not find much substance. The issue of involvement of offending vehicle in another accident was raised before the learned Tribunal as well but it was not believed by the learned Tribunal as it found that FIR was registered in this case promptly and in FIR, registration number of the offending vehicle was also mentioned, which was corroborated by the statement of investigating officer as well. At this stage, additional objection regarding the change of address of the owner has also been taken to show that the claim petitions were a case of collusion between claimants and owner/driver of the offending vehicle. However, there could be multitude of reasons for a person to change his address and merely on the basis of an address change, that too in a span of two years, which is a significantly large period, is not so improbable that it could raise any serious suspicion in the case of claimants. Had this plea been raised before the learned Tribunal and issue was framed in this regard, then it would have been obligatory for the driver/owner to come with a reasonable explanation. But, in the absence of any such ground taken before the learned Tribunal, this argument by insurance company taken at this stage, is liable to be discarded in the absence of chance having been given to the owner/ driver to explain the same.

(26) In view of the discussion held above, all the appeals filed by the insurance company on the aspect of maintainability / liability are dismissed.

B-SUBMISSIONS IN SPECIFIC APPEALS: FAO-4978-2022 (O&M)

(27) Learned Tribunal granted interest @ 6% per annum, however it specified that if amount of compensation awarded in favour of claimants is not paid within 2 months from the date of award, then Claimants shall be entitled to claim interest @9% per annum.

(28) Learned counsel for the insurance company has also raised objection qua this aspect and contends that in view of *National*

Insurance Co. Ltd. versus Keshav Bahadur and others¹, penal interest rate cannot be awarded. The above judgment has been subsequently followed by this court in ***Oriental Insurance Company Limited Chandigarh versus Barinder Singh and others*** in **FAO No. 9186 of 2014** as well. Therefore, in view of judgment of Hon'ble Apex Court in ***Keshav Bahadur's case (supra)***, learned Tribunal has erred while specifying condition of enhanced interest rate if compensation is not paid within 2 months.

(29) However, the grant of interest @ 6% per annum is not just in view of the facts and circumstances of the present case; As in other claim petitions it has been 7.5% per annum, the interest rate is enhanced to 7.5% per annum in this case also on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization.

FAO-3625-2022 (O&M)

(30) Learned Counsel for the Insurance Company contends that in this case, on the basis of last Income Tax Return filed by the deceased, his annual income was taken by the learned Tribunal as Rs. 4,71,400/- per annum. He further submits that at relevant period of time after the limit of Rs.2.5 lakh per annum, 5% income tax was applicable and therefore, payable Income Tax should have been deducted from his annual income.

(31) I find force in this argument of learned Counsel for the Insurance Company on this account and even in ***Smt. Sarla Verma and others versus Delhi Transport Corporation and another***², it has been stated that statutory deductions like income tax are liable to be deducted from the income of the deceased. Therefore compensation shall be calculated after deducting 5% from the annual income as assessed by the learned Tribunal. However, while calculating compensation it appears that due to a clerical mistake in serial No.(ii), income was wrongly taken by the learned Tribunal as Rs.32,984/- in place of Rs.39,284/- and this will obviously require correction.

(32) In view of the discussions made hereinabove, the claimants are entitled for following compensation, as detailed in the table:-

¹ 2004(2) RCR Civil 99

² 2009 (3) RCR (Civil) 77

Sr.No.	Particulars	Amount (Rs.)
1.	Annual Income of deceased after 5% deduction (Rs. 4,71,400/- – Rs 23,570/-)	Rs.4,47,830/-
2.	Add 40% of Future prospects	Rs.1,79,132/-
3.	Total Income	Rs.6,26,962/-
4.	Income after deduction (1/3rd)	Rs.4,17,974/-
5.	Multiplier of 16	Rs.66,87,584/-
6.	Funeral Expenses	Rs.16,500/-
7.	Loss of Consortium i.e. Rs.44000 x 3	Rs.1,32,000/-
8.	Loss of Estate	Rs.16,500/-
	Total Compensation	Rs.68,52,584/-
	Amount Awarded by the Tribunal	Rs.63,98,280/-
	Enhanced Amount	Rs.04,54,304/-

(33) All these appeals are disposed of in the aforesaid terms with further direction that statutory amount deposited by the Insurance Company at the time of filing of appeals shall be remitted back to the learned Tribunal, to be released in favour of the claimants.

(34) Pending miscellaneous application(s), if any, shall also stand disposed of.

Ankit Grewal