

Calcutta High Court (Appellate Side)

National Insurance Co. Ltd vs Kusum Devi And Ors on 3 July, 2015

Author: Soumitra Pal

In the High Court at Calcutta  
Civil Appellate Jurisdiction  
Appellate Side

Present:

The Hon'ble Justice Soumitra Pal.

And

The Hon'ble Justice Mir Dara Sheko.

F.M.A No. 1424 of 2014

National Insurance Co. Ltd.

Versus

Kusum Devi and Ors.

With

CAN 11044 of 2014

With

C.O.T. 22 of 2015

For the Appellant : Mr. Rajesh Singh.

For the Respondents : Mr. Santosh Kumar Das,

Judgment on : 3rd July, 2015

Soumitra Pal, J.:

This appeal has been preferred by the National Insurance Company against the judgment and order dated 25th September, 2013 passed in MACC No. 206 of 2008 by the learned Judge, Motor Accident Claims Tribunal, IInd Bench, City Civil Court, Kolkata not only on the ground that the Tribunal had no jurisdiction to try the case but also on merits.

Mr. Rajesh Singh, learned advocate for the insurance company at the outset submitted that as the statutory requirements stipulated under section 166(2) of the Motor Vehicles Act, 1988 (for short the '1988 Act') for filing a claim petition before the Tribunal at Kolkata were not fulfilled, the

Tribunal lacked jurisdiction to decide the claim petition. Referring to facts, submission was as the accident took place at Howrah, the owner and the respondents reside at Howrah and the policy was issued from the branch office of the insurance company at Howrah and as 1988 Act is a special statute, the Tribunal at Kolkata had no jurisdiction to entertain the petition. Since, as evident from the judgment under challenge, the point of maintainability was taken and accordingly the Tribunal had framed an issue, the Tribunal erred in allowing the claim petition on merits without dealing with the point of maintainability. In support of his submission Mr. Singh had relied on the following judgments:- i) Union of India v. Col. G.S. Grewal: 2014 AIR SCW 4656; ii) Dr. Jagmittar Sain Bhagat v. Dir. Health Services, Haryana: 2013 AIR SCW 4387; iii) Nirmala Debi Agarwal v. ICICI Lombard General Insurance Co. Ltd.: 2013(3) CLJ (Cal); iv) New India Assurance Company Limited v. Kutiswar Pramanik: 2010(1) T.A.C. 405 (Cal); and on an unreported judgment delivered on 18th July, 2012 in FMA 724 of 2008 with COT 22 of 2008 (The New India Assurance Company Limited versus Smt Silpi Dutta and others).

Mr. Santosh Kumar Das, learned advocate for the respondents - claimants submitted that since the insurance company by participating before the Tribunal had tacitly consented to the proceedings and the objection raised before the said forum was general in nature, as the judgment was passed on merits and no prejudice is caused to the company and keeping the provisions in Order VII Rule 10 of the Code of Civil Procedure, 1908 in mind and as the judgments cited on behalf of the appellant are distinguishable on facts, the appeal may be dismissed. In support of his submission the following judgments were cited:-

i) Mantoo Sarkar v. Oriental Insurance Co. Ltd.: AIR 2009 SC 1022; ii) Oriental Insurance Co. Ltd. v. Raj Kumari: 2008 ACJ 295; iii) Harshad Chiman Lal Modi v. DLF Universal Ltd.: (2005) 7 SCC 791; iv) Hira Lal Patni v. Sri Kali Nath: AIR 1962 SC 199. Reliance was also placed on an unreported judgment delivered on 21st April, 2014 in FMA 1454 of 2013 with CAN 1858 of 2014 (National Insurance Company Ltd. v. Alpana Jana & Ors.) We find from the judgment and order impugned, that though before the Tribunal the maintainability of the claim petition was issue no.2, however, without dealing with the point of jurisdiction the Tribunal had allowed the claim petition on merits.

The question is whether the Tribunal, in view of section 166(2), had the jurisdiction to entertain the claim petition.

In order to answer the issue, it is appropriate to refer to section 166(2) of the 1988 Act which is 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 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:"

(Emphasis supplied) As seen under section 166(2) a claimant has an option to file claim application either before the Claims Tribunal over the area in which the accident had occurred or the application can be filed where the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides.

In the instant case admittedly the accident took place in Howrah. The claimants, as evident from the cause title, reside at Howrah. The owner, the respondent, too resides at Howrah. Howrah, no doubt, is beyond the territorial jurisdiction of the Tribunal at Kolkata. The argument of the respondent - claimant that the Kolkata Tribunal exercises jurisdiction since the regional office of the insurance company is situated within its territorial limits cannot be accepted as the last option under section 166(2) cannot be construed to mean the residential address of the company as a company can have a business or an office address and not a residential address. In this regard we follow the principles of law laid down in *New India Assurance Company Limited v. Kustiswar Pramanik* (supra), in *Nirmala Devi Agarwal*(supra) and on the unreported judgment delivered on 18th July, 2012 in FMA 724 of 2008 with C.O.T.22 of 2008 (*The New India Assurance Co. Ltd. v. Silpi Dutta & Ors.*) and we respectfully disagree with the judgment in FMA 1454 of 2013 (*National Insurance Company Ltd. v. Alpana Jana & Ors.*). Since in *Dr. Jagmittar Sain Bhagat* (supra) it has been held that "..... if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply." (paragraph 7) and in *Union of India v. Col. G.S. Grewal* (supra), held that "If a Tribunal lacks jurisdiction then there is no question of proceeding with the matter in a given case taking umbrage under the façade of not treating it as a precedence. In a matter of jurisdiction, there are only two alternatives. Either the Tribunal has the jurisdiction or it has no jurisdiction. There is no third alternative to proceed with the matter with the statement that it will not be treated as precedent." (paragraph 22), as the Tribunal lacked jurisdiction, it was not proper for the Tribunal to deal with the merits of the case. As the issue on the point of jurisdiction was raised by the company, the Tribunal should not have, while recording the submission advanced on behalf of the company, brushed aside the point of maintainability on the point of technicality. As on the point of jurisdiction an issue was framed, it was incumbent on the part of the Tribunal to decide the question of jurisdiction at the outset before proceeding with the matter. Therefore, in view of section 166(2) the Tribunal had no jurisdiction to entertain the claim petition. The argument on behalf of the respondent - claimants that no prejudice is caused to the company by the judgement under challenge cannot be accepted as the primary question is whether the Tribunal had the jurisdiction to deal with the claim petition. It is also to be borne in mind that the settled principle of law is that the point of jurisdiction, which is a question of law, can be taken at any stage of the proceedings even if not pleaded in the petition. So far as the judgments relied on by the learned advocate for the respondents - claimants are concerned, the judgment in *Mantoo Sarkar* (supra) though relied on by the claimants, supports the case of the insurance company as therein it was held that "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 stage". (paragraph18) and therein the judgment in *Kiran Singh v. Chaman Pawan*: AIR 1954 SC 340 was referred to wherein it was held ".....It is a fundamental principle well established 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 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". The principle of law laid down in paragraphs 13 and 15 in Oriental Insurance Company Limited v. Raj Kumari (supra), though relied on by the respondent, furthers the case of the appellant company as the Tribunal at Kolkata had no jurisdiction to entertain the petition as the fact is that the accident occurred in Howrah and the claimants and the respondent owner reside at Howrah and even the branch office of the company issuing policy is at Howrah. Since, 1988 Act is a special Act, the judgments in Hira Lal Patni (supra) and in Harshad Chiman Lal Modi (supra) dealing with the provisions of the Code of Procedure Code, 1908 are inapplicable.

Before parting with the judgment, we are of the view that when the point of jurisdiction to deal with a claim petition is raised, it should be dealt with by the Tribunal at the threshold. If a claim petition is found maintainable, the Tribunal thereafter should proceed to deal with the merits of the case. This apart since jurisdictional fact need not even be pleaded, in view of section 166(2), a Tribunal, before proceeding with a claim petition on merits, should consider the point of jurisdiction.

Hence, in the instant case as the Tribunal lacked jurisdiction to deal with the claim petition, the judgment and the order under challenge are set aside and quashed. The appeal, the cross-objection and the application are disposed of. We direct the Tribunal to return the claim petition to the claimants who are liberty to present it before the Tribunal having jurisdiction. The National Insurance Company Limited is at liberty to withdraw the awarded amount, if deposited in the High Court, with interest accrued thereon, by filing an application and if such application is filed, the learned Registrar General shall refund the amount in accordance with law. If the respondents - claimants have withdrawn any amount during pendency of this appeal, they shall refund the same to the Tribunal before the plaint is returned to the claimants by the Tribunal as directed.

No order as to costs.

Let lower court records, if brought, be sent down forthwith. Let a copy of this order be sent to the Tribunal for communication.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties on priority basis.

(Soumitra Pal, J.) I agree.

(Mir Dara Sheko, J.)