

Civil Revision
Present:
The Hon'ble Mr. Justice **Prasenjit Mandal**
C.O. No. 2594 of 2008
Sailen Santra
Versus
Mr. Iswar Prasad Sah & Anr.
JUDGMENT ON: 26.07.2010

Point:

Jurisdiction: Accident happened in Howrah.- Owner of the offending vehicle is resident of Howrah- FIR was lodged with the Sankrail P.S., District : Howrah.- The rent bills do not support that the applicant resided at New Ghat Road, Calcutta- – 700 044- Whether Tribunal at Alipore has jurisdiction to try the case- Motor Vehicles Act, 1988, S. 163A, 173.

Fact: The petitioner filed the instant revisional application challenging the judgment and order dated 14.08.2001 passed by the Ld. Judge, Motor Accident Claims Tribunal, Tenth Court, Alipore, whereby a direction was given for return of the application under Section 163A of the Motor Vehicles Act for filing the same before the appropriate forum. The applicant suffered injury owing to a motor accident and he filed an application under Section 163A of the Motor Vehicles Act against the owner of the offending vehicle and the insurer before the Tribunal and it was held by the Tribunal that it lacks jurisdiction and so the application should be heard by the appropriate forum. The petitioner being aggrieved by the said judgment and order preferred an appeal and the appellate court by an order dismissed the appeal holding that since the Tribunal returned the application for filing the same before the appropriate forum on the ground of want of territorial jurisdiction, the judgment and order cannot be described as an award within the meaning of Section 173 of the Motor Vehicles Act.

Held:

The learned Tribunal has rightly concluded that the applicant does not reside at all within the jurisdiction of the learned Tribunal at Alipore. The accident happened in Howrah. The owner of the offending vehicle is also a resident of Banipur under P.S. Sankrail, District : Howrah. Though the insurer has its place of business at 3, Middleton Street, Calcutta – 700 071, the FIR was lodged with the Sankrail P.S., District : Howrah. The rent bills filed by the applicant relate to the months

of April to June, 2000 and these bills do not support the contention of the applicant that he resided at 247, New Ghat Road, Calcutta – 700 044 at the relevant time. The learned Tribunal has rightly observed that the learned Tribunal lacks jurisdiction and so the plaint should be returned to the applicant for filing before the appropriate forum. (Paragraphs 7 & 8)

For the Petitioner: Mr. Purna Chandra Maity.

For opposite party no.2: Parimal Kumar Pahari.

Prasenjit Mandal, J.: 1. This application is directed against the judgment and order dated 14.08.2001 passed by the learned Judge, Motor Accident Claims Tribunal, Tenth Court, Alipore, District : South 24 Parganas in M.A.C.C. No.235 of 2000 thereby giving direction for return of the application under Section 163A of the Motor Vehicles Act for filing the same before the appropriate forum.

2. The short fact is that the applicant suffered injury on 27.09.1999 at 18.00 hours on the Andul Road in front of the Allana Factory under P.S. Sankrail, District: Howrah owing to a motor accident and he filed the application under Section 163A of the Motor Vehivles Act against the owner of the offending vehicle bearing registration no.WB 25 – 8587 and the insurer. That application was heard by the learned Tribunal and he held that the learned Tribunal lacks jurisdiction and so the application should be heard by the appropriate forum. Accordingly, the learned Judge passed the order for return of the application to the applicant for being filed the same before the appropriate forum.

3. Being aggrieved by the said judgment and order, the applicant preferred an appeal and then the appellate court by an order dated 18.07.2008 dismissed the appeal holding, inter alia, that since the learned Tribunal returned the application for filing the same before the appropriate forum on the ground of want of territorial jurisdiction, the judgment and order cannot be described as an award within the meaning of Section 173 of the Motor Vehicles Act. Accordingly, no appeal lies and so the appeal was dismissed. The appellate court also directed that the applicant might seek appropriate relief before the appropriate forum in accordance with law. Thereafter, this application under Article 227 of the Constitution of India was filed against the impugned judgment and order dated 14.08.2001 passed by the learned Tribunal.

4. Mr. Maity, learned Advocate for the applicant, submits that the applicant has been residing all along in Calcutta at 247, New Ghat Road, Calcutta – 700 044 as a tenant. So, according to the provisions of the Motor Vehicles Act, he was entitled to file the application under Section 163A of the Act before the learned Tribunal at Alipore. So the findings of the learned Tribunal should be set aside.

5. On the other hand, Mr. Pahari, learned Advocate appearing on behalf of the opposite party no.2, supports the judgment contending that the applicant has failed to prove that he was residing within the jurisdiction of the learned Tribunal at Alipore at the relevant time. So the application should be dismissed.

6. After due consideration of the submission of the learned Advocate of both the parties and on perusal of the materials on record, I find that though the applicant claimed that he has been residing at 247, New Ghat Road, Calcutta – 700 044 since 1997, he does not possess any ration card at that address. Even he has no voters' identity card at the said address. He did not mention the permanent address in the appropriate place of the application. As per evidence of the applicant, the rent bill was previously granted in the name of his father and he became a tenant of the premises since March, 2000. The accident took place on 27.09.1999, as stated earlier, but the owner of that premises, that is, the P.W.4 has clearly stated that the applicant has been residing in his house since March, 2000, that is, after the date of the accident.

7. That being the position, I am of the view that the learned Tribunal has rightly concluded that the applicant does not reside at all within the jurisdiction of the learned Tribunal at Alipore. The accident happened in Howrah. The owner of the offending vehicle is also a resident of Banipur under P.S. Sankrail, District : Howrah. Though the insurer has its place of business at 3, Middleton Street, Calcutta – 700 071, the FIR was lodged with the Sankrail P.S., District : Howrah. The rent bills filed by the applicant relate to the months of April to June, 2000 and these bills do not support the contention of the applicant that he resided at 247, New Ghat Road, Calcutta – 700 044 at the relevant time.

8. In view of above fact, I am of the opinion that the learned Tribunal has rightly observed that the learned Tribunal lacks jurisdiction and so the plaint should be returned to the applicant for filing before the appropriate forum. I am of the view that this application is meritless and there is nothing to interfere with the impugned order. Accordingly, this application is dismissed.

9. Considering the circumstances, there will no order as to costs.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)