

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 20th OF MARCH, 2023
MISC. APPEAL No. 2612 of 2021**

BETWEEN:-

JAGESHWAR PRASAD NAMDEO S/O SHRI SEETA RAM NAMDEO, AGED ABOUT 46 YEARS, OCCUPATION: OWNER OF THE MOTORCYCLE R/O SEMARIYA P.S. SEMARIYA DISTT. PANNA (MADHYA PRADESH)

.....APPELLANT

(BY SHRI UDAY KUMAR - ADVOCATE)

AND

- 1. SMT. KALPANA PATHAK W/O OMKAR PRASAD PATHAK, AGED ABOUT 30 YEARS, R/O VILLAGE SEMARIYA, P.S. SEMARIYA, DISTRICT PANNA (MADHYA PRADESH) PRESENT ADDRESS PANNA NAKA UMARI, CIVIL LINES, RAGHURAJNAGAR, DISTRICT SATNA (MADHYA PRADESH)**

- 2. PURUSHOTTAM PRASAD PATHAK S/O LATE SHRI JAG PRASAD PATHAK, AGED ABOUT 63 YEARS, R/O VILLAGE SEMARIYA, P.S. SEMARIYA, DISTRICT PANNA (MADHYA PRADESH) PRESENT ADDRESS PANNA NAKA UMARI, CIVIL LINES, RAGHURAJNAGAR, DISTRICT SATNA (MADHYA PRADESH)**

- 3. SMT.SHAKUNTLA PATHAK W/O PURUSHOTTAM PRASAD PAHTAK, AGED ABOUT 59 YEARS, R/O VILLAGE SEMARIYA, P.S. SEMARIYA, DISTRICT**

PANNA (MADHYA PRADESH) PRESENT ADDRESS PANNA NAKA UMARI, CIVIL LINES, RAGHURAJNAGAR, DISTRICT SATNA (MADHYA PRADESH)

4. **ATHARV PATHAK S/O LATE OMKAR PRASAD PATHAK, AGED ABOUT 7 YEARS, OCCUPATION: MINOR THROUGH NATURAL GUARDIAN MOTHER SMT.KALPNA PATHAK W/O LATE OMKAR PRASAD PATHAK R/O VILLAGE SEMARIYA, P.S. SEMARIYA, DISTRICT PANNA (MADHYA PRADESH) PRESENT ADDRESS PANNA NAKA UMARI, CIVIL LINES, RAGHURAJNAGAR, DISTRICT SATNA (MADHYA PRADESH)**
5. **KUMARI ANUSHKA PATHAK D/O LATE OMKAR PRASAD PATHAK, AGED ABOUT 5 YEARS, OCCUPATION: MINOR THROUGH NATURAL GUARDIAN MOTHER SMT.KALPNA PATHAK W/O LATE OMKAR PRASAD PATHAK R/O VILLAGE SEMARIYA, P.S. SEMARIYA, DISTRICT PANNA (MADHYA PRADESH) PRESENT ADDRESS PANNA NAKA UMARI, CIVIL LINES, RAGHURAJNAGAR, DISTRICT SATNA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI KAPIL PATWARDHAN - ADVOCATE)

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This appeal coming on for admission this day, the court passed the following:

ORDER

This Miscellaneous Appeal under Section 173 of Motor Vehicles Act has been filed against the award dated 09.09.2021 passed by 8th Additional Motor Accident Claims Tribunal, Satna in MACC No.3400827/2016.

2. The appellant is the driver of the offending motor cycle bearing registration No.MP 35 MA 4626.

3. This Appeal has been filed by the appellant on the ground that the Motor Accident Claims Tribunal, Satna did not have jurisdiction to entertain the claim petition as well as the appellant has been falsely implicated.

4. The facts of the case in short are that the claimants/respondents No.1 to 5 filed a claim petition under Section 166 of the Motor Vehicles Act on the allegations that on 21.09.2015 the deceased, namely; Omkar Pathak was going alongwith the appellant on his motor cycle bearing registration No.MP 35 MA 4626. The deceased was a pillion rider. At about 7 p.m. because of rash and negligent driving of the appellant, the motor cycle slipped near the house of Suresh Pathak in Village Pagra, as a result the deceased suffered grievous injuries on his head. The injured Omkar was taken to Community Health Centre, Amaanganj and since his condition was serious, therefore, after First Aid, he was referred to Jabalpur Hospital and Research Centre, Jabalpur, where he died on 23.09.2015.

5. The respondents No.1 to 5 filed a claim petition before the Motor Accident Claims Tribunal, Satna, whereas undisputedly, the accident took place on Amaanganj - Semariya Road, District Panna. The appellant disputed the pleadings and pleaded that his motor cycle was out of order and was lying in the garage. The deceased was driving the motor cycle, whereas the appellant was the pillion rider. Because of rash and negligent driving of the deceased, the motor cycle slipped, as a result the injured Omkar Pathak suffered grievous injuries on his head, whereas the appellant suffered injuries on his chest and leg. Both were taken to Amaanganj Hospital. The deceased Omkar Pathak died after 2 to 3 days. Initially, the claimants and their relatives have tried to falsely implicate the appellant

for an offence under Section 302 of IPC and accordingly, it was prayed that the claim petition be dismissed.

6. It appears that before the Claims tribunal an objection was also raised with regard to its territorial jurisdiction, which was adjudicated by the Claims tribunal in paragraph 27 of its award and held that the claimants are at present resident of Panna Naka, Umri, Police Station Civil Lines, Tahsil Raghurajnar, District Satna and therefore, the Motor Accident Claims Tribunal has jurisdiction to entertain the claim petition.

7. Challenging the award passed by the tribunal below, it is submitted by the counsel for the appellant that as per Section 166(2) of Motor Vehicles Act, the application can be filed 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. It is submitted that the claimants are not the resident of Satna and the accident took place in District Panna as well as the appellant is the resident of District Panna, therefore, the Motor Accident Claims Tribunal, Satna has no territorial jurisdiction.

8. *Per contra*, it is submitted by the counsel for the respondents that since the minor son of the respondent No.1 was staying and studying in Satna, therefore, for the time being the respondent No.1 was also residing in Satna, but thereafter, she shifted back to Panna and the claim petition was filed when respondent No.1 was residing at Satna, therefore, the Motor Accident Claims Tribunal, Satna has a territorial jurisdiction to entertain the claim petition.

9. Heard the learned counsel for the parties.

10. Section 166(2) of the Motor Vehicles Act, 1988 reads as under:

“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.”

11. Admittedly, the accident took place in District Panna. The appellant is also the resident of District Panna. Therefore, primarily the MACT Panna had jurisdiction to entertain the claim petition.

12. Now, the only question for consideration is as to whether the respondents were residing within the territorial jurisdiction of Motor Accident Claims Tribunal, Satna or not?

13. Smt. Kalpana Pathak (P.W.1) in her affidavit filed under Order 18 Rule 4 CPC had given her address as resident of the house of Dr. Uma Tripathi, near Little Flower School, Prabhat Vihar Colony, Tahsil Raghurajnagar, District Satna but in paragraph 1 of her affidavit, she specifically made a declaration that she is the resident of Village Semariya, Police Station Semariya, District Panna. She has further stated that after the death of her husband, she was residing alongwith her father-in-law and sister-in-law in the house of her sister-in-law and her son is a student of Little Flower School, Satna, who was being looked after by herself, her father-in-law and her sister-in-law. In her cross-examination, she has stated that her daughter Anushka Pathak is studying in Semariya, therefore, she is residing in Semariya for looking after her. Thus, it is clear that according to the claimants, one claimant, namely; Atharwa Pathak, a minor boy student of Class-IV is the resident of Satna. To prove the said contention, the

respondent No.1 has also relied upon the mark sheet of final exam of class-3A of Session 2016-17 of Atharwa Pathak issued by Little Flowers Public High School, Prabhat Vihar Colony, Satna as Exhibit P/20. The claim petition was filed on 08.12.2016. Thus, it is clear that at least on the date of institution of the claim petition one of the claimant was the resident of Satna.

14. Now the question for consideration is as to whether the Motor Accident Claims Tribunal, Satna will have a jurisdiction to entertain the claim petition only because of fact that a minor claimant, who is a student of Class-IV is residing in Satna? It is clear from Section 166(2) of Motor Vehicles Act, 1988 the claimants can file the claim petition to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides.

15. Kalpana Pathak (P.W.1) in her cross-examination has stated that her minor child, who is the student of Class-IV is residing in Satna and her parents-in-law are also residing there in order to look after him. Thus, the contention of the appellant is that the minor son Atharwa Pathak and his grandparents are residing in Satna. The appellant has not examined the grandparents of the child/respondents No.2 and 3 to prove that they are residing in Satna. No document has been filed to show that the respondent No.2 and 3 are residing in Satna. Father of the deceased cannot be treated to be a dependant for the reasons that there is nothing on record to show that the father of the deceased is not an earning member. Even in paragraph 1 of the claim petition filed under Section 166 of the Motor Vehicles Act, it was claimed that since the applicants No.4 and 5/respondents No.4 and 5 are minor children of the deceased and therefore, they are being represented by their natural guardian the applicant No.1/respondent No.1 and thus, the claim petition is being

filed by the respondent No.1/applicant No.1 before the Motor Accident Claims Tribunal. In paragraph 4 of the claim petition, it is mentioned that since the applicants No.2 and 3/respondents No.2 and 3 are parents of the deceased and they are under shock due to untimely death of the deceased, therefore, they are entitled of Rs.1,00,000/- each towards consortium. In the claim petition, it was not mentioned that the respondents No.2 and 3/applicants No.2 and 3 are residing in Satna to look after a minor child Atharwa Pathak.

16. Further, the appellant by amending his written statement had pleaded that by order dated 02.12.2019 passed by Jila Panchayat, Panna in file No.6535, the respondent No.1 has been given compassionate appointment as Contractual Shikshak Class-II and accordingly, the respondent No.1 has submitted her joining in Sankul Centre, Government Higher Secondary School, Semariya/Government Girls High School, Semariya and for initial period of three years she would get Rs.7,000/- per month and thereafter, she would be regularized in *Adhyapak* cadre and would start getting her regular pay scale.

17. The respondents No.1 to 5 did not file any reply to this amended pleading of the appellant.

18. Thus, it is clear that not only the respondent No.1 is staying back in Semariya as stated by her in her cross-examination but after the death of her husband, she has got an appointment on compassionate ground and is posted in Semariya, District Panna. As already observed, the appellant has not examined the respondents No.2 and 3, therefore, it is held that the respondents No.2 and 3 are not the resident of Satna.

19. Now, the fact remains is that only Atharwa Pathak, who is the student of Class-IV is prosecuting his studies in Satna. The Supreme

Court in the case of **Mantoo Sarkar Vs. Oriental Insurance Company Limited and Others**, reported in (2009) 2 SCC 244 has held that, the Motor Vehicle Act is a special statute and 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. Resident of the claimant also determines jurisdiction of the Tribunal. It is further held that what would be a residence of a person would, however, depend upon the facts situation obtaining in each case. In the case of **Mantoo Sarkar (supra)**, the appellant therein was the permanent resident of Pilibhit. He was a migrant labourer and at the time of filing of the claim petition, he was working in Nainital District and was residing there during the period of accident. Therefore, it was held that ordinarily an Appellate Court shall not, having regard to the provisions contained in sub-Section 1 of Section 21 of C.P.C., entertain an appeal on the ground of lack of jurisdiction on the part of the Court below, unless he has been prejudiced thereby.

20. In the present case, the appellant had raised the objection of territorial jurisdiction from very beginning. Atharwa Pathak is a minor child, who is a student of Class-IV. He can sue or be sued through his guardian/next friend. In the present case, the guardian of Atharwa Pathak, who is also the claimant No.1/respondent No.1, is the resident of Semariya, District Panna. It is true that a claim petition can lie to the Motor Accident Claims Tribunal where the claimants are residing but in the present case, out of five claimants, four are residing in Semariya, District Panna, whereas only one minor child, who is prosecuting his studies, is residing in District Satna. It is true, that the Motor Vehicles Act is a special statute and the same has to be held to be wider than the civil court but the parties cannot be permitted to confer a jurisdiction on a tribunal, which

otherwise does not have. Atharwa Pathak being a minor was not competent to contest the claim petition on his own. He also did not appear in the witness box. Under these circumstances, this Court is of the considered opinion that merely because a minor son of the deceased is prosecuting his studies in a particular district would not confer a jurisdiction on the Claims Tribunal which otherwise does not have to entertain the claim petition.

21. Even otherwise, in the light of the judgment passed by the Supreme Court in the case of **Kusum Ingots and Alloys Ltd. Vs. Union of India and Another** reported in **(2004) 6 SCC 254**, the Court can refuse to entertain the jurisdiction on the principle of forum conveniens. In the present case, except Atharva Pthak, who is a student of Class-IV, nobody else is residing in the territorial jurisdiction of Motor Accident Claims Tribunal, Satna. When the accident took place within the territorial jurisdiction of Motor Accident Claims Tribunal, Panna, the respondent also resides in District Panna and even the widow, her daughter and her parents-in-law are also residing in Panna, then this Court is of the considered opinion that Motor Accident Claims Tribunal, Satna, should not have entertained the claim petition only on the ground that one of the child of the deceased, who is a student of Class-IV is residing within the territorial jurisdiction of Motor Accident Claims Tribunal, Satna. Even otherwise the Claims Tribunal has not assigned any reason for holding that it has territorial jurisdiction. Thus, viewed from every angle, it is clear that Motor Accident Claims Tribunal, Satna had no jurisdiction to entertain the claim petition. Since the claim petition entertained by Motor Accident Claims Tribunal, Satna, is held to be without jurisdiction therefore, other questions are not dealt with.

22. Accordingly, the award dated 09.09.2021 passed by 8th Additional Motor Accident Claims Tribunal, Satna in MACC No.3400827/2016 is

hereby **set aside**. The claimants shall be free to file a claim petition before Motor Accident Claims Tribunal having territorial jurisdiction over the subject matter.

23. The Appeal succeeds and is hereby **allowed**.

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(G.S. AHLUWALIA)
JUDGE