



2026:AHC-LKO:60349

**A.F.R.**  
**Reserved**

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**FIRST APPEAL FROM ORDER No. - 364 of 2015**

Smt. Santosh Singh And Others

.....Appellant(s)

Versus

Gajendra Singh And Others

.....Respondent(s)

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|                           |                                                        |
|---------------------------|--------------------------------------------------------|
| Counsel for Appellant(s)  | : Rajendra Jaiswal, Krishan Kumar                      |
| Counsel for Respondent(s) | : Ajeet Srivastav, Mahesh Kumar Yadav,<br>Neeraj Singh |

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**Court No. - 19**

**HON'BLE SYED QAMAR HASAN RIZVI, J.**

1. Sri Krishan Kumar, learned counsel for the appellants; Ms. Ekta Singh, Advocate, holding brief of Sri Neeraj Singh, appearing for the respondent No.2; Sri Ajeet Srivastava, learned counsel for the National Insurance Company/respondent No. 3; and Sri Mahesh Kumar Yadav, learned counsel for the United India Insurance Company/respondent No.4, are present.

2. By means of the present Appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellants/claimants have assailed the judgment and order dated 02.07.2014 passed by the learned Motor Accident Claims Tribunal/Additional District Judge, Court No. 7, Sitapur (hereinafter referred to as 'Tribunal') in MAC Case No. 19 of 2013 (Smt. Santosh Singh and others versus Gajendra Singh and others), whereby the claim petition filed by the appellants under Section 166 of the Motor Vehicles Act, 1988 has been dismissed.

3. The facts of the case as culled out from the pleadings are that on 07.09.2012 at about 1:30 P.M., the deceased Rajendra Singh son of Ikbāl Bahadur Singh, resident of Village and Post Sarsaul, Pargana, Tehsil and District Kanpur Nagar, was returning home on his motorcycle (registration number UP78W2188) from Kanpur. When the deceased reached near Sarsaul, a car bearing registration number UP35 L 7733 (hereinafter referred as 'offending vehicle'), owned by Respondent No. 1 / Gajendra Singh son of

Jagdeo Singh, resident of Narendra Nagar, Kasba and District Unnao and being driven by Respondent No. 2 / Satendra Singh son of Surendra Singh, resident of Village Katara, P.S. Purna, District Unnao; hit the motorcycle of the deceased causing him grievous injuries. Despite due medical treatment, the deceased Rajendra Singh could not be saved and succumbed to death during the course of treatment. The offending car (UP35L7733) was duly insured with Respondent No. 3 / National Insurance Company Ltd. at Unnao.

4. The appellants/ claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal at Sitapur which was registered as MAC Case No. 19 of 2013, inter-alia claiming compensation award to the tune of Rs. 30,41,000/- under various heads, along with an interest @ of 12% per annum.

5. By means of the aforesaid Claim petition, the appellants herein are claiming compensation on account of the death of Rajendra Singh (husband of Appellant No. 1 namely Smt. Santosh Singh and father of Appellant Nos. 2 and 3, and son of Appellant No. 4 namely Smt. Kamla Devi). The said Kamla Devi died during the pendency of this appeal and has been substituted by appellant Nos. 4/1, 4/2, 4/2/1, 4/2/2, 4/2/3, 4/3 as her legal heirs vide order of this Court dated 27.10.2023.

6. The Learned Tribunal vide order dated 16.12.2013 framed eight issues for determination. For ready reference, the same is reproduced heren below:

- "1. क्या दिनांक 07.09.2012 को समय 1.30पी0एम0 पर जब मृतक राजेन्द्र सिंह पुत्र इकबाल बहादुर सिंह निवासी ग्राम व पोस्ट सरसौल जिला कानपुर नगर मोटर साइकिल संख्या यू०पी० 78डब्लू 2188 से अपने घर वापस आ रहा था एवं जब वह गांव के निकट पहुंचा तभी कार संख्यां यू०पी० 35 एल 7733 के चालक ने वाहन को तेजी व लापरवाही से चलाते हुये मृतक की मोटर साइकिल मे पीछे से टक्कर मार दी जिससे मृतक राजेन्द्र सिंह को गम्भीर चोटे आई और परिणाम स्वरूप दौरान इलाज उसकी मृत्यु हो गई ?
2. क्या कथित दुर्घटना मृतक राजेन्द्र सिंह एवं कार 2. संख्या यू०पी० 35 एल 7733 की योगदायी उपेक्षा का परिणाम है?
3. क्या कथित दुर्घटना की दिनांक व समय को 3. मोटरसाइकिल संख्या यू०पी० 78डब्लू 2188 विपक्षी संख्या 4 के कार्यालय से वैध एवं प्रभावी रूप से बीमित थी?
4. क्या कथित दुर्घटना की दिनांक को मोटर साइकिल संख्या यू०पी० 78डब्लू 2188 के चालक मृतक के पास वाहन चलाने हेतु वैध एवं प्रभावी अनुज्ञप्ती पत्र था?
5. क्या कथित दुर्घटना की दिनांक को कार संख्या यू०पी० 35 एल 7733 के चालक के पास वाहन चलाने का हेतु वैध एवं प्रभावी लाइसेंस था?
6. क्या कथित दुर्घटना की दिनांक व समय को कार संख्या यू०पी० 35 एल 7733

विपक्षी सं० 3 के कार्यालय से बीमित थी और क्या वाहन का संचलान बीमा पालिसी की शर्तों के अनुरूप किया जा रहा था?

7. क्या याचीगण प्रतिकर पाने के अधिकारी हैं? यदि हां तो किस पक्ष से और कितनी धनराशि ?

8. क्या न्यायालय को प्रश्नगत याचिका की सुनवाई का क्षेत्राधिकार प्राप्त है?"

7. While deciding the aforesaid claim petition, the Learned Tribunal, firstly proceeded to deal with the Issue No. 8, relating to its territorial jurisdiction as per Section 166(2) of the Motor Vehicles Act, 1988 and concluded the same by recording categorical finding that the appellants had failed to produce any document to establish that they had shifted their permanent residence from District Kanpur to District Sitapur and that all the documents on record, including the income certificate filed by Appellant No. 1 (bearing Paper No. 60 Ga), disclosed Kanpur. The learned Tribunal further recorded that the agricultural land belonging to the deceased situates in the district Kanpur; and that neither the respondents resided at Sitapur nor carried on any business there. Resultantly, the learned Tribunal vide its judgment and order dated 02.07.2014 dismissed the claim petition solely on the ground of lack of territorial jurisdiction, while granting the appellants liberty to prefer claim before the competent Tribunal. The relevant part of the findings recorded by the Learned Tribunal is reproduced herein below:

#### **"निस्तारण वाद विन्दु संख्या 8**

उक्त वाद विन्दु इस आशय का बिरचित किया गया है कि-क्या न्यायालय को प्रश्नगत याचिका की सुनवाई का क्षेत्राधिकार प्राप्त है?

इस सम्बन्ध में उल्लेखनीय है कि याचीगण द्वारा प्रश्नगत याचिका एम०वी०एक्ट की धारा 166 (1) के तहत प्रस्तुत की गयी है। धारा 166 की उपधारा 2 के अनुसार उक्त धारा के तहत क्लेमेन्ट / दावेदार को यह अधिकार प्राप्त है कि वह चाहे तो प्रतिकर याचिका ऐसे न्यायालय में प्रस्तुत कर सकता है जिसके क्षेत्राधिकार में दुर्घटना स्थल स्थित हो या ऐसे प्राधिकरण के समक्ष प्रस्तुत कर सकता है जहां क्लेमेन्ट / दावेदार निवास करता है या कारोबार करता है या ऐसे प्राधिकरण के समक्ष प्रस्तुत कर सकता है जिसके क्षेत्राधिकार में प्रतिवादी निवास करता है या कारोबार करता है। उक्त धारा के परिप्रेक्ष्य में पत्रावली के अवलोकन से यह तथ्य विदित है कि निर्विवादित रूप से प्रश्न घटना जिला कानपुर क्षेत्र के अन्तर्गत घटित हुयी है। याचीगण द्वारा याचिका में अपना पता ग्राम सरसौल तहसील, परगना एवं जिला कानपुर अंकित किया है तथा हाल पते के तौर पर सुरेन्द्र सिंह ग्राम हेमपुर परगना, तहसील एवं जिला सीतापुर अंकित किया है, परन्तु याचीगण द्वारा अपने हाल पते की पुष्टि हेतु कोई भी प्रपत्र पत्रावली पर प्रस्तुत नहीं किया गया है। जिससे याचीगण का ग्राम हेमपुर जिला सीतापुर में निवास करने के तथ्य की पुष्टि होती हो, बल्कि याचिनी संख्या-1 द्वारा पत्रावली में अपना आय प्रमाण पत्र कागज संख्या 60ग प्रस्तुत किया है, जिसमें याचिनी का वर्तमान पता जिला कानपुर उत्तर प्रदेश का अंकित है। इसके अलावा पत्रावली पर उपलब्ध खतौनियों के अवलोकन से यह तथ्य विदित है कि मृतक की खेती की भूमि जिला कानपुर में स्थित है। इस स्तर पर यह तथ्य उल्लेखनीय है कि माननीय उच्च न्यायालय इलाहाबाद द्वारा यूनाइटेड इण्डिया इंश्योरेंस कं० बनाम ओम प्रकाश एवं अन्य ए०सी० जे० पेज 1428 में धारा

166 की उपधारा (2) के परिप्रेक्ष्य में "निवास" शब्द को स्थानीय निवास के रूप में परिभाषित किया गया है न कि अस्थायी निवास के तौर पर याचीगण की ओर से पत्रावली पर कोई ऐसा भी साक्ष्य प्रस्तुत नहीं किया जिससे यह तथ्य प्रमाणित होता हो कि उनके द्वारा जिला कानपुर से अपना निवास स्थान बदलकर जिला सीतापुर को अपना स्थायी निवास बना लिया गया है। ऐसी स्थिति में याचीगण के जिला सीतापुर के निवास को एम०वी०एक्ट की धारा 166 की उपधारा 2 के तहत स्थायी निवास की श्रेणी में नहीं रखा जा सकता। इसके अलावा यह तथ्य भी उल्लेखनीय है कि प्रश्नगत वाहन का स्वामी व चालक जिला उन्नाव के रहने वाले है। याचीगण की ओर से प्रतिवादीगण के जिला सीतापुर में रहने व कारोबार करने की बाबत भी कोई ऐसा साक्ष्य प्रस्तुत नहीं किया है जिससे यह परिलक्षित होता हो कि प्रतिवादीगण जिला सीतापुर के निवास है या जिला सीतापुर में कारोबार करते है। ऐसी स्थिति में प्रश्नगत याचिका में गुण-दोष के आधार पर अपनी राय व्यक्त किये बिना न्यायालय इस मत की है कि इस न्यायालय को प्रश्नगत याचिका की सुनवाई का क्षेत्राधिकार प्राप्त नहीं है।

तदनुसार वाद बिन्दु संख्या 8 निस्तारित किया जाता है।

चूँकि न्यायालय को प्रतिकर याचिका की सुनवाई का क्षेत्राधिकार हासिल नहीं है। ऐसी स्थिति में शेष वाद बिन्दुओं पर विवेचना किया जाना उचित प्रतीत नहीं होता। तदनुसार याचिका वाद बिन्दु संख्या 8 के निष्कर्ष के आधार पर ही निर्णीत की जाती है।

#### आदेश

मोटर दुर्घटना प्रतिकर याचिका 19/2013 श्रीमती संतोष सिंह आदि बनाम गजेन्द्र सिंह आदि क्षेत्राधिकार के आभाव में निरस्त की जाती है। याचीगण सक्षम न्यायालय के समक्ष याचिका प्रस्तुत करने हेतु स्वतंत्र है। पक्षकार अपना-अपना वाद व्यय स्वयं वहन करेंगे।"

**8.** Aggrieved by the aforesaid judgment and order dated 02.07.2014 passed by the learned Tribunal, the appellants have preferred the present Appeal.

**9.** The appellant No. 1 herein has filed an application under Order XLI Rule 27 of the C.P.C. duly supported by an affidavit seeking the permission of this Court to bring on record additional documentary evidence to conclusively demonstrate and prove their residence at Sitapur. Upon perusal of the record, it transpires that a copies of the same has been duly served upon the learned counsel for the Opposite Party No. 3 / National Insurance Company and Opposite Party No. 4 / United India Insurance Company. However, there is nothing on record to indicate that either of the opposite parties have filed any reply or objection to the same.

**10.** Learned counsel appearing on behalf of the appellants, have advanced the following arguments in support of their case.

10.1. It is submitted on behalf of the appellants that the learned Tribunal rejected the claim petition in manifest error by misinterpreting the provisions of Section 166(2) of the Motor Vehicles Act, 1988. Contention of the learned counsel for the appellants is that the Section 166(2) of the Motor Vehicles Act, 1988 bestows upon the claimant a three-fold option to institute claim petition: (i) at the place of accident;

(ii) at the place where the claimant resides or carries on business; or  
(iii) at the place where the defendant resides or carries on business. Since the claimants are presently residing at Sitapur, as such, they filed the Claim Petition before the Learned Motor Accident Claims Tribunal, Sitapur. It is submitted that in the affidavit filed in evidence, by the wife of the deceased, she deposed her current address / place of residence in District Sitapur, the same has not been substantially denied by the opposite parties but the learned Tribunal, dismissed the Claim Petition by observing that the claimant have failed to establish their place of residence at Sitapur.

10.2. The learned counsel appearing on behalf of the appellants further urged that the learned Tribunal, framed eight issues, conducted a full-fledged trial, and only thereafter dismissed the claim petition only on the ground of territorial jurisdiction at the final stage. It is submitted that having allowed the entire trial to proceed without deciding the jurisdictional issue as a preliminary issue, the Tribunal was not justified in non-suiting the appellants on a purely technical jurisdictional ground at the stage of final adjudication.

10.3. It is vehemently argued on behalf of the appellants that in the present case no failure of justice whatsoever was demonstrated by any of the respondents on account of the claim petition having been instituted at Sitapur. No prejudice, was either pleaded or proved by the respondents. On the contrary, prejudice has been caused to the appellants / dependants of the deceased whose claim petition, despite completion of trial, came to be dismissed on a purely technical ground. It is submitted that such an approach defeats the very spirit and beneficial object underlying the Motor Vehicles Act, 1988.

10.4. The learned counsel for the appellants also contended that Respondent No. 3 / National Insurance Company Limited had filed its written statement before the learned Tribunal showing the place of swearing of the affidavit at Sitapur, thereby establishing that Respondent No. 3 was carrying on business and had its office / branch at Sitapur. Therefore, this circumstance by itself was sufficient to confer territorial jurisdiction upon the Tribunal at Sitapur under the

third limb of Section 166(2) of the Motor Vehicles Act, 1988.

10.5. It has further been submitted on behalf of the appellants that an application for additional evidence under Order XLI Rule 27 CPC has been filed before this Court by Appellant No. 1, annexing therewith a School Leaving Certificate dated 31.07.2014 issued by the Principal of Shanti Niketan Shiksha Mandir, Rampur, Sitapur, pertaining to Appellant No. 3 / Om Singh for Class I, wherein the address of Appellant No. 3 has categorically been mentioned as Village Hempur, Post Neri Kalan, District Sitapur. It is urged that the said document directly and conclusively establishes the residence of the appellants within the territorial jurisdiction of the learned Tribunal at Sitapur at the relevant time and completely removes the sole basis upon which the claim petition came to be dismissed.

10.6. Learned counsel further urged that the aforesaid proof of residence filed before this Court by way of additional evidence could not be produced before the learned Tribunal owing to the failure of the erstwhile counsel at Sitapur to properly advise the Appellant No. 1 who is a housewife unacquainted with legal proceedings, to place the same on record before the Tribunal. It is submitted that a litigant who has done everything within her capacity, ought not to be made to suffer for the inaction, omission, or misdemeanor of her counsel.

10.7. Lastly, It is contended on behalf of the appellants that the Motor Vehicles Act, 1988, being a beneficial and welfare legislation intended to provide 'just compensation' to accident victims and to their dependents and technical objections relating to jurisdiction cannot be permitted to defeat their substantive rights.

**11.** *Per Contra*, learned counsel appearing on behalf of Respondent No. 4 / United Insurance Co. Ltd. opposed the arguments advanced on behalf of the appellants and raised the following objections by way of an affidavit dated 17.10.2019:

11.1. The prime objection raised on behalf of Respondent No. 4 is that the appellants failed to produce any document before the learned Tribunal establishing that they were residing within the district Sitapur

at the time of filing of the claim petition. He submitted that all documents that were brought on record disclose the address of the appellants at Kanpur and no evidence whatsoever was adduced to establish their permanent residence at Sitapur.

11.2. It is also urged on behalf of Respondent No. 4 that the appellants have failed to satisfactorily explain the delay in preferring the present appeal and no material or documentary evidence has been filed substantiating the said delay as bona fide and genuine.

11.3. It is asserted on behalf of Respondent No. 4 that in light of the aforesaid facts and circumstances, the present Appeal is liable to be dismissed and the impugned judgment and order passed by the learned Tribunal deserves to be affirmed.

**12.** Heard learned counsel for the respective parties and perused the material available on record.

**13.** In view of the above, the foremost question falling for consideration before this Court is whether the learned Tribunal at Sitapur was justified in dismissing the Claim Petition filed by the appellants under Section 166 of the Motor Vehicles Act, 1988, at the final stage of the proceedings, solely on the ground of lack of territorial jurisdiction, without adjudicating the same on merits.

**14.** Before advertng on the aforesaid issue, it would be germane to first set out the text of Section 166(2) of the Motor Vehicles Act, 1988, which governs the territorial jurisdiction of the Claims Tribunal. The said provision reads as under:

**"166. Application for compensation.** - (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be: Provided that where all the legal representatives of the deceased have not joined

in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.[Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

[(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:\*\*\*]

[(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.]

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [section 159] as an application for compensation under this Act.]

[(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.]"

*(emphasis supplied)*

**15.** The amplitude and the liberal spirit in which the aforesaid provision is to be interpreted has been authoritatively settled by the Hon'ble Supreme Court in the case of **Mantoo Sarkar Vs. Oriental Insurance Company Limited and others**, reported in **2009 (2) SCC 244**, to the effect that such claim petitions could have been filed at a place, in case, any of the claimant is living and mere technicality of territorial jurisdiction should not come in way particularly when no prejudice to the rights of the opposite parties has been caused. In the aforesaid case before the Hon'ble Apex Court the Insurance Company had a branch at Nainital; the accident had taken place outside the jurisdiction of the Nainital Tribunal; the claimant was admitted in the hospital at Bareilly and thereafter he had been shifted to Pilibhit; and at the time of filing of claim petition the claimant was working as a labourer in Nainital. Relevant paragraph nos. 11, 12, 15, 16, 20 and 23 of the aforesaid judgment are quoted as under:-

11.....The said Act is a special statute. The jurisdiction of the



Tribunal having regard to the terminologies used therein must be held to be wider than the civil court.

12. A claimant has a wide option. Residence of the claimant also determines jurisdiction of the Tribunal. What would be a residence of a person would, however, depend upon the fact situation obtaining in each case.

15. No doubt the Tribunal must exercise jurisdiction having regard to the ingredients laid down under sub-section (2) of Section 166 of the Act. We are not unmindful of the fact that in terms of Section 169 of the Act, the Tribunal, subject to any rules, may follow a summary procedure and the provisions of the Code of Civil Procedure under the Act have a limited application but in terms of the rules 'save and except' any specific provision made in that behalf, the provisions of the Code of Civil Procedure would apply. Even otherwise the principles laid down in the Code of Civil Procedure may be held to be applicable in a case of this nature.

16. We say so because ordinarily an appellate court shall not, having regard to the provisions contained in sub-section (1) of Section 21 of the Code of Civil Procedure, entertain an appeal on the ground of lack of territorial jurisdiction on the part of the court below unless he has been prejudiced thereby. Other respondents did not raise any question of jurisdiction. Although one witness each had been examined on behalf of the truck owner and owner of the bus, neither a question of lack of territorial jurisdiction was raised nor the question of any prejudice had been argued. It is only the first respondent who raised the question of territorial jurisdiction. However, no prejudice was caused to the appellant by the claim petition being tried by the MACT at Nainital.

20. A distinction, however, must be made between a jurisdiction with regard to subject matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject matter of claim. As a matter of fact the civil court had no jurisdiction to entertain the suit. If the Tribunal had the jurisdiction to entertain a claim petition under the Motor Vehicles Act, in our opinion, the Court should not have, in absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal.

23. We cannot also lose sight of the fact that the appellant herein was a labourer. The justness or otherwise of the amount of compensation has not been disputed before us. If the High Court judgment is to be complied with, appellant would again have to initiate another proceeding either at Bareilly or Gurgaon or at Delhi or at Jabalpur. The same evidence would have to be rendered once again."

*(emphasis supplied)*

**16.** The principle enunciated in **Mantoo Sarkar** (*supra*) was subsequently reaffirmed and enlarged by the Hon'ble Supreme Court in **Malati Sardar**

**versus National Insurance Company Limited**, reported in **(2016) 3 SCC**

**43.** The Hon'ble Court in **Malati Sardar** (*supra*) observed as under:-

"12. In Mantoo Sarkar (*supra*), the insurance company had a branch at Nainital. Accident took place outside the jurisdiction of Nainital Tribunal. The claimant remained in the hospital at Bareilly and thereafter shifted to Pilibhit where he was living for a long time. However, at the time of filing of the claim petition he was working as a labourer in Nainital District. The High Court took the view that Nainital Tribunal had no jurisdiction and reversed the view taken by the Tribunal to the effect that since the office of the insurance company was at Nainital, the Tribunal had the jurisdiction. This Court reversed the view of the High Court. It was held that the jurisdiction of the Tribunal was wider than the civil court. The Tribunal could follow the provisions of Code of Civil Procedure (CPC). Having regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in absence of any prejudice. Distinction was required to be drawn between a jurisdiction with regard to subject matter on the one hand and that of territorial and pecuniary jurisdiction on the other. A judgment may be nullity in the former category, but not in the latter.

14. We are thus of the view that in the face of judgment of this Court in Mantoo Sarkar (*supra*), the High Court was not justified in setting aside the award of the Tribunal in absence of any failure of justice even if there was merit in the plea of lack of territorial jurisdiction. Moreover, the fact remained that the insurance company which was the main contesting respondent had its business at Kolkata.

16. The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hyper technical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting parties in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. Moreover, in view of categorical decision of this Court in Mantoo Sarkar (*supra*), contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC."

*(emphasis supplied)*

**17.** The aforesaid settled legal position has been further considered by the Hon'ble Supreme Court in the case of **Balveer Batra versus New India Assurance Company Ltd.**, reported in **2024 SCC OnLine SC 4072** wherein, the Hon'ble Court was pleased to observe as under:

**10.** Paragraph 10 of the decision in *Malati Sardar's case* is also relevant for the purpose of knowing the factual position under which such a question was formulated and answered. It reads thus-

"The question for consideration thus is whether the Tribunal at

Kolkata had the jurisdiction to decide the claim application under Section 166 of the Act when the accident took place outside Kolkata jurisdiction and the claimant also resided outside Kolkata jurisdiction, but the respondent being a juristic person carried on business at Kolkata. Further the question is whether in absence of failure of justice, the High Court could set aside the award of the Tribunal on the ground of lack of territorial jurisdiction."

(underline supplied)

**11.** Noticeably, in that case the Tribunal entertained the claim petition and awarded compensation and the High Court, at the instance of the insurance company, considered and reversed the decision on the question of territorial jurisdiction. Consequently, the appeal of the insurance company was allowed and the party was directed to refund of the amount deposited/paid, if any, to the appellant insurance company. After framing the said question in the above factual backdrop, it was answered in *Malati Sardar's case* by placing reliance on the earlier decision of this Court in *Kiran Singh v. Chaman Paswan*<sup>2</sup>. This Court held that the provision in question is a benevolent provision for the victims of accidents of negligent driving and in such circumstances, it has to be interpreted with the object of facilitating remedies for the victims of accidents. Furthermore, it was held in paragraph 16 thereof, thus:—

".....Hyper technical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice".

(underline supplied)

**13.** A bare perusal of Section 21, CPC would reveal that objection as to the place of suing is not to be entertained by any Appellate or Revisional Court if it was not taken in the Court of first instance at the earliest possible opportunity and unless there has been a consequent failure of justice. While looking into the object and reasons for the aforesaid provision it is very clear as to why lack of territorial jurisdiction by itself was not recognized under it as a reason to make a judgment/decreed a nullity. It is to be noted that it is quite different and distinct from inherent lack of jurisdiction which would strike at the very authority of the Court to try a case and pass a judgment/decreed and would make it a nullity. On a careful consideration of the provisions under Section 21, CPC, we are of the considered view that the provisions would undoubtedly make it clear though taking of an objection as to the lack of territorial jurisdiction before the Court of first instance at the earliest opportunity is a condition required to raise that objection before an appellate or revisional Court satisfaction of such condition by itself would not make an award granting compensation a nullity inasmuch as in such cases there would not be inherent lack of jurisdiction in Court in regard to the subject matter. Therefore, in such cases, correction by a Court is open, only if it occasions in failure of justice. The provision thus, reflects the

legislative intention that all possible care should be taken to ensure that the time, energy and labour spent by a Court did not go in vain unless there has been a consequent failure of justice.

17. The words 'at the option of the claimant' employed in Section 166(2) and the options available to a claimant in regard to places for suing for such compensation under Section 166(2), assume relevance for consideration of the moot question. Indubitably, the statute indicates that option lies with the claimant to make application for compensation 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. There can be no doubt with respect to the position that if more than one Court has jurisdiction to adjudicate a dispute it will be open to the party concerned to choose one of the competent Courts to decide his dispute. Thus, it is obvious that merely because the claimant made the application for compensation not to the Claims Tribunal having jurisdiction over the area in which the accident occurred or not to the Claims Tribunal within the local limits of whose jurisdiction he resides or carries on business, is no reason to dismiss the application provided it is filed before a Claims Tribunal where it is otherwise maintainable. This aspect calls for consideration not solely confining to strict construction of the rest of the provision under Section 166(2) of the M.V. Act, but by looking into various other authorities, as well.

21. Section 173 of the M.V. Act provides for filing appeal by any person aggrieved by an award by a Claims Tribunal. In the decision in *Sharanamma v. M.D., Divisional Contr. Nekrtc*, this Court held that a bare reading of Section 173 shows that there is no curtailment or limitations on the powers of the appellate court to consider the entire case on facts and law. When that be the position, indubitably, it could be said that consideration of the question of sufferance or prejudice in regard to a finding on territorial jurisdiction besides its correctness is required in appeals against awards declining compensation upholding the objection on territorial jurisdiction of the opposite parties. Since the provisions for grant of compensation under Section 166 is one of benevolence if an illegality resulting in failure of justice is discernable from the materials on record, even if in respect of which no specific pleading is taken, the Court is bound to take it into consideration.

22. The further support of the above view can be taken from paragraph 16 of the decision in *Malati Sardar's case* (supra), extracted hereinbefore, wherein this Court held that provision under Section 166 for grant of compensation in respect of an accident of the nature specified in Sub-section (1) of Section 165 being a benevolent provision for the victims of accidents of negligent driving, the provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accident. Furthermore, it was held in the said decision that hyper technical approach in such matters could hardly be appreciated and there would be no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party in such cases, has its business.

**28.** True that in terms of the said provision, the issues regarding territorial jurisdiction ought to be tried as primary issues but when it is evident that the issue could not be decided solely based on the pleadings in the plaint (here claim petition) and when parties are permitted to adduce evidence upon finding that it is a mixed question of law and facts there was absolutely no justification for not pronouncing an award on all the issues framed besides the one pertaining to its territorial jurisdiction. There cannot be any doubt with respect to the fact that when evidence was permitted to be let in, may be for such issues the possibility of re-appreciation and consequent reversal of finding(s) of the Tribunal cannot be ruled out. But then, if the award was pronounced not at threshold, but after a very long lapse of time and confining consideration only on the issue of territorial jurisdiction and then, answering the other issues as well against the claimant without examining them on their own merits, but solely because of the negative finding on the issue of territorial jurisdiction, as occurred in the case on hand, it would defeat the very purpose of the benevolent legislation providing for grant of compensation under Section 166 of the M.V. Act. As noticed hereinbefore in this case, the question of territorial jurisdiction was decided by the Tribunal after about 4 years since the filing of the claim petition and the appeal filed in 2010 was dismissed, confirming the dismissal of the claim petition after about 6 years. We have also already noted that in the case on hand a great illegality or error has been committed by the Tribunal even after observing that it got no occasion to examine the other six issues but then deciding those six issues against the claimant and in favour of the opposite parties. Since a Claims Tribunal constituted under Section 165, M.V. Act even when lacking territorial jurisdiction cannot be said to be lacking jurisdiction on the subject matter in a claim petition and the award would not be a nullity and therefore, the findings on other issues would be binding on the parties. Hence, in the first instance, failure of justice occurred as the award of the Tribunal virtually rendered the claimant remediless. In cases of this nature, sometimes a remand may also be a futility as passage of such long period may make witnesses unavailable for examination or re-examination for various reasons. Such reasons may also include death of the witness(s). Since the present imbroglio is created because of a mistake or error on the part of the Tribunal, either in proceeding further after returning a negative finding on the question of territorial jurisdiction or in not pronouncing award on all issues, we are of the considered view that the said mistake not entering on merits and into a findings on issues No. 1 to 4, 6 and 7 at paragraph 21 against the claimant and in favour of the opposite parties without examining them on merits and hence, they are liable to be set aside in the light of the salutary maxim 'Actus Curiae neminem gravabit', as no party shall be put to suffer for the mistake of a Court.

*(emphasis supplied)*

**18.** The Appellant No. 1/ Smt. Santosh Singh has categorically stated in the application under Order XLI Rule 27 of C.P.C as well as in the affidavit filed in support of it, before this Court, that after the tragic and untimely death of the deceased, she, being a less-educated housewife unfamiliar with

the outside world, moved to Village Hempur, Pargana, Tehsil and District Sitapur along with her minor children and started residing there at the house of her relative Surendra Singh. She has cogently explained that the claim petition was filed at Sitapur on the advice of her erstwhile counsel, as she was residing in that district at the time. The additional evidence tendered by the appellants before this Court under Order XLI Rule 27 of the C.P.C., namely, the school leaving certificate dated 31.07.2014 issued by the Principal of Shanti Niketan Shiksha Mandir, Rampur, Sitapur, pertaining to Appellant No. 3 / Om Singh for Class I, which categorically records his address as Village Hempur, Post Neri Kalan, District Sitapur.

**19.** The position of the appellants is further and independently strengthened by an important and material circumstance available on the record. The Respondent No. 3 / National Insurance Company Limited filed its written statement before the learned Tribunal reflecting the place of swearing at Sitapur, thereby establishing that Respondent No. 3 was doing business at Sitapur and maintained an office / branch in that District. This fact was itself sufficient to confer territorial jurisdiction upon the Tribunal at Sitapur under the third limb of Section 166(2) of the Motor Vehicles Act, 1988, namely that the claim petition can be filed before the Tribunal "within the local limits of whose jurisdiction the defendant resides." The learned Tribunal, while deciding Issue No. 8, failed to notice and consider this material circumstance, and committed grave error.

**20.** Insofar as the contention of the learned counsel appearing for the appellant that the question of lack of jurisdiction and the objection relating to territorial jurisdiction stood waived by the conduct of the parties, as well as that of the learned Tribunal itself, is concerned. A four judges Bench of the Hon'ble Supreme Court in the case of **Hira Lal Patni versus Kali Nath** reported in **AIR 1962 SC 199** has been pleased to hold as under:

"The objection to its [Bombay High Court] territorial jurisdiction is one which does not go to the competence of the court and can, therefore, be waived. In the instant case, when the plaintiff obtained the leave of the Bombay High Court on the original side, under clause 12 of the Letters Patent, the correctness of the procedure or of the order granting the leave could be questioned by the defendant or the objection could be waived by him. When he agreed to refer the matter to arbitration through court, he would be deemed to have waived his objection to the territorial jurisdiction of the court, raised by him in his written statement. It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an

objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure."

*(emphasis supplied)*

21. The learned Tribunal in the case in hand, despite the framing of Issue No. 8 pertaining to jurisdiction, chose not to decide the same as a preliminary issue. Instead, it allowed all parties to adduce their documentary as well as oral evidence and conducted a complete trial. Having permitted the parties to go through a full-fledged trial without even advertng on the issue of 'prejudice' at any stage, the Tribunal was not justified, in nullifying the entire proceedings at the final stage.

22. Further, the Hon'ble Supreme Court in the case of **Harshad Chiman Lal Modi versus DLF Universal Ltd.** reported in **(2005) 7 SCC 791**, the Court held that an objection to territorial and pecuniary jurisdiction has to be taken at the earliest possible opportunity. If it is not raised at the earliest, it cannot be allowed to be taken at a subsequent stage. The Hon'ble Supreme Court held thus:

"30. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity."

23. Thus, it is trite law that an objection as to the territorial jurisdiction of a Court or Tribunal must be raised at the threshold and at the earliest available opportunity and in any case at or before settlement of issues.

24. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the territorial jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure.

Applying the aforesaid settled principles of law to the facts of the present case, this Court finds that no failure of justice was demonstrated by any of the respondents either before the Tribunal or before this Court. On the contrary, it is the appellants, the dependants of the deceased have been non-suited after a complete trial on a purely technical ground.

25. Now dealing with the issue of the application for additional evidence filed by Appellant No. 1 under Order XLI Rule 27 of the C.P.C., this Court finds that the School Leaving Certificate dated 31.07.2014 is proposed to be tendered as additional evidence.

26. In order to properly appreciate the controversy involved, it is necessary to first advert to the statutory provision applicable to the case at hand. Order XLI Rule 27 of CPC reads as follows: -

**"27. Production of additional evidence in Appellate Court.–**

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) . . .

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) . . .

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

27. Rule 27, being couched in negative terms, makes it abundantly clear that parties to an appeal are not entitled to adduce additional evidence, whether oral or documentary, save and except in the circumstances expressly enumerated therein. The provision contemplates only three eventualities in which additional evidence may be permitted: first, where the court which passed the decree has refused to admit evidence which ought to have been admitted; second, where the party seeking to adduce such evidence establishes that, notwithstanding the exercise of due diligence, the evidence was not within its knowledge or could not have been produced at the time when the decree under appeal was passed; and third, where the appellate court itself requires any document to be produced or any witness to be examined in order to enable it to pronounce judgment or for any other substantial cause.



28. Accordingly, it is only upon satisfaction of any of the aforesaid three contingencies that an application under Order XLI Rule 27 of CPC can be entertained. Sub-rule (2) of Rule 27 of Order XLI mandates that where the appellate court forms an opinion that additional evidence is required to be admitted, it must record the reasons for such admission. While elucidating the scope and object of Order XLI Rule 27 of CPC, the Hon'ble Apex Court, in the case of **Union of India versus Ibrahim Uddin**, reported in (2012) 8 SCC 148 undertook an exhaustive analysis of the provision. The relevant extract is reproduced hereinafter:

"36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself

.....

38. Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence

.....

41. The words "for any other substantial cause" must be read with the word "requires" in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment

.....

47. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed.."

*(emphasis supplied)*

29. Thus, a holistic reading of the aforesaid decision makes it clear that while considering an application for leading additional evidence, is confined to examining whether such evidence is necessary to remove a lacuna in the case. More importantly, the appellate court may permit additional evidence only upon being satisfied that the conditions expressly stipulated under Order XLI Rule 27 of CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage. Consequently, the provision has no application where the appellate court is in a position to render a satisfactory and reasoned judgment on the basis of the evidence already available on record.

30. Upon consideration of the application filed under Order XLI Rule 27 of the Code of Civil Procedure, this Court is of the view that the school leaving certificate / transfer certificate dated 31.07.2014 has material bearing on the controversy involved in the appeal, namely, the residence of the appellants at Sitapur. As regards the explanation furnished by Appellant No. 1 that she being a less-educated housewife and having no knowledge of Court's procedure, could not produce the said document before the Tribunal owing to the failure of her erstwhile counsel to advise her appropriately, this Court finds the same to be credible being consistent with the observations made by the Hon'ble Supreme Court in the case of **Rafiq and Another versus Munshilal and Another**, reported in **(1981) 2 SCC 788** wherein the Hon'ble Court was pleased to hold that once a party engages a counsel, they have done effectively everything to participate in the judicial proceedings and should not be made to suffer due to inaction or deliberate absence of his counsel. The relevant paragraph of the judgement passed in the case of **Rafiq** (*supra*) is extracted herein below for convenience:

" 3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal

nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. ...What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. "

**31.** In the light of the aforesaid principles and the facts of the present case this court finds that Appellant No. 1 has satisfactorily explained that, after the death of the deceased, she shifted to District Sitapur with her minor children. Having engaged a counsel and entrusted him with the conduct of the proceedings, the appellants had done all that could reasonably be expected of them and cannot be made to suffer for the omission of their counsel in not producing the said document before the Tribunal.

**32.** In the present case, the school leaving certificate / transfer certificate dated 31.07.2014 has the potential to throw light on issue of residence of the appellants / claimants.

**33.** This Court finds that the proposed additional evidence is relevant for proper and effective adjudication of the dispute and that its admission would facilitate the rendering of a reasonable judgment. Accordingly, the application having No. 15 of 2014 filed under Order XLI Rule 27 CPC is, therefore, allowed, and the school leaving certificate / transfer certificate dated 31.07.2014 enclosed with the same as Annexure- 1 is taken on record as additional evidence. Since, there is no objection on the same, from the other side, it shall be treated as admitted.

**34.** This Court is of the considered view that in the cases of accident claims the issue of territorial jurisdiction has to be decided consistent with the object of facilitating remedies for the victims of the accidents as per the provisions of the Motor Vehicles Act, 1988. Claim petition can 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. Hyper technical approach in such matters can hardly be appreciated. In the instant case, the Insurance Company, which is the contesting party, admittedly carries on its business at Sitapur, where the office of the respondent-Insurance Company is also situated. It is further significant that, throughout the entire proceedings before the learned Tribunal, no plea of prejudice arising from the alleged lack of territorial jurisdiction was ever raised by the respondents. Nor has any material come on record to demonstrate that the respondents have, in any manner whatsoever, suffered or been subjected to any prejudice on account of the proceedings having been conducted before the learned Tribunal at Sitapur. In the circumstances, therefore, there is, in any event, no failure of justice.

**35.** Rejection of the claim petition after the lapse of a considerable period of time, solely on the ground of territorial jurisdiction, particularly when the witnesses had already been examined, would not only defeat the very object and purpose of the beneficial provision contained in Section 166(2) of the Motor Vehicles Act, 1988, but would also frustrate the underlying object of the benevolent legislation providing for just and adequate compensation under Section 166 of the Motor Vehicles Act, 1988. Such an approach would, in effect, permit a mere technical objection as to territorial jurisdiction to override the substantive rights of the claimants and defeat the very remedial purpose for which the statutory provision has been enacted

**36.** Having regard to the factual matrix of the case and the surrounding circumstances in their entirety, and upon consideration of the legal position discussed here-in-above, this Court is of the considered opinion that the impugned judgment and order dated 02.07.2014 passed by the learned Motor Accident Claims Tribunal, Sitapur, cannot be sustained in law. The learned Tribunal has erred in law in dismissing the claim petition on the ground of lack of territorial jurisdiction, particularly when no prejudice or failure of justice has been demonstrated to have occasioned to the respondents on account of the proceedings having been instituted before the learned Tribunal at Sitapur.

**37.** Accordingly, the impugned judgment and order dated 02.07.2014 passed by the learned Motor Accident Claims Tribunal, Sitapur in M.A.C. Case No. 19 of 2013 (Smt. Santosh Singh and Others Versus Gajendra Singh and Others) deserves to be set-aside.

**38.** Resultantly, the judgment and order dated 02.07.2014 passed by the learned Motor Accident Claims Tribunal, Sitapur in M.A.C. Case No. 19 of 2013 (Smt. Santosh Singh and Others Versus Gajendra Singh and Others) is hereby **set-aside**.

**39.** The matter is remanded to the learned Motor Accident Claims Tribunal, Sitapur with the following directions:

(i) The learned Motor Accident Claims Tribunal, Sitapur is directed to entertain the claim petition having M.A.C. Case No. 19 of 2013 (Smt. Santosh Singh and Others Versus Gajendra Singh and Others) and decide the same on its own merits, strictly in accordance with law.

(ii) Since the accident in question took place in the year 2012 and the Claim Petition was filed in the year 2013, the learned Tribunal shall make every endeavor to decide the claim petition as expeditiously as possible, preferably within a period of four months from the date of receipt of a certified copy of this order.

**40.** There shall be no order as to costs.

**41.** Registry is directed to transmit the original records of the claim petition to the learned Motor Accident Claims Tribunal, Sitapur, forthwith.

**(Syed Qamar Hasan Rizvi,J.)**

**August 24, 2026**

Manoj K.