



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.210 OF 2023

SATISH
RAMCHANDRA
SANGAR

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1. **Mr.Jiyalal Rajaram Yadav,**
Age : 47 Years, Occupation : Nil,
[Son of original Appellant Mr.Rajaram
Butairam Yadav].
2. **Mr.Lav Rajaram Yadav,**
Age : 27 Years, Occupation : Service,
[Son of original Appellant Mr.Rajaram
Butairam Yadav].
3. **Mr.Kush Rajaram Yadav,**
Age : 27 Years, Occupation : Service,
[Son of original Appellant Mr.Rajaram
Butairam Yadav].

All are residing at : Manshapur, Kharaghpur,
Ozh. Sant Ravidas Nagar, Dist. : Gyanpur,
Uttar Pradesh State.

**...Appellants
(Ori. Applicants)**

Versus

1. **M/s. Agrawal Roadlines (P) Ltd.**
Through its Director :-
Shri.Satyanarayan Agarwal,
Old Address of Respondent No.1:-
Agrawal House, Plot No.356, Gokul
Park, Sector 12B, Gandhidham, Gujrat. **...Respondent No.1**
[Owner of Motor Tanker No.GJ-12-Z-1926]. **...(Ori.Opp.No.1)**
2. **United India Insurance Company Limited**
Old address of Respondent No.2:-
Thane Divisional Manager at Pinak Galaxy,
Kapurbawdi, Near Mahadev Hotel,
Opposite Big Bazar, Thane (West),
PIN : 400067.
New Address of Respondent No.2:-
Motor Third Party Claims HUB,

At 5th Floor, Union Co-operative Insurance
 Building, Mr.P.M.Road, Fort, Mumbai, ...**Respondent No.2**
 PIN : 400001. **(Original Insurer)**

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Mr.T.J.Mendon i/b.Smt.Rina Kundu:-	Advocates for Appellants (Original Applicants).
Ms.Varsha Chavan a/w Ms.Namrata Gawde:-	Advocate for Respondent No.2 (Original Insurer).

CORAM : S.M.MODAK, J.

RESERVED ON : 13th OCTOBER 2025

PRONOUNCED ON : 14th NOVEMBER 2025

JUDGMENT :-

1. The vehicular accident took place at Vadodara – Gujarat. The office of employer is situated at Gandhidham – Gujarat. The insurance policy was issued at Ahmedabad and they are having branch office at Thane. The original Claimant was residing at Thane at the time of filing of Application (but no documents were filed). During pendency of Claim Application, he shifted to Uttar Pradesh and died there. His dependants are residing there. On these facts, learned Commissioner, Thane dismissed the Application on 9th November 2019 for want of ‘*territorial jurisdiction*’. That is why, the Appeal is filed by the dependants. So, the issue involved in this Appeal is “*dismissal of such Application for want of territorial jurisdiction whether can be a*

substantial question of law” and if yes “*what can be the order*”?

2. When this Appeal was admitted on 28th March 2023, any substantial question of law was not framed. On this background, I have heard learned Advocate Shri.T.J.Mendon for the Appellants/Original Claimant Nos.1 to 3 and learned Advocate Ms.Varsha Chavan for Respondent No.2/Original Insurer. The Respondent No.1 is the employer/Insured. The Original Claimant–Rajaram Yadav was the employee of Respondent No.1. He was a driver by profession. The Respondent No.1 runs a business of transport in the name and style as “*M/s.Agrawal Roadlines (P) Ltd.*” They have obtained an insurance policy (*Vehicle Package Policy*) from the Respondent No.2/Insurance Company.

Pleadings

3. The deceased Rajaram was injured in an accident that took place on 2nd January 2011 at Vadodara (Gujarat). He was driving a tanker and it turned turtle and he sustained fracture. He was paraplegic. He sought compensation for injuries. The accident took place on 2nd January 2011 but Application was not filed in time. It was filed on 4th September 2013.

4. **The Respondent No.1/Employer** filed the Written Statement.

They have admitted the employment and the accident. According to them, the responsibility to pay compensation is on the Insurance Company. However, they have challenged the '*territorial jurisdiction*' of the Court of Labour Commissioner at Thane. Whereas, the **Respondent No.2** has denied everything but not challenged the '*territorial jurisdiction*' of Thane Court.

Evidence

5. The Claimant–Rajaram Yadav gave evidence and examined three witnesses. The employer gave evidence through their Representative Mitesh S. Joshi. The Insurance Company has not given any evidence. They have restricted themselves in conducting cross-examination.

Findings

6. Learned Commissioner framed four issues. All the issues are answered in favour of the Claimant except the issue of '*territorial jurisdiction*'. And that is how, the Application was dismissed as per the judgment dated 9th November 2019. During pendency of the Application, there was one development. **The injured Rajaram expired on 28th June 2018.** His Legal Representatives were brought on record. They are nothing but the present Appellants.

7. During the arguments, Ms.Varsha Chavan supported the findings

on the issue of '*lack of territorial jurisdiction*'. Whereas, according to Mr.Mendon, such objection cannot be entertained for two reasons.

They are:-

- (i) Such objection was not taken while hearing the delay condonation Application.
- (ii) The Insurance Company in their Written Statement has not taken this objection, and hence, they have waived it.

According to Mr.Mendon, the findings on the aspect of '*territorial jurisdiction*' are erroneous. During their oral arguments, they have elaborated which are the points which can be / cannot be the '*substantial question of law*' and hence, I am framing them as below:-

- (a) Whether the learned Commissioner erred in dismissing the Application by holding that it has no '*territorial jurisdiction*'?
- (b) Whether dismissing the Application for '*territorial jurisdiction*' can be a '*substantial question of law*'?
- (c) Whether the impugned judgment requires interference?
- (d) If yes, what order?

-: **REASONS** :-

-: **Question No.(b)** :-

8. The phrase '*substantial question of law*' is used in various statutes. If a particular piece of evidence is not considered or is considered by overlooking the provisions of relevant law, it is said, the

findings are perverse and in that case, '*substantial question of law*' is involved.

9. There is serious dispute amongst both of them about involvement of '*substantial question of law*'. Ms.Varsha Chavan relied upon the observations in case of ***Fulmati Dhramdev Yadav & Anr. V/s. New India Assurance Co. Ltd. & Anr.***¹ and observations made in paragraph Nos.17 to 23. The Hon'ble Supreme Court has reiterated the importance of framing of '*substantial question of law*' and then only there can be interference in the judgment. On facts of that case, the Supreme Court observed:-

“There has to be perversity in the findings and there cannot be an interference just because another view is possible”
(paragraph No.25).

Whereas according to Mr.Mendon, learned Commissioner has overlooked the fact that the Insurance Company was having branch office at Thane. He places reliance on the provisions of Section 21 of the said Act.

Consideration

10. There is difference in between '*question of fact*' and '*substantial question of law*'. If the issue is "*whether the evidence of Claimant on*

¹ AIR 2023 SC 4438

the point of accident is to be believed or not” is a ‘*question of fact*’.

“*Whether the evidence of Claimant corroborates documentary evidence or not*” is a ‘*question of fact*’.

11. Similarly, in this Appeal, when the Claimant contends, he was residing at Thane and during hearing of the Application, he shifted to Uttar Pradesh and Commissioner gives negative findings, “*whether these facts fall within the domain ordinary residence*” is certainly a question of law and a substantial question of law. And if documents to substantiate place of residence are filed and the issue is “*whether they are proved or not*” is a ‘*question of fact*’.

12. Similarly “*when the insurer is having branch office at Thane*” is a ‘*question of fact*’. However, the issue is whether “*these facts fulfill requirements of clause (c) of sub-section (1) of Section 21 of the EC Act*”, is certainly a ‘*question of law*’ and a ‘*substantial question of law*’. Because, it touches the aspect of ‘*territorial jurisdiction*’.

13. In case of ***Fulmati Dhramdev Yadav*** (cited supra), earlier there were findings that relationship was proved. It was set aside by the High Court. That is why the Supreme Court dwelt upon the issue of interference under Section 30 of the said Act. As said above, in this Appeal, there is scope for hearing about correctness of finding on the

issue of '*substantial question of law*'. I reject the contention of Ms.Varsha Chavan representing the Insurance Company. Even though the Insurance Company has not taken plea of '*territorial jurisdiction*', they are entitled to take that plea in Appeal. Because, they have every right to support those findings and hence, they are entitled to raise all the pleas. I reject the contention of Mr.Mendon.

-: Question Nos.(a) (c) and (d) :-

14. The evidence need to be considered. From the evidence of Claimant Rajaram and evidence of employer's representative, following facts emerges:-

- (i) While filing delay condonation Application and Claim Application, the Claimant Rajaram has given his address at Thane. (within territorial jurisdiction of Thane Court).
- (ii) When the Claimant Rajaram gave evidence, he gave his address at Uttar Pradesh.
- (iii) When his Legal Representatives filed an Application for bringing their names on record, they gave their address at Uttar Pradesh.
- (iv) The accident took place at Vadodara (Gujarat).
- (v) The place of office of the employer is at Gandhidham at Gujarat.
- (vi) Policy was issued by the Insurance Company at Ahmedabad.
- (vii) Branch office of the Insurance Company is situated at Thane.

15. Apart from above circumstances, Ms.Varsha Chavan invited my attention to the following circumstances:-

- (a) Averment by Rajaram that he has no relative at Gujarat and hence, he was shifted to the Uttar Pradesh (paragraph No.3). Initially, he was admitted in the hospital in Gujarat.
- (b) Rajaram admits that he is a resident of Uttar Pradesh.
- (c) The averment in the Affidavit by the Representative of the employer that *“Rajaram has mentioned the Thane address on ill advise.”*
- (d) Admission in the cross-examination by Representative that *“Rajaram does not reside in Thane”*, and admission given that the employer is not having office in Thane.

Findings by Commissioner

16. Relevant findings are there in paragraph No.8 to paragraph No.10. The reasons are as follows:-

- (a) The employer by way of separate Application has challenged the *‘territorial jurisdiction’*.
- (b) The Commissioner considered the native place of Rajaram at Uttar Pradesh. The place of accident and office of employer both are at Gujarat.
- (c) Rajaram has not filed any documentary evidence to show his residential address at Thane.
- (d) In the cover-note, the address is at Gandhidham.

Submissions

17. Mr.Mendon relied upon the provisions of Section 21 of the said Act. After reading the same, following are the decisive factors for deciding ‘territorial jurisdiction’:-

- (a) Place of accident
- (b) Place of residence of the employee or his dependants.
- (c) Place of registered office of employer.

According to Ms.Chavan, the Claimant does not satisfy any of the contingencies under any of the clauses under Section 21(1) of the said Act. Ms.Chavan has laid much emphasis on difference in between the scheme of EC Act and the Motor Vehicles Act, 1988 (“**MV Act**”, henceforth). Section 166(2) of the MV Act talks of ‘*territorial jurisdiction*’. The following are the relevant factors:-

- (a) The place of accident.
- (b) Place of residence of Claimant or place of business of Claimant. (Place of business of Claimant has no significance when employee asks for compensation as per EC Act).
- (c) Place of residence of the defendant. (Here place of business of defendant / insurance company is not provided).

18. If above both provisions are considered together, we can infer about intention of the legislature in enacting those provisions. On comparative analysis, following principles emerge:-

- (a) Under both the Acts, place of accident is a common factor which decides the '*territorial jurisdiction*'.
- (b) There is a difference in between above provisions when place of residence of claimant / defendant is one of the considerations.
- (c) As per the provisions of EC Act, there is emphasis on place of residence of Claimant and there is no reference of place of his business. It is but natural. Because place of business of employee has no significance.
- (d) Whereas, the factor of place of registered office of employer has got significance under EC Act whereas it is not specifically provided as per the MV Act.
- (e) Place of residence of employer has no relevance as per the EC Act. It is but natural. Whereas, place of residence of defendant has relevance as per the MV Act.

19. On this background, the findings need to be tested from two viewpoints.

- (a) While drafting the Claim Application, place of residence of Claimant is mentioned at Thane whether is of paramount consideration (but not filed any document).
- (b) Admittedly, at a subsequent stage, the Claimant has shifted to Uttar Pradesh and his dependants too.
- (c) Whether branch office of the Insurance Company at Thane is of paramount consideration?

Judgments cited by both the sides

20. Mr.Mendon relied upon the following judgments:-

- (i) *Firozkhan Kallukhan Pathan V/s. Dimpal Kumar Shah and another*²
- (ii) *Balveer Batra V/s. New India Assurance Company and Another.*³
- (iii) *Malati Sardar V/s. National Insurance Company Limited and Others.*⁴
- (iv) *Mantoo Sarkar V/s. Oriental Insurance Company Limited and Others.*⁵
- (v) *Ved Prakash Garg V/s. Premi Devi and others*⁶
- (vi) *Iqbal Shamsuddin Ansari V/s. Gazi Salauddin Ansari and another.*⁷
- (vii) *Mahendra Rai V/s. United India Insurance Co. Ltd. and another.*⁸
- (viii) *National Insurance Co. Ltd. V/s. Prembai Patel and others*⁹
- (ix) *Nirmala Devi V/s. Oriental Insurance Co. Ltd. and others*¹⁰

21. Ms.Varsha Chavan relied upon following judgments:-

- (i) *New India Assurance Co. Ltd. V/s. Harshadbhai Amrutbhai Modhiya and Anr.*¹¹
- (ii) *Fulmati Dhramdevi Yadav & Anr. V/s. New India Assurance Co. Ltd. & Anr.*¹²

2 2019 ACJ 1870

3 2024 SCC OnLine SC 4072

4 (2016) 3 Supreme Court Cases 43

5 (2009) 2 Supreme Court Cases 244

6 1998 ACJ 1

7 1980 LabIC 125

8 2015 ACJ 2663

9 2005 ACJ 1323

10 2025 ACJ 1490

11 AIR 2006 SUPREME COURT 1926

12 Civil Appeal No.4713 of 2023 : 4th September 2023 : Supreme Court of India

22. While supporting the findings, Ms.Chavan laid emphasis on the scheme of MV Act and the scheme of EC Act. In fact, the Insurance Company has not raised a point of their misjoinder before the Commissioner. It is true, as per the provisions of Section 170 of MV Act, in certain contingencies, the Insurance Company can be impleaded and they have got a right to contest the Claim Petition. Whereas, Mr.Mendon relied upon the provisions of Section 146 and Section 147 of MV Act. There is a necessity for obtaining the insurance policy so that the risk arising out of damages to third party can be covered. Whereas Section 147 deals with requirement of policies and limits of liability. Mr.Mendon laid emphasis on proviso to Sub-section (1) to Section 147 of the said Act. If there is a death or injury to an employee due to the employment, policy need not cover such risk. There is an exception to this proviso if the liability is arising out of WC Act, then policy must cover such risk. In other words, legislature recognises the contingency covered as per WC Act and contingency other than that. There is an option to cover second contingency. However, in a former contingency, policy is required.

23. Mr.Mendon invited my attention to the vehicle package policy in the name of employer. Risk for employees under WC Act is covered

and premium is also charged.

24. It is true there is no Section in EC Act similar to Section 170 of MV Act. But when an employer pays a premium for an employee and if an accident took place during the course of employment, certainly the Claimant is entitled to implead the insurer. And it is on the basis of contractual liability.

25. Mr.Mendon also relied upon the provisions of Section 19 of the EC Act. He also places reliance on the observations in case of *Iqbal Shamsuddin Ansari V/s. Gazi Salauddin Ansari and another*¹³. When special category of employees are covered as per Section 95 of old MV Act, there is a legislative intent to make provisions of Sections 95 and 96 of old MV Act being part of WC Act. The liability of insurer is integrally connected to the primary liability of employer and hence, the Commissioner is having exclusive jurisdiction to determine such liability. Similar is the ratio in case of *Mahendra Rai* (supra).

26. When the accident took place and vehicle is involved, it is the provisions of MV Act which are applicable. Whereas, in a Petition under EC Act, the relationship is that of employer and employee. The accident may involve a vehicle or may not involve a vehicle. If an employee sustains an injury during the course of employment and also

13 A.F.O.D.No.7 of 1971 : 4th April 1979, Bombay High Court

involving a vehicle, he has got an option either to move under the MV Act or under the EC Act.

27. Ms.Varsha Chavan relied upon the observations in case of ***Harshadbhai Amrutbhai Modhiya and Anr.*** (cited supra). It is true, there is elaboration on necessity of obtaining an insurance under the Motor Vehicles Act. When the policy is obtained, the liability of insurer is governed as per the provisions of Section 147 of MV Act and there remains nothing for the insurer to decide terms of insurance policy. It has to be decided within parameters of Section 147 of the said Act. Whereas as per EC Act, the statutory liability rests on an employer and insurer's liability is just contractual. As per contract, the employer and insurer may decide terms of liability. I can agree to this much submission of Ms.Chavan. In case of ***Prembai Patel and others*** (supra), there was a Petition under Section 166 of the MV Act and on evidence, it was a case of mechanical failure. The insurer was held liable for all sort of liability. It was restricted only to liability under EC Act.

28. But once there is a policy issued by the insurer covering the risk of employees under the Employees Compensation Act, it is sort of contract and insurer cannot deny liability by relying on difference in between provisions of MV Act and EC Act.

Judgments on '*territorial jurisdiction*'

29. Any observations in a judgment is a ratio on the basis of facts and law involved. A slightest variation in facts can lead to different outcome. As said above, scope of an adjudication under MV Act wide as compared to an adjudication under EC Act. It is the relationship of '*employer and employee*' which is necessary for involving the provisions of EC Act.

30. Whereas as per MV Act, the relationship may be of an '*employer and employee*' and may also cover other cases also. What is important, there must be vehicular accident. The legislatures have drafted the provisions of Section 19 of EC Act and Section 166 of MV Act according to the object which they want to achieve. That is why, employee's place of business has no significance. On two aspects, the provisions of EC Act relating to '*territorial jurisdiction*' are different from the provisions of MV Act. The phrase used under clause (b) of Sub-section (1) of Section 19 of EC Act is '*ordinary residence*' whereas it is only place of residence / office under Section 166 of MV Act. Secondly, clause (c) of Sub-section (1) of Section 19 of EC Act uses the word '*registered office*'. Whereas under Section 166, there is reference of only place of residence of defendant.

31. The judgments in case of ***Morgina Begum, Firozkhan Kallukhan Pathan, Ved Prakash Garg*** (cited supra) deal with the provisions of EC Act. Whereas the judgments in case of ***Balveer Batra, Malati Sardar, Mantoo Sarkar, Arvinder Walia*** (cited supra) deal with the provisions of MV Act.

32. In case of ***Morgina Begum*** (supra), the accident and place of residence at the time of accident was outside the *territorial limits* of Tejpur Court. The only cause of action within the limits of Tejpur Court was place of residence of parents at the time of filing of Claim Petition. The Supreme Court also negated the contention about necessity of documents to prove residence.

33. In case of ***Firozkhan Kallukhan Pathan*** (supra), the High Court remanded the matter. Place of residence was at Latur whereas accident took place at Pune.

34. An Insurance Company was having office within Gurugram. The MACT Tribunal was having jurisdiction to entertain the Claim Application. It was in case of ***Nirmala Devi*** (supra).

35. It is true place of residence of defendant is the relevant parameter as per Section 166(2) of MV Act. Court should not take hyper technical approach. Whereas in case of ***Balveer Batra*** (supra), the

Hon'ble Supreme Court applied the test of '*failure of justice*' as contemplated under Section 21 of the Code of Civil Procedure, 1908 ("CPC"). In that case, the claimant as well as two opponents were not residing within the territorial limits. Only the Insurance Company was having an office within the territorial limits. Here also, there is an emphasis on not taking hyper technical approach.

36. In case of ***Malati Sardar*** (supra), the MACT Calcutta was held to be the proper Tribunal because place of business was situated at Calcutta whereas place of accident and place of residence of Claimant was outside territorial limits of Calcutta. Here also, the test of '*failure of justice*' was applied (paragraph No.14).

37. Whereas in the case of ***Mantoo Sarkar*** (supra), the Claimant was original resident of Pilbhit and the Claimant was residing at Nainital at the time of accident. A Claim was filed before Tribunal at Nainital. There was a branch office of the Insurance Company at Nainital. Here also, the test of '*failure of justice*' under Section 21 of CPC was invoked.

Consideration

38. No doubt, neither the Claimant nor his dependants have filed documentary evidence to prove their place of residence at Thane. It is

also not required as held in the case of *Morgina Begum* (supra). In the Claim Petition, the Claimant has written his address at Thane. Throughout the evidence, he says that he is a resident of Uttar Pradesh. Even he took treatment at Uttar Pradesh. As per Section 21(1)(b), there is emphasis on '*ordinary residence*' as compared to permanent residence. '*Ordinary*' means generally. It does not contemplate stay with the intention to stay permanently at a particular place while doing business at that place. Place of business of Claimant had no significance when Claim Application was filed. Court has to satisfy itself that it has the '*territorial jurisdiction*'. Address mentioned was Thane, so the Commissioner was justified in admitting the Application.

39. The employer appeared and he challenged '*territorial jurisdiction*'. At the time of giving of evidence, the Claimant had shifted to Uttar Pradesh. The position in existence at the time of filing of an Application is important. At the same time, subsequent development also needs to be considered.

40. It is not in dispute that the Insurance Company though not having registered office but is having a branch office at Thane, that is to say, was doing business at Thane. In Section 21(1)(c), there is an emphasis on registered office of employer. Admittedly, the office of

employer is not at Thane. There is no reference of office of Insurance Company or place of their business in the Section. Even in Section 166(2) of MV Act, there is only reference of place of residence of defendant and there is no reference of place of business of defendant.

41. Now on this background, whether the Claim Application can be rejected on account of reliance placed on place of branch office of the Insurance Company. As per provisions of EC Act, joining Insurance Company is not mandatory. The liability on the basis of insurance policy is a contractual liability. The employer may obtain a policy or may not. Probably, that is why the legislatures have not made a reference of place of office of Insurance Company in Section 21 of the EC Act. On this background, if we consider the principles about '*territorial jurisdiction*' laid down in CPC, certainly place of business of defendant is one of the consideration and if there are more than one defendants, place of business of one of the defendants is also determining factor for deciding the '*territorial jurisdiction*'.

42. This is not the case of territorial jurisdiction which strictly falls under one of 3 clauses of Section 21 of the EC Act. Partly it falls under first clause and under 3rd clause. This Court has accepted this interpretation for the purpose of achieving object of the Act. That is

what is said in some of the judgments (though under MV Act) that is hyper technical approach should be avoided. Plea of '*territorial jurisdiction*' does not touch the root of the matter.

43. For the above reasoning, it cannot be said that the learned Commissioner has applied the law correctly to the facts of the case. Court has to interpret the law so that object of the Act can be achieved. When there is a contract of insurance, the insurer indemnifies the insured and he falls in the shoes of insured for the contractual liability. The findings on the issue of '*territorial jurisdiction*' need to be set aside. The matter needs to be remanded back for hearing on remaining points. Hence the order:-

ORDER

- (a) The Appeal is partly allowed.
- (b) The judgment dated 9th November 2019 passed by the learned Commissioner for Employees' Compensation and Judge, First Labour Court, Thane in Application (ECA) No.224/C-46/2014 is set aside.
- (c) Matter is remanded back to the Court of learned Commissioner for Employees' Compensation and Judge, First Labour Court, Thane for hearing on following points:-
 - (i) To hear the parties on the aspect of calculation of compensation and the liability of insurer and insured.

- (ii) Rest of the findings given by the Commissioner are not interfered with.
 - (iii) The Commissioner to hear the parties on the basis of available evidence.
 - (d) Parties are directed to appear before the Commissioner on 23rd November 2025.
 - (e) The Commissioner to decide the matter finally within 3 months from 23rd November 2025.
44. With these observations, **the Appeal stands disposed of.**

[S. M. MODAK, J.]