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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 9th March, 2021

+ **CM (M) 81/2021**

SADDAM HUSAIN Petitioner
Through: Mr. C. M. Patel, Advocate
(M:7683041412), Mr. Faiz Imam,
Advocate (M:9958097116)

versus

RAM PRASAD AND ORS. Respondents
Through: Mr. Pankaj Seth, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).

CM APPL. 3497/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

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3. The present petition has been filed challenging the impugned order dated 1st February 2020, passed by the Presiding Officer, Motor Accident Claims Tribunal, South District, Saket Courts (hereinafter, "MACT"), vide which the application of the Petitioner, for restoration of the claim petition before the MACT has been dismissed.

4. The brief background is that the mother of the Petitioner met with an accident while she was travelling by a bus in Uttar Pradesh. The Petitioner then filed the claim petition before the Presiding Officer, MACT on 19th March, 2016. The Respondents filed their written statements before the

MACT in which they took the plea that the insurance company i.e. Respondent No.3 - United Indian Insurance Company Limited, is liable to pay the compensation.

5. The insurance company objected to the jurisdiction of the MACT in Saket Courts, New Delhi. An application was filed raising the issue of maintainability, by the insurance company to which a reply was also placed on record on 25th April, 2018. Ld. counsel for the Petitioner, however, withdrew the said petition under the impression that the MACT in Delhi would not have jurisdiction to hear the claim petition.

6. Thereafter, the Petitioner is stated to have been advised to file an application for restoration, relying upon the judgment of the Supreme Court in *Malati Sardar v. National Insurance Company Ltd., (2016) 3 SCC 43*. However, vide the impugned order, the MACT has refused to restore the claim petition of the Petitioner. Hence, the present petition has been filed under Article 227 of the Constitution of India.

7. Ld. Counsel for the Petitioner relies upon a similar case, in which this Court had taken a view that in view of the judgment in *Malati Sardar (supra)*, there is no bar in filing a claim petition in the jurisdiction where the insurance company is carrying on its business. He submits that a similar order may be passed in the present case.

8. Mr. Seth, Ld. Counsel appearing for the insurance company submits that once the lawyer has withdrawn the petition, there is always an option to file a fresh petition before the appropriate jurisdiction.

9. Heard Ld, Counsels for the parties. This Court has perused the impugned order dated 1st February, 2020. It is clear from the perusal of the initial petition and reply *qua* non-maintainability, that the Petitioner had contended

that the Court in Saket would have jurisdiction. Thus, the reasons of withdrawal are not clear, which appears to have been done due to legal advice given to the Petitioner.

10. It is a settled position in law that a litigant cannot be made to suffer due to the mistake of a lawyer. In *Malati Sadar (supra)*, the Supreme Court has held as under:

“14. 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.”

11. In *CM(M) 93/2021 titled Savitri and Ors. v. Keshav Singh & Ors.*, this Court had dealt with the similar issue where the written statement had already been filed and the counsel thereafter, under the impression that the MACT would not have jurisdiction, prayed for withdrawal of claim petition. In the said petition, this Court vide order dated 4th February, 2021 has observed as under:

“8. Thus, the clear legal position is that the claims against the insurance company can be filed where the company has its office or carries on business. The petition need not be filed only at the place where the accident took

place. The withdrawal of the petition was thus a genuine mistake, may be based on legal advice received the Petitioner.

9. It is the settled position of law that a mistake by a lawyer cannot work to the detriment of the client. A perusal of the order dated 25th April, 2018, passed by the MACT, clearly shows that the claim petition was withdrawn due to the preliminary objection, as to jurisdiction which was raised by the insurance company, and the said withdrawal may be under wrong legal advice.

10. Considering the fact that the written statement had already been filed before the MACT when the withdrawal of the petition took place and also the fact that The Oriental Insurance Company Ltd. has its registered office in Delhi and is not inconvenienced in any manner, the impugned order dated 30th January, 2020 and order dated 25th April, 2018, passed by the MACT, are set aside. The petition is restored to its original number. However, the delay during this period cannot be the fault of the insurance company. Thus, if the claim of the Petitioner is allowed, for the period between 25th April, 2018 till today i.e., 4th February, 2021, no interest would be liable to be paid.

11. The MACT shall now proceed with the claim petition in accordance with law. List before the MACT on 1st March 2021. Copy of the order be communicated to Dr. Hardeep Katir, Presiding Officer, MACT, South East District, Saket Courts.”

12. In view of this settled position and the above discussion, the present

petition is liable to be allowed in favour of the Petitioner. The application for restoration is allowed and the claim petition is restored to its original number, and the MACT shall now proceed with the claim petition in accordance with law.

13. If, before the MACT, the claim petition of the Petitioner is allowed, as the insurance company ought not to be prejudiced due to the period during which the petition was withdrawn by the Petitioner, for the period between 25th April, 2018 till today i.e. 9th March, 2021, no interest would be liable to be paid.

14. Considering that the accident took place in 2015 and the claim petition was filed in 2016, the MACT would make an endeavour to dispose of the matter expeditiously, and in any case, within nine months.

15. List before the MACT on 22nd March, 2021. The parties shall appear before the MACT on the said date.

16. The present petition is disposed of in the above terms. Copy of this order be communicated to Shri Atul Kumar Garg, Id. PO, MACT, South District, Saket Courts, New Delhi.

भारतमेव जयते

PRATHIBA M. SINGH
JUDGE

MARCH 9, 2021/dk/Ak