

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

Date of decision: 16th July, 2012

+ **CM (M) 861/2011**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. L.K. Tyagi, Adv.

versus

MOHNA MESHARAM & ORS. Respondents
Through Mr. J.N. Aggarwal, Adv. for
R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant National Insurance Company Limited impugns a judgment dated 17.02.2011 and a subsequent order dated 02.06.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal).
2. It is urged that one Charu Dutt suffered injuries in a motor vehicle accident which occurred on 21.10.2002 with the offending vehicle, a DTC bus No.DL-1PA-3350 while he was travelling on his two wheeler No.DL-2SAB-1158. It was further alleged that the said Charu Dutt died during the pendency of the proceedings before the Claims Tribunal and his mother was substituted in his place.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of bus No.DL-1PA-3350 by its driver Respondent No.2 (Devendra Kumar).
4. It was claimed that the deceased Charu Dutt was admitted in Indraprastha Apollo Hospital, New Delhi on 21.10.2002 and was discharged on 02.04.2003. It was further the case of the Claimant that the deceased Charu Dutt received treatment at Leelawati Hospital, Mumbai and Satayu Hospital, Nagpur.
5. Major compensation awarded to the First Respondent is on account of the treatment purported to have been received at Shatayu Nature Care Hospital & Yoga Centre, Dhantoli, Wardha Road, Nagpur. (There is a dispute with regard to the exact name of the hospital as no such hospital is alleged to be in existence in Nagpur).
6. The Claims Tribunal by order dated 17.02.2011 awarded a compensation of ₹52,97,622/- which included the compensation of ₹52,57,622/- towards the treatment of the victim Charu Dutt.
7. The case of the Appellant Insurance Company is that it carried out an investigation about the genuineness of the treatment received by Charu Dutt at Shatayu Nature Care Hospital & Yoga Centre, Dhantoli, Wardha Road, Nagpur and it was revealed that there was no hospital of the above said name. Rather, there was a hospital with a similar name i.e. Shat-Ayu

Critical Care, Polytrauma Centre & Multispeciality Hospital, Wardha Road, Near Hitavada Press, Dhantoli, Nagpur (“Shat-Ayu Critical Care Centre”). It was further revealed to the Appellant Insurance Company by the Shat-Ayu Critical Care Centre that the bills produced before the Court were not issued by the hospital nor Ms. Jyoti Vankhede and Mr. Gurudatt Jogendra Meshram were their employees nor they were residing at the addresses as mentioned in their statements recorded by the Claims Tribunal. Finding that the bills produced during inquiry before the Claims Tribunal were fraudulent, an Application under Section 114 read with Section 151, 152 and 153 of the Code of Civil Procedure was moved before the Claims Tribunal. The Application was dismissed by the Claims Tribunal observing as under:-

“This review application running into 14 pages has been filed by the R-3/Ins Company for recalling the award dated 17.02.2011. It is being averred in the application that after receipt of the copy of the final award by the R-3/Ins Company, its Regional Office took the opinion of a doctor and that the Manager of the R-3/Ins Company namely, Sh. Ashok was also deputed for on-site verification of the hospital and bills of the Shat-Ayu Hospital & Research Centre and found that the medical bills filed on record by the petitioner do not pertain to the said hospital and they were informed that there is no employee named Jyoti Wankhede working in the said hospital who was examined as a witness on behalf of the petitioner. It is in these circumstances that fraud is being alleged by the R-3/Ins Company and the award dated 17.02.2011 is being sought to be recalled/reviewed. However, the provision of review under section 152 of

CPC provides that “Clerical or arithmetical mistakes in judgments, decree or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties”. Bare perusal of the Section 152 of CPC makes it clear that provision of review can be invoked for the limited purpose of correcting clerical errors or arithmetical mistakes in the judgments. It is settled law that review cannot be invoked for claiming a substantive relief which was not granted under the decree or as a pretext to get the order recalled which has attained finality. The Hon’ble Supreme Court has held in AIR 2001 SC 1084 that “The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed. It is to be confined to something initially intended but left out or added against such intention”. The present application is more in the nature of an appeal rather than that of a review. I have perused the award and apparently there is no clerical or arithmetical error in the award or any accidental slip or omission apparent in the said award. Accordingly, the application filed by the R-3/Ins Company, being devoid of any merits is hereby dismissed.”

8. When these facts were brought to the notice of this Court, the operation of the impugned judgment was stayed by order dated 05.08.2011. One Mr. Somnath Padhan, Advocate appeared on behalf of the First Respondent (the Claimant) on 23.11.2011 and the case was listed for 07.02.2012. On this date, the adjournment was sought by the counsel for the First Respondent on the ground that he needed to contact the First Respondent. The matter was listed for today. Neither the First Respondent

nor the counsel appeared.

9. The Appellant Insurance Company relies on a letter dated 12.05.2011 purported to be written by Shat-Ayu Critical Care Centre. The letter is extracted hereunder:-

“Date:12/5/11

*To,
National Insurance Company
Regional Office, Nagpur,*

I have to inform you that as per discussion with Dr.Pramod T.Borghave (Medical Critics Genins India TPA).

I state that this all bill are not generated by the hospital this are fraud and Miss. Jyoti Wankhede and Dr. S.V. Anand are not working in Shat-Ayu Hospital. Above mentioned all this information are truth from my side.

*Sd/-
Dr. Mukesh Mishra
(SHAT HOSPITAL)”*

10. A report was also obtained from Mr. Arvind Kumar R. Tiwari, Advocate, Nagpur. The extract of the report by the Advocate is extracted hereunder:-

“To,

Date : 13/05/11

*Regional Office
National Insurance Co. Ltd.
Mangalam Arcade, Dharampeth Ext.,
Nagpur,*

*REFERENCE: C.P. NO.643/02, SH. CHARU DUTT –
VS- MR. DEVENDRA KUMAR, BEFORE HON’BLE*

MACT, SAKET COURTS, NEW DELHI, ACCIDENT
DATED 21/10/02, VEHICLE : DL-1PA-3350, POLICY
NO.6714868 FOR PERIOD 01/20/2002 TO 31/01/03
CONNAUGHT PLACE, NEW DELHI-110001.
INSURED : DELHI TRANSPORT CORP.

R/Sir,

In pursuance to the instructions received from National Insurance Co. Ltd., Regional Office, Nagpur in respect of verification of medical bills issued by Shat:ayu Nature Cure Hospital & Yoga Centre, Dhantoli, Wardha Road, Nagpur, after contacting the concerned persons I convey my report, without prejudice, as under:-

That, first of all I visited in the Shat:ayu Critical Care, Polytrauma Centre Multispeciality Hospital, Wardha Road, Dhantoli, Nagpur and met the officers of said hospital and shown him the bills as issued by Shat:ayu Nature Cure Hospital & Yoga Centre, Dhantoli, Wardha Road, Nagpur-12.

The officials of said hospital after verifying the bills told me that they do not issue these bills, they specifically told me that in their hospital no one was/is employed by name Jyoti Vankhede at any time. They told me that these bills are not issued by their hospital and they do not know anything about Jyoti Vankhede who had appear before MACT, Saket Court, New Delhi for proving the said bills, they further stated me that there is no relation in between their hospital and Shat:ayu Nature Cure Hospital & Yoga Centre.

I have also asked so many other medical stores, hospitals of that area about the Dr. S.V. Anand who is running Shat:ayu Nature Cure Hospital & Yoga Centre but no such doctor, hospital and yoga centre is not traceable at the given address. I also asked some doctors of that area

about Dr. S.V.Anand but his also not traceable at the given address. As such it appears that bills of Shat:ayu Nature Cure Hospital & Yoga Cenre are not genuine and the said hospital is not in existence in Dhantoli, Wardha Road, Nagpur-12 area. After investigation as above, it appears that the some persons taken undue advantage of the name of Shat:ayu Critical Care, Polytrauma Centre Multispeciality Hospital, which is one of the famous hospital of Nagpur.

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I have also visited at the address of Mr. Gurdudatt Jogendra Meshram and Jyoti Vankhede at Nagpur at 66, Nalwada Layout, Dindiyal Nagpur, Nagpur, where it reveals that Smt. Jyoti Vankhede and Gurudatt Jogendra Meshram are not residing at the said address. I tried my best but both the above said persons are not traceable at the given address.”

11. It is, therefore, apparent that there was a fraud practiced by the victim/First Respondent upon the Claims Tribunal. The impugned judgment, therefore, cannot be sustained. The same is accordingly set aside.
12. The matter is remanded back to the Claims Tribunal for holding further inquiry under Section 168 of the Motor Vehicles Act, 1988. The Claims Tribunal shall also go into the question as to the persons responsible for committing the fraud and shall be at liberty to proceed further against the said persons.
13. The parties are directed to appear before the Claims Tribunal on 17.08.2012.

14. Pending applications also stand disposed of.
15. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JULY 16, 2012
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