

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Review Petition No. 12 of 2022

Ref:- WP(C) No. 365 of 2017

1. The State of Manipur represented by the Commissioner/Secretary (Power), Government of Manipur, Secretariat Complex, Babupara, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
2. The Manipur State Power Distribution Company Limited through its Managing Director, MSPDCL having its Office at 3rd Floor, New Directorate Building near 2nd MR Gate, P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.

***.... Review Petitioners/
Respondents in Writ Petition***

-Versus-

Shri Moirangthem Indrakumar Singh, aged about 40 years, S/o M. Uttam Singh of Leimaram Awang Leikai, P.O. & P.S. Nambol, District Bishnupur, Manipur-795134.

... Respondent

**BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN**

For the Petitioners :: Mr. S. Nepolean, GA

For the Respondent :: Ms. L. Sillori, Advocate

Date of Hearing and
reserving Judgment & Order :: 31.03.2023

Date of Judgment & Order :: **25.04.2023**

JUDGMENT AND ORDER
(CAV)

This review petition has been filed by the review petitioners to review the order dated 3.5.2018 passed in W.P.(C) No.365 of 2017.

2. W.P.(C) No.365 of 2017 has been filed by the respondent for issuance of a writ of mandamus directing the review petitioners herein to pay a sum of Rs.30 lakh as compensation on the ground that the petitioner sustained 70% disability leading to amputation of his right arm due to the negligence on the part of the review petitioners. The said writ petition was allowed on 3.5.2018 directing the review petitioners to pay a sum of Rs.10 lakh as compensation to the respondent within a period of 60 days from the date of receipt of a copy of this order. Alleging that there is an error in the said order, the review petitioners have filed this review petition.

3. Mr. S. Nepolean, the learned Government Advocate appearing for the review petitioners submitted that the writ petition was disposed of without the affidavit-in-opposition of the review petitioners and, as such, relevant documents which were directly or indirectly related with the case could not be placed before this Court, resultantly, the writ petition was decided

in favour of the respondent. He would submit in the event the review petitioners were allowed to file their affidavit-in-opposition by giving one more opportunity before the writ petition was disposed of, the order dated 3.5.2018 might have been negative because of the fact that as per the records of the State Government, the electrical accident was never reported either by the respondent or by his family members. As per the enquiry report submitted by the Deputy General Manager, Churachandpur Division, MSPDCL who is the competent authority to do so and who has conducted the enquiry as per verbal report given on 4.7.2016 by one Utam Singh of Leimaram Village who is the father of the respondent, the electrical accident took place on 13.6.2016 at around 1.00 p.m. while the respondent was repairing the mobile telecommunication gadget on the roof top of SBI Tuibong Branch building.

4. The learned senior counsel further submitted that the accident took place because of the victim accidentally touched the High Tension conductor stringed adjacent to the building with his head while climbing down from the roof. It is stated in the enquiry report that the said SBI building was once the control room of 33/11 KV Tuibong Sub-Station and although it was RCC roofing, there was no steps or upstairs to climb the roof top as it

was initially designed for control room. The existing 11 KV lines were also the same line which was used when the control room was functioning. However, the victim used a private ladder to climb the roof top for the purpose of his own private works without any prior information to the concerned authority. Therefore, the electrical accident which took place on 13.6.2016 might not have happen if either the respondent or the Linquest Telecom Limited or the authorities of SBI for whom the respondent was on duty have given notice in writing of his intention to the supplier and to the Inspector as required under Rule 82 of the Indian Electricity Rules, 1956, which is mandatory as it has penal provision under Rule 140 of the Indian Electricity Rules, 1956. Since the respondent or his employer or the authorities of the SBI have not given any notice in writing, the respondent or his employer or the authorities of SBI have violated the mandatory provision of Rule 82 of the Indian Electricity Rules, 1956 and, as such, the review petitioners cannot be held responsible for the electrical accident.

5. Adding further, the learned senior counsel for the review petitioners submitted that the writ petition is not maintainable for non-joinder of necessary parties. Since the electrical accident took place while the respondent was on his official duty as directed by the employer for installation of

Monopole attached ODU to it for the SBI, Churanchandpur Branch, the respondent should have impleaded the Linkquest Telecom Limited i.e. his employer and the SBI, Churachandpur Branch for whom he was executing the work. Furthermore, the decisions relied upon in the order are not directly or indirectly applicable with the facts of the present case. Since the impugned order is a clear case of an error apparent on the face of the record and non-consideration of relevant documents, the same is to be reviewed. In support, the learned senior counsel placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Rajender Singh v. Lt. Governor, Andaman & Nicobar Islands, (2005) 13 SCC 289.***

6. Supporting the impugned order, the learned counsel for the respondent submitted that there is no error on the face of record and the order impugned is well considered order and, therefore, no review is warranted. He would submit that no report has been filed with the company or the police regarding the incident. Be that as it may, the issue cannot be considered is the error apparent on the face of the impugned order dated 3.5.2018. Thus, a prayer has been made to dismiss the review petition.

7. This Court considered the rival submissions and also perused the materials available on record.

8. The respondent has filed the writ petition claiming compensation of Rs.30 lakh alleging that he joined the service as Engineer on 10.11.2014 in Linquest Telecom Limited, which is a privately owned telecommunication company, with an initial pay of Rs.24,000/- per month. The Linquest Telecom Limited is working in partnership with the Bharti Airtel Limited along with some other private telecom companies. The Bharti Airtel Limited is providing all telecom services to the State Bank of India with the help of those private companies including Linquest Telecom Limited. On 13.6.2016, the respondent was on duty at SBI Tyibong Churachandpur for installing a Monopole and attach on ODU to it on the roof top of the SBI building which would be connected with one IDU in the server room of the bank. After completing the work on the roof top, the respondent got electric shock suddenly from the HT power line on the neck and fell down on the ground unconscious. Thereafter, the respondent was admitted in Raj Medicity for treatment on 14.6.2016 and subsequently he was further given treatment to Downtown Hospital at Guwahati on 2.7.2016.

9. As his condition aggravated, the right arm of the petitioner was amputated below the ankle to save his life in that hospital. In the meantime, the respondent was transferred to Bihar Jharkhand Circle on 30.11.2016. However, due to physical condition, the respondent did not join new place of posting and, accordingly, the service of the respondent was terminated by an order dated 14.12.2016. Stating that he would have led a normal life more than an additional 40 years if the accident was not happened and taking the monthly salary at Rs.24,000/- for another 24 years, the respondent calculated the loss of earning at Rs.49,12,000/-. Since the respondent suffered 70% of the disability, he claimed compensation of Rs.30 lakh from the State respondents. This Court, upon considering the arguments of both sides, directed the State respondents to pay a compensation of Rs.10 lakh to the petitioner.

10. The review petitioners sought to review the order dated 3.5.2018 mainly on the ground that the writ petition was disposed of without the affidavit-in-opposition of the review petitioners and if the review petitioners were allowed to file their affidavit-in-opposition, the order dated 3.5.2018 might have been negative because of the fact that as per the records of the State

Government, the electrical accident was never reported either by the respondent or by his family members.

11. As far as non-providing of opportunity to the review petitioners for filing affidavit-in-opposition is concerned, on a reading of the order dated 3.5.2018, this Court recorded that despite a number of opportunities being granted to the review petitioners, no counter affidavit has been filed on their behalf and therefore, the averments made in the petitioner shall be deemed to have been admitted by the review petitioners in terms of a catena of decisions rendered by the Hon'ble Supreme Court in this regard.

12. The non-filing of the affidavit-in-opposition to the writ petition by the review petitioners is the fault on the part of the review petitioners and if really, they are interested in contesting the writ petition, the review petitioners ought to have filed their counter affidavit within a time and failure on the part of the review petitioners in not filing the counter affidavit is not a ground to review the order dated 3.5.2018 passed in the writ petition. Though no counter affidavit filed on behalf of the review petitioners, on their side, learned Additional Advocate General argued the matter extensively by raising the maintainability issue.

13. This Court, after referring to the decisions relied upon by the learned Additional Advocate General in the cases of ***Chairman, Grid Corporation of Orissa Ltd. and others v. Smt. Sukamani Das, (1999) 7 SCC 298 and SDO, Grid Corporation of Orissa Ltd. V. Timudu Oram, (2005) 6 SCC 156 and the decisions in the cases of Rudul Sah v. State of Bihar and others, (1983) 4 SCC 141; Nilabati Behera (Smt) alias Lalita Behera v. State of Orissa and others, (1993) 2 SCC 746 and D.K.Basu v. State of West Bengal, (1997) 1 SCC 416***, held that the High Court in exercise of power under Article 226 of the Constitution of India is competent to award compensation in cases where the fundamental rights guaranteed in the Constitution have been infringed by the State authorities. This Court, by relying upon the decision of the Hon'ble Supreme Court in the cases of ***MP Electricity Board v. Shail Kumari and others, (2002) 2 SCC 162 and Raman v. Uttar Haryana Bijli Vitran Nigam Ltd., Civil Appeal No.11466 of 2014, decided on 17.12.2014***, observed as under:

“[8] In view of and in terms of the decisions, as referred to hereinabove, relating to payment of compensation in the cases arising out of incidents of electrocution due to the negligence on the part of the State authorities, this court is

of the view that the instant writ petition deserves to be allowed by this court. Therefore, the question that arises for consideration by this court is as to what amount of compensation would be just and reasonable in the facts and circumstances of the present case. In Raman case (supra), the Hon'ble Supreme Court was confronted with a question as to how the just and reasonable compensation be determined in a case and after examining its earlier decisions, it came to the conclusion that it is difficult for any court to lay down rigid tests which should be applied in all situations and that in the Indian context, various factors like educational qualification, nature of job, past performance, scope of higher salary, the expenditure that the claimant has incurred and is likely to incur, family dependence, inflation etc. should be taken into consideration. While determining the compensation, the Hon'ble Supreme Court has emphasized the need to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. In view of its earlier decisions referred to therein, the Hon'ble Supreme Court was of the view that the compensation awarded at Rs.60 lakhs in the judgment of the learned Single Judge, out of which Rs.30 lakhs were to be deposited jointly in the name of the appellant

represented by his parents as natural guardian and the Chief Engineer or its nominee representing the respondents in a fixed deposit till he attains the age of majority, was just and proper but set aside the portion thereof as mentioned in its para 19 of the judgment and order and modified it accordingly. But the Hon'ble Supreme Court rejected the use of multiplier system as the only basis for purpose of determining the just and reasonable compensation in such cases like the present one."

14. In this review petition, the review petitioners contended that while the respondent was repairing the mobile telecommunication gadget on the roof top of the SBI Tuibong Brach building, the accident took place because of the respondent accidentally touched the high tension conductor stringed adjacent the building with his head while climbing down from the roof. Since the respondent or his employer or the authorities of the SBI have not given any notice in writing, the respondent or his employer or authorities of SBI have violated the mandatory provision of Rule 82 of the Indian Electricity Rules and, as such, the review petitioners cannot be held responsible for the electrical accident.

15. On a perusal of the order dated 3.5.2018, it is seen that the issue to hold a person liable for tort, the negligence on the part of that person must be established by the petitioner and moreover, if there are disputed questions of facts, the appropriate remedy would be to approach the civil court of competent jurisdiction was raised by the review petitioners and rightly answered by this Court by observing that it is an undeniable fact that compensation can be claimed by an aggrieved person under the provisions of various laws enacted by the Union of India or the States which is a remedy available in private law and that compensation can be claimed in public law as well. While allowing the writ petition, this Court further observed as under:

“[6] The purpose of awarding compensation is to compensate the loss or injury suffered by a person so as to make good to him, although he cannot be compensated fully in terms of money. In other words, it is to mitigate his hardship in terms of money. The quantum of compensation will definitely depend upon the facts and circumstances of each case, as no straightjacket formula which will be applicable in all cases, can be laid down by the court. Compensation can be broadly divided into two – one, a compensation that can be claimed in private law and two, a compensation that can

be claimed in public law for violation of fundamental rights. So far as the present case is concerned, it falls in the second category, in the sense that the compensation is being claimed by the petitioner for the violation of his fundamental rights and therefore, the contention of the learned counsel appearing for the respondents is devoid any merits and is not acceptable to this court. ...”

16. If really, the review petitioners are aggrieved by the awarding of compensation payable by them to the respondent, they ought to have filed an appeal against the said findings and the review would not maintainable.

17. It is pertinent to note that challenging the order dated 3.5.2018 passed in W.P.(C) No.365 of 2017, the review petitioners have filed W.A.No.18 of 2018. However, for one reason or the other, W.A.No.18 of 2018 has been withdrawn by the review petitioners on 16.3.2022 with liberty to file a fresh. On the contrary, facing with the notice in Contempt Case No.46 of 2022, the review petitioners have filed the present review petition on 4.7.2022 after a lapse of nearly four months of the dismissal of W.A.No.18 of 2018. The aforesaid factual scenario, clearly establishes the attitude of the review petitioners in delaying the payment of compensation to the respondent by filing writ appeal

first and then review petition by falsely stating that there is an error apparent on the face of record. The approach adopted by the review petitioners firstly filing a writ appeal and subsequently withdrawing the same and then filing the review petition with a gap of nearly four months alleging there is an error in the order is not appreciable.

18. As stated supra, if really the review petitioners are aggrieved by the order dated 3.5.2018 passed in the writ petition, they ought to have challenged the same by way of writ appeal.

19. Under Order 47, Rule 1 CPC, a judgment may be open to review, *inter alia*, if there is mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC, it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise.

20. Time and again, the Hon'ble Supreme Court held that review is not appeal in disguise. It follows, therefore, that

the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.

21. In ***Meera Bhanja v. Nirmala Kumari Choudhury***, (1995) 1 SCC 170, the Hon'ble Supreme Court held:

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389 speaking through Chinnappa Reddy, J. has made the following pertinent observations:

“It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review.

The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

22. In the case of ***Lily Thomas v. Union of India, (2000) 6 SCC 224***, the Hon'ble Supreme Court observed and held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power.

23. In the case on hand, by filing MC No.4 of 2023, the review petitioners contended that though the electrical accident took place on 13.6.2016, no complaint about the accident was ever reported to the authorities of the MSPDCL, nor to the Churachandpur Police Station until the father of the respondent reported the incident verbally to the Deputy General Manager, MSPDCL only on 4.7.2016. However, soon after the report was received though verbally on 4.7.2016, a field enquiry about the electrical incident was conducted and thereafter a detail accident report dated 11.7.2016 was submitted by the Deputy General Manager, Churachandpur Division to the General Manager, Electrical Circle-II, CMSPDCL. In the said report, it has been mentioned that the said SBI building was once the control room of 33/11 KV Tuibong, Sub-Station and although it was RCC roofing, there was no steps or upstairs to climb the rooftop as it was initially designed for control room. The existing 11 KC lines were also the same line which was used when the control room was functioning. However, the victim used a private ladder to climb the rooftop for the purpose of his own private works without any prior information to the concerned authority.

24. Admittedly, the aforesaid plea and the report sought to be filed are very well available with the review petitioners while

arguing the writ petition. For the purpose of consideration of the review petition, the report filed along with MC No.4 of 2013 is treated as part of the review petition. However, this Court is of the view that the review petitioners have failed to refer the said report while arguing the writ petition which was readily available with them. It is not the case of the review petitioners that those facts are not within their knowledge or could not be produced by them at the time when the order was made in the writ petition. In view of the above, an application for review would lie if the order has been passed on account of some mistake. Thus, it is clear that there is total failure on the part of the review petitioners in defending the writ petition in proper manner. Therefore, under the aid of review, now the review petitioners cannot sought to the review the order dated 3.5.2018, as power of review can be exercised for correction of a mistake but not to substitute a view.

25. Under the Indian Electricity Act, 2003 and the rules framed thereunder, it is bounden duty of the electricity authorities to conduct periodical inspection of the lines maintained by them and to take all such safety measures to prevent accident and maintain the lines in such a manner that life and property of the general public is protected. Though the review petitioner contended that the State authorities have a policy of ex-gratia

payment for electrocution cases and the compensation awarded in the order dated 3.5.2018 is exorbitant and if the aforesaid facts as well as the provision of law were considered at the time of hearing of the writ petition, the order dated 3.5.2018 might not have been passed, the aforesaid are not grounds for reviewing the order dated 3.5.2018. A blame has to be fastened on the review petitioners in not properly defending the writ petition by producing relevant records.

26. Though the review petitioners contended that the victim used a private ladder to climb the rooftop for the purpose of his own private works without any prior information to the concerned authority and therefore, the State authorities are not held liable to compensation, the said issue cannot be gone into in the review jurisdiction for the reason that the very point was raised by the review petitioners in the writ petition and, this Court held that since the respondent sustained injuries due to electrocution, the respondent is entitled to compensation. Such a finding arrived at by this Court is not reviewable. As stated supra, if really the respondent State is aggrieved by the said finding, they ought to have assailed by way of appeal not under review.

27. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by the Hon'ble Supreme Court in number of decisions. An error is an error which is a patent error and not a mere wrong decision. An order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court on a point of fact or law. In any case, while exercising the power of review, the Court concerned cannot sit an appeal over its judgment.

28. This Court is of the view that no ground as envisaged under Order 47, Rule 1 CPC has been made out for the purpose of reviewing the order dated 3.5.2018 passed in W.P.No.365 of 2017. Further, in view of the scope as discussed above, if the submissions of the learned senior counsel for the review petitioners is tested in the light of the materials available on record including from the perusal of the order dated 3.5.2018 passed in W.P.No.365 of 2017, it would indicate that while deciding the matter, all aspects of the matter has been duly considered by the Court and findings have been given.

29. The grounds and the decisions cited by the learned senior counsel for the review petitioners do not relate to the scope of review. The order under review has been passed by

the Court considering the facts, law and the arguments made and also materials available on record. No error apparent on the face of record could be pointed out by the learned senior counsel for the review petitioners, hence, the decision in the case of ***Rajender Singh***, supra, relied upon by the learned senior counsel for the review petitioners do not render any support.

30. The review petitioners are trying to seek a re-hearing of the writ petition which is not within the scope of review. As stated supra, the learned senior counsel for the review petitioners could not point out any error apparent on the face of the record and the submissions made do not fall within the parameters of Section 114 read with Order 47, Rule 1 CPC.

31. Having considered the matter, this Court finds that no grounds of review is made out. The revision petition is absolutely devoid of merits and is dismissed. No costs.

32. In view of the dismissal of the Review Petition No.12 of 2022, the Contempt Case No.46 of 2022 is directed to be listed on 15.05.2023 for passing further orders/compliance.

ACTING CHIEF JUSTICE

FR/NFR

Sushil