

GAHC010079912022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./80/2022

IQBAL HUSSAIN @ EKBAL HUSSAIN
S/O LATE MD. ALI HUSSAIN
RESIDENT OF VILLAGE BIDYAPARA WARD NO. 8, PS AND DIST DHUBRI,
ASSAM

VERSUS

THE NATIONAL INSURANCE COMPANY LIMITED AND 2 ORS
REGISTERED HEAD OFFICE AT 3, MIDDLETON STREET, CALCUTTA,
700071, REPRESENTED BY THE ASSTT. MANAGER, GUWAHATI, REGIONAL
OFFICE, BHANGAGARH, GUWAHATI 781005

2:MEHEBUB ALOM
S/O LATE MOZIBUR RAHMAN
RESIDENT OF VILLAGE JHAGRAPAR PART I
PS AND DIST DHUBRI
ASSAM 783325

3:JAHIR UDDIN ALI
S/O LATE LOKMAN ALI
RESIDENT OF VILLAGE KHEWARCHAR PART I
PS BILASIPARA
DIST DHUBRI
ASSAM 78334

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : MS. R D MOZUMDAR

:: P R E S E N T ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Review Petitioner: Mr. M. Khan,
Advocate.

For the Respondents: Mrs. R.D. Mozumdar,
Advocate.

Date of Hearing : 27.04.2023.

Date of Judgment : 02.05.2023.

JUDGMENT AND ORDER (CAV)

Heard the learned counsel Mr. M. Khan appearing for the review petitioner. Also heard the learned counsel Mrs. R.D. Mozumdar appearing for the respondents.

2. The present petition has been filed under Order 47 Rule 1 of the Code of Civil Procedure praying for reviewing the judgment passed by this Court on 04.04.2022 in MACApp./292/2018.

3. The factual matrix leading to filing of this review petition lies within a very short campus. The driver of erring vehicle did not have a license at all while the accident took place. In fact, the driver was using a license issued to someone else. Therefore, the Insurance Company was relieved of its duty to pay compensation and the owner of the vehicle was directed to pay the compensation.

4. Aggrieved by the aforesaid direction, the claimant has filed this

review petition.

5. In order to buttress his argument, Mr. Khan has relied upon the judgment of Supreme Court that was delivered in *Parminder Singh v. New India Assurance Co. Ltd.*, (2019) 7 SCC 217. In paragraph 7.1 of this judgment, it has been held as under:

“7.1. This Court in *Shamanna v. Oriental Insurance Co. Ltd.* [*Shamanna v. Oriental Insurance Co. Ltd.*, (2018) 9 SCC 650 : (2018) 4 SCC (Civ) 561 : (2019) 1 SCC (Cri) 863] , held that if the driver of the offending vehicle does not possess a valid driving licence, the principle of “pay and recover” can be ordered to direct the insurance company to pay the victim, and then recover the amount from the owner of the offending vehicle.”

6. *Per contra*, Mrs. Mozumdar has submitted that there are no errors apparent on the face of the record and therefore, the review petition is not maintainable. Mrs. Mozumdar has relied upon the judgment of the Supreme Court in *Lily Thomas v. Union of India*, (2000) 6 SCC 224. Paragraph 56 of the said judgment reads as under:

“56. 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. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its

powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment."

7. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

8. In order to exercise the power under Order 47 of the CPC, there must be an error apparent on the face of the record. The error contemplated under this provision of law, must be such which is apparent on the face of the record and not an error which is to be fished out and searched. It must be an error of inadvertence.

9. In the impugned judgment, there are no errors apparent on the face of the record. The view expressed by this Court is based on the merits of the case. I find that there are no such errors as has been pointed out by the learned counsel for the petitioner seeking review of the judgment.

10. I find that the review petition is devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant