

GAHC010145632018



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

Case No. : Review.Pet./91/2018

M/S NEW INDIA ASSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT NEW INDIA ASSURANCE BUILDING
87, MAHATMA GANDHI ROAD, MUMBAI AND ONE OF THE REGIONAL
OFFICE AT G.S. ROAD, ABC, GUWAHATI AND A DIVISIONAL OFFICE AT
ULUBARI, GUWAHATI

VERSUS

SRI. KHANINDRA BORAH,
S/O LATE KAMINI CH. BORAH, NEAR STATE ZOO, R.G.B. ROAD, P.S.
GEETANAGAR, DIST. KAMRUP, ASSAM

Advocate for the Petitioner : MR. K K BHATTA

Advocate for the Respondent : MR. S C BISWAS

Linked Case : MC/2801/2014

NEW INDIA ASSURANCE CO. LTD.

HAVING ITS REGISTERED OFFICE AT NEW INDIA ASSURANCE BUILDING 87
MAHATMA GANDHI ROAD
MUMBAI AND ONE OF THE REGIONAL OFFICE AT G.S. ROAD
ABC
GUWAHATI AND A DIVISIONAL OFFICE AT ULUBARI
GUWAHATI

VERSUS

KHANINDRA BORAH and ANR

S/O LATE KAMINI CH. BORAH
NEAR STATE ZOO

R.G.B. ROAD
P.S. GEETANAGAR
DIST. KAMRUP ASSAM

2:PRANAB BARMAN

S/O SRI BONGSHI BARMAN
VILL. SARTHEBARI PALLA
P.S. SARTHEBARI
DIST. BARPETA
ASSAM.

Advocate for : MS.L SHARMA
Advocate for : appearing for KHANINDRA BORAH and ANR

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

24.06.2024

Heard Shri R.K. Bhatra, learned counsel for the review applicant, who by means of this application has prayed for review of the judgement dated 26.06.2013 passed by this Court in MAC Appeal No. 198/2004. Also heard Ms. A. Bora, learned counsel for the respondent no. 1.

2. By the order dated 26.06.2013, this Court have dismissed the appeal on the ground that though the respondent no.1-claimant had passed away on 07.08.2010, no application was filed for bringing the legal heirs of the said respondent on record. This Court had accordingly held that the appeal against the respondent no.1 - claimant stood abated and consequently the appeal was dismissed.

3. For ready reference, the order dated 26.06.2013 for which review is sought for is extracted herein below:

“26.06.2013

Despite the death of the respondent No.1 / claimant on 07.08.2010, no application has been filed for bringing the legal heirs of the said respondent on record.

Hence the appeal as against the respondent No.1 / claimant has abated and consequently dismissed.

In view of the same, the entire appeal stands dismissed.

The appellant insurance company shall deposit the entire awarded amount before the learned Member, Motor Accident Claims Tribunal, Kamrup. While making such deposit, the amount already deposited shall be deducted.

The learned Member shall ascertain the legal heirs of the respondent No.1 and shall release the same to them in accordance with law.

Registry is directed to send down the records forthwith."

4. Shri Bhatra, the learned counsel has submitted that in spite of best efforts, the legal heirs of the claimant could not be traced out and therefore no steps could be taken.
5. The aforesaid contention would not come within the limited scope of exercising powers of review which has to be for correction of an error apparent on the face of it.
6. In a recent judgment, namely, ***S Madhusudhan Reddy Vs. V Narayana Reddy & Ors.*** reported in **(2022) SCC OnLine 1034**, the Hon'ble Supreme Court has reiterated the earlier principles laid down in the case of ***Kamlesh Verma vs. Mayawati & Ors.*** reported in **(2013) 8 SCC 320** wherein the principles laid down are extracted herein below:

"20. Thus, in view of the above, the following grounds of review are

maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.”

7. In the instant petition, the order sought to be reviewed dated 26.06.2013 is on the point of abatement of the appeal due to not taking steps to bring the legal heirs of the claimant - respondent no.1. There is no dispute to the fact recorded that the aforesaid claimant-respondent no.1 had passed away on 07.08.2010 and the order was passed almost after 3 (three) years on 26.06.2013. The applicant has admittedly not filed any application for setting aside abatement in the procedure prescribed.

8. In the considered view of this Court, the present is not a fit case for any review.

9. Accordingly the petition is dismissed.

JUDGE

Comparing Assistant