

GAHC010182062022



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

Case No. : Review.Pet./170/2022

BHARATI BEZBARUAH AND 2 ORS.
W/O LATE BIREN BEZBARUAH,
VILL.- AKHARA,
P.O.- SURADI,
P.S.- NALBARI,
DIST.- NALBARI, PIN- 781335, ASSAM.

2: INITA BEZBARUAH
D/O LATE BIREN BEZBARUAH
VILL.- AKHARA
P.O.- SURADI
P.S.- NALBARI
DIST.- NALBARI
PIN- 781335
ASSAM.

3: APURBA BEZBARUAH
S/O LATE BIREN BEZBARUAH
VILL.- AKHARA
P.O.- SURADI
P.S.- NALBARI
DIST.- NALBARI
PIN- 781335
ASSAM

VERSUS

RELAINCE GENERAL INSURANCE CO. LTD. AND 2 ORS.
RELIANCE CENTRE, 19, WALCHAND HIRACHAND MARG, BELTARD
ESTATE, MUMBAI- 400001,
REPRESENTED BY THE LEGAL MANAGER, RELIANCE GENERAL
INSURANCE CO. LTD., GUWAHATI BRANCH, 5TH FLOOR, ANIL PLAZA, GS
ROAD, BHANGAGARH, GUWAHATI- 781005, ASSAM.

2:NAND KUMAR SINHA
S/O LATE RAM SINHA

R/O KATWA
TOWNHALL PARA

P.O. AND P.S.- KATWA

DIST.- BURDWAN
PIN- 713130
WEST BENGAL.

3:ASHIM MARJIT
S/O NIMAI MARJIT
R/O KATWA MILLPARA
P.O. AND P.S.- KATWA
DIST.- BURDWAN
PIN- 713130
WEST BENGAL

Advocate for the Petitioner : MR. J KALITA
Advocate for the Respondent : M CHETIA (r-1)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

Date : 17-07-2024

JUDGMENT & ORDER (CAV)

Heard Mr. J. Kalita, learned counsel for the review petitioners and Mr. A.J. Saikia, learned counsel for the respondent insurance company.

2. The factual matrix leading to this review petition is that the petitioners filed a claim petition for compensation under the MV Act of 1988 before the MACT, Nalbari vide MAC case No. 20 (death)/2016 on account of the death of the husband of petitioner No. 1 and father of petitioner No. 2 and 3, arising out of a motor vehicle accident on 21/08/2013. Vide Judgment/order dated 29/06/2018, the said case was disposed of awarding compensation of Rs. 4,66,000/- directed

to be paid by the respondent no. 2 and 3 i.e., owner and driver of the offending vehicle.

2. Being aggrieved by the said judgment and order dated 29/06/2018, the present petitioners filed an appeal vide MAC Appeal no. 937/2018 before this court seeking enhancement of the awarded amount as well as shifting of the liabilities to the insurance company i.e., the respondent no. 1 as because at the relevant time of accident the alleged offending vehicle was duly insured with the respondent No. 1. After hearing the learned counsel for the parties, this court delivered the Judgment on 05/08/2022 dismissing the said appeal as well as set aside the Judgment and order passed by the learned MACT, Nalbari. Hence, this review petition.
3. It was urged by the learned counsel for the review petitioner that while passing the impugned Judgment and order dated 05/08/2022 in MAC Appeal no. 937/2018, this court has committed error apparent on the face of the record regarding the issues involved in the MAC appeal and as such the same is liable to be reviewed by this court.
4. It is also the submission of the learned counsel for the review petitioner that the petitioner had preferred the appeal for enhancement of the compensation awarded by the tribunal and to shift the liabilities to pay the compensation towards the insurance company as well. The respondent has not preferred any counter appeal to set aside and quash the Judgment and order of the learned tribunal. Therefore, without pleading or any grievance of the respondent side this court cannot mechanically reverse the Judgment of the tribunal which was passed after proper assessment of the materials on record. As such the impugned Judgment dated 05/08/2022 passed by this court is liable to be reviewed.

5. According to the learned counsel for the petitioner, in case of motor accident, the evidence before the Motor Accident Claims Tribunal is not required to be proved beyond reasonable doubt but on preponderance of probabilities and the same is also established in the instant case. However, this court has insisted on the standard of proof of facts of the case instead of considering the fact that MV Act is a beneficial legislation and the court should be given much more weightage to the evidence given by the claimant in its true sense than rejecting the appeal on technical grounds.

6. In support of his submission, learned counsel has placed reliance on the following case law –

(2011) 14 SCC 639 (Ranjana Prakash and others vs. Divisional Manager and another)

7. On the other hand, learned counsel for the insurance company has submitted that the grounds taken by the petitioner to file a review petition are in fact the grounds of appeal. Review is not permissible here in this case. A review of a Judgment and Order is permissible where a glaring omission or a patent mistake or grave error has been crept in because of judicial fallibility. Hence, the learned counsel for the insurance company prays for dismissal of the review petition.

8. It is a settled position of law that review by a court of its order is not possible except on three prescribed grounds namely –

- a. Discovery of new and important matters or evidence which after the exercise of due diligence was not within the applicants knowledge or could not be produced by him at the time when the decree or order was passed.
- b. Mistake or error apparent on the face of the record or,
- c. Any such sufficient grounds which is analogous to grounds as aforesaid.

However, it has now surfaced in the light of the judicial pronouncement that the expression 'any sufficient ground' must be analogous to the two grounds aforesaid, is no longer a rule of universal application.

9. This Court must remain mindful of the basic principle of review that a review is not a rehearing of a matter on merits and cannot be lightly entertained by the Court. Observed the Supreme Court, in **Sow Chandra Kanta v. Sk. Habib**, **reported in (1975) 1 SCC 674**,

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate, which should be a routine affair or a habitual step."

10. Yet another principle of review is that the power of review has to be exercised to prevent miscarriage of justice or correct grave and palpable error. Laid down the Supreme Court, in **Aribam Tuleshwar Sharma v. Aibam Pishak Sharma, reported in (1979) 4 SCC 389**, following its earlier decision in the case of **Shivdeo Singh v. State of Punjab (AIR 1963 SC 1009)** as follows:

"There is nothing in Article 226 of the Constitution to preclude a 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 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 powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court."

11. Dealing with this aspect of review jurisdiction, the Supreme Court, in **Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi (AIR 1980 SC 674)**, observed, thus:

"Whatever be the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."

12. 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. A review cannot be treated as 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 for review can be entertained.

13. The Supreme Court, in **Board of Control for Cricket, India and Another v. Netaji Cricket Club and Others (AIR 2005 SC 592)**, observed:

"We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those, which are expressly provided in Section 114 of the Code in terms whereof, it is empowered to make such order as it thinks fit."

14. Order 47, Rule 1 circumscribes a court's power of review by

specifying the three grounds on which review is possible, the specific grounds being, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed, (ii) mistake or error apparent on the face of the record and (iii) for "any other sufficient reason".

15. Having taken into account the said three grounds, which Order 47, Rule 1 embodies as the grounds for review, the Supreme Court, in **Moran Mar Basselios Cathlicos v. Mar Poulose Athanasius (AIR 1954 SC 526)**, held that power of review is circumscribed by the three grounds, which have been specified in Order 47, Rule 1.

16. Explaining the scope of the third ground of review mentioned in Order 47, Rule 1, namely, "any other sufficient reason", the Supreme Court, in [Moran Mar Basselios Cathlicos](#) (supra), held that "any other sufficient reason" cannot be "any sufficient reason", but a reason, which is "sufficient" and, at the same time, at least, "analogous" to one of the two reasons as indicated hereinbefore, namely, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed and (ii) mistake or error apparent on the face of the record.

17. In short, thus, what [Moran Mar Basselios Cathlicos](#) (supra) laid down was that the expression, "any other sufficient reason", cannot be construed as "any sufficient reason" and that "any sufficient reason" cannot become a ground for review unless even such "sufficient reason" is "analogous" to one of the

other two grounds mentioned in Order 47, Rule 1, namely, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree was passed or (ii) mistake or error apparent on the face of the record.

18. Board of Control for Cricket, India (supra) is one of those cases, which has elaborately dealt with the scope of the power of review, particularly, of the High Courts and, having considered the case of *Moran Mar Basselios Cathlicos* (supra), the Supreme Court has clarified, in no uncertain words, in *Board of Control for Cricket, India* (supra), that the rule that "any other sufficient ground" must be "analogous" to the other two grounds, as mentioned in Order 47, Rule 1, "is not a rule of universal application". The relevant observations, made, at paragraph 91, in *Board of Control for Cricket, India* (supra), in this regard, read:

*"91. It is true that in **Moran Mar Basselios Cathlicos v. Most Rev. Mar Poulose Athanasius**, MANU/SC/0003/ 1954 : [1955] 1 SCR 520, this court made observations as regards limitations in the application of review of its order stating: Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needles to emphasize that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil procedure which is similar in terms of Order 47, Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record, and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those*

specified in the rule", but the said rule is not universal."

19. The law, on the subject of review, may, in the light of the discussions held, as a whole, be summarized thus:

(i) Ordinarily, a court or a tribunal cannot review its order or decision if the statute does not confer on the court or the tribunal, as the case may be, the power to review its own order. This apart, whatever limitations are imposed by a statute, while conferring the power of review on a court or a tribunal, the court or the tribunal, as the case may be, must adhere to the limitations, which the relevant statute may impose on the exercise of such power. Section 114 CPC, which embodies the substantive power of review of a civil court, does not impose any limitations on the court's power to review its order or decision; yet the power of review even by a civil court cannot be unguided and uncanalised, for, Order 47, Rule 1 circumscribes the court's power of review.

(ii) Though, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed grounds, namely, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed and (ii) mistake or error apparent on the face of the record or (iii) any such sufficient ground, which is analogous to the two grounds aforementioned, the subsequent development of law, on the subject of review, has shown that the grounds referred to, namely, that any sufficient ground must be analogous to the two sufficient grounds aforementioned is no longer a rule of universal application.

(iii) One of the cases, which has helped in the expansion of the court's power to review its order is the case of **Lily Thomas etc vs. Union of India & others, reported in (2000) 6 SCC 224**, inasmuch as Lily Thomas (supra) ruled that ordinarily, the power of review, being a creature of statute, cannot be exercised as an inherent power, yet such technicalities of law may have to be bent, in an appropriate cases, for the purpose of correcting an order committed by the court if such an error arises out of a presumption of fact, which was nonexistent, and when the court finds that its refusal to review its own error would cause, or has caused, grave miscarriage of justice.

20. In **Col. Avatar Singh Sekhon v. Union of India and Others, reported in 1980 0 AIR (SC) 2041**, the Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

*“12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In **Sow Chandra Kante and Another v. Sheikh Habib, reported in (1975) 3 SCR 933** this Court observed:*

‘A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.’

21. In **State of West Bengal and others vs Kamal Sengupta and another reported in (2008) 8 SCC 612**, the term ‘mistake or error apparent’ has been discussed in the following words:

“The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or

the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of [Order 47 Rule 1 CPC](#) or [Section 22\(3\)\(f\)](#) of the Act. To put it differently 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/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision”.

20. In this review petition, the petitioners have challenged the final verdict/conclusion of this court which cannot be treated as error apparent on the face of the record. On the basis of the above facts and circumstances of the case, this court is of the view that the present review petition is nothing but an abuse of the process of the court and ought to be rejected as it is not maintainable.

21. In the result, the review petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant