

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RP 2/2022 in[CMAM 20/2017] CM(150/2022)

Date of Pronouncement 11-03-2026

Uploaded on 03-2026.

BILAL AHMAD LONE

...Petitioner/Appellant(s)

Through: Mr. N. H Khuroo, Advocate.

Vs.

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY ...Respondent(s)
LIMITED AND ORS.

Through: Mr. Imtiyaz Ahmad, Advocate.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

11.03.2026

ORAL.

1. In the instant review petition, the appellant herein is seeking review of the judgment and order dated 02-12-2021, passed in CMAM No. 20/2017.
2. Facts giving rise to the filing of the instant review petition reveals that a claim petition came to be filed by private respondents herein before Motor Accident Claim Tribunal, Srinagar, seeking compensation therein for the death caused to one Mr. Saleem Wagay, in a vehicular accident caused by vehicle bearing Registration No. JK13A-2638 and impleaded therein the said claim petition, the owner of the said vehicle, the driver as also the insurance company with which the vehicle was stated to be insured.
3. The tribunal after adjudicating upon the claim petition in terms of the award dated 26-12-2016 allowed the claim petition and the saddled the insurance company-respondent 1 herein with liability to pay compensation to the

claimants, however, granted liberty to the insurance company to recover the said amount of compensation from the owner owing to the reason that the insurance company-respondent 1 have had proved that the owner had committed breach of the terms of the insurance policy having engaged a driver holding an invalid /fake licence.

4. The owner-petitioner herein aggrieved of the said liberty granted to the insurance company assailed the award before this Court in the CMAM supra, which appeal however, came to be dismissed in terms of the judgment and order under review.
5. The owner-petitioner herein has sought review of the judgment and order in question in the instant petition *inter alia*, on the premise that the court while deciding the appeal did not give consider the statement of the owner-petitioner herein as also the law laid down by the Apex Court qua the engagement of a driver by the owner in right perspective.
6. Objections to the petition have been filed by the respondent-insurance company, wherein the petition is being opposed on the premise that the petitioner essentially seeks rehearing of the appeal as there is no error apparent on the face of the record and no other ground as well available to the petition or in law warranting review of the judgment.

Heard counsel for the parties and perused the record.

7. Before proceeding to advert to the rival submissions of the appearing counsel for the parties as well as their respective pleadings, it needs to be mentioned here that, in law, the normal principle is that once a judgment is pronounced or order is made, the court becomes *functus officio* (seizes to have been control over the matter as such judgement and order is final and cannot be altered, modified or varied). However, where the court finds

that an error has occurred in the judgment and order and that the said error is apparent on the face of the record, court can arrogate until itself a power to review the judgment and order.

The Apex Court in case titled as “*Northern India Caterers (India Limited) vs.*

Lt. Governor of Delhi reported in 1980 SCC (2) 167 has held as under;

“It is well settled that a party is not entitled to seek a review of a judgment delivered by the Court merely for the purposes of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from the principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. Power to review its judgment has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order XLVII rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record. But whatever 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 the earlier by judicial fallibility.”

8. Keeping in mind the aforesaid position of law in mind and reverting back to the case in hand, the sole ground urged by the petitioner for seeking review of the judgment is that the court did not consider the evidence in its right perspective led by the petitioner before the tribunal as also the position of law laid down by the Apex Court in case titled as “*Nirmala Kothari v. United India Insurance*

Company Limited” reported in (2020) 4 SCC page 49, wherein at para 12 following has been held;

While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

9. Perusal of the record available on the file including the copy of the statement of the petitioner produced by the counsel for the petitioner during the hearing of the instant review petition tends to show that the petitioner before the tribunal had in explicit categorical and unambiguous terms deposed that the driver of the offending vehicle is a resident of his village and that the said driver was previously driving the tipper of one namely Ghulam Mohi ud In Khan s/o Mohammad Rafiq Khan and upon sale of the said tipper by the said Ghulam Mohi ud In Khan and after purchase of a tipper by the petitioner, the said driver was entrusted by him to drive/ply the said tipper and at the time of the engagement of the said driver, the petitioner examined his driving licence possessed a photo copy of which licence is on the record before the tribunal and as per the endorsement made in the said licence, the said driver was found to

be competent to ply a tipper and it is only thereafter that the petitioner allowed the said driver to drive the said tipper and even associated himself for 15 days with the said driver during the driving of the said tipper as the said tipper was involved in carrying the earth filling for the Railway Station, Pattan, and that during the said period, the said driver was found by the petitioner fit to drive the tipper and that, he, the petitioner cannot say as to whether the licence is fake as there is an appropriate seal and signature on the licence as is used on the licence. During his cross-examination, the petitioner before the tribunal has however, admitted that he did not get the licence verified from the office of the RTO which had issued it because had it been issued from Pulwama or Srinagar, the petitioner would have got it verified from the office of RTO of the said places and that the petitioner cannot say that whether the licence is fake.

10. As has been held by the Apex Court in the judgment of *Nirmala Kothari* supra, an employer while hiring a driver has been held to only verify if the driver is having a driving licence and that if a licence is produced before the employer by the driver which on the face of it looks genuine, in that event, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise and that if the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of the Policy of Insurance or Section 149(2)(a)(ii) of Motor Vehicles Act although the Apex Court has also simultaneously

observed that if the insurance company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the driver to drive the vehicle, the insurance company would no longer to continue to be liable.

11. Further perusal of the record available on the file reveals that the insurance company-respondent 1 herein though have had got an issue No. 2 framed by the tribunal on the basis of its defense set up against the claim petition that the owner-petitioner herein permitted the driver to drive the offending vehicle without being possessed of a valid and effective licence, and that the owner committed breach of the insurance contract absolving the insurance company from its liability to indemnify the owner, yet the insurance company-respondent 1 herein only produced one witness namely Maroof Ahmad, the Licensing Clerk/Statistical Assistant of the office of ARTO Poonch, who deposed before the tribunal that the numbered licence available on the claim petition in facts stands issued in the name of one Mohd Azaan S/o Mohd Shafi R/o Mendhar Poonch, and not in the name of Rafiq Ahmad Kuchay the driver engaged by the petitioner, yet the insurance company-respondent 1 herein has not led any evidence to support the plea that the owner-petitioner herein had the knowledge that the licence possessed by the driver is fake and despite that allowed the driver to ply the offending vehicle and consequently failed to prove the breach of the conditions of the insurance policy.

12. In view of the aforesaid position obtaining in the matter, it is manifest that a patent mistake and error has crept in judgment under

review while dismissing the appeal filed by the petitioner herein mis-placing the principles of law laid down in judgment passed by the Apex Court *Nirmala Kothari* supra in as much as overlooking the evidence led by the petitioner herein.

13. Viewed thus, for aforesaid reasons, the instant review petition succeeds as a consequence whereof, the judgment and order dated **02-12-2021** is ***set aside*** and the appeal preferred by the petitioner herein being CMAM No. 20/2017 as a consequence whereof is allowed, setting aside the award dated 26-12-2016 passed by MACT Srinagar, in claim petition titled as “***Mst. Shahzada and Ors. V. Rafiq Ahmad Kuchay and Ors***”, to the extent, the tribunal has granted liberty to the insurance company-respondent herein to recover the award amount from the owner-petitioner herein after satisfying the award.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

11.03.2026

Sarvar

Whether the order is Speaking Yes.

Whether the order is reportable Yes/No.