

IN THE HIGH COURT OF TRIPURA
AGARTALA

FAO NO.02 OF 2003

Shri Bikash Paul,
 son of late Nepal Chandra Paul,
 resident of village- Ranirbazar,
 P.S. Jirania, District- West Tripura.

..... Appellant

– Vs –

1. Smti. Sikha Saha,
 wife of Bikas Chandra Saha.
2. Smti. Beauty Saha,
 daughter of late Bikas Chandra Saha.
3. Smti. Nibedita Saha,
 daughter of late Bikas Chandra Saha.
- All are residents of village Khoyerpur (Chandrapur Math),
 P.S. East Agartala, District – West Tripura,
 (Owner of vehicle No. TR-01-3667, Commander Jeep)
4. Sri Balaram Saha,
 son of late Pranballab Saha,
 resident of village- Natunnagar,
 P.S. Airport, District – West Tripura.
 (Owner of vehicle No.AS-13/1446, Truck)
5. The New India Assurance Company Limited, Agartala Branch,
 H.G.B. Road, Agartala, West Tripura,
 (Insurer of Vehicle No. TR-01-3667, Commander Jeep).
6. The Oriental Insurance Company Limited, Divisional Office,
 Central Road, Agartala, West Tripura,
 (Insurer of vehicle No.AS-13/1446, Truck)

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. S. Deb, Sr. Advocate.
Mr. S. Datta, Advocate.

For the respondents : Mr. S.D. Choudhury, Advocate
Mr. S.M. Ali, Advocate

Date of hearing : 14.11.2014

Date of judgment & order: 22.01.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

This is a first appeal from order, questioning the legality of the order dated 09.09.2002 passed by the Motor Accident Claims Tribunal, West Tripura, Agartala, holding that the review petition, being Civil Misc.No.143/2001 filed by the Oriental Insurance Company Ltd., the respondent No.6 is maintainable.

2. The appellant herein filed a claim petition for compensation for the disablement he suffered in a road traffic accident while he was travelling by the vehicle bearing registration No.TR-01-3667 (Commander Jeep) on 18.01.1999 from Ranirbzar to Agartala for the rash and negligent driving of the offending vehicles. The said vehicle and another vehicle

bearing registration No.AS-13/1446 (Truck), which was also being driven rashly and negligently, had collided and the vehicle by which the appellant was travelling was capsized. As a result, the driver and a few passengers died on the spot. The appellant herein and another co-passenger, namely Nil Charan Das were seriously injured and, they were transported to the GBP Hospital, Agartala, where they were treated for a day and, thereafter, for further treatment they were referred to the SSKM Hospital, Kolkata, but the appellant was admitted in the Peerless Hospital, Kolkata. He was treated there from 21.01.1999 to 11.02.1999.

3. From the appellant's deposition made in the course of inquiry, it surfaces that he received fracture on his right leg and teeth of his upper jaw were rooted out whereas the teeth of the lower jaw were substantially damaged. He has also received injury on his head. The appellant has stated that he cannot walk properly. He had submitted a disablement certificate issued by the Medical Board of the Govt. of Tripura, Exbt.4.

4. By the judgment and award dated 30.03.2001, the Motor Accident Claims Tribunal, West Tripura, Agartala, awarded a sum of ₹3,10,058 with interest @ 9% per annum w.e.f. 30.03.1999 when the claim application, being TS(MAC) No.159/1999 was filed. It has been further observed that, if the

payment was not made within forty five days from the day of passing of the award, the said amount shall carry interest @ 16% per annum. From the said judgment and award dated 30.03.2001, it appears that the tribunal has returned the finding, which reads as under :

"Since the petitioner sustained 35% of the disability as stated, let us take 35% of that total amount and the amount stands at Rs.2,26,800/-. This amount the petitioner is entitled to get as compensation towards the head loss of income."

5. After the said judgment and award dated 30.03.2001, the respondent No.6, Oriental Insurance Company Ltd. filed a review petition under Order 41 Rule 1 of the CPC, being Civil Misc.No.143/2001, contending as under :

"That, be it stated that the judgment dated 30.03.2001 was awarded for compensating the alleged injury sustained by the Res.No.1 herein leading to permanent disability to the extent of 35%. It is pertinent to mention here that the claimant i.e. the Res.No.1 herein was also covered under Personal Accident Policy vide No.322700/12/634/Misc/1838/98-99 and he lodged claim for settling his claim under Personal Accident Policy. When he furnished documents in support of his claim lodged under Personal Accident Policy it was found that from his own documents he sustained permanent disability to the extent of 7% only."

6. The respondent No.6 herein, referred to as the review petitioner, has stated that the appellant had exercised fraud on the tribunal for illicit enrichment and such fraud be un-

winded by way of review. Another application under Section 151 of the CPC was filed bringing to the notice of the tribunal, the discovery that the permanent disability sustained by the appellant herein was to the extent of 7%, not what he claimed as 35% by virtue of Exbt.4. Those documents were sought to be placed before the court.

7. The appellant herein has challenged the maintainability of the said review petition, contending that the tribunal does not have any jurisdiction to review its own judgment and award except for correcting the arithmetical mistake. Even there is no patent illegality apparent on the face of the record. Since a serious allegation of fraud has been raised by the respondent No.6, two witnesses were allowed to be examined, namely, Dr. Jiban Chakraborty (PW.1) and Dr. Abhijit Sarkar (DW.1).

8. PW.1, Dr. Jiban Chakraborty, has stated as under :

"The Divisional Manager of Oriental Insurance Company Limited wrote a letter dated 16.1.2001 to the Chairman, Special Medical Board for Physically Handicapped of West Tripura District and wanted to know about the disablement certificate issued in the name of one Sri Bikash Paul vide certificate No.236/99 dated 12.3.99. On the basis of that letter a verification of the records was made and it was found that disablement certificate was issued in the name of Bikash Paul vide No.F.4(2)-MED/94-95 dated 16.8.2001 certifying 7% disability. At that time Dr. Binoy Bhowmik was the Superintendent of G. B. Hospital. This is that certificate issued in the

name of Bikash Paul dated 16.8.2001 – marked Exhibit-1. The Certificate dated 16.8.2001 was issued by the Medical Board in response to the inquiry made by the Oriental Insurance Company. The Original Certificate issued in the name of Bikash Paul was bearing No.236/1999 dated 12.3.2000 and that was signed by the Medical Board on 9.8.2000. The photo copy of the original certificate referred to the witness to which the witness says that it bear the signatures of Dr. Abhijit Sarkar, Member of the Board and the Chairman of the Board Dr. A. K. Nath. The original certificate was issued to the person concerned namely Bikash Paul. Photo copy on identification marked Exhibit-2.

In Exhibit-1 which was issued by the Medical Board informing the Insurance Company was signed by the Chairman Dr. Binoy Bhowmik and Member Dr. Abhijit Sarkar and I know their signatures – on identification marked Exhibit-1/1 series.

I have verified with the original register and there is nothing in the register that any disablement certificate was issued in the name of Bikash Paul certifying disability of 35% on 2.8.2000.

Exhibit-1 was issued in response to the letter of Insurance Company after careful examination of the office records."

9. DW.1, Dr. Abhijit Sarkar, has also stated that :

"There is a Medical Board constituted for issuing physically handicapped certificates to a orthopedically disabled person. I am a Member of that Medical Board. In the year 2000 I was Member of the Medical Board responsible for issuing such Disablement Certificate. The other Members of the Board in the year 2000 were Dr. A.K. Nath who was M.S. of the Hospital and was Chairman of the Board. The Convenor of the Board was Special Employment Officer. So far I could recollect Sri Palash Debbarma was the Convenor.

I have brought today the Register which is maintained in G.B. Hospital in respect to Certificate issued to disabled persons by the Board. I brought it as per requisition of the Court. This is the original register – marked Exhibit-M.O.1.

On seeing the Register at Sl.No.661 the witness says, that, a Disablement Certificate was issued in the name of Bikash Paul, S/O Late Nepal Paul of Ranirbazar, Jirania certifying that Bikash Paul was suffering post traumatic mild stiffness of right knee with 7% disability. The Register also bears signature of myself, Chairman and Convenor. On identification the relevant entry on Sl.No.661 marked Exhibit-3. The signature of the witness on identification marked Exhibit-3/1. The signature of Medical Superintendent and Convenor on identification marked Exhibit-3/2 and 3/3 respectively.

A photo copy of the relevant portion of the Register is also produced containing all the entries dated 2.8.2000 and 9.8.2000 and those are marked accordingly as Exhibit-M.O.1 and the entries at Sl.No.661 marked as Exhibit-3 and the signature marked as Exhibit-3/1, 3/2 and 3/3 respectively.

On 9.8.2000 no disability certificate in the name of Bikash Paul was issued certifying 35% disability. The Register further shows that no disability certificate was issued in the name of Bikash Paul on 2.8.2000 certifying any disability.

A photo copy of a disablement certificate dated 2.8.2000 referred to the witness to which the witness says that the signature appeared in the photo copy is not his signature. The photo copy on identification is marked Exhibit-4.”

10. Thereafter, on hearing the parties, the challenge raised by the appellant herein in respect of the maintainability of the review petition was rejected by the tribunal, holding as under :

"The brief fact is that T.S.(MAC) 159 of 1999 was instituted by the opposite party Bikash Paul praying for awarding compensation for the injury sustained by him due to motor vehicles accident. At the time of hearing of the suit the claimant produced a disablement certificate issued by the Medical Board dated 2.8.2000 showing 35% disability and that was taken to consideration and compensation was awarded. The Insurance Company, i.e., the petitioner herein submitted that they have now discovered that the petitioner was allowed a disablement certificate only stating 7% (seven per cent) disability and that the earlier disablement certificate was a fraud. In such a situation of the discovery of the material fact the review application was registered and fixed for hearing."

Thereafter, having reference to Section 169 of the Motor Vehicles Act, 1988, the tribunal has further observed that:

"The above provision has not directly authorised the Tribunal to review its own judgment but it is settled law that Tribunal is to follow the principles of natural justice and the rule of evidence and other procedural law has to be applied mutatis mutandis suitable for fair ends of justice. It is no doubt a settled law that the Court should not proceed with a matter unless law has authorised the Court to do so but it is also a settled law that the jurisdiction of a Court does not go away to rectify a wrong if the wrong is found apparent. In the present case a fraud is alleged in respect to disablement certificate. The Hon'ble Apex Court in AIR 2000 SC 1165 has observed that fraud and justice never duel (sic) together and the spirit of the judgment is that the wrong what was done due to fraud should be corrected."

11. Is the fraud stinking from the record? Without any reference to such fraud exercised on the tribunal, the appellant

has filed this appeal challenging the order dated 09.09.2002 passed in Civil Misc.No.143/2001 on the solitary ground that the tribunal does not have any jurisdiction to review its own order as the statute has not authorised the tribunal to exercise such jurisdiction. After the judgment and award is passed, the tribunal turns out functus officio. Moreover, even if it is assumed that the tribunal has the jurisdiction of review its own judgment and award then also the said review petition filed by the respondent No.6 was time barred. In support of that contention, the appellant has relied on **Patel Narshi Thakerji & Ors. Vs. Shri Pradyumangshji Arjun Singhji**, reported in **AIR 1970 SC 1273** and **Lily Thomas & Ors. Vs. Union of India & Ors.**, reported in **(2000) 6 SC 224**. All these decisions are related to whether the power to review is an inherent power of the court or tribunal or power of review should spring out from the statutory provision. Even those decisions has discussed about the extent of the review jurisdiction.

12. Mr. S. Deb, learned senior counsel appearing for the appellant has, however, submitted that the petition for review cannot be maintained as there is no statutory provision. Even such provision has not been imported by Section 169 of the Motor Vehicles Act, which has adopted various provisions of the CPC, but not Order 47 Rule 1 and/or Section 114 of the CPC.

Thus, Mr. Deb, learned senior counsel has strenuously argued that the impugned order be interfered with.

13. From the other side, Mr. S. Datta Choudhury, learned counsel while repelling such submission of Mr. Deb, learned senior counsel, has contended that when the fraud is discovered the tribunal has its inherent power to extricate that fraud as the tribunal can allow fraud to reside in the records, even after its discovery.

14. On scrutiny of the record, this court finds from the impugned order and the record that *prima facie* it has been established that the appellant might have exercised fraud for obtaining the judgment and award as stated. Thus, even if there is no statute authorising the tribunal to review its own judgment, the tribunal has its inherent power to recall its judgment and award, if after hearing, the tribunal finds that the judgment and award was obtained by fraud inasmuch as fraud vitiates everything.

15. In a celebrated decision, **Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd.**, reported in **(1996) 5 SCC 550**, the apex court has held that :

"..... which needs to be reminded that the Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud

as Fraud and Justice never dwell together (*Fraus et just nunquam cohabitant*). It has been repeatedly said that Fraud and deceit defend or excuse no man (*Fraus et dolus nemini patrocinar debent*).

21. In *Smith v. East Elloe Rural Distt. Council* : 1956 AC 736 : (1956) 1 ALL ER 855, the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case. *Lazarus Estate Ltd. v. Beasley* : (1956) 1 QB 702 : (1956) 1 ALL ER 341, Denning L.J. said :

"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

[Emphasis supplied]

16. Thereafter, the apex court in **Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd.**, has further observed that :

22. The judiciary in India also possesses inherent power, specially under Section 151 C.P.C., to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent power are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behavior. This power is necessary for the orderly administration of the Court's business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of

Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. (See : Benoy Krishna Mukerjee v. Mohanlal Goenka : AIR 1950 Cal 287; Gajanand Sha v. Dayanand Thakur : AIR 1943 Pat 127; Krishnakumar v. Jawand Singh : AIR 1947 Nag 236; Devendra Nath Sarkar v. Ram Rachpal Singh: ILR (1926) 1 Luck 341; Saiyed Mohd. Raza v. Ram Saroop : ILR (1929) 4 Luck 562; Bankey Behari Lal v. Abdul Rahman : ILR (1932) 7 Luck 350; Lekshmi Amma Chacki Amma v. Mammen Mammen : (1955) Ker LT 459). The Court has also the inherent power to set aside a sale brought about by fraud practised upon the court (Ishwar Mahton v. Sitaram Kumar : AIR 1954 Pat 450); or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh : AIR 1958 Pat 618; Tara Bai v. V.S. Krishnaswamy Rao : AIR 1985 Kant 270).

[Emphasis supplied]

17. The Privy Council in **Satish Chandra Chatterji Vs. Kumar Satish Kantha Roy**, reported in **AIR 1923 PC 73**, laid down as under :

"Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them - proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspensions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape."

18. This is the fundamental principle of justice. As such, by whatever name the petition, disclosing the discovery of fraud based on which the judgment and award has been alleged to have been obtained by the appellant, is called, the tribunal has its inherent power to completely unravel and clear up the fraud. As such, this court does not find any infirmity in the impugned order.

19. Having held so, this appeal is dismissed.

Send down the LCRs forthwith.

JUDGE

ROY