

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 50 of 2014**

Bhuneshwar Singh S/o J.D. Singh Aged About 45 Years R/o Haldibadi,
Chirmiri (Bharat Gas Agency) P.S. Chirmiri, Tah, Khadgawa, District
Korea C.G.

---- Applicant

Versus

1. Nurjaha Khatun wd/o Late Ajij Khan Aged About 27 Years.
2. Mohd. Shahrukha Khan S/o Late Aziz Khan Aged About 12 Years
Minor, Through natural guardian mother Smt. Nurjaha Khatun. Both
R/o Village Haldibadi, Pankha Dafai, Chirmiri, Tah. Khadgawa, Dist.
Korea C.G.

---- Respondents

For Applicant	:	Shri Anil Gulati, Advocate.
For Respondents No.1 and 2	:	Shri Parag Kotecha, Advocate.

Order On Board**26/10/2015**

1. Heard on admission.
2. By filing the instant civil revision under Section 115 of the Code of Civil Procedure, 1908 (for short 'the CPC'), the Applicant prays for quashing of the entire proceedings of Execution Case No.24 of 2009 pending before the Second Additional Motor Accident Claims Tribunal, Manendragarh, District Korea, Chhattisgarh by allowing the instant civil revision as the impugned order is illegal and perverse.
3. The brief facts required for disposal of the instant civil revision at the stage of admission are that the Respondents had filed Motor Accident Claim Case No. 24 of 2009 (Nurjaha Khatun and one another versus Bhuneshwar Singh) under Section 163-A of the Motor Vehicles Act, 1988 (for short 'Act of 1988'). On 9.10.2009, the Court below under Section 140 of the Act of 1988 directed that Non-applicant shall deposit Rs.50,000/- as interim

compensation on the principle of 'No Fault Liability' within a month. After the interim order was passed, the Court below proceeded further for hearing the matter and ultimately disposed of the said claim case finally vide order dated 28.6.2010 and thereby the Court below held that since the deceased himself was negligent as he was the driver of the offending vehicle and further held that the claimants are not entitled to get compensation under the Act of 1988 and if they wish, they are free to file claim case under the Workmen's Compensation Act against the owner of the offending vehicle. The Court below further observed that the provisions of Section 163-A of the Act of 1988 were not applicable for the reason that the income of the deceased whatever pleaded was beyond the scope of Section 163-A of the Act of 1988 and thereby the Court below dismissed the claim. After such dismissal, the claimant had filed an application under Section 3 of the Workmen's Compensation Act before the Labour Court, Ambikapur, District Sarguja and the same is pending for consideration. It is submitted that the claimants had concealed this fact that the Claims Tribunal under Section 140 of the Act of 1988 had ordered to pay Rs.50,000/- as 'No Fault Liability' and they had also filed Execution Case No.24 of 2009 before the Second Additional Motor Accident Claims Tribunal, Manendragarh, District Korea, Chhattisgarh for execution of the order passed by the Claims Tribunal dated 9.10.2009.

4. After the order passed by the Executing Court on 10.12.2013, the Applicant has filed the instant civil revision which is preferred after 50 days of its limitation. By filing the instant civil revision, the Applicant has challenged the legality and propriety of the entire proceedings before the Executing Court and prayed that the entire proceedings of the execution case be quashed and revision may be allowed.

5. Heard on I.A. No. 1 of 2014, an application for condonation of delay in filing the instant civil revision and also on admission. In the said application, it is prayed that the Applicant *bona fide* participated in the entire proceedings with the presumption that when the claim application of the Claimants was dismissed then the order granting interim compensation becomes not enforceable.

6. The Applicant was not aware of the fact that the execution proceedings are to be challenged before the Court below. After taking advice, he has filed the instant petition and prayed that the delay occurred in preferring the instant civil revision may be condoned.

7. Learned counsel for the Applicant supporting I.A. No. 1 of 2014 prays that the delay may be condoned and the instant civil revision may be admitted for hearing. Learned counsel further submits that the interim order passed under Section 140 of the Act of 1988 has to merge in the final order dated 28.6.2010 therefore the order passed on 9.10.2009 is not enforceable. Hence, the entire proceedings may be quashed and the revision may be allowed.

8. On behalf of the Respondents, I.A. No. 1 of 2014 was opposed as the same lacks a *bona fide* reason for condonation. He further submits that the order passed under Section 140 of the Act of 1988 is an appealable order and no appeal has been preferred against the same. Hence, the instant revision is not maintainable and the same may be dismissed as not maintainable. Learned counsel placed reliance on *Yallwwa & Ors. v. National Insurance Co. Ltd. & Anr.* (AIR 2007 SC 2582) wherein the Hon'ble Apex Court held that the order of the Tribunal awarding compensation under

'No Fault Liability' under Section 140 of the Act of 1988 amounts to award under Section 173 of the Act of 1988 and is an appealable one. Learned counsel further submits that as the Applicant has not preferred any appeal, the instant civil revision is not maintainable.

9. To appreciate the arguments advanced on behalf of the parties for hearing on I.A. No. 1 of 2014 and also on admission, perused the material and the facts mentioned in the petition. The instant civil revision is preferred after 50 days of its limitation against the order passed on 10.12.2013 by the Court below. In the entire application of I.A. No. 1 of 2014 nothing has been submitted regarding delay in filing the instant civil revision after the order passed on 9.10.2009. The entire I.A. No. 1 of 2014 does not contain reasons for condonation of delay and only submits that as the Applicant was under presumption that if the claim application has been filed and dismissed by the Tribunal the interim order passed under Section 140 of the Act of 1988 is not enforceable. Further more, in the prayer clause of the instant civil revision, it is prayed that the entire proceedings of the execution case be quashed but no material has been filed except for the order-sheet in the execution case on 10.12.2013. As there is no satisfactory explanation for the delay after the order passed on 9.10.2009, the instant civil revision is not maintainable as it is barred by limitation.

10. Even on the appreciation of other facts required for the admission of the instant civil revision, as per law cited above and also as per the scheme of the Act of 1988, as per settled law an order under Section 140 of the 1988 is an award and hence it is appealable. No appeal has been preferred against the order dated 9.10.2009 thereby the same attains the finality also for the fact for concealing the interim award under Section 140 of the Act of

1988. This is to be taken care of by the Labour Court and not by this Court also if any adjustment for the amount awarded under Section 140 of the Act of 1988, if permissible, can be done.

11. The instant civil revision as filed is barred by limitation and also not maintainable and is therefore liable to be dismissed. Consequently, the instant civil revision is dismissed as indicated above.

12. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge