

YBG

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.1 OF 2015
IN
FIRST APPEAL NO.1686 OF 2012

Shivaji Nivrutti Kharade & Anr.	...	Petitioners
V/s.		
D.C.Gupta & Anr.	...	Respondents

Mr.VA.Shastry for petitioners
Mr.Rahul Mehta i/b. KMC Legal Venture for respondent No.2.

CORAM : K.K.TATED, J.
DATED : 13th March 2015.

P.C.

1] Heard the learned Counsel for the parties. This review petition is preferred by the claimants of the order dated 1st July 2013 passed by this Court (S.VGangapurwala, J) in First Appeal No.1686 of 2012 with Civil Application No.4256 of 2012.

2] Learned Counsel for the petitioner submits that the petitioner is aggrieved by the observations made by this Court in para 6 of the order and in particular line No.4 wherein the words “same is proper” appear.

3] Learned Counsel for the petitioner submits that in an accident which occurred on 17th September 2005 the petitioners lost their son. On the date of incident, the deceased Promod Shivaji Kharade was aged 26 years. He submits that the trial court decided the multiplier as 13 on the basis of the age of the parents. He, submits that at the time of deciding multiplier, the Court should not have considered the age of dependents. In support of his contentions he relied upon a judgement of Apex Court in the case of Amrit Bhanushali Vs. National Insurance Company and Ors., reported in **2012 (11) SCC 738**. He further submits that the petitioner claimant also preferred a first appeal for enhancement of compensation, which is pendig before this Court. He submits that if the aforesaid observations i.e. “same is proper” is not deleted from para 6 of the impugned order dated 11th July 2013, that will affect merits of their first appeal.

4] On the basis of these submissions, the learned Counsel for the petitioner submits that the revision filed by them be allowed with costs.

5] On the other hand, the learned Counsel for the respondent No.2, Insurance Company vehemently opposed the review petition. He submits

that the review petition itself is not maintainable because the petitioner has already preferred a first appeal for enhancement of compensation. He further submits that the impugned order dated 1st July 2013 was passed by this Court after hearing both the sides, therefore, there is no question of allowing this review petition.

6] For consideration of this review petition, it is necessary to reproduce the para 6 of the order under review, which reads thus:-

“6. While awarding the compensation amount and applying the multiplier, the Court has considered the age of the complainants, which is 43 and 48 years and not the age of the deceased and thereby has applied the multiplier of “13”. The same is proper. Even while awarding the future prospects, the Court has considered that the deceased was working as Lab Chemist since 29.11.2001. The accident has taken place in September 2005. It has also been observed by the Court that on 31.08.2005, the letter at Exh.57 has been issued by the company regarding increment in salary of the deceased.”

After hearing both sides the Court held that multiplier of 13 applied by the tribunal is proper. Same was decided on the basis of claimants' age.

7] The Apex Court in the matter of N. Anantha Reddy Vs. Anshu

Kathuria and Ors., reported in (2013) 15 S.C.C. 435 held that the Review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/ judgement does not call for review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.

8] I have heard both the sides. The endeavour made by the learned Counsel for the petitioner is to re-argue the entire first appeal and that is not allowed in review jurisdiction. Hence, the review petition is dismissed. No costs.

(K.K.TATED, J)