

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 919 of 2016

1. M/s Shrikishan & Company through Proprietor, Sushil Agrawal, aged about 47 years, S/o Late Shri Kishan Agrawal, R/o S-1, Shri Complex, Stadium Road, T.P.Nagar Korba, Tahsil and P.S. Korba, Distt. Korba (C.G.) (Non-Applicant No.2)

---- Appellant

Versus

1. Vijay Kumar Patel S/o Shri Gendram Patel, aged about 19 years, R/o Village Jatraj Chandranagar, Kusmunda, Tahsil Katghora, District Korba, Next Friend Gendram Patel, aged about 48 years, S/o Shri Santram Patel, R/o Village Jatraj Chandranagar, Kusmunda, Tahsil Katghora, District Korba, Chhattisgarh....(Claimant)
2. Rajesh Kumar Singh, S/o Shri Harischandra Singh, aged about 30 years, R/o Old Basti Rani Road, Korba, Tahsil and District Korba, Chhattisgarh.....(Non Applicant No. 1 (Driver))
3. United India Insurance Company Limited, Branch Office T. P. Nagar, Korba, Tahsil and District Korba, Chhattisgarh.....(Non Applicant No. 3 (Nusrer))

---- Respondents

For Appellant – Shri M.K.Bhaduri, Advocate.

For Respondent No. 1 – None, though served.

For Respondent No.2 – None, though represented.

For Respondent No.3 – Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

26-10-2016

1. Heard on I.A.No.1/2016 under Section 5 of the Limitation Act, 1963 (in short 'the Act, 1963') read with Section 12 of the Act, 1963 as the instant MAC has been preferred after 1363 days of its limitation.
2. Learned counsel for the appellant submits that in the instant matter the Claims Tribunal passed the award dated 05-07-2012 arises out of the Claim Case No.281/2007. Thereafter, against the said award the non-applicant No.2/appellant filed a review petition before the concerned Tribunal on 09-04-2015. The Tribunal disposed of the said miscellaneous MACT Case No.22/2015 on 22-04-2016 and vide operative para No.5 held that appeal lies against the award passed by the Motor Accident Claims Tribunal, there is no

any provision for review in the Motor Vehicles Act, 1988 (in short 'the Act, 1988) and there would be no any review for merits of said award passed by the Tribunal, the applicant has not filed any application for correction of procedural part and as there is no any provision for review and against the order of Tribunal only appeal is maintainable. Thereafter, the appellant filed a petition, W.P.(227) No.359 of 2016 before this Court. This Court vide order dated 13-06-2016 held that the petition under Article 227 of the Constitution of India has no substance and thereby dismissed the said petition. Thereafter, the appellant has filed the instant MAC.

3. It is submitted that there is substance in the MAC. The award passed by the Tribunal is excessive. The Tribunal wrongly held that permanent disability is 75%, the Tribunal wrongly held for the breach of condtion of Beema Policy. The appellant was taking recourse of law available; he had filed the review petition and after dismissal thereof he had filed the petition under Article 227 of the Constitution of India and thereafter he has filed the instant MAC. Hence, the delay is bonafide and the same may be condoned as prayed.

4. Learned counsel for respondent No.3 opposed the I.A.No.1/2016.

5. Perused the documents annexed along with the appeal and submitted during the argument.

6. During argument, learned counsel placed copy of order dated 13-06-2016 passed in WP227 No.359 of 2016 which is made part of the record.

7. For the relevance as per Article 124 of the Act, 1963 period for filing review petition is only 30 days. The award passed on 05-07-2012 and the appellant preferred the review petition filed before the concerned Tribunal on 09-04-2015, i.e., after two years and 9 months and 2 days. It is not apparent whether any application for condonation of delay in filing the said review petition is annexed or not.

8. For relevance, paras 3, 4, 5, 6, 7 and 8 of the order dated 13-06-2016 in

WP227 No.359 of 2016 is reproduced here:-

3. It is argued that since the petitioner had not preferred any appeal, an application for review under Section 114 of the CPC is maintainable and the Court below has failed to exercise jurisdiction vested in it. It is also argued that power of review being a judicial power, the MACT was competent to entertain the application, therefore, the impugned order rejecting review application as not maintainable is *per se illegal*. He would refer to the law laid down by the Supreme Court in the matter of **Rajendra Kumar & Ors. Vs. Rambhai & Ors**¹.
4. In the matter before the Supreme Court, the issue was not as to whether the MACT can exercise power of review under Section 114 read with Order 47 Rule 1 CPC. The issue was never raised nor dealt with. It is settled that a judgment is binding on the issue raised decided by the Court.
5. Rule 240 of the Chhattisgarh Motor Vehicle Rules, 1994 prescribes the procedure to be followed by the claims tribunals in holding enquiries. It speaks about application of certain provisions of Code of Civil Procedure in the following manner:-

“240. Procedure to be followed by Claims Tribunal in holding enquiries.- Application of certain provisions of Code of Civil Procedure 1908; Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V, Rule 9 to 13 and 15 to 20, Order IX, Order XVIII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.”
6. A plain reading of the above quoted Rule 240 would imply that Section 114 or Order 40 Rule 1 of CPC have not been made applicable in the proceedings before the claims tribunal.

¹ AIR 2003 SC 2095

7. It has been held by the Supreme Court in **Abdul Basit** ALIAS RAJU **and Others Vs. Mohd. Abdul Kadir Chaudhary and Another**² that review being creature of statute any Court or authority has no inherent jurisdiction to exercise power of review and that such power has to be specifically conferred by the statute.
8. Even otherwise, the petitioner was a party before the claims tribunal and had ample opportunity to put forth its case during the enquiry pending before the MACT. If the petitioner failed to bring it to the notice of the claims tribunal that on the date of accident the vehicle was sold out to some other person, the petitioner has to blame himself and there was no error apparent on the face of record.
9. As per settled law also held by the coordinate Bench while passing the order dated 13-06-2016, it goes to show that there is no any provision for filing review petition under Rule 240 of the Chhattisgarh Motor Vehicles Rules, 1994. With the above legal proposition, review petition is not permissible under the law. As per settled law, against impugned award, it is appeal which lies under the relevant provisions of Section 173 of the Act, 1988.
10. Also as per settled when any forum is available, in case of filing of any petition under the provision of Article 227 of the Constitution of India, the petitioner has to justify why despite clear provision for appeal against the award he has chosen the course of writ petition under Article 227 of the Constitution of India. While reading the entire order, it appears that nothing was argued on behalf of the appellant/petitioner as to why they had taken recourse of the writ petition under Article 227 of the Constitution of India.
11. To conclude, the review petition under the relevant provision of Order 47 Rule 1 of the Code of Civil Procedure, 1908 is not permissible. On the basis of

² (2014) 10 SCC 754

the pronouncement of the order passed by this Court dated 13-06-2016 also it is held that review is not maintainable. The coordinate Bench dismissed said petition as it has no substance. After perusal of legal pronouncement as finds place in said order, there is no reason to take a different view regarding maintainability of the review petition in question. Even otherwise, said review petition filed after 2 years, 9 months and 2 days without any application for condonation of delay in filing said review petition, review petition itself was not maintainable. The petition under Article 227 filed was also held as had no substance therefore, it cannot be said that the appellant was taking recourse of law bonafidely, hence the delay may be condoned.

12. Taking wrong recourse the appellant may be liable for after effect of said recourse not available under the law as settled and discussed aforementioned.

13. On due consideration, the appellant utterly failed to demonstrate satisfactory reason for filing the instant MAC after 1363 days of its limitation. Consequently, I.A.No.1/2016 is hereby dismissed as not maintainable and also the MAC being barred by limitation by 1363 days of its limitation.

14. The appeal dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE