

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2016

PRONOUNCED ON : 25.10.2016

CORAM:

HONOURABLE MR.JUSTICE S.VAIDYANATHAN

REVIEW APPLICATION (WRIT) NO.266 OF 2015

K.Selvi

... Review petitioner

vs.

1. The Home Secretary,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai 600 009.
2. The Director General of Police,  
Office of the Director General of Police,  
Dr.Radhakrishnan Salai,  
Mylapore, Chennai 600 004.
3. The Inspector of Police,  
Basin Bridge Outpost,  
Railway Police Station,  
Central Railway Station,  
Central, Chennai.

Review Application filed under Order 47 Rule I CPC r/w 114 C.P.C.  
praying to review the order dated 16.09.2014 made in W.P.No.28223 of  
2011.

For Petitioner : Mr.M.Pari

For Respondents : -

\* \* \* \* \*

**ORDER**

Aggrieved by the dismissal order dated 16.09.2014 made in W.P.No.28223 of 2011, the writ petitioner has filed this Review petition seeking to review the same.

2. The writ petitioner originally filed W.P.No.28223 of 2011 seeking a direction to the respondents to pay her a sum of Rs.20 lakhs with interest at 12% p.a. as compensation on account of the death of her husband, viz. Gunasekaran, a Loadman, who succumbed to the grievous injuries suffered on 01.09.1997, while loading cement bags in a Lorry bearing Registration No.TN B 2877. Though a complaint was lodged by a relative of the writ petitioner to the 3rd respondent on 01.09.1998 and it was registered in Crime No.1002 of 1997, no action was taken by the respondent police. The grievance of the writ petitioner is that due to the inaction on the part of the respondent police in not filing final report against the owner of the offending vehicle, she is not able to get compensation under the provisions of the Motor Vehicles Act.

3. After hearing the learned counsel on either side, this Court dismissed the said Writ Petition on 16.09.2014, by holding as under:

"7. It is not in dispute that the husband of the petitioner had met with unnatural death in an accident that took place on 1.9.1997 while he was loading cement

bags in a lorry bearing Regn.No.TN B-2877 and due to sudden move of the lorry, he fell down and cement bags had fallen on his face and thereby he sustained grievous injuries on his neck, which resulted in his death while taking treatment in the hospital. As rightly contended by the learned counsel for the petitioner, she is entitled to claim compensation. However, it is to be noted that there is delay in conducting the investigation and filing the final report by the Inspector of Police/3<sup>rd</sup> respondent and in fact, it prompted the petitioner to approach this Court for necessary directions to the 3<sup>rd</sup> respondent in this regard. Thereafter, the 3<sup>rd</sup> respondent had acted upon the directions of this Court and filed the final report on 6.8.2005 before the XVI Metropolitan Magistrate, George Town, Chennai as seen from the counter affidavit filed by him. Considering the same, now there is no impediment for the petitioner to work out her remedy in the manner known to law. Therefore, this Court is of the view that the respondents cannot be made responsible in order to claim compensation from them. However, the petitioner can claim the compensation in accordance with law by invoking the provisions either under the Workmen Compensation Act or under the Motor Vehicles Act after establishing her claim for compensation. Therefore, I do not find any merits to entertain this Writ Petition. Though the learned counsel for the petitioner relied upon various decisions of the Hon'ble Apex Court as well as this Court, since this Court is not inclined to entertain the writ petition for the reasons stated supra, those decisions are not taken into consideration."

Accordingly, this Writ Petition is dismissed. No costs. However, the petitioner is always at liberty to claim compensation in accordance with law. If the petitioner approaches for claiming compensation, the concerned Tribunal/Forum, is directed to entertain the same, without insisting upon the limitation aspect."

4. Learned counsel for the Review Petitioner contended that the petitioner filed a copy application in Crime No.1082 of 1997 before the

Magistrate Court seeking a copy of the alleged F.I.R. and report filed by the respondent police. But, the application filed by her was returned by the Court for "Non-availability of F.I.R. and Report". According to the counsel for the petitioner, the said aspect was not considered by this Court.

5. In the Writ petition, the counsel for the petitioner has contended that the 3rd respondent police has not taken any appropriate action in filing the final report against the offending vehicle, due to which, the petitioner is deprived of claiming compensation as per the provisions of the Act.

6. A perusal of the order under review clearly shows that the above points were considered and dealt with extensively by this Court, both by law and on facts. In paragraph 4 of the counter affidavit filed in the Writ Petition, the 3rd respondent has stated that as per the order made in Crl.O.P.No.7307 of 2004, appropriate action was taken and after investigation, a Report was filed in the XVI Metropolitan Magistrate Court, George Town, Chennai on 06.08.2005. The 3rd respondent has further stated that the petitioner has not made any attempt to get compensation under the Motor Vehicles Act and for the inaction and negligence on the part of the petitioner, the respondents cannot be blamed. Considering the entire facts and circumstances of the case, this Court had made it clear that there is no impediment for the petitioner to work out her remedy in the

manner known to law.

7. To maintain a review application, the review petitioner must satisfy the three requirements of Order 47 Rule 1 of C.P.C. i.e.

(i) From discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge (or) could not be produced by him at the time when the decree was passed (or) order made;

(ii) There is some mistake (or) error apparent on the face of the record in the judgment under review; and

(iii) or any other sufficient reasons.

8. The basic principle to entertain the review under Order 47 Rule 1 C.P.C. is to correct the errors but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes functus officio and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review petitioner without altering or substituting its view in the judgment under review; the review court cannot entertain the arguments touching the merits and

demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.

9. It is settled law that even an erroneous decision cannot be a ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order under review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed.

10. In ***“Shanmuga Sundara Nadar vs. Tamil Nadu Housing Board, rep. by its Chairman, Madras and others”***, reported in 1988 (2) L.W. 57 (MAD.), this Court held as under:

"The power to review is a restricted power which authorises the Court to look through the judgment not in order to substitute a fresh or second judgment but in order to correct it or improve it, because some material which it ought to have considered has escaped consideration or failed to be placed before it for any other reason or because it suffers from a patent error which cannot be sustained by any process of reasoning.

The Court cannot under cover of review arrogate to itself the power to decide the case over again because it feels then that the assessment of evidence, etc., done formerly was faulty or even incorrect. An erroneous view of evidence of law is not a ground for review. A wrong exposition of the law, a wrong application of the law and failure to apply the correct law have been held to be not a ground for review."

11. In "***Meera Bhanja vs. Nirmala Kumari Choudhury***" reported in (1995) 1 SCC 170, the Supreme Court, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as under:

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

12. Having regard to the above, this Court does not find any error apparent on the face of the order in order to entertain the present review application.

**Accordingly, this Review Application is dismissed. No costs.**

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**25.10.2016**

**S.VAIDYANATHAN,J.**

**(aeb)**

Order in

**Rev. Application No.266 of 2015**

**25.10.2016**

