



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2016

CORAM

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Review Application(MD)No.61 of 2016

and

C.M.P(MD)No.6704 of 2016

The Branch Manager,
The Oriental Insurance Company Limited,
No.1858, South Main Road,
Tanjore.

... Petitioner/2nd Respondent

Vs.

1.Antony Birnath Mary @ Anthony Mary
2.Lourdu Flora Mary ... 1&2 Respondents/1&2 Claimants
3.M.Akbar Ali ... 3rd Respondent/1st Respondent

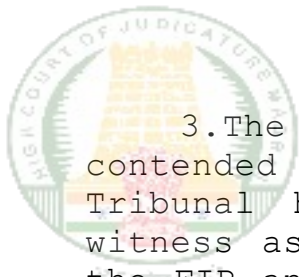
Review Petition Writ petition filed under Order XLVII Rule 1 of CPC r/w Section 114, 151 of C.P.C., to Review the judgment and decree of the Hon'ble Court made in C.M.A.(MD)No.189 of 2012, dated 22.04.2016.

For Petitioner : Mr.K.Bhaskaran
For Respondents : M/s.Vijayakumari Natarajan

ORDER

The petitioner is the respondent and respondents are the petitioners in C.M.A(MD)No.189 of 2012. This Court by the order, dated 22.04.2016 disposed the C.M.A.

2.The present review is filed to re-consider the judgement, dated 22.04.2016 made in C.M.A(MD)No.189 of 2012. The respondents 1 and 2 filed M.C.O.P(MD)No.90 of 2008 before the Motor Accidents Claims Tribunal/Principal District Court, Dindigul, claiming a sum of Rs.10,00,000/- as compensation for the death of son of the first respondent and brother of the second respondent. By the order, dated 14.09.2010 the Motor Accidents Claims Tribunal/Principal District Judge, Dindigul dismissed the claim petition filed by the respondents 1 and 2. Against the said dismissal, the respondents 1 & 2 filed C.M.A(MD)No.189 of 2012. This Court, by the judgment, dated 22.04.2016 allowed the Civil Appeal holding that the respondents 1 and 2 are entitled to total compensation of Rs.11,77,000/-.



3.The learned counsel appearing for the Review petitioner contended that this Court failed to take note of the fact that the Tribunal has rejected the evidence of P.W.2, the alleged eye witness as he did not file the FIR and there is a difference in the FIR and evidence of P.W.2. This Court, failed to see that the Tribunal has given valid reason for holding that the accident did not take place due to rash and negligent driving of driver of vehicle belonging to the third respondent. The respondents 1 and 2 failed to prove that they are the dependants of the deceased. This Court failed to consider that the second respondent is married and her husband is having independent income and the second respondent is not residing with the deceased and deceased is not maintaining the second respondent. The respondents 1 and 2 failed to prove the age, nature of the work and income earned by the deceased. This Court ought to have applied the multiplier of 5 taking into account the age of the first respondent instead of applying the multiplier 13 taking into consideration the age of the deceased. The respondents 1 and 2 claimed only Rs.10,00,000/- whereas, this Court, granted compensation of Rs.11,77,000/-. The second respondent being the sister of the deceased is not a class-I heir as per Law of Succession. This Court, without any proof fixed the income of the deceased at Rs.6,000/- per month and awarded further 50% enhancement for future prospects. This Court, failed to follow the following judgments:-

- i) (2003) 7 SCC 197
- ii) 2010(2) SCC 607 (Jai Prakasi v. National Insurance Company)
- iii) (2013) 9 SCC 65 (Reshma Kumari & Ors. v. Madan Mohan & Anr.)
- iv) (2009) 6 SCC 121 (Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & anr.)
- v) (2013) 9 SCC 54 (Rajesh & Ors. v. Rajbir Singh & Ors)
- vi) C.C.No.8058 of 2014 (National Insurance Company Ltd., v. Pushpa & Ors.,)
- vii) MAC APP.138/2011 (The New India Assurance Co., Ltd., v. Harpal Singh & Ors)
- viii) Union of India & Ors. V. S.K.Kapoor (2011) 4 SCC 589
- ix) 2007) 10 SCC 1 (New India Assurance Company Ltd., v. Shanti Pathak (Smt.)

therefore, prayed for allowing the review petition.

4.The learned counsel for the respondents 1 and 2 submitted that there is no error in the judgment of this Court sought to be reviewed. This Court ,has considered all the facts and set aside the award of the Tribunal and granted just compensation. In the facts and circumstances of the case, this Court has ample power to grant more compensation then the amount claimed by the claimants.

<https://hcservices.ecourts.gov.in/hcservices/>

5.Heard the learned counsel appearing for the petitioner and the respondents 1 and 2 and perused the materials on record.



6. From the grounds raised in the Review petition and the arguments of the learned counsel for the petitioner, it is clear that the review petitioner is seeking to re-argue the matter on merits. Review is not an appeal and the petitioner is not entitled to raise new grounds on merits and also is not entitled to re-argue the matter on merits. In review, if there is any error on the face of earlier order, the Review petition can be entertained and the error can be rectified. In the present case, the learned counsel for the petitioner has not pointed out any error in the order of this Court. A reading of the said order clearly shows that after considering all the materials on record and judgment relied on by the counsel for the petitioner and arguments of the counsel for the parties, this Court passed the judgment setting aside the award of the Tribunal. There is no error in the judgment.

7. The power of Review has been elaborately considered by the Honourable Apex Court in the Judgment reported in **2000 (6) SCC 224 [Lilli Thomas and Others Vs. Union of India and Others]**. In paragraph 52 of the said Judgment, the Honourable Apex Court has held as follows:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in **Patel Narshi Thakershi Vs. Pradyumansinghji Arjunsinghji [1971 (3) SCC 844 : AIR 1970 SC 1273]** held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error."

56. it follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review



petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment."

(emphasis supplied)

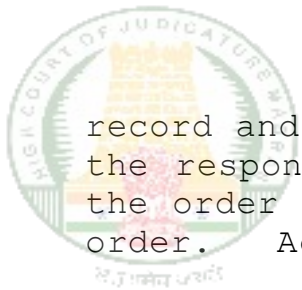
8.A Division Bench of this Court in the Judgment reported in **2014 (3) TLNJ 245 (Civil) [M.Jai Kavitha Vs. The Authorised Officer, Syndicate Bank, Regional Office, Chennai - 1 and others]**, has considered the scope of judicial review, wherein the decision of the Honourable Apex Court was noted with approval and in paragraph No.9 of the said Judgment, it has been held as follows:-

"9.The power of review under Order 47 Rule 1 of CPC can be exercised by a court of law, if the order in question comprises a mistake or an error apparent on the face of record. Once an order is pronounced, it should not be altered, unless there is an apparent error. Law is well settled that erroneous finding is not a ground for review, so also improper consideration for that matter. In review application, the court does not sit in appeal over its own judgment and the said application cannot be treated as an appeal. This position has been ruled by the Supreme Court in Lily Thomas Vs. Union of India [2000 (6) SCC 224]. Therefore, in the absence of any error apparent on the face of record, we are not inclined to interfere with the order in question, except to the extent of deleting of the portions in paragraphs 14 and 15 of the impugned order, with which the applicant is concerned as to having an impact on the proceedings pending before the tribunal, as stated in the foregoing paragraph."

(emphasis supplied)

9.The above two decisions were also followed in Review Application (MD)No.142/2014, dated 25.11.2014, in which, I was a party, wherein it has been held that Review Petitioner is not entitled for re-hearing the issue.

10.In the light of the dictum laid down by the Honourable Apex Court as well as by the Division Benches of this Court, I am of the considered view that the earlier order of the Court can be reconsidered, only if there is an error apparent on the face of <https://hcservices.courts.gov.in/hcservices/> in that event, the said error can be rectified. Otherwise, a Review Application is not at all maintainable. In the present case, this Court considered all the materials on



record and arguments of the learned counsel for the petitioner and the respondent and passed orders on merits. There is no error in the order dated 22.04.2016, warranting reconsideration of the said order. Accordingly, the Review Application fails.

11. In the result, the Review Application is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12. The petitioner/Insurance Company is directed to deposit the compensation amount within four weeks from the date of receipt of a copy of this order. The respondents 1 and 2 are permitted to withdraw the amounts after payment of court fee to the enhanced amounts.

Sd/-

Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

To
The Principal District Judge,
Motor Accident Claims Tribunal,
Dindigul.

Copy to: The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr.K.Bhaskaran, Advocate SR.No.71747
+1cc to Mrs.Vijayakumari Natarajan, Advocate SR.No.71471

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Rev.Aplc (MD) No.61 of 2016
22.11.2016