

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4222 of 2014 (O&M)
Date of decision:04.04.2016

Vinod Kumar

... Petitioner

Vs.

Oriental Insurance Co. Ltd. & others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Jagdish Manchanda, Advocate
for the petitioner.

Mr. Suvir Dewan, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Challenge in the present petition to the impugned order dated 28.05.2014 (Annexure P-3), whereby, review application at the instance of the owner despite dismissal of the appeal bearing No.3975 of 2013 being barred by law of limitation, has been rejected.

Mr. Jagdish Manchanda, learned counsel appearing on behalf of the petitioner submits that Motor Accidents Claim Tribunal (for short 'MACT') held that the Insurance Company shall be able to recover amount of compensation from the owner owing to the fact that on the date of alleged accident vehicle in question was not having route permit. He further submits that in view of the ratio decidendi culled out by this Court at Annexures P-5 and P-6,

objection qua non-holding of route permit is not available to the Insurance Company and qua maintainability of the review application, he has relied upon paragraph 18 of the judgment of the Hon'ble Supreme Court rendered in **Kunhayammed and others vs. State of Kerala and another** 2000 (6) Supreme Court Cases 359. In support of his contentions, he has also placed reliance upon the information sought under Right to Information Act to contend that vehicle bearing No.HR-38C-5457 had the route permit valid from 24.11.2003 to 23.11.2008, thus, urges this Court for remanding the matter back to the MACT to decide the review application afresh on merits.

Mr. Suvir Dewan, learned counsel appearing on behalf of respondent No.1 submits that in view of the dismissal of the appeal, though it may be on account of being barred by law of limitation but there is detailed order, therefore, the review application has rightly been dismissed as there is no provision to entertain the same. Nothing prevented the petitioner to lead evidence sought to be placed on record in the review application and thus, valuable right has accrued and allowing application would tantamount to de-novo of trial which is not permissible in law. Thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce paragraph 18 of the judgment rendered by the Hon'ble Supreme Court in

Kunhayammed's case (supra) which reads thus:-

“18. In our opinion what has been stated by this Court applies also to a case where a special leave petition having been dismissed by a non-speaking order the applicant approaches the High Court by moving a petition for review. May be that the Supreme Court was not inclined to exercise its discretionary jurisdiction under [Article 136](#) probably because it felt that it was open to the applicant to move the High Court itself. As nothing has been said specifically in the order dismissing the special leave petition one is left merely guessing. We do not think it would be just to deprive the aggrieved person of the statutory right of seeking relief in review jurisdiction of the High Court if a case for relief in that jurisdiction could be made out merely because a special leave petition under [Article 136](#) of the Constitution had already stood rejected by the Supreme Court by a non-speaking order.”

On going through the order dated 04.09.2013, whereby, appeal bearing No.3975 of 2013 along with the miscellaneous application bearing No.16131-CII-2013 dismissing the appeal being barred by 613 days, there is no adjudication vis-a-vis merits of the matter. No doubt, the approach of the petitioner has been very callous and tardy in not bringing on record the factum of having valid route permit on the alleged date of accident. However, in order to

advance justice and prevent miscarriage of justice, I am of the view that the party should not be prevented its right of proving its case and also by relying upon the judgment on this aspect, the petitioner would be able to claim indemnification. No doubt, in case, where there has been adjudication on merits and dismissed on account of limitation, review application would be maintainable, thus, findings rendered by the MACT vis-a-vis non-maintainability of review application is not correct. Accordingly, the impugned order is set aside and the matter is remitted back to the MACT to decide the review application afresh in accordance with law. The Insurance Company shall be at liberty to rebut the same, in accordance with law. Review application is restored to its original number.

Parties through their counsel are directed to appear before the MACT on 05.05.2016.

Revision petition stands allowed.

(AMIT RAWAL)
JUDGE

April 04, 2016
savita