NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 484 of 2017

- Rajendra Kumar Agrawal S/o Satyanarayan Agrawal, Aged About 55 Years R/o Transport Nagar, Korba, Tehsil & District Korba, Chhattisgarh ....(Owner Of Offending Truck/ Respondent No.3 Of MA(C) 326/07)

---- Petitioner

Versus

1. The New India Insurance Company Ltd. Through Branch Manager, Branch Office Rajendra Nagar Chowk, Tahsil And District Bilaspur, Chhattisgarh ....(Appellant Of MA(C) 326/07)

2. Iswar Prasad S/o Hetram Kashyap Tilakram, Aged About 32 Years R/o Village Salkha, Thana Takhatpur, Tahsil And District Bilaspur, Chhattisgarh, Amended Address- Village Salkha, Thana Ratanpur, District Bilaspur, Chhattisgarh ....(Respondent No.1 Of MA(C) 326/07)

3. Chetan Singh S/o Roshan Singh, Aged About 32 Years R/o Village Sadhwani, Thana Pendra, District Bilaspur, Chhattisgarh, Present Address- Transport Nagar Korba, Tahsil & District Korba, Chhattisgarh ....(Driver Of Offending Truck/ Respondent No.2 Of MA(C) 326/07)

---- Respondent

For Applicant Shri Ravish Verma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishsra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board

07/09/2017

1. Heard.

2. The matter is listed in default as the Registry has pointed out that instead of filing a review petition, the applicant has filed MCC, which is not maintainable.

3. Shri Ravish Verma, learned counsel for the applicant would submit that applicant is not seeking of the review of order dated 29 July 2011, but it is an application for setting aside and recall of the order, therefore, the MCC is maintainable.

4. By the order, out of which, this MCC is arising, the Division Bench allowed Miscellaneous Appeal No. 326/2007 preferred by the New India Insurance Company Ltd. in the following words as contained in Para 7 to 9 of the order dated 29.7.2011 :

> "7. The appellant/Insurance Company has successfully proved that the driver of the offending vehicle (Truck/Dumber) was not having a valid and effective driving licence at the time of accident. The licence submitted by the driver was fake. In this regard, statement of the official from R.T.O. Office was recorded to verify this fact but it is not known whether the owner had taken the driver in service with precaution mentioned under the law and as such the appeal is liable to be allowed and the appellant/Insurance Company is liable to be exonerated.
>
> 8. In the result, the appeal is allowed. The appellant/Insurance Company is exonerated from its liability to pay compensation. However, it will be open for the appellant/Insurance Company to recover the amount of compensation from the owner of the vehicle.
>
> 9. It is necessary to mention that we have not examined the question of quantum and it will be open for the owner to challenge the quantum, if so advised."

5. A plain reading of the above quoted part of the order would explicit that the Insurance Company's appeal was allowed

on merits. A prayer for setting aside and recall of the order is nothing but calling upon the Court to review the order and saddle the Insurance Company with liability of payment of compensation.

6. In our considered opinion, the Office has rightly pointed out that instead of MCC, the applicant should have filed a review petition.

7. Accordingly, the MCC is dismissed as not maintainable.

Sd/-	Sd/-
Judge	Judge
Prashant Kumar Mishra	**Arvind Singh Chandel**

Akhilesh