Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVIEW APPLICATION NO. 21 OF 2017
IN
FIRST APPEAL NO. 327 OF 2007

Vincentina Paulina D' Souza ... Applicant

V e r s u s

1. Sunil Kumar P. (Driver) & Ors. ... Respondents

Mr. E. Afonso, Advocate for the Applicant.

Mr. U. R. timble, Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved for Order on : 5th October 2017
Order Pronounced on : 16th November 2017

ORDER

The Applicant who is the original Appellant in First Appeal No.327 of 2007 had sought a review of the Judgment dated 13.07.2017 passed by this Court in appeal holding the Applicant entitled to the compensation of ₹7,55,000/- with interest and other consequential reliefs.

2. It was the case of the Applicant that this Hon'ble Court had partly allowed the First Appeal No.327 of 2007

awarding compensation of ₹7,55,000/- to the Applicant based on the monthly income of the deceased as ₹5,000/- per month. It was her case that he would have earned ₹10,000/- within the next four years as evident from the testimony of Ganesh Govekar/Cw4 Human Resource Executive and that he would have been absorbed in service on completion of his two years and on salary of ₹5,000/- per month with 20% annual increment. This Court therefore ought to have taken his monthly income at ₹10,000/-, added 50% towards the loss of future prospects and on that basis awarded the final compensation. Moreover, an amount of ₹1,00,000/- remained to be awarded to the Applicant towards the loss of life and an equal amount towards the loss of estate as laid down by the Hon'ble Apex Court which probably escaped the attention of this Court on account of the time gap of 77 days between the date of reserving of the Judgment on 27.04.2017 and its pronouncement on 13.07.2017. Moreover, this Hon'ble Court ought not have set off 20% of the compensation towards uncertainty of life and besides ought to have granted an amount of ₹48,809/- towards the loss of motorcycle which earlier came to be granted by the learned Motor Accident Claims Tribunal. As these were errors apparent on the face of the record and hence the Judgment passed by this Court had to be reviewed accordingly.

3. Heard Shri E. Afonso, learned Advocate for the Applicant, who reiterated the contents of the application and pressed for a review of the Judgment under consideration. Besides, he adverted to the Notification issued by the Government dated 04.03.2013 pursuant to which the minimum wages had been fixed at ₹6,000/- per month. He also relied on an order in Civil Review Application No.2 of 2016 where 50% increase had been granted in favour of the party and therefore the Applicant too was entitled to such enhancement in the income as settled by the Apex Court in a number of decisions.

4. Shri U. R. Timble, learned Advocate for the Respondents No.3 contended that it was not a fit case for review as there was no error apparent on the face of the record. He relied upon Kamlesh Verma vs Mayawati [(2013) 8 SCC 320] and submitted that an attempt was made by the Applicant to re-assess the Judgment under the garb of review which was not permissible as it would tantamount to a re-

writing of a Judgment. Besides, the accident had occurred in 2003 and therefore the Circular of 2013 could not be pressed into service qua the minimum wages fixed by the Government. He therefore pressed for the dismissal of the application.

5. The Judgment in Smt. Sarla Verma vs. Delhi Transport Corporation [2009 (6) SCC 121] as also that in Santosh Devi vs National Insurance Company Limited & Ors [(2012) 6 SCC 421] were discussed by this Court while computing the quantum of compensation to be awarded in favour of the Applicant. However, while considering the earnings of the deceased, a 50% increase in the earnings of the deceased were not taken into account as laid down by the Hon'ble Apex Court and therefore this was an error apparent on the face of the record which needs correction. i am however unable to subscribe to the contention of Shri Afonso, learned Advocate for the Applicant that the minimum wages of ₹6000/- per month had to be taken into consideration as per the Government Notification of 2013 when the accident had admittedly taken place in the year 2003 unlike the Notification fixing the minimum wages at ₹6000/- per month in 2013. As such, taking a 50% increase in his earnings fixed at ₹5,000/-

per month, the deceased would have earned a reasonable sum of ₹7,500/- in due course if not ₹10,000/ as claimed by the Applicant.

6. On that basis, deducting one third towards his personal expense and applying the multiplier of 18, the compensation would work out to ₹10,80,000/-. The Applicant was earlier awarded a reasonable sum of ₹1,00,000/- towards the loss of estate and an equal amount towards the loss of love and affection apart from ₹25,000/- towards the funeral expenses which would now take the tally to ₹13,05,000/-. However, an error is also apparent from the face of the record which indicates that though the learned Motor Accident Claims Tribunal had granted an amount of ₹48,809/- towards the damages to the motorcycle, the same was not taken into account by this Court while awarding the compensation in the Applicant's favour. That amount would also be required to be added to the compensation now awarded in the Applicant's favour. An amount equivalent to 20% was deducted towards the uncertainties of life which need not be deducted considering the trend of the Judgments of the Apex Court and this Court and therefore no deduction is made on that count.

Last but not the least, the Applicant is awarded an amount of ₹50,000/- towards the loss of expectation of life taking the final tally to ₹14,03,809/- which is rounded off to ₹14,04,000/-.

7. In Kamlesh Verma (supra), the Hon'ble Apex Court while dealing with the Petition seeking review of the Judgment and Order dated 06.07.2012, passed in Mayawati vs Union of India & Ors. [(2012) 8 SCC 106] spelt out the summary of the principles in the matter of grant of review and the circumstances in which the review will not be maintainable. The review would be maintainable on discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him, mistake or error apparent on the face of the record and any other sufficient reason. A review would not be maintainable which involves a repetition of old and overruled argument and is not enough to re-open concluded adjudications, minor mistakes of inconsequential import and in any event proceedings could not be equated with the original hearing of the case. Review is not maintainable unless the material error, manifest on the

face of the order, undermines its soundness or results in miscarriage of justice. The error apparent on the face of the record should not be an error which has to be fished out and searched.

8. The Hon'ble Apex Court further held by referring to an earlier Judgment Hari Vishnu Kamath v. Ahmad Ishaque [AIR 1955 SC 233] that it is essential that it should be something more than a mere error, it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. These Judgments with respect not at all buttress the case of Shri Timble, learned Advocate for the Respondents No.3 that the review as sought is not permissible. Hence, the respectful departure of the application of these Judgments.

9. The Applicant has shown on the basis of the material on record itself that there was a manifest error by this Court in considering certain aspects of the matter which if allowed to stand would result in a miscarriage of justice. The

Review therefore is permissible in the facts of the particular case.

10. In the result, the application is allowed and the Applicant is held entitled to an amount of ₹14,04,000/- with interest.

NUTAN D. SARDESSAI J.