

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 4824 of 2004

DATE OF DECISION : 01.12.2017

General Manager, Haryana Roadways Depot, Ambala City and another

.... APPELLANTS

Versus

Joginder Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. D.R. Singla, DAG, Haryana,
for the appellants.

Mr. Prashant Gupta, Advocate, for
Mr. Suman Jain, Advocate,
for respondent No.2 – Insurance Company.

* * *

AVNEESH JHINGAN, J.

The present appeal has been filed by the General Manager, Haryana Roadways Depot, Ambala City and the State of Haryana, challenging the award dated 01.03.2004 passed by the Motor Accident Claims Tribunal, Yamunanagar at Jagadhri (for short, 'the Tribunal').

The legal issue involved in the present appeal is whether the Tribunal has power to review its order under the Motor Vehicles Act, 1988 (for short, 'the Act').

A bare facts necessary for adjudication of the present appeal are that there was a motor vehicular accident on 07.02.2001 involving a

Haryana Roadways bus bearing registration No. HR-37A-1805 (for short, 'the offending vehicle'). As a result of the accident, Sawnu Ram lost his life. Joginder Singh and Kishna suffered injuries. FIR No. 12 was registered at Police Station City Yamunanagar.

Three claim petitions were filed under Section 163-A of the Act.

The Tribunal, vide award dated 12.02.2004 allowed the claim petitions and awarded compensation along with interest in all the three claim petitions. In the said award, it was held that the Insurance Company failed to prove that Gurdial Singh (respondent No.3 in this appeal), driver of the offending vehicle, was not holding a valid and effective driving licence at the time of the accident. It was held that the insured had not violated any term and condition of the insurance policy. The net result was that the Insurance Company was held liable to pay the compensation.

Subsequently, the Tribunal vide order dated 01.03.2004 reviewed its earlier award dated 12.02.2004. The amount of compensation awarded was not touched, but decision on issue No.4 was reviewed :

“Whether the respondent no.1 (respondent No.3 in this appeal) was not holding any valid driving licence at the time of accident?”

It was held that Gurdial Singh was holding two driving licences. The first one was valid from 08.07.1997 to 07.07.2000, the second driving licence produced was valid from 11.01.2002 to 10.01.2005. The

accident in this case occurred on 07.02.2001. Therefore, none of the licences was valid on the day of the accident. The Tribunal held that since respondent No.1 Gurdial Singh (respondent No.3 in this appeal) was not holding a valid driving licence at the time of the accident, hence, recovery rights were granted to the Insurance Company.

Aggrieved of the aforesaid review order, the present appeal has been filed.

The amounts of compensation are not in dispute. The only dispute is against the review order passed by the Tribunal on issue No.4.

Before adjudicating the other issues, the root question involved is “whether the Tribunal had power to review its order?”

It is to be noted here that the Tribunal is a statutory authority and is discharging quasi judicial function. A Motor Accident Claims Tribunal is constituted under Section 165 of the Act. Section 166 of the Act lays down the procedure for moving an application for compensation. Section 168 of the Act deals with passing of the award by a Tribunal on receipt of application for compensation under Section 166. Section 173 of the Act provides for an appeal to the High Court against the award passed by a Tribunal.

For the sake of convenience, the relevant Sections are reproduced below :-

165. Claims Tribunals – (1) A State Government may, by notification in the Official

Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation – For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140 and section 163-A.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he -

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a High Court Judge or as a District Judge.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

166. Application for compensation – (1)
An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made -

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be :

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or

to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed :

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) omitted w.e.f. 14.11.1994 by Act 54 of 1994

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.

168. Award of the Claims Tribunal – (1)

On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the

amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be :

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

173. Appeals – *(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :*

Provided that no appeal by the person who

is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court :

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

The law is well settled that the power of review is not an inherent power. The statutory authority cannot exercise a power of review unless and until the statute/rules so permit. The review is neither a natural right nor a fundamental right. It is a statutory power, can be exercised only in case the statute bestows such jurisdiction on the authority.

The Hon'ble Apex Court in *Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd.*, 2008 (14) SCC 171, held as under :-

“25. The learned counsel for the Revenue contended that the normal principle of law is that once a judgment is pronounced or order is made, a Court, Tribunal or Adjudicating Authority becomes functus officio [ceases to have control over the matter]. Such judgment or order is

‘final’ and cannot be altered, changed, varied or modified. It was also submitted that Income Tax Tribunal is a Tribunal constituted under the Act. It is not a ‘Court’ having plenary powers, but a statutory Tribunal functioning under the Act of 1961. It, therefore, cannot act outside or de hors the Act nor can exercise powers not expressly and specifically conferred by law. It is well-settled that the power of review is not an inherent power. Right to seek review of an order is neither natural nor fundamental right of an aggrieved party. Such power must be conferred by law. If there is no power of review, the order cannot be reviewed.”

Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others,

2010 (9) SCC 437, held as under :-

*“12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: **Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & Anr., AIR 1965 SC 1457; and Harbhajan Singh v. Karam Singh & Ors., AIR 1966 SC 641**).*

*13. In **Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji, AIR 1970 SC 1273; Maj. Chandra Bhan Singh v. Latafat Ullah Khan & Ors., AIR 1978 SC 1814; Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya***

Mahavidhyalaya, Sitapur (U.P.) & Ors., AIR 1987 SC 2186; State of Orissa & Ors. v. Commissioner of Land Records and Settlement, Cuttack & Ors., (1998) 7 SCC 162; and Sunita Jain v. Pawan Kumar Jain & Ors., (2008) 2 SCC 705, this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.”

A Division Bench of this Court in **Gurjinder Singh and another Vs. State of Punjab and another**, 2016 (3) RCR (Civil) 342, held as under :-

“8. There is no gain-saying that a judicial or quasi-judicial authority cannot review its own order unless the power of review is vested in it. There is no inherent power of review exercisable by a judicial or quasi-judicial Forum. This is a conceded fact in the case in hand that there is no provision in the 1948 Act enabling the Authorities to review their own orders. In the absence of such a provision, we fail to understand as to how the application moved by respondent No.2 could be entertained or allowed by the first respondent.”

In the above said decisions, it has been specifically held that review is not an inherent power and an authority is not empowered to review its own order, unless such power of review is vested upon it.

Learned counsel for the appellants argued that there is no provision in the Act, under which the power of review has been given to the Tribunal. Hence, the award dated 01.03.2004 is without jurisdiction, null and void.

Learned counsel for respondent No.2 – Insurance Company, on the other hand, argued that the case on merits is very good, as the driver was not holding a valid driving licence on the date of the accident. In such circumstances, the Insurance Company cannot be held liable to pay compensation.

The contention raised by learned counsel for respondent No.2 – Insurance Company cannot be considered, as before adjudicating the merits of the case, it is to be first decided if the Tribunal could have reviewed its earlier award dated 12.02.2004. In absence of any specific provision of review in the Act, the Tribunal acted beyond jurisdiction in passing the award dated 01.03.2004, and same is, therefore, liable to be set aside.

Consequently, the appeal is allowed. The award dated 01.03.2004 is quashed.

December 01, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes