NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVIEW PETITION NO.42 OF 2018

Oriental Insurance Company Branch Jagdalpur District Bastar, Chhattisgarh (Insurer Of Maruti Car), District : Bastar, Chhattisgarh.

Applicant.....

Versus

1. Smt. Usha Gondi Wd/o Late Sunil Kumar Gondi Aged About 40 Years
2. Ku. Pinky D/o Late Sunil Kumar Gondi Aged About 14 Years
3. Ku. Puja D/o Late Sunil Kumar Gondi Aged About 12 Years
4. Mohit S/o Late Sunil Kumar Gondi Aged About 6 Years
   App. No.2 to 4 Through Mother And Natural Guardian App. No. 1 Smt. Usha Gondi,
   All R/o Kweara Munda, Bastar, Chhattisgarh (Claimants), District : Bastar(Jagdalpur), Chhattisgarh.
5. Md. Sabir S/o Md. Salim Aged About 31 Years R/o Mana Chowk, Nai Sharad, Hajari Bagh, District Hajari Bagh (Bihar) (Driver of Truck), Bihar
6. Uday Pratap Singh S/o Shri Dev Kumar Singh Aged About 26 Years M/s Kumar Transport Bhanpuri Road, Raipur, Through Shri Ram Transport Finance Ltd. Garchas Medican Complex, 1st Phase, Jail Road, Near Kutchari Chowk, Raipur, Chhattisgarh (Owner Of Truck).
7. New India Insurance Company Branch Gandhi Bag, Nagpur (M.S.) (Insurer Of Truck), District : Nagpur, Maharashtra
8. Area Manager Ashok Lend Finance Corporation, G.E.Road, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh.
9. Gopal Chakravarty S/o Shri Nital Chakravarty R/o Matkachora, Jagdalpur, Chhattisgarh (Driver Of Maruti Car), District : Bastar(Jagdalpur), Chhattisgarh.
10. Smt. Raj Rani Jaggi W/o Shri R.S.Jaggi Punjabi Colony Raipur, Chhattisgarh.

… Respondent(s)

For Applicant : Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24.07.2018

1. The present review petition has been filed seeking review of the order dated 10.07.2017 passed by this court in MA No.724 of 2002.

2. The facts of the case for adjudication of review petition is that, the claimants in the original Miscellaneous Appeal i.e. respondents No.1 to 4 herein (appellants in MA) had filed an Appeal challenging the award dated 18.07.2002 passed by the 3rd Additional Motor Accident Claims

Tribunal, Jagdalpur, in Claim Case No.10/2002. The Tribunal originally had awarded a compensation of Rs.80,000/- as full and final settlement. The claimant's appeal for enhancement came up for hearing before this court on 10.07.2017 and this court passed the impugned award on the same day enhancing compensation to the extent of total compensation payable to the claimants at Rs.10,50,000/- instead of Rs.80,000/- as awarded by the Tribunal. The payment of compensation was apportioned between the applicant herein-the Insurance Company to the extent of Rs.7,87,500/- and the owner and driver of the offending vehicle the compensation was assessed to pay Rs.2,62,500/-.

3. From the perusal of records it appears that the insurance company had applied for the certified copy of the said award on the very next day i.e. on 11.07.2017 and copy of which also received on 08.09.2017. Thereafter, now the present review petition has been filed after about 6 months from the date of receipt of certified copy i.e. on 09.03.2018.

4. The review has been sought for on two grounds. Firstly, the multiplier applied by this court while deciding the appeal was on the higher side and secondly, the interest awarded also is not justified.

5. The counsel for the applicant relies upon the judgment of Supreme Court in case of Dharampal & Others Vs. UP State Road Transport Corporation, 2008 AIR SCW 3947 as also in case of Sarla Verma & Others Vs. Delhi Transport Corporation, 2009(6)SCC 121.

6. Both the grounds raised by the applicant cannot be a ground for review of the order for the simple reason that the award passed by this court was in the presence of counsel representing the insurance company. At that point of time, the insurance company neither in their pleading nor in their submission had raised this contention. Once this court having found merit in the appeal of the claimants for enhancement and have decide the appeal in the presence of the counsel for the parties, the review application cannot have been filed on the ground that there are some judgments of the Supreme Court which lay down a different proposition. The only option available to the applicant was to challenge the award of this court before the higher forum.

7. The Insurance company, it appears, for reasons best known, sat upon the order of this court for more than six months and now when they found that the period for filing appeal before the Supreme Court has lapsed, they woke up from slumber and filed the present review petition perhaps with malafide intention of getting the delay condoned so that they can take the matter before the higher forum, if need so arises.

8. The review petitioner, by way of review application, are trying for re-hearing of the entire matter based on some judicial pronouncement of the Supreme Court. It is well settled law that fresh materials and plea cannot be permitted to be raised by way of review jurisdiction. Moreover, a perusal of order passed in writ petition would reflect that it has been passed after due appreciation and consideration of facts and it is not the case where there was any error apparent on the face of record. Review jurisdiction is not an Appeal in disguise. It does not permit re-hearing of matter on merits.

9. Re-appreciation of the facts of the case on the basis of fresh materials which were not there along with the writ petition and passing of fresh order by exercising the review petition is not permissible under law. It is well settled principles of law that the review proceedings are not to be considered as an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review. The jurisdiction under review does not permit an erroneous decision to be reheard and corrected.

10. This court does not find any strong case made by the applicant for invoking review jurisdiction of this court recalling the award dated 10.07.2017 passed by this court in MA No.724 of 2002.

11. The review petition, being totally misconceived and with oblique motive of timely denial of the claimant's rightful claim which they were otherwise entitled for, deserves to be and is hereby dismissed with cost of Rs.20,000/- to be paid by the applicant-Oriental Insurance Co. Ltd. within a period of 30 days from today before the High Court Legal Services Authority, Bilaspur, failing which the authorities can resort to RRC proceedings for recovering the same.

Sd/-
(P. Sam Koshy)
Judge

inder