

HIGH COURT OF CHHATTISGARH, BILASPUR

Review Petition No. 41 of 2018

Misc. Appeal (C) No.293 of 2006

1. Chhathu Prasad, S/o. Jhari Yadav, Aged About 57 Years, Caste Yadav, R/o. Village Palgi, Tehsil Pal, District Surguja, Civil & Revenue District Surguja, Chhattisgarh Now District Balrampur Chhattisgarh (Owner)
2. Durgesh Yadav, S/o. Chhathu Prasad, Aged About 29 Years, Caste Yadav, Occupation Vehicle Owner, R/o. Village Dhamni, Tehsil Pal, District Surguja, Civil & Revenue District Surguja, Chhattisgarh Now District Balrampur, Chhattisgarh (Driver)

---- Petitioners

Versus

1. The Oriental Insurance Co. Ltd. Through Branch Office Manendragarh Road, Near To Ambedkar Chowk, Ambikapur, District Surguja (Chhattisgarh) (Appellant)
2. Dayawati, Wd/o. Ramjanam, Aged About 20 Years, Caste Korva, R/o. Village Palgi, Tehsil Pal, District Surguja, Chhattisgarh Now District Balrampur, Chhattisgarh
3. Deepak, S/o. Late Ramjanam Dayawati, Aged About 1 Year, Caste Korva, Minor Through Guardian Mother Dayawati, Wd/o. Ramjanam, R/o. Village Palgi, Tehsil Pal, District Surguja, Chhattisgarh Now District Balrampur, Chhattisgarh (Claimants)

&

Misc. Appeal (C) No.297 of 2006

1. Chhathu Prasad, S/o. Jhari Yadav, Aged About 57 Years, Caste Yadav, R/o. Village Palgi, Tehsil Pal, District Surguja, Civil & Revenue District Surguja, Chhattisgarh Now District Balrampur Chhattisgarh (Owner)
2. Durgesh Yadav, S/o. Chhathu Prasad, Aged About 29 Years, Caste Yadav, Occupation Vehicle Owner, R/o. Village Dhamni, Tehsil Pal, District Surguja, Civil & Revenue District Surguja, Chhattisgarh Now District Balrampur, Chhattisgarh (Driver)

Versus

1. The Oriental Insurance Co. Ltd. Through Branch Office Manendragarh Road, Near To Ambedkar Chowk, Ambikapur, District Surguja (Chhattisgarh)
2. Shanti, Wd/o. Pankaj, Aged About 22 Years, Caste Kodaku
3. Ramesh, S/o. Late Pankaj, Aged About 2 Years, Caste Kodaku
4. Kamlesh, S/o. Late Pankaj, Aged About 7 Years, Caste Kodaku
5. Kamleshwar, S/o. Late Pankaj, Aged About 5 Years, Caste Kodaku

For Minor Respondents No.3 to 5 Through Guardian Mother Shanti, Wd/o. Late Pankaj and all are R/o. Village Palgi, P.S. Basantpur, Tehsil Pal, District Surguja, Chhattisgarh, Now District Balrampur, Chhattisgarh (Claimants)

---- Respondents

For Petitioners : Mr. Manoj Kumar Mishra, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

29.11.2018

1. Learned counsel for the petitioners submits that the order dated 04.11.2016 was passed without hearing to the respondents, as their counsel did not appear at the time of hearing.
2. The instant petition has been filed by the petitioners Chhathu Prasad & Durgesh Yadav who was respondent No.3 & 4 in M.A. (C) No.293 of 2006 and respondent No.5 & 6 in M.A.(C) No.297 of 2006. The records would show they were duly served and power was also filed on their behalf by the counsel, however, they choose not to appear when the case was called.
3. For the purposes of review, the principle has been laid down by the Supreme Court in the case of ***Kamlesh Verma Versus Mayawati and others {(2013) 8 SCC 320}*** which are reproduced hereunder:-

“Summary of the Principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1 When the review will be maintainable:-

(i) 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;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words ‘any other sufficient reason’ have been interpreted in Chhajju Ram v. Neki, [AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius [(1955) 1 SCR 520], to mean ‘a reason sufficient on grounds at least analogous to those

specified in the rule'. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [JT 2013 (8) SC 275].

20.2 When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

4. After going through the record, I do not find any reason exists so as to interfere with the order. Accordingly, the review petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge