

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 812 of 2018**

The Oriental Insurance Company Limited, Geetanjali Building, Main Road,
Old Bus Stand, Korba, Tahsil and District Korba (C.G.)

---- **Petitioner****Versus**

1. Sem Singh, aged about 25 years, S/o Mangal Singh, Caste Gond, R/o Dhanras, Police Station Pasaan, Tahsil Podi Uproda, District Korba (C.G.)
2. Narayan Singh Markam S/o Gulab Singh Markam, Caste Gond, r/o Village Jatga, Police Station and Tehsil Podi Uproda, District Korba, Chhattisgarh.
3. Jitendra Kumar Rai, S/o Baikunth Rai, R/o Katainaar Baki, Police Station Baki, Tahsil Katghora, District Korba, Chhattisgarh.

---- **Respondents**

 For Petitioner

: Mr. Deepak Gupa, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board**27/09/18**

1. In a claim petition filed by respondent No. 1, an award was passed by the Claims Tribunal on 10.07.2017 in favour of claimant granting compensation of Rs.5,000/-, and fastened the liability to pay compensation upon the petitioner/Insurance Company.
2. The petitioner/Insurance Company preferred an application for review of the aforesaid award dated 10.07.2017 under Order 47 Rule 1 of the Code of Civil Procedure (henceforth "CPC") on the ground that insured did not have valid permit to drive the offending vehicle on the date of incident.

3. Learned Claims Tribunal, by its impugned order dated 26.02.2018, rejected the review application finding that merit of the award cannot be looked into in the review jurisdiction, against which instant writ petition under Article 227 of the Constitution of India challenging the same.

4. Learned counsel for the petitioner would submit that impugned order passed by the learned Claims Tribunal is bad and unsustainable in law as the offending vehicle did not have valid permit to ply the vehicle on the date of accident.

5. I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

6. The short question that emanates for consideration in this petition is whether the Claims Tribunal constituted under the provisions of the Motor Vehicles Act, 1989 has power and jurisdiction to review its award on merits.

7. Section 169 of the Motor Vehicles Act provides for the power and jurisdiction of the Claims Tribunal and procedure to be followed by it. Section 169 of the Act reads as under:-

“169. Procedure and powers of Claims Tribunals.-

(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for purpose of taking evidence on oath

and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunals may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the enquiry.”

8. The Madhya Pradesh Motor Vehicles Rules, 1994 is also applicable in the State of Chhattisgarh. Rule 240 provides for procedure to be followed by the Claims Tribunal in holding enquiries and provides as under:-

“240. Procedure to be followed by Claims Tribunal in holding enquiries- application of certain provisions of Code of Civil Procedure, 1908: Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V, Rules 9 to 13, and 15 to 20, Order IX, Order XVIII, Rule 3 to 10, Order XVI, Rule 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.”

9. A careful reading of the provisions contained in Section 169 of the Motor Vehicles Act and Rule 240 of the Rules of 1994 would show that Order 47 of the Code of Civil Procedure which provides for review has not been made applicable expressly to the Claims Tribunal. Sub-section (1) of Section 169 provides that in holding enquiry under

Section 168, the Claims Tribunal may subject to any rules that may be made in this behalf follow such summary procedure as it thinks fit. Thus, the legislature in its wisdom has not expressly conferred any power of review to the Claims Tribunal constituted under the Motor Vehicles Act, 1989.

10. The question for consideration would be whether in absence of the express provision in the Motor Vehicle Act and rules made thereunder conferring power of review, such a power of review can be exercised by the Claims Tribunal to review its award on merits.

11. The expression 'review' is used in two distinct senses, namely (i) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it and (ii) review on merits when the error sought to be corrected is one of law and is apparent on the face of record.

12. The Supreme Court in the matter of **S. Nagraj & Ors vs. State of Karnataka & Anr.**¹ has held that review literally and even judicially means reexamination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility.

13. It is well settled law that the power of review is not inherent power it must be conferred either specifically or by necessary implication. The Supreme Court in the matter of **Patel Narshi Thakershi v. Pradvuman Singhji Arjunsinghji**² has held that if the

¹ 1993 Supp (4) SCC 595

² AIR 1970 SC 1273

power of review is not provided under the statute or by necessary implication, power of review cannot be exercised. Their Lordships held as under:-

“4.It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.....”

14. Similar is the law laid down by the Supreme Court in the matter of **Kapra Mazdoor Ekta Union vs. Management of M/s. Birla Cotton Spinning and Weaving Mills Ltd. & Anr.**³ in which it has been held that where a court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The power of review is not an inherent power and must be conferred by law either expressly or by necessary implication.

15. Recently, the Supreme Court in the matter of **Kalabharati Advertising vs. Hemant Vimalnath Narichania and others**⁴ while reiterating the law in this regard succinctly held that in absence of

³ (2005) 13 SCC 777

⁴ (2010) 9 SCC 437

statutory provision of review, review application cannot be entertained and 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 Jambekar⁵ and Harbhajan Singh v. Karam Singh⁶).

13. In Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji⁷, Major Chandra Bhan Singh v. Latafat Ullah Khan⁸, Kuntesh Gupta (Dr.) v. Management of Hindu Kanya Mahavidhyalaya⁹, State of Orissa v. Commr. of Land Records and Settlement¹⁰, and Sunita Jain v. Pawan Kumar Jain¹¹ 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.

5 AIR 1965 SC 1457

6 AIR 1966 SC 641

7 (1971) 3 SCC 844

8 (1979) 1 SCC 321

9 (1987) 4 SCC 525

10 (1998) 7 SCC 162

11 (2008) 2 SCC 705

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/ modification/correction is not permissible.”

16. Similarly, the Supreme Court while considering the question as to whether District Forum and State Commissions have power to set aside or recall their own ex-parte order in the matter of **Rajeev Hitendra Pathak and others v. Achyut Kashinath Karekar and another**¹² has held that the Tribunals are creatures of the statute and derive their power from express provision of the statute and in absence of power of review in the Consumer Protection Act, 1986, power of review cannot be exercised by the District Forums and the State Commissions and held as under:-

“34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised.”

17. The Madhya Pradesh High Court in the matter of **National Insurance Co. Ltd. v. Lachhibai @ Laxmibai and other**¹³ while considering the issue has held that the Claims Tribunal constituted under the Motor Vehicle Act, 1988 has power of review, when the

12 (2011) 9 SCC 541

13 1997(1) M.P.L.J. 356

review is sought to correct the procedural defect or error committed by Tribunal to prevent the abuse of process but it has no power to review the award on merits and held as under:-

“12. From the aforesaid discussion, it is clear that the power of review vests with the Tribunal in its inherent power under Section 169 of the Motor Vehicles Act though Rule 240 of the M.P. Motor Vehicles Rules, 1994 has not expressly provided for application of Order 47, Civil Procedure Code. A review application is maintainable when it is sought due to a procedural defect, or inadvertent error committed by the Tribunal, to prevent abuse of its process. Such power inheres in the Tribunal. The contention of the learned counsel for the non-applicant cannot be accepted that power of review is not provided by the statute, therefore, it cannot review its own order. As considered by me earlier, wide powers are vested with the Tribunal under Section 169 of the Motor Vehicles Act. Therefore, review on limited grounds as mentioned above is permissible.”

18. Subsequently, the Division Bench of the Madhya Pradesh High Court again in the matter of **Uttara Soni v. Oriental Insurance Co. Ltd. and others**¹⁴ followed the principle of law laid down in **Lachhibai** (supra) with approval.

19. However, the Supreme Court in the matter of **United India Insurance Co. Ltd. v. Rajendra Singh and others**¹⁵ has held that the Claims Tribunal has an inherent power to review its own award if it is obtained by fraud or misrepresentation. The relevant paragraph of the report states as under:-

14 2009 ACJ 276

15 (2000) 3 SCC 581

“16. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.”

20. Thus, from the aforesaid analysis it is quite *pellucid* that the power of review has not been expressly conferred to the Claims Tribunal constituted under the provisions of Motor Vehicle Act, 1989 and Rule 240 of the Rules of 1994. Order 47 Rule 1 of the CPC providing for review has not been made expressly applicable to the Claims Tribunal. Therefore, in absence of statutory provision the power of review of the award cannot be exercised by the Claims Tribunal except in a case where the award has been obtained from the Claims Tribunal by practicing fraud or making misrepresentation. However, the power of review is inherent in the Claims Tribunal to rectify procedural, arithmetical, clerical error or defect made by the Tribunal to prevent abuse of its process and to make its record straight and to that extent when a review is sought due to procedural defect, the inadvertent error committed by the Tribunal must be corrected ex-debito-justice to prevent abuse of its process and such power inheres in every Tribunal, the review application would be maintainable to the Claims Tribunal to review its award to that extent.

21. In the light of principle of law laid down in above-stated judgments, if the facts of the case are examined it is *quite vivid* that in

the instant case petitioner – Insurance Company is seeking review of the award on the merits holding that the offending vehicle, insured by petitioner/Insurance on the date of accident, was not having valid permit to ply the vehicle as this question cannot be appreciated in review jurisdiction. It has already been held that no express power of review has been conferred by the Act of 1989 to the Claims Tribunal to review its award on merits, therefore the Claims Tribunal is absolutely justified in rejecting the application for review filed by the appellant/Insurance Company by the impugned order. I do not find any jurisdictional error in the order impugned.

22. Accordingly, the writ petition, being devoid of merit, is liable to be and is hereby dismissed *in limine*.

SD/-
(Sanjay K. Agrawal)
Judge