

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.63 of 2013****Order reserved on :14.12.2018****Order delivered on: 02.01.2019**

National Insurance Company Limited, District Office "Pipari" P.S. & Post "Turra", District "Sonbhadra" (U.P.) Through Authorised Signatory National Insurance Company Limited, Divisional Office: B-1 Taha Complex, Ring Road II, Priyadarshani Nagar, Bilaspur, P.S. & Post Bilaspur District Bilaspur (CG)

---- Petitioner**Versus**

1. Prakash Rao Tirole S/o Subhakar Tirole aged about 21 years, Occupation-Student, R/o Village Jarhi, Police Station Bhatgaon, Tahsil Bhatgaon, District Surguja (CG)
2. Lalta Prasad Jaiswal S/o Shri A.P. Jaiswal, R/o Bouripara Ambikapur, Permanent Resident Village Mewathpur, P.S. Duddhi, District Sonbhadra (U.P.)
3. Shiv Shankar Prasad S/o Ramdev Singh, aged about 36 years, Caste-Gond, Occupation-Driver, R/o Matewatpur, Police Station Duddhi, District Sonbhadra (U.P.)

---- Respondents

For Petitioner	:	Mr.B.N.Nande, Advocate
For Respondents	:	None

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. The petitioner by the instant writ petition take objection to the order passed by the learned Claims Tribunal rejecting his review petition filed for reviewing the award on the alleged ground of fraud played by the claimant in course of trial of claim petition.
2. In the claim petition filed by the respondent No.1/claimant, the Claims Tribunal by its award dated 30.11.2007 awarded an amount of ₹ 4,00,740/- towards medical expenses and ₹ 9,215/- towards

transport/travelling expenses and in total granted ₹ 5,34,955/- along with 6% interest and fastened the liability against the present petitioner/Insurance Company to satisfy the award so passed.

3. Thereafter, on 24.1.2008 the petitioner filed an application under Section 169 of the Motor Vehicles Act, 1988 read with Sections 151, 152 and 153 of the CPC stating inter-alia that the Claims Tribunal has granted an amount of ₹4,00,739/- towards medical treatment incurred in Apollo Hospital stating it to be paid by the claimant, but on enquiry it was found that a sum of ₹ 3,42,663/- towards medical treatment and expenses was paid by the South Eastern Coalfields Limited to Apollo Hospital, Bilaspur as per investigator's report, as such, the award to that extent be set aside by reviewing the award passed earlier being obtained by suppressing the material fact.
4. The said application was opposed by the claimant stating the same to be not maintainable in law.
5. Learned Claims Tribunal enquired the application and by the impugned order rejected the same finding no merit. Questioning that order, this writ petition has been filed.
6. Mr.B.N.Nande, learned counsel for the petitioner relying upon the judgment of the Supreme Court in the matter of United India Insurance Company Limited v. Rajendra Singh¹ would submit that the Claims Tribunal is absolutely unjustified in rejecting the application for review of award dated 30.11.2007 as it is vitiated by fraud and misrepresentation played by the claimant and as such, the award and the impugned order are liable to be set aside.

¹ (2000) 3 SCC 581

7. I have heard learned counsel for the petitioner and went through the record with utmost circumscription.

8. 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.”

9. 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.”

10. 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.
11. 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.
12. 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.

13. The Supreme Court in the matter of S. Nagraj & Ors vs. State of Karnataka & Anr.² has held that review literally and even judicially means reexamination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility.

14. 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 Arjunsinghji³ has held that if the 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.....”

15. 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.⁴ 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

² 1993 Supp (4) SCC 595

³ AIR 1970 SC 1273

⁴ (2005) 13 SCC 777

and must be conferred by law either expressly or by necessary implication.

16. Recently, the Supreme Court in the matter of Kalabharati Advertising vs. Hemant Vimalnath Narichania and others⁵ while reiterating the law in this regard succinctly held that in absence of 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 Jambekar⁶ and Harbhajan Singh v. Karam Singh⁷).

13. In Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji⁸, Major Chandra Bhan Singh v. Latafat Ullah Khan⁹, Kuntesh Gupta (Dr.) v. Management of Hindu Kanya Mahavidhyalaya¹⁰, State of Orissa v. Commr. of Land Records and Settlement¹¹, and Sunita Jain v. Pawan Kumar Jain¹² 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

5 (2010) 9 SCC 437

6 AIR 1965 SC 1457

7 AIR 1966 SC 641

8 (1971) 3 SCC 844

9 (1979) 1 SCC 321

10 (1987) 4 SCC 525

11 (1998) 7 SCC 162

12 (2008) 2 SCC 705

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.

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.”

- 17.** 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 another¹³ 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.”

- 18.** The Madhya Pradesh High Court in the matter of National Insurance Co. Ltd. v. Lachhibai @ Laxmibai and other¹⁴ while

¹³ (2011) 9 SCC 541

¹⁴ 1997(1) M.P.L.J. 356

considering the issue has held that the Claims Tribunal constituted under the Motor Vehicle Act, 1988 has power of review, when the 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.”

19. Subsequently, the Division Bench of the Madhya Pradesh High Court again in the matter of Uttara Soni v. Oriental Insurance Co. Ltd. and others¹⁵ followed the principle of law laid down in Lachhibai (supra) with approval.

20. However the Supreme Court in the matter of United India Insurance Co. Ltd. v. Rajendra Singh and others¹⁶ 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:-

¹⁵ 2009 ACJ 276

¹⁶ (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.”

21. 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, the review application would be maintainable to the Claims Tribunal to review its award.

22. The Claims Tribunal has clearly recorded a finding that the petitioner/Insurance Company has failed to establish that Bill No.17836 dated 17.06.2005 ₹ 3,42,663/- was paid by SECL to Apollo Hospital. The Claims Tribunal has recorded a categorical finding that the petitioner/Insurance Company has failed to establish the fact of fraud having been played while obtaining the amount towards medical expenses by analyzing and appreciating the evidence available on record. The said finding is a finding of fact

based on evidence available on record, which is neither perverse nor contrary to record.

23. I do not find any merit in this writ petition. The writ petition being without substance is liable to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-