

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. : 7589 OF 2019

1)Meena w/o Popat Mhaske
Age : 49 years, Occu : household,
R/o : RX-6-18/2, Bajajnagar,
MIDC Waluj, TQ & District
Aurangabad

2)Narayan Babasaheb Dhande
Age : 35 years, Occu : driver.
R/o : village Limba, Tal. Sirur,
Dist. Beed.

....PETITIONERS

VERSUS

1)The Manager,
Bajaj Alliainz General Insurance
Co. Ltd. GE Plaza, Airport road,
Yermala, Pune.

2)Mrs. Surekhabai wd/o Baban Dhule
Age : 41 years, Occu ; household,
R/o : RM-285, Shivlaya Chouk,
Bajaj nagar MIDC Waluj, Aurangabad

3)Chanrakala d/o Baban Dhule
Age : 24 years, occu : Education,
R/o : As above.

4)Jaishree D/o Baban Dhule
Age : 20 years, occu : education,
R/o as above.

5)Snadhya d/o Baban Dhule
Age : 22 years, occu ; education,
R/o as Above.

6)Pratiksha D/o Baban Dhule
Age : 20 years, occu : Education,
R/o as Above.

7)Prafull s/o Baban Dhule
Age : 18 years, Occu : Education,
R/o : as Above.

... RESPONDENTS

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Advocate for the Petitioners : Shri Manoj D. Shinde and
Ms. Savita P. Kakade (Matkar)
Advocate for the Respondent No.1 : Shri S. G. Chapalgaonkar
Advocate for Respondent Nos. 2 to 7 : Shri V. P. Kadam

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 03rd AUGUST, 2019.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The petitioners are the original respondent Nos. 1 and 2
in the Motor Accident Claim Petition No. 96/2012. They are
aggrieved by the order dated 08/02/2019, delivered by the
Tribunal, by which, MACP Misc. Application No. 02/2019, has
been rejected and the Tribunal has refused to correct a mistake
that has occurred in the judgment dated 28/11/2018, by
which, the claim petition was allowed and the entire liability of

paying the compensation was foisted on these petitioners.

3. This case brings up a peculiar issue as regards a mistake in the judgment of the Motor Accident Claims Tribunal. The mistake that has occurred is such which would seldom appear as a mistake in any proceeding.

4. The compensation claimants, who are respondent Nos. 2 to 7 herein, had approached the Tribunal under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs. 23,36,000/-. They claimed to be the legal heirs of the deceased Baban Natha Dhule, who died in a motor vehicle accident that took place on 09/10/2011 at about 6.00 p.m. near the FDC Company, MIDC Waluj, Aurangabad. Petitioner No.2 was driving a four wheeled vehicle which crashed on to the moped vehicle of the deceased Baban. Baban passed away on 30/11/2011 while under treatment in a Super Speciality Hospital at Aurangabad. He was working with an industry by name M/s. Pawan Steel Furniture Works at Ranjangaon, Aurangabad and his monthly earnings were said to be Rs. 18,000/-. The claim was allowed on 28/11/2018.

5. The original respondent No. 3 had initially examined one Shri Namdeo Tukaram Wagh, who was in RTO, Beed. He had specifically deposed that he was an employee posted at Beed RTO as a Junior Clerk. He had brought the original file pertaining to the driving license of Narayan Babasaheb Dhande, petitioner No. 2 herein. He mentioned the license number of the vehicle, date of issuance as 04/12/1998 and the category as "heavy goods (HMV)". It was valid from 04/12/1998 to 01/12/2011. The insurance company alleged that, on 09/10/2011, Narayan was not having a valid and effective driving license as per the record. There was no entry in the office file that Narayan had renewed the driving license on 01/02/2011 atleast from 01/02/2011 to 21/12/2012. This portion is set out in paragraph 21 of the judgment.

6. In paragraph 22, the Tribunal concluded that the petitioners had examined Prashant Umraosingh Shinde from RTO office, Aurangabad. It is further recorded that Prashant Shinde deposed that the license was valid from 17/03/2011 up to 16/03/2014 as per the record. The receipt number for

depositing renewal license fees was also mentioned. However, in the same paragraph, the Tribunal concluded that since Prashant Shinde was working in the RTO at Aurangabad and the matter pertains to Beed, his evidence cannot be believed and has to be discarded. The mistake that has occurred is that Prashant Shinde was not an officer from RTO, Aurangabad, but was actually an officer from RTO, Beed who used to reside at Aurangabad and used to travel daily to reach his office to Beed.

7. I am not required to go into the analysis of the Claims Tribunal in paragraph Nos. 21 and 22 since I am not dealing with the merits of the said judgment. I am dealing with an issue raised by the petitioners that the deposition of Prashant Shinde was discarded by the Tribunal under a mistaken belief that he was working in RTO, Aurangabad and had nothing to do with RTO, Beed. Contention of the petitioners is that if the testimony of Prashant Shinde is considered, as he indeed was working in RTO, Beed, the entire result of the proceedings would be altered and the petitioners would not be liable to pay compensation amount since the entire liability would then shift

on to the Insurance Company.

8. It is in the above backdrop that these petitioners preferred MACP -MA No. 02/2019 invoking Section 169 of the Maharashtra Motor Vehicles Act and Sections 151 and 152 of the Code of Civil Procedure. The Tribunal concluded that it does not have the jurisdiction, either under Section 151 or under Section 152, because it has become *functus officio* after a passage of time and cannot re-appreciate the evidence and come to a conclusion diagonally opposite to the conclusion that it has drawn in the judgment.

9. The learned Advocate for the Insurance Company has drawn my attention to Sections 169 and 176 of the Motor Vehicles Act and Rules 275 and 276 framed under Section 176 and which are known as the Maharashtra Motor Vehicles Rules, 1989.

10. Before proceeding to deal with the issue raised, I deem it appropriate to reproduce the following provisions for ready reference :-

Section 169 of the Motor Vehicles Act :-**" 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 the 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.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal 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 inquiry."

Section 176 of the Motor Vehicles Act :-**"176. Power of State Government to make rules**

– A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely :-

(a) the form of application for claims for compensation

and the particulars it may contain, and the fees, if any, to be paid in respect of such applications ;

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter ;

(c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;

(d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and

(e) any other matter which is to be, or may be, prescribed.

Rules 275 and 276 of the Maharashtra Motor Vehicles

Rules, 1989 :-

275. Power vested in Civil Court which may be exercised by Claims Tribunal .-- (1) *Without prejudice to the provisions of Section 169,--*

(a) Every Claims Tribunal, may exercise all or any of the powers vested in a Civil Court under the following provisions of the Code of Civil Procedure, 1908, in so far as they may be applicable namely :--

Sections 30, 32, 34, 35, 35(a), 75(a) and (c), 76, 77 , (89), 94, 95, 132, 133, 134, 145, 147, 148, 149, 151, 152 and 153 ;

(b) In addition to the provisions of Section 174,--

(i) Any Claims Tribunal constituted for Greater Bombay where the amount of compensation awarded by it does not

exceed twenty-five thousand rupees, shall have all the powers of the City Civil Court, and where such amount exceeds the said sum, shall have all the powers of the High Court, for the purpose of execution of the award, as if the award is a decree for the payment of money made in Suit by City Civil Court or High Court, as the case may be, and the Claims Tribunal shall execute the same through the Sheriff of Greater Bombay as if the same has been executed by the City Civil Court or High Court, as the case may be.

(ii) any Claims Tribunal constituted for in or outside Greater Bombay, shall have all the powers of the Court of Civil Judge (Senior Division) for the purpose of execution of any award for compensation made by it, as if the award is a decree for the payment of money made in a suit by such Court.

(2) For the purposes other than those specified in sub-rule (1), the Claims Tribunal may exercise all or any of the powers of a Civil Court as may be, necessary in any case for discharging its functions under the Act and made thereunder rules.

276. Procedure to be followed by Claims Tribunal in holding enquiries.-- *(1) The following provisions of the Code of Civil Procedure, 1908 shall, so far as may be, applied to the proceedings before every Claims Tribunal, namely ---*

(a) Sections 28, 79, [82 and 89]

(b) in the First Schedule, Order V, Rules 9 to 13 (both inclusive) and 15 to 30 (both inclusive), Order VI, Rules 4,

5, 7, 10, 11, 16, 17 and 18, and Order VII, Rule 10, Order Rules 2 and 5 (both inclusive), 9 and 10, Order IX, Order XI, Rules 12 and 15 (both inclusive), 17 to 21 (both inclusive) and 23 Order XII, Rules 1 to 3A, 4, 7 and 9, Order XIII, Rules 3 to 10 (both inclusive), Order XIV, Rules 2 and 5, Order XVI, Order XVII, Order XVIII, Rules 1 to 34 (both inclusive), 10 to 12 (both inclusive) and 15 to 18 (both inclusive), Order XIX, Order XX Rules 1 to 3 (both inclusive), 8, 11 and 20, Order XXI, Order XXII, Rules 1 to 7 (both inclusive) and 9, Order XXIII, Rules 1 to 3 (both inclusive), Order XXIV, Order XXVI, Rules 1 to 8 (both inclusive) and 15 to 18 (both inclusive), XXVII, Order XXVIII, Order XXIX, Order XXX, Rules 1, 3 to 8 (both inclusive) and Rule 10 Order XXXII, Rules 1 to 15 (both inclusive), Order XXXVII, Rules 1 to 10 (both inclusive), and Order XXXIX, Rules 1 to 5 (both inclusive). In so far as the Act and these rules make no provision or make sufficient provision, the relevant provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply to the proceedings before the Claims Tribunal."

Sections 114, 151, 152 and Order XLVII of the Code of Civil Procedure.

"**Section 114. Review .-** – Subject as aforesaid, any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been

preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Section 151 : Saving of inherent powers of Court –

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court

Section 152 : Amendment of judgments, decrees or

orders.-- *Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.*

Order XLVII : 1. Application for review of

judgment – (1) *Any person considering himself aggrieved,---*

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence,

was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review."

11. The learned Advocate for the petitioners has relied upon the following judgments:-

(a) U.P.S.R.T.C. Vs. Imtiaz Hussain, AIR 2006 Supreme Court 649

(b) Kamlesh Verma Vs. Mayawati and others, (2013) 8 Supreme Court Cases 320

(c) National Insurance Company Ltd., Jabalpur, Vs. Lachhibai Urf Laxmibai, AIR 1997 Madhya Pradesh 172.

(d) Patel Narshi Thakershi and others Vs.

Pradyumansinghji Arjunsinghji, AIR 1970 Supreme Court 1273.

(e) Satnam Verma Vs. Union of India, AIR 1985 Supreme Court 294

(f) Grindlays Bank Vs. The Central Government Industrial Tribunal and others, AIR 1981 Supreme Court 606.

12. The learned Advocate for the Insurance Company relies upon the following judgments:-

a) Kalabharati Advertising Vs. Hemant Vimalnath Narichania, (2010) 9 Supreme Court Cases 437.

b) Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. and another, (2005) 13 Supreme Court Cases 777,

c) National Insurance Co. Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, (2002) 7 Supreme Court Cases 456,

d) United India Insurance Co. Ltd. Vs. Rajendra Singh and others with United India Insurance Co. Ltd. Vs. Sanjay Singh and others, (2000) 3 Supreme Court Cases 581.

e) Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and others, 1980 (Supp) Supreme Curt

Cases 420

- f) Indian Oil Corporation Ltd. and another vs. Union of India and others, 1980 (Supp) Supreme Court Cases 426,*
- g) National Insurance Co. Ltd. Vs. State of Himachal Pradesh and Ors. and National Insurance Co. Ltd. Vs. Smt. Dev Mani & Ors., 2016 SCC OnLine HP 3924*
- h) National Insurance Company Ltd. Vs. Lachhibai @ Laxmibai and others, [1997 (1) M.P.L.J., 356*
- i) Oriental Insurance Company Ltd. Vs. Sudha Devi wd/o Gopal Singh and others, [1997 (1) M.P.L.J. 362*
- j) R.K.B.K. Ltd. Vs. Sushila Devi and Ors., Matters under Article 227 No. 3886 of 2015, decided on 25.08.2015.*

13. Shri Chapalgaonkar, learned Advocate for the Insurance Company points out from Section 176 that the State Government is empowered to make the Rules under the Motor Vehicles Act. If Rule 275 is seen, it would indicate that Section 114 and Order XLVII of the Code of Civil Procedure, have been specifically excluded. Rule 275 deals with the powers of the Civil Court. Under Rule 276, the procedure to be followed by the Claims Tribunal in holding enquiries is prescribed and the

legislators have specifically excluded Order XLVII from the said Rules. He therefore canvasses that Order XLVII, which permits a litigant to file a review, has been intentionally and with a purpose, kept away from the Motor Vehicles Act. Section 114 and Order XLVII are not made applicable to the Tribunals for the specific purposes found in Rules 275 and 276 and it would be unsafe for the Court conclude that the Tribunal has the power to Review. He submits that the Court can only interpret and cannot legislate.

14. I find it appropriate to rely upon the view taken by the Honourable Apex Court in the matter of U.P.S.R.T.C. (supra), and especially the conclusions drawn in paragraph Nos. 7, 8 and 9 which read as under :-

" 7. Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of

remedies provided in respect of the same and the very Court or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the Section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of Code even after passing of effective orders in the lis pending before them. No Court can, under the cover of the aforesaid sections,

modify, alter or add to the terms of its original judgment, decree or order. Similar view was expressed by this Court in Dwaraka Das Vs. State of Madhya Pradesh and another (1999(3) SCC 500) and Jayalakshmi Coelho V. Oswald Joseph Coelho (2001 (4) SCC 181).

8. The basis of the provision under Section 152 of the Code is founded on the maxim 'actus curiae neminem gravabit' i.e. an act of Court shall prejudice no man. The maxim "is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law", said Cresswell J. in Freeman v. Tranah (12 C.B. 406). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified. In Master Construction Co. (p) Ltd. Vs. State of Orissa (AIR 1966 SC 1047) it was observed that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected. To illustrate this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the Court which may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits can be entertained to facilitate such rectification

of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case.

9. The maxim of equity, namely, *actus curia neminem gravabit* – an act of court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia* – the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in *Raj Kumar Dey v. Tarapada Dey* (1987 (4) SCC 398), *Gursharan Singh v. New Delhi Municipal Committee* (1996 (2) SCC 459) and *Mohammad Gazi v. State of M.P. and others* (2000 (4) SCC 342). The principles as applicable to Section 152, CPC are clearly applicable to Section 6(6) of the U.P. Act. In the aforesaid background the Labour Court was not justified in modifying the award as was originally made. The High Court also had not considered this aspect and decided the writ petition filed by the present appellant on issues other than this vital issue."

[Emphasis supplied]

15. In the case of *Kamlesh Verma (supra)*, the Hon'ble Apex Court concluded in paragraph Nos. 14, 19, 20, 20.1 and 20.2 as under :-

"14. Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. This Court in Col. Avtar Singh Sekhon v. Union of India - 1980 Supp SC 562 : 1981 SCC (L & S) 381 held as under : (SCC p. 566, para 12)

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow. Chandra Kante v. Sk. Habib - (1975) 1 SCC 674 : 1975 SCC (Cri)305 : 1975 SC (L&S) 184 : 1975 SCC (Tax) 200 this Court observed : (SCC p. 675, para 1)

'1.A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ...The present stage is not a virgin ground but review of an earlier order which has the

normal feature of finality.' "

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

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 - AIR 1954 SC 526 : (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. - (2013) 8 SCC 337 : 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."

16. The Madhya Pradesh High Court has held in the case of *National Insurance Company Ltd., Jabalpur (supra)*, in

paragraph Nos. 10, 11 and 12 and 13 which read as under :-

"10. The procedure and powers of the Claims Tribunal are provided under Section 169 of the Motor Vehicles Act, 1988. Subsection (1) of Section 169 provides that the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. Similar provision is provided under Section 11 of the Industrial Disputes Act. A Full Bench of the Punjab and Haryana High Court in Jai Singh v. N. A. Subramaniam, AIR 1982 Punj and Har 407, has considered the scope of Section 100C of the Motor Vehicles Act of 1939. While considering the powers of the Claims Tribunal regarding the sentence "The Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit, the Court held that the Tribunal is at liberty to follow any procedure that it may chose to evolve itself so long as the said procedure is not arbitrary, is consistent with the rules of natural justice, and does not contravene the positive provisions of law. When such a wide power exists in the Tribunal, there will absolutely be no justification to reconstruct the exercise of that power on the ground that the legislature impliedly intended to do so by not applying all provisions of the Code of Civil Procedure. In order to do justice and to achieve the purpose for which it has been constituted, a constituted, a Tribunal would have inherent power to apply all or any of the procedures of the C.P.C.

On principles of justice, equity and good conscience. The Supreme Court while considering the scope of the similar provisions under Section 11 of Industrial Disputes Act, held that the power of review is not inherent power, it must be conferred either specifically or by necessary implication. Subsections (1) and (3) of Section 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act- while the procedure is left to be derived by the Tribunal to suit carrying out of its functions under the Act, the powers of the Civil Court conferred upon it are clearly defined.

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. In the case of Narshi Thakershi's case (AIR 1970 SC 1273) it is held that no review lies on merits unless the statute specifically provides for it. Obviously, when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process and such power inheres in every Court or Tribunal. The Hon'ble Supreme Court has given a limited power of review to the Tribunal and while considering the scope of sub-sections (1) and (3) of Section 11, it was held that the review is maintainable.

Similarly, in *Satnam Verma's case* (AIR 1985 SC 294) (*supra*), considering the scope of powers of the Tribunal under Section 11 of the Industrial Disputes Act, it was held that the Tribunal is endowed with such ancillary or incidental power as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. The jurisdiction vested in the Tribunal under the wide powers cannot be denied by the Tribunal itself.

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, C.P.C. 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.

13. In the result, the order of the Claims Tribunal holding that it has no power to review the award is therefore set aside and the case is remanded to it for

deciding the application for review on merits in accordance with law. The revision is allowed. There shall be no order as to costs."

[Emphasis supplied]

17. In the matter of *Patel Narshi (supra)*, the Honourable Apex Court (Three Judges Bench) has held that the power of review is not an inherent power and it must be conferred by law, either specifically or by necessary implication. I do not find that the view expressed in *National Insurance Co. Jabalpur (supra)* could be interpreted to mean that a Tribunal can review its judgment on its merits, in the light of *UPSRTC and Patel Narshi (supra)*.

18. In the matter of *Grindlays Bank Ltd. (supra)*, it was concluded that if a Tribunal sets aside an *exparte* award, such setting aside does not amount to review and the Tribunal does not become *functus officio* provided an application is filed within 30 days of the publication of the award.

19. Insofar as *National Insurance Company Judgment (supra)*, is concerned, the Madhya Pradesh High Court (learned Single

Judge) infact concluded that no review lies on the merits unless the statute specifically so provides. When a review is sought only with regards to a procedural defect, the inadvertent error committed by the Tribunal may be corrected to prevent the abuse of the process of law.

20. In *Oriental Insurance Company Ltd. (supra)*, the High Court of Chhattisgarh held on the basis of ***United India Insurance Company Ltd. Vs. Rajendra Singh and others (2000) 3 SCC 581***, that no Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was obtained through fraud or misrepresentation.

21. In the matter of *Kalabharati Advertising (supra)*, the Honourable Apex Court has held in paragraph Nos. 11 to 14 as under :-

" 11. We have considered the rival submissions made by both the parties and perused the record.

Legal Issues

Review in absence of statutory provisions

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 the 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 – AIR 1965 SC 1457 and Harbhajan Singh v. Karam Singh – AIR 1966 SC 641.)

13. In *Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji* – (1971) 3 SCC 844 : AIR 1970 SC 1273. *Major Chandra Bhan Singh v. Latafat Ullah Khan* (1979) 1 SCC 321. *Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya* (1987) 4 SCC 525 : 1987 SCC (L & S) 491 :AIR 1987 SC 2186. *State of Orissa v. Commr. of Land Records and Settlement* (1998) 7 SCC 162 and *Sunita Jain v. Pawan Kumar Jain* – (2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537 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 the 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 the absence of any statutory provision for the same is a nullity, being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an

application for review or under the garb of clarification/modification/correction is not permissible."

[Emphasis supplied]

22. It is, therefore crystal clear that unless the statute or the rules permit a review, such an application would not be maintainable in case of judicial or quasi judicial orders. In the absence of any statutory provision providing for a review, entertaining an application for review or for recalling a judgment under the garb of modification or correction, is not permissible.

23. In *Kapra Mazdoor Ekta Union (supra)*, the Honourable Apex Court has held in paragraph No.19 as under :-

" 19. Applying these principles it is apparent 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 procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) as

procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire

proceeding. In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again."

24. In the case of *United India Insurance Limited (supra)*, the Honourable Apex Court concluded that if a fraud is committed on any Court or Tribunal and an application is filed under Sections 151, 152 and 153 of the Code of Civil Procedure for recalling an award, the fraud committed must be specifically indicated and the Trial Court would have the power to recall an order in the face of a fraud or a misrepresentation.

25. In the matter of *Asha d/o Bhalchandra Joshi Vs. National Insurance Company Ltd. 2008 (1) MhLJ 724*, the learned Division Bench of this Court has concluded that all the provisions under the Code of Civil Procedure applicable to the Civil Courts, would not apply to the Claims Tribunal and concluded that a Claims Tribunal is not a Civil Court. This would, therefore, indicate that unless a specific provision is prescribed in the Act, the Claims Tribunal cannot review or

recall its judgment.

26. The learned Advocate for the petitioners has strenuously submitted that the language of Section 151 may be appreciated and nothing in the Code would deem to limit or otherwise restrict the inherent power of the Court to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of law. He further submits that under Section 152 of the CPC, clerical or arithmetical mistakes in a judgment, decree or order or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court either on the Court's motion or on an application from the parties. He therefore, submits that a serious error committed by the Tribunal in discarding the testimony of Prashant Shinde, has led to a completely different conclusion in the matter. The whole liability which would have been foisted upon the Insurance Company since petitioner No.2 had a valid driving license on the date of the accident, has now fallen upon the shoulders of the petitioners, who are directed to pay the entire amount of about Rs. 24 Lakhs. If the said mistake is corrected and if the

evidence of the witness Prashant Shinde is considered, the entire verdict in the matter would be altered and the Insurance Company would have to shoulder the liability and not the petitioners.

27. It is, therefore, quite evident that the petitioners are carrying an impression that if the evidence of Prashant Shinde is taken into account, the verdict already pronounced would undergo a drastic change. The parties will have to re-argue before the Claims Tribunal and the Tribunal would have to re-appreciate the evidence and arrive at a new finding, which is not the scope of Section 151 and 152 or even Section 153 of the Code of Civil Procedure.

28. I find that though Section 151 pertains to the inherent powers of the Civil Court, it can make such orders under that provision which would be necessary to meet the ends of justice or to prevent abuse of the process of the Court. However, if Section 151 is to be interpreted in a way so as to mean that the Tribunal can practically overturn its earlier decision and arrive at a new decision, it would be against the intent and object of

the legislature to keep Section 114 and Order XLVII away from the Motor Vehicles Act. The legislature intends that the Tribunal should not cause a review and should not entertain a review as regards its order or judgment delivered, on its merits.

29. I do not find that the Madhya Pradesh High Court or the Chhattisgarh High Court had noticed that Section 114 and Order XLVII were specifically not made applicable to the Tribunal. It would indicate that the legislature did not intend that the Tribunal should have the power to review its own judgment or orders. It is possible that the legislature had in mind that the claimants, who litigate for compensation on account of the injuries caused to a family member or the loss of a family member, which would take away a bread earner, would then be tired out in litigation by permitting a litigant to seek a review. The rigors of litigation being suffered by the claimants would thus be increased and it would take years for them to receive the compensation amount. I find that Sections 151 to 153 would not permit the Court to amend its own order/judgment or cure any defect which would affect the

merits of the case.

30. In view of the above, as there is a specific absence of a statutory provision providing for a review and since the power of review under Section 114 and Order XLVII have been excluded under Rules 275 and 276 defining the procedure and powers of the Tribunal, a Motor Accidents Claims Tribunal cannot review its judgment on its merits. To make it more clear, correcting a simple error or mistake or arithmetical calculations would be permitted under Sections 151/152/153. However, a mistake as like the one which has occurred in paragraph 22 of the judgment of the Tribunal in the case in hand, which would alter the decision of the Tribunal and which would require a re-argument and re-appreciation of evidence, would not be permissible.

31. In view of the above, I do not find that the Tribunal has committed any error in passing the impugned order declining the request of the petitioner to correct the error.

32. This petition, being devoid of merit is, therefore,

dismissed. Rule is discharged.

33. Before I part with this judgment, I find it appropriate to record my appreciation for the efforts put in by Shri Chapalgaonkar and Shri Shinde, learned Advocates, who have ably assisted this Court in this matter.

(RAVINDRA V. GHUGE, J.)

shp/-