

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Review Petition No. 48 of 2019

National Insurance Company Limited, Second Manjil Mobin Mahal, Behind
Jila Co-operative Bank, G.E. Road, Raipur, Chhattisgarh.

---Petitioner(s)

Versus

1. Shekhar Kumar Thakur (Now Dead) S/o Late Ramdhar Thakur Aged About 17 Years R/o Baaspara Durg, Near Gawra Chowra Tahsil Durg District Durg, Chhattisgarh Through His Legal Representatives:

1.(A) Smt. Kejiya Thakur Wd/o Late Ramadhar Thakur,

1.(B) Smt. Pooja Thakur Wd/o Late Shekhar Kumar Thakur

1.(C) Prince Thakur S/o Late Shekhar Kumar Thakur, aged 7 years,

1.(D) Yash Thakur S/o Late Shekhar Kumar Thakur Aged 5 Years

Respondents No.1C and 1D are Minor Through Their Mother Smt. Pooja Thakur (Respondent No. 1B).

Respondents No. 1A to 1D are R/o Near Guora Choura, Near Banspara Durg, Tahsil And District Durg, Chhattisgarh.

2. Manoj Kumar Sahu S/o Pritam Sahu Aged About 35 Years R/o Polsaypara, Durg, Tahsil, Police Station And Post Office Durg, District Durg, Chhattisgarh.
3. Navneet Jha S/o Late U.K. Jha Branch Manager, Proprietor Ashok Layland Finance Company Bhilai, Tahsil Durg, District Durg, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Dashrath Gupta, Advocate.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

06.02.2020

1. Heard on IA No.1, which is an application for condonation of delay in filing the review petition.
2. Taking into consideration the entire facts and circumstances of the case and also the contents reflected therein, this court is of the opinion that a strong case is made out to condone delay in filing the review petition. Accordingly delay of 517 days in filing the review petition stands condoned.

3. This review petition has been filed by the petitioner-Insurance Company seeking review of the order dated 31.07.2017 passed by this court in Misc. Appeal No.769 of 2005.
4. The said appeal was an appeal for enhancement by the claimant-injured arising out of the award passed by the 9th Additional Motor Accident Claims Tribunal (FTC) Durg, in Claim Case No.130 of 2004. The Tribunal while passing the award had granted compensation of Rs.58,486/- to the claimant. This amount of compensation has been since enhanced by this court vide its order dated 31.07.2017, the review against which has been filed. This court had enhanced the compensation from Rs. 58,486/- to Rs.4,60,000/-. The interest part was the same as awarded by the Tribunal while passing the award on 16.03.2005.
5. The review petition has been filed on the ground that on the date when the appeal was being heard by this court on 31.07.2017, infact the appeal had already abated as the appellant/injured person had already expired as early as on 30.10.2015.
6. Learned counsel appearing for the review petitioner herein has produced death certificate of deceased Shekhar Kumar Thakur. The same is taken on record. In view of the death certificate produced, the contention of the counsel for the review petitioner is that since the claimant had already died on the date when the appeal was heard finally, by this court on 31.07.2017, the appeal had already abated by that time as there was no substitution was made by the legal representatives of the appellant/claimant before this court. In support of his contention, the review petitioner has relied upon Full Bench decision of the MP High Court in case of Smt. Bhagwati Bai & Another Vs. Bablu and Others, AIR 2007

MP 38, wherein it has been held that the claim for personal injury will stand abated on the death of the claimant.

7. This court had made various efforts in getting the service made upon the family members of the deceased claimant. They were duly served, but there has been no representation on their behalf. There is also no representation on behalf of the owner and driver of the vehicle inspite of substitute service of paper publication also being made.
8. Given the aforesaid facts and circumstances of the case and taking into consideration the Full Bench decision of MP High Court in Smt. Bhagwati Bai (Supra), this court is forced to reach to a conclusion that a strong case is made out for review of the order dated 31.07.2017 in the light of the appellant/claimant having died on 30.10.2015 i.e. much before the final order was passed by this court on 31.07.2017.
9. In view of the same, the order dated 31.07.2017 passed in Misc. Appeal No.769 of 2005 stands hereby recalled. Taking into consideration the death certificate produced by the review petitioner showing death of the appellant/claimant to have occurred on 30.10.2015 and no substitution being made by any of the legal representative of the appellant/claimant, Misc. Appeal No.769 of 2005 stands dismissed as abated, reserving the right of the claimants to revive the same.
10. The review petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge