

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 23/11/2020

Order pronounced on : 09/12/2020

REVIEW PETITION NO. 131 OF 2020

Suraj Upadhyay, S/o Onkarnath Upadhyay, Near Swaraj Tractor Showroom, Ring Road No. 01, Kushalpur Chowk, P. S. D. O. Nagar, District Raipur, Chhattisgarh.

---- Petitioner/Applicant-Owner

Versus

1. Smt. Bharti Netam Wd/o Late Dwarkia Prasad Netam, Aged About 26 Years.
2. Ku. Devshri Netam, D/o Late Dwarika Prasad Netam, Aged About 3 Years Minor Through Natural Guardian Mother Smt. Bharti Netam,

Both R/o Village Sakri, Post Chandi, Police Station And Tahsil Abhanpur, District Raipur, Chhattisgarh. - **claimants**

3. Mannilal, S/o Makhan Prajapati, R/o Village Chhatakund, Police Station Ketar, District Gadhwa Jharkhand, Presently Residing At Suraj Upadhyay, S/o Onkarnath Upadhyay, Near Swaraj Tractor Showroom, Ring Road No. 01, Kushalpur Chowk, Police Station D. D. Nagar, District Raipur, Chhattisgarh. - **Driver**

4. The New India Assurance Company Limited Through Divisional Manager, Division No. 03, 2nd Floor, R. D. A. Building Bajrang Market, G. E. Road, Raipur, Chhattisgarh.

---- Respondents

For Petitioner : Shri HB Agrawal, Sr. Advocate
with Dr. Shailesh Ahuja, Advocate.

For Respondents : None.

Hon'ble Shri Gautam Chourdiya, J

CAV ORDER

1. Heard on IA No.01, application for condonation of delay of 525 days in filing this review petition.
2. On due consideration, for the reasons mentioned in the said application which is supported by affidavit of the petitioner, it is allowed and accordingly, delay in filing the review petition is

condoned.

3. Also heard on admission.
4. The petitioner/owner has filed this petition under Order 47 Rule 1 read with Section 114 of CPC for review of the order dated 12.3.2019 passed by this Court in MAC No.1540/2017.
5. MAC No.1540/2017 was filed by the insurance company/respondent No.4 herein under Section 173 of the Motor Vehicles Act, 1988 against the award 13.9.2017 passed by 6th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No.249/2016 awarding total compensation of Rs.25,32,600/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner. Further, the Tribunal directed that in case the amount of compensation is not deposited within a month from the award, it shall carry interest @ 9% per annum from the date of award till its payment.
6. By the order under review, this Court after hearing learned counsel for the insurance company and the claimants, as the driver and owner despite service of notice remained unrepresented, allowed the appeal in part thereby fastening liability on the owner and driver jointly and severally while exonerating the insurance and further, directed the insurance company to first pay the amount of compensation to the claimants and then recover the same from the non-applicants/owner and driver in accordance with law.
7. Learned counsel for the petitioner/owner submits that the owner had duly engaged a counsel Shri Satish Chand Verma for contesting the case on his behalf before this Court but he did not appear on the date of passing of the order dated 12.3.2019. He submits that due to fault on the part of the counsel engaged by the owner, the owner cannot be made to suffer as the liability of payment of the huge compensation has been fastened upon him which he is not in a position to bear. Reliance has been placed on the decision of the Hon'ble Supreme Court in **Ram Lakhan**

Vs. Presiding Officer and others, AIR 2001 SC 286 and Shivdeo Singh and others Vs. State of Punjab and others, AIR 1963 SC 1909 (V 50 C 273).

8. It is further contended on behalf of the petitioner that as per seizure memo Ex.A/2, registration certificate, insurance policy, fitness certificate, permit and driving licence of the driver were seized. Though the validity of the said permit expired on 6.1.2016 but the petitioner had already deposited fee of Rs.2000/- through online on 6.1.2016 itself to obtain permit. However, the same was issued in favour of the petitioner only on 21.1.2016 vide Annexure A/6 which is valid till 20.1.2021. Thus, the owner has not committed any willful default or breach of the insurance policy. On the aforesaid ground, the review petition is required to be allowed and consequently, the order dated 12.3.2019 is liable to be modified/recalled.
9. Heard learned counsel for the petitioner and perused the documents filed with the review petition as also the appeal.
10. Under Order 47 Rule 1 read with Section 114 of CPC, there is limited scope for considering the review petition. Three main grounds are there for review of the order/judgment which are as under:
 - (i) discovery of new and important fact or evidence, or
 - (ii) mistake or error apparent on the face of record; or
 - (iii) any other sufficient reasons
11. In the present matter, the petitioner/owner as well as respondent No.3/driver remained ex-parte before the Tribunal despite service of notice. Here also, though they were duly served with the notice, yet no representation was made on their behalf when the matter was finally heard by this Court on 12.3.2019. The award was passed on 13.9.2017, the appeal was filed by the insurance company before this Court on 8.11.2017 which was admitted for hearing on 15.11.2017 while issuing notices to the respondents and notice on the petitioner/owner was served on

29.11.2017. Vakalatnama on behalf of the petitioner/owner was filed by his counsel Shri SC Verma and his associates on 23.1.2018. However, admittedly, no cross-objection or counter appeal was filed on behalf of the petitioner/owner or the driver within stipulated time or even thereafter.

12. When the matter was taken up for final hearing on 12.3.2019, no one appeared on behalf of the petitioner/owner despite repeated calls, therefore, considering the long pendency of the appeal since 2017 and the issue involved in the matter, this Court proceeded to decide the same in presence of counsel for the claimants and the insurance company.

13. As regards the contention of the petitioner that his non-representation due to fault on the part of his counsel has adversely affected his right of defence, the same is of no consequence because the ground being raised by the petitioner for review of the order dated 12.3.2019 has already been elaborately considered by this Court while passing the said order in accordance with facts and law based on the evidence available on record. According to the petitioner, he had deposited fee of Rs.2000/- through online on 6.1.2016 for obtaining permit but the same was issued only on 21.1.2016. In this context, reproduction of relevant part of Section 66 of the Motor Vehicles Act, 1989 being germane is as under:

“66. Necessity for permits. - (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used.”

14. Admittedly, the date of accident in this case is 12.1.2016 and on that date the owner had no valid and effective permit for plying

the vehicle. According to the owner himself and as per the document of Goods Carriage Permit filed with the review petition as Annexure A/6, the same was issued in favour of the petitioner on 21.1.2016 which is valid till 20.1.2021. Plain reading of Section 66 of the Act makes it clear that for plying the goods carriage vehicle permit is necessary. As such, it is quite evident that on the date of accident, the vehicle of the owner was being plied without permit in breach of terms and conditions of the insurance policy condition which is a fundamental statutory infraction as has been held by the Hon'ble Supreme Court in ***Amrit Paul Singh and another Vs. Tata AIG General Insurance Co. Ltd., (2018) 7 SCC 558***. All this has already been considered by the Tribunal concerned while deciding Issue No. 6 as well as this Court in the order under review in paras 12 & 13. This apart, the Tribunal has also held that on the date of accident, the driver/non-applicant No.1 was also not having a valid and effective driving licence. The said finding has not been challenged by the owner or driver by filing any appeal and as such, it has attained finality. Thus, it has been established that the vehicle of the owner was being plied at the relevant time without a valid and effective driving licence as well as permit in violation of terms and conditions of the insurance policy.

15. No new important fact or evidence has been brought on record by the petitioner before this Court. Further, the petitioner could not point out any mistake or error apparent on the face of record in the order under review. On due consideration, this Court also does not find any other good reason to review the order dated 12.3.2019.

16. In the matter of **Ram Lakhan** (*supra*), the Advocate on record was unable to appear due to ill health, another Advocate to whom advocate on record had requested to mention had also to leave the Court due to illness of his son and in these circumstances, the matter was recalled. However, in the present case, no such circumstance is there justifying recalling of the order dated 12.3.2019 passed in MAC No.1540/2017. As already discussed above, the petitioner/owner's counsel did not appear on the date of final hearing nor any request was made on his

behalf for adjourning the matter. Even otherwise, the petitioner/owner also remained ex-parte before the Tribunal. Thus, looking to the conduct of the petitioner/owner, it is apparent that he was throughout negligent in contesting the case and therefore, now he cannot be permitted to turn around at his own sweet will and contest the case at this highly belated stage on such flimsy grounds. Even after service of notice of this appeal, no cross-objection or counter appeal was filed by him. The present review petition has also been filed with a delay of 525 days, though the same has been condoned in the interest of justice.

17. As regards the judgment in the matter of **Shivdeo Singh and others** (*supra*), in the facts and circumstances of the case, as discussed above, and in particular the fact that the said judgment was delivered under Article 226 of the Constitution of India, it being distinguishable from the case in hand, is of no help to the petitioner.

18. On the basis of aforesaid discussions and for the reasons stated above, this Court finds no ground to review its order dated 12.3.2019 passed in MAC No.1540/2017. Accordingly, the review petition being meritless is liable to be dismissed at the admission stage itself and is dismissed as such.

Sd/

(Gautam Chourdiya)

Judge