

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.199 OF 2019
IN
FIRST APPEAL NO.585 OF 2019

1. Ujwala w/o Hanmantrao Deshmukh
and others. = APPLICANTS
(Appellants/orig.
claimants)

VERSUS

1) Shivshankar Ananda Londhe
and Ors. = RESPONDENTS
(orig.Respondents)

Mr. Ram B.Deshpande, Advocate for Applicants;
Mr. GR Syed, Advocate for Resp.Nos.1 & 2;
Mr. VN Upadhye, Advocate for Respondent No.3.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 13th December,2019

PRONOUNCED ON : 8th May, 2020

COURT'S ORDER

1. Present review application has been filed by original appellants for review of judgment and order dated 1st August, 2019 passed by this Court in aforesaid First Appeal.

2. Present review applicants are the original claimants, who filed MACP No.256/2013 before learned Member, Motor Accident Claims Tribunal, Latur (herein after referred to as the

Tribunal) for getting compensation for the accidental death of one Hanmantrao Manikrao Deshmukh, on whom present review applicants were depending.

3. The accident had taken place on 16.9.2013. Hanmantrao and his friend Bhalchandra Rathod were proceeding on the motor cycle bearing registration No.MH-24/X-3631. Deceased was driving the same and Bhalchandra was pillion rider. When they reached near Chakur, at that time, one TATA pick-up vehicle bearing registration No.MH-26-AD-6283, driven by original respondent No.1, came from opposite side and gave dash to the motor cycle driven by the deceased as a result of which, both the riders fell down and Hanmantrao died on the spot. Bhalchandra Rathod was taken to hospital. Offence came to be registered against Respondent No.1. The vehicle driven by Respondent No.1 was owned by Respondent No.2 and it was insured with Respondent No.3.

4. Deceased Hanmantrao was serving as Junior Clerk with Vimal Devi Girls School and was getting

salary of Rs.25,420/- per month. On the basis of this contention, the claimants had claimed compensation.

5. The respondents had resisted the claim. After leading evidence, arguments were heard by the learned Tribunal. The learned Tribunal held that the deceased was responsible to the accident to the extent of 30% as it was held to be cause of contributory negligence. Respondent No.1 was held negligent to the extent of 70%. 70% compensation that was awarded was to the tune of Rs.22,44,562/- inclusive of No fault liability. 30% of the said total amount of compensation to which the deceased was responsible was to tune of Rs.9,61,954/-. The original claimants approached this Court by filing the first appeal. Not only the amount of compensation was challenged; yet it was also challenged that the learned Tribunal erred in holding the deceased responsible for the accident to the extent of 30%.

6. As aforesaid, after hearing the parties, this court partly allowed the appeal. The judgment

and Award passed by the Tribunal was set aside and modified to the extent of rate of interest only. The amount of compensation of Rs.21,94,562/-, which was inclusive of NFL amount, was directed to carry interest @ 7.5% per annum from the date of petition till actual realization of the entire amount. However, this Court confirmed the finding of the Tribunal that it was the case of contributory negligence and the deceased was responsible to the extent of 30%. Now, by way of this review application filed under Order 47 Rule 1 and Section 114 of the Code of Civil Procedure, the original claimants have prayed for review of the said order passed by this Court in the aforesaid first appeal.

7. Heard learned Advocate appearing for the respective parties.

8. It has been vehemently submitted on behalf of the review applicants that the Tribunal had erred in not considering the evidence of witness No.3 who was examined on behalf of the claimants. Witness No.3 was Bhalchandra Rathod, who was the pillion rider of the deceased. The said

witness has clearly stated that the deceased was driving the motor cycle in a slow speed from extreme left side of the road following every traffic rules. The testimony of this witness was missed by both the courts i.e. the Tribunal as well as this Court and only on the basis of the spot panchanama, it was held that the deceased was responsible to the extent of 30% to the accident. When, in fact, the eye-witness/injured was examined and there was no evidence in refutation by Respondent Nos.1 and 2 especially, then testimony of witness No.3 Bhalchandra Rathod ought to have been accepted by both these courts. If we consider the testimony of this witness, then definitely the accident will not be a case of contributory negligence. Both the courts erred in deducting said 30% of the total compensation and this is an error on the face of record, therefore, review is maintainable.

9. Learned Advocate appearing for the review applicants relied on the decision in the case of Union of India Vs. Valluvan and Ors. - AIR 2007 SC 210, wherein it has been observed by the Apex court that, " the Court's jurisdiction to review its own

judgment, as is well known, is limited. The High Court, indisputably, has a power of review, but it must be exercised within the framework of Section 114 read with Order 47 of the Code of Civil Procedure."

10. Further reliance has been placed in the case of Syed Sadiq etc. Vs. Divisional Manager, United India Insurance Co. - AIR 2014 SC 1052, wherein the Tribunal as well as High Court, by placing reliance only on the spot panchanama, had arrived at the conclusion that, deceased had contributed to the extent of 25% and this finding was not approved by the Hon'ble Apex court. It was observed, "The Tribunal arrived at the above conclusion only on the basis of the fact that the accident taken place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellants/claimants in the accident is not proved by the respondents by producing evidence and, therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set

aside."

11. Per contra, learned Advocate appearing for the respondents, submitted that the review application is not maintainable at all. This court had considered the evidence on record. So also the Tribunal had considered it. If at all the claimants are aggrieved by the decision of this court, then they should approach the higher court and not by way of review. There is no error apparent on the face of the record. If the review applicants are of the opinion that certain piece of evidence is not considered, then that will not be considered as an error on the face of the record, taking into consideration the fact that the powers of review are limited and will have to be exercised sparingly.

12. Learned Advocate for the insurance company has relied on the decision of this Court in the case of Meena and Anr. Vs. Manager, Bajaj Allianz General Insurance Co. Ltd. And Ors. - (2019) 6 Bom CR 392, wherein this Court has observed,- "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.". Further, it has been observed in para No.30 as follows, -

"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 required a re-argument and re-appreciation of evidence, would not be permissible."

13. The first and foremost fact that is required to be considered as to whether review is

maintainable. Though this Court has come to the said conclusion in the case of Meena and Anr. (cited supra); yet we are required to consider that in Union of India Vs. Valluvan and Ors. AIR 2007 SC 210, general principle has been laid down that the Court has jurisdiction to review its own judgment. However, that jurisdiction is limited. Further, we should also consider the decision in the case of United India Insurance Co. Vs. Rajendra Singh – 2000 ACJ 1032 (SC). In the said case, the Supreme Court held that, "....Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order." I would like to harp upon the words "or the Court itself commits a mistake which prejudices a party...." Therefore, though the said case before the Hon'ble Apex court was required to deal with the allegations regarding order obtained

by fraud; yet the Hon'ble Supreme Court has even included the situation, where the court is misled by a party or the Court itself commits a mistake, which prejudices the party. Therefore, in view of this pronouncement by the Apex Court, in my opinion, those cases are also covered for review by the same court where the Court comes to a conclusion that there was a mistake committed by the court which prejudiced the party.

14. Now, it is required to be considered in this case as to whether there exists such situation. One thing will have to be accepted here that the Tribunal as well as this court had missed the testimony of witness No.3 – Bhalchandra Rathod, while taking into consideration the point regarding rashness and negligence. Now, the said evidence is pointed out and, therefore, it is also required to be considered as to whether the evidence of this witness would make any difference and support to the contention of the review applicants that there was total negligence on the part of respondent No.1 alone?

15. Witness No.3 – Bhalchandra Rathod has

deposed that he was the pillion rider and the deceased Hanmantrao was driving the motorcycle. He has specifically stated that Hanmantrao was driving the vehicle in slow speed from extreme left side of the road by following every traffic rules. It is further stated that respondent No.1, who was driving the TATA pick-up vehicle, drove the vehicle in rash and negligent manner and gave forceful dash from opposite side to the motorcycle, as a result of which, they fell and ultimately Hanmantrao expired. In his cross-examination, he has stated that the road from which they were proceeding, is State Highway and it remains busy for traffic all the times. He has further stated that width of the road is 10 to 12 feet. But, then he stated that he cannot tell the position of the motor cycle and as to how much distance from the southern side of the road, their vehicle was proceeding. The important point to be noted is neither in the examination-in-chief nor in his cross-examination, when one more opportunity was made available to him, he has given place of impact. He has only stated that he was on the left side of the road. However, his testimony is not supporting the contents of the spot

panchanama. The spot panchanama was produced by the claimants themselves. It has not come through CW-3 that after he was recovered, the police had, in any way, confirmed the spot of the accident from him. He has also not stated that he had ever made any attempt to meet the police and tell them about the exact position of the accident. When his statement was belatedly recorded by the police, so also after so many years when he is stating the only fact that deceased Hanmantrao was driving the vehicle in slow speed from extreme left side of the road, then such statement will have to be accepted with caution. He being the interested witness, would have made that statement. However, his actions, after he was discharged from the hospital, do not support and do not inspire confidence. Under such circumstance, when there was no other evidence, taking into consideration the position of the vehicles, the observations have been made and finding has been arrived at.

16. We can not consider the decision in the case of Syed Sadiq etc (supra) in the review application as it would amount to replacing the

finding, which is not permissible under Order 47, Rule 1 and Section 114 of the Code of Civil Procedure. A better course for the review applicants is elsewhere. Therefore, though it may be said that the review application is maintainable; yet the review applicants have not made out a case for review. Under such circumstance, the review application stands rejected.

(SMT. VIBHA KANKANWADI,J.)

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