IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 13939 OF 2018
IN/WITH
REVIEW APPLICATION STAMP NO. 18713 OF 2018
IN
FIRST APPEAL NO.2756 OF 2013

Sunita Babasaheb Wankhede and others … Applicants

Versus

Bajaj Allianz General Insurance Co. Ltd. & Anr … Respondents

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Mr. Mukul Kulkarni, Advocate h/f Ms Laxmi R. Thakur, Advocate for applicants
Mr. S. G. Chapalgaonkar, Advocate for respondent No.1

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CORAM : R. G. AVACHAT, J.
DATED : 06th SEPTEMBER, 2021

PER COURT :-

. For the reasons given in the civil application, the same is allowed in terms of prayer clause (B).

2. Heard the learned Advocates on the review application.

3. The review has been sought of the judgment and order dated 29.01.2014 allowing First Appeal No. 2756 of 2013 and dismissing the Motor Accident Claim Petition, so far as regards the respondent – Insurance Company is concerned. The applicants

herein are the legal representatives of deceased Babasaheb Wankhede, who died in an accident involving motor vehicle.

4. On 08.02.2008, the deceased was riding the motorbike, bearing No.MH-21-K-6325, belonging to his friend. Due to headlights of the oncoming tempo, the deceased lost control over the motorbike and dashed against a roadside tree. As a result of the injuries suffered in the accident, the deceased breathed his last. His legal representatives, therefore, preferred M.A.C.P. for compensation. The Tribunal allowed the same. The respondent – Insurance Company, therefore, preferred First Appeal No.2756 of 2013. This Court, vide judgment and order dated 29.01.2014, allowed the same dismissing the claim against the appellant - Insurance Company.

5. The first question is whether review of a judgment and order passed under the Motor Vehicles Act (for short, 'M.V. Act'), is maintainable. I do not propose to elaborate on the issue involved, since the learned Single Judge of this Court in the case of ***Meera Popat Mhaske and another vs. Manager, Bajaj Allianz General Insurance Company Limited and others – 2019(6) Bom.C.R. 392,*** has held that review of judgment and/or award passed in M.A.C.P. or appeal preferred thereagainst, is not maintainable. This Court has no

reason to take a different view.

6. The judgments of the Hon'ble Supreme Court relied on by the learned Advocate for the applicants are not applicable in the facts and circumstances of the present case. The learned Advocate for the Insurance Company brought to the notice of this Court certain Rules framed by the State of Maharashtra in exercise of powers under Section 111 of the M.V. Act. Under those rules, Section 114 of the Code of Civil Procedure (C.P.C.) and/or the provisions of Order 47 thereof, have not been made applicable to the proceedings for grant of compensation. The learned Advocate, therefore, was right in submitting that the authorities relied upon by the learned Advocate for the applicants are from the States other than the State of Maharashtra, Rules framed by those States in exercise of jurisdiction under the aforesaid Section might have made Section 114 and Order 47 of C.P.C., applicable in such proceedings in the respective States. Moreover, close reading of the facts of all those cases would indicate that in none of them, issue as to applicability of power of review was involved.

Learned Advocate for the applicants relied on the following cases.

(i) United India Insurance Co. Ltd. Vs. Rajendra Singh and Ors. – MANU/SC/0180/2000;

(ii) Ramkhiladi and Ors Vs. The United India Insurance Company and Ors. – MAN U/SC/0008/2020;

(iii) Montford Brothers of St. Gabriel and Ors Vs. United India Insurance and Ors. - MANU/SC/0061/2014;

(iv) Manager, National Insurance Company Ltd. Vs. Saju P. Paul and Ors. - MANU/SC/0006/2013.

7. There can be no two views over the proposition that the Court has inherent jurisdiction to recall its order on the basis of newly discovered facts amounting to fraud of high degree.

8. On merits as well, the applicants have no case for review policy of insurance of the motor vehicle involved in the accident had covered limited liability to the extent of rupees one lakh in case of injury or death of owner or driver of the motorbike. It is now settled proposition of law that the vehicle owner cum driver is not a third party within the meaning of Section 147 of the M.V. Act. The deceased stepped into the shoes of his friend, the owner of the motorbike. The legal representatives of deceased had preferred a claim for compensation under Section 163A of the M.V. Act. The

applicants want to have a benefit of a judgment of the Hon'ble Supreme Court in the case of ***Ramkhiladi*** in Civil Appeal No.9393 of 2019, whereunder the appeal was partly allowed. In the said case, it is held that:-

> "*….. the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove.*"

9. The Hon'ble Supreme Court did not grant the claim under Section 163A of the Act. It however observed that the deceased stepped in the shoes of the owner of the vehicle, whose risk was covered under the policy of insurance to the extent of rupees one lakh. The learned Advocate for the Insurance Company herein was right in submitting that for such a claim the forum is Consumer Court. It appears that the learned Advocate for the applicants did not press into service any of the grounds urged in the application for review and all of a sudden relied on the judgment in the case of ***Ramkhiladi*** *(supra)*, which has been passed in the recent past.

10. It is reiterated the application for review is not maintainable and on merits as well, it does not deserve to be allowed.

11. The review application, therefore, fails. The same is rejected.

[R. G. AVACHAT, J.]

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