Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 563 OF 2023
IN
CIVIL APPLICATION (REVIEW) NO. 2274 OF 2023 (F)
IN
FIRST APPEAL NO. 41 OF 2017

The New India Assurance Company Ltd., ... Applicant

Versus

1. Custodio Emael D'Costa & Ors. ... Respondents

Mr. Sagar Dhargalkar, Advocate *for the Applicant.*

CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.

DATED: 6th DECEMBER 2023

ORAL ORDER

1. Heard Mr. Sagar Dhargalkar, learned Counsel for the Applicant-Review Petitioner.

2. There is delay of 278 days in instituting this Review Petition. Before condoning the delay, notice is required to be served to the Respondents i.e. the claimants.

3. This is a case concerning compensation to be paid to the dependents of an accident victim. Accordingly, we requested Mr. Dhargalkar to argue the Review Petition on merits to see whether any *prima facie* case is made out for exercise of our review jurisdiction.

4. Mr. Dhargalkar submitted that while computing the income of the deceased (accident victim), no deductions towards income tax were made from his income. He submitted that this amounts to an error apparent on the face of record. He relied upon the decision in the case of **Chanderi Devi & anr. vs. Jaspal Singh & Ors.**[1]

5. Firstly, we find that a ground now urged, was never urged by and on behalf of the Insurance Company when First Appeal nos. 41 of 2017 and 45 of 2017 were disposed of by us by our Judgment and Order dated 06.12.2022.

6. Mr. Dhargalkar submitted that there was a ground raised in the memo of appeal. Mere raising of a ground in the memo of appeal is not sufficient. Admittedly, no such argument was canvassed or no such ground was pressed when we delivered our Judgment and Order dated 06.12.2022.

7. Be that as it may, the contention in the facts and circumstances of the present case, cannot be accepted. There is evidence that the deceased was earning foreign exchange. There is absolutely no evidence on record to suggest that income tax was payable on this income. A factual foundation was necessary and the same is not at all available on record.

1 (2015) 11 SCC 703

8. **Chanderi Devi & anr. vs. Jaspal Singh & Ors** (supra) is not an authority for the proposition that in every case, tax has to be deducted before computing the income of the deceased. In any case, there is no error apparent on the face of record for exercising review jurisdiction. Besides, in this case, the Judgment and Order of which review is applied for notes that hardly any defences were raised by the Insurance Company in written statement as originally filed. No witnesses were examined by or on behalf of the Insurance Company. Accordingly, no case is made out for exercise and review jurisdiction.

9. No other point was urged by Mr. Dharghalkar in support of his Review Petition.

10. The delay in instituting the Review Petition is also not satisfactorily explained. All that is stated is that the matter was sent to 'Delhi Legal Hub' on 10.02.2023 when the Judgment and Order of which review is applied for was made on 06.12.2022. Further explanation is that the 'Delhi Legal Hub' referred the matter for opinion of an Advocate who gave his opinion only on 21.05.2023. Even after receipt of the opinion, this Review Petition was filed on 09.10.2023 for which, there is no proper explanation. In any case, based upon such explanation, it cannot be said that there is any sufficient cause for instituting the Review Petition after delay of 278 days.

11. For the above reasons, the Misc. Civil Application no. 563 of 2023 and consequently the accompanying Review Petition, are liable to be dismissed and are hereby dismissed. There shall be no order as to costs.

VALMIKI SA MENEZES, J. **M. S. SONAK, J.**

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