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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 369 OF 2016

Vandana Tarachand Gawle

Applicant

.. (Ori. Applicant)

Versus

1. Shri. Bhaginath Jetharam

Respondent No.1.

.. (Ori. Opponent No.1)

2. The New India Assurance Co. Ltd.,
Kalyan Divisional Office.

Respondent No.2.

.. (Ori. Opponent No.3)

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- Mr. Suresh Payak a/w. N.R. Parushar, Advocates for the Applicant.
 - Mr. Himanshu B. Takke i/by Mr. Milind More, Advocate for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 03, 2023.

P.C.:

1. Heard Mr. Payak, learned Advocate appearing for Applicant and Mr. Takke, learned Advocate appearing for Respondent No.2 at length.

2. By the present Civil Revision Application, Applicant has prayed for the following reliefs:-

“(ii) That the records and proceeding in M.A.C.315 of 2005 and R.J.E. (Review) No.2 of 2014 of M.A.C.T., Kalyan may be called for and on being satisfied that there is an error apparent on the face of the record the order dated 14.1.2016 passed in R.J.E. (Review) No.2 of 2014 may be set aside;

(iii) That this Hon’ble Court may be pleased to award an additional amount of Rs.2,18,315/- with interest @ 9% p.a. from the date of application till realization thereof to the Applicant.”

3. Applicant has challenged the order dated 14.01.2016 passed by the learned District Judge-3 and Member of Motor Accident Claims Tribunal, Kalyan At Thane (for short “**Trail Court**”) passed order below Exhibit ‘1’ in R.J.E. (Review) Application No.2 of 2014 filed by Applicant seeking review of order dated 12.03.2014 passed in M.A.C. Application No.315 of 2005.

4. Such of the relevant facts which are necessary to decide the present Civil Revision Application are as under:-

4.1. On 09.10.2005, Applicant met with an accident and suffered several injuries. She is a teacher working in Zilla Parishad School. She filed Claim Application being MACP No.315 of 2005 before learned MACT, Kalyan seeking compensation of Rs.7,00,000/- alongwith 18% interest. Applicant was awarded total compensation of Rs.5,01,332/- by judgment and award dated 12.03.2014 (Exhibit-B to the Petition). The total medical expenses incurred by the Applicant were however Rs.2,88,521.92 as per Exhibit ‘42’, but in the said judgment in paragraph No.16 the medical expenses amounting to Rs.70,206/- were considered and awarded.

4.2. Exhibit ‘42’ consists of 14 pages and Rs.70,206/- is the total medical expenses of the first 12 items listed on the first page of the said Exhibit. Because of this error, Applicant suffered a loss of compensation of Rs.2,18,315/-.

4.3. Hence, Applicant preferred R.J.E. (Review) Application No.2 of 2014 under Order XLVII Rule 1 of the Code of Civil procedure, 1908 (for short “**CPC**”) for correction of error. The learned Trial Court rejected the aforesaid Review Application vide the impugned order dated 14.01.2016 stating that Applicant’s challenge was not serious considering the scope and object of the review and there was no merit in the Application.

4.4. Hence, the present Civil Revision Application.

5. Mr. Payak, learned Advocate for Applicant has vehemently submitted that the learned Trial Court failed to exercise jurisdiction vested in him for correction of the error which was apparent on the face of the record of judgment by reviewing the same and the reasons for rejection are not tenable in law.

5.1. He submitted that the reason given for rejection of Application by MACT was that if review is allowed the compensation will be more than the claimed amount and this cannot be sustained because Tribunal cannot award more than the claimed amount vide Section 168 of the Motor Vehicles Act, 1988. He has relied upon the decision of the Supreme Court of India in the case of ***Nagappa Vs. Gurudayal Singh***¹ in support of his case. He submitted that Rs.70,206/- is the total medical expenses of the first page of Exhibit ‘42’ and

¹ 2003 ACJ 12

therefore the reason given in paragraph No.5 of the order dated 14.01.2016 for rejecting the review Application cannot be sustained.

6. *PER CONTRA*, Mr. Takke, learned Advocate for Respondent No.2 has submitted that the impugned award dated 12.03.2014 and order dated 14.01.2016 have been passed correctly in the facts and circumstances of the present case and no review is called for.

7. I have heard Mr. Payak, learned Advocate for Applicant and Mr. Takke, learned Advocate for Respondent No.2 and perused the record of the case with their able assistance.

8. It is seen that the controversy in the present case is with respect to Exhibit '42', which is the statement of expenses of the hospital and medical bills incurred by the Applicant towards pecuniary damages. The said Exhibit '42' admittedly is annexed as Exhibit 'D' to the present Application. Record clearly indicates that the Applicant has produced Exhibit '42' which is the list of total medical bills filed before the learned Trial Court consisting of 14 pages and the total medical expenses there being Rs.2,88,521.92. The same is taken into account by the learned Trial Court in paragraph No.16 of the award dated 12.03.2014 only to the extent of Rs.70,206/- towards medical expenses as against Rs.2,88,521.92. In so far as the amount of Rs.70,206/- is concerned, it is evident on reading the statement of expenses i.e. Exhibit '42' that, the said amount is the sum total of the

first 12 entries only which are incurred between 03.11.2005 and 12.10.2005. The expenses incurred by the Applicant from 12.10.2005 to 01.11.2012 are shown as expenses from Serial No.13 to 354 which appear on internal page Nos.2 to 14 of Exhibit '42'. The sum total of the entire expenses is Rs.2,88,521.92. Learned Advocate for the Respondents has not raised any dispute whatsoever in respect of Exhibit '42'. Thus it is clearly seen that the Applicant has been denied the amount of Rs.2,18,315.96 towards the medical expenses incurred by the Applicant. On the face on record of the case it is seen that the learned Trial Court while passing the award dated 12.03.2014 has only considered the expenses incurred by the Applicant which are reflected on page No.1 of Exhibit '42' before the learned Trial Court. That apart, when the issue was brought to the notice of the learned Trial Court in Review Petition filed by the Applicant under Section 114 read with Order XLVII Rule 1 of the CPC and Section 168, 169(2) of the Motor Vehicle Act, 1988 alongwith 275(2) of the Maharashtra Motor Vehicle Rules, 1989, the learned Trail Court by the impugned order dated 14.01.2016 stated that it cannot be said that a mistake is committed on the face of record for arriving at the said conclusion. It was incumbent upon the learned Trial Court to have referred to Exhibit '42' in order to arrive at the said conclusion. This has not been done. Though the Applicant in the Review Petition categorically pointed out that the amount of Rs.70,206/- in Exhibit '42' was

considered inadvertently and sum total of Exhibit '42' i.e. of the medical expenses was Rs.2,88,521.92, the learned Trial Court considered the same but has not returned any findings on the same. There is complete non-application of mind on the part of the Trial Court. On the contrary, it is stated that the expenditure amount of Rs.2,88,521.92 cannot be considered and there was no merit in the Review Petitioner.

9. On perusal of the award dated 12.03.2014 and order dated 14.01.2016 passed by the learned Trial Court in the Review Petition there is an apparent error and mistake committed on the face of record whereby the total medical expenses incurred by the Applicant under Exhibit '42' have not been considered. The Applicant is thus entitled to the deficit medical expenses which is part of Exhibit '42'.

10. The impugned order dated 14.01.2016 passed by the learned Trial Court is not sustainable and is thus quashed and set aside. Award dated 12.03.2014 stands modified accordingly whereby the Applicant is entitled to an additional amount of Rs.2,18,315/- alongwith interest @ 9% p.a. from the date of Application till realization.

11. Respondents are directed to complete the interest quotient and deposit the aforesaid total amount with the Trial Court within a period of two weeks from the date of uploading of the present order

on the website of the Bombay High Court. On the deposit being made, the Trial Court shall permit Applicant (Applicant herein) to withdraw the same on Application / pursis. If such Application or pursis is filed by Applicant, the deposited amount shall be permitted to be withdrawn forthwith.

12. Parties are directed to act on the authenticated copy of this order.

13. With the above directions, Civil Revision Application is disposed.

[MILIND N. JADHAV, J.]

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Digitally signed by
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