

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 15 OF 2022
IN
FIRST APPEAL NO. 290 OF 2021

Meenadevi Jaiprakash Gupta and ors .. Applicants
Versus
Union of India thru General Manager .. Respondent

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Mr. Vasant N. More for the review petitioner
Mr. T.J. Pandian with Gautam Kumar for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 12th SEPTEMBER, 2023

P.C:-

1 The present Review Petitions seek review of the judgment dated 8/6/2022 passed in First Appeal No.290/2021.

2 Learned counsel for the Review Petitioner has placed reliance upon the decision of the Apex Court in case of *Arun Dev Upadhyaya vs. Integrated Sales Service Ltd*, 2023 SCC Online 779, and the pertinent observations in the said judgment rather canvas proposition exactly contrary to what the petitioner is arguing as in para 15, their Lordships of the Apex Court have specifically recorded as under :-

“15. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC. An error on the face of record must be such an error which, mere looking at the (2020) 2 SCC 677 record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions”.

3 Testing the case of the petitioner on these parameters, when the impugned judgment is perused, it is evident that the facts were clearly discerned and reliance was placed upon the maps and photographs which were accepted by the Tribunal coupled with an accident memo issued by the Dy. S.S/Titwala, that the victim was hit by an unknown train while trespassing in a negligent manner. Even the police report mention about the body having been found in an injured condition on the spot which was located 500 meters away from the railway platform between Km 63/29 in between Titwala and Ambivali Upline station.

The Tribunal had clearly recorded a finding that there is an open space near the accident spot which has no boundary wall and there is pathway which is used by motorman, giving rise to inference that the deceased was attempting to cross.

4 By specifically referring to Section 124(A), which is the provision for payment of compensation on account of untoward accident, I have categorically recorded that the said

Section lays down principle of 'Strict Liability' of 'No fault liability' in case of a railway accident and if the case falls within the purview of Section 124(A), it is irrelevant, who is at fault and then the duty is cast upon the railway administration to pay the compensation, but in the present case, since the deceased met with an accident and there was no proof that he met with an untoward incident which would have made his heirs entitled for compensation, the Appeal was dismissed by upholding the finding recorded by the Tribunal, to the effect that the dependents have failed to establish the claim of compensation within Section 124(A) of the Railways Act.

With the limited scope available, since apparently, no error apparent on the face of it has surfaced, the Review Petition is dismissed.

(SMT. BHARATI DANGRE, J.)