



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**MISC. CIVIL APPLICATION NO.657 OF 2022
IN
FIRST APPEAL NO.850 OF 2015**

1. Smt. Meghavini Sukhdeo Badhe,
Aged about – 43 years,
Occupation – Service,
 2. Ku. Arya Sukhdeo Badhe,
Aged about 17 years,
Occupation – Nil
 3. Ku. Gauri Sukhdeo Badhe,
Aged about 14 years,
Occupation – Nil
 4. Smt. Narmadabai wd/o Ramrao Badhe,
Aged about 73 years,
Occupation – Nil
- } Appellant No.4 deleted
as per Court's order
dated 03/12/2021.

Petitioners No.2 and 3 being
minors represented through
natural guardian mother,
Petitioner No.1.

All are R/o. C/o. Dr. Prashant Shelke,
"Shelke Hospital",
Andewadi, Warud
Tq. Warud, District Amravati

...APPLICANTS

VERSUS

1. Saiyyad Bashir Saiyyad Nuru,
Aged Adult, Occupation – Owner
R/o. Pathanpura, Murtizapur,
Tq. Murtizapur, District Akola

2. Mohd. Jafar Abdul Rehman,
Aged Major, Occupation – Driver,
R/o. Old City, Murtizapur,
Tq. Murtizapur, District Akola
3. The Oriental Insurance Co. Ltd.,
through its Branch Office,
Amravati Tq. & District Amravati
- Deleted - Amendment
as per Court's order
dated 29/08/2022

...NON-APPLICANTS

Shri V.A. Kothale, Advocate for the applicants.
Mrs. Mrunal Naik, Advocate for non-applicant No.3.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : MARCH 06, 2023.
PRONOUNCED ON : JUNE 05, 2023

JUDGMENT :

Heard finally with the consent of learned Counsel for the parties.

2. The present application has been filed by the appellants in First Appeal No.850/2015 for review on the ground that this Court while enhancing the amount of compensation has not given benefit of future prospects by presuming enhancement of monthly income to the extent of 50% and not awarded the compensation under the head of loss of love and affection, loss of consortium and loss of estate and funeral expenses, etc.

3. The First appeal was filed by the appellants for enhancement of the compensation on the ground that deceased Sukhdeo Ramrao

Badhe who was proceeding on his motorcycle bearing No.MH-30-N-9796 on 23/01/2007 at about 10.00 pm. When he was crossing Dahigaon (Gawande) village, the offending vehicle No.GJ-06-Z-5050 has given violent dash to his motorcycle. Due to the severe dash he died on the spot. Regarding the said accident, crime was registered against the unknown vehicle vide Crime No.14/2007. During investigation, it revealed that the accident took place due to rash and negligent driving of the driver of the offending vehicle. Deceased was working as an Assistant Teacher and drawing salary of Rs.20,915/- per month and was 39 years old.

4. The legal heirs of the deceased preferred claim petition and the learned Tribunal dismissed the petition. Being aggrieved and dissatisfied with the same, the First Appeal No.850/2015 was preferred. This Court, while awarding the compensation held that deceased was getting salary of Rs.20,915/- per month. On the basis of salary certificate Exhibits 52 and 53, the evidence of Head Master was assessed and this Court has awarded the compensation after applying the formula by deducting $\frac{1}{3}^{\text{rd}}$ amount towards personal expenses. Thus, this Court has awarded the compensation of Rs.26,77,248/-.

5. Present review application is filed on the ground that the appellants-petitioners are not given benefit of future prospects in the

light of the judgment of the Hon'ble Apex Court in case of *Sarla Verma an ors. Vs. Delhi Transport Corporation and anr., (2009) 6 SCC 121 and Jitendra Khimshankar Trivedi and ors. Vs. Kasam Daud Kumbhar and ors. (2015) 4 SCC 237*. As per the contention of the appellants, non-granting of compensation by not considering the future prospects, and under the head of loss of consortium, loss of estate and funeral expenses is error apparent on record, and therefore, judgment is to be reviewed.

6. Said application is strongly opposed by Mrs. Mrunal Naik, learned Counsel for respondent No.3 on the ground that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of Code of Civil Procedure. She submitted that the power of review may be exercised on the discovery of new and important matter or evidence, which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits as that would be the province of a Court of appeal.

7. Heard Shri V.A. Kothale, learned Counsel for the applicants and Mrs. Mrunal Naik, learned Counsel for respondent No.3.

8. Learned Counsel for the applicants submitted that in view of the judgment of Sarla Verma (supra) and Jitendra Trivedi (supra), the appellants are entitled to receive the compensation by considering the future prospects. He submitted that the said issue is also considered by the Constitution Bench of the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi (2017) 16 SCC 680*** wherein the Hon'ble Apex Court held that when we are disposed to think we accept the principle of standardisation, there is really no rational, not to apply the said principle to the self employed or a person who is on a fix salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act.

9. He submitted that in view of the above observation the claimants are entitled to receive the compensation by adding future prospects. He further submitted that the claimants are further entitled to receive the compensation under the head of loss of consortium, loss of

estate and funeral expenses, etc. which are not awarded to the claimants. He further submitted that non-awarding the compensation under the said head is an error apparent on record.

10. *Per contra*, Mrs Naik, learned Counsel submitted that the granting of compensation under the review is not within the scope of review. The power of review is to be exercised where some mistake or error apparent on the face of record but it may not be exercised on the ground that decision was erroneous on merits. She submitted that granting compensation under the above head would be within the scope of appeal and not within the scope of review hence, review application deserves to be rejected.

11. In support of her contention, she placed reliance on ***Smt. Rajeshwari and ors. Vs. Smt. Meharunnisa and ors. of Allahabad High Court decided on 15/07/2021*** wherein the scope of review was discussed by the Allahabad High Court.

12. Before entering into the merits of the case, it is necessary to see the legal position regarding the scope of review, the Hon'ble Apex Court in the case of ***Haridas Das Vs. Usha Rani Banik (Smt.) and others, 2006(4) Mh.L.J. (S.C.) 14***, while considering the scope and ambit of Section 114 read with Order XLVII, Rule 1 of the Code of Civil

Procedure, it is observed and held in paragraph Nos.14 to 18 as under:

“14. In Meera Bhanja vs. Nirmala Kumari Choudhury, (1995)1 SCC 1780 it was held that:

“It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma speaking through Chinnappa Reddy, J. has made the following pertinent observations:

“It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be in the

province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of error committed by the Subordinate Court.”

15. A perusal of the Order XLVII, Rule 1 show that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

16. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (AIR 1979 SC 1047) this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p-390, para 3)

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC1908) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of

review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."

17. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale [AIR 1960 SC 137] were also noted:

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from selfevident and if it can be established, it

has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

18. *It is also pertinent to mention the observations of this Court in the case of Parsion Devi v. Sumiri Devi (1997)(8) SCC 715). Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja (supra) it was observed as under :*

"Under Order XLVII, Rule 1, CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."

13. Thus, an application for review would lie *inter alia* when the order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. The power of review can also be exercised by the Court on the discovery of

new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. An application for review would also lie if the order is passed on account of some mistake. It is well settled that reviewing Court is not an appellate court over its own order. Thus, the powers of review can be exercised for correction of mistake and such powers can be exercised within the limits of the statutes. The term 'mistake' or 'error' apparent is discussed by the Honourable Apex Court in the case of ***State of West Bengal and others Vs. Kamal Sengupta and another, (2008) 8 SCC 612*** and observed that the term 'mistake or error apparent' by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 of Code of Civil Procedure. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law.

14. The Honourable Apex Court in the case of *Shri Ram Sahu (dead) through LRs vs. Vinod Kumar Rawat and others, 2021(3) Mh.L.J. 268* by referring catena of decisions of the Honourable Apex Court observed that the principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

It is further held in the case cited supra that to appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for

review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC.

15. Keeping in mind the aforesaid principles, let us consider the ground of the applicant. The only ground raised by the applicant is that while granting the compensation this Court had not awarded the compensation by adding future prospects in view of the judgment of Hon'ble Apex Court in the case of Sarla Verma (supra) and Pranay Sethi (supra). The compensation is also not awarded under the head of loss of consortium, loss of estate and funeral expenses.

16. The Hon'ble Apex Court in the case of Pranay Sethi (supra) had considered the aspect of just compensation and held that taking into consideration the cumulative factors, namely passage of time, the

changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life etc. an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years, an addition of 25% where the deceased was between 40 to 50 years would be reasonable. The Hon'ble Apex Court further held that the claimants are also entitled to receive compensation under the head of general damages i.e. funeral expenses, loss of consortium, loss of estate, etc. It is held by the Hon'ble Apex Court that Section 168 of the Act deals with the concept of just compensation and the same has to be determined on the foundation of fairness, reasonableness and equitability of acceptable legal standards because such determination can never be an arithmetical exactitude. The Hon'ble Apex Court further held that it seems to us that reasonable figures on conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

17. In view of the above said observation, admittedly the claimants are entitled to receive the compensation by adding future prospects. Admittedly, while allowing the first appeal, this Court had only considered the yearly income of the deceased as Rs.1,67,328/- and applied the multiplier of 16 and awarded the compensation. In fact, the appellants are entitled to receive the compensation in view of the

judgment of Constitution Bench of the Hon'ble Apex Court in the case of Pranay Sethi (supra). Thus, the error pointed out covers under the error apparent on record. Therefore, said error can be corrected under the scope of review. In view of that the claimants are entitled to receive the compensation by adding future prospects in the yearly income of the deceased.

18. The deceased was an Assistant Teacher and drawing salary of Rs.20,915/- per month. After deducting $1/3^{\text{rd}}$ it comes to Rs.13,944/-. The yearly income comes to Rs.1,67,328/-. After adding 40% in that as deceased was 39 years of age, the yearly income comes to Rs.2,34,259/- ($1,67,328/- + \text{Rs.}66,931/- (40\%)$). The deceased was 39 years old, therefore, multiplier as per the second Schedule of Motor Vehicles Act, 1988 applies is 16. After application of multiplier of 16 ($\text{Rs.}2,34,259/- \times 16$) the amount comes to Rs. Rs.37,48,144/-. Besides the said amount of compensation the claimant No.1 is entitled to receive the spousal consortium of Rs.40,000/-, claimant Nos.2 and 3 are entitled to receive parental consortium of Rs.40,000/- each and claimant No.4 – mother is entitled to receive filial consortium of Rs.40,000/-. The claimants are also entitled to receive the compensation of Rs.15,000/- each towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the claimants are entitled to receive the compensation amount of Rs.39,83,144/-.

19. In view of the above discussion, the review application is allowed. The judgment and award passed by this Court in First Appeal No.850/2015 is reviewed and modified.

20. The claimants are entitled to receive the compensation of Rs.39,83,144/- along with interest @ 7.5% per annum inclusive of No Fault Liability (NFL) from the date of petition till realisation of the whole amount.

21. In view of the above discussion, the judgment and award passed by this Court in First Appeal No.850/2015 is modified and respondent Nos.1 and 3 shall jointly and severally pay the amount of compensation of Rs.39,83,144/- including no fault liability under Section 140 of the Motor Vehicles Act, 1988 along with interest @ 7.5% per annum from the date of petition till realisation of the whole amount.

22. The review application is allowed in the above terms and disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*