110 **CM-11837-CII-2015, CM-11839-CII-2015 in/and RA-CR-121-CII-2015 in FAO-208-2000**

Roshni and others vs. Murabali Shah and others

Present: Mr.R.C.Gupta, Advocate
for the applicant-respondent No.3.

Mr.Ashwani Arora and Mr.Vipul Sharma, Advocate
for respondents No.1 and 2.

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CM-11837-CII-2015 and CM-11839-CII-2015

Along with the review application, the present applications have also been filed by the insurance company for seeking condonation of delay of 8 days in re-filing and 251 days in filing of the review application, respectively.

In pursuance of the decision rendered in by this Court in FAO-208-2000 filed by the claimants for seeking enhancement of the compensation as awarded by learned Tribunal, the review application bearing RA-CR-121-CII-2015 was filed along with the aforesaid applications, thereby, seeking condonation of delay of 8 days in re-filing and 251 days in filing of the review application, respectively.

In the application, it is submitted that the records of the case were already lying with Sh.H.S.Giani, Advocate, who has since died and the records of the file were not traceable, whereupon, the insurance company could not get the same immediately. On tracing of the record, the insurance company processed the file, in order to comply with the judgment passed by this Court. However, on scrutiny of the copy of the insurance policy, copy of which was exhibited as Ex.R1 before learned Motor Accident Claims

Tribunal, it was observed that the policy of insurance was '**Act Only Policy**'. As such, the risk of the occupants, in a private car, having 'Act Only Policy' were not covered. Thereupon, the insurance company decided to file the review application and in the process, delay of 251 days had occurred, which is neither intentional nor deliberate. Furthermore, it is also stated that objections were raised by the registry, as a result of whereof, 8 days' delay has also occurred in re-filing of the review application.

In reply, learned counsel for the respondent-claimant has resisted the claim for condonation of delay. Rather, it is stated in the same that only remedy available with the insurance company is to file SLP before Hon'ble Supreme Court.

Keeping in view the reason, so assigned and also considering the file hopping from one seat to another, which consumes time and also, considering the fact that it is always appropriate, if the matter is decided on merits, without dilating further, both the aforesaid applications are allowed and delay of 8 days in re-filing and 251 days in filing of the review application, respectively, is hereby condoned.

RA-CR-121-CII-2015

The present review application relates to the decision rendered by this Court in FAO-208-2000, decided on 30.06.2014. It is averred in the application that FAO-208-2000 was filed by the claimants Roshni and others, for seeking enhancement of compensation, as awarded by learned MACT, Gurdaspur and in the FAO, the compensation, awarded was increased from Rs.3,23,940/- to Rs.12,26,836/-, payable by the insurance company, along with the interest @ 7.5%.

Further, it is also averred that during the course of arguments, counsel representing the insurance company has submitted that since, it was a private vehicle, being used as a taxi and further, that the deceased was a gratuitous passenger, in a private car and his risk was not covered, as per the contract of insurance. So, no liability was attracted. However, it was averred that this Court was pleased to hold that since the policy of the insurance was not shown to Court, at the time of arguments, therefore, it was assumed that the insurance company did not prove the basis of the exclusion of the liability from a claim, arising at the instance of the legal representatives of the gratuitous passengers, travelling in the insured vehicle. Hence, the insurance company along with the owner and driver, of the offending vehicle, were held liable, jointly and severally, with right of enforcement against insurers. Further, it was also stated in the application that since this appeal was being pursued by Sh.H.S.Giani, Advocate, since deceased, the records of the file, were not available with the counsel and hence, despite due diligence and best efforts, the same could not be procured and produced before the Tribunal, at the time of final arguments. It is also mentioned that the policy of the insurance company was duly exhibited before learned Tribunal as Ex.R1.

From the perusal of the policy of the insurance, this Court may observe and appreciate that the policy of the insurance was issued as 'Act Only Policy', in which the risk of passengers, being carried in the car in question, was not covered. This issue has already been decided by the

Hon'ble Supreme Court and therefore, it is a covered matter and hence, the applicant-insurance company pleads no liability, in this case. As such, in the application, a prayer was made to allow the review application and the judgment dated 30.06.2014, be reviewed, while considering the contents of Ex.R1, policy of insurance and the main appeal be re-heard and the applicant-insurance company may be ordered to absolved from the liability, in the interest of justice.

In pursuance of the notice issued, respondents No.1 and 2(driver and owner of the offending vehicle) made appearance through counsel and filed reply. In the reply, it is submitted that false ground has been taken by the insurance company, with regard to the coverage of the occupants. Also therein, it is submitted that the only remedy available with the insurance company is to file SLP before the Hon'ble Supreme Court. Rather, it is averred that ample opportunities were granted to the insurance company, not only by learned Tribunal but also by this Court, production of the insurance policy, but they failed to do so. As such, it is submitted that no case is made out to review the judgment passed by this Court, vis-a-vis, liability, fastened upon the insurance company.

To so substantiate his claim, learned counsel for respondents No.1 and 2 has placed reliance upon decisions rendered in ***S.Murali Sundaram vs. Jothibai Kanna and others, 2023(2) RCR (Civil) 111***, ***Jayalakshmi Coelhi vs. Oswald Joseph Coelho, 2001(2) RCR (Civil) 515***, ***Ved Pal and others vs. State of Haryana, 2007(2) RCR (Civil) 211***, ***Shiv Lochan Singh @ Bhola vs. National Insurance Co. Ltd. and others, 2018(1)***

RCR (Civil) 559 and ***New India Assurance Co. Ltd. vs. Seema Devi and others, 2019(3) RCR (Civil) 728***.

Learned counsel for the parties heard.

In ***S.Murali Sundaram's case (supra)***, the Hon'ble Supreme Court, considered the order passed by the High Court, thereby, allowing the review application filed under Order 47 Rule 1 CPC and having set aside the judgment and order passed in a writ petition. While allowing the review application, the High Court had observed and held that earlier judgment and order, in the writ petition was erroneous. In this context, in the said authority, it was observed by the Hon'ble Supreme Court that the question, which is posed before this Court for consideration is whether, in the facts and circumstances of the case, the High Court is justified in allowing the review application filed under Order 47 Rule 1 CPC and setting aside the reasoned judgment and order passed in main writ petition?

In the same, the reference was made by the Hon'ble Supreme Court to two decisions rendered in ***Perry Kansagra vs. Smriti Madan Kansagra, 2019(20) SCC 753*** and ***Shanti Conductors (P) Ltd. vs. Assam SEB, 2020 (2) SCC 677*** and on the basis thereof, had held that re-hearing of the matter is impermissible in law. Further, it was observed that review is not appeal in disguise. It observed that power of review can be exercised for correction of a mistake but not to substitute a view. Further, it was observed that, it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided.

After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC, the Hon'ble Supreme Court has summed up, as herein reproduced:-

> *"(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.*
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> *(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on the points where there may conceivably by two opinions.*
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> *(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.*
>
> *(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.*
>
> *(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit."*

Also, it was observed, as herein given:-

> "***It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.***"

Not only this, even, in the subsequent paragraph, while taking consideration the case of ***Shanti Conductors' case (supra)***, it was observed, as herein given:-

> *"…...that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It is further observed that 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 record*

> *justifying the court to exercise its power of review under Order 47 Rule 1 CPC."*

Thereupon, it was opined by the Hon'ble Supreme Court that while allowing the review application and setting aside the judgment and order passed in Writ Petition, the High Court had exceeded its jurisdiction and exercised the jurisdiction, not vested in it, while exercising the review jurisdiction under Order 47 Rule 1 read with Section 144 CPC. On this account, the order passed by the High Court in review application was held to be erroneous. Furthermore, it was held that the erroneous order may be subjected to appeal before the higher forum but cannot be a subject matter of review under Order 47 Rule 1 CPC.

In ***Jayalakshmi Coelho's case (supra)***, it was held that clerical or arithmetical mistake or accidental slip of the Court can only be corrected in exercise of powers of review. However, before the exercise of such power, the Court must be legally satisfied that the order or the decree contains or omits something, which was intended to be otherwise. It does not empower the Court to have a second thought over the matter and to find that a better order or decree could or should be passed by re-consideration of merits of the matter and to come to another conclusion. Likewise in ***Ved Pal's case (supra)***, it was observed by the Hon'ble Division Bench of this Court that scope of review jurisdiction is limited to correction of mistake or accidental slips, on the face or the record.

Besides the aforesaid case law learned counsel for respondents No.1 and 2 has placed much reliance upon ***Shiv Lochan's case (supra)***, wherein, it was observed that vis-a-vis Section 147(1)(b)(i)-liability, the interpretation of the term 'any person' and 'any liability' not restrictive and held that it covers every liability of insured qua every person-'Every person' included even passengers travelling in private passenger car and pillion rider of motorcycle. While taking into consideration the scope of compulsory insurance policy, it was observed that to succeed in claim petition against owner of private passenger car or motorcycle or its insurer, the claimant is required to prove negligence of driver of such private passenger car or motorcycle.

Also, reference has been made to the decision rendered in ***Seema Devi's case (supra)***, wherein, reference was made to the decisions of the Hon'ble Supreme Court rendered in ***United India Insurance Company vs. Tilak Singh and others, 2006(3) RCR (Civil) 168*** and also in ***New India Assurance Co. vs. Asha Rani and others, 2003(1) RCR (Civil) 671*** and was held that even, where a gratuitous passenger is traveling in a vehicle other than a goods vehicle, an insurance company cannot be held liable to indemnify the owner of the vehicle that it has insured. In the light of the same, further, it was observed while making reference to ***Shiv Lochan's case (supra)***, that the co-ordinate Bench of this Court, after discussing the differences between an "**Act only Policy**" as also a comprehensive and a package policy, it was held that the insurance company, as had insured the vehicle involved in the accident in that case, was not entitled to recover compensation paid by it to the claimants.

Considering the same, it was also further held that in the present case that this Court (Coordinate Bench) in ***Shiv Lochan's case (supra)*** has held that what is applicable in respect of a goods vehicle cannot be held to be applicable in the case of a private vehicle, and therefore a pillion rider on a two wheeled vehicle insured with an insurance company, would be covered within the term "third party", because Section 147(1)(b)(i) of the Act of 1988, simply refers to the death of or bodily injury to any person, which distinction (between the case of a goods vehicle and any other vehicle), was not clearly brought out before the Supreme Court in ***Tilak Singhs' case (supra)***.

On the basis thereof, it was held in ***Seema Devi's case (supra)***, what is applicable to good carriage, cannot be held applicable to a motorcar or motorcycle. On the basis of the distinction, as spelt out in ***Shiv Lochan's case (supra)***, it was also observed in ***Seema Devi's case (supra)*** that the judgment delivered in ***Shiv Lochan's case (supra)*** was appealed before the Hon'ble Supreme Court, wherein, no stay was granted, as observed in paragraph No.33 of the aforesaid judgment. Precisely, on the basis thereof, in the succeeding paragraph No.34, it was observed that Court finds no hesitation in dismissing this appeal qua the prayer of the appellant insurance company seeking to be absolved of any liability to pay compensation to the respondent claimants and decided the application.

In the light of the aforesaid case law, it is evident that the distinction has been made by our own High Court, with regard to the absolvement of the insurance company, as observed by the Hon'ble Supreme Court in the judgment aforesaid. In such circumstances, it cannot be concluded that the judgment, so delivered by the Court, on the basis of the insurance policy Ex.R1, produced before learned Tribunal and which was not available with this Court, at the time of disposal of the main appeal, could be taken into consideration. Respectfully, it is observed that the error, on the basis whereof, the review application has been filed, cannot be said to be self-evident. Rather, to consider the question of absolvement, there is a process of reasoning, which has to be spelt forth. Precisely, on this account, when reasoning further is required, the same does not make out a case for re-appraisal of the material, vis-a-vis, the liability, so fastened upon the insurance company and therefore, the reasoning process, which is to be conducted, is impermissible, while deciding the review application and precisely, on this account, even though, erroneous order may have been passed, the same may be subjected to appeal before higher forum, but it cannot be a subject matter of review under Order 47 Rule 1 CPC.

Hence, on the aforesaid account, there is no merit in the review application and therefore, the same is hereby dismissed.

December 06, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**