

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.418 of 2023

1. Branch Manager New India Assurance Company Ltd. Cinema Road, Hazipur, through Manager cum Duly constituted Attorney New India Assurance Company Regional Office, New India Assurance Company Ltd., 6th and 7th Floor B.S.F.C. Building Fraser Road, Patna, District-Patna.
2. Branch Manager New India Assurance Company Ltd., V.I.P. Main Road Behind Madona High School Station Road, Darbhanga. through Manager cum Duly constituted Attorney New India Assurance Company Regional Office, New India Assurance Company Ltd., 6th and 7th Floor B.S.F.C. Building Fraser Road, Patna, District-Patna.

... .. Petitioner/s

Versus

1. Anand Kumar Jha son of Daya Nath Jha, Resident of Dainby Road, D-13, P.O. Lalbag, District Darbhanga, Bihar 843302.
2. Md. Touhid Alam, son of Md. Faroom, 26, Bentinck Street Kolkatta 700001 at present Village Pathara, P.O. Khirma, P.S. Kewati, District Darbhanga, Bihar 847121.
3. Vijay Kumar Singh alias Vijay Singh son of Chaturbhuj Singh, Resident of Village Fatehabad Borha, P.O. Gurmiya, P.S. Sarai, District Vaishali, PIN 844117.
4. Bachchi Devi Wife of Vijay Kumar Singh alias Vijay Singh, Resident of Village Fatehabad Borha, P.O. Gurmiya, P.S. Sarai, District Vaishali, PIN 844117.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ashok Priyadarshi, Advocate
For the Respondent/s	:	Mr. Prince Kumar Mishra, Advocate
		Mr.Vikas Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 14-08-2024

The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 24.02.2023 passed by learned Additional District Judge -cum- Motor Vehicle Accident Claims Tribunal, Vaishali Hajipur dismissing the Civil Misc. Case No. 39 of 2021 filed for review



of judgment passed in Claim Case No. 78 of 2016.

2. Conspectus of the case is that one Claim Case bearing No. 78 of 2016 was filed under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') by the parents of the deceased Shashi Bhushan Kumar submitting that their son died in an accident caused by the vehicle bearing Registration No. BR 30P 5666. The petitioners were made party as opposite party nos. 3(I) and 3 (II) being the insurer of the vehicle in question which met with the accident. The petitioners appeared after receipt of notice before the Claims Tribunal, Vaishali at Hajipur and filed the written statement. Vide order dated 31.07.2019, Claims Tribunal allowed the claim petition and directed the petitioners to pay and satisfy the award with right to recover the said amount from the owner. However, no appeal was preferred by the petitioners against the aforesaid judgment and award. Subsequently, it came to the knowledge of the petitioners that at the time of accident, the vehicle was not insured with the petitioner New India Assurance Company Ltd. and the insurance policy as brought on record was a subsequent policy issued after the accident. Thereafter, the petitioners filed Civil Misc. Case No. 39 of 2021 for review of the judgment and award. On 24.02.2023, learned Additional District Judge IX



-cum- Motor Vehicle Accident Claims Tribunal, Vaishali Hajipur dismissed the review petition on the ground of limitation. The said order is under challenge before this Court.

3. Mr. Ashok Priyadarshi, learned counsel for the petitioners at the outset submitted that in the light of decisions of the Hon'ble Supreme Court, the review petition filed by the petitioners could not be dismissed on the point of limitation. Mr. Priyadarshi further submitted that while reviewing the documents, from the inquest report of the police, the fact came to the notice of the petitioners that the body of the deceased Shashi Bhushan Kumar was found at 12.40 hours on 26.05.2016 on the spot of accident and in column 9, the number of offending vehicle has also mentioned in the inquest report. The insurance policy mentions the start of insurance cover from 1.27 PM dated 26.05.2016 till 11.59 PM dated 25.05.2017. Thus the accident had taken place before the policy was issued. Mr. Priyadarshi further submitted that the Hon'ble Supreme Court in the case of *National Insurance Company Ltd. Vs. Jikubhai Nathuji Dabhi* reported in (1997) 1 SCC 66 and *Oriental Insurance Company Vs. Sunita Rathi* reported in AIR 1998 SC 257 has held that the policy will come into effect from the date and time as mentioned in the policy and that liability of the



insurance company will start when the policy becomes operative. Now the bare reading of inquest report and the policy document of the offending vehicle shows that the accident had taken place much before the vehicle was insured with the petitioners and for this reason vehicle in question was not insured at the time of accident rather the respondent owner has suppressed the inquest report otherwise the owner would have been liable to pay the award amount as the vehicle in question was not insured at the time of accident. Mr. Priyadarshi further submitted that the Claims Tribunal failed to exercise the jurisdiction vested with it when it refused to review the judgment and award though it has been brought to the notice of the learned tribunal that the said award has been obtained by practicing fraud and misrepresentation. Learned Tribunal ought to have examined the question on which the review has been sought. In this regard the learned counsel referred to the decision of learned Single Judge in the case of ***Chairman, The New India Assurance Company Ltd. Vs. Most. Prabhawati Devi and Others*** reported in ***(2007) 1 PLJR 337*** wherein it has been held that in case of alleged fraud, the Tribunal must entertain an application filed by the aggrieved party under Sections 151, 152 and 153 of the Code of Civil Procedure



(hereinafter as 'the Code') relying on the another decision of this Court in the case of *Munna Kumar Singh Vs. The National Insurance Company and Others* reported in (2006) 4 *PLJR* 262. Mr. Priyadarshi further relied upon a decision of Hon'ble Supreme Court in the case of *United India Insurance Company Ltd. Vs. Rajendra Singh and Others* reported in *AIR 2000 SC 1165* wherein the Hon'ble Supreme Court held that the remedy to move for recalling the order on the basis of the newly discovered fact amounting to fraud of high degree, cannot be foreclosed in such a situation. The Hon'ble Supreme Court has further held that no Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim. Mr. Priyadarshi further submitted that the claim of the petitioners that the vehicle was not insured with the petitioners at the time of insurance cannot be simply brushed aside without further probe into the matter. Mr. Priyadarshi further submitted that as soon as the petitioners came to know about the fraudulent representation of the owner of the vehicle about his vehicle being insured at the time of accident, the petitioners moved before the learned Claims Tribunal for review of the earlier



order and rightly so as the petitioners did not prefer any appeal and even if any appeal would have been preferred, the scope of the appeal would be limited to issues formulated from the pleadings made till the filing of appeal. Thus, learned counsel submitted that the learned Claims Tribunal erred in dismissing the Civil Miscellaneous case filed for review of the judgment and award dated 31.07.2019 passed in Claim Case No. 78 of 2016.

4. Learned counsel appearing on behalf of respondent no. 1/owner of the offending vehicle vehemently contended that the learned Claims Tribunal has rightly dismissed the review petition of the petitioners. The award has been passed in terms of Section 173 of the Act and review being creature of statute, in absence of statutory provision, review is not permissible. Learned counsel has placed his reliance on the decision of Hon'ble Supreme Court in the case of ***Kalabharati Advertising Vs. Hemant Vimalnath Narichania*** reported in ***(2010) 9 SCC 437*** wherein the Hon'ble Supreme Court held that unless statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting the express power of review, it is manifest that a review could not be made and the



order in review, if passed, is ultra vires, illegal and without jurisdiction. Learned counsel further submitted that the accident took place on 26.05.2016 and the claim petition has been allowed on 31.07.2019 and the review application has been filed on 07.04.2021 which is beyond the period of limitation of 30 days in terms of Limitation Act, 1963. Learned counsel further submitted that the application filed by the Insurance Company under Sections 151, 152 and 153 of the Code is not in consonance with Section 114 of the Code read with Order 47 Rule 1 of the Code. The petitioners have failed to show that the discovery of review matter or evidence was not within the knowledge of the petitioners even after exercise of due diligence and could not be produced by the time when the decree was passed. Learned counsel further submitted that the said document is part of the case diary and has been available all along to the petitioners. So the petitioners claiming review at this stage is against the provisions of law. The copy of FIR has already been marked exhibit in the present case. Charge sheet has also been marked exhibit. So the petitioners were having knowledge of all facts. The petitioners cannot go beyond their pleadings and cannot take a new plea at this stage to deny their liability. Learned counsel further submitted that the petitioners



want to avoid the claim on the basis of photocopy of a document in which interpolation has been made and no review is permissible under such circumstances. Thus, learned counsel submitted that there is no infirmity in the impugned order and the same needs to be sustained.

5. I have given my thoughtful consideration to the rival submission of the parties. The Misc. Case of the petitioners filed for review has been rejected by the learned Claims Tribunal mainly on two grounds that the review petition was barred by limitation and devoid of substantial merit on account of lack of explanation with regard to factum of reasonable care and diligence for bringing a new evidence on record. In the facts of the present case, the petitioners have based their claim on a document stated to be inquest report of the deceased showing time of death to be 12.40 PM on 26.05.2016 which is being contrasted with coming into effect of the policy, i.e., 1.27 PM on 26.05.2016. It is the contention of the respondent no. 1 that the inquest report is a photostat page and there some interpolation on it as for this reason the same is a dubious document. Moreover, the inquest report is not a document which was not available to the petitioners when they filed their written statement. Then the copy of FIR and charge sheet have also



been brought on record and marked exhibits and it could be safely inferred that the said documents also contained the time of death of the victim Shashi Bhushan Kumar. If all the documents were available with the petitioners, it shows sheer negligence on part of the petitioners in not raising the issue at the first instance. The petitioners could not play victim card at this stage when their review petition has been dismissed. The petitioners have failed to explain why they did not took up this plea at the time of filing of the written statement and even prior to passing of the award on 31.07.2019.

6. There can be no dispute on the point that a review petition is not barred before a Claims Tribunal. Section 169 of the Motor Vehicles Act, 1988 provides that the provisions of Code of Civil Procedure would be applicable in a proceeding instituted under the Motor Vehicles Act. Now Section 114 and Order 47 Rule 1 of the Code read as under:-

“114. Review.- Subject as aforesaid, any person considering himself aggrieved –

(a) by a decree or order from which no appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court



Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

47(1). Application for review of judgment.--

(1) Any person considering himself aggrieved--

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or other made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of



an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when the matter is taken up, no one appears being respondents, he can present to the Appellate Court the case on which he applied for the review.”

7. Applying the aforesaid provision to the facts of the present case, it could not be said that the discovery of new and important matter or evidence in this case copy of inquest report was not within the knowledge of the petitioners or could not be produced even after exercise of due diligence by that time when the decree was passed or order made. The petitioners claimed that fraud was perpetrated and it was not realistic to expect the petitioners to resist a claim at the first instance because the petitioners were not having knowledge at that time. But the said contention is not acceptable because the petitioners were having knowledge of the fact and by their indolent act they condoned the act of respondent no. 1 if this claim is taken to be true. Moreover, all the claims of the petitioners have been denied by respondent no. 1 and it is not the case of the petitioners that there has been any acquiescence/admission of their contention by respondent no. 1. In the light of aforesaid discussion, I do not find much merit in the contention of the petitioners. Moreover,



the law related to review has been settled by the Hon'ble Supreme Court in the case of ***Sanjay Kumar Agarwal Vs. State Tax Officer***, reported in ***2023 SCC OnLine SC 1406*** and the Hon'ble Supreme Court has elaborately considered under what circumstances civil review could be entertained. In this regard eight principles have been laid down by the Hon'ble Supreme Court which are as under:-

“(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) 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.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected.”



(v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.”

8. In the light of discussion made herein before, it is very much clear that the reliance placed by the learned counsel for the petitioners on the decision of Hon’ble Supreme Court in the case of ***Chairman, The New India Assurance Company Ltd. Vs. Most. Prabhawati Devi and Others*** (*supra*) and ***United India Insurance Company Ltd. Vs. Rajendra Singh and Others*** (*supra*) are of no help to the cause of the petitioners



since the facts are quite dissimilar.

9. Therefore, in the light of facts and circumstances, discussion made and the law applicable, I do not find that the learned trial court has committed any error of jurisdiction and hence, the impugned order dated 24.02.2023 does not need any interference and the same is affirmed.

10. Accordingly, the present petition stands dismissed.

11. Since, it appears, the petitioners-insurance company have already deposited the claim amount of Rs. 10,77,200/- towards compliance of the order dated 23.02.2024 of this Court before the Registry, the Registry is directed to release the said claim amount so deposited along with interest, if any in favour of the claimants, who are respondent nos. 3 and 4 herein, after proper verification.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	15.07.2024
Uploading Date	20.08.2024
Transmission Date	NA

