

10.04.2024
Ct. 654
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**RVW 107 of 2023
(Assigned)**

**Bela Mukherjee @ Mukhopadhyay
-Vs-
The New India Assurance Co. Ltd & Anr.**

Mr. Souri Ghosal

... for the review-petitioner

Mr. Parimal Kumar Pahari

... for the respondent-insurance company

This review petition has been filed by the petitioner for review of the judgment and order dated 13th January, 2020 passed in F.M.A. 756 of 2006.

By the aforesaid order, a compensation of Rs. 1,57,500/- was allowed in the favour of the claimant.

Mr. Souri Ghosal, learned advocate for the review-petitioner submits that while disposing of the application, error has crept into the calculation of compensation which is error apparent on the face of the record. The Hon'ble Court has determined the income of Rs. 1,500/- per month of the victim and age of the victim as 29 years. Therefore, the multiplier as per Second Schedule would be 18. Taking into account the aforesaid aspect, the compensation should be Rs.2,74,000/-. There is arithmetical error in calculation of compensation. In view of the above submissions, he

prays for enhancement of the compensation amount by way of review.

Mr. Parimal Kumar Pahari, learned advocate for the respondent-insurance company opposing the prayer in the review for enhancement submits that the scope of review is not that of an appeal and it can be entertained only if there is error apparent on the face of record. The appeal was disposed of by the Hon'ble Division Bench by taking into consideration the entire aspects and applying the structural formula in Schedule II to the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act of 1988'). Therefore, the enhancement of the compensation would amount to re-assessing of the compensation, which cannot be entertained by way of review. In support of his contention, he relies on the decision of the Hon'ble Supreme Court passed in ***Kamalesh Verma versus Mayawati and others***, reported in **(2013) 8 SCC 320**. In view of the above submissions, he prays for dismissal of the review petition.

The provision under Order XLVII of the Civil Procedure Code lays down that in order to maintain a review, an error must be apparent on the face of the record or there has to be discovery of new evidence which after exercise of due diligence was not within the knowledge or could not be produced by the review applicant.

The principal ground for review in the present application is that there was arithmetical error in calculation of compensation which is an error apparent on the face of record.

It is found from the judgment under review that it has applied the structural formula in Schedule II to the Act of 1988 to arrive at compensation of Rs. 1,57,500/-. It is urged on behalf of the petitioner that since the age of the victim been determined as 29 years, the multiplier of 18 is applicable for assessing compensation. Whether the multiplier would be 18 or some other multiplier calls for further examination or scrutiny. The term "*mistake or error apparent*" by its plain meaning signifies an error which is *ex facie* evident from the record of the case and the same does not require any further examination or scrutiny or explain both on fact and law. If an error is not self-evident and detection thereof requires a detailed enquiry or assigning of reasons, it cannot be construed to be an error apparent on the face of record. An order cannot be corrected merely because it is erroneous in law or a different view could be arrived at on the same set of facts. In review, reappraisal of evidence is not permitted, as the Court exercising power of review is not an appellate authority. When the Court has decided finally, it is deemed that it has considered all the aspects before final decision was passed. No such error

apparent on the face of record could be indicated to exercise the power of review.

The Hon'ble Supreme Court in ***Lily Thomas and others versus Union of India and others***, reported in **(2000) 6 SCC 224** has observed as follows:

"52. The dictionary meaning of the word "review" is "the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakersh and Ors. v. Pradyunman singh ji Arjun singh ji held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. If cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S. Nagaraj and Ors v. State of Karnataka and Anr. held: (SCC pp. 619-20, para 19)

'19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Law Choudhury v. Sukhraj Rai the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council

in Rajunder Narain Rae v. Bijai Govind Singh that an order made by the Court was final and could not be altered:

‘...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.’

Basis for exercise of the power was stated in the same decision as under:

‘It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.’

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of

Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.'

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength. 53. This Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order XL Rule 1 of the Supreme Court Rules and held: (SCC pp. 171-172, para 8)

"8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that 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: Sajjan Singh v. State of Rajasthan , SCR at p. 948. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: Giridhari Lal Gupta v. D.N. Mehta, SCR at p. 760. The Court may also reopen its judgment if a manifest wrong, has been done and it is necessary to pass an order to do full and effective justice O.N. Mohindroo v. Distt. Judge, Delhi, SCR at p. 27. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47, Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL, R.1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except 'where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility': Sow Chandra Kanta v. Sheikh Habib."

This Court finds substance in the submissions of Parimal Kumar Pahari, learned advocate for the

respondent-insurance company relying on *Kamalesh Verma (supra)* that the scope of the review is not that of an appeal.

Bearing in mind the aforesaid proposition and in view of the above discussion, the review petition being ***RVW 107 of 2023*** stands dismissed.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat copy of this order, if applied for be given to the parties upon compliance of necessary legal formalities.

(**Bivas Pattanayak, J.**)