

13.05.2024
Ct. 654
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**RVW 163 of 2023
With
CAN 1 of 2024
In
FMA 1073 of 2022**

**The New India Assurance Co. Ltd.
-Vs-
Munihara Khatun & Ors.**

Mr. Rajdeep Bhattacharya
... for the review applicant

Ms. Sima Ghosh
... for the Opposite parties-claimants

This matter is appearing under the heading “*To Be Mentioned*”.

Re: CAN 1 of 2024 (Section 5)

This is an application for condonation of delay under Section 5 of Limitation Act, 1963 in filing of the review petition.

Mr. Rajdeep Bhattacharya, learned advocate for the review applicant-insurance company submits that upon going through the order passed in the appeal being FMA 1073 of 2022, it was found by the insurance company that there was error in calculation of the compensation and thereafter, the matter was intimated to the learned advocate-on-record as well as there was misplacement of certified copy of the judgment and order, which has resulted in delay of 233 days in filing of the review petition. He seeks for condonation of such delay.

Ms. Sima Ghosh, learned advocate for the opposite parties-claimants leaves the matter to the discretion of the Court.

It is contended in the application that the review applicant-insurance company while complying the order passed in the appeal observed that there was error in calculation of the compensation, which was intimated to the learned advocate-on-record. Further the learned advocate for the insurance company misplaced the requisition of the certified copy of the judgment and order. For such reason, there has been delay of 233 days in preferring the review petition. The cause shown is sufficient to condone the delay of 233 days in filing the review petition.

Accordingly, the aforesaid delay in filing the review petition stands condoned.

The application for condonation of delay being **CAN 1 of 2024** stands allowed.

Re: RVW 163 of 2023

This review petition has been filed by the applicant-insurance company (being respondent no.1 in appeal) for review of the judgment and order dated 12th June, 2023 passed in F.M.A. 1073 of 2022.

Mr. Rajdeep Bhattacharya, learned advocate for the review applicant-insurance company submits that the multiplier adopted for calculation of the compensation should be 17 instead of 18 since at the time of accident, the victim was 30 years of age. He

seeks for review of the judgment and order dated 12th June, 2023 to such extent.

Ms. Sima Ghosh, learned advocate for the opposite parties-claimants leaves the matter to the discretion of the Court.

The appeal being FMA 1073 of 2022 was preferred by the opposite parties-claimants against the judgment and order dated 11th March, 2022 passed by the learned Tribunal. The learned Tribunal adopted multiplier of 18. Such finding of the learned Tribunal was never challenged by the insurance company before the appellate Court.

Order XLVII Rule 1 of the Code of Civil Procedure provides that a judgment and decree can be reviewed on the ground of 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.

The principle ground raised by the review applicant- insurance company is that since the victim at the time of accident was 30 years of age, the multiplier should be 17 instead of 18 adopted by this Court and thus there is error apparent in calculation of compensation.

In order to appreciate such ground, the Court has to reappraise the evidence. Whether the multiplier would be 18 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. It 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."

Bearing in mind the aforesaid proposition and in view of the above discussion, the review petition falls short of merit.

Accordingly, the review petition being **RVW 163 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.)