

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present: - Hon'ble Mr. Justice Subhendu Samanta.

**RVW 185 of 2023
With
IA No. CAN 1 of 2023
In
FMA 197 of 2017
Aishwarya Sen & Anr.
Vs.
New India Assurance Co. Ltd.**

For the appellant	:	Mr. Tapas Dutta.
For the respondent	:	Mr. Parimal Kumr Pahari
For Amicus Curie	:	Mr. Rajesh Singh
Heard on	:	16.1.2024
Judgment on	:	23-2 -2024

Subhendu Samanta, J.

This instant petition is filed for review of judgment dated 12.5.2023 passed in FMA No. 197 of 2017(Aishwarya Sen & Anr. Vs. New India Assurance Co. Ltd.)

The brief fact of the case is that the present petitioners are the legal heirs of one injured(deceased) namely, Manab Sen. Initially, the injured(deceased) preferred an application before the learned Tribunal for getting compensation. During the pendency of the said application the claimant died and the present petitioners are represented in the claim application as the legal heirs.

After hearing the parties and also after receiving the evidences from the claimant as well as Insurance Company, the learned Tribunal has awarded a sum of Rs.10,00,000/- together with interest in favour of the claimants under Section 166 of the M.V. Act.

Being aggrieved by the said award, the insurance Company preferred an appeal being No. FMA 804 of 2010. The legal heirs of the original claimant/injured filed another appeal being FMA no.197 of 2017 against the said award dated January 13, 2010.

The learned appellant court has heard both the appeal analogously has passed the impugned judgment on 12.5.2023, thereby, enhanced the award of compensation to the tune of Rs.27,66,475/-.

Being aggrieved by and dissatisfied with the said award, the instant review application has been filed by the present petitioner/claimants/

Mr. Tapas Dutta, learned advocate for the petitioner submits that the grounds of review as follows:

- A. Learned Appellant Court has failed to appreciate the correct multiplier in this case. Learned appellant Court adopted the multiplier 15. The correct multiplier would be 16.
- B. The annual income of the deceased was not correctly calculated by the learned Appellate Court, it would be gross total income less income tax paid for the last financial year.
- C. Rate of interest would be 9% instead of 6%.
- D. The Appellate Court has failed to provide the monetary relief on the different heads i.e. pain and suffering, permanent disability, loss of amenities, happiness, enjoyment, expectation, discomfort, hardship etc.

On the above ground, he submits that the order passed by the learned Appellate Court need be modified.

Mr. Rajesh Singh, learned advocate appearing on behalf of the Insurance Company submits that the learned Appellate Court has heard both the appeal analogously. After considering the submission of the parties and after considering the materials on record, the learned Appellate Court has enhanced the compensation from Rs.10,00,000/- to more than Rs.27,00,000/-. The grounds mentioned in the review application is not maintainable. The claimants may prefer an appeal before the Hon'ble Apex Court against the order passed by the 1st Appellate Court but the alleged grounds under the disguise of review cannot be allowed.

Refuting the contention of the learned advocate for the insurance company, Mr. Dutta, learned advocate submits that the Hon'ble Supreme Court in **M. M. Thomas Vs. State of Kerala** reported in **(2000) 1 SCC 666** has categorically discussed about the power of High Court to entertain the review application.

He referred paragraph 14 of **M. M. Thomas(Supra)**, which is quoted below:

“14. High Court as a Court of Record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. As Court of Record envelopes all such powers whose acts and proceedings are to be enrolled in a perpetual, memorial and testimony. A Court of Record is undoubtedly a superior Court which is itself competent to determine the scope of its jurisdiction. The High Court, as a Court of Record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is

noticed by the High Court in respect any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and another, 1966(3) SCR 744 : AIR 1967 SC 1 [LQ/SC/1966/75] a nine Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a Court of plenary jurisdiction being a Court of Record."

On the other hand, Mr. Singh, learned advocate cited a decision of Hon'ble Supreme Court in **Kamalesh Verma Vs. Mayawati & Ors.** reported in **(2013) 8 SCC 320**. The relevant portion of paragraph 18,19,20.1 and 20.2 are quoted below:

"18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in Jain Studios Ltd. Vs. shin Satellite Public Co. Ltd., held as under:

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would covert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A

repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

19. 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 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

The words “any other sufficient reason” have been interpreted in Chhajju Ram Vs. Nedi and approved by this Court in Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius to mean “a reason sufficient on ground at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the fact of the order, undermines its soundness or results in miscarriage of justice.*
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- (vi) The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) The error apparent on the fact of the record should not be an error which has to be fished out and searched.*
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

- (ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.*

Heard the learned advocates and perused the grounds mentioned in the review application, it appears that all the ground in the review petition were already raised before the appellate Court. The appellate Court has decided all the issues. There exist no new fact which discovered after passing of the judgment under challenge. The points of review i.e. the annual income of the deceased, rate of interest and other pecuniary and non-pecuniary benefits has already been argued before the learned Appellate Court. After appreciating the arguments of the parties, the learned Appellate Court has come to the conclusion that the award passed by the learned Tribunal requires modification. Let me now consider the scope of review by this Court.

Order 47 Rule 1(1) of the Code of Civil Procedure, 1908 provides for an application for review, which reads as under:-

“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 fact of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.”

In case of **M.M. Thomas(Supra)**, the Hon’ble Supreme Court has decided the issue on the ground that High Court as a court of record as envisaged under Article 215 of the Constitution of India must have inherent power to correct the records. In the present application, the grounds for review as sought for by the petitioner is not come under “mere correction”. The grounds as sought for are also not an inadvertent defect appearing in the body of the judgment.

By virtue of decision of Hon’ble Supreme Court in **Kamalesh Verma(supra)**, I am of the view that the instant review application filed by the present petitioner is not at all maintainable. The present petitioners wanted to repeat the old and overrule argument, which was already considered by the 1st Appellate Court.

Thus, I find no justification to entertain the instant prayer of the petitioner.

The review application being meritless, is hereby dismissed.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)

