

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (ST) NO. 11032 OF 2023
IN
FIRST APPEAL NO. 463 OF 2020
WITH
INTERIM APPLICATION NO. 317 OF 2024
IN
REVIEW PETITION (ST) NO. 11032 OF 2023

ICICI Lombard General Insurance Co Ltd

...Petitioner
(Orig. Respondent No. 2)

In the matter between

Namrata Anil Yadav (Widow of Deceased) &
Ors

...Appellants
(Orig. Claimants)

Versus

Bhupendra Manohar Bhoir & Anr

...Respondents

Mrs Varsha Chavan, for the Petitioner.

**Mr Sandeep R Mishra, i/b JP Gadhiya, for the Original Appellant
and Respondent in Review Petition.**

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signed by
SHEPHALI
SANJAY
MORMARE
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**CORAM G.S. Patel &
 Madhav J Jamdar, JJ.**
DATED: 10th January 2024

PC:-

INTERIM APPLICATION NO. 317 OF 2024:

1. For the reasons stated in the Interim Application, the delay is condoned, and the Interim Application is made absolute in terms of prayer clause (a).

REVIEW PETITION (ST) NO. 11032 OF 2023:

2. The Review Petition is filed after the Special Leave Petition against our reasoned order and judgment of 13th April 2022 was rejected on 16th December 2022 with the specific finding that the Supreme Court did not find any reason to entertain that Petition.

3. Notably, no leave was sought before the Supreme Court to file a review. That may not matter much, but the Petition accepts that the Review Petition is filed after the Special Leave Petition (“SLP”) was dismissed. Indeed it says it is filed since the Review Petitioner is “aggrieved” by the dismissal of the SLP, and hence has filed his Review Petition. Ms Chavan for the Review Petitioner immediately agrees that the submission is wholly incorrectly placed.

4. We are astonished at the approach of the insurer which has refused to pay the compensation ordered. This is to be deprecated because the only submission before us is not positioned under either Section 114 or properly under Order 47 of the Code of Civil Procedure 1908. An exception is taken instead to a particular phrasing in sub-paragraph (VIII) of paragraph 32 of our judgement and the use of the word ‘independent witness’ with a suggestion

that this was a less than felicitous phrasing and therefore the entire judgment is liable to be reviewed. The Supreme Court evidently did not think so. Further, our conclusion after considering the position in law and on the question of negligence and contributory negligence is summarised in paragraph 37, viz., that the accident took place solely due to rash and negligent driving of the driver of the offending Tempo. In so holding, we negated the finding of the Tribunal that there was any element of contributory negligence on the part of the deceased or that there was any question of apportionment of negligence between the deceased and the tempo driver. We therefore held that the Appellants were entitled to compensation entirely to the extent of 100%.

5. It is not asserted before us that our judgment fails to take into account the evidence or any part of the record before the Trial Court. What is being alleged is that one particular witness, namely the Investigating Officer, had to be regarded as an independent witness and we could not have held that the 2nd Respondent namely the present Review Petitioner, had 'failed to examine any independent witness'. Indeed, there is an extended discussion on the evidence and testimony of the investigating officer in paragraph 29. The conduct of the police has been adversely commented upon. No review is sought of any of these findings that only of a description, i.e., the phrase 'independent witness'.

6. In the result, we see no ground is made out for review.

7. The Review Petition is rejected.

8. In the facts and circumstances of the case, there will be no order as to costs.

(Madhav J Jamdar, J)

(G. S. Patel, J)