

Mrs. S. S. Dwivedi, Advocate for the Appellant/Applicants in IAST 22909 / 2021.

Mr. R. R. Varma with Mr. Sanket Thorat and Mr. Sachin Suware, Advocate for the Respondents No.2 / Applicant in IA 133/2023.

CORAM : **ABHAY AHUJA, J.**
RESERVED ON : **17th AUGUST, 2023**
PRONOUNCED ON : **2nd JANUARY, 2024**

JUDGMENT :

1. This Appeal has been filed under section 173 of the Motor Vehicles Act, 1988 (the “M.V. Act”) challenging the judgment and award dated 10th December, 2019 passed in Review Application being M.A.C.P. (Review Application) No. 22 of 2015 by the Motor Accident Claims Tribunal, Nashik (the “Tribunal”) in Motor Accident Claim Petition No.760 of 2012 allowing the said Review Application and modifying Award dated 2nd January, 2015 passed by the Tribunal enhancing the compensation payable to the Respondents No.1 and 2 by the Appellant and Respondent No.3 from Rs.4,54,000/- (inclusive of the amount of “no-fault liability” with interest @ 9% p.a. from the date of institution of claim petition till realization) to Rs.13,30,000/- (inclusive of the amount of “no-fault liability” with interest @ 9% p.a. from the date to of institution of claim petition till realization).

2. The brief facts in this matter are as follows. On 15th June, 2012 at about 5:30 a.m., Mayur Haribhau Khaire was riding pillion on his brother, Devidas Haribhau Khaire's motorcycle bearing registration no. MH-15/DE-7047. Mayur was sitting with a bundle of newspapers. When they reached Rasbihari Square, suddenly container bearing registration no. HR-38/M-7221, whose driver was driving the container at a high speed and in a negligent manner, gave a violent dash to the motorcycle bearing registration No, MH-15/DE-7047 owing to which pillion rider Mayur sustained several injuries on his head and died on the spot itself. Offence bearing C.R. No. 243/2012 has been registered against the container driver at Panchvati PS. The Respondents No.1 and 2 are the parents of the deceased Mayur and were dependent on the income of the deceased at the time of the incident. The Respondents No.1 and 2 filed a claim under Section 166 of the Motor Vehicles Act for awarding compensation of Rs.55,00,000/- towards death of Mayur against the Appellant Insurance Company and Respondent No.3 owner of the Container.

3. From the evidence on record the Tribunal held that the Respondents No.1 and 2 Claimants had established that the accident took place due to the rash and negligent driving on the part of the driver of the offending

container who gave a violent dash to the motorcycle behind it where the deceased Mayur was sitting as a pillion rider owing to which he sustained fatal injuries on his head which was sufficient to cause his death. Thus the Tribunal held that the driver of the offending container was solely responsible for causing the accidental death of the deceased Mayur. The Tribunal further held that the offending container was owned by the Respondent No.3 and insured with the Appellant at the relevant time of the accident and therefore both the Appellant and Respondent No.3 were jointly and severally liable to pay compensation to Respondents No.1 and 2.

4. On the issue of quantum of compensation, the Tribunal held that at the time of the accident the deceased was 20 years old. The Respondents No.1 and 2 filed various documents regarding the education of the deceased. The Respondent No.2 being the mother of the deceased, deposed that the deceased Mayur was selling newspapers and earning Rs.15,000/- per month. The Tribunal held that there was no document on record regarding the income of the deceased and therefore took the notional income to be Rs.3900/- per month considering the increase of dearness and distress. As per Schedule II the multiplier available to the

Respondents No.1 and 2 claimants would be 16. Taking the monthly income into account the annual income would be Rs.46,800/-. Out of the said income, 50% amount was to be deducted towards personal expenses of the deceased as he was a bachelor and so the annual income came to Rs.23,400/- towards dependency. This amount multiplied by 16 came to Rs.3,74,000/- towards dependency. Besides this, the Respondents No.1 and 2 were held to be entitled to get Rs.20,000/- towards funeral charges, Rs.30,000/- towards love and affection and Rs.30,000/- towards loss of estate. The Tribunal therefore held that the Respondents No.1 and 2 the Claimants as being entitled to a total amount of Rs.4,54,000/-from the Appellant and Respondent No.3 jointly and severally inclusive of NFL amount along with interest @ 9% per annum thereon from the date of this application till realization of the amount. The said amount was to be paid equally to the Respondents No.1 and 2 by account payee cheques.

5. Aggrieved by this Judgment and Award, the Respondents No.1 and 2 filed a Review Application being M.A.C.P (Review Application) No. 22 of 2015 on the ground that although they had tendered the judgment of the Hon'ble Supreme Court in the case of ***Radha Krishna and another v. Gokul***

*and others*¹ before the Tribunal, the same was not considered. It was submitted on behalf of the Respondents No. 1 and 2 that as per the judgment in the case of *Radha Krishna and another v. Gokul and others (supra)* while deciding compensation in case of accident suffered by a student of an engineering course which had taken place in the year 2003, the earning of the student was considered to be Rs.60,000/- per annum. It was submitted on behalf of the Respondents No. 1 and 2 that in the present case the accident took place on 15.07.2012 and the deceased was also a 2nd year engineering student pursuing his course from Pune University and he was already having a diploma in Mechanical Engineering which he completed in 2010-2011 and secured first class with distinction. Accordingly it was submitted that the monthly income for calculating the compensation amount should have been taken as Rs.15,000/- per month as per the observation of the Hon'ble Supreme Court in the aforementioned judgment and therefore the compensation amount ought to be enhanced to Rs.10,00,000/-.

6. It was further submitted on behalf of the Respondents No.1 and 2 Claimants that the Tribunal not considering the decision in the case of

1 2013 (4) T.A.C. 737 (SC)

Radha Krishna and another v. Gokul and others (supra) would make the judgment and award of the Tribunal patently illegal and passed in ignorance of the law declared by the Hon'ble Supreme Court and therefore a review application would lie in the present case. On the other hand it was submitted on behalf of the Appellant that the Respondents No.1 and 2 did not prefer an appeal against the Judgment and award passed by the Tribunal and they could not prefer a Review Application and merely because there may be an erroneous decision, a review proceeding is not maintainable. The Tribunal set out the principles laid down in the decisions of ***Kamlesh Verma v. Mayawati***² and ***Union of India v. Sandur Manganese and Iron Ores Ltd.***³ of when a review is maintainable and held that in this case from a perusal of the record and proceeding of MACP No. 760 of 2012 showed that the Respondents No.1 and 2 Claimants had filed the judgment of the Hon'ble Supreme Court in *Radha Krishna and another v. Gokul and others (supra)* along with pursis and the Presiding Officer has passed the remark “seen” on 29.12.2014. The Tribunal further held that from a perusal of the judgment and award dated 02.01.2015 it appeared that no reference had been made to the judgment in the case of *Radha Krishna and another v. Gokul and others (supra)*. The Tribunal

2 (2013) 8 SCC 320.

3 (2013) 8 SCC 337.

further held that although it was stated in paragraph 11 of the judgment that at the relevant time of the accident the deceased was a second year engineering student, however while discussing the quantum of compensation to be paid to the Respondents No.1 and 2 claimants, it has been observed that no documentary evidence of the income of the deceased was found on record. Further, even future prospects had not been considered while deciding the quantum of compensation payable to the Respondents No.1 and 2 claimants. The Tribunal held that it was clear that the judgment in the case of *Radha Krishna and another v. Gokul and others (supra)* had not been considered while deciding the quantum of compensation payable to the Respondents No.1 and 2 claimants. The Tribunal therefore held that part of the judgment and award required to be reviewed and modified considering the observations of the Hon'ble Supreme Court in the case of *Radha Krishna and another v. Gokul and others (supra)*. The Tribunal therefore held that since the deceased was in the second year of mechanical engineering at the time of the accident which took place on 15.06.2012 and was aged about 20 years, and since in the year 2003 the Hon'ble Supreme Court took the income of the victim to be Rs.60,000/- per annum, in the present case, since the accident took place in 2012, therefore considering the rate of inflation, the annual

income of the deceased was to be taken to be Rs.1,00,000/- per annum and the compensation amount was recalculated on that basis. Accordingly, the Tribunal allowed the review application and modified the quantum of compensation amount payable to the Respondents No.1 and 2 Claimants from Rs.4,54,000/- to Rs.13,30,000/- as payable by the Appellant and Respondent No.3 jointly and severally inclusive of the amount of “no fault liability” to the Respondents No.1 and 2 Claimants with interest at the rate of 9% p.a. from the date of institution of the claim petition till its realization. The same was to be paid equally to the Respondents No.1 and 2 Claimants via account payee cheque.

7. Aggrieved by this Judgment and New Award dated 10.12.2019 passed by the Tribunal in Review Application No. 22 of 2015 in Motor Accident Claim Petition No.760 of 2012, the Appellant Insurance Company has preferred this appeal primarily on the ground that the Tribunal erred in allowing the Review Application filed by the Respondents No.1 and 2 as there is an absence of a specific provision providing for a review and since the power of review has been excluded under Rules 275 and 276 of the Motor Accident Rules defining the procedures and powers of the Motor Accident Claims Tribunal, the

Tribunal cannot review its judgment on merits and that the Respondents No.1 and 2 ought to have exercised their statutory remedy of appeal and the Review Application was not maintainable. It has been submitted on behalf of the Appellant that no new facts were brought out which were not pleaded earlier in the application and also no grounds for review had been made out and hence the review was not maintainable. That the Respondents No.1 and 2 failed to establish that there was any error apparent in the judgment and hence the Review Application ought to have been dismissed.

8. Mrs. S.S. Dwivedi, learned counsel for the Appellant, in support of the above contention has relied upon the decision of this Court in the case of *Meena w/of Popat Mhaske and Anr. v. Manager, Bajaj Allianz General Insurance Co. Ltd., Pune and Others*⁴ where it was held that as there is a specific absence of a statutory provision providing for a review and since the power of review under Section 114 and Order XLVII have been excluded under Rules 275 and 276 of the Motor Accident Rules defining the procedure and powers of the Motor Accidents Claim Tribunal, it cannot review its judgment on its merits.

⁴ 2019 (6) BCR 392.

9. Mr. R.R. Varma, learned counsel for Respondent No.2, on the other hand submitted that the Tribunal had inadvertently failed to consider the judgment of *Radha Krishna and another v. Gokul and others (supra)* for calculating the compensation amount payable to the Respondents No.1 and 2 by considering the educational qualification of the deceased. He submitted that the Review Application can be entertained and decided in accordance with Section 169 of the Motor Vehicles Act and in accordance with Sections 151 and 152 of the Code of Civil Procedure, 1908 (“Civil Procedure Code”) and under Order XVII Rule 1 of the Civil Procedure Code. Mr. Varma has relied upon the decisions of the Hon'ble Supreme Court in the cases of *Kamlesh Verma v. Mayawati*⁵ and *Union of India v. Sandur Manganese and Iron Ores Ltd. & Ors.*⁶ where the Hon'ble Supreme Court has set out the principles as to when a review will be maintainable and when the same will not be maintainable. He has also relied upon the decisions of the Allahabad High Court in the case of *Oriental Insurance Co. Ltd. v. Fida Ali and Ors.*⁷ where it was held that a review application is maintainable when it is sought due to a procedural defect or inadvertent error committed by the Tribunal to prevent abuse of its process and the Gujarat High Court in the case of *The New India Assurance Co. Ltd. v.*

5 (2013) 8 SCC 320.

6 (2013) 8 SCC 337

7 1995 ACJ 572

Thakor Kanaji Viraji⁸ where it has been held that the review application would fall under Order XVII Rule 1 of the Code of Civil Procedure since it was an error apparent on the face of the record.

10. I have heard Mrs. S.S. Dwivedi, learned counsel for the Appellant and Mr. R.R. Varma, learned counsel for the Respondent No. 2 and with their able assistance, I have perused the papers and proceedings in the matter and considered the rival contentions.

11. Whether Appellant Insurance Company and the Respondent No.3, the owner of the offending vehicle are jointly and severally liable to pay compensation to the Respondents No.1 and 2 is not in dispute. The Claimants viz. Respondents No.1 and 2 were aggrieved by the quantum of compensation as the Tribunal did not consider the decision in the case of *Radhakrishnan and Anr Vs. Gokul and Others (supra)*, and granted only a compensation of Rs.4,54,000/-, without considering that at the time of his death, the deceased was in the second year of mechanical engineering and even though the said decision had been taken on record and therefore filed a review before the Tribunal and the Tribunal after applying the decision in the case of *Radhakrishnan and Anr Vs. Gokul and Others*

8 R/Special Application No. 16750 of 2019 with R/First Appeal No. 3153 of 2019.

(*supra*), enhanced the compensation from Rs.4,54,000/- to Rs.13,30,000/-. The Insurance Company is aggrieved that the Tribunal could not have enhanced the compensation in a review. Therefore, the principal and the only ground of challenge in this Appeal is that a review was not maintainable against the Judgment and Award dated 2nd January, 2015 as the Motor Accident Claims Tribunal does not have the power of review.

12. It is not in dispute that the Respondents No.1 and 2 Claimants, had filed the judgment of the Hon'ble Supreme Court in *Radha Krishna and another v. Gokul and others (supra)* along with pursis before the Tribunal at the time of hearing of the M.A.C. P. No.760 of 2012 and the Presiding Officer has passed the remark “seen” on 29.12.2014. The issue is whether the Review Application would be maintainable or not in the facts and circumstances of the case.

13. In its decision in the case of *Kamlesh Verma v. Mayawati (supra)*, the Hon'ble Supreme Court of India has in Paragraph 20 summarized the grounds under which a review will be maintainable and when a review will not be maintainable. Paragraph 20 is usefully quoted as under:

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

(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.

20.2. When the review will not 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 face 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 face 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.”

These principles have been reiterated by the Hon'ble Supreme Court in the case of *Union of India v. Sandur Manganese and Iron Ores Ltd. (supra)*.

14. In its decision in the case of ***Arun Dev Upadhyaya v. Integrated Sales Service Limited and Another***⁹, the Hon'ble Supreme Court has held as under:

“35. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order XVII Rule 1 of the Code of Civil Procedure. 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 they may be conceivably two opinions.”

15. In ***Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal***¹⁰ the Hon'ble Supreme Court held that the expression “review” is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in ***Patel Narshi Thakershi case***¹¹ held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must

9 (2023) 8 SCC 11.

10 1980 Supp SCC 420.

11 AIR 1970 SC 1273

be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inhere in every court or Tribunal.

16. In the case of *Meena w/of Popat Mhaske and Anr. v. Manager, Bajaj Allianz General Insurance Co. Ltd., Pune and Others (supra)* this Court had the occasion to consider the issue whether a Motor Accidents Claim Tribunal has a statutory power of review. Paragraphs 13 (relevant extracts), 28 and 30 are usefully quoted as under:

“13. I find it appropriate to rely upon the view taken by the Honourable Apex Court in the matter of U.P.S.R.T.C. (supra) and especially the conclusions drawn in Paragraphs No.7, 8 and 9 which read as under:

Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order... It implies that this section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be...

28. I find that though Section 151 pertains to the inherent powers of the Civil Court, it can make such orders under that provision which would be necessary to meet the ends of justice or to prevent abuse of the process of the Court. However, if Section 151 is to be interpreted in a way so as to mean that the Tribunal can practically overturn its earlier decision and arrive at a new decision, it would be against the intent and object of the legislature to keep Section 114 and Order XVII away from the Motor Vehicles Act. The legislature intends that the Tribunal should not cause review and should not entertain a review as regards its order or judgment delivered on merits...

30. *In view of the above, as there is a specific absence of a statutory provision providing for a review and since the power of review under Section 114 and Order XVII have been excluded under Rules 275 and 276 defining the procedure and powers of the Tribunal, a Motor Accidents Claims Tribunal cannot review its judgment on its merits. To make it more clear, correcting a simple error or mistake or arithmetical calculations would be permitted under Sections 151/152/153. However, a mistake as like the one which has occurred in paragraph 22 of the judgment of the Tribunal in the case at hand, which would alter the decision of the Tribunal and which would require a re-argument and re-appreciation of evidence would not be permissible”.*

17. In particular reference to the powers under Section 152 of the Civil Procedure Code it would also be relevant to refer to the decision of the Hon'ble Supreme Court in the case of ***State of Punjab v. Darshan Singh***¹² , paragraph 12 whereof is usefully quoted as under:

“Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very court or the tribunal cannot and, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of

12 AIR 2003 SC 4179.

invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party, if at all, is to file an appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of the Code even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order.”

18. From the above discussion, it is quite clear that for a review on merits there has to be a power under the Act. As noted above in the case of *Meena w/of Popat Mhaske and Anr. v. Manager, Bajaj Allianz General Insurance Co. Ltd., Pune and Others (supra)*, the Motor Vehicles Act does not provide for a power of review on merits to the Tribunal. A procedural review is possible only where the error is palpable or order passed under a misapprehension. Section 152 of the Motor Vehicles Act, 1988 provides for corrections for clerical and arithmetical mistakes arising from any accidental slip or omission for corrections of its ministerial action but does not contemplate passing of effective judicial orders on merit.

19. The reference to Section 169 of the Motor Vehicles Act by the Respondents No. 1 and 2 also does not contain any reference to the power of review of the Tribunal and does not assist the case of the Respondents No.1 and 2 in any manner. Also the other decisions relied upon by the learned Counsel for the Respondents do not assist the case of the Respondents.

20. In the facts of the case what the Tribunal has done while considering the Review Application, it has as applied the decision of the Hon'ble Supreme Court in the case of *Radhakrishnan and Anr Vs. Gokul and Others (supra)*, since the deceased was in the second year of mechanical engineering at the time of his death and enhanced the compensation amount to be awarded to the claimants. The enhancement of compensation in this manner, more particularly since the judgment of the Hon'ble Supreme Court was received by the Tribunal and marked as "seen" by the Presiding Officer, cannot be said to be correcting a procedural or palpably erroneous order passed under a misapprehension or a clerical or an arithmetical mistake arising from any accidental slip or omission but an order on merits and could not have been passed in the absence of a specific power of review of the Tribunal. It is definitely debatable as to whether the Tribunal considered the said judgment

inapplicable to the facts of the present case. The Tribunal in M.A.C.P (Review Application) No. 22 of 2015 has also not considered whether the power of review of the Tribunal was only limited to inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it.

21. Even if the Claimants are entitled to the enhancement pursuant to the Judgment of the Hon'ble Supreme Court in the case of *Radhakrishnan and Anr Vs. Gokul and Others (supra)*, in the absence of a specific power of review on merits to the Tribunal, the proper course of action would have been for the Respondents No.1 and 2 to have filed an appeal against the Judgment and Award dated 2nd January, 2015 passed by the Tribunal in Motor Accident Claim Petition No.760 of 2012.

22. In the light of the above discussion, the Judgment and Award dated 10th December, 2019 passed in Review Application being M.A.C.P (Review Application) No. 22 of 2015 by the Motor Accident Claims Tribunal, Nashik is hereby set aside. The Appeal is allowed. Pending interim applications accordingly stand disposed. No order as to costs.

23 However, the Respondents No.1 and 2 Claimants are at liberty to file an appeal against the Judgment and Award dated 2nd January, 2015 passed by the Tribunal in Motor Accident Claim Petition No.760 of 2012.

24. In case the Respondent Claimants file an appeal against the Judgment and Award dated 2nd January, 2015 passed by the Tribunal in Motor Accident Claim Petition No.760 of 2012, the Appellate Court may consider the time period between the filing of the Review Application before the Tribunal and the disposal of this Appeal while disposing of the condonation of delay application that may be filed along with the First Appeal that may be filed against the impugned order.

(ABHAY AHUJA, J.)

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