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04.9.2025
Ct. No. 16
SB

RVW 273 of 2025
CAN 1 of 2025

In
FMAT (WC) 26 of 2025

The Shipping Corporation of India Ltd.
Vs.
Deepa Das

Mr. Pranit Bag
Ms. Swastika Sengupta.... For the appellant

Mr. Anup Kumar Bag ... For the respondent

1. This is an application for review of our judgment and order dated 21.8.2025. The purpose of the application appears to be an attempt to have rehearing the appeal on merits.
2. It is argued that previously when the matter was heard at length certain documents have not been considered.
3. It is submitted that the wife of the claimant has in her evidence stated that she is not aware of any past medical history of brain tumor of her husband. It is further submitted that the husband of the respondent previous to his present engagement was employed in other vessel.
4. Mr. Bag has further submitted that the ship in question was a passenger ship and the deceased was not entrusted with any duty to seaman or deck cleaning or painting of boat. The safety management objectives as enshrined in Clauses 1.2.2 of the International Safety Management Code has no relevance to the issue moreover, in the present case there is no evidence on record to suggest that as employer the appellant had not

provided said practices in shipping operation and a safe working environment. There is no iota of evidence not even an accusation in the pleadings that such medical examination had not been undertaken or not carried out for Apurba Das when it had become necessary under the applicable rules.

5. Section 5 of the Merchant Shipping (Medical Examinations) Rules, 2000 is not applicable in the facts and circumstances. The judgment under review proceeds on an incorrect perception that Apurba Das was exposed to Hydro Carbon Gas carried by MT DESH UJAALA. The movement of gaseous cargo carried on a vessel is always done through sealed and/or air-tight pipelines from shore tanks to the holds of the vessel, which are also leak-proof and duly protected from any outward emission.
6. The finding on Exbt.5 that the Assistant Medical Officer was aware of the disease of Apurba Das from a period prior to his signing on board the vessel MT DESH UJAALA is also an incorrect reading or appreciation of the said exhibit.
7. The appeal was heard at length at the stage of admission in order to find out whether the appeal involves any substantial question of law. The Commissioner deciding the compensation case had amongst others taken into consideration that the medical report was not produced by the Shipping Corporation of India Limited and has drawn an adverse inference. It is an admitted position that before Mr. Das was taken onboard and required to perform his

duties in the ship a medical certificate as to whether the seafarer is medically fit to perform his duties is required. Moreover, it is on record that on 30th April, 2012 it was reported that Apurba should be signed off as he was unable to exercise control on his left foot and hand. He was, however, not let to sign off as would be clear from the communication dated 11th May, 2012 (exhibit 2) on the ground that sign on/sign off at Mundra is difficult for various reasons. In the aforesaid background the medical examination of Apurba was an important piece of evidence at the time when he was allowed to join his duty in the ship. The medical report if produced could have atleast established that the seafarer was medically fit to perform the duties assigned to him in the ship.

8. We have categorically asked the learned Counsel for the appellant on 21st August, 2025 as to whether the appellant was in a position to produce the medical certificate. We have been informed that the said medical certificate was not traceable. Even today when the review application was heard we enquired from Mr. Bag if any medical report was available which would establish that at the time when he joined his duty he was medically examined.
9. It would also appear from Exhibit-5 that while recommending for examination of Apurba Das to the Medical Director, Bombay Hospital for treatment of brain tumor on 21st May, 2012 the Assistant Medical Officer has clearly stated that he was detected with brain tumor. The Shipping Corporation of India Ltd. did not disclose when

such element of disease was first discovered. The basis of finding of the Assistant Medical Officer in the communication dated 21st May, 2012 was not disclosed. What was the physical condition of the deceased is not known as the applicant/appellant has not disclosed any medical documents. On the contrary Exhibit-2 shows that he was unwell. It was in such background the medical screening test led to the issuance of the medical certificate has become necessary.

10. Moreover, it is also well-settled that mistake or error apparent on the face of the record has to be self-evident and does not require a process of reasoning and the same is clearly distinct from erroneous decision as has been held in ***Parsion Devi & Ors. vs. Sumitri Devi & Ors.*** reported in **1997(8) SCC 715**. In the said decision, the Hon'ble Supreme Court was considering the phrase "mistake or error apparent on the face of record". It was held, an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter can only be corrected by exercise of the review jurisdiction. A review petition has a

limited purpose and cannot be allowed to be "an appeal in disguise". [See. Paragraphs 19 and 20 in **Barun Kumar Das v. State of West Bengal** reported in 2012(2) CHN 617].

11. In a fairly recent decision in **S. Murali Sundaram vs. Jothibai Kannan & Ors.**, reported in 2023 SCC Online SC 185 the Hon'ble Supreme Court has discussed the scope and ambit of Order 47 Rule 1, Code of Civil Procedure in paragraphs 15 to 17. On a review of its earlier decisions it was held:

"15. While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? In the case of Perry Kansagra (supra) this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under:

"(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit."

16. It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.

17. In the case of Shanti Conductors (P) Ltd. (supra), it is observed and held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It is further observed that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review under Order 47 Rule 1 CPC." (emphasis supplied)

12. On such consideration, we are not inclined to allow the review petition.

13. The review petition stands dismissed.

14. However, there shall be no order as to costs.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)