GAHC010164142020

2026:GAU-AS:17520-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./115/2020

THE PAWAN HANS LTD. AND ANR.
(A GOVERNMENT OF INDIA ENTERPRISE) PAWAN HANS TOWERS, C-14, SECTOR-1, NOIDA- 201301, UTTAR PRADESH.

2: THE COMPANY SECRETARY
PAWAN HANS LTD.

(A GOVERNMENT OF INDIA ENTERPRISE) PAWAN HANS TOWERS
C-14
SECTOR-1
NOIDA- 201301
UTTAR PRADESH

VERSUS

SHAILENDRA KUMAR SARAWGI AND 4 ORS.
S/O- SHRI ANANDILALSARAWGI, R/O- NEELKANTH APARTMENT, A.K. AZAD ROAD, REHABARI, GUWAHATI- 781008.

2:DR. KAMAL NAHATA
S/O- SHRI MANGILAL NAHATA
R/O- FIFTH FLOOR
NEELKANTH APARTMENT
A.K. AZAD ROAD
REHABARI
GUWAHATI- 781008.

3:THE UNION OF INDIA
REP. BY THE SECRETARY
MINISTRY OF CIVIL AVIATION
GOVT. OF INDIA
NEW DELHI.

4:THE DIRECTOR GENERAL OF CIVIL AVIATION

NEW DELHI.

5:THE STATE OF ARUNACHAL PRADESH

REP. BY THE SECRETARY
MINISTRY OF CIVIL AVIATION
GOVT. OF ARUNACHAL PRADESH

Advocate for the Petitioner : MR. M H LASKAR, MR M HOSSAIN,MR. S ROY

Advocate for the Respondent : ASSTT.S.G.I., MS. NEHA BEGUM(R1,2),MR. INDRAJIT BHUYAN(R1,2),Y KHAUND(R1,2),MR. P SENGUPTA(R1,2),MR. D DAS SR. ADV(R1,2),GA, AP

Linked Case : Review.Pet./107/2020

THE DIRECTOR GENERAL OF CIVIL AVIATION
NEW DELHI.

VERSUS

SUNITA TOMDEN AND 11 ORS.
W/O- LATE NAWANG TOMDEN
P.O. AND P.S. TAWANG
ARUNACHAL PRADESH.

2:MATER TSERING TOMDEN (MINOR)
S/O- LATE NAWANG TOMDEN
(REP. BY HIS MOTHER SMTI. SUNITA TOMDEN)
P.O. AND P.S. TAWANG
ARUNACHAL PRADESH.

3:MATER CHODUP TOMDEN (MINOR)
S/O- LATE NAWANG TOMDEN. (REP. BY HIS MOTHER SMTI. SUNITA TOMDEN)
P.O. AND P.S. TAWANG
ARUNACHAL PRADESH.

4:SANGEY CHOIKONG
F/O- LATE NAWANG TOMDEN
P.O. AND P.S. TAWANG
ARUNACHAL PRADESH.

5:SMTI. NIMA CHOTEN
M/O- LATE NAWANG TOMDEN
P.O. AND P.S. TAWANG
ARUNACHAL PRADESH.

6:TOMRIN TSERING
B/O- LATE NAWANG TOMDEN
P.O. AND P.S. TAWANG
ARUNACHAL PRADESH.

7:SHAILENDRA KUAMR SARAWGI
S/O- ANANDILAL SARAWGI
R/O- NEELKANTH APARTMENT
A.K. AZAD ROAD
REHABARI
GUWAHATI- 781008.

8:DR. KAMAL NAHATA
S/O- MANGILA NAHATA
R/O- 5TH FLOOR
NEELKANTH APARTMENT
A.K. AZAD ROAD
REHABARI
GUWAHATI- 781008.

9:THE STATE OF ARUNACHAL PRADESH
REP. BY THE SECRETARY
MINISTRY OF CIVIL AVIATION
GOVT. OF ARUNACHAL PRADESH
ITANAGAR.

10:THE PAWN HANS HELICOPTERS LTD.

(A GOVT. OF INDIA ENTERPRISE) REP. BY CHAIRMAN-CUM-MANAGING DIRECTOR
PAWN HANS TOWERS
C-14
SECTOR-1
NOIDA- 231301. (UTTAR PRADESH).

11:THE COMPANY SECRETARY
PAWN HANS HELICOPTERS LTD. (A GOVT. OF INDIA ENTERPRISE)
PAWN HANS TOWERS
C-14
SECTOR-1
NOIDA- 231301. (UTTAR PRADESH).

12:UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF CIVIL AVIATION
GOVT. OF INDIA
NEW DELHI.

Advocate for : MR. S C KEYAL
Advocate for : GA
AP appearing for SUNITA TOMDEN AND 11 ORS.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE NCHUMBEMO MOZHUI

ORDER

Date : 25-11-2026
(M. Zothankhuma, J)

1. Heard Mr. M.H. Laskar, learned counsel for the review petitioners in Review Pet. No.115/2020 and Mr. S.C. Keyal, learned Senior Counsel for the review petitioner in Review Petition No.107/2020. Also heard Mr. D. Das, learned Senior Counsel assisted by Mr. I. Lahiri, learned counsel for respondent Nos.1 and 2 in Review Pet. No.115/2020 and for the respondent Nos.7 & 8 in Review Pet. No.107/2020. Mr. A. Chandran, learned Senior Government Advocate appears for the Government of Arunachal Pradesh.

2. These two review petitions seek review/modification of the impugned Judgement and Order dated 07.02.2020 passed by the Division Bench in WA 13(AP)/2015, WA 5(AP)/2015, WA 4(AP)/2015, WA 20(AP)/2016 and WA 39(AP)/2017. These two review petitions are being disposed of by this common order.

3. Review Petition No.115/2020 has been filed by The Pawan Hans Limited, a company providing helicopter services across India including the North-East, while Review Petition No. 107/2020 has been filed by the Director General of Civil Aviation (DGCA).

4. The challenge to the impugned judgement and order is against the Division Bench, upholding the findings of negligence against the review petitioners and the direction to pay exemplary compensation of Rs. 45 lakhs each to the next of kin of the victims of the helicopter crash, that had occurred on 19.04.2011.

5. On 19.04.2011, a Mi-172 helicopter belonging to Pawan Hans Limited took off from Lokapriya Gopinath Bordoloi Airport, Guwahati carrying 23 persons (4 crew members and 19 passengers). While approaching the Ugyen Sangpo Helipad at Tawang, Arunachal Pradesh, the helicopter toppled to the left at about 13:54 hours. The aircraft then caught fire and the portable fire extinguishers at the helipad proved ineffective. The helicopter was destroyed by fire and the crash resulted in the death of 19 persons.

6. Immediately after the accident, Pawan Hans Limited took steps to assist the families, by paying approximately Rs.20 lakhs towards medical treatment of burn-injured survivors and offered compensation as provided by the Carriage by Air Act, 1972 (hereinafter referred to as the 'Act'). Under a notification issued under Sections 8 and 22 of the Act, the statutory compensation for death in a domestic air accident was fixed at Rs.7.5 lakhs, which was accepted by most families of the deceased. However, some of the

families of the deceased did not accept the statutory compensation and filed WP(C) No.223(AP)/2012 and WP(C) No.107(AP)/2013 before the Itanagar Bench of the Gauhati High Court, seeking enhanced compensation. They relied on the Inquiry Report, which had been made pursuant to a Committee of Inquiry constituted by the Ministry of Civil Aviation, wherein the cause for the crash was stated as follows:-

> "*(i) There was inadequate oversight over flying operations at Pawan Hans Helicopter Limited (PHHL). Many flight safety violations had gone unchecked and unreported. The maintenance and servicing records at PHHL were inadequate and suspect. PHHL had agreed to certain clauses in contracts with the Government of AP which it was not in a position to fulfill.*
>
> *(ii) DGCA, as an organization is not able to fulfill its task as their manpower was extremely inadequate and it had a direct bearing on safety and commercial flying activities In the country.*
>
> *(iii) Arunachal Pradesh Aviation Department was not adequately equipped to man the helipads safely."*

7. Pawan Hans Limited filed a counter-affidavit contending that the liability for payment of compensation was governed exclusively by the Act and that the inquiry report was only an opinion and not conclusive evidence of fact. They further took the stand that disputed questions of negligence could not be decided in a writ petition.

8. WP(C) No. 223(AP)/2012 and WP(C) No.107(AP)/ 2013 were disposed of by Judgment and Order dated 13.03.2014, of the learned Single Bench,

holding that Pawan Hans Limited and the Government of Arunachal Pradesh were negligent. However, the learned Single Judge observed that a writ Court could not determine the legal heirs of the deceased or the exact quantum of compensation payable to the family of the deceased. It thus directed the family of the deceased to approach the appropriate forum for the said purpose.

9. Aggrieved by the decision of the learned Single Judge, Pawan Hans Limited, the State of Arunachal Pradesh and the private respondents herein filed different writ appeals before the Division Bench. The Division Bench disposed of all the writ appeals, vide a common Judgment and Order dated 07.02.2020, upholding the finding of the learned Single Judge that death had occurred due to the negligence of Pawan Hans Limited, the State of Arunachal Pradesh and the DGCA. This Court held that the negligence itself amounted to misconduct on the part of the officials and as such, infringed on the fundamental rights of the deceased and injured persons. This Court also held that in cases relating to infringement of fundamental rights, where public law remedy was concerned, the writ Court had the jurisdiction to pass the relief of monetary compensation and accordingly, imposed exemplary compensation upon Pawan Hans Limited, the State of Arunachal Pradesh and the DGCA @ Rs.45 lakhs, to be paid against each victim, which was to be deposited in the Registry of this Court.

10. Pawan Hans Limited and the Director General of Civil Aviation have accordingly filed Review Petition Nos.115/2020 and 107/2020 respectively, against the impugned common Judgement and Order dated 07.02.2020 passed in WA 13(AP)/2015 and other connected writ appeals, on the ground that the Division Bench could not have awarded exemplary compensation beyond Rs.7.5

lakhs, due to the death of a passenger in a domestic air accident, which is exclusively governed by the Act and the notification issued by the Government under Sections 8 and 22 of the Act.

11. The other ground for review made out by the review petitioners is that a writ petition under Article 226 was not maintainable for determining negligence and for awarding compensation in tort, especially when disputed questions of facts exist and an efficacious remedy was available, by way of filing a civil suit before a civil Court. Further, the Internal Inquiry Committee Report, which had been made without hearing Pawan Hans Limited, contained only opinions and probable causes of the accident, which could not be treated as conclusive evidence of negligence, sufficient to attract unlimited liability under Rule 25 of the Act.

12. The review petitioners' further case is that the principles laid down in the case of ***Municipal Corporation of Delhi Vs. Uphaar Tragedy Victims Association & Ors.,*** reported in ***(2011) 14 SCC 481,*** cannot apply to a case governed by the Act, as it is not proper to award damages against public authorities, merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. It was further held in regard to performance of statutory functions and duties, that Courts should not award damages, unless there is malice or conscious abuse.

13. The case of the Director General of Civil Aviation is that they had no privity of contract with Pawan Hans Limited or the State of Arunachal Pradesh.

They also did not have any involvement in the operation of the helicopters or the helipads being run by Pawan Hans Limited and the State of Arunachal Pradesh. As such, the Division Bench could not have fastened any liability on the exemplary compensation payable to the private respondents, when there was no involvement/connection of the Director General of Civil Aviation in the accident.

14. The counsels for the review petitioners thus pray that the impugned judgment and order should be reviewed and set aside, as the private respondents cannot be allowed to get claims beyond the statutory limit provided under Section 22 read with Section 8 of the Act, on the basis of which a notification had been issued by the Government of India.

15. The counsel for the private respondents submits that the Director General of Civil Aviation never put to challenge the decision of the learned Single Judge and has only approached this Court by way of a review petition, because he has been fastened with the payment of the exemplary compensation along with Pawan Hans Limited and the State of Arunachal Pradesh. He also submits that the review petitions are not maintainable, as they are only appeals in disguise. He submits that there is no infirmity with the decision of the Division Bench which is under challenge before the Hon'ble Supreme Court, as the applicability of the public law has been based on contravention of human rights and fundamental rights. He also submits that disputed questions of fact do not bar the writ Court from deciding an issue under Article 226 of the Constitution, especially when elaborate or difficult questions of evidence are not required to be decided. He accordingly submits

that the impugned judgment and order should not be interfered with, as no grounds of review have been made out.

16. We have heard the learned counsels for the parties.

17. On considering the grounds of review taken by the review petitioners, we are of the view that the issues raised do not pertain to there being any mistake or error apparent on the face of the record, or that there is some other sufficient reason, or from the discovery of new and important matter or evidence which, after exercise of due diligence, was not within their knowledge and which could not be produced at the time when the order was made. We have seen that the issues raised by the review petitioners have all been considered in the impugned judgement & order and just because two views may be possible, does not mean that a case for review has been made out.

18. In the case of ***Kamlesh Verma Vs. Mayawati & Ors.,*** reported in ***(2013) 8 SCC 320***, the Hon'ble Supreme Court has held that a review will be maintainable on: (i) the discovery of new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him; (ii) mistake or error apparent on the face of the record; and (iii) any other sufficient reason, on grounds which are at least analogous to those specified in Order 47 Rule 1 CPC.

19. The Hon'ble Supreme Court in the above case has also given illustrations of various examples of when a review will not be maintainable, which are as follows:

"*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."

20. In the case of ***Sanjay Kumar Agarwal Vs. State Tax Officer (1) & Anr.***, reported in ***(2024) 2 SCC 362***, the Supreme Court has held that under the guise of review, the petitioner cannot be permitted to re-agitate and re-

argue the questions which have already been addressed and decided.

21. In the present case, the learned Division Bench having already taken a decision that the Single Bench's decision to claim compensation under Rule 25 of the Act was proper due to the infringement of fundamental rights, wherein the writ Court has the jurisdiction to pass the relief of monetary compensation, which turns out to be a public law remedy and that the provisions of the Act could not be a bar to the payment of exemplary compensation. We cannot go into the issue of whether compensation had been correctly awarded under Section 25 of the Act or whether Section 25 was applicable at all, when the said decision has come about after a detailed reasoning, as the same would amount to sitting in appeal over a decision of a coordinate Bench. As such, we are of the view that just because a different view may be possible, does not mean that a case for review has been made out. We also find that the present review petitions are basically appeals, in the guise of review petitions.

22. With regard to the finding of the learned Division Bench in the impugned judgment, that, in terms of the decision of the Supreme Court ***Uphaar Tragedy Victims Association & Ors. (supra),*** the next of kin of the deceased were entitled to compensation where there has been a violation of fundamental rights, a possibility of a different or wrong interpretation of the decision of the Supreme Court in the above case, cannot be a ground for review, keeping in view the provisions of Order 47 Rule 1 CPC. Also, the Hon'ble Supreme Court, in the case of ***Beghar Foundation through its Secretary & Anr. Vs. Justice K.S. Puttaswamy (Retd.) & Ors.,*** reported in ***(2021) 3 SCC 1,*** has held that even the change in law or subsequent decision/judgement

of a coordinate Bench or larger Bench, by itself, cannot be regarded as a ground for review.

23. In view of the reasons stated above, we find that no ground for review has been made out. The review petitions are accordingly dismissed.

JUDGE **JUDGE**

Comparing Assistant