

(2016) 10 CHH CK 0048
In the Chhattisgarh High Court
Case No : Civil Revision No. 73 of 2016.

Atul Kumar Mishra S/o. Matacharan Mishra, aged about 38 years, R/o Chandani Chauk, Mayapur, Ambikapur, P.S. and Post Ambikapur, Civil and Revenue District-Surguja (CG) - Applicant @HASH Mohar Singh Chhabra (died and deleted)

Date of Decision : 07-10-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, Section 151
Motor Vehicles Act, 1988 — Section 169

Citation : (2017) AAC 194 : (2016) 4 ACC 594 : (2017) 170 AIC 309 : (2017) 1 TAC 65

Hon'ble Judges : Shri Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Ms. Priyanka Mehta, Advocate, for the Applicant in C.R. No. 73 of 2016; Ms. Hamida Siddique and Mr. Raghvendra Verma, Advocates, for the Applicants in C.R. No. 135 of 2016; Mr. Ratan Pusty, Advocate, for the Oriental Insurance

Final Decision : Dismissed

Judgement

Shri Sanjay K. Agrawal, J. - The short question that emanates for consideration in these revisions is whether the Claims Tribunal constituted under the provisions of the Motor Vehicles Act, 1989 has power and jurisdiction to review its award on merits.

2. In claim case filed by Shri Dinesh Kumar Prasad being Motor Accident Claim Case No. 75/1999 and in Motor Accident Claim Case No. 28/1999 filed by Mohar Singh Chhabda, learned Claims Tribunal by its award dated 2.1.2001 granted compensation to them, but fastened the liability to pay compensation upon owner and driver of the vehicle and exonerated the Insurance Company from its liability to make payment of amount of award.

3. Misc. Appeal filed by Atul Kumar Mishra (applicant in Civil Revision No.73/2016) came to be dismissed by a Division Bench of this Court by order dated 31.8.2006. However, liberty was granted to the applicant-Atul Kumar

Mishra by this Court to work out his legal remedies, if any, if he is so advised before the MACT itself on the basis of additional documents filed against exoneration of the Insurance Company from liability to make payment of compensation.

4. Applicant-Atul Kumar Mishra filed an application under Section 114 read with Section 151 of the CPC for review of the award before the Claims Tribunal, which has been rejected by order dated 17.3.2016. Against which, Atul Kumar Mishra has filed Civil Revision No.73 of 2016, whereas claimants have also filed Civil Revision No.135 of 2016 against the order dated 17.3.2016.

5. Since common question of law is involved in these revisions, both the revisions are taken up and heard together and are being decided by this common order.

6. Ms. Priyanka Mehta, learned counsel appearing for the applicant in Civil Revision No.73 of 2016, would submit that the Claims Tribunal is absolutely unjustified in rejecting the application for review filed under Section 114 read with Section 151 of the CPC as the owner was not given sufficient opportunity to file the documents and prove those documents to demonstrate that on the date of incident, the vehicle in question was involved in the election duty as it was taken for the election purpose and therefore, the Division Bench of this Court while dismissing the appeal has given liberty to the applicant to work out his legal remedies before the MACT itself, as such the impugned order of the Claims Tribunal be set aside as there is an error apparent on the face of record and the revision petition be allowed.

7. Similar contention has been made by Ms. Hamida Siddique, learned counsel appearing for the applicants in Civil Revision No. 135 of 2016 while questioning the impugned order.

8. Mr. Ratan Pusty, learned counsel appearing for the Oriental Insurance Company, would submit that the Claims Tribunal has power of review when review is sought due to procedural defect or inadvertent error committed by Tribunal to prevent abuse of its process. He would further submit that Order 47, Rule 1 of the CPC has not been expressly made applicable to the Claims Tribunal. He would also submit that the review is permissible if some fraud is played or some other special ground is made out in inherent jurisdiction when award passed is palpably wrong, but review on the ground of error in judgment or review on the ground of merit that there is an error apparent on the face of record is not permissible, therefore, the impugned order warrants no interference by this Court in revisional jurisdiction and both the revision petitions deserve to be dismissed.

9. I have heard learned counsel appearing for the parties, cautiously analysed the submissions made by learned counsel for the parties herein and gone through the records extensively and thoroughly.

10. Section 169 of the Motor Vehicles Act provides for the power and jurisdiction of the Claims Tribunal and procedure to be followed by it. Section 169 of the Act reads as under:-

"169. Procedure and powers of Claims Tribunals. - (1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunals may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the enquiry."

11. The Madhya Pradesh Motor Vehicles Rules, 1994 is also applicable in the State of Chhattisgarh. Rule 240 provides for procedure to be followed by the Claims Tribunal in holding enquiries and provides as under:-

"240. Procedure to be followed by Claims Tribunal in holding enquiries-application of certain provisions of Code of Civil Procedure, 1908: Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order 5, Rules 9 to 13, and 15 to 20, Order 9, Order 18, Rule 3 to 10, Order 16, Rule 2 to 21, Order 17, Order 21 and Order 23, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto."

12. A careful reading of the provisions contained in Section 169 of the Motor Vehicles Act and Rule 240 of the Rules of 1994 would show that Order 47 of the Code of Civil Procedure which provides for review has not been made applicable expressly to the Claims Tribunal. Sub-section (1) of Section 169 provides that in holding enquiry under Section 168, the Claims Tribunal may subject to any rules that may be made in this behalf follow such summary procedure as it thinks fit. Thus, the legislature in its wisdom has not expressly conferred any power of review to the Claims Tribunal constituted under the Motor Vehicles Act, 1989.

13. The question for consideration would be whether in absence of the express provision in the Motor Vehicle Act and rules made thereunder conferring power of review, such a power of review can be exercised by the Claims Tribunal to review its award on merits.

14. The expression "review" is used in two distinct senses, namely (i) 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 (ii) review on merits when the error sought to be corrected is one of law and is apparent on the face of record.

15. The Supreme Court in the matter of *S. Nagraj & Ors v. State of Karnataka & Anr.*, 1993 Supp (4) SCC 595 has held that review literally and even judicially means reexamination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility.

16. It is well settled law that the power of review is not inherent power it must be conferred either specifically or by necessary implication. The Supreme Court in the matter of *Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji*, AIR 1970 SC 1273 has held that if the power of review is not provided under the statute or by necessary implication, power of review cannot be exercised. Their Lordships held as under:-

"4.It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order....."

17. Similar is the law laid down by the Supreme Court in the matter of *Kapra Mazdoor Ekta Union v. Management of M/s. Birla Cotton Spinning and Weaving Mills Ltd. & Anr.*, (2005) 13 SCC 777 in which it has been held that where a court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The power of review is not an inherent power and must be conferred by law either expressly or by necessary implication.

18. Recently, the Supreme Court in the matter of *Kalabharati Advertising v. Hemant Vimalnath Narichania and others*, (2010) 9 SCC 437 while reiterating the law in this regard succinctly held that in absence of statutory provision of review, review application cannot be entertained and held as under:-

"12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: *Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar*, AIR 1965 SC 1457 and *Harbhajan Singh v. Karam Singh*, AIR 1966 SC 641).

13. In *Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji*, (1971) 3 SCC 844, *Major Chandra Bhan Singh v. Latafat Ullah Khan*, (1979) 1 SCC 321, *Kuntesh Gupta (Dr.) v. Management of Hindu Kanya Mahavidhyalaya*,

(1987) 4 SCC 525, *State of Orissa v. Commr. of Land Records and Settlement*, (1998) 7 SCC 162 and *Sunita Jain v. Pawan Kumar Jain*, (2008) 2 SCC 705 this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible."

19. Similarly, the Supreme Court while considering the question as to whether District Forum and State Commissions have power to set aside or recall their own ex parte order in the matter of *Rajeev Hitendra Pathak and others v. Achyut Kashinath Karekar and another* (2011) 9 SCC 541 has held that the Tribunals are creatures of the statute and derive their power from express provision of the statute and in absence of power of review in the Consumer Protection Act, 1986, power of review cannot be exercised by the District Forums and the State Commissions and held as under:-

"34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised."

20. The Madhya Pradesh High Court in the matter of *National Insurance Co. Ltd. v. Lachhibai @ Laxmibai and other* 1997(1) M.P.L.J. 356 while considering the issue has held that the Claims Tribunal constituted under the Motor Vehicle Act, 1988 has power of review, when the review is sought to correct the procedural defect or error committed by Tribunal to prevent the abuse of process but it has no power to review the award on merits and held as under:-

"12. From the aforesaid discussion, it is clear that the power of review vests with the Tribunal in its inherent power under Section 169 of the Motor Vehicles Act though Rule 240 of the M.P. Motor Vehicles Rules, 1994 has not expressly provided for application of Order 47, Civil Procedure Code. 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. Such power inheres in the Tribunal. The contention of the learned counsel for the non-applicant cannot be accepted that power of review is not provided by the statute, therefore, it cannot review its own order. As considered by me earlier, wide powers are vested with the Tribunal under Section 169 of the Motor Vehicles Act.

Therefore, review on limited grounds as mentioned above is permissible."

21. Subsequently, the Division Bench of the Madhya Pradesh High Court again in the matter of *Uttara Soni v. Oriental Insurance Co. Ltd. and others* 2009 ACJ 276 followed the principle of law laid down in *Lachhibai* (supra) with approval.

22. However the Supreme Court in the matter of *United India Insurance Co. Ltd. v. Rajendra Singh and others* (2000) 3 SCC 581 has held that the Claims Tribunal has an inherent power to review its own award if it is obtained by fraud or misrepresentation. The relevant paragraph of the report states as under:-

"16. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

23. Thus, from the aforesaid analysis it is quite pellucid that the power of review has not been expressly conferred to the Claims Tribunal constituted under the provisions of Motor Vehicle Act, 1989 and Rule 240 of the Rules of 1994. Order 47, Rule 1 of the CPC providing for review has not been made expressly applicable to the Claims Tribunal. Therefore, in absence of statutory provision the power of review of the award cannot be exercised by the Claims Tribunal except in a case where the award has been obtained from the Claims Tribunal by practicing fraud or making misrepresentation. However, the power of review is inherent in the Claims Tribunal to rectify procedural, arithmetical, clerical error or defect made by the Tribunal to prevent abuse of its process and to make its record straight and to that extent, the review application would be maintainable to the Claims Tribunal to review its award.

24. In the light of principle of law laid down in above-stated judgments, if the facts of the case are examined it is quite vivid that in the instant case *Shri Atul Kumar Mishra* - owner of the vehicle is seeking review of the award on the merits holding that the offending vehicle owned by him on the date of accident was involved in the election duty duly requisitioned by the Collector of the District for the purpose of election. It has already been held that no express power of review has been conferred by the Act of 1989 to the Claims Tribunal to review its award on merits, therefore the Claims Tribunal is absolutely justified in rejecting the application for review filed by the applicant ? *Shri Atul Kumar Mishra* by the impugned order. I do not find any jurisdictional error in the order impugned.

25. Learned counsel for the applicant has submitted that in an appeal preferred by the applicant this Court in *M.A. No. 173/2001* granted liberty to the applicant to work out his legal remedy before the Claims Tribunal while dismissing the appeal therefore the review petition ought to have been entertained by the Claims Tribunal. It is needless to say that the appeal preferred by the appellant has been dismissed on merit. The applicant is entitled to invoke the remedy of review only if such power of review is legally available and permissible under the provisions of the Act of 1989 and rules made thereunder. Since the remedy of

review on merits of the award is not permissible in law, therefore, the Claims Tribunal is absolutely justified in rejecting the application for review filed by the applicant.

26. As a fallout and consequence of the aforesaid discussion, both the civil revisions deserve to be and are accordingly dismissed leaving the parties to bear their own cost(s).