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**(2007) 01 MP CK 0042**  
**In the Madhya Pradesh High Court**

Narayan Lillahare

APPELLANT

Vs

Dinesh and Others

RESPONDENT

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**Date of Decision :** 22-01-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11  
Criminal Procedure Code, 1973 (CrPC) — Section 195  
Industrial Disputes Act, 1947 — Section 11  
Limitation Act, 1963 — Section 5  
Motor Vehicles Act, 1988 — Section 158, 162, 166, 168, 169

**Citation :** (2007) ILR (MP) 382

**Hon'ble Judges :** S.S. Jha, J;Dipak Misra, J

**Bench :** Division Bench

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## Judgement

Dipak Misra, J.—The obtaining factual matrix that has been innovatively expounded in the Claim Petition No. 13/2006 which has spiralled to the passing of an award dated 11-10-2006 by the Motor Accidents Claims Tribunal, Balaghat (in short "the Tribunal") frescoes a picture which creates some sense of maze, may be due to deliberate ingenious attempt by the claimant or may be due to Everesting ambition that has an innocuous perception. Be that as it may, we proceed to adumbrate the facts.

2. The claimant-appellant (hereinafter referred to as "the claimant") initiated an action u/s 166 of the Motor Vehicles Act, 1988 (for brevity "the Act") forming the subject-matter of Claim Case No. 103/2003 on the ground that he had met with an accident on 28-4-2003 as a result of which he had sustained grievous injuries. The Tribunal, as pleaded, determined the permanent disablement at 40% and awarded a sum of Rs. 89,000/- vide award dated 27-11-2004.

3. The claimant for the reasons best known to him, accepted the award in silence and chose not to prefer an appeal. The award was satisfied by the insurer on whom the liability was fastened. As the time rolled by, the claimant, as set forth, suffered further because of the injuries caused in the aforesaid accident and eventually there was amputation of left leg below the knee. This occurred

between 14-10-2005 and 24-10-2005. As is evincible from the asseverations made, the claimant availed treatment at Nagpur. Because of this fall out, he preferred a second claim petition, Claim Case No. 13/2006, before the Tribunal putting forth a claim of Rs. 5,56,000/-. The Tribunal upon hearing the parties came to hold that as an award had already been passed in respect of self-same accident, he had no jurisdiction to deal with the grievance and pass another award.

4. Questioning the correctness of the aforesaid award it is submitted by Mr. Ankit Pandey, earned Counsel for the appellant, that the Tribunal has fallen into serious error by not entertaining the application u/s 166 of the Act since the subsequent events occurred immediately after the award was passed which could have been taken cognizance of by the Tribunal. It is proponed by Mr. Pandey that the Tribunal has erroneously expressed the opinion that the second claim petition was not permissible, though there is no bar in law inasmuch as the principle of either *res judicata* or doctrine of constructive *res judicata* would not come into play in a case of this nature. Submission of Mr. Pandey is that as the claimant could not plead about the amputation earlier as that had not happened during the pendency of the first claim case, therefore, there could not have been any bar under law to agitate the same by filing a fresh claim petition, for a person aggrieved cannot be remedyless. In support of the aforesaid submissions he has commended us to the decisions rendered in the cases of *Anant Narayan v. Brijmohan Chhotulal* and *Ors. AIR 1956 Nagpur 93*, *Ramesh Chand and Others Vs. Board of Revenue and Others*, and *Smt. Mira Chatterjee Vs. Sunil Kumar Chatterjee*, .

5. Mr. Rakesh Jain, earned Counsel appearing for insurer, respondent No. 3, in oppugnation, contended that in the Act there is no provision for entertaining a second application u/s 166 of the Act and hence, the conclusion arrived at by the Tribunal that the second award could not be passed is absolutely sound and no fault can be found with it. It is urged by him that if the second claim petition is permitted to be entertained that would lead to uncertainty and anarchy inasmuch as the controversy can never be put to rest and the same is contrary to the letter and spirit of the statute as well as the public policy. Earned Counsel further submitted that in the absence of enabling provision, if such a claim is entertained, unscrupulous claimants may take advantage of the same, and for that reason, the Legislature has not conferred such enabling power on the Tribunal. Mr. Jain further contended that it was open to the claimant to file an appeal and an application under Order 47 Rule 1 of the CPC for putting forth additional evidence to bolster the claim with regard to amputation.

6. It is seemly to state that the facts with regard to passing of first award and filing of second claim case are beyond disputation. The singular question that emerges for consideration is whether such second claim petition would be maintainable because of some kind of event takes place subsequently. We may hasten to clarify that it is not the expiration of particular period which would be

the governing factor. The real controversy relates to maintainability of such an application. In this regard, it is apposite to refer to Section 168 of the Act, which deals with award of the Claims Tribunal. The said provision reads as under:

168. Award of the Claims Tribunal. - On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

7. Section 169 of the Act deals with the procedure and powers of Claims Tribunals. It is apposite to reproduce the said provision:

169. Procedure and Powers of Claims Tribunals. - (1) In holding any inquiry u/s 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 the purpose of taking evidence on oath and on 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 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 Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry.

8. On a perusal of the aforesaid provisions there remains no scintilla of doubt that the second claim petition cannot be entertained. Mr. Pandey with immense vehemence has submitted that the law laid down in the cases of Anant Narayan (supra), Ramesh Chand (supra) and Smt. Mira Chatterjee (supra), do render assistance to him as a consequence of which the second claim petition would lie. We have carefully perused the aforesaid decisions. In the case of Anant Narayan (supra), the Division Bench of the High Court of Nagpur was dealing with a case of mortgage. The claim was made on the mortgage which comprised the entire three fields but at the trial it was conceded on behalf of the plaintiff that he could not have obtained decree against A, who was then minor under a guardian adlitem. The Court, therefore, passed a decree in favour of the plaintiff in respect of only the mortgagor's moiety share. In execution of that decree the plaintiff instead obtaining joint possession in respect of undivided moiety share in the three fields obtained physical possession of the entire three fields. A, against whom no decree had been passed claimed possession of the entire three fields and that possession granted back to him. Subsequently, the plaintiff filed a suit for partition. In that context, the Bench expressed the opinion that the plaintiff's remedy of a suit for partition had not been affected. Mr. Pandey to further his submission has read Paragraph 10 of the aforesaid judgment. On a perusal of the same we are of the considered opinion that the said decision is of no assistance to Mr. Pandey and it has been erroneously placed reliance upon.

9. In the case of Ramesh Chand (supra), the Full Bench of the Allahabad High Court while dealing with the concept of res judicata held that before a plea of res judicata can be considered, it must be pleaded at the proper stage and further held that if the suit by the original tenant for ejectment u/s 202 of U.P. Act, 1951 had been dismissed the doctrine of res judicata would not apply either for application for reinstatement or the suit for ejectment in the declaratory suit that his rights as hereditary tenant had revived.

10. In the case of Smt. Mira Chatterjee (supra), the Division Bench of the Calcutta High Court expressed the view that if a party acquires right, during pendency of previous suit, for such right acquired the suit is maintainable and is not hit by Explanation 4 of Section 11 of the Code of Civil Procedure.

11. In our considered opinion, the aforesaid judgments have no applicability to the case at hand. Submission of Mr. Pandey is that he could not have raised the plea of amputation in the first claim case and, therefore, the principle of "ought" and "might" would not be attracted. We fail to fathom, how the same would clothe him with the right to file a separate claim petition. We may hereby clarify that the cause of action remains the same as the occurrence of the accident and the injury sustained by the injured are inseparably connected. Ultimately, the injury may lead to a grievous injury which may cause permanent disablement, but, the aforesaid eventuality has un-severable nexus with the initial cause of action. It can never be regarded as a fresh cause of action. In view of the aforesaid we have no hesitation in holding that the aforesaid decisions are not at

all applicable and we unhesitatingly hold that the second claim petition under the Motor Vehicles Act was not maintainable.

12. Ordinarily after so holding we would have recorded a verdict "Inevitably the appeal stands dismissed", but we cannot be oblivious of the fact that the Motor Vehicles Act is a beneficial statute and that is why the provision enshrined u/s 158(6) has been incorporated. Section 158(6) reads as under:

158. (6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer.

We have referred to the aforesaid provision only to highlight that how the enactment is beneficial in nature.

13. If the factum of amputation is genuine, the grieved person cannot be remediless. True it is, he could have preferred an appeal and filed documents as per law seeking enhancement of compensation. That would have been in a different realm altogether. He has not done so. He has filed the second claim petition. The Tribunal, as stated above, treated the said application as not maintainable and we have concurred with the said view. But, a pregnant and eloquent one, the claimant cannot be allowed to suffer frustration that his sufferings cannot be adjudicated in terms of money. That is not the purpose of the Act. In this context, we may profitably refer to the Order 47 Rule 1 of the Code of Civil Procedure. It reads as under:

1. Application for review of judgment. - (1) Any person considering himself aggrieved, -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter of evidence, which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review

of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation: The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a Superior Court in any other case, shall not be a ground for the review of such judgment.

14. In the case of National Insurance Co. Ltd. v. Lachhi Bai and Ors. 1996 MPLJ 546, one of us (S.S. Jha, J.) has held as under:

11. 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 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. In the case of Narshi Thakershi's case, it is held that no review lies on merits unless the statute specifically provides for it. Obviously, when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito iustitiae* to prevent the abuse of its process and such power inheres in every Court or Tribunal. The Hon'ble Supreme Court has given a limited power of review to the Tribunal and while considering the scope of Sub-sections (1) and (3) of Section 11, it was held that the review is maintainable. Similarly, in Satnam Verma 's case (*supra*), considering the scope of the powers of the Tribunal u/s 11 of the Industrial Disputes Act, it was held that the Tribunal is endowed with such ancillary or incidental power as are necessary to discharge the Parties. The jurisdiction vested in the Tribunal under the wide powers cannot be denied by the Tribunal to itself.

15. In this regard we may profitably refer to a decision rendered in the case of United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, , wherein the Apex Court was dealing with the power of the Tribunal for review. In Paragraphs 16 and 17 Their Lordships expressed the view as under:

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. 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.

17. The allegation made by the appellant Insurance Company, that the claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. The

claimants then confirmed their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to a serious miscarriage of justice.

16. In view of the aforesaid pronouncement of law there can be no trace of doubt that the Tribunal has the power to review. If the provision contained under Order 47 Rule 1, CPC is read in proper perspective there can be no shadow of doubt that the subsequent events can be taken note of on certain conditions precedent being satisfied. In the case at hand, the subsequent event is amputation, as set forth in the claim petition. The said amputation may have nexus with the accident occurred on 28-4-2003. The same might have happened due to some other reason. As presently advised, we do not intend to dwell upon the same at present but the said facet can be factor for recall or modification or review of the award as the concept of "for any other sufficient reason" would get attracted. The same has to be dealt with by the Tribunal within the parameters of review.

17. Ordinarily, we would have dismissed the present appeal and asked the appellant to file an application for review. We think that would be inappropriate in a case of this nature when the injured has knocked the doors of the Tribunal with hope and aspiration. Hence, we would like to direct the Tribunal to treat the second claim petition as an application for review. It would be open to the claimant-appellant to file an application u/s 5 of the Limitation Act explaining the delay in entirety so that the Tribunal can appreciate the same. It would be open to the insurer to contest the application for condonation of delay within the parameters of law. We have not expressed any opinion on the said score as that has to be dealt with by the Tribunal. We have only expressed the opinion that second claim petition shall be treated as an application for review and dealt with in accordance with law.

18. Accordingly, the appeal stands disposed of. There shall be no order as to costs.