

(1999) 04 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Review Petition No. 2/99, 3/99, 4/99, 5/99, and 6/99 and Civil
Revision Petition No. 2/99 5/99 with CMP's

New India Assurance Company

APPELLANT

Vs

Uri Civil Constructions

RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Section 113, 115
Motor Vehicles Act, 1988 — Section 140

Citation : (2000) ACJ 1540 : (1999) 2 SriLJ 451 : (1999) SriLJ 451

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : Miraj-ud-Din Bhat, M.A.Dar, Advocates appearing for the Parties

Judgement

1. By a common judgment dated 28011999, Civil Revisions 1/99, 3/99, 4/99, 5/99 and 7/99 involving identical questions of fact and law were

disposed of as dismissed. Against the judgment(s) in all five revision petitioner(s), review petitions seeking recall of the orders of dismissal have

been filled on similar rather same set of facts and circumstances. As in all these review petitions identical questions of fact and law are raised,

therefore, they are taken up together.

2. Dependents of victims of the vehicular accident, were ordered to be paid interim compensation of Rs. 50,0007 each, under section 140 of

Motor Vehicle Act on 09121995 by the Motor Accident Claims Tribunal (District and Sessions Judge) Baramulla. The New India Assurance Co,

indemnifier, moved the Tribunal for modification of this interim award to the extent of absolving/sparing the Insurance Coy. from payment of the

interim award. However, the Motor Accident Claims Tribunal, Baramulla, on

15091998, rejected the review/modification application and allowed the original interim award dated 09121995 to stand. Against this order of Motor Accident Claims Tribunal Baramulla, the New India Assurance filed revision petition(s) accompanied by application(s) seeking condonation of delay. The revision petition(s) was/were dismissed by the High Court on 28011999.

3. This dismissal order of 28011999 of revisions and condonation applications is sought to be reviewed on the following grounds:

4. That the revision petitions were listed during the course of winter vacation and were dismissed on 29011999 in absence of the petitioner. The petitioner could not present himself before the court as the clerk of the counsel for the petitioner had inadvertantly omitted to collect the regular supplementary cause list from the Registry. The petitioner was thereby afforded no opportunity of hearing while dismissing the revision petitions.

The Court could not have dismissed the revision petitions on merits in absence of the petitioner as it had to follow the law on the analogy of

dismissal of appeals in absence of the party. His application for condonation of delay has been dismissed on wrong construction of the dates

regarding payment of stamps and supply of requisite copy by the MACT Baramulla. There is an error apparent on the face of record regarding

computation of period of limitation which is a ground for review. That the order does not effectively deal with the points involved in the revision and

the MACT being a court is amenable to the revisional jurisdiction of the High Court. Therefore, the revisions could not have been dismissed on this

ground, which too is a ground to warrant review of the order. The review petition is prayed to be accepted, as otherwise, serious miscarriage of

justice flows from the dismissal order.

5. The counsel for the review petitioner has canvassed arguments in line with the above submissions and submits that the orders in question may be recalled and review petitions allowed.

6. The counsel for the respondents submit that the review petition is not competent. There is no provision in the Motor Vehicle Act which provide

for review. The provisions of CPC as contained in Order 47 read with Section 114 CPC, cannot be made applicable to this case. The revision

petition has been rightly dismissed after the petitioner failed to avail the

opportunity provided by the court to appear and argue the case. The revision petition is time barred, even, if the time consumed in getting the copies as per the construction placed thereto by petitioner is countenanced. Neither the revision nor review is competent in this case.

7. The counsel for the parties are agreed that the motion is only review in contradistinction to restoration motion. In the review proceedings, the court is to examine the order of dismissal of the revision itself with a view to consider the legality and propriety or otherwise of varying or setting aside of the order in question on merits. Being so, it may be in place here to mention that the petitioner has filed two other revision petitions, challenging the rejection of the application of the petitioner on 15091998 by Motor Accident Claims Tribunal Baramulla, regarding modification/review of interim award of Rs. 50,000/ awarded to the dependents of the deceased victims of the vehicular accident against petitioner Assurance Company. These two revision petitions which involve similar or identical questions of fact(s) and law, are therefore, taken up for disposal alongwith these cases. This is so, on consensual submissions of the counsel for the parties.

8. The revision petitions 01/99, 03/99, 04/99, 05/99 and 07/99 were listed before the Court on 21011999. on this date the cases were adjourned as the petitioner and the counsel engaged by petitioner failed to appear. Then the cases were again listed on 27011999 (after vacations) only after the cases were shown in the cause list and the name of the counsel was also given. If the counsel or his clerk has omitted to collect the cause list or did not take the steps to keep himself informed of listing of the case before the court, the petitioner or his counsel is to blame only himself.

Notification of the case in the cause list is by itself a sufficient notice. It does not lie in the mouth of the petitioner that he has not been afforded an opportunity to argue the case. The petitioner had sufficient opportunity to appear and argue the case before the court but failed to seize the opportunity. To seek review, in contradiction to rehearing of the revision and the condonation matter, on this ground is impermissible under law.

9. The contention of the counsel that on the analogy of law incorporated in Order 41 Rule 17 CPC, the revision could have been at best dismissed simplicitor for failure of the petitioner to appear, but could not have been

dismissed on examination of the grounds on merits set out in the memo therefore, is not merited. The procedure provided for appeals as contained in Order 41 of CPC is not applicable to revisional proceedings sought to be pressed in service in a memo filed thereto in the Court against an interim award passed under section 140 of M. V Act. For the reasons to follow, the revision petition is not competent against such an order. Besides, the provisions of Motor Vehicles Act, nowhere provides for any revision against an award and much less the procedure for appeals under Civil Procedure Code to be followed in any proceedings laid in revision against an interim award under section 140 of M.V.A. The review cannot exist unless conferred by law. Even under procedural law, the rule of review is definitive of its limits within which it is permitted by the court.

10. Even, if the period between 15121998 and 30121998, is excluded on the assumption that this time period was taken and consumed to prepare and to supply certified copy to the petitioner, yet the main revision filed before this court is beyond time. The period consumed to furnish the copying charges and the preparation and collection of the copy when excluded, still no sufficient cause is given in the review memo to warrant review of the order holding in terms that no sufficient cause is made out for condonation of delay. Though much stress is laid on the question that the petitioner had deposited the copying charges on 15121998, the copy was ready and signed by the certifying officer only on 30121998 and thereby the whole period from 15121998 to 30121998 merits to be excluded, yet even so, no ground whatsoever, is made out to warrant review of the order refusing to condone the delay. Even, if the submissions of the counsel are countenanced then at the most period from 151298 to 301298 is excluded. But, still the revision is barred by three days. The petitioner is under legal duty to explain the reasons and make out a sufficient cause for condonation of delay, which is not the case here.

11. In the order dated 2811999, the motion seeking condonation of delay was disposed of in terms as under:

'The reason for seeking condonation of delay put forth is that though the petitioner knew the order of the Tribunal on the date when it was pronounced and even was given a copy of the order it took petitioner time to correspond with their Regional and Head Office. It was only after

hearing from the Regional Office on 14121998 that certified copy was applied for on 15121998 which was obtained on 30121998 and the

petition was filed on 411999. The intervening days were consumed in preparing and filing the condonation application with revision. In the motion

infact apart from omnibus and generalised pleas of the Regional and Head Offices of being seized of the matter, no explanation is on record to

reveal, why so much of time was taken in preparing and filing the motion. Under the guise of a generalized statement, the delay cannot be

condoned when no explanation and sufficiency of cause or reason are placed on record"".

No ground whatsoever is advanced to warrant review of the order . In fact nothing is given in the review petition for seeking condonation of the

delay except as already stated of laying overemphasis on exclusion of period from 151298 to 301298, which period when excluded, still leaves the

main revision time barred.

12. The counsel for the petitioner has laid great stress on the question that the order under review has not effectively dealt with, all important

question of exercise of re visional jurisdiction by High Court in the matter of award of interim compensation under section 140 M.V.A, by the

Motor Accidents Claims Tribunal. The orders of Motor Accidents Claims Tribunal are amenable to the writ jurisdiction of the High Court. He has

cited AIR 1997 SC 2951, AIR 1972 MP 125 and SLJ 1989 J and K 225. The counsel submits that the Motor Accidents Claims Tribunal is a

Civil Court subordinate to the High Court, therefore, amenable to the writ jurisdiction of the High Court.

13. The counsel for the respondents has canvassed that the Motor Accidents Claims Tribunal is not a Civil Court subordinate to the High Court,

therefore, High Court cannot invoke the powers of revision against the orders of Claims Tribunal in matters of interlocutory orders in proceedings

under Motor Vehicles Act. He has cited 1993 ACJ 413, AIR 1985 J and K 26(DB) in support of his contention that revisional powers cannot be

exercised by the High Court in respect of orders including an interim award under Section 140 of Motor Vehicles Act.

14. In Amar Kaur and Anr. Vs. Kulbir Singh and Anr. (SLJ 1989 J and K 225), it has been held that for purposes of Section 24 of CPC

regarding transfer of cases from one Tribunal to another, the State Motor Vehicles Claims Tribunal is a Court subordinate to the High Court and

High Court has powers of superintendence and control over all the courts including the Motor Accidents Claims Tribunal. In this case, the

pronouncements of the Supreme Court in Bhagwati Devis Case (1983 ACJ 123) and Darshana Devis case (AIR 1979 SC 855) were relied on.

In Bhagwati Devis case, (supra), the matter arose in the context of suits and proceedings under section 25 of CPC and the Apex Court held that

the Accident Claims Tribunal is a civil court for purposes of Section 25 of CPC. In Darshana Devis case, (supra), the Apex Court in the context of

extending benefit of Order 33 CPC to the proceedings before the Motor Accident Claims Tribunal, held that Order 33 CPC applied to Tribunal

which has the trappings of the civil court. Even so in Amar Kaur's case (supra), the Hon'ble Dr. A.S. Anand, Chief Justice of this Court, as His

Lordship, then was observed:

There is a divergence of opinion amongst the Courts in the country as to whether a claim tribunal can be considered to be a court subordinate to

the High Court, whereas, some of the courts have held in the affirmative, the others have decided in the negative. But to apply Section 24 CPC to

the claims tribunal, it is not necessary to refer to the differing views of the High Courts on the point in view of the pronouncement of the Supreme

Court in Bhagwati Devi and other Vs. M/S I.S.Goel and others, reported as 1983 ACJ 123, where the Supreme Court referred to its earlier

pronouncement in the State of Haryana Vs. Smt. Darshana Devi and others, AIR 1979 SC 855, which arose out of decision of the Punjab and

Haryana High Court".

15. In AIR 1972 MP: 125, it is held that Motor Accident Claims Tribunal constituted under Section 110 of M.V.Act is a Court subordinate to the

High Court and therefore, the order of the Tribunal are revisable under Section 115 of CPC. However, in view of the law laid down by this Court

in AIR 1985 J and K 26(DB) and 1993 ACJ 413, the view expressed in AIR 1972 MP 125 (supra) is, with respect, dissented from.

16. In AIR 1997 SC 2951, the Supreme Court in the context of adoption by the Haryana and Punjab Motor Accident Claims Tribunal Rules,

1964, held that the provisions of Order 21 Rule 1 CPC, are applicable to deposits

made under the award given by the Motor Accident Claims

Tribunal, in terms of the interpretation of the above Motor Vehicle Rules. It was held that the amount of compensation ordered to be paid to the

victims of accident or the legal heirs of such victims will earn interest on the decretal amount in case the claimant is not informed of such deposit

either by the judgment debtor or by the Court. The provision of Order 21 Rule 1 CPC were invoked and applied to hold the judgment debtor

liable for the claim of interest on the final award in terms of the directions under the award. This case revolves around its own factual axis. It does

not cover in terms the question whether the order on an application seeking the review/clarification of an interim award passed under 140 of

M.V.Act, by claims Tribunal, is at all revisable by the High Court.

17. In Abdul Gaffar Gujri's case, (AIR 1985 J and K 26, (DB)) Justice M.L.Bhat, (as his Lordship then was) speaking for the court, observed:

25. Therefore, we have no doubt in our mind that neither the language of the relevant provisions of the Motor Vehicles Act nor the Rules framed

thereunder suggest that the Claims Tribunal was constituted as a civil court. In fact it is constituted as an Administrative Authority and has no

trappings or attributes of a civil court. It, therefore, follows that the claims Tribunal is not a Civil Court subordinate to the High Court or subject to

its revisional jurisdiction

18. It is to be noted that AIR 1972 M.P: 125 (supra) though taken note of by the D.3. in Abdul Gaffar Gujri's case (supra), the Division Bench

observed that the case did not lay the law correctly.

19. In New India Assurance Co. Ltd. case (1993, ACJ 413) Hon'ble Mr. Justice R.P.Sethi, as his Lordship then was after analysing the law on

the subject held that an appeal against an interim award under section 92(A) (corresponding to Section 140 of the new Act) was not competent.

Further after referring and relying on the case of Gulam Rasool Wani (1990 KLJ 173) and Executive Engineer's case (revision 104/88) decided on

31188) the court also held that the Tribunal under Motor Vehicles Act is not a civil court and as such, not amenable to the revisional jurisdiction of

the High Court. Besides, it was observed that New India Assurance Coy. Ltd. could not be permitted to invoke the jurisdiction of the High Court

under Article 226 of the Constitution (corresponding to Section 103 of the State

Constitution) or Article 227 of the Federal Constitution

(corresponding to Section 104 of the State Constitution) for the grant of relief against an interim award as prayed for in that petition.

20. It should be seen that in view of the law laid down in the Abdul Gaffar Gujri's case (AIR 1985 J and K 26) by the Division Bench and New

India Assurance Co. Ltd's case (19993 ACj 413) and Gh.Rasool Wani's case (1990 KLJ 173) revision against an interlocutory order including

interim award under 140 of Claims Tribunal under Motor Vehicles Act would not lie in so far as the Motor Accident Claims Tribunal is not

amenable to the revisional jurisdiction of the High Court.

21. While dismissing the revision, this court in its order dated 28/11/1999 observed: ""The compensation awarded in this case on account of death

arising from the vehicular accident U/S 140 of Motor Vehicle Act is on the basis of ""No fault liability"". Neither the appeal nor a revision is provided

under Motor Vehicles Act against such interim award. The provisions of Civil Procedure Code cannot be made applicable to this case, as exercise

of powers under Section 140 of the M.V.Act, come within the sweep of exercise of Special Powers in exercise of Special jurisdiction under the

Act. Under M.V.Act, powers can be exercised in appeal or revision only if appeal or revision is provided by Motor Vehicles Act, which is not the

case under Motor Vehicles Act. In fact keeping in view the beneficial purpose behind the enactment of Section 140 of Motor Vehicles Act and

placing construction to the provisions which would advance the purpose underlying the enactment in juxtaposition to the specific provision of

M.V.Act, it can be said that the Insurance Company is liable for the interim award, leaving the question of adjustment and working out of equities

between the parties to be determined by the Tribunal on enquiry.

In this case in fact what is sought to be challenged in revision, is not interim award itself but the order rejecting an application of the Assurance Co.

to modify the interim award passed under Section 140 of Motor Vehicles Act on 15/9/1998. Notwithstanding the form of such application, in fact

the application is a review petition wherein award of interim compensation awarded by the Tribunal has been sought to be reviewed. This

application has been dismissed and the order of dismissal of this application is sought to be impugned in the revision. There is no provision in the

Motor Vehicles Act where the order rejecting a review petition of an interim award can be challenged in revision. The challenge in revision thrown to the rejection of the review application by the Tribunal, is still on a weaker wicket than the challenge in revision thrown to an interim award itself. Obviously High Court cannot exercise such a jurisdiction, as no power for interfering with such order is found in the Motor Vehicle Act. The High Court cannot be expected in exercise of special jurisdiction under M.V.Act to interfere with the impugned order in proceedings in revision outside the Motor Vehicles Act. High Court cannot exercise jurisdiction when a revision is not contemplated or provided for by the M.V.Act In absence of any provision for revision in the M.V.Act the operation of statutory provision of 140 of Motor Vehicles Act cannot be circumvented to avoid or delay the payment of awarded interim compensation. The purpose of such welfare provision cannot be allowed to be frustrated. The revision petition in such circumstances is not maintainable".

22. Seen through the above extracted passage of the impugned order, it is manifest that the revision petition was dismissed as not maintainable after noticing the relevant provisions of law and facts of the case, which happen to be in conformance with the law laid down by AIR 1985 J and K 26, 1993 ACJ 413 and 1990 KLJ.173 (supra).

Judged thus, the contention that the High Court has not properly exercised the powers in so far as the Claims Tribunal under Motor Vehicles Act has been held not amenable to the Revisional jurisdiction of the High Court, is not and cannot be available, as a ground to seek review of the impugned order. The order is not merited to be interfered with. The order impugned in review considered as above still holds the field. No miscarriage of justice is caused and nothing has been brought on record to reveal that any injustice is caused to the otherside by coming into existence of the impugned order. The order is not vitiated by any error apparent on the face of record. The order is not also based on mistaken view of facts of law. No new and important matter or evidence is stated to be discovered to warrant the review. Review as understood in law can be creature of a statute and has definitive legal parametrical limits. The review rule when applied to this case, it is seen that the review is neither merited nor would lie in this case. The varying or setting aside the impugned

order on merits is not required in the context of review in the totality of facts and circumstances of the case.

For the aforesaid reasons, no sufficient ground is made out for review.

23. The revision petitions 2/99 and 6/99 with condonation applications 3/99 and 11/99 cannot succeed for the reasons given herebefore and also

in Revision Petition No. 4/99 with CMP 7/99, which involved identical question of fact and law and stood dismissed on 28011999.

In the result, the review petitions and revision petitions with CMP's are dismissed. Srinagar April, 154999.