

(2016) 03 PAT CK 0119

In the Patna High Court

Case No : Civil Review No. 125 of 2014 in MA No. 44 of 2012

New India Assurance Company Ltd.

APPELLANT

Vs

Kiran Singh

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Motor Vehicles Act, 1988 — Section 146, 147, 169

Citation : (2016) 2 BBCJ 68 : (2016) 2 BLJud 125 : (2016) 3 PLJR 338

Hon'ble Judges : Mr. Aditya Kumar Trivedi, J.

Bench : Single Bench

Advocate : Mr. Durgesh Kumar Singh, Advocate, for the Appellant; Mr. Dr. Rajesh Kumar Singh, Mr. Anant Kumar Bhaskar and Mr. Sanjay Kumar Jha, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Aditya Kumar Trivedi, J.—Instant civil review has been filed on behalf of petitioners/appellant/opposite party against the judgment and order dated 11.03.2014 passed in Misc. Appeal No.44 of 2012 by a co-ordinate Bench whereby and where under the appeal has been dismissed with further imposition of Rs. 25,000/- as exemplary cost.

2. In order to proper appreciate the points so raised, a glimpse of facts have to be taken up, first. Chandeshwar Prasad Narayan Singh, aged about 35 years, owner of motorcycle bearing Registration No.BR-04A 3596 while was proceeding over his motorcycle on 24.02.2000,at about 08:00 AM, met with an accident in order to save a child and on account thereof, suffered injuries. During course of treatment he succumbs on 29.04.2000. U.D. Case No. 1/2000 was instituted on the fardbeyan of his brother wherein final form was submitted. Subsequently thereof, the respondents/claimant filed Claim Case No.88 of 2000 under Section 163(A) of the MV Act which was allowed vide judgment dated 30.04.2011 and award dated 12.05.2011 directing the petitioner/opposite party to pay a sum of

rupees one lac with an interest at a rate of 6% enforceable from the date of filing of claim petition till saturation of the award amount by the Additional District Judge, FTC-V-cum-Motor Accident Claim Tribunal, Saran at Chapra which was brought up under challenge at the behest of petitioners/appellants under Miscellaneous Case No.44 of 2012 and the same was dismissed vide order dated 11.03.2014 attracting instant petition for review.

3. It has been submitted on behalf of petitioners that during course of dismissing the Misc. Appeal No. 44 of 2012, neither the principles laid down by the Hon''ble Apex Court has been considered nor the relevant provisions of law with regard thereto has been perceived in its true sense and on account thereof, miscarriage of justice has occurred attracting review.

4. To substantiate his plea, the learned counsel for the petitioners submitted that admittedly, the vehicle (motorcycle) was duly insured with the petitioners at the end of the deceased. Chandeshwar Prasad Narayan Singh being owner of the vehicle. The aforesaid policy was obtained under statutory head in terms of Section 146 of the MV Act and on account thereof, it was only enforceable relating to 3rd party. Deceased, being owner could not be identified as 3rd party rather he himself happens to be insured. As there was no agreement amongst the insured and insurer (petitioner) to cover the owner/driver also, in terms of Section 147 of the M.V. Act, and as, no extra premium was paid with regard to owner/driver of the motorcycle, therefore, insurer could not be identified to indemnify the legal liabilities so accrued on account of death of owner/driver due to accident.

5. Furthermore, it has also been submitted that the claim petition in terms of Section 163(A) of the MV Act is not at all maintainable in the background of the fact that 163(A) of the MV Act, like Section 140 of the MV Act, does not necessitate pleading as well as proof of negligence simultaneously, putting an obligation upon the owner or insurer, as the case may be, to make payment. That means to say, under Section 163(A) of the MV Act the owner has to pay the amount which, as per terms of policy, found duly indemnified at the end of the insurer and that being so, considering the facts of the present case would not be applicable because of the fact that owner himself met with casualty in a motor accident. That means to say, the status of owner is not as a third party. Furthermore, in terms of Section 163(A) of the Act, the owner has to be properly identified who is to be indemnified by the insurer, then in that circumstance, having absence of owner, will clearly give a slip to insurer, as in absence of owner, as per agreement, the insurer would not be liable to pay, share the burden.

6. It has further been submitted that at an earlier occasion, while dismissing the Misc. Appeal No.44 of 2012, the relevant provisions of M.V. Act have been completely ignored where under claim petition, in the facts and circumstances of the case would not be maintainable, in likewise manner, relevant judicial pronouncement also not been considered. It has also been argued that even

having absence of such ground taken at an earlier occasion at the end of petitioner, could not obliterate the court from its responsibility to decide the lis in appropriate legal manner. To substantiate such plea, also relied upon *Oriental Insurance Company Limited v. Rajni Devi & Ors.* reported in (2008) 5 SCC 736, *Dhanraj v. New India Assurance Co. Ltd.* and another reported in (2004) 8 SCC 553, *New India Assurance Company Limited v. Sadanand Mukhi and Ors.* reported in (2009) 2 SCC 417, *Bimlesh and others v. New India Assurance Company Limited* reported in (2010) 8 SCC 591, *National Insurance Company Limited v. Balakrishnan & Another* reported in (2013) 1 SCC 731.

7. On the other hand the learned counsel for the respondents opposed the prayer and submitted that instant review petition is not maintainable, hence is fit to be dismissed. It has further been submitted that Misc. Appeal No.44 of 2012 has been dismissed after considering the rival submissions as well as considering the relevant law so applicable in the facts and circumstances of the case. Furthermore, it has been submitted that insurer/petitioners is playing hide and sick policy in order to avoid payment of the decretal amount and for that, has indulged in such kind of activity.

8. In order to counter-meet with the submission made on behalf of petitioner, it has been submitted that policy was issued by the petitioners and, the reason best known to the petitioner the original policy has not been produced by the petitioner at an earlier occasion to substantiate whether premium was received against 3rd party only or being comprehensive will attract and cover the owner/driver also. Because of the fact that respondent were in possession of cover note only, which they filed. Now the petitioners have filed the same, which also podge their plea. Moreover, none of the witness has been cross-examined on that score and in likewise manner, petitioners also failed to substantiate during their defence. Moreover, review is not permissible relating to the documents, which were not filed at an earlier occasion though having in possession thereof.

9. Because of the fact that though statutory obligation is found in terms of Section 146 of the MV Act however its ambit is found duly expanded in terms of Section 147 of the M.V. Act, which, the petitioners would have substantiated during trial that policy being in terms of Section 146 of the M.V. Act, was applicable/enforceable only to the extent of third party, and not concerning the driver/owner, that too in the background that the vehicle happens to be motorcycle, being self driven.

10. It has further been submitted that mentioning of wrong Section is not relevant for the court to adjudicate upon the lis in that particular way, rather the court has to part with substantial justice, and furthermore, considering the basic feature of the Act, to be benevolent. Hence mere nomenclature of petition under Section 163(A) of the M.V. Act, is not going to cast any sort of restriction. In order to substantiate such plea, the learned counsel for the respondent has relied upon *Ningamma and another v. United India Insurance Company Limited* reported in (2009) 13 SCC 710.

11. The first and foremost point for consideration is, whether review is maintainable. In order to clinch the issue, first of all section 169 of the M.V. Act has to be seen where under procedure has been laid down.

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 the 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 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.

After going through sub-section (2) of Section 169 of the M.V. Act, it is evident that certain provision of CPC has only been made applicable, however power of review as contemplated under Section 114 read with Order 47 Rule-1 of the CPC is not at all emblazoned. That means to say, had there been intention of the legislature to provide such power, certainly that would have been incorporated. The power of review is a statutory event and in absence thereof, it cannot be exercised.

12. In *New India Assurance Co. Ltd. v. Bimla Devi & Ors.* reported in 1999 ACJ 613, it has been held:

"2. We wanted to know from Mr. Rajesh Verma, the learned counsel appearing on behalf of the petitioner as to whether the Motor Vehicles Act or the Rules framed thereunder contain any provision for review to which he answered that neither the Act nor the Rules framed under the Act contain such a provision.

3. It is a settled law that appeal/revision or review are the creation of statute. No litigant has got an inherent right to prefer appeal/revision or review. In *Harbhajan Singh v. Karan Singh*, AIR 1966 SC 641, the Apex Court has clearly laid down that in the absence of any power review is impermissible. This decision has been followed by the Full Bench of our own court in *Shivragi v. D.D.C.*, 1997 RD 562. Since review prayed for by the writ petitioner was impermissible before the lower authority we dismiss this writ petition."

The same view also been followed in 1999 (3) TAC 817 (Pat.)

13. In *State of West Bengal v. Kamal Sengupta & Anr.* reported in AIR 2009 SC (Supp). 476, wherein the power of Administrative Tribunal was under

consideration having power of review whereupon in para 11, it has been held:

"11. Since the Tribunal's power to review its order/decision is akin to that of the Civil Court, statutorily enumerated and judicially recognised limitations on Civil Court's power of review the judgment/decision would also apply to the Tribunal's power under Section 22(3)(f) of the Act. In other words, a Tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order 47, Rule 1 is available. This would necessarily mean that a Tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision."

14. In *Meera Bhanja v. Nirmala Kumari Choudhury* reported in (1995) 1 SCC 170, it has been held:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (1979) 4 SCC 389, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

"It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* AIR 1973 SC 1909, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record

and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent 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 points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* AIR 1960 SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:-

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

15. In *Parsion Devi v. Sumitri Devi* reported in (1997) 8 SCC 715, it has been held:

"9. Under Order 47, Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. 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". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

16. Thus, after analysing the different judicial pronouncement, as referred above, in sum and substance, the principle so scurched out is that the power of review is a power duly acknowledge able under the statute itself, and unless and until it is so provided it cannot be exercised. Apparently, the M.V. Act has got no such provision and on account thereof, its application is found duly foreclosed.

17. Moreover, the power of review is exercisable only in case, there happens to be proper application of the ingredients so enumerated under Section 114 read with Order 47 Rule-1 of the CPC. However, the aforesaid exercise is to be done cautiously, as the review application should not be proceeded with and be decided as a court of appeal to set aside the erroneous decision, and that happens to be reason behind that Hon"ble Apex Court forbidden to entertain in event of "an appeal in disguise".

18. That being so, instant petition is found devoid of merit and is accordingly dismissed. However, in the facts and circumstances of the case, the parties will bear their own costs.