
(2007) 04 MP CK 0045
In the Madhya Pradesh High Court

Smt. Sushila and Another

APPELLANT

Vs

Rajbeer Singh and Another

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2008) ACJ 1262 : (2007) 3 MPLJ 361

Hon'ble Judges : Sanjay Yadav, J;A.K. Gohil, J

Bench : Division Bench

Judgement

A.K. Gohil, J.

Petitioners have filed this review petition under Order 47 Rule 1, CPC against the order dated 21-9-1999 passed by the Division Bench of this High Court in M.A. No. 169/1996 [2000(1) M.P. 331 (DB)] by which the Division Bench dismissed the appeal on the ground that after the death of respondent No. 2, who was the owner of the vehicle, his L.Rs. were not brought on record and application for dispensing with service was filed and the name of the respondent No. 2 owner of the vehicle, was deleted at the risk of the appellant. Subsequently, the Tribunal dismissed the appeal under the provisions of Chapter XI of the Motor Vehicles Act, 1988, which clearly indicate that a liability stand cast upon the Insurer to indemnify against the third party risk on the establishment of the fact that insured was liable to pay the damages to a third party. The provisions of Act do not require that the insurer must indemnify the third party independently of the liability of the insured. Where the insured is liable directly or vicariously to pay the damages is a question governed by law of torts and considering the various provisions of Motor Vehicle Act by a detailed order dismissed the appeal. Against which this petition for review has been filed.

This review petition which has been filed on 19-6-2000 prima facie appears to be barred by limitation and no application for condonation of delay had been filed. On 17-3-2004 when case came up for hearing in the order-sheet it has been mentioned that list the petition for admission after delay in filing application is

decided. But thereafter case was not listed for the same as no application for condonation of delay has been filed. Therefore, apparently the review petition appears to be barred by limitation and no application for condonation of delay has been filed. Secondly, there is no specific provision under the Motor Vehicle Act for review. In Section 169 and Rule 240 of the M.P. Motor Vehicles Rules, 1994, certain provisions of the CPC have been made applicable for deciding the claim petition but certainly there is no specific provision that the review petition can be filed in cases of Motor Vehicles Act, 1988 or in the appeals arising out of Motor Vehicles Act. Prima facie, it appears that the provision of Order 47 Rule 1, CPC are not applicable in Motor Vehicles Act cases but at this stage we leave this question open to be decided in some other case.

Shri N.D. Singhal submitted that after the aforesaid impugned order passed by the Division Bench on 21-9-1999 in M.A. No. 169/99, the Full Bench of M.P. High Court in M.A. No. 98/1997, Smt. Jamunabai and Ors. v. Chhotesingh and Ors. 2004(2) M.P. 325 (FB) has over-ruled the aforesaid Division Bench decision and has held that appeal shall not fail on account of dispensing with notice upon the respondents, who were ex parte before the Court of first instance. Therefore, it is submitted by Shri Singhal that review application is maintainable. Shri Singhal further argued that the case cannot be dismissed on the ground of technicalities and there should be apparent justice in the case. He placed reliance in the case of Lily Thomas, etc. etc. v. Union of India and Ors. AIR 2000 SC 1650.

On the contrary, Shri S. Gagendragadkar, submitted that as per the explanation appended to Rule 1 of Order 47, the fact that the decision on the question of law on which judgment of the Court is based, has been reversed and modified by the subsequent decision by the Court is not a ground for review of such judgment. He placed reliance on the decision in the case of Parsion Devi and Others Vs. Sumitri Devi and Others, , wherein the Supreme Court on the scope of review held as under:

When the mistake or error is apparent on the face of the record, then only review petition is maintainable and if the order is self-evident there cannot be interference in the review petition.

Shri S. Gagendragadkar, further submitted that in the similar circumstances that when the High Court exempted the owner of vehicle from liability but made insurer alone liable, the Constitutional Bench of Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, , held as under:

The insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract

of insurance. There is, thus, a basic fallacy in the conclusion reached by the High Court on this point.

Considering the entire controversy involved in the matter, we prima facie found that in view of the Explanation added to Rule 1 of Order 47, CPC, the review is not maintainable even on reversal of decision by the Full Bench. On merits also even if we ignore the other laches of limitation etc., it is clear from the decision in the case of Sunita Rathi (supra), that the liability of insurer arises for the purpose to indemnifying the insured under the contract of insurance when the liability of the insured has been upheld. Thus, it appears that the view taken by the Division Bench in M.A. No. 169/99, decided on 21-9-1999 gets support from the decision of the Supreme Court in case of Sunita Rathi (supra).

It is settled position under the law that even a decision or order erroneous in law or on merits it cannot be accepted that it is an error apparently on the face of the record and the aforesaid mistakes cannot be corrected exercising powers of review under Order 47 Rule 1. Even if erroneous view taken by the Division Bench in M.A. No. 169/99, decided on 21-9-1999, the same cannot be corrected and naturally the present case will not fall strictly within the scope of review and it cannot be held that there is mistake apparent on the face of record. Thus, considering the totality of the facts and circumstances of the case, we do not find any merit in this review petition. Accordingly, the review petition is dismissed.

Parties are directed to bear their own costs.