
(2007) 12 MP CK 0021
In the Madhya Pradesh High Court
Case No : M.C.C. No. 725 of 2007

United India Insurance Co. Ltd.	Vs	APPELLANT
Nandlal and Others		RESPONDENT

Date of Decision : 04-12-2007

Acts Referred:

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

Citation : (2008) ILR (MP) 13 : (2008) 2 MPLJ 212

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : L.N. Soni with Anand Soni, for the Appellant; Vijay Singh Chouhan for Respondent Nos. 1 and 2 and Sameer Verma for Respondent Nos. 3 to 6, for the Respondent

Final Decision : Allowed

Judgement

N.K. Mody, J.

This order shall also govern the disposal of MCC Nos. 716/07 to 739/07 as all the petitions are being filed against the order dated 30-8-2007, whereby this Court has disposed of M.A. No. 316/06 and also M.A. Nos. 2305/05, 2315/05, 2316/05, 2458/05, 2459/05, 2466/05, 2568/05, 3016/05, 3026/05, 3027/05, 3055/05, 3056/05, 3057/05, 3058/05, 3295/05, 3306/05, 3307/05, 3502/05, 3640/05, 3654/05, 3669/05, 30/06 and 247/06.

Short facts of the case are that in a Motor Accident which took place on 26-8-2003 and in which two vehicles i.e. a bus bearing Registration No. MP 10-D-7444 and a truck bearing Registration No. MP46-H-0795 was involved. Number of persons filed the claim petition on account of injuries and also on account of death. All the claim petitions were decided by the learned tribunal vide order dated 12-9-2005 against which number of appeals were filed and all the appeals were disposed of by this Court vide order dated 30-8-2007 except M.A. No. 2903/05, which was disposed of vide order dated 28-6-2007 by the Hon'ble

Division Bench of this Court.

In all the appeals in which MCC has been filed, relevant findings, relating to the liability of driver, owner and Insurance Co. of each of the vehicle was as under:

So far as findings of contributory negligence is concerned, it is evident that the drivers of both the vehicles died immediately after the accident. The best evidence which is available is the cleaner of the offending truck, who has seen the accident. From the passengers of the offending bus it is not expected that they have seen how the accident occurred. The Learned Tribunal has also found that there was a pit and the driver also tried to save the bus from the pit. So far as claimants are concerned, since they were travelling in the bus and they were not the cause of accident in any manner, therefore, it was a case of composite negligence for them. After perusal of the evidence on record this Court is of the view that it is difficult for the Court to determine the percentage of negligence. In the circumstances the learned Tribunal committed error in deviating from the general principle and in apportioning the inter se liability of joint tortfeasors. It was not necessary for the claimants to implead respondent No. 3 as party. In view of the aforesaid position of law the findings of learned tribunal whereby the liability of respondents was apportioned in the ratio of 50% 50% is set aside and it is held that the claimants are entitled to recover the amount from any of the tortfeasors.

Prior to it the appeal filed by one Vijaylaxmi bearing M.A. No. 2903/05 is concerned, was taken up for hearing by the Hon"ble Division Bench of this Court, which was disposed of vide order dated 28-6-2007 wherein so far as liability is concerned, it was decided as under:

From the facts taken into account by the Tribunal, it is manifest that the accident has occurred on A. B. Road, which has a considerable width. It was on account of the width of the road and the head on collision between the two vehicles that the Tribunal has inferred that both the vehicles contributed in causing the accident and the resultant deaths and injuries. We are of the view that even on the basis of *res ipsa loquitur*, the circumstances did not indicate that the Bus Driver had contributed in equal part towards the accident. We find that the extent of contributory negligence on the part of the Driver of the Bus was only 25%, while on the part of the Truck Driver - 75%. Under these circumstances, the Insurance Company of the Truck, namely; United India Insurance Co. Ltd., would be liable to the extent of 75% of the amount awarded, while the owner Govind Das, to the extent of 25%.

Learned Counsel submits that all the appeals in which MCC are being filed, were heard on 1-5-2007 and were reserved for orders. While Hon"ble Division Bench decided the appeal on 28-6-2007. Learned counsel submits that since the appeals heard by this Court were reserved for orders, therefore, it could not be brought to the notice of this Court that the matter has already been decided by the Hon"ble Division Bench and a view has been taken to the effect that Driver of

offending truck was liable to the extent of 75% and the Driver of bus was liable to the extent of 25%.

Learned Counsel submits that since the different view has been taken by the Hon"ble Division Bench, prior to the decision of this Court, and the same could not be brought to the knowledge of this Court, therefore a case of review is made out. Learned counsel placed reliance on a decision of Apex Court in the matter Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, wherein Hon"ble Apex Court has observed as under:

Section 114 of the Code empowers a Court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit. Order 47, R.1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The word "sufficient reason" in O. 47, R. 1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit."

It is not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case relating to disqualification of members by Board of Control of Cricket in India (Board) when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held subsequently, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake.

Learned counsel for the respondents submit that the appeals were disposed of on merits after hearing, therefore, only because a different view was taken by the Hon"ble Division Bench, no case for review is made out.

Learned counsel for the respondents submit that in view of the explanation of Order 47, Rule 1 of CPC the application filed by the petitioner is not maintainable. In alternative learned counsel submits that if this Court is of the view that a case of review is made out then the respondents be also heard on the question of amount of compensation awarded as on account of number of heads no amount has been awarded and on account of injuries also the amount

awarded is on lower side.

Perused the record and heard the arguments. Explanation of Order 47, Rule 1 reads as under :- "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.."

Since the decision passed by the Hon"ble Division Bench was not a subsequent decision but was passed prior to the judgment of this Court, therefore, the application filed by the petitioner cannot be dismissed in view of the explanation of Order 47, Rule 1. Explanation to Order 47, Rule 1, CPC is of no help to the respondents.

Although, appeals were heard and reserved by this Court and before this Court could have passed the order other matter in which counsel for the petitioner was Shri L.K. Soni, Advocate, was decided by the Hon"ble Division Bench, therefore, it was the duty of the counsel to place the copy of the order before this Court. Even if the appeals were reserved, then too, it cannot be a excuse. However, since in all the appeals which were disposed of by this Court, it has been held that it was a case of composite negligence and by the Division Bench it was held that it was a case of contributory negligence to the extent 75 and 25% and the order passed by Hon"ble Division Bench was not brought to the notice of this Court due to the mistake on the part of the lawyer of the petitioner, therefore, keeping in view the law laid down in the matter of BCCI vs. NCC (supra), it was a ground for review. In view of this the application filed by the petitioner is allowed. Impugned order dated 30-8-2007 passed in M.A. No. 316/2006 is recalled. Appeals shall be reheard by this Court on the question of liability and also on the question of quantum. Office is directed to re-register all the appeals and list for hearing immediately thereafter. Petitioner shall be liable to pay cost of Rs. 500/- per case payable to the advocates of the claimants by cheque within two weeks.