

(2024) 02 GAU CK 0003

Gauhati High Court

Case No: Review Petition No. 16 Of 2023, MACApp. No. 481 Of 2017

Oriental Insurance Company Ltd.

APPELLANT

Vs

Pabitra Kr. Roy Prodhani And 2
Ors.

RESPONDENT

Date of Decision: Feb. 8, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Section 114, Order 47 Rule 1, Order 41 Rule 3
- Motor Vehicles Act, 1988 - Section 169, 169(2), 173
- Code Of Criminal Procedure, 1973 - Section 195

Hon'ble Judges: Arun Dev Choudhury, J

Bench: Single Bench

Advocate: R D Mozumdar, L R Mazumder

Final Decision: Dismissed

Judgement

1. Heard Ms. R. D. Mozumdar, learned counsel for the review petitioners. Also heard Mr. A. Z. Ahmed, learned counsel for the claimants/ respondents.

2. The present review petition is filed under Section 114 read with Order XLVII Rule I of the Code of Civil Procedure, 1908, seeking review of the Judgment dated 06.12.2022 passed by this Court in MAC Appeal No. 481/2017.

3. The ground of seeking review is that six grounds urged in the appeal memo was not considered by this Court while passing the judgment dated 06.12.2022 and accordingly, there is an error apparent on the face of record in passing the judgment and order dated 06.12.2022.

4. The grounds according to the review petitioner which are not considered by this Court are as follows:-

“A. For that this Hon’ble Court erred in law as well as in facts in not considering that vide order dated 22.02.2022 the I.A.(Civil) No. 2398/2021 filled under Order XLI Rule 3 was allowed. Vide the said order the additional grounds were allowed by this Hon’ble Court to be treated as grounds in the memo of appeal. But while passing the judgment dated 06.12.2022 there is no mention about these additional grounds by this Hon’ble Court. This is error apparent on the face of the record. Thus the judgment deserves to be reviewed and set aside.

B. For that this Hon’ble Court erred in law as well as in facts in accepting the income of the deceased to be Rs. 14,300/- (Rupees fourteen thousand three hundred) as per Exhibit-7 whereas as per Exhibit-7 itself after deduction of the professional tax the amount came to Rs. 14,092.00 (rupees fourteen thousand ninety two). This is error apparent on the face of the record. Thus the judgment deserves to be reviewed and set aside.

C. For that this Hon’ble Court erred in law as well as in facts in not considering that, defense evidence was adduced in the case which this Court has mentioned in paragraph 5 of the judgment dated 06.12.2022, but there is no reason given whether this defense evidence is accepted or rejected. This is error apparent on the face of the record. Thus the judgment deserves to be reviewed and set aside.

D. For that this Hon’ble Court erred in law as well as in facts in not considering that an amount of Rs. 11,53,596/- (rupees eleven lakhs fifty three thousand five hundred ninety six) was deposited by the petitioner before the Registry of this Hon’ble Court on 27.11.2017. But in the judgment dated 06.12.2022 there is no mention of this amount. This is error apparent on the face of the records. Thus the judgment deserves to be reviewed and set aside.

E. For that this Hon’ble Court has not discussed the ground No. E regarding the rate of interest which was challenged in the MAC Appeal. Moreover the Court has not decided about the interest on the future prospect income. This is error apparent on the face of the record. Thus the judgment deserves to be reviewed and set aside.

F. For that in any view of the matter the impugned judgment dated 06.12.2022 is bad in law for non consideration of the above mentioned grounds. This is error apparent on the face of the records. And as such the judgment is liable to be reviewed and set aside.”

5. Perused the judgment. In the judgment itself, at paragraphs – 7 and 8, the Court has specifically recorded the arguments advanced by the learned counsel for the appellant.

It is not a case that the aforesaid six grounds pleaded in the appeal memo were also urged and argued by the learned counsel during the course of hearing and that this Court has not considered such argument. In fact, the aforesaid grounds were not even argued before this Court during the course of hearing.

6. Be that as it may, this Court is of the view that the present review petition itself is not maintainable under the law.

7. It is by now well settled that power of review can be exercised only when the statute provides for the same. In the absence of any such provision in the concerned statute, such power of review cannot be exercised.

8. Section 169 of the MV Act, provides the power and jurisdiction of the Claims Tribunal and procedure to be followed by it. Such Section nowhere empowers a Motor Vehicles Tribunals to exercise the power of review either under Section 114 of the CPC or under Order XLVII Rule I of the CPC. The Assam Motor Vehicles Rules, also do not provide any such power of review upon any judicial authority adjudicating Motor Vehicle Claims.

9. The appeal in question was preferred by the review petitioner under Section 173 of the M.V. Act, 1988. Thus, this Court was exercising its jurisdiction as an appellate authority under Section 173 of the M.V. Act, 1988. The M.V. Act, 1988, also does not confer any power on the appellate authority to review its order. Therefore, in absence of any express provision empowering the appellate Court under Motor Vehicle Act, 1988 to review its judgment and order, this Court cannot entertain a review petition filed under Section 114 read with Order XLVII of CPC, 1908 inasmuch as the Section 169 (2) of the M.V. Act, 1988, empowers a Claim Tribunal to exercise the power of a Civil Court for purpose of taking evidence on oath and enforcing attendance of witnesses and compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed. The said provision also treats a Claims Tribunal to be a Civil Court for all the purposes under Section 195 and Chapter XXVI of Code of Criminal Procedure, 1973. Thus, it is clear that the Order XLVII of the CPC which is part of the First Schedule of the CPC or Section 114 which is part of PART VIII of CPC have not been made expressly applicable either to the Claim Tribunal or to the appellate authority.

10. While holding as aforesaid, this Court cannot be oblivious of the settled proposition of law that, power of review can still be exercised by the Tribunal or the appellate authority where review is sought to correct procedural defects like clerical or arithmetical error or, where award is obtained by fraud or misrepresentation. However, in the absence of express and substantive power of review being provided under the MV Act, neither the Tribunal nor the appellate authority shall have power to review the award/judgment on merit. In the case in hand, no new grounds are discernible to review the order dated 06.12.2022. Therefore, as an appellate Court, this Court shall

have no power to review the judgment in absence of any ground of established fraud or misrepresentation or clerical or arithmetical error. So far the ground of refund of statutory deposit, no specific order as such is required inasmuch as in the event of disposal of an appeal, the Registry even in the absence of a specific order can return the statutory deposit. Therefore, the same cannot be a reason for exercising review jurisdiction.

11. Accordingly, the present review petition stands dismissed.