
Neelam and Others Vs Nawab Ahamad and Others

First Appeal From Order No. 3392 of 2014

Court: ALLAHABAD HIGH COURT

Date of Decision: Dec. 4, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 13 Rule 10, Order 13 Rule 3, Order 16 Rule 2, Order 16 Rule 21, Order 17 Rule 17

Citation: (2015) 2 ACC 781 : (2016) ACJ 517 : (2015) 1 ADJ 625 : (2015) 108 ALR 909 : (2015) 1 AWC 1017

Hon'ble Judges: Rajiv Sharma, J; Dinesh Gupta, J

Bench: Division Bench

Advocate: Ratnesh Kumar Pandey, Advocates for the Appellant

Judgement

1. Heard learned counsel for the claimants/appellants and perused the record. Claim Petition No. 23 of 2009 was filed by the claimants/appellants

against Nawab Ahmad and others, claiming compensation for the death of Vijay Kumar Agarwal in a road accident. The Motor Accident Claims

Tribunal, Bulandshahr, vide judgment and award dated 14.9.2010, dismissed the claim petition on the ground that the claimants have failed to

establish that accident had occurred due to carelessness of driver of Santro Car No. H.R. 25A.J./8972.

2. Not being satisfied with the judgment and award dated 14.9.2010, claimants/appellants have filed a Review Petition, bearing No. 18 of 2010,

seeking review of the judgment and award dated 14.9.2010. The Tribunal, after hearing the parties and perusing the evidence on record, dismissed

the review petition vide judgment and order dated 26.9.2014, which-is impugned in the instant appeal, holding that the Motor Accident Claims

Tribunal has no power to review its award and as such, review petition is not maintainable.

3. Counsel for the claimants/appellants has submitted that the Tribunal, while passing the judgment and award dated 14.9.2010 in Claim Petition

No. 23 of 2009, had not taken into consideration the entire facts and evidence on record and erred in dismissing the Claim Petition. Therefore,

claimants/appellants had filed review petition. The Court below, without appreciating the evidence on record, erred in dismissing the Review

Petition by the impugned order only on the ground that the Review Petition is not maintainable.

4. A specific query was put to the learned Counsel for the claimants/appellants as to whether there is any specific provision in the Motor Vehicles

Act to review the judgment and award passed by the Motor Accident Claims Tribunal, the answer was in negative.

5. At this juncture, we would like to point out that Section 221 of the U.P. Motor Vehicles Rules, 1998 deals with the applicability of certain

provisions of the Code of Civil Procedure and it reads as under:

221. Code of Civil Procedure to apply in certain cases. The following provisions of the First Schedule to the Code of Civil Procedure, 1908,

shall, so far as may be, apply to proceedings before the Claims Tribunal, namely, Rules 9 to 13 and 15 to 30 of Order V; Order IX; Rules 3 to 10

of Order XIII; Rules 2 to 21 of Order XVI; Order XVII; and Rules 1 to 3 of Order XXIII.

6. Order XLVII of the Code of Civil Procedure deals with the power of review conferred to the Court. A perusal of the aforesaid Rule 221 would

indicate that Order XLVII which deals with the power of review cannot be applied by the Motor Accident Claims Tribunal. Only the provisions/Orders mentioned in the aforesaid Rule 221 can be applied by the Motor Accident Claims Tribunal.

7. In New India Assurance Company Ltd. Vs. Smt. Bimla Devi and Others, , a Division Bench of this Court has held that the Motor Accident

Claims Tribunal has no power to review. In Assistant Commercial Taxes Officer Vs. Makkad Plastic Agencies, , the Apex Court observed as

follows:

Review is a creature of statute and such an order of review could be passed only when an express power of review is provided under statute. In

the absence of any statutory provision for review, exercise of power of review under the garb of clarification/modification/correction is not

permissible.

8. From the aforesaid, what emerges is that if Statutory Authority/Quasi Judicial Officer/Tribunal, does not have any express power of review

under the Statutes, the subsequent order passed by it recalling/modifying or reversing its earlier order is nullity, as such order is non est and void.

Therefore, we are of the view that there is no illegality and infirmity in the impugned award which is hereby confirmed. For the reasons aforesaid,

the appeal is dismissed. Under the facts and circumstances of the case, there is no order as to costs.