

(2009) 08 DEL CK 0129

Delhi High Court

Case No: R.P. No. 188 of 2008 in MAC APP No. 30 of 2006

Jeet Singh

APPELLANT

Vs

National Insurance Company
Ltd. and Others

RESPONDENT

Date of Decision: Aug. 11, 2009

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 21, 3
- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, 11

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Seeraj Bagga, for the Appellant; Manoj Ranjan Sinha, for the Respondent

Final Decision: Dismissed

Judgement

Kailash Gambhir, J.

By way of the present application filed by the applicant under Order 47 Rule 1 CPC, the applicant seeks review and reconsideration of the order dated 28.3.2008 passed by this Court in MAC APP No. 30/06 whereby the appeal filed by the applicant was dismissed and order of the learned MACT was upheld.

2. The grounds taken by the applicant in the review application inter alia are that the issue relating to the compliance of Rule 3(b) of the Central Motor Vehicles Rule, 1989 already stood decided in favour of the applicant in the collateral proceedings between the applicant and respondent No. 1 by the court of District Consumer Redressal Forum but the said decision of the Consumer Forum could not be brought to the notice of this Court at any stage of the appeal. As per the applicant the said decision of the Consumer Court is binding between the parties, and the same cannot be re-agitated being barred by the principles of constructive res judicata envisaged u/s 11 of C.P.C. It has also been stated that in the absence of any evidence led by respondent No. 1 to establish any breach on the part of the

applicant, no liability to pay compensation amount could be fastened on the applicant. The counsel for the applicant also stated that it could not be brought to the notice of this Court at the time of hearing of the appeal that the learned MACT wrongly formed an opinion so far the identity of Mr. Daljeet Singh, trainer/driver was concerned after placing reliance on the FIR while ignoring the other circumstances. As regards the driving licence of Daljeet Singh, the applicant took a stand that the driving licence of Daljeet Singh was never an issue between the parties, and therefore, the same was not placed in support of the appeal due to oversight by the applicant which was otherwise a part of the original record and therefore to hold otherwise would be contrary to the records. The counsel for the applicant contended that there is an apparent error on the face of the record, more particularly, when the driving licence of Daljeet Singh formed part of the original record.

3. Opposing the present application, the National Insurance Company/respondent No. 1 in its reply averred that the findings of the Consumer Court cannot have any binding effect on the Tribunal constituted under the Motor Vehicles Act, where the Tribunal arrives at a decision after taking into consideration the pleadings, documents and evidence adduced by the respective parties in support of their respective pleas. The applicant, as per the respondent, has failed to produce any evidence to prove that Daljeet Singh was having a valid and effective driving licence at the time of the accident due to which the Tribunal gave a categorical finding to hold that Daljeet Singh was not in possession of an effective driving licence at the relevant time and therefore, at the stage of the review, the applicant cannot be allowed to reopen the case or to re-agitate the settled issues. It is also stated that the learned MACT as well as the Appellate Court in the concurrent findings have reached to the conclusion that the applicant failed to prove compliance of Sub-rule (b) of Rule 21 of Central Motor Vehicles Rules, 1989.

4. The respondent based on the above submissions contended that the review filed by the applicant is not at all maintainable and deserves to be dismissed.

5. Counsel appearing for the applicant strongly urged that so far as the compliance of Rule 3(b) of the Central Motor Vehicles Rules, 1989 is concerned, the same stood finally concluded between the parties with the decision of the consumer court where also the respondent No. 1 had claimed violation of the said rule besides disputing the identity of Daljeet Singh and validity of his driving licence. The contention of the counsel for the applicant is that the findings of the consumer court are binding on the parties and the same could not be re-agitated based on the principle of constructive res judicata as envisaged under Explanation 4 of Section 11 CPC. Counsel for the applicant placed reliance on the judgment of the Apex Court in [Sulochana Amma Vs. Narayanan Nair](#) . Counsel also submitted that the driving licence of Mr. Daljeet Singh was duly placed on record before the MACT, but ignoring the said driving licence the learned MACT gave a wrong finding by holding

that the driving licence was not placed on record by the applicant and accepting the same view, this Court in appeal also returned a wrong finding. Counsel thus submitted that there is an error apparent on the face of the record as the order of the Consumer Court as well as the filing of the driving licence before the MACT were ignored by this Court at the time of deciding the appeal in question.

6. On the other hand, counsel for the respondent refuted the submissions of the counsel for the applicant and submitted that by taking up all the aforesaid pleas the applicant seeks to re-agitate the issue on merits and such a course would be beyond the scope and ambit of review as envisaged under Order 47 Rule (1) CPC. Counsel further submitted that decision of the Consumer Court cannot be held to be binding on the MACT as before the Consumer Court, no proper adjudication to determine the rights of the parties takes place, while before the Tribunal the decision is given based on the in-depth examination of pleadings and documents of the parties. Counsel thus submitted that the decision of the Consumer Court cannot be held to be binding under Explanation 8 of Section 11 CPC.

7. I have heard learned Counsel for the parties at considerable length.

8. It is a settled legal position that the power to review under Order 47 Rule 1 can be exercised only when the applicant is able to satisfy the conditions strictly covered by the said statutory provision. The power to review is thus an exception to the general rule and has to be exercised with great care and circumspection as exercise of such power would lead to modification, alteration or reversal of the original order. It is also a settled legal position that no party seeking review can be allowed to re-open or re-agitate the issues to re-appreciate the factual and legal pleas of the parties.

9. An application for review can be maintained only when the case of the appellant falls within the scope and ambit of the said provision and one of the main postulate being that the order suffers from an error apparent on the face of the record. A plea which was not taken by the party at the hearing of the case would not be allowed to be taken in review. In this regard in [Inderchand Jain \(D\) through L.Rs. Vs. Motilal \(D\) through L.Rs.](#), the Apex Court observed as under:

An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In [Rajender Kumar and Others Vs. Rambhai and Others](#), this Court held:

The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.

The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake.

Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

Review is not appeal in disguise.

In *Lily Thomas v. Union of India* AIR 2000 SC 1650, this Court held:

56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise.

10. The learned Tribunal has given a categorical finding that RW-2, Shri Daljeet Singh failed to place on record copy of his driving licence, it would be appropriate to reproduce the following para taken from the judgment of the MACT:

For the sake of argument, I may take the next requirement of the Sub-rule (b), requiring the instructor to hold an effective driving licence to drive the vehicle. In this regard RW2 Sh. Daljit Singh in his examination-in-chief has deposed that he had a valid driving licence when he was teaching Sh. Jeet Singh to drive the vehicle but no copy of the said driving licence was produced on record which results into the only conclusion that he was having no effective driving licence with him at the relevant time.

11. If this finding of the learned MACT was erroneous being contrary to the records then the remedy to seek review of the said order was available with the applicant before the MACT Court and not before this Court. Even otherwise, nowhere the applicant has taken a stand that the said driving licence of Mr. Daljeet Singh was proved on record. With regard to the decision of the Consumer Court, as per the applicant compliance of Sub-rule 3(b) was duly established. It would be relevant to refer to the following para taken from the order of the MACT:

The deposition of RW2, Sh. Daljit Singh that he filed an affidavit Ex. RW2/A before a consumer court wherein the F1 was claiming damages for the damage caused to the said car in the said accident does not come to the help of either RW3 or the R1 because the bare perusal of the affidavit Ex. RW1/A establishes that it was not

signed by anyone and as per date of verification it was prepared on 15.2.2002 and there is no date mentioned on the same as to when the said affidavit was filed before the said consumer court. Even the date i.e., 15.2.2002, even if the facts narrated in the affidavit are taken to be true for the sake of argument, it remains an afterthought. Hence, I hold that RW2, Sh. Daljit Singh was not present in the car at the time of the accident which is also not proved by any of the documents of the record of the criminal case, the certified copies of which are Ex.P1 to Ex.P23.

12. Accepting the findings of the learned Tribunal, this Court also came to the conclusion that the applicant failed to prove presence of Mr. Daljeet Singh in the car at the time of the accident, and also the fact of competence of Mr. Daljeet Singh to impart training to the applicant in his capacity as an instructor in violation of Rule 3(b) of the Central Motor Vehicles Rules and also even the failure of the applicant to prove driving licence of Daljeet Singh on record. It is in this background, this Court in the said order dated 28.3.2008 passed in appeal observed as under:

I find myself in agreement with the observations of the Tribunal that the driver although may be perfect in driving a vehicles but still he cannot be considered to be an expert in imparting instructions for making the other persons learn how to drive the vehicle.

13. In the backdrop of the aforesaid facts it is quite evident that the applicant seeks to re-argue the appeal in the garb of review application and under no circumstance the applicant can be permitted to adopt such a course. The applicant has failed to point out that the order suffers from an error apparent on the face of the record nor there is discovery of any new matter or evidence which was not within the knowledge of the applicant despite exercise of due diligence on his part. There is concurrent finding of fact by the MACT as well as by this Court on same issues, which are now again being raised by the applicant in the present application, and therefore, the same cannot be gone into while exercising the power of review as per the imperatives envisaged under the said provision of law. The judgments relied upon by the counsel for the applicant are not applicable in the facts of the present case and therefore, the applicant cannot find any support therefrom.

14. There is no merit in the present application.

15. Dismissed.