AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 77 of 2018

- Dayashankar Agrawal S/o Late Gopal Krishna Agrawal Aged About 79 Years R/o 37/3, Nehru Nagar East, Bhilai, Durg, Chhattisgarh

---- Petitioner

Versus

1. National Insurance Company Ltd. Through Regional Manager, Regional Office, Akash Ganga Complex, Supela, Bhilai, District- Durg, Chhattisgarh
2. Smt. Sarita Agrawal W/o Sushil Agrawal Behind Ram Mandir District- Durg, Chhattisgarh
3. Ram Pyare S/o Jahoor Singh Mahar Through Dayashanker Agrawal, R/o 37/3, Nehru Nagar East, Durg, Chhattisgarh
4. Beniram S/o Goverdhan Sahu R/o Folsaipara Durg, Chhattisgarh

---- Respondents

For Petitioner : Shri Siddharth Shukla, Advocate
For Respondent No.1 : Shri Raj Awasthi, Advocate
For Respondent No.2 : Shri Vikas A. Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27/11/2018

1. The present review petition has been filed for review of the order dated 22.07.2016 passed in M.A. No.614 of 2003, whereby the respondent insurance company was directed to pay the amount of the compensation and thereafter the right to recover the same was given from the owner of the vehicle. As has been averred that the execution has been filed to recover the amount paid by

the insurance company, the instant review petition has been filed on behalf of Dayashankar Agrawal, the owner of the vehicle.

2. The facts of this case are that an accident took place on 19.09.1994 involving Tempo No. M.B.L. 8313, which was driven by Rampyare, who is arrayed as respondent No.3 herein. The insurance company took a stand that Rampyare did not have a valid license and Dayashankar Agrawal, the petitioner herein, was the owner of the said vehicle.

3. Learned counsel for the petitioner would submit that in the said accident different six claims were filed and in one of the claim petition filed by Smt. Sukhia Bai & others the award was passed on 31st of March, 2003 which was based on the same cause of action of the accident passed by the 7th Additional Motor Accident Claims Tribunal (FTC), Durg in Claim case No.48/2003. It is stated that such award was subject of appeal in M.A. No.613 of 2003, wherein the Division Bench of this Court has held that the liability was absolute of the insurance company by following the principles laid down in the case of ***National Insurance Company Vs. Swarn Singh & others {(2004) 3 SCC 297}.*** He further submits that the said appeal was bearing M.A. No.613 of 2003 and was decided on 26.11.2010 (Annexure P-2). Subsequently, this appeal bearing M.A. No.614 of 2003 was decided, wherein the insurance company was given right to recover the amount of compensation from the owner of the vehicle after payment of amount to the claimant. He further submits that the finding is against the finding as given by the Division Bench of this Court on 26.11.2010 in M.A. No.613 of 2003 and in any case the insurance company was obliged to

place that on record or bring the attention of the Court so that conflicting order could have been avoided. He further submits that since the earlier order passed was suppressed by the insurance company, therefore, this Court fell into error and different findings have been arrived at in M.A. No.614 of 2003.

4. Perused the order dated 26.11.2010 passed in M.A. No.613 of 2003 passed by the Division Bench of this Court and also perused the order dated 22.07.2016 passed in M.A. No.614 of 2003. It is not in dispute that both the appeals were based on the cause of action of the accident dated 19.09.1994 involving Tempo No.M.B.L. 8313. Perusal of the order passed in M.A. No.613/2003 would show that the Division Bench of this Court relied on the law laid down in the case of ***Swarn Singh (supra)*** and after perusal of the record and the statement of the witnesses, came to a finding that there was no willful breach on the part of the owner of the vehicle in question to investigate the authenticity of the license. The order passed on 22.07.2016 passed in M.A. No.614 of 2003 which has been sought to be reviewed, the Court has observed that the license which was held by Rampyare was fake and it was initially issued from Dhaulpur and subsequently renewed by the Road Transport Office, Raipur and thereby has held that the insurance company would not be liable to pay the compensation and was given a right to recover the compensation amount from the owner after satisfaction of the claim. The finding arrived at in M.A. No.614/2003 therefore prima facie is in direct conflict with the order passed in M.A. No.613/2003 wherein the Division Bench has dismissed the contention of the insurance company and held that the insurance company would be solely liable to pay the

compensation and would be as the owner of the vehicle had verified the authenticity of the license as per the principles laid down in the case of ***Swarn Singh (supra).*** It is obvious that the insurance company was obliged to place on record the order dated 26.11.2010 passed by Division Bench of this Court in M.A. No. 613/2003 while M.A. No.614/2003 was heard on merits on 22.07.2016 and orders were passed. The said order as appears was suppressed and by-passed, as such the Court fell into error and there was no occasion before the Court to examine the order passed in M.A. No.613 of 2003.

5. The Supreme Court in the case of ***Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and another {(2005) 2 SCC 673}*** has held that the law laid down by this Court in a decision delivered by a Bench of larger strength would be binding on any subsequent Bench of lesser or coequal strength. The principle as has been laid down has been enumerated hereinbelow:-

> **"12.**Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-
>
> *(1)* The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.
>
> *(2)* A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of

coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : *(i)* the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Union of India Vs. Raghubir Singh {(1989) 2 SCC 754} and Union of India Vs. Hansoli Devi {(2002) 7 SCC 273}"

6. Admittedly, as appears that the order dated 26.11.2010 passed by the Division Bench of this Court in M.A. No.613/2003 was not brought before this Court while subsequent M.A. No.614/2003 was decided. As such, it appears that the order dated 22.07.2016 passed in M.A. No.614/2003 was apparently on the basis of the wrong facts.

7. The issue having been decided it would be covered within the principles of res judicata. The Supreme Court in the case of ***Bhanu Kumar Jain Vs. Archana Kumar and another {2005 AIR SCW 270}*** has held that res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality. The ratio laid down in para 30 & 31 are reproduced hereunder:-

> **"30.** *Res judicata* debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the

party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of res judicata creates a different kind of estoppel viz. Estopper by Accord.

31. In a case of this nature, however, the doctrine of 'issue estoppel' as also 'cause of action estoppel' may arise. In *Thoday (supra)* Lord Diplock held :

"....." cause of action estoppel" is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment.....If it was determined no to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam."

8. For the purposes of review, the principle has been laid down by the Supreme Court in the case of ***Kamlesh Verma Versus Mayawati and others {(2013) 8 SCC 320}*** which are reproduced hereunder:-

"Summary of the Principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1 When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words 'any other sufficient reason' have been interpreted in Chhajju Ram v. Neki, [AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [(1955) 1 SCR 520], to mean 'a reason sufficient on grounds at least analogous to those specified in the rule'. The same principles have been reiterated in Union of India

v. Sandur Manganese & Iron Ores Ltd. [JT 2013 (8) SC 275].

20.2 When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

9. Following the aforesaid principles, there cannot be a conflicting finding of fact on the same cause of action. Apparently, herein the cause of action is one and the same while deciding the earlier miscellaneous appeal filed by the insurance company the finding was arrived at that the insurance company would be liable and no liability was fastened on the owner to repay the same by following the principles giving a finding of fact based on the evaluation of the evidence. In view of this for suppression of such order by the insurance company, the error came to the fore and conflicting orders have been passed. In view of this the

review petition is allowed and the order dated 22.07.2016 passed in M.A. No.614 of 2003 is recalled and it is therefore directed in view of the earlier judgment of the division Bench, the direction given in M.A. No.614/2003 by this Court, the part of the finding in para 5 of the order dated 22.07.2016 is modified to the extent that the insurance company will have to satisfy the award and the appeal of the insurance company deserves to be dismissed. No order as to costs.

Sd/-

Goutam Bhaduri
Judge

Ashu