



GAHC010214962022

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./87/2023

ORIENTAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE, A-25/27, ASAF ALI
ROAD, NEW DELHI 110002, AND REGIONAL OFFICE AT GUWAHATI 7,
REPRESENTED BY THE REGIONAL MANAGER,

VERSUS

NIHARENDRA NARAYAN BARUAH AND 4 ORS. A
S/O LATE JOTINDRA NARAYAN BARUAH RESIDENT OF GHANKURSHA,
NORTH SALMARA, PS ABHAYAPURI, DIST BONGAIGAON, ASSAM, 783384

2:SRI ROHAN BARUAH

S/O LATE JAYANTA NARAYAN BARUAH

RESIDENT OF GHANKURSHA
NORTH SALMARA
PS ABHAYAPURI
DIST BONGAIGAON
ASSAM
783384

3:SRI NILIM BARUAH
S/O LATE JAYANTA NARAYAN BARUAH

RESIDENT OF GHANKURSHA
NORTH SALMARA
PS ABHAYAPURI
DIST BONGAIGAON
ASSAM
783384



4: ABDUR RAHIM
S/O MD. BARHANGRAM
PO NAYANSUKH PS FARAKKA
DIST MURSIDABAD
WEST BENGAL
742212

5: GOBARDHAN SAHA
S/O LATE SANTOSH SAHA

RESIDENT OF KHEGUREAGHAT
PS FARAKKA
DIST MURSIDABAD
WEST BENGAL
74221

Advocate for the Petitioner : MS. M CHOUDHURY

Advocate for the Respondent : MR. M KHAN (R-2,3)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Ms. M. Choudhury, Adv.

For the Respondents : Mr. M. Khan. Adv.

Date of Hearing : 16.08.2023

Date of Judgement : 16.08.2023

JUDGMENT & ORDER (ORAL)

1. Heard Ms. M. Choudhury, learned counsel for the review petitioners. Also heard Mr. M. Khan, 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 24.08.2022 passed by this Court in MAC Appeal No. 259/2021.

3. The ground of seeking review is that three grounds urged in the appeal memo was not considered by this Court while passing the judgment dated 24.08.2022 and accordingly, there is an error apparent on the face of record in passing the judgment and order dated 24.08.2022.
4. The grounds according to the review petitioner which are not considered by this Court are as follows:-

“A. For that learned Member without any materials on record accepted the annual income of the deceased at Rs. 3,08,194/- and as such the impugned award is liable to be set aside”

B. For that the learned Member quite mechanically awarded Rs. 40,000/- under the head of loss of consortium and as such the impugned award is liable to be modified.

C. For that learned Member miserably failed to consider the fact that the claimant respondent is not entitled to interest on future prospect of the deceased's income. Hence the impugned award is liable to be modified”.

5. Perused the judgment. In the judgment itself, at paragraph – 9, the Court has specifically recorded the arguments advanced by the learned counsel for the appellant. It is not a case that the aforesaid three grounds pleaded in the appeal memo were also urged and argued by the learned counsel during the course of hearing and this Court has not considered such argument. In fact, the aforesaid grounds were not even argued before

this Court.

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 by the authority concerned.
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 or Section 114 have not been made applicable expressly either to the Claim Tribunal or to the appellate authority.

10. While holding as aforesaid, this Court cannot be oblivious of the fact and 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 defect made by the Tribunal or appellate Court, 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. 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.
11. Accordingly, the present review petition stands dismissed.

JUDGE

Comparing Assistant