

THE HIGH COURT OF MEGHALAYA

REVIEW PETN.No.11/2013 In MAC APPL. No.(SH)7/2008

National Insurance Company,
Bangalore Divisional Office-V,
72 Mission Road,
Unity Building Annexe,
Bangalore 27,
Represented by Shillong Branch.

:::: Petitioner

-Vs-

1. M/s New India Assurance Company Ltd.,
a Govt. of India Enterprise, having its
Registered and Head Office at New India
Assurance Building, 87 Mahatma Gandhi Road
Fort Mumbai 400001 and one of its Divisional
Office situate at Opp. Bawri Mansion, Dhanketi,
Shillong 793001, represented by its
Senior Divisional Manager.

2. Kina Ram Chetia
S/o (L) S. Chetia,
R/o Upper Motinagar, Shillong-793014.

3. M/s Shiv Keshav Transport,
Flat No.504, 112, Capri towers,
Srinagar Colony,
Hyderabad-500072.

4. Shri. B. Sattayya,
S/o (L) Kanakaiah,
R/o Eppore village, Athmekore Mandal(S),
Suryapel Taluk, Nallagonda District,
Andhra Pradesh.

:::: Respondents

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner : Mrs. PDB Baruah, Adv.

For the Respondents : Mr. VK Jindal, Sr. Adv.
Mr. S Dey, Adv. for respdt.No.1

Date of hearing : **29.10.2013**

Date of Judgment & Order : **29.10.2013**

JUDGMENT AND ORDER (ORAL)

Heard Mrs. PDB Baruah, learned counsel appearing for the petitioner i.e. the review petitioner and Mr. VK Jindal, learned senior counsel assisted by Mr. S Dey, learned counsel for the respondent No.1 i.e. M/s New India Assurance Company Ltd. (appellant) in MAC Appl.No.(SH)7/2008.

2. Perused the office note dated 24.09.2013 and notice to the respondents No.3 & 4 shall deem to have been served. None present for the respondents No.3 & 4.

3. The petitioner, by filing the present review petition, is praying for reviewing the order dated 01.05.2013 passed in MAC Appl.No.(SH)7/2008 for *inter-alia* reasons that:-

- (i) The appellant i.e. M/s New India Assurance Company Ltd. did not bring to the notice of this Court, while hearing the appeal that the learned Tribunal vide order dated 02.04.2007 passed in MACT Case No.44/2004 deleted the review petitioner i.e. National Insurance Co. Ltd. from being one of the respondents in the claim case for the reasons that "*the terms and conditions of the policy cover the loss or damage to the third party and obviously, the deceased is not a third party being the insured as well as the rider of the said Motor Cycle on the date of the accident*" and the motor cycle was insured with the review petitioner i.e. National Insurance Co. Ltd. on the date of the accident;
- (ii) The petitioner i.e. National Insurance Co. Ltd. was not even a party in the appeal and;
- (iii) The review petitioner was not at all heard while passing the judgment and order dated 01.05.2013 passed in MAC Appl. No.(SH)7/2008.

4. Mr. VK Jindal, learned senior counsel appearing for the respondent No.1/appellant in MAC Appl.No.(SH)7/2008 contended that this Court in a review petition can decide the issue as to whether the said order of the Tribunal dated 02.04.2007 for deleting the review petitioner from being one of the respondents in the connected claim case i.e. MACT No.44/2004 was rightly passed or not. But it is an admitted fact that the present review petitioner was not a party in the appeal i.e. MAC Appl.No.(SH)7/2008, therefore, the issue as to whether or not the learned Tribunal had correctly passed the said order dated 02.04.2007 cannot be decided in the absence of the present review petitioner. It is fairly well settled that there cannot be rehearing of the case which was finally disposed of on merit in the review petition. Regarding this point, it would be sufficed to refer to the decisions of the Apex Court in ***M/s Northern India Caterers (India) vs. Lt. Governor of Delhi: AIR 1980 SC 674*** that a party is not entitled to seek a review of a judgment delivered by the Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when there is circumstances of a substantial and compelling character make it necessary to do so. The Apex Court reiterated in ***Col. Avtar Singh Sekhon vs. Union of India & Ors: AIR 1980 SC 2041*** that review is not a routine procedure but an application for review could be entertained where there is material error manifest on the face of the earlier order resulting in miscarriage of justice.

5. In the instant case, if the submission of learned senior counsel Mr. VK Jindal, is accepted for re-hearing of MAC Appl.No.(SH)7/2008 on the said issue, it would be against the well known principle for review. The Apex Court in ***Surjit Singh vs. Union of India reported in (1997) 10 SCC 592*** held that when a patent error is brought out to the notice of the Tribunal, the Tribunal is duty

bound to correct with grace its mistake by way of review of its order or/directions. The Gauhati High Court i.e. (*Justice T. Nandakumar Singh*) in the **(1) State of Manipur & Ors vs. Manipur Hills and Plain Contractors Association & Anr reported in AIR 2006 Gauhati 73** and also the Gauhati High Court (Division Bench) **(2) in State of Tripura & Anr vs. Tripura Government Pensioner's Association reported in 2006 (2) GLT 688** held that when a patent error is brought to the notice of the Court, the Court is duty bound to correct with grace its mistake by way of review of its order or/directions. The Gauhati High Court in **State of Manipur & Ors** case (*Supra*) held that “for the reasons discussed above, this court is of the considered view that this court is duty bound to correct with grace its mistake in passing the judgment and order dated 27.09.2005 when a patent error is brought to the notice of this Court. Further, this Court is of the view that the law is to bend for justice and if the court finds that an error pointed out in the judgment and order dated 27.09.2005 in the review petition was due to mistake of facts and the earlier judgment and order would not have been passed, this Court is duty bound to prevent the miscarriage of justice in passing the judgment and order dated 27.09.2005.”

6. When the dictation of the judgment and order is about to be completed, Mr. VK Jindal, learned senior counsel appearing for the respondent No.1 by relying to the decision of the Apex Court in **Tamil Nadu State Transport Corporation, Tanjore vs. Natarajan & Ors reported in (2003) 6 SCC 137**, contended that in the appeal, the said order dated 02.04.2007 passed by the Tribunal can also be challenged. But in the present case, neither in the memo of appeal of MAC Appl.No.(SH)7/2008 nor at the time of hearing of the appeal, learned senior counsel Mr. VK Jindal challenged the order dated 02.04.2007 passed by the learned Tribunal in MACT No.44/2004. Over and above, this point cannot be agitated in the review petition. The point agitated by him shall be taken up in the appropriate case. This Court also for the sake of repetition reiterated

that had the order dated 02.04.2007 passed by the learned Tribunal in MACT No.44/2004, been brought to the notice of this Court, this Court would not have disposed of MAC Appl.No.(SH)7/2008 by passing the order dated 01.05.2013 in the absence of the present review petitioner.

7. For the foregoing reasons, this Court has no alternative except to review paras 9 & 10 of the judgment and order of this Court dated 01.05.2013 passed in MAC Appl.No.(SH)7/2008.

8. In the result, the judgment and order of this Court dated 01.05.2013 passed in MAC Appl.No.(SH)7/2008 is reviewed to the extent that there shall be no direction or finding made by this Court in para 9 of the judgment and order of this Court dated 01.05.2013. In other words, para 9 of the judgment and order of this Court dated 01.05.2013 is scored out and para 10 of the judgment and order of this Court dated 01.05.2013 is also reviewed to the extent that the appeal is dismissed.

9. With the above observations, this review petition is allowed.

JUDGE

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