

Geeta Devi And Ors vs M/S Som Nath Nagarmal And Anr on 23 February, 2022

Author: Sanjay Dhar

Bench: Sanjay Dhar

Sr. No.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

RPC No. 02 of 2013

Geeta Devi and ors.

.....Appellant(s)/Petitioner(s)

Through: Mr. L. K. Sharma, Sr. Advocate with
Mr. Mohit Kumar, Advocate

Vs

M/s Som Nath Nagarmal and anr.

..... Respondent(s)

Through: Mr. D. S. Chauhan, Advocate for R-2.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

23.02.2022

1. In this review petition, the petitioners-appellants have sought review of judgment and order dated 12.12.2012 passed by this Court in CIMA No. 165 of 2010 whereby the appeal filed by the appellants-review petitioners against the Award of the Commissioner under Workmen's Compensation Act, 1923 (Assistant Labour Commissioner), Jammu (hereinafter to be referred as, "the ALC") has been allowed and while doing so, the rate of interest on the awarded sum has been reduced from 12% per annum to 6% per annum.

2. The facts leading to the filing of this review petition are that the appellant- review petitioners filed a claim petition under the provisions of Workmen's Compensation Act for award of compensation in their favour on account of accidental death of Sh. Mulkh Raj, who happens to be husband/father of the review petitioners. The claim petition was allowed by the ALC vide its Award dated 27.01.2010 and a sum of Rs. 4,07,700/- along with interest @ 12 % per annum from 28.02.2010 till payment of

the amount of compensation was awarded in favour of the review petitioners and against respondents i.e. the employer and the insurer.

3. The aforesaid Award came to be challenged by the claimants-review petitioners by way of an appeal before this Court primarily on the grounds that the wages of the deceased were taken by the ALC as Rs.4,000/- per month instead of Rs.6,000/- per month and that the interest was awarded by the ALC from 28.02.2010 and not from the date when the injury was received by the deceased i.e. w.e.f 05.07.2006. The appeal was contested by the respondent- insurance Company. This Court, after hearing the parties, vide its judgment and Order dated 12.12.2012, while accepting the contention of the appellants-review petitioners that they are entitled to interest from the date of causing of personal injury i.e. w.e.f. 05.07.2006, reduced the rate of interest to 6% per annum.

4. Through the medium of the instant review petition, the appellants-review petitioners have raised two contentions. First contention that has been raised is that while passing impugned judgment/order dated 12.12.2012, this Court did not deal with the contention of the appellants-review petitioners that the deceased was earning wages of Rs.6,000/- per month and instead his wages have been assessed as Rs.4,000/- per month. The other contention that has been raised is that as per the provisions contained in Section 4A of the Employee's Compensation Act, 1923 (for short, the Act of 1923), the claimants-review petitioners are entitled to statutory interest @ 12% per annum. According to the claimants-review petitioners, the appellate Court has passed the impugned order without considering the provisions contained in Section 4A of the Act of 1923, which amounts to an error apparent on the face of record.

5. On the other hand, learned counsel appearing for the respondent-insurance Company has contended that in terms of provisions contained in the Act of 1923, the appellate Court does not have any power to review its own orders. It is further contended that even otherwise, the contentions raised by the learned counsel for the review petitioners cannot be decided in review jurisdiction though the same may offer grounds of challenge before a higher forum.

6. I have heard learned counsel for the parties and perused the record.

7. As already noted, the respondent-insurance company has raised objection with regard to the maintainability to this review petition on the ground that this Court does not have jurisdiction to review its own orders while dealing with the proceedings arising out of the Act of 1923. It is contended that the provisions of the aforesaid Act do not provide for a remedy of review and, as such, the petition is not maintainable. In this regard, learned counsel has relied upon the judgments of the Supreme Court in cases titled Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar and anr., 1965 SC 1457 and Harbhajan Singh V. Karam Singh and ors., AIR 1966 SC 641.

8. So far as the jurisdiction of this Court to review its own order is concerned, the same is vested with it in terms of rule 65 of the J&K High Court Rules 1999, which reads as under:

"65. Application for review of judgment: The Court may review its judgment or order but no application for review shall be entertained except on the ground mentioned in

Order XLVII Rule 1 of the Code."

9. Even otherwise this Court, being a constitutional Court, is a Court of record, as such, it has the authority to recall its own orders. The said power is inherent in this Court by virtue of the fact of being a superior court of record. It is a well settled proposition of law that being a Court of record, the High Court is vested with powers to proceed under Article 226 of Constitution of India itself and to review a judgment if it is found that there was any material suppression or the Court was not right in passing a verdict. The High Court is not a creature of a statute like Employee's Compensation Act but it is a creature of the Constitution. Hence, the limitations of jurisdiction as contained in the Act of 1923 are not applicable to the jurisdiction of the High Court. Thus, the contention of the learned counsel appearing for the respondent-insurer that the power of this Court to review its own order are circumscribed by the provisions contained in the Act of 1923 is a specious argument, which deserves to be rejected.

10. Now coming to the scope of jurisdiction of review, it has to be borne in mind that a plea for review of a judgment or order can be entertained only on the grounds mentioned in Order XLVII Rule 1 of Code of Civil Procedure which reads as under:

1. Application for review of judgment.--(1) Any person considering himself aggrieved--

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review."

11. From a perusal of the afore-quoted provision, it is clear that review of a judgment can be made on the following grounds:

a. if it is shown by the aggrieved person that a new and important matter and evidence which after exercise of due diligence was not within his knowledge or could

not be produced by him, has been discovered;

b. if there is some mistake or error apparent on the face of record; and c. for any other sufficient reason. The expression for any sufficient reason has been interpreted by the courts to mean for a reason analogous to the first two reasons.

12. Adverting to the facts of the instant case, it has been contended by learned Senior counsel for the petitioners that while passing the impugned judgment/order, this Court did not deal with the contention of the appellants- review petitioners that they had succeeded in proving that the income of the deceased was Rs.6,000/- per month, but the ALC had reduced it to Rs.4,000/- per month without assigning any reason.

13. In this regard, it is to be noted that the income of the deceased has been taken as Rs.4,000/- per month by the ALC because of the notification issued by the Central Government in terms of Sub Section (1) of Section 4 of the Act of 1923, as was applicable at the relevant time. Therefore, the ALC had rightly taken income of the deceased as Rs.4,000/- per month. Thus, no fault can be found with the award passed by the ALC in this regard and rightly this Court has not interfered with this aspect of the matter while passing the order under review.

14. The other contention raised by the review petitioners relates to the award of rate of interest. In the award passed by the ALC, the claimants have been granted interest @ 12% per annum with effect from 28.02.2010. This Court, in appeal while allowing the contention of appellants/review petitioners that they are entitled to interest from the date of injury reduced the rate of interest to 6% without assigning any reason. The rate of interest was not even challenged by the respondent-insurance Company before this Court. Even otherwise, Section 4A(3) of the Act of 1923 clearly provides that the interest has to be payable @ 12% per annum or at such higher rate not exceeding the maximum of the lending rates of any Scheduled Bank. So the minimum statutory rate of interest, which is payable on compensation due to the claimants is 12% per annum. It seems that the provisions contained in Section 4A(3) of the Act of 1923 have escaped the notice of this Court, while passing the impugned judgment/order. This constitutes an error apparent on the face of record and as such, the same deserves to be corrected.

15. For the foregoing reasons, the review petition is partly allowed and judgment and order dated 12.12.2012 passed by this court in CIMA No. 165 of 2010 is reviewed to the extent that instead of interest @ 6% per annum, the review petitioners/claimants shall be entitled to interest @ 12% per annum from the date from which the same has been awarded vide the judgment under review.

16. The review petition stands allowed to the aforesaid extent.

(Sanjay Dhar) Judge Jammu 23.02.2022 Paramjeet Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No