IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16750 of 2019

With

R/FIRST APPEAL NO. 3153 of 2019

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THE NEW INDIA ASSURANCE CO. LTD

Versus

THAKOR KANAJI VIRAJI

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Appearance:
MR SUNIL B PARIKH(582) for the Petitioner(s) No. 1
MS. PAYAL M TUVAR(7055) for the Respondent(s) No. 3,4
NOTICE SERVED BY DS for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MS. JUSTICE GITA GOPI**

Date : 18/07/2022

ORAL ORDER

1. Learned advocate Mr. Sunil Parikh for the petitioner-Insurance Company submits that the M.A.C.T. (Auxi.), Patan has erred in rejecting Misc. Civil Application (Review) No.2 of 2015 by order dated 06.03.2019, which was moved against the order passed in M.A.C.P. No.4275 of 2002. Mr. Parikh submits that the Insurance Company had not filed any reply in M.A.C.P. No.4275 of 2002 since there was no Policy in existence on the date of

accident. Mr. Parikh further submits that the Tribunal had placed reliance on the document Mark-36/3, which is a receipt and has erred in considering the said document as Insurance Policy. Mr. Parikh submits that when the said fact was brought to the notice of the Tribunal by way of the review application, the Tribunal, in the impugned order, has considered the same as a slip of pen; however, the said document Mark-36/3, though was not adduced in evidence, was placed by way of List Exhibit-36 by the driver and owner of the Jeep, the Tribunal in M.A.C.P. No.4275 of 2002 has placed liability on the Insurance Company for paying compensation, which was considered to be the Insurance Policy of Jeep bearing registration No. GJV-4692.

2. Mr. Parikh submits that the Tribunal has also rejected the review application on the ground that there was delay of about 4 years after the judgment and order in preferring the review application. Mr. Parikh submits that categorical

stand was taken before the Tribunal that document Mark-36/3 was a forged document and that there was fraud in filing the M.A.C.P. and in receiving the compensation money. Mr. Parikh further states that fraud was committed with the Tribunal and therefore, such judgment was required to be set aside as soon as it comes to the notice of the Tribunal or it is brought to the notice of the Court concerned that any litigant has played fraud with it.

3. Mr. Parikh relied on the judgment of Apex Court in case of **United India Insurance Co. Ltd vs Rajendra Singh & Ors reported in (2000) 3 SCC 581** to submit that in a case where there is a fraud on the Court / Tribunal and award of compensation is secured by the claimants from the Tribunal by practising fraud, then the Tribunal is required to recall its own order under the inherent powers if it is brought to the notice of the Tribunal and the Tribunal is convinced that such an order has been obtained by practising

fraud or misrepresentation. Mr. Parikh submits that as soon as the Insurance Company was served with the notice of execution petition, it came to know about the fraud practised with the Court. Mr. Parikh submits that review application was filed along with a delay condonation application and the delay was condoned by the Tribunal. Mr. Parikh submits that the Tribunal has rejected the application by making observation on the facts that the issue raised does not come within the purview of the provisions of review and that the review application is not tenable.

4. Learned advocate Ms. Payal Tuvar appearing for the driver and owner, opponent Nos.3 & 4, submits that after a period of 4 years, the Insurance Company has moved the review application, which is absolutely barred. Ms. Tuvar states that there was no fraud played by the owner or driver and states that the Insurance Company has not taken any steps against the owner or driver against the document, which is alleged

to be fraud. Ms. Tuvar further submits that the document was produced by way of list; however, the owner and driver though appeared had never adduced any evidence by way of any affidavit nor had relied upon any document. Ms. Tuvar submits that it was the Tribunal on its own volition had relied upon the documents; thus, there would not be any question of fraud and submits that the Insurance Company had appeared through the lawyer and had not filed any written statement nor had taken any pleading of fraud or forgery or misrepresentation.

5. The Tribunal while rejecting the review application has made the following observations;

> "6. In view of the above settled law of position, here case on hand the then predecessor in the Judgment dated 23.03.2011 in MACP No.4275/2002, there is a slip of pen occurred in Para 12 of the Judgment that at Mark No.36/3 instead of Receipt, Insurance Policy was mentioned. Moreover such document was produced by Ld. Advocate of Opponent No.3

and 4 / Orig. Opponent No. (1) and 2 i.e. Driver and Owner of the Jeep vide list of Exh.36. Now perusing the present case, this Tribunal observes that though the insurance policy is in control of the Insurance Company, the original Insurance policy had not been produced before the Tribunal. Moreover, Ld. Advocate for the Insurance Co. had not filed even its written statement in the claim petition. Further, during the pendency of MACP No.4275/2002 the Ld. Advocate for the Insurance Company had not taken any steps that the receipt which has been produced vide Mark No.36/3 was forged and now about 4 years after the Judgment the Insurance Company has filed review application contending that the receipt which has been produced during the pendency of the case of MACP was forged and fabricated. It is also observed that the claim petition i.e. MACP No.4275/2002 was filed by the injured and he was died due to his head injuries and his parents (Opponent No.1 and 2 herein) were joined as legal heirs for claiming compensation on account of death of their deceased son. Moreover, in the MACP case the receipt produced vide Mark 36/3 was not Exhibited even though the Tribunal had considered it in that there is nothing wrong

because in the matter of MACP strictly Evidence Act is not applicable. Moreover the said receipt was not produced by the Opponent No.1 and 2 i.e. Original applicants. Hence, in view of the above observations and settled law of position the issue raised by Insurance Company in this review application is not came into the purview of provision of review therefore the present review application is not tenable..."

6. As per the observations, the Tribunal has considered Mark-36/3 as Insurance Policy on account of slip of pen. The Tribunal found it to be a receipt and according to the Tribunal, the driver and owner of the Jeep had produced the documents vide receipt and it had been observed that the Insurance Policy is in the control of the Insurance Company; in spite of that it was not produced and Insurance Company had not taken any steps against the claim of receipt being forged and after a delay of 4 years, they have raised a contention for the first time of it being forged and fabricated.

7. As per the observation, the claim petition was filed by the injured. He died due to his head injury and thereafter, his parents were joined as legal heirs for claiming compensation on the death of the son.

8. As per the observation in the review application, the document Mark-36/3 was not exhibited but the Tribunal had considered the same and according to the Tribunal, in the review application, it was not wrong as in M.A.C.P. proceedings, Evidence Act does not strictly apply. It was also observed that the receipt was not produced by the claimants and further the Tribunal felt that the application would not fall within the purview of the provisions of review. By way of the review application, the Insurance Company had brought it to the notice of the Tribunal that the document Mark-36/3 relied by the Tribunal was a forged document. It was produced by the driver and owner of the Jeep vide

Exhibit-36 but the reliance was not placed by the claimants on such document nor the owner or driver had come to step in the witness box to depose and to rely on the document Mark-36/3. The Tribunal while passing the impugned judgment and order had considered it as an Insurance Policy and thereafter had laid down the liability on the Insurance Company. It appears that the Tribunal has failed to appreciate Mark-36/3 and erroneous reliance has been placed by the Tribunal on the document to consider it as Insurance Policy since none of the litigating party had adduced the same in evidence. The review application was moved under the provisions of Order 47(1) of CPC, which reads as under:

> "***1. Application for review of judgment.-*** *(1) Any person considering himself aggrieved —*
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> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
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> *(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 other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

9. This Court has exhaustively dealt with the issue relating to applicability of the provisions of Order 47(1) of C.P.C. in a recent decision rendered by this Court in the case of **Rasilaben Dhirubhai Hirpara v. Nitinkumar Rameshbhai Dave** in Special Civil Application No.4483 of 2022 decided on 06.07.2022.

10. Mr. Parikh states that if the document so produced is considered to be a fraud played with the Court, then it is true that under the inherent powers of the Court, the Court ought to have recalled its order. There was no requirement of filing any separate application from any of the litigating parties. The Insurance Company while moving the review application had brought it to the notice of the Court that the document Mark-36/3 was forged document. None of the parties had relied on the document and since the Insurance Company had no contract with the owner of the vehicle and as the Insurance Policy was not in force on the date of accident, there was no requirement to join the Insurance Company as party to the matter. The liability of the Insurance Company would arise only on the basis of the Insurance Policy.

11. In the case of **United India Insurance Co. Ltd vs Rajendra Singh (supra), it has been observed as under:**

"15. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

16. The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions

it might certainly lead to serious miscarriage of justice."

12. The delay condonation application moved by the Insurance Company was condoned by the Tribunal before the review application was taken on record. Thus, the question of delay would not arise at this stage though raised by the owner and driver, would fail merits. The review application would survive having fallen under Order 47(1) of CPC since it was an error apparent on the face of record. Even otherwise, as it was urged of fraud by the driver and owner, the Tribunal had power to recall its own order.

13. In **Anita v. R. Rambilas reported in AIR 2003 AP 32** it is held that if the evidence on record discloses that one party has played fraud on the other party, in such event the only remedy left to the party against whom the fraud is played to file a separate suit for setting aside the decree obtained by fraud. But if it is proved that one

of the party has played fraud on the Court, then only the review petition is maintainable under section 151.

14. Insofar First Appeal No.3153 of 2019 is concerned, the Insurance Company has raised the ground that the Jeep bearing registration No. GJV-4692 was not insured with the Insurance Company on the date of accident and therefore, the appellant is not liable to satisfy the award. The ground is also raised that the fact of fraud was brought to the notice of the Tribunal while filing the review application and that there was some manipulation in the date of insurance receipt Mark-36/3. The receipt was issued on 13.11.2000 and the policy was with effect from 14.11.2000 to 13.11.2001 whereas, the accident occurred on 11.11.2000 and the date is manipulated as 13.10.2000 in document Mark-36/3.

15. In the result, the petition is allowed. The order dated 06.03.2019 passed by the M.A.C.T.

(Auxi.), Patan in Misc. Civil Application (Review) No.2 of 2015 is quashed and set aside and the same is allowed. Consequently, the judgment and order passed in M.A.C.P. No. 4275 of 2002 is quashed and set aside and the matter is remanded to the Tribunal for consideration of the said claim petition afresh. The Tribunal shall consider the claim petition from the stage of evidence of the parties. Respondents / opponents are permitted to file their written statements. The compensation so deposited and lying with the Tribunal shall be kept in Cumulative Fixed Deposit till the claim petition is decided. With the above observations and directions, both the writ petition as well as the first appeal stands disposed of.

(GITA GOPI, J)

PRAVIN KARUNAN