



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 11683/2017

Abhilash S/o Narendra Singh, R/o 157, Rajendra Nagar Pali,
District Pali, Rajasthan.

----Petitioner

Versus

1. The New India Insurance Company Ltd., Main Branch,
Near Town Hall Upon Bank Of Baroda, Suraj Pole Pali,
Through Its Senior Branch Manager Deendayal Banshilal.
Insurance Company
2. Naushad Kha S/o Rasid Khan, R/o Sippayion Ka Bada
Bass, Jaitaran, District Pali, Rajasthan. Owner Of The
Vehicle
3. Yusuf Baig S/o Mehboob Khan, R/o Sippayion Ka Bada
Bass, Jaitaran, District Pali, Rajasthan. Driver Of The
Vehicle
4. Motor Accident Claim Tribunal Pali, District Pali,
Rajasthan.

----Respondents

For Petitioner(s) : Mr. Yogesh Sharma

For Respondent(s) : Mr. Jagdish Vyas for Respondent No.1.

HON'BLE MS. JUSTICE REKHA BORANA

Order

Reportable

18/09/2024

1. The present writ petition has been preferred against the order dated 13.07.2017 (Annex.6) passed by Motor Accidents Claims Tribunal, Pali in Civil Misc. Case No.01/2017 whereby the review application as preferred by respondent-Insurance Company had been allowed. Vide the said order dated 13.07.2017, the learned Tribunal proceeded on to set aside the judgment and award dated 28.01.2017 passed in favour of the claimants and directed the matter to be heard and decided afresh.



2. The facts are that in Claim Petition No.225/2015 as preferred by the claimants qua the alleged accident of 22.06.2012, the learned Tribunal proceeded on to pass award dated 28.01.2017 for an amount of Rs.20,65,900/- in favour of the claimants with interest @9% per annum. Vide the said award, the driver, owner and the Insurance Company were held severally and jointly liable to pay the compensation to the claimants.

3. However, after two months of passing of the said award dated 28.01.2017, a review application under Order 47 Rule 1 read with Section 114, CPC was preferred on behalf of the Insurance Company with a submission that the insurance policy as relied upon by the claimants and on basis of which the award was passed in their favour, was a forged document and the award in question was obtained by playing a fraud upon the learned Tribunal. It was alleged that the said insurance policy was forged on the number of a policy actually issued in favour of one Shrawan Kumar. The actual policy was placed on record alongwith the said review application.

4. The learned Tribunal, after hearing the parties and considering the material available on record, observed that *prima facie* it was proved on record that the policy in question was a forged one. While relying upon the judgments passed by the Hon'ble Apex Court in the cases of **United India Insurance Company & Ors. Vs. Rajendra Singh & Ors.; AIR 2000 SC 1165** and **A.V. Papayya Sastry and Ors. Vs. Government of A.P. and Ors.; AIR 2007 SC 1546**, the learned Tribunal overruled the objection as raised by the claimants regarding maintainability of the review petition and observed that in cases of fraud, the



Tribunal was very well within its jurisdiction to set aside the award. Consequently, vide order dated 13.07.2017, it proceeded on to quash the award dated 28.01.2017 and directed the matter to be heard afresh.

5. Aggrieved of the order dated 13.07.2017, the present writ petition has been preferred.

6. Learned counsel for the petitioner submits that it is the settled position of law that a Tribunal does not have power to review its own order and hence, the order impugned being totally in excess of jurisdiction, deserves to be quashed and set aside.

In support of his submissions, learned counsel relied upon the judgments of the Co-ordinate Bench of this Court in the cases of **Smt. Imiya Vs. United India Insurance Co. Ltd. & Ors.; (2009) 1 DNJ 52** and **Hanuman Sahai Vs. Judge, Special Court (Communal Riots)/MACT, Jaipur; (2012) WLC 145.**

7. Per contra, learned counsel for the respondent-Insurance company, while supporting the order impugned, submitted that it was a clear case of a fraud been played upon the Court/Tribunal and hence, the learned Tribunal rightly quashed the award in question.

8. Heard learned counsels for the parties and perused the material available on record.

9. Two issues which arise before this Court are:

Firstly, whether a Motor Accidents Claims Tribunal, while exercising its powers under the Motor Vehicles Act, 1988 can review its own order?

Secondly, whether in cases where it is proved on record that a decree/award has been obtained by playing fraud upon the



Court/Tribunal, the Court/Tribunal can review its order even in absence of any specific provision of law empowering it to do so?

10. So far as the first issue is concerned, reply to the same has clearly been spelt out in the case of **Smt. Imiya** (supra) wherein the Court held as under:

*"11. The Tribunal as constituted under the Motor Vehicles Act while dealing with the claim application even when having the trappings of the Civil Court, its jurisdiction is specifically defined by the statutory provisions and the rules framed thereunder. So far the powers of the Civil Court that are vested in the Claims Tribunal and procedure to be followed by the Claims Tribunal are concerned, such aspects have specifically been delineated in Section 169 of the Act and Rule 10.27 and Rule 10.28 of the Rajasthan Motor Vehicles Rules, 1990. Significant it is to notice that the provisions of Section 114 CPC or Order XLVII Rule 1 CPC, relating to powers of review have not, as such been made applicable to the proceedings before the Claims Tribunal. **The Tribunal, in the opinion of this Court, had no jurisdiction to deal with a so called review application moved under Order XLVII CPC and the impugned order, passed on a so-called review application, cannot be upheld.**"*

The first issue therefore, is answered in the manner that the Motor Accidents Claims Tribunal generally, does not have the jurisdiction to deal with a review application under Order 47, CPC.

11. But then, the above settled proposition of law is also subject to certain exceptions as held by the Hon'ble Apex Court in the case of **United India Insurance Co. Ltd. vs. Rajendra Singh & Ors.; AIR 2000 Supreme Court 1165** that fraud and justice never dwell together. 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. Therein,





the Hon'ble Apex Court, while dealing with a similar circumstance, observed as under:

"16. It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

17. 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."

12. The view that an order obtained by a successful party by practising or playing fraud is vitiated, has further been reiterated in very strong terms by the Hon'ble Apex Court in **A.V. Papayya Sastry's** case (supra). Therein, the Hon'ble Apex Court proceeded on to hold that an order obtained by practising or playing fraud cannot be held legal, valid or in consonance with law. It is non-existent, *non est* and cannot be allowed to stand. The Court further observed that the said is a fundamental principle of law and hence, held that a judgment, decree or order obtained by fraud is to be treated as nullity, whether by the Court of first instance or by the final Court.





13. In view of the above ratio as laid down by the Hon'ble Apex Court and in view of the settled position of law that a decree/award can be set aside at any stage, even in collateral proceedings, if found to have been obtained by fraud, the order impugned does not deserve any interference.

14. Further, this Court cannot be oblivious of the fact that in the reply to the review application, it was not even the case of the claimants that the policy in question was valid. The only ground raised by the claimants and the owner of the vehicle in question was that the review application was not maintainable and the Tribunal was not competent to recall its own order.

15. It is also relevant to note that there was no interim order operating in the present writ petition and after passing of the impugned order dated 13.07.2017, proceedings before the learned Tribunal re-commenced and the claimants have even led their evidence. Meaning thereby, the claimants have already submitted themselves to the jurisdiction of the learned Tribunal. Therefore also, no interference, at this stage, is required.

16. In view of the above analysis and observations, the present writ petition is **dismissed**.

17. Stay petition and all pending applications, if any, stand **disposed of**.

18. It is however, made clear that the observations made hereinabove, have been made only for the purpose of deciding legality and validity of the order impugned passed by the learned Tribunal. The same be not understood to be an expression of opinion on merits of the matter. The learned Tribunal shall therefore, be under an obligation to decide the matter on its own



merits without being inhibited by the observations made by this Court in this judgment.

(REKHA BORANA),J

805-T.Singh/-

