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Decided on : 08/06/2026

Duration : 2Y 1M 29D

IN THE COURT OF 3RD ADDITIONAL SESSIONS JUDGE, AT RAJKOT.

MACRP NO.01/2024

PETITIONER

Bajaj Allianz General Insurance Co. Ltd.

Adds - 2nd Floor, Office No.201,

Anant The Work Space,

Kalawad Road, Rajkot – 360001.

V E R S U S

RESPONDENTS

: (1) Kaliben Chanabhai Vanvi,

Adult, Occ. Labourer,

R/o: Sultanpur Dhar, Tal. Vandhali,

Dist-Junagadh.

(2) Hanifbhai Hasanbhai Jethava,

Adds- Sathvara, Falia,

Ta..

Car No. GJ-03-MB-0064

(3)Shri Kishorbhai Virjibhai Rathod(owner),

R/o 14D-Shastri Nagar, Society Street No.2,

B/h Mamta Petrol Pump, Rajnagar Chowk.

(4)Cholmandalam M.S.Gen.Ins.Co.Ltd.(Ins.Co.),

Adds-City Center, Old Amrapali Cinema,

Near Under Bridge, Raiya Road, Rajkot.

Appearance:

Mr. Vinubhai M. Vadher, Learned Advocate for the petitioner.

None appears for respondent no.1 & 3

Mr.A. A. Sehmani for the respondent no.2.

Mr. Jayprakash J. Trivedi, Learned Advocate for the respondent no.4.

**REVIEW APPLICATION UNDER ORDER-47 RULE-1 OF THE CODE OF
CIVIL PROCEDURE AGAINST THE JUDGMENT AND AWARD DATED
06/12/2023 PASSED IN MACP NO. 25/2010.**

:: J U D G M E N T ::

- 1.** By way of present review application the insurance company/applicant has prayed to set aside the judgment and award passed by this Tribunal in MACP No. 25/2010 dated 30/08/2007.
- 2.** Brief facts of the present application are as under;

The MACP No.25/2010 was filed by the original claimant/opponent no.1 on account of injuries sustained by her in a motor vehicular accident dated 30/08/2007, claiming compensation of Rs.5,00,000/- along with interest and cost.
- 3.** The applicant has stated that the original claimant/injured has stated in MACP No.25/2010 that she has taken treatment from Government Hospital, Junagadh from 30/08/2007 to 01/09/2007 and thereafter again the claimant has taken treatment from 01/09/2007 and further the claimant has taken treatment at Government Hospital, Rajkot from 06/10/2007 to 02/11/2007, but the the original claimant has failed to show the primary treatment certificate in respect of treatment at Vanthali Government Hospital and also not produced any certificate/discharge card/medical papers issued by Government Hospital, Junagadh. Further it is stated that injury certificate of claimant issued by the Government Hospital, Junagadh for the period from 30/08/2007 clearly shows that only CLW on lower eye lid and left heel and stich wound on left leg and the claimant has not sustained

any fracture injury.

- 4.** The applicant has further stated that the claimant has produced disability certificate issued by Dr. Bhaumik Bhayani who is a Plastic Surgeon. Further stated that without getting any treatment from Dr. Bhaumik Bhayani the disability certificate issued by him and therefore, such disability as stated by the Dr. Bhayani is not accepted.
- 5.** It is further submitted that the observation of Tribunal that “from endorsement in said disability certificate it appears that the Ld. Advocate for the Opponent no.2-Insurance Co. Ltd. has received copy of said certificate on 17/07/2023 and till date no objections were raised by him over the disability. Hence, in absence of any objections against the disability certificate, this Tribunal believes that, he has no objection if disability of claimant should be assessed and accepted as per disability certificate. Further it is submitted that, right from the production of the disability certificate, this opponent has objected the injuries and the disability assessed by Dr. Bhaumik Bhayani by not giving consent to exhibit the disability certificate. Hence, this opponent submits that the claimant had no sustained disability as assessed by Dr. Bhayani and the same should not be considered for assessing the future loss of earning capacity and claimant had not sustained such grievous injuries and has only received CLW injuries, and therefore, the claimant should not be awarded huge amount as awarded by the Hon’ble Tribunal.
- 6.** In view of the above submissions, the learned Advocate for the applicant has prayed to set aside the judgment and award dated 06/12/2023 passed in MACP no. 25/2010 by the MACT, Rajkot and also prayed to re-open MACP No. 25/2010 so that the applicant can defend the case on the ground of disability and make arguments on that

ground. Further prayed to stay the operation of the Judgment and Award passed in MACP no.25/2010 by the MACT, Rajkot.

- 7.** After service of summons the Opponents have appeared through their duly instructed learned advocate.
- 8.** The learned Advocate appearing for the Opponent no.1 has filed reply and written arguments to the present application vide Exh.7 wherein, he has denied the facts of the present petition *in toto*. It is has been submitted that as per settled law, power of review is not an inherent power and it must be conferred expressly/specifically or by necessary implication and in the absence of nay provision of the Act/Rules, review of earlier order is impermissible as review is a creation of statute. Jurisdiction of review can been derived only from the statute and thus, any order of review passed in absence of any statutory provision for the same is a nullity being without jurisdiction. The learned Advocate has referred the judgment of Hon'ble Apex Court in the cse of Kalbharati Advertising V/s Hemant Vimalnath Narichania and Other reported in 2010(9) SCC 437.
- 9.** Further it is submitted that it is a settled legal position under order 47 Rule 1 of CPC that a judgment may be opened to review only when there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of record justifying the Court to exercise its power to review under Order 47 Rule 1 CPC. In exercise of jurisdiction under Order 47 Rule 1 CPC it is not permissible for a decision to be "reheard and corrected" even if the same is found to be erroneous. A review petition has a limited purpose and cannot be allowed to an "an appeal in disguise. Further stated that this Tribunal has passed the judgment and Award with

proper appreciation of evidence on record and considered the disability accordingly, therefore, the legality of the judgment and award cannot be questioned and it cannot be reviewed under order 47 Rule 1 of CPC and leading further evidence or rehear the matter is beyond the scope of Order 47 Rule 1 of CPC. Consequently, with the above submissions, the applicant has stated that present review application by the Insurance Company is not maintainable and liable to be rejected with heavy costs.

10. I have heard the learned advocates appearing for the respective parties. I have also perused the record and proceedings of MACP No.25/2010, the judgment and award dated 06/12/2023 and the grounds raised in the present Review Application.

11. Before advertng to the facts of the present case, it would be appropriate to examine the scope and ambit of review jurisdiction under Order XLVII Rule 1 of the Code of Civil Procedure. It is a settled proposition of law that the power of review is not an inherent power and can be exercised only when such power is conferred by statute either expressly or by necessary implication. The jurisdiction of review is extremely limited and cannot be equated with appellate jurisdiction.

12. Order XLVII Rule 1 CPC permits review only on the following grounds:

(i) discovery of new and important matter or evidence which, despite exercise of due diligence, was not within the knowledge of the applicant or could not be produced at the time when the order was passed;

(ii) mistake or error apparent on the face of the record; or

(iii) any other sufficient reason analogous to the aforesaid grounds. It is equally well settled that review proceedings cannot be used as a mechanism for rehearing the matter on merits or for re-appreciation of evidence already considered by the Court or Tribunal.

13. In **Kalabharati Advertising Vs. Hemant Vimalnath Narichania & Ors.**, (2010) 9 SCC 437, the Hon'ble Supreme Court has elaborately explained the scope of review jurisdiction. In paragraph 12 and 13 of the judgment, the Hon'ble Apex Court has held as under:

12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & Anr., AIR 1965 SC 1457; and Harbhajan Singh v. Karam Singh & Ors., AIR 1966 SC 641).

13. In Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji, AIR 1970 SC 1273; Maj. Chandra Bhan Singh v. Latafat Ullah Khan & Ors., AIR 1978 SC 1814; Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya, Sitapur (U.P.) & Ors., AIR 1987 SC 2186; State of Orissa & Ors. v. Commissioner of Land Records and Settlement, Cuttack & Ors., (1998) 7 SCC 162; and Sunita Jain v. Pawan Kumar Jain & Ors., (2008) 2 SCC 705, this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.

In view of the above decision, it is well understood that "Review is not an appeal in disguise. The mere possibility of two views on the subject

is not a ground for review. The error contemplated under the rule must be an error apparent on the face of the record and not an error which has to be fished out and searched."

14. The Hon'ble Supreme Court further observed that an error which is not self-evident and requires a process of reasoning cannot be treated as an error apparent on the face of the record. Thus, review jurisdiction cannot be invoked for re-appreciation of evidence or for substituting one view by another.

15. The opponent has relied upon the judgment of Hon'ble Bombay High Court (Aurangabad Bench) dated 03.08.2019 passed in writ petition No.7589 of 2019 wherein the Hon'ble High Court in para 30 has held that;

"30. In view of the above, as there is a specific absence of a statutory provision providing for a review and since the power of review under Section 114 and Order XLVII have been excluded under Rules 275 and 276 defining the procedure and powers of the Tribunal, a Motor Accidents Claims Tribunal cannot review its judgment on its merits. To make it more clear, correcting a simple error or mistake or arithmetical calculations would be permitted under Sections 151/152/153. However, a mistake as like the one which has occurred in paragraph 22 of the judgment of the Tribunal in the case in hand, which would alter the decision of the Tribunal and which would require a re-argument and re-appreciation of evidence, would not be permissible."

16. Keeping the aforesaid legal principles in mind, the facts of the present case are required to be examined. The principal contention of the applicant–Insurance Company is that the claimant had not produced certain medical papers relating to treatment at Vanthali Government Hospital and Government Hospital, Junagadh; that the injury certificate issued by Government Hospital, Junagadh did not

disclose any fracture injury; and that the disability certificate issued by Dr. Bhaumik Bhayani ought not to have been relied upon while determining compensation. Further it is stated by the applicant that he has repeatedly objected the validity of the disability certificate issued by Dr. Bahaumik Bahayani but the same was ignored by the Tribunal recording the finding to the effect that “from the endorsement in the disability certificate of the insurance company it transpires that the learned Advocate has received the copy of the said Disability Certificate on 17/07/2023 but till the date of judgment the learned Adv. for the Opponent-insurance company has not challenged the said disability certificate”. This Court finds that the ground of review petition as stated hereinabove are not covered by the provisions contemplated under order XLVII of CPC. As, in this regard, the crux of the case of applicant is that the finding recorded by the Tribunal concerning the medical papers/disability certificate was recorded as if medical papers and disability certificate were not disputed by the applicant. On the basis of these contentions, the applicant seeks reopening of the claim petition and a fresh opportunity to contest the issue of disability.

17. At the outset, it is required to be noted that the applicant has not pointed out any clerical mistake, accidental omission, patent error or error apparent on the face of the record in the judgment and award dated 06/12/2023. The grounds raised by the applicant pertain to appreciation of medical evidence, assessment of disability and correctness of the findings recorded by the Tribunal. Such issues were already part of the adjudication in the claim petition and cannot be reopened in review proceedings.

18. The record reveals that the disability certificate, oral evidence

and documentary evidence produced by the claimant were available before the Tribunal at the time of adjudication of MACP No.25/2010. The applicant had full opportunity to contest the claim, cross-examine the witnesses and challenge the documentary evidence produced by the claimant. After considering the entire evidence on record, the Tribunal recorded findings regarding the injuries, disability and quantum of compensation.

- 19.** The applicant now seeks reconsideration of the medical evidence and reassessment of the disability certificate issued by Dr. Bhaumik Bhayani. Such a prayer necessarily requires re-appreciation of evidence and re-examination of findings already recorded by the Tribunal. Entertaining such a request would amount to rehearing the claim petition on merits, which is wholly impermissible within the limited scope of review jurisdiction.
- 20.** It is also pertinent to note that the applicant has neither pleaded nor established discovery of any new and important evidence which, despite due diligence, could not be produced during the pendency of the claim petition. No material has been placed on record to demonstrate any patent error apparent on the face of the record. The grounds urged by the applicant merely challenge the correctness of the conclusions arrived at by the Tribunal on the basis of evidence already available on record.
- 21.** The prayer for reopening MACP No.25/2010 and permitting fresh arguments on the issue of disability would virtually amount to setting aside the findings already recorded and conducting a fresh adjudication of the claim petition. Such a course is beyond the scope of Order XLVII Rule 1 CPC. If the applicant is aggrieved by the findings recorded in the judgment and award, the appropriate remedy available

in law is to challenge the award before the competent appellate forum and not to seek a rehearing under the guise of review.

22. Therefore, this Tribunal is of the considered opinion that the grounds raised in the present Review Application do not satisfy any of the conditions prescribed under Order XLVII Rule 1 CPC. No error apparent on the face of the record has been demonstrated. The application is nothing but an attempt to seek re-appreciation of evidence and reconsideration of findings already rendered by this Tribunal, which is not permissible in review jurisdiction.

23. In view of the aforesaid discussions and considering the facts and circumstances of the present case the present Review Application, being devoid of merits and not maintainable within the parameters of Order XLVII Rule 1 CPC, deserves to be dismissed. Hence, I find following order judicious.

:: ORDER ::

- 1.** The present MACRP No.01 of 2024 is hereby dismissed.
- 2.** No order as to costs.

Pronounced in open Court today at Rajkot on this **8th day of June, 2026.**

Date :- 08/06/2026
Place:- Rajkot.

[Ikramkhan Basirkhan Pathan]
Chaiman, MACT (Spl.) &
3rd Addl. Sessions Judge, Rajkot.
Code No. GJ 00 614.

//V.V.Pandey//