

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4508 of 2025**

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THE STATE OF GUJARAT THROUGH I.G.P. , GUJARAT STATE
Versus
NATHHUBHAI RAJABHAI & ORS.

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Appearance:

MR ABHISHEK D JAIN AGP for the Petitioner(s) No. 1

MR P B KHAMBHOLJA(5730) for the Respondent(s) No. 1

SERVED BY PUBLICATION IN NEWS for the Respondent(s) No. 2

CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 30/07/2026****ORAL ORDER**

1. By way of the captioned petition, the petitioner has prayed for following reliefs:-

"A. YOUR LORDHSIP/S may be pleased to admit and allow this petition;

B. YOUR LORDHSIP/S may be pleased to issue writ of certiorari or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the order dated 04.02.2023 passed by the Learned Motor Accident Claims Tribunal in MACMA No. 1175 of 2015, At Annx "A"

C. YOUR LORDHSIP/S may be pleased to issue writ of certiorari or a writ in the nature of mandamus or any other appropriate writ, order or directing the learned Tribunal to hear the MACP No. 1570 of 1992, At Annx "C"

D. YOUR LORDHSIP/S may be pleased to stay further hearing and adjudication of MAC Execution No. 06/2012 filed by the respondents herein; At Annx "B".

E. Pending, admission, hearing and final disposal of this petition, YOUR LORDHSIP/S may be pleased to stay the implementation, operation and execution of the order dated 01.09.2010 passed in MACP No. 1570 of 1992. At Annx "C"

F. YOUR LORDSHIP/S may be please to pass such other order and further orders as may be deemed just and proper in the interest of justice.”

2. Heard learned advocates for the parties.

3. Mr. Abhishek D. Jain, learned AGP, appearing on behalf of the petitioner vehemently submitted that the vehicle involved in the vehicular accident which took place on 26.04.1992, was not belonging to the petitioner. He further submitted that the truck bearing registration No.GRU-4309 was involved in the vehicular accident, wherein the original claimant/respondent No.1 herein sustained injuries. He further submitted that at the time of accident, the said vehicle was lying in P. C. M. T., Rajkot service station for maintenance. Therefore, the question of involving the vehicle bearing registration No.GRG-4309, does not arise.

3.1. He further submitted that it is true that the charge-sheet came to be filed against the driver of the offending vehicle bearing registration No.GRG-4309, but the mistake was inadvertently committed by the investigating officer in mentioning the number of the offending vehicle. He further submitted that on receiving the notice of execution, the petitioner has preferred the application being M.A.C.M.A. No.1175 of 2015 before the learned Tribunal under the provisions of Section 151, 152 & 153 of CPC for recalling the impugned judgment and award dated 01.09.2010 passed in M.A.C.P. No.1570 of 1992. He further submitted that the learned Tribunal vide order dated 04.02.2023 rejected the said application preferred by the petitioner. He further submitted that

the impugned order dated 04.02.2023 passed by the learned Tribunal, is against the factual position, therefore, the same is liable to be set aside. In support of his contention, learned AGP placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **United India Insurance Company Limited Vs. Rajendra Singh & Ors.**, reported in **2000 (0) AIJEL- SC 33561**. Having placed reliance upon the aforesaid judgment, he submitted that the captioned petition deserves to be allowed.

4. Mr. P. B. Khambholja, learned advocate appearing on behalf of original claimant/respondent No.1 herein vehemently submitted that the claimant- Nathhubhai Rajabhai sustained grievous injuries in the vehicular accident which took place on 26.04.1992. He filed the claim petition being M.A.C.P. No.1570 of 1992 seeking the compensation on account of injuries sustained in the accident. Initially, the driver and owner of the truck bearing registration No.GRU-4309 were impleaded as opponents in the claim petition. However, upon receiving a copy of the charge-sheet, the claimant came to know that, after completing the investigation, the investigating officer had concluded that the truck bearing registration No.GRG-4309 was the vehicle involved in the accident. Therefore, on the basis of the charge-sheet, he preferred the application below exhibit-8. The said application came to be allowed and hence, accordingly, the petitioner herein was impleaded as a party.

4.1. Learned advocate for the original claimant further submitted that notice of the claim petition came to be served

upon the petitioner, but the petitioner has chosen not to appear before the learned Tribunal. Having considered the pleadings, evidence and submissions canvassed by the learned advocates for the parties, learned Tribunal partly allowed the claim petition vide impugned judgment and award dated 01.09.2010 and awarded a sum of Rs.1,35,300/- as compensation along with interest @ 7.5% per annum from the date of filing the claim petition till its realization. Thereafter, the original claimant has preferred the execution petition being Execution No.6 of 2012. Again, the notice of the execution petition was duly served upon the petitioner, but the execution was not satisfied, hence accordingly, the learned Tribunal issued the warrant of attachment. The said warrant of attachment was duly served upon the petitioner on 06.05.2013. Despite service of warrant of attachment, petitioner has not taken any steps, and thereafter, at a belated stage, petitioner herein filed an application being M.A.C.M.A. No.1175 of 2015 for recalling the impugned judgment and award dated 01.09.2010 passed in MACP No.1570 of 1992.

4.2. Learned advocate for the original claimant further submitted that owing to the injuries sustained in the accident, the claimant has lost his right leg below the knee. However, till date, the claimant is not in a position to get the compensation owing to the conduct of the petitioner herein. He further submitted that there is no infirmity in the impugned order passed by the learned Tribunal in M.A.C.M.A. No.1175 of 2015, therefore, the captioned petition deserves to be dismissed.

5. Having considered the submissions canvassed by the learned advocates for the parties and having gone through the record, it is to be noted that the original claimant- Nathhubhai Rajabhai sustained grievous injuries in the vehicular accident dated 26.04.1992. Owing to the injuries sustained in the accident, the right leg of the claimant came to be amputated below the knee. Initially, the owner and driver of truck bearing registration No.GRU-4309 were impleaded. On receiving the copy of the police papers, more particularly the charge-sheet, the cause title of the claim petition came to be amended, and the owner and driver of the truck bearing registration No.GRG-4309 came to be impleaded, as the Investigating Officer had mentioned in the charge-sheet that the offending vehicle was the truck bearing registration No.GRG-4309. After impleadment of the petitioner, the learned Tribunal had issued the notice of the claim petitions. The said notice was duly served upon the petitioner herein on 17.07.2009. Despite service of notice of claim petition, the petitioner has chosen not to appear before the learned Tribunal, therefore, the learned Tribunal proceeded ex-parte against the petitioner herein. The petitioner has not even preferred any application to set aside the ex-parte order. No efforts have been made on behalf of the petitioner to participate in the proceedings before the learned Tribunal. Therefore, the learned Tribunal, after considering the pleadings, evidence and submissions canvassed by the learned advocates for the parties, partly allowed the claim petition and awarded a sum of Rs.1,35,300/- as compensation along with interest @ 7.5% per annum.

6. Since the award was not satisfied by the petitioner, therefore, the original claimant preferred the execution petition being Execution Petition No.6 of 2012. In the said petition, the notice of the execution petition was to be issued but the award was not satisfied, therefore, the learned Tribunal issued the warrant of attachment, which came to be served on 06.05.2013. Even then, the petitioner has not taken any steps to participate in the proceedings. After a delay of more than two years from the service of warrant of attachment, the petitioner preferred an application being M.A.C.M.A. No.1175 of 2015 for recalling the impugned judgment and award dated 01.09.2010 passed in MACP No.1570 of 1992. The said application came to be rejected by the learned Tribunal vide order dated 04.02.2023. The said order is challenged by way of preferring the captioned petition. Even the captioned petition was filed on 02.04.2025 i.e., after two years of passing of the order in M.A.C.M.A. No.1175 of 2015. The learned Tribunal had rejected the M.A.C.M.A. No.1175 of 2015 on the ground that the truck bearing registration No.GRG-4309 was impleaded on the basis of charge-sheet filed by the investigating officer of the petitioner. Not only this, the learned Tribunal has also taken the care of limitation and held that the application is barred by limitation. The learned Tribunal has also observed that the application for recalling the order was filed after almost five years of passing the original judgment and award. The findings returned by the learned Tribunal, in my considered view, is factually and legally correct. The learned Tribunal has not committed any error in observing that there is an inordinate delay in preferring the application for recalling the order.

7. As per Article 124 of the Limitation Act, 1996, the application for review or recall has to be preferred within a period of 30 days. At this stage, learned AGP for the petitioner submitted that in the present case, the Article 137 of the Limitation Act shall apply, which prescribe the period of limitation 3 years, even if for the sake of argument his contention is accepted by this Court, even then, the M.A.C.M.A. No.1175 of 2015 came to be filed after a period of 5 years. Therefore, the said M.A.C.M.A. was filed after inordinate delay. Learned AGP placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **Rajendra Singh** (*supra*), the Hon'ble Supreme Court, in paragraph Nos.17 & 18, observed as under:-

“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.

18. 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.”

8. Thus, in view of the above discussion, I am of the

considered view that the ratio of this judgment shall not be applicable in the facts and circumstances of the present case, as no fraud has been committed by the claimant. The claimant has impleaded the owner and driver of the offending truck bearing registration No.GRG-4309 on the basis of the charge-sheet filed by the investigating officer of the petitioner. Therefore, the ratio of the aforesaid judgment would not apply in the facts and circumstances of the present case.

9. Now adverting to the facts and circumstances of the present case, it is an undisputed fact that the vehicular accident in question took place on 26.04.1992, the original claimant-Nathhubhai Rajabhai sustained grievous injuries and resultantly, his right leg below the knee was amputated. Despite this fact, the original claimant could not get a single penny till date without any fault.

10. Thus, considering totality of the facts and circumstances of the case, I am of the considered view that the learned Tribunal has not committed any error in rejecting the application preferred by the petitioner for recalling the impugned judgment and award dated 01.09.2010, and therefore, the captioned petition is devoid of merits and liable to be dismissed.

11. The amount deposited by the petitioner with the Registry of this Court is directed to be paid to the original claimant/respondent No.1 herein, along with the interest, within a period of one week from the date of receipt of copy of this order.

12. In view of the above discussion, the captioned petition stands dismissed. Interim relief granted earlier stands vacated.

13. R & P be sent back to the concerned learned Tribunal forthwith.

CDP

(MOOL CHAND TYAGI, J)