

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No.78 OF 2020

(arising out of Special Leave Petition (C) No.5580 of 2018)

MAHOORA BANO

... APPELLANT

Versus

NATIONAL INSURANCE COMPANY & ORS.

... RESPONDENTS

O R D E R

1. Leave granted.
2. Challenging an Order passed by the High Court allowing an application for review and reducing the compensation originally awarded in an appeal arising out of the award of the Motor Accident Claims Tribunal, the claimant has come up with the above appeal.
3. In a road traffic accident that occurred on 17.11.2007, the appellant suffered injuries resulting in permanent disablement in her left arm. She filed a claim for compensation in a sum of Rs.30,00,000/- before the Motor Accident Claims Tribunal, Srinagar. The Tribunal awarded a total compensation of Rs.2,75,000/-, comprising of a sum of Rs.90,000/- towards mental agony, a sum of Rs.30,000/- towards expenses for employing an attendant, a sum of Rs,1,30,000/- towards medicines and diet and a sum of Rs.25,000/- towards transportation.
4. Not satisfied with the amount so awarded, the appellant filed an appeal on the file of the High Court of Jammu and Kashmir at Srinagar. By a Judgment dated 11.06.2014, the Tribunal allowed the appeal, granting an

additional amount of Rs.2,01,600/- towards loss of income and a sum of Rs.20,000/- towards expenses incurred for taking treatment outside the State. In other words, the High Court enhanced the compensation from Rs.2,75,000/- to Rs.4,96,600/-.

5. The award of the additional amount of Rs.2,01,600/- by the Tribunal towards loss of income, was on the ground that the appellant had an income of Rs.1500/- per month and that since she suffered permanent partial disablement to the tune of 60%, she was entitled to have the multiplier of 17 applied upon 60% of the annual income namely Rs.18,000/- . If so done, the amount payable towards loss of income came to Rs.2,01,600/-.

6. Aggrieved by the enhancement so granted by the High Court, the insurer filed a petition for review before the High Court. It was claimed in the petition for review that the insurer appointed a surveyor/investigator, after the disposal of the appeal by the High Court to investigate into the claim relating to the employment of the appellant and that the investigation revealed that the appellant, who was employed on a temporary basis as a teacher, got regularized subsequently. Therefore, the Insurance Company sought a review on the short ground that there was no loss of income for the appellant.

7. The High Court allowed the review application by holding that the appellant was guilty of suppression of material particulars in her claim petition and that her description in the claim petition as a household lady

engaged in agriculture had been proved to be false. Accordingly, the High Court deleted a sum of Rs.2,00,000/- which represented the compensation awarded towards loss of income. It is against the said order passed in the review application that the claimant is before us.

8. It is no doubt true that in the claim petition filed by her, the appellant described her occupation as an agriculturist. She was obviously employed as Rehbari Taleem (RT) teacher on a monthly salary of Rs.1500/-.

9. But it is not wholly correct to say that the appellant was guilty of willful suppression or the commission of fraud upon the Court. The appellant examined herself as a witness before the Motor Accident Claims Tribunal. As seen from the order of the Tribunal, the appellant described herself as follows:

“Mahoora Bano, daughter of Manzoor Ahmad Wani R/o Kupwara, Occupation-Government teacher.

10. The Tribunal, in its order, took note of the fact that the appellant was working as Rehbari Taleem teacher, earning a monthly income of Rs.1500/-. The Tribunal also noted the fact that by the time the Award was passed, the appellant would have completed five years of service and would have been regularized. The relevant portion of the order of the Tribunal reads as follows:

“The petitioner in her petition has stated that she was working in the agriculture form and due to disablement caused to her in the accident she has lost future earning as she was a young lady, could earn for her livelihood for a long time and to this effect she has claimed compensation. But her contention has been nullified by the witness Irshad Ahmad who has been produced by her and happens to be her relative. The said witness has stated before this

court on 23.7.2009 that the petitioner was Rehbari Taleem (RT) Teacher and was getting 1500/- rupees per month and her service would confirm after five years, and in the meanwhile she has stated that her service was not confirmed, because she could not go to school on account of this accident and as such she was deprived of this job. But the documentary evidence in the shape of photocopy of order issued by Office of the Zonal Education Officer, Kupwara has of late been produced by the petitioner herself. The perusal of the said order reveals that a post has been created in newly sanctioned Prg School Geerhati Kupwara under SSA vide DSEK's Order No. PlgJSSA-02-04/1712-17, dated: 07.08.2004 and CEO Kupwara's No. Plg/Opg/800-21, dated: 29.10.2004, the petitioner Mahoora Bano Qualification 10+2 W/O: Manzoor Ahmad Wani R/O: Geerhati Kupwara has been appointed as Rehbar-Taleem in SSA Prg School Geerhati on merit basis by the election Committee vide No. Estt/SSA/RT/22928-29, Dated: 22.03.2005 on the monthly honorarium of Rs. 1500/- and the said order was dispatched besides the authorities at the helm of affairs to the petitioner also vide Dispatch No. ZEO/05/1875-78, Dated: 23.3.2005, which means that the petitioner is under Government employment and this the petitioner has also admitted in her statement before this Tribunal on 30.06.2009 that she is working as Govt. teacher.

From the above discussion it is clear that the petitioner has been appointed as Govt. teacher (RT) by the authorities as mentioned herein above in the year 2005 and since then more than five years have lapsed and at present she would be a regular teacher earning handsome salary. Therefore, it can safely be said that loss of income the petitioner has suffered on this count and accordingly award cannot be granted under this head.”

11. In the memorandum of grounds of appeal that the appellant filed before the High Court, she did not focus upon the refusal of the Tribunal to award any compensation for loss of income. All the grounds of appeal were focused on inadequacy of compensation towards mental agony, medicines, diet, transportation etc.

12. However, the High Court, in the first instance, proceeded to award a sum of Rs.2,01,600/- towards loss of income by taking the very salary of the appellant as a Teacher at Rs.1500/- per month as the basis. Infact the

High Court actually took note of the employment of the appellant as a teacher and the allegation of suppression made against her by the Insurance Company. Paragraph 15 of the order of the High Court passed in the first instance reads as follows:

“I have minutely gone through the deposition made by the appellant before the Tribunal on 30.06.2009. It is seen there from that though she has not stated anywhere that she was working as a Rehbar-e-Taleem, but her identification particulars mentioned at the top of the statement she had tendered before the Tribunal mentions her occupation as Government Teacher. Learned counsel for the appellant has vehemently disputed the same. Irshaad Ahmad in his deposition has in unambiguous terms stated that the appellant was appointed as Rehbar-e-Taleem in 2005, and that after five years she would be confirmed, but, she could not go to School, she lost the job. Obviously, reference to the order of appointment of the appellant as Rehbar-e-Taleem made by the Tribunal in its judgment is a fact which related to a date prior to the accident. There is no evidence on record, worth the name, to even remotely suggest that after the accident the appellant continued to function as such Rehbar-e-Taleem or that she had been confirmed as a regular teacher before completion of five years after her such appointment. It is specifically recorded by the Tribunal in the impugned judgment that the appellant had been appointed as Rehbar-e-Taleem on 23.3.2005, and it is also not in dispute that on the date of making of the aforesaid deposition before the Tribunal viz, on 30.06.2009, even if she was continued after the ‘accident, she could not have been regularized as a Government teacher, because she had not completed 5 years service as Rehbar-e-Taleem, which eventuality could arise only after March, 2010. Apparently, the occupation of the appellant recorded at the top of the statement while describing her particulars is not supported by the rules and/or any other evidence. The finding recorded by the Tribunal is, thus, based on assumption, especially so in view of the categorical statement ‘made by the witness, Irshad Ahmad, that the appellant lost the job.”

13. It was only after the High Court allowed the appeal in the first instance that the Insurance Company chose to appoint an investigator and found out that the appellant was subsequently regularized in service. On

the basis of the report of the investigator enclosing the certificate of the Zonal Education Officer, the High Court allowed the review application, on the ground that the appellant was guilty of making false averments. Paragraph 6 of the Order of the High Court passed in the review application reads as follows:

“From the perusal of pleadings of the parties, and with the support of the material on record, it has become clear that claimant was engaged as ReT and subsequently regularized as a General-line teacher, therefore, the contention raised in the appeal that she was a household lady working in agriculture fields has been proved false.”

14. But interestingly, neither the grounds of review filed by the insurer nor the order of the High Court passed in the review application disclose the date of regularization of the services of the appellant. The date on which the accident occurred was 17.11.2007. The date on which she was appointed on temporary basis as a teacher was 22.03.2005. Even according to the Insurance Company, the appellant would have become entitled to regularization only after completion of five years. In other words, she would have become eligible to be regularized only in March-2010. The date on which the appellant deposed as a witness before the Tribunal was 30.06.2009. The award of the Tribunal itself was dated 23.11.2011. The date of institution of the claim was 06.06.2008.

15. Therefore, it will be clear from the above timeline of events that on the date on which the appellant deposed before the Tribunal, she would have at the most had a legitimate expectation of being regularized. In such circumstances, we do not know how the High Court could have reviewed its

earlier order on the sole ground that there was a false statement. On the date on which the appellant deposed before the Tribunal, the statement that she had not been regularized, was not false, but true. Merely because the said statement turned out to be incorrect, due to subsequent developments, the High Court could not have reviewed its earlier order. As we have pointed out earlier, the High Court did not even know the date on which the appellant was regularized. Even the review petition filed by the insurer does not disclose the date of regularization. Therefore, we are of the view that the High Court could not have taken a pedantic approach and allowed the review application. Hence, the appeal is allowed and the impugned order of the High Court passed in the review application is set aside. The original order of the High Court passed in the main appeal shall stand restored.

.....J
(N.V. Ramana)

.....J
(V. Ramasubramanian)

New Delhi
January 08, 2020.

ITEM NO.30

COURT NO.2

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).5580/2018

(Arising out of impugned final judgment and order dated 19.03.2015 passed by the High Court of Jammu and Kashmir at Srinagar in RPC No.17/2014)

MAHOORA BANO

Petitioner(s)

VERSUS

NATIONAL INSURANCE COMPANY & ORS.

Respondent(s)

Date : 08-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. Yashraj Singh Deora, AOR
Ms. Sonal Mashankar, Adv.
Mr. S.S. Wani, Adv.

For Respondent(s) Mr. Ambhoj Kumar Sinha, AOR
Mr. Satya Mitra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed and the impugned order of the High Court passed in the review application is set aside. The original order of the High Court passed in the main appeal shall stand restored.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR
(Signed order is placed on the file)