

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.1188 OF 2013

Nirmalabai Ashok Patil Vs. Lavlitsingh S/o Swarupsingh Sahani and others.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
--	---------------------------

Mr.G.L.Gujar, advocate holding for Mr.V.P.Patil, advocate for the petitioners.

Mr.D.P.Deshpande, advocate for Respondent No.3.

CORAM : S.V.GANGAPURWALA, J.

Date : 28.04.2016.

PER COURT :

1. Heard.

2. The petitioners have filed Motor Accident Claim Petition bearing No.574/1998, seeking compensation on account of the death of Ashok in motor accident. On 23.1.2006, on account of absence of the petitioners and their advocate, the Motor Accident Claims Tribunal passed an order, dismissing the claim petition in default. Thereafter, the petitioners filed Misc. Application on 20.7.2011, for restoration of claim petition along with an application for condonation of delay. The Tribunal rejected the said application for restoration and condonation of delay. Aggrieved thereby, the present Writ Petition.

3. According to the petitioners, the petitioners were not aware of the order dated 23.1.2006, passed by the Tribunal. It is their contention that the advocate of the petitioners did not intimate the petitioners the said fact of dismissal of the claim petition.

4. Mr.Deshpande, learned counsel for the Insurance Company submits that the Tribunal has rightly rejected the application for condonation of delay and restoration. There was abnormal delay of 66 months and 14 days in filing the application for restoration. They did not take care of their own matter. They were negligent. No sufficient cause was shown. As such the application was rightly rejected.

5. I have considered the submissions. It is a fact that the claim petition was dismissed for non-prosecution on 23.1.2006, as on the said date the petitioners, so also their advocate did not remain present.

6. It will have to be seen that the proceedings before the Tribunal were under the Motor Vehicles Act, a beneficial piece of legislation, wherein the legislature has also not provided period of limitation to institute a claim petition. The petitioners appear to be agriculturists and residing in a remote rural village, naturally, they would rely upon their lawyer.

7. No doubt, even the petitioners are required to keep track of their matter and contact their advocate for getting further date. It

appears that the same has not been done. The equities will have to be adjusted.

8. Considering the above, I pass the following order :

a) The impugned order is quashed and set aside. Misc. Application No.234/2011 is allowed and MACP No.574/1998 is restored to its original position.

b) If present Respondent Nos.1 and 2 are parties in the claim petition, the Court will issue notices to them, so also the Insurance Company.

c) In case the Tribunal comes to the conclusion to award compensation to the petitioners, then in that case the petitioners would not be entitled for the interest from 23.1.2006 till 20.7.2011.

d) The Writ Petition is accordingly allowed in above terms. No costs.

(S . V . GANGAPURWALA, J .)

Dt.28.04.2016.
asp/office/wp1188.13

