

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 496 OF 2010

SINDHUBAI GUNWANTRAO MAGAR AND OTHERS
VERSUS
BABULAL KESARILAL VARMA AND ANOTHER

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Advocate for Appellants : Mr. S. D. Deshmukh.
Advocate for Respondent No.2 : Mr. V.N.Upadhye.

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CORAM : K.K. SONAWANE, J.

DATED : 21TH SEPTEMBER, 2017.

Order :-

Heard learned counsel for the appellants-original claimants. The learned counsel for respondent No.2 present. The matter is pending since year 2010. In morning session, when the matter is called out, the learned counsel for the appellants-original claimants remained absent. Therefore, the matter was kept back. However, he secured his presence in second half and submits that notices against respondent No.1 had already been reissued by this Court in the year 2011, and therefore, no question arises for dismissal of appeal against respondent No.1. But, when it was brought to the notice of learned counsel for the appellants-original claimants that after issuance of notice to respondent No.1 in the year 2011, it was returned unserved for want of correct forwarding address, and thereafter, no steps were taken, hence, appeal against respondent No.1 came to be dismissed once again by the order of this Court dated 1st March, 2013. Thereafter, learned counsel for the appellants-original claimants seeks accommodation to move requisite civil application in this appeal.

2. As observed supra, the appellants-original claimants preferred present appeal in the year 2010, and since then, same is pending for appearance of the respondent particularly respondent No.1. The appellants-original claimants did not take reasonable precautions with due diligence to secure the presence of respondent No.1 in this

matter, and therefore, this Court was constrained to dismiss the appeal against respondent No.1 on two occasions by requisite Order dated 14th December, 2010, as well as, 1st March, 2013.

3. It is also pertinent to note that since year 2013 uptill this date the appellants-original claimants remained idle and did not move any civil application to recall the Order of dismissal against respondent No.1. In such circumstances, at this belated stage, I find it painful to allow the appellants-original claimants to prefer civil application for requisite relief in this appeal. Therefore, prayer to adjourn the matter once again on behalf of learned counsel for the appellants-original claimants is turned down and he was asked to proceed further for arguments in this appeal. But, Mr. Deshmukh, learned counsel for the appellants-original claimants found reluctant to argue the matter on merit under the pretext that the argument would be an futile efforts when the appeal has already been dismissed against respondent No.1.

4. It would be reiterated that, the present appeal is filed under Section 173 of the Motor Vehicles Act, for enhancement of compensation awarded by the learned Tribunal under Section 166 of the Motor Vehicles Act. The matter is pending since year 2010. But due to the slipshod and lethargic approach on the part of appellants-original claimants, there is no progress in this matter. Once again, Mr. Deshmukh, learned counsel for appellants-original claimants seeks accommodation. All these circumstances constrained this Court not to allow appellants-original claimants to protract the matter but to dismiss the appeal for want of prosecution. Hence, appeal stands dismissed. No order as to the costs.

[K. K. SONAWANE]
JUDGE

rrd.