

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

WRIT PETITION NO. 4334 OF 2015

**VINAYAK BHIMRAO DAUD
VERSUS
THE NEW INDIA ASSURANCE COMPANY LTD, JALNA**

...
Advocate for the Petitioner : Shri B. V. Dhage
Advocate for the Respondent : Shri H. R. Deshmukh

...
CORAM : RAVINDRA V. GHUGE, J.

DATED : 03rd DECEMBER, 2018.

...

PER COURT :

1. Though this matter was filed on 16/02/2015, same has been adjourned from time to time. The short issue is that the State Disputes Consumer Redressal Commission has dismissed the first appeal in default.

2. The learned Advocate for the respondent strenuously opposes this petition. He submits that the petitioner has acted negligently and therefore, the First Appeal has been rightly dismissed. He prays that this petition be dismissed with heavy costs. In the alternative, he submits that if costs are imposed, the said amount be donated for the treatment of the poor patients.

3. The impugned order dated 23/01/2015 passed by the State Commission clearly indicates that the Appeal has been dismissed in default as nobody turned up for the Appellant. This Court has considered the issue of an Appeal being dismissed in default by the State Commission in the following orders/ judgments :-

1] Writ Petition No. 397/2013 in the matter of United India Insurance Company Ltd. Vs. Yogesh Gorakhlal Jaiswal, decided on 20/03/2013.

2] Writ Petition No. 6348/2012 in the matter of Branch Manager, HDFC Ltd. Vs. Pravin Devidas Pawar and others, decided on 05/10/2012.

3] Review Application (Civil) No. 72/2013 in WP No. 3985/2012 in the matter of Ms Radhika Rajesh Mandhani Vs. Dr. Dilip Pathwardhan, decided on 22/07/2014.

4] Arun Sudhamrao Modale Vs. Sangameshwar Tractor Authorised Dealer Ahmedpur, 2014(4) Mh.L.J. 757.

5] Writ Petition No. 3985/2012 in the matter of Miss Radhika D/o Rajesh Mandhani Vs. Dr. Dilip Pathwardhan, decided on 22/03/2016.

4. Considering the above, this petition is allowed. The order dated 23/01/2015 passed by the said Commission in First Appeal No. 185/2013 is quashed and set aside and the Appeal is restored to the file of the State Commission at the Aurangabad Bench on the following conditions :-

(a) The petitioner shall deposit an amount of Rs. 5,000/- (Five Thousand only) in this Court as donation for the treatment of poor patients to the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti”**), on or before 17/12/2018.

b) The receipt of such deposit shall be produced before the State Commission on 04/01/2019.

c) Both the parties shall appear before the State Commission on 04/01/2019 and the petitioner shall work out the said Appeal without seeking an adjournment, failing which the said Appeal would then be dismissed by the commission and there shall be no request for restoration.

(RAVINDRA V. GHUGE, J.)

shp/-