

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

909 CIVIL APPLICATION 6154 OF 2018
IN FA/808/2011 WITH

GANESH SHIVAJI PATIL
VERSUS
THE NEW INDIA ASSURANCE CO. LTD. AND ORS

...

Advocate for Appellant : Mr.M. M. Bhokarikar
Advocate for Respondent Nos 1 & 3 : Mr. Kulkarni K.V.
& Mr.Usmanpurkar Aniruddha S.

...

CORAM : SUNIL K.KOTWAL, J.

DATE : OCTOBER 9, 2018

O R D E R :

The appeal is dismissed against respondent no. 2 on 21/8/2012 by the order of Registrar (Judicial) as after admission of appeal steps were not taken to serve notice on respondent no. 2.

2. This application is for condonation of delay of 1742 days.

3. Heard learned counsel for appellant and learned counsel for respondent Nos. 1 and 3.

4. Learned counsel for respondent Nos. 1 to 3 has opposed this application on the ground that no reasonable cause has been assigned for the delay and therefore, delay cannot be condoned.

5. On the other hand, learned counsel for applicant submits that the order of dismissal passed against respondent no. 2 was not on the Web Site and therefore, counsel for appellant could not take note of the same. The appellant is the original claimant in Motor Accident Claim Petition and this appeal is for enhancement of compensation.

6. Considering the nature of litigation, it is desirable to condone the delay, when the appeal was dismissed as the counsel for the appellant did not take note of the dismissal of the appeal against respondent no. 2.

8. I hold that reason assigned for delay is

acceptable, therefore delay deserves to be condoned, subject to condition that appellant shall file written undertaking in First Appeal that he waives interest and enhanced compensation amount for the delayed period. Undertaking be filed within four weeks from the date of this order.

9. Civil Application is allowed. Delay in filing application is condoned. The dismissal order passed against respondent no. 2 is recalled. Appeal is restored against respondent no. 2 from its original stage at the time of dismissal of the appeal.

10. Permission is granted to the appellant to serve respondent No. 2 by resorting alternative mode of service by publishing notice in widely circulated News Paper at Pachora City, District; Jalgaon. Appellant to file copy of Public Notice within two months from the date of this order in the present

appeal.

11. Stand over to 3.1.2019.

[**SUNIL K.KOTWAL, J.**]

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