

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION NO.1038/2017

IN

FA NO.163/2017

Shriram General Insurance Company Ltd., thr. its Legal Officer

..VS..

Asha wd/o Tulsiram Shivankar and ors

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

Court's or Judge's Order

.....
Shri G.I. Dipwani, Counsel for the applicant.

Shri R.M. Pande, Counsel for non-applicant Nos.1 to 3.

CORAM : MRS. SWAPNA JOSHI, J.

DATED : AUGUST 3, 2018.

1. Heard.
2. This is an application for restoration of the first appeal and setting aside order of dismissal dated 11.8.2017 whereby the first appeal was dismissed for want of prosecution.
3. The applicant preferred an appeal against judgment and award dated 2.1.2016 passed by learned Chairman, Motor Accident Claims Tribunal at Gondia in MACP No.79/2011. At the stage of admission itself, the said first appeal was listed for final disposal before this Court on 11.8.2017. It was the case of the applicant that since his Advocate Shri H.N. Verma was not well, he could not remain present in the Court. The applicant had tendered a consent slip to Sheristedar of the Court seeking an adjournment as other side consented for the adjournment. However, due to inadvertence, the Sheristedar missed to mark the note in the matter.

.....2/-

Therefore, the matter came to be called out and dismissed for want of prosecution.

4. Learned counsel for the applicant contended that it was *bona fide* mistake of the junior of Advocate for the applicant and it was not an intentional mistake. As such, learned counsel for the applicant prayed for setting aside the order of dismissal dated 11.8.2017.

5. Learned counsel Shri R.M. Pande for non-applicant Nos.1 to 3 did not seriously dispute the said position.

6. In view of the fact that there was no intentional mistake on the part of learned counsel for the applicant, the appeal needs to be restored to its original file.

7. For the reasons stated therein, the application stands allowed subject to costs of Rs.500/- to be deposited with the High Court Bar Association at Nagpur. Order 11.8.2017 is set aside and the first appeal is hereby restored to its original file in the interest of justice for proper adjudication on merits.

8. Learned counsel Shri R.M. Pande waives service on behalf of non-applicant Nos.1 to 3 for restoration of the appeal.

9. The civil application stands disposed of accordingly.

FA NO.163/2017

The first appeal be tagged with F.A. No.861/2016.

JUDGE

!! BRW !!

...../-