

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

937 CIVIL APPLICATION NO.8463 OF 2019
IN FA/1258/2009 WITH CA/8464/2019 IN FA/1258/2009

**KHAIRUNNISA FAZLURRAHEMAN ANSARI AND ANR
VERSUS
MANSINGH POKARRAM AND ANR**

...
Advocate for Applicants : Mr. C.T. Jadhav h/f Mr. A D Pawar
Advocate for Respondent No.2 : Mr. A.A. Puranik h/f
Mr. A.S. Deshpande
...

CORAM : V.L. ACHLIYA, J.

DATED : 22nd NOVEMBER, 2019

PER COURT:-

1. The applicants – appellants have preferred this application seeking restoration of appeal with consequential delay caused in filing the application.

2. Heard the learned counsel for the applicants and respondent no.2.

3. It is submitted that as against the judgment and order dated 23.01.2009 passed by the learned Member, Accident Claims Tribunal, Dhule in MACP No.74/2007, the applicants – appellants have preferred the appeal seeking enhancement of compensation. The applicant no.1 has lost her husband in the accident. The tribunal has awarded meager compensation of Rs.2,32,000/- as against the claim of Rs.20,00,000/- made by the applicants – appellants. It is submitted that appeal was admitted by order dated 16.06.2009. While admitting the appeal, this court has dispensed with the print of the paper book and directed to prepare and file private paper book within 12

weeks. The Court has directed that on failure to submit private paper book within 12 weeks, the appeal stands dismissed without back reference to this Court. Due to lack of communication between the applicants and their advocate, the paper book could not be filed within time. Due to conditional order, the appeal was dismissed without reference to Court. When the applicants moved Civil Application (Stamp) No.10715/2019 seeking early hearing, and the matter was circulated on 16.06.2019, it was revealed that appeal was dismissed due to non fulfillment of the condition to submit private paper book within 12 weeks. It is submitted that the default was not deliberate, but occurred due to communication gap between the applicants and their advocate. The applicants had no knowledge about the dismissal of appeal in default. Only after the application moved for fixing the appeal for early hearing, the applicants got knowledge about dismissal of appeal in default. Immediately, thereafter, the present application is filed seeking restoration with consequential delay of 3641 days in filing the application seeking restoration. It is submitted that the applicants have good case to succeed in appeal. If the delay is not condoned, serious prejudice would cause to the applicants. So far as prejudice to be caused to the respondents on account of inordinate delay on the part of applicants, same can be taken care by passing the conditional order that the applicants shall not be entitled for the interest from the date of dismissal of appeal in default i.e. 15.06.2010 till passing of this order.

4. Accordingly the application is allowed in terms of prayer clause B and C. The appeal is restored subject to condition that the applicants – claimants shall not be entitled for interest from the date of dismissal of appeal in default i.e. 15.06.2010 till passing of this order, in the event the award is modified and the

enhanced compensation is paid.

5. The paper book submitted by the appellant is taken on record.

6. Issue notice to respondents, returnable on 09.01.2020. Mr. A.A. Puranik waives service of notice of appeal for respondent no.2. In addition to service through process of Court, the applicants - appellants are permitted to serve respondent no.1 by Registered Post Acknowledgment Due or any other legally permissible mode of service and file the affidavit of service before the next date.

7. List the appeal for awaiting notice of Respondent No.1 on 09.01.2020.

(V.L. ACHLIYA)
JUDGE

SPR