

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 184 of 2020**

1. Shriram General Insurance Co. Ltd., Through The Branch Manager,
Branch Office, E-8, Rico Industrial Area, Sitapura, Jaipur, Rajasthan

---- Applicant**Versus**

1. Vinay Kumar Pathak, S/o Shri Pemchand Pathak, Aged About 20
Years, Resident of Baikunth Dham, Sharda Para, Pole No. 28, Camp
2, Bhilai, Thana Chaawani, Tehsil And District: Durg, Chhattisgarh
2. Girdhari, S/o Shri Madhu Mangraj, Resident of Turrechanda,
Champariya, Thana Kaman, District : Kalahandi, Orissa
3. Varun Kumar, S/o Shri Sukhram Bagade, Aged About 25 Years,
Resident of Subhash Nagar, Behind Kali Mandir, Power House
Bhilai, Tehsil And District : Durg, Chhattisgarh

... Respondent(s)

For Applicant	:	Mr. P. Acharya, Advocate
For Respondents	:	None

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24.02.2020**

1. The present MCC has been filed seeking restoration of the MAC No. 1533 of 2017. The said miscellaneous appeal got dismissed by way of a peremptory order dated 14.11.2017. The default in the miscellaneous appeal was that of non-deposit of statutory amount, as was required u. section 173 of the Motor Vehicles Act, 1988. As per the act, the appeal has to be accompanied with the memo of receipt the statutory deposit. In the event of non-enclosure of the receipt of deposit or in the event of non-deposit of the statutory deposit, the appeal would not be maintainable.

2. It would be entirely a different case, where if the appeal memo does not accompany the receipt, though the amount stands already deposited but on the contrary the appeal as such would not be maintainable, if statutory deposit has not been made on the date when the appeal was filed. In the instant case, the appeal seems to have been filed on 25.10.2017 and the matter was listed before the Court in default on 14.11.2017, this Court granted them one week time for removing the default. However, the deposit has been made only on 11.12.2017.
3. Given the said facts, the order of dismissal of the appeal as a consequence of the peremptory is not illegal on the expiry of the time granted by this Court of one week vide its order dated 14.11.2017. The restoration of an appeal which has been dismissed by way of a peremptory order would not be sustainable in the instant case or in the facts of the present case for the reason that in the instant case firstly, the appeal memo did not accompany the receipt of the statutory deposit required. Moreover, the amount itself was not deposited at all before the filing of the appeal on 25.10.2017 and was not even deposited within the period granted by this Court vide its order dated 14.11.2017.
4. If the appellants have deposited the amount at a later stage, the only recourse /remedy available to the appellants would be of filing a fresh appeal altogether with an application for condonation of delay explaining the delay caused. The MCC as such would not be maintainable.

5. Given the fact that the appeal itself was not maintainable at the first instance nor was the default cured within the time permitted by this Court, the present MCC stands dismissed. However, it is made clear that the appellants would have the liberty to file a duly constituted appeal with liberty to explain the delay caused therein.
6. The present MCC with the aforesaid observation stands dismissed, subject to the appellants furnishing a photocopy of the impugned order in the original miscellaneous appeal, the Registry is directed to return the certified copy to the appellants.

**Sd/-
(P. Sam Koshy)
Judge**