

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

936 CIVIL APPLICATION NO.6748 OF 2009
IN FA/123/1995

M/S. NEW INDIA ASURANCE CO.LTD.
VERSUS
FAKRI MOHD PATHAN AND ORS.

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Advocate for Applicant : Mr. V. N. Upadhye
Advocate for Respondent No.3 : Mr. S. D. Dhongade
Advocate for Respondent No.4 : Mr. A. S. Kale

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CORAM : SANDIPKUMAR C. MORE, J.
DATED : 11/08/2022.

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P. C. :

In Civil Application No. 6748 of 2009

1. Heard learned counsel for the applicant – Insurance Company as well as learned counsel for respondent Nos.3 & 4, who are the owner and driver of the offending vehicle.
2. By way of this application, the Insurance Company is seeking recall of order dated 04/05/2009, whereby First Appeal No. 123 of 1995 was dismissed in default. In fact, the application for restoration / re-admission of appeal appears to be taken out on very next day of the order of the dismissal. Further, the learned counsel for the applicant-Insurance Company submits that after such restoration of appeal it be treated as heard and be decided on merits even by dispensing with the service of notice to the original claimants.
3. The learned counsel for respondent Nos. 3 & 4, who appears to be contesting parties, also shown their willingness for such submission for deciding the appeal on merit.

4. In view of the same, the application stands allowed and the order dated 04/05/2009 whereby the First Appeal No. 123 of 1995 was dismissed, is hereby recalled and the said appeal stands readmitted at the original stage. No order as to costs.

In First Appeal No. 123 of 1995 :

1. Heard.

2. The learned counsel for the appellant – Insurance Company submitted that the appeal be decided on its own merit and on the basis of available evidence. The learned counsel appearing on behalf of respondent Nos.3 & 4, namely the owner and driver of the offending vehicle also submitted that the learned Tribunal has rightly cast liability upon the appellant- Insurance Company to pay the compensation to the respondent Nos. 1 & 2 claimants. Though the respondent Nos.1 & 2 are served, but they remained absent. Further, the learned counsel for the appellant-Insurance Company also submitted that the entire amount of compensation awarded by the learned Tribunal is already deposited with the Tribunal itself. The learned counsel for the appellant-Insurance Company also submitted that the award is challenged only on the ground that respondent No.4 driver of the offending vehicle was not possessing the driving license. As such, there is no need to call record and proceedings at this juncture. In view of the same, appeal is reserved for order.

(SANDIPKUMAR C. MORE, J.)