

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

APPEAL FROM ORDER NO.99 OF 2015

Sheshrao s/o Vishwambhar Jagtap,
Age : 72 years, occu.: Pensioner,
R/o.: Bhatagali, Tq. Lohara,
District : Osmanabad.

..... APPELLANT

VERSUS

1. Anand s/o Sahebrao Athavale,
Age : Major, Occu.: Driver,
R/o.: T. V. Center, Anand Nagar,
Osmanabad, Tq. & Dist. Osmanabad.
2. Uttam s/o Sambhaji Dodake,
Age : Major, Occu.: Business,
R/o.: Nathnagar, Viveknand Chauk,
Latur, Tq. & Dist. Latur.
3. The New India Assurance Company Ltd.,
Regional Office, Nagpur. RESPONDENTS

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Advocate for Appellant : Mr. Apparao Yenegure
Advocate for Respondent No.2 : Mr. R. P. Adgaonkar
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CORAM : SANDIPKUMAR C. MORE, J.

**RESERVED ON : 29/08/2022
PRONOUNCED ON : 28/09/2022**

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ORDER :

1. The appellant, who is original claimant in M.A.C.P. No.214 of 2004, has filed this appeal for challenging the order dated 28/01/2015 passed by the learned M.A.C.T. Omerga in M.A.C.P.

(RJE) No.8 of 2011, whereby the said learned Tribunal refused the prayer of appellant for restoration of his original claim petition which was dismissed on 27/07/2011.

2. Heard the learned counsel for the appellant as well as the learned counsel for respondent No.2. Respondent No.1, who was driver of the alleged offending vehicle and respondent No.3 - Insurance Company with whom the offending vehicle was allegedly insured with, remained absent despite service.

3. The record shows that the present appellant had filed M.A.C.P. No.214 of 2004 for getting compensation on account of injured sustained by him in vehicular accident. However, on 27/07/2011 the learned Tribunal had dismissed the aforesaid claim petition of the appellant in default. It further appears that the appellant thereafter took out the application bearing M.A.C.P. (RJE) No.8 of 2011 for restoration of his original claim petition. The impugned order dated 28/01/2015 indicates that the learned Tribunal by observing the previous conduct of the appellant, refused to restore his original claim and rejected the said application. However, this court as well as the Hon'ble Apex Court in many cases, has taken a view that restoration applications are to be dealt liberally and the principle of natural justice should not be ignored. In view of this, the learned Tribunal could have considered the application of the appellant liberally and ought to have restored his original claim petition even by imposing certain costs, if it was found that the appellant was negligent. As such, the impugned order, which has denied the appellant a fair

opportunity of hearing, is liable to be set aside. Hence, following order is passed.

O R D E R

- I) The appeal from order is partly allowed and the order dated 28/01/2015 passed by the learned Member of M.A.C.T. Omerga in M.A.C.P. (RJE) No.8 of 2011 is quashed and set aside subject to costs of Rs.5,000/- (Rs. Five thousand) to be paid by the appellant to High Court Legal Services Sub Committee, Aurangabad, within a period of one month from this order.
- II) The original claim petition i.e. M.A.C.P. No. 214 of 2004 of the appellant, shall stand restored to its original stage after deposit of the costs.
- III) The appeal from order is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)