

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

918 CIVIL APPLICATION NO.15864 OF 2010
IN FA/4168/2008

NUTAN GANESH BURSE AND ORS
VERSUS
S ARJUNAN AND ORS

...
Advocate for Applicants : Mr. Palod L.b.
Advocate for respondent No.3 : Mr. A. A. Puranik
...

CORAM : S. G. DIGE, J.
DATE : 22.07.2022

PER COURT :-

Heard learned counsel for the applicant and learned counsel for respondent No.3.

2. Learned counsel for the applicant submits that applicant has challenged the Judgment and award passed in MACP Claim Petition No. 521 of 2004 for enhancement. This Court had issued notice to the respondent. Notice of respondent No.2 returned unserved. As per bailiff report respondent No.2 was not residing on given address. Thereafter applicant took steps against respondent No.2. When learned counsel for the applicant approached the registry to issue notice to respondent No.2 then present learned counsel for the applicant come to know that matter is dismissed, hence without

filing any fresh application, he added two lines under prayer clause that matter be restored. Learned counsel further submits that the applicant is widow and applicant No.2 and 3 are the minor son of deceased if matter is not restored it would cause injustice on the applicant as it was mistake of Advocate.

3. Learned for respondent No.3 submits that appropriate order may be passed.

4. I have heard both the learned counsel. Admittedly matter is dismissed in default for non service of notice on respondent No.2. The learned counsel for the applicant was not aware about the dismissal order and he took steps against respondent No.2. Applicants have filed appeal against the order of learned tribunal for enhancement of amount due to death of Karta of their family. Motor Accident Claim Petition is welfare legislation if dismissal is not restored it would cause injustice on the applicant.

5. It appears from the record that appellant had taken step against respondent, but after passing the order applicant failed to take step. Hence I pass the following order

ORDER

(I) The order passed by this Court dated 22nd March 2010 is

recalled. Matter is restored.

- (ii) Applicant is not entitled for the interest and statutory benefit from 2010 till today.
- (iii) Application is disposed of.

Issue notice to the respondents, returnable on 19.08.2022.

**(S.G. DIGE,)
JUDGE**

ysk