

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.121 OF 2015

BAJAJ ALLIANZ GENERAL
INSURANCE CO.LTD.,
THROUGH ITS SIGNATORY
PRAVIN PRABHAKAR
PRABHU

.... APPELLANT

Versus

RAUJI ULHAS KAKODKAR
AND 2 ORS.

...RESPONDENTS

Mr. Pankaj Shirodkar, Advocate for the Appellant.

Mr. Shailesh Redkar, Advocate for the Respondent No.1.

Ms. Annelise Fernandes, Advocate for Respondent Nos.2 & 3.

CORAM : M. S. SONAK, J.

DATE : 29th APRIL 2022

ORAL ORDER :

1. This is an appeal by the Insurance Company challenging an award made by the Motor Accident Claims Tribunal way back on 02.03.2015.

2. This appeal was admitted on 26.02.2016, even though the Advocate for the appellant was not present.

3. The farad endorsement indicates that until 29.03.2016, no process fees were paid for service upon respondents nos.2 & 3.

The Registrar's order dated 15.12.2016 records that none appeared for the appellant, but still, the Registrar granted three weeks to the appellant to take steps.

4. There is a farad endorsement on 06.02.2017 that no process fees were paid to serve respondents nos.2 & 3. Though there was no appearance on behalf of the appellant, the Registrar, by order dated 09.02.2017, granted two weeks to deposit the requisite process fees. There is a further endorsement on the farad that as of 12.03.2018, no process fees and charges were paid.

5. The matter was taken up before this Court on 23.03.2018, on which date an advocate appeared for the appellant, and at his request, one week was granted to pay the process fees and charges to effect service upon respondents nos.2 & 3. There is further endorsement dated 05.04.2018 on the farad that despite all this, no process fees and charges were paid.

6. The matter was again taken up on 12.04.2018 before the Court, on which date again there was no appearance on behalf of the appellant. Despite all this, the Court granted two weeks as the last chance to pay the postal charges failing which the appeal was to stand dismissed without reference to this Court.

7. On 31.05.2015, there is an endorsement that postal charges are not paid in the farad. On 04.06.2018, there is an endorsement in the farad that since postal charges are not paid, the matter is to be posted before the Court for dismissal. In terms of the order dated 12.04.2018, which was a self-operative order, there was no necessity to place the matter before the Court because the case stood dismissed as against respondents nos.2 & 3. There is an endorsement dated 05.06.2018 about the dismissal of the appeal.

8. There is also an endorsement dated 10.01.2019 referring to Misc. Civil Application No.1073/2018, for restoration, which was to be tagged with the First Appeal.

9. Then, the matter was taken up on 13.09.2019, on which date again the Counsel for the appellant appeared, and directions were issued to pay the process fees/postal charges for service on respondents nos.2 & 3 within one week. Ultimately, on 19.11.2019, it appears that some process fees were paid, and the service was completed.

10. From the above, it is clear that this appellant has taken four years to simply pay the process fees and postal charges so that the service could be completed in this matter. Meanwhile, the

claimants were deprived of the compensation that was awarded to them by the Tribunal. However, Mr. Redkar for the claimants pointed out that a portion of the compensation was permitted to be withdrawn. Nevertheless, the fact remains that only a portion of the compensation was allowed to be withdrawn vide order dated 08.12.2021.

11. Now, today, the Advocate for the appellant states that this appeal cannot be heard because the paper book is not ready. The paper book is not ready because the appellant has again failed to pay the charges for preparing the paper book.

12. In my opinion, this is a gross case where the appellant-Insurance Company has failed to pursue this appeal with the required diligence. The entire objective was to institute this appeal and delay the same so that the execution does not proceed. The Registry also does not put such cases on the cause list on the specious ground that these are unready matters. The Registry must pursue such old cases, and the Registrar must, where no steps are taken despite several opportunities, make orders for dismissal according to rules.

13. Considering how the appellant has conducted themselves in this matter, I think this appeal should be dismissed for non-

prosecution without further adjournment. Accordingly, this appeal is dismissed for non-prosecution.

14. The amounts deposited by the appellant can now be withdrawn by the claimants after submitting proper identification documents and bank details. Registry to facilitate the remission of the payments directly into the bank account of the claimants.

15. At this stage, learned Counsel for the appellant stated that he wanted to submit the private paper book. If the appellant had been serious about this offer, the appellant would have obtained such orders way back in 2015 and complied with such orders. Instead, here is a case where the appellant took four years only to pay the process fees and postal charges so that the service could be completed. This belated offer is not supported by the appellant's conduct thus far. Based on this belated offer, I do not think that I should recall the order now made.

16. The Registry to send the copy of this order to the Head Office of the appellant.

M. S. SONAK, J.