IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2603 OF 2021
(WITHDRAWAL OF AMOUNT)
WITH
INTERIM APPLICATION NO.3560 OF 2021
(FOR RESTORATION)
IN
FIRST APPEAL NO.796 OF 2013

Smt. Jyothsna Satish Rao and Anr. ...Applicants
Vs
National Insurance Co. Ltd. Mumbai ... Respondent

...

Mr. A.B.Gatne for the Appellant and for Respondent in Application.

Mr. Prashant J. Pandit with Mr. Shashikant Gaikwad for Respondent Nos.1 and 2 in IA 2603 of 2022.

CORAM : SANDEEP K. SHINDE J.
DATE : FEBRUARY 18, 2022.

P.C. :

Interim Application 3560 of 2021

Against the award dated 19th July, 2012, passed in Motor Accident Claim Petition No.855 of 2009, the National Insurance Company Limited preferred First Appeal No.796 of 2013. On 21st July, 2014, after hearing appellant and respondent nos.1 to 3 (then claimants), appeal was admitted. The admission order does not mention that learned counsel for respondents had waived service. May be for that reason, Registrar granted four weeks time to pay bhatta charges. Charges were not paid by the appellant, could be for the reason, that at the time of admitting appeal, respondent nos.1 to 3 were heard. Nevertheless, appeal was dismissed in pursuant to self-operative order dated 10th March, 2015 passed by the Registrar (Judl.-II), for non-payment of bhatta charges.

2 In the meanwhile, original claimant nos.1 and 2 moved Interim Application No.2603 of 2021, seeking leave to withdraw the compensation deposited by the Insurance Company and served its' copy on the appellant. Whereafter, appellants had realized, that in view of the, self-operative order, appeal was dismissed. Soon thereafter, appellants moved Interim Application No.3560 of 2021 seeking restoration of appeal with prayer to condone the delay of 6 years 188 days.

3 Heard Mr. Gatne, learned counsel for appellant/applicant and Mr. Prashant Pandit for respondent nos. 1 and 2.

4 Mr. Pandit learned counsel for respondent nos. 1 and 2 vehemently opposed the application contending that no *'sufficient cause'* has been shown for condoning the delay.

5 In consideration of the facts of the case and averments made in the application, in my view, application deserves consideration, reason being appellants' non-payment of charges, was neither deliberate nor intentional. It was genuine mistake. Therefore, application is allowed and made absolute in terms of prayer clauses (A) and (B) subject to cost of Rs.1,000/-, which the appellant shall deposit with the High Court Legal Services and Aid Committee, within two weeks from today.

6 Interim Application is allowed and disposed of.

Interim Application No.2603 of 2021

7 Applicants were the original claimant nos.1 and 2; Claimant No.1 is widow; no.2 is Son and No.3 is father, of the deceased. In pursuant to the award passed in Motor Accident Claims Petition No.855 of 2009, the National Insurance Company Ltd./appellant deposited approximately Rs.51 Lakhs in the Claims Tribunal. The award, apportioned compensation as under;

(i) 50% to the Widow(Respondent No.1);

(ii) 30% to the son (Respondent No.2);

(iii) 20% to the father (Respondent No.3).

8 Pending appeal, respondent nos.1 and 2 withdrew Rs.16 Lakhs; whereas respondent no.3 withdrew Rs.3 Lakhs. As per the order of apportionment, respondent nos.1 and 2 together, shall withdraw Rs.20 Lakhs, without security, and remaining amount shall be invested in the name of Respondent Nos.1 and 2 in proportion of apportionment, in the fixed deposit account of any nationalised bank initially for a period of two years to be renewed, pending appeal.

9 Interim Application No.2603 of 2021 is allowed and disposed of in aforesaid terms.

(SANDEEP K. SHINDE, J.)