

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4117 OF 2020 IN
FIRST APPEAL NO. 1123 OF 2011

Kalpana Vijay Bachchhav & others

Applicants

Versus

Eknath Baburao Auchite & others

Respondents

Mrs. N. R. Suryawanshi, Advocate for the applicants.

CORAM : R. M. JOSHI, J.

DATE : 15th FEBRUARY, 2023.

PER COURT :

1. Applicants are the claimants in First Appeal No. 1123/2021 which was filed against the judgment and award dated 5th December, 2006 passed in MACP No. 507/2000. By order dated 26th April, 2011, the appeal came to be admitted. However, for want of providing copies and non-removal of office objections, the appeal was dismissed by order dated 11th October, 2011, passed by the Registrar.

2. Learned counsel for the applicants submits that notices were not issued to the original respondents and therefore, without issuance of notice of this application to them, the appeal can be restored at the stage of its dismissal. She further submitted that the

earlier advocate representing the appellants failed to take steps which has resulted in dismissal of the appeal. It is further submitted that the delay caused in filing the application for restoration of appeal is not deliberate.

3. The first appeal arises out of the proceedings under the Motor Vehicles Act. The claimants have right to seek just compensation. The appeal came to be dismissed for want of appropriate action on the part of the advocate representing the appellants. The appellants cannot be denied right of just compensation on technicalities. Learned counsel for applicants makes statement that necessary compliance would be done within a period of two weeks. Statement is accepted.

4. In view of the above, delay caused in preferring the application stands condoned. Order dated 11th October, 2011, passed by the Registrar dismissing the appeal for want of prosecution is quashed and set aside. Appeal be restored at the stage of its dismissal. In case of non-compliance within a period of two weeks, the appeal shall stand dismissed without further reference to the

Court. Applicants shall not be entitled to any interest on the enhanced compensation granted, if any, for the period of 3024 days.

5. Civil application stands disposed of.

(R. M. JOSHI)
Judge

dyb