



Received on : 11/06/2024
Registered on : 11/06/2024
Decided on : 13/03/2026
Duration : 01Y, 09M, 02D.

**BEFORE DHIRAJ P. KALE, COMMISSIONER THE UNDER
EMPLOYEES' COMPENSATION ACT AND JUDGE,
FIRST LABOUR COURT, THANE.**

**MISC. RESTORATION A(ECA) NO. 222/I-50/2024
IN
APPLICATION (ECA) NO. 243/C-61/2011**

1. **Smt. Sushila Harikeshkumar Gaud,**
(Widow of deceased, Age 40 years)

2. **Kum. Khushboo Harikeshkumar Gaud,**
(Daughter of deceased, Age 18 years)
R/at :- Village Kishundaspur, Post – Kadipur,
Dist. Pratapgadh, State- Uttar Pradesh. .. Applicants

V/s.

Mr. Shahensha Hussain Sayyed,
At Post – Jasai, Tal – Uran,
Navi Mumbai. .. Opp. No.1

And

The New India Assurance Co. Limited,
At : Opp. Pinak Galaxy, Lake Mall,
Ghodbunder Road, Kapurbawdi Junction,
Thane (W). .. Opp. No.2/
Insurer

In the matter of application for restoration.

Appearances : Ld. Advocate V. D. Gupta, for Applicants.
Ld. Advocate A. A. Shukla for Opp. No.1.
Ld. Advocate D. S. Dwivedi, for Opp. No.2.

JUDGMENT

(Passed on : 13/03/2026)

1. The present application filed for restoration of the original claim A(ECA)No.243/C-61/2011, by the legal heirs of the deceased Harikeshkumar Gaud i.e. original applicant, who died on 20/08/2011 at his native place. It is contended that, the deceased died due to the employment injury during the course of his employment and out of employment. Due to the injuries he was admitted and was taking treatment at Global Bharuch Hospital, Bharuch, Gujarat from 06/09/2010 and OPD treatment after that. Thereafter, the deceased went to his native place as no any family member available to take care of him. The deceased had filed application for compensation and thereafter he went to his native place and started taking treatment for his employment injuries. Due to the disability the deceased was not in position to continue his employment and while taking treatment he died at his native place. The death occurred due to the employment injury. The original claim application filed by the deceased was pending before the court. Since the deceased died and there was no contact with the advocate on record, no steps were taken by the advocate, hence the claim application dismissed in default on 21/12/2013. Therefore, the present applicants prayed for restoring the matter and bringing legal heirs of the original applicant on record.

2. The opponent no.1 appeared through advocate and filed pursis at Exh.C-1.

3. The opponent no.2 insurance company has filed its reply at Exh.C-4 and objected the application. It is contended that, no steps taken by the applicants to bring themselves on record as legal heirs of the deceased Harikeshkumar Gaud within 90 days of the death of the deceased. Therefore the original claim application stands abated due to death of the original applicant who died on 20/08/2011, hence original claim application cannot be restored. It is contended that, due to operation of Section 306 of the Indian Succession Act, the present application for restoration and for bringing legal heirs on record is not maintainable.

4. It is contended that, there is no nexus between accidental injuries sustained by the deceased Harikeshkumar. The accident occurred on 06/09/2010, whereas the deceased Harikeshkumar expired on 20/08/2011 i.e. after more than 11 months. The present restoration application is filed on 12/06/2024 and there is considerable period of more than 10 years and 5 months has been passed since the original claim application dismissed for default. Hence, there is no sufficient shown for restoration of the application. Hence, prayed to reject the application.

5. Heard Ld. Advocates for both the parties. From perusal of the documents on record and arguments advanced, following points arose for my determination to which I have recorded reasons as under :-

POINTS

FINDINGS

| | | | |
|----|---|---|---------------------|
| 1. | Whether applicants have shown good and sufficient cause for restoration of the original A(ECA)No.243/C-61/2011? | : | In the Affirmative. |
| 2. | What order? | : | As per final order. |

REASONS

POINT NO.1 AND 2 -

6. By way of present application the applicants have claimed for restoration of the original Application (ECA) No. 243/C-61/2011. It is contended that, since the deceased Harikeshkumar died due to the employment injuries while taking treatment at his native place and there was no contact with the advocate on record, no steps were taken by the advocate, hence the claim application dismissed in default on 21/12/2013. The insurance company has objected for the application on account of lack of any sufficient cause.

7. In the present matter the applicants had also preferred application for condonation of delay bearing No.113/I-40/2019. The said application is allowed by order dtd.02/12/2023. Thereafter the present restoration application is filed. The applicant no.1 Sushila filed her evidence affidavit at Exh.UW-1. She was duly cross examined by the Ld. Advocate for the opponent no.2. This is a social and welfare legislation. If the application is rejected, it will cause great prejudice to the applicants as compared to the opponents, because they will have opportunity to defend the

case on merits. The applicants should not suffer for lack of communication with his Advocate.

8. Considering the facts and circumstances of the case, there are good and sufficient reasons to restore the matter. Therefore, I come to the conclusion that the present application is allowed. Hence I answer the point no.1 in the affirmative and in answer to point no.2 I pass the following order -

ORDER

1. The application is allowed.
2. The original Application(ECA)No.243/C-61/2011 is restored to its original file.
3. Office is directed to restore the original Application (ECA)No.243/C-61/2011 to its original file.
4. Applicants are permitted to proceed with matter being legal heirs of deceased Harikeshkumar Gaud.

Place : Thane

Date : 13/03/2026

Ast/-

(Dhiraj P. Kale)

Commissioner under the Employees'
Compensation Act & Judge,
First Labour Court, Thane.