

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.457 of 2012**

1. Jai Prakash Gupta, Son of late Ram Lakhan Sah.

2. Mamta Devi, Wife of Jai Prakash Gupta.

Both are resident of Village-Karmauni (Bhalua), P.O.-Sahdeokhap, P.S.-Dobhi (Sherghati), District-Gaya.

.....Applicants/Appellants

Versus

1. The New India Assurance Co-Ltd., Dak Bangla Road, in front of Civil Lines Police Station, District-Gaya.

2. Md. Baidul, Son of late Abdul Rasid @ late Md. Abdul Rasid near-Kharsia Naka, Ambikapur, Surguja, Chhattisgarh.

.....Opposite Parties/Respondents

**Appearance :**

For the Appellants : Mr. Birendra Kumar, Advocate

For the Respondent No. 1 : Mr. Bimlesh Kumar Jha, Advocate

Mr. Sanjay Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA**

**ORAL JUDGMENT**

**Date: 30-01-2015**

This file is placed under the heading “**For Hearing Under Order XLI Rule 11 CPC**”.

**Interlocutory Application No. 6258 of 2012**

Heard the parties.

**2.** This is an appeal preferred against the judgment dated 21<sup>st</sup> January, 2011 and award signed on 5<sup>th</sup> September, 2011 in Claim Case No. 20 of 2010 / 63 of 2008 by Sri Rudra Prakash

Mishra, Motor Accident Claim Tribunal-Cum-Additional District Judge - IV, Gaya.

3. As is evident from the judgment, it is undisputed that the claim application was preferred seeking compensation of Rs. 1,50,000/- against death of one Sonam Kumari, aged about 8 years, daughter of the applicants-appellants, wherein, finally a sum of Rs. 1,54,500/- was awarded with interest @ 6% from the date of filing of the claim application till realization. It is also undisputed that said award has already been satisfied.

4. The appellants have preferred this appeal for enhancement and by filing interlocutory application seeking condonation of the delay it is stated in paragraph no. 6 of the interlocutory application that the delay of 7 (seven) months and 13 (thirteen) days caused be condoned on the ground mentioned in paragraph no.-4 of the same that the appellant no. 1, namely, Jai Prakash Gupta, had been suffering from Jaundice and liver problems from September, 2011 to June, 2012 causing the delay in preferring the appeal which has been preferred on 18<sup>th</sup> July, 2012.

5. The record indicates that against the judgment dated 21<sup>st</sup> January, 2011, an application seeking certified copy was filed on 12<sup>th</sup> December, 2011, i.e., roughly after 11 (eleven) months.

In the meantime, the award was signed on 15<sup>th</sup> September, 2011, but an application for certified copy was filed on 12<sup>th</sup> December, 2011; consequently, copies of the judgment and award filed were ready and may available to the appellants on 19<sup>th</sup> January, 2012 and roughly 6 (six) months, thereafter, this present appeal has been preferred on 18<sup>th</sup> July, 2012.

6. The appellants could also have preferred the appeal even without copy of the award subject to eventualities as laid down under **Order XX Rule 6-A C.P.C.**, which reads as such:-

“**6-A. Preparation of decree.**—(1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the Court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.”

7. The facts indicated above clearly shows that the appeal has been preferred causing delay of about 17 (seventeen) months, not 7 (seven) months and 13 (thirteen) days for which an attempt is made to explain the delay by subsequently filing interlocutory

application on 17<sup>th</sup> September, 2012, which ought to have been filed as per the provisions contemplated under **Order XLI Rule 3-A C.P.C.**

**8.** The provision as contemplated under **Order XX Rule 7** indicating the date of decree/award is date of judgment and the procedure prescribed for computation of limitation in **PART III of the Limitation Act under Section 12**, which reads as such:-

**PART III**

**COMPUTATION OF PERIOD OF LIMITATION**

**“12. Exclusion of time in legal proceedings.—**

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment 2[\*\*\*] shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

**Explanation.**— In computing under this section the time requisite for obtaining a copy of a decree or any order, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.”

appears has not been taken into consideration while filing present interlocutory application which lacks explanation as required for condonation if at all the appellants deserves.

**9.** Accordingly, finding no merit, the interlocutory application is hereby dismissed; consequently, the appeal.

**(Akhilesh Chandra, J)**

Praveen-II/-

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