

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.193 of 2007

=====

The Oriental Insurance Company Ltd., Patna - 800001.

.....Appellant

Versus

1. Indu Devi, Wife of Late Premchand Tiwari
2. Bablu Kumar Tiwari, aged about 17 years.
3. Kajal Kumar, aged about 15 years.
4. Mithu Kumar Tiwari, aged about 13 years.

(Petitioner no. 3 is the minor daughter and Petitioner no. 2 is the minor son of the deceased Premchand Tiwari represented through Petitioner no. 1, Mother and natural guardian - Indu Devi).

(All are resident of Village - Tiwary, Kharaya, P.O. - Karnatghi Basar,, P.S. - Gopalganj, District - Gopalganj).

.....Claimants.....Respondent 1st Set

5. Tarkeshwar Pd. Singh, Son of A.K. Singh, Biharisao Lane, Muradpur, P.S. - Pirbahore, District - Patna. (Owner of Bus, bearing no. - BPI - 5211)

.....Opposite Party No. 1

6. Hiranman Pd. Gupta, Son of Hari Narain Pd. Gupta, resident of Bhabhui Pokhar, Barrara (UP), At present - at Chhas, P.S. and District - Dhanbad.

.....Respondent 2nd Set

=====

Appearance :

For the Appellant : Mrs. Seema, Advocate

For the Respondent : None

=====

CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 04-02-2015

This file is placed under the heading “For Orders (On Office Notes)”.

Interlocutory Application No. 5494 of 2008

2. Heard learned counsel appearing on behalf of the appellant.

3. This appeal has been preferred against order dated 31st January, 2007 passed by Sri Munni Lal Paswan, 12th Additional District Judge-Cum-Claim Tribunal, Patna in Claim Case No. 50/95 under Section 140 of the M.V. Act.

4. This appeal has been filed on 28th May, 2007 but knowing fully well it is preferred beyond prescribed period of limitation, no care was taken of the provisions as stand contemplated under Order **XLI Rule 3-A C.P.C.**, which reads as such:-

[3-A. Application for condonation of delay.]-(1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule(1), the Court shall not make an order

for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.]

5. The interlocutory application seeking condonation was filed only on 8th September, 2008 without any explanation for such delay. Accordingly, finding no merit, the interlocutory application stands dismissed; consequently, the appeal.

6. However, since the order impugned is related with ad interim compensation, the appellant's right to agitate the issue of contributory negligence or any other point shall not be treated taken away.

(Akhilesh Chandra, J)

Praveen-II/-

U			
---	--	--	--