

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19455 of 2012

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Most. Raj Kumari Devi Wife Of Late Sriman Narayan @ Sri Kant Kumar Sharma
Resident Of Village - Jalaha, P.O. And P.S. - Surajpura, District - Rohtas

.... Petitioner

Versus

1. Narendra Prasad Rai Son Of Bans Narayan Rai Resident Of Bihiya, P.S. - Bihiya, P.O. - Bihiya, District - Bhojpur
2. Branch Manager, Oriental Insurance Company Limited, Branch Office, Ara, Bhojpur
3. Bhrigunath Prasad Son Of Bhola Prasad Driver Resident Of Village - Teghra, P.S. - Bihiya, District - Bhojpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mohit Shrivastava, Advocate
Mr. Vijay Kumar, Advocate

For the Respondent/s : Mr. Rajiva Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 19-04-2018

This application has been filed for setting aside the order dated 23.06.2012 passed by Ist Additional District Judge, Bhojpur at Ara in Miscellaneous Case No.05 of 2012. The learned court below refused to restore the Motor Vehicle Case No.41 of 2008 which was dismissed for default.

2. Heard learned counsel for the petitioner and the respondents.

3. It appears that the petitioner filed a Motor Vehicle Accident Claim Case No.41 of 2008 for compensation to the tune of Rs.7,00000/- from the respondents for the accidental death of her



husband. The said case was dismissed in default on 11.03.2011. The petitioner filed Miscellaneous Case No.06 of 2011 which after hearing was allowed and the claim case was restored to its original file on 02.06.2011. This case was again dismissed on 04.12.2012. The petitioner filed Miscellaneous Case No.05 of 2012 along with petition under Section 5 of the Limitation Act for restoration of said claim case which after hearing was dismissed.

4. It has been submitted that the petitioner is widow of deceased and there was no other family member to look after the case. After the death of her husband, she used to run her house as well as was looking after the case but she suddenly fell ill and during her illness, the claim case was dismissed. The petitioner got knowledge about dismissal of case on 01.05.2012 and thereafter filed a petition under Order IX rule 9 read with Section 151 of the CPC on 08.05.2012 for restoration of the claim case. The petitioner had enclosed medical certificate in support of her case. The court below dismissed the case observing that the said medical prescription does not clarify as to during which period she was ill and what medicines were prescribed for her treatment and further that the applicant has not disclosed about the step taken by her to get information regarding her case.

5. Be that as it may, it appears that the petitioner being



sole applicant was prevented to appear before the court on account of her prolonged illness. She filed prescription in support of her illness but the court below disbelieved the said prescription observing that the same did not contain the details of her disease with exact period of her illness and the medical prescriptions were purposely filed only for restoration of the suit.

6. This observation is against the materials on record and so it is not sustainable. In view of above discussions, the impugned order is set aside and this miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
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