

Received on : 15/09/2023

Registered on : 15/09/2023

Decided on : 13/08/2026

Duration : 2Y 10M 29D

IN THE COURT OF 3RD ADDITIONAL SESSIONS JUDGE
(MACT), AT RAJKOT.

MACMA NO.277/2023

PETITIONER : Sandhyaben Kishanbhai Badal,
Residing at: Sidhhi Vinayak Society,
Didoli, Surat.

V E R S U S

RESPONDENTS : (1) Shailesh Jayantilal Dalsaniya,
Residing at: Ramkrishna Nagar,
Navapar-Pansar Road Corner,
Mu. Wankaner, Dist-Morbi.
(2) Reliance General Insurance Co. Ltd.,
Adds: Business Empire, 3rd Floor,
Gymkhana Road, Rajkot.
(3) Bijalbhai Raghubhai Madani
Adds.159, Mandani Ambabhai Vadi,
Mu. Thikariyala, Ta. Wankaner,
District -Morbi.

Appearance:

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Mr. Shyam J. Gohil, Learned Advocate for the petitioner.

None Appears for the respondent no.1.

Mr. M. H. Parmar , Learned Advocate for the respondent no.2

Mr.V. A. Dafda, Learned Advocate for the respondent no.3.

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**AN APPLICATION FOR CONDONATION OF DELAY UNDER
SECTION 5 OF THE LIMITATION ACT.**

:: J U D G M E N T ::

- 1.** The claimant has come up with the present application to condone the delay of 12 days in filing the motor accident claim petition.
- 2.** The brief facts of the present application is that the claimant has sustained serious injuries due to the accident. Further stated that from recovering the said injuries it took measurable time and he was also in pain and shock he could not file the claim petition within the prescribed time limit. Further stated that the applicant is an illiterate person and having no knowledge regarding the Motor vehicles act and due to all these reasons he could not file the claim petition within time limit and therefore, prayed to condone the delay of 12 days.
- 3.** The summons were issued to the Opponents. The opponent no.1 has not appeared despite repeated summons issued. The Opponent no.2 and 3 has appeared through duly instructed Advocate.
- 4.** The learned Advocate appearing for the Opponent no.2 has filed written statement vide Exh.9 wherein he denied almost all the facts of petition *in toto*. The learned Advocates has strongly submitted that the accident is occurred on 03/03/2023 and the present claimant has filed Petition on 15/09/2023. Further stated that as per the new amendment in Motor Vehicle Act, 2022 under Section 166(3) it is specifically mentioned that "No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident" and nothing has been mentioned in this section about what should be done if this period

expires ? The learned Advocate stated that this application is pending before a Tribunal not in a Court and the present claim petition is a special case and therefore, the provisions of Limitation Act will not be applicable on this petition consequently stated that this Tribunal has no power to exercise such types of application and therefore, such types of application must be dismissed at its prima facie stage. The learned Advocate has also relied upon the various judgments of Hon'ble Higher Courts which are taken into consideration at the relevant stage.

- 5.** The learned Advocate for opponent no.3 has filed a pursish vide Exh.10 wherein he has relied upon the objection of the opponent no.2 and not filed any further objection regards to the present delay petition.
- 6.** This court has heard the oral submissions of the learned Advocate for both the parties and examined the ground of this delay condonation petition and the relevant records and written objection filed vide Exh.9 from the side of respondent no.2.
- 7.** It appears that the claimant has sustained injuries in a motor vehicular accident dated 03/03/2023 and due to shock and suffering the Claim petition could not be filed within the time. After recovering from the injuries the claimant approached his duly instructed Advocate to file Motor Vehicle Accident Petition beyond the period of six months i.e. on 15/09/2023 as the limitation expires on 03/09/2023 and thus there was a delay of almost 12 days in filing the claim, hence, the claimant has filed the present petition to condone the delay of the 12 days in filing the appeal.

8. On the contrary the learned Advocate has referred Section 166(3) of the Motor Vehicles Act which reads thus;

"(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident."

9. Relying upon the above provisions the learned Advocate for the insurance company has stated that as the present motor vehicle accident petition is filed beyond the limitation period and as the Motor Vehicles Act is a Special Act, this Tribunal is not entitled to try the present application under Section 5 of the Limitation Act consequently prayed to reject the present application. In support of such submissions the learned Advocate has referred the various judgments of the Hon'ble Higher Courts which has been taken into consideration.

10. Having heard the submissions advanced on behalf of both the parties main controversy between them is that whether the claimant can file the motor vehicular accident petition beyond the period of six months from the date of occurrence of the accident or not? This question has also been raised in the various cases before the Hon'ble High Courts also.

11. It is judicious to refer one of such case in which the **Hon'ble Gujarat High Court in the case of Bazaz Allianz General Insurance Co. Ltd. Versus Virsinh Muljibhai Khadiya & Ors.** has observed as under;

"29.Perusal of all above provisions as well as binding precedent manifestly makes it clear that police officer who is registering the information of the road accident is duty bound to send the copy of the same to the jurisdictional claim tribunal as also to the insurer. Central Motor Vehicle Rules makes it abundantly clear and make it obligatory upon the police officer to file various reports with claim tribunal. Section 149 as introduced by the amendment in the Motor Vehicle Act

provides for settlement by Insurance Company and also laid down procedure therefor. This could be taken up to reduce the time period of deciding the claim petition. The wording of Section 149 mandates upon the Insurance Company to offer compensation amount to the claimant upon receiving information of the accident either from the claimant or through accident information report or otherwise. The claimant is not required to make claim for getting the compensation under Section 149. Section 149(2)(b) statutorily makes it incumbent upon the claim tribunal to adjudicate such claim on merits in case where offer made by the Insurance Company has been rejected after fixing date. Section 159 which is introduced by way of amendment in the Motor Vehicle Act being *pari materia* to Section 158(6) of Motor Vehicle Act, 1988 makes it obligatory for the police officer to send the accident information report for settlement of the claim. Section 164, again newly introduced provision permits the claimant to make claim without pleading fault or negligence. Noticeably, it does not specify any time limit to make claim petition. Section 166(4) mandates that the claim tribunal shall treat any report of accidental information forwarded to it under Section 159 as application for compensation under the Motor Vehicle Act .

30. In backdrop of above, let refer to statement of object and reason of amending Motor Vehicle Act, 1988 which reads as under :

"STATEMENT OF OBJECTS AND REASONS

The Motor Vehicles Act, 1988 (the Act), was enacted with a view to consolidate and the laws relating to motor vehicles. The Act was enacted to give effect to the suggestions made by the Supreme court in *M.K. Kunhimohammed vs P. A. Ahmedkutty* (1987) 4 SCC 284.

2. The Act was amended several times to adapt to the technological upgradation emerging in road transport, passenger and freight movement and in motor vehicle management. With rapidly increasing motorisation, India is facing an increasing burden of road traffic injuries and fatalities. The emotional and social trauma caused to the family which loses its bread winner, cannot be quantified. India is signatory to the Brasilia Declaration and is committed to reduce the number of road accident fatality by fifty per cent. by

the year 2020. The road transport sector also plays a major role in the economy of the country.

3. Numerous representations and recommendations in the form of grievances and suggestions from various stakeholders have been received in the Ministry, citing cases of increase in road accidents, delay in issue of driving licences, the disregard of traffic rules and regulations, etc. Therefore, in order to improve road safety and transport system, certain amendments are required to be made in the Motor Vehicles Act, 1988 to address safety and efficiency issues in the transport sector.

In view of the above, it has become necessary to amend certain provisions of the said Act. The proposed Motor Vehicles (Amendment) Bill, 2019 seeks to address the issues relating to road safety, citizen facilitation, strengthening public transport, automation and computerisation. 5. The Motor Vehicles (Amendment) Bill, 2019, inter alia, provides for the following, namely :-

- (a) to facilitate grant of online learning licence;
- (b) to replace the existing provisions of insurance with simplified provisions in order to provide expeditious help to accident victims and their families;
- (c) to increase the time limit for renewal of driving licence from one month to one year before and after the expiry date;
- (d) to increase the period for renewal of transport licence from three years to five years;
- (e) to enable the licensing authority to grant licence even to the differently abled persons;
- (f) to enable the States to promote public transport, rural transport and last mile connectivity by relaxing any of the provisions of the Act pertaining to permits;
- (g) to increase the fines and penalties for violation of provisions of the Act; and
- (h) to make a provision for protection of Good Samaritans.

6. The Notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives."

31. Bill No.154 of 2019 was introduced to Lok Sabha on 15.07.2019 to amend the Motor Vehicle Act, 1988 with aforesaid statement of object and reasons. It also contains notes on clauses. Clause 53 which seeks amendment in Section 166 of the Motor Vehicle Act, 1988 and to introduce Section

166(3), requires to be referred as under :

"Clause 53 seeks to amend section 166 of the Act to ensure that a claim for compensation does not abate on the death of the claimant and may be continued by his legal representatives and that the application has to be made within six months from the date of occurrence of the accident.

32. As per notes on clauses, Clause 53, Section 166(3) was introduced to ensure that claim for compensation does not abate on the death of the claimant and may be continued by his legal representatives and that the application is to be made within six months from the date of occurrence of the accident.

33. The amendment in Motor Vehicle Act introduced Section 164. The victim of the road accident has two options to seek claim, one under Section 164 and another under Section 166. Interestingly, the Legislature has not put any fetter of limitation in claiming compensation under Section 164 of the Motor Vehicle Act. The intention of the Legislature has to be also considered while interpreting Section 166(3) of the Motor Vehicle Act. Had the legislation intended to introduce limitation in making claim petition, both the enabling provisions viz. Section 164 and Section 166 would have had a fetter of limitation. There cannot be any discrimination in same law for two provisions claiming compensation or permitting victim of the road accident to claim the compensation.

34. In view of the above and reading all provisions together harmoniously then it is no more right of the accident victim to make claim petition under Section 166 but it is bloomed and bestowed in full fledged duty on the part of the police machinery as well as on the part of the Insurance Company to settle the compensation amount on receiving various reports namely FIR as well as first accident report, interim accident report and detailed accident report. In the circumstances, the claim petition filed by the claimant under Section 166 is in addition to statutory duty of the police machinery or Insurance Company who has not settled the claim on receipt of the information cannot be treated as claim petition made beyond time period. Probably aforesaid provisions are amended in the Motor Vehicle Act to ensure that helpless victim of the motor

accident need not to be dependent on filing claim petition in a Court for the purpose of getting just, fair and adequate compensation. The proceeding to grant just, fair and adequate compensation starts on the basis of report filed by the police authority as per Section 159. Duty is upon the Insurance Company to offer just, fair and adequate compensation to the victim of the road accident on receipt of the information as per Section 149 of the Motor Vehicle Act and if such offer is rejected, duty is upon claim tribunal to adjudicate such claim on merits. In effect the petition under Section 166 is mnemonic to the learned Tribunal when police has already filed the various report containing all the requisite details and therefore it has to take up said report as claim petition and to tag it with the petition filed under Section 166 of the Motor Vehicle Act and to proceed further for adjudicating the claim petition.

35. Learned advocate appearing for the Insurance Company is not in position to submit that police authority has not followed the procedure laid down in Section 159 or under the Central Motor Vehicle Rules, 2022 and has not filed/forwarded various reports which they are required to file. Even the Insurance Company did not bring on record anything that what they have done to settle the claim as per Section 149, for which they are statutorily bound to do and to offer just, fair and adequate compensation. Thus, in view of aforesaid discussion, it is crystal clear that in case where any request is made and assessable by the tribunal to adjudicate the claim petition in addition to procedure laid down in Section 149, Section 159 reading with Section 166(4) of the Motor Vehicle Act, question of six months limitation would not arise. The question of six months limitation will arise only in case where no FIR has been registered by the police and no report has been sent or uploaded.

36. The upshot of the discussion is that on registration of the FIR, the claimant is entitled to make petition without fear of being thrown out on the ground of limitation. This could be the reading, more particularly when FIR is registered within six months from the date of the road accident.

37. Another aspect which could be noticed that learned advocate appearing for the Insurance Company has failed to

point out that by amending Section 166, Legislature has excluded the operation of Limitation Act, 1963. Learned advocate appearing for the Insurance Company argued that since limitation has been specified in the special law being Motor Vehicle Act, the general law being Limitation Act would not be operative. To exclude operation of the Limitation Act, 1963, there must exist a specific exclusion clause, in view of Section 29(2) of the Limitation Act. Notably, in amended Act the Legislature has not put any clause for relaxing the time limit specified in Section 166(3). In absence of clause permitting Court to relax time stated in Section 166(3), it would be incorrect to say that provisions of the Limitation Act are not applicable.

38. In case on hand deceased Kamlaben Khadiya lost her life from the road accident. She is survived by his legal heirs and representatives. Amongst them two are minor children. Section 6 and 7 of the Limitation Act for legal disability also applies in case on hand. Since one of the several persons being the claimant suffered from legal disability, they can file claim petition within same time limit after the disablement is ceased.

39. In discussion of above, I find that present petition has no merit and it deserves to be dismissed. Accordingly, this petition stands dismissed. Rule is discharged."

11. So far as condonation of delay is concerned in one judgment of **Hon'ble High Court of Kerala at Ernakulam in MAC Nos.6, 8, 11, 12, 13, 15, 17 of 2023(connected cases)**, in which the petitioners have filed the claim petition beyond the period of six months after the expiry of limitation period and there was a delay of almost three days and upon which the Hon'ble High Court of Kerala at Ernakulam has set aside all the previous impugned orders and had held that,

"the provisions of the Limitation Act would be applicable for entertaining the petitions for claiming the compensation even beyond the period of six months, for, by taking into consideration, Rule 17 of Annexure

XIII framed under Rule 150A of the Central Motor Vehicles Rules, 1989, the limitation to entertain the claim petition cannot be restricted to six months as there is no provision in the Act excluding the applicability of provisions of Section 29(2) of the Limitation Act. In other words, it is held that the claim petitions, if filed beyond the period of six months cannot be dismissed in limine."

12. It is further directed by the **Hon'ble High Court of Kerala at Ernakulam**, that all the MACT's are directed to entertain the petition and decide the same, in accordance with law and Registry is directed to circulate the copy of the judgment to all the MACT's to entertain and try the petitions under the Motor Vehicles Act in view of the observations aforementioned.

13. Now, keeping in mind the ratio laid down by the **Hon'ble High Court of Kerala at Ernakulam** in the year 2023 that while deciding the delay condonation applications, the applicant should be given a chance to file litigation and it should be decided in its own merits and therefore the present delay condonation application of the applicant deserves to be accepted and therefore, the delay of 17 days that has been caused in filing the claim petition under Section 166 of Motor Vehicles Act is hereby condoned and considering the same, I pass the following order judiciously.

:: ORDER ::

1. The present delay condonation application is hereby allowed and the delay of 12 days caused in filing the Motor Vehicle Accident

Petition is hereby condoned.

- 2.** The Registry is hereby directed to register the Motor Accident Claim Petition of the petitioner as per rules.
- 3.** No order as to costs.

Pronounced in open Court today at Rajkot on this **13th day of August, 2026.**

Date :- 13/08/2026

Place:- Rajkot.

V.V.Pandey

[I. B. Pathan]
Chairman, MACT &
3rd Addl. Sessions Judge, Rajkot.
Code No. GJ 00 614.