

ORDERS

Respondent No.1 Insurance Company has filed this application seeking rejection of plaint under Order VII Rule 11(d) CPC, stating that the petition is barred by the law.

2. Respondent No.1 says that the present petition has been filed claiming compensation for the injuries sustained in the accident involving

auto rickshaw bearing No. KA-42-A-9880. The accident said to have occurred on 10.04.2021 at 6.10pm. Whereas the claim petition is filed on 11.10.2022. The insurance company claims that the petition is barred by limitation in view of amended provision to Section 166 under Motor Vehicles(Amendment) Act, 2019 with effect from 14/01/2022. According to the new provision, the petition should have been filed within 6 months from the date of accident whereas the present petition is filed after lapse of one and a half year and hence the petition is not at all maintainable under section 166(3) of MV Act and hence it is requested to reject the petition as it is barred by law.

3. The Petitioner has filed objection and contended that the amendment Act came into force only from 01/04/2022. The applicability of the amended act is prospective in nature and not retrospective. It is said that the limitation period of 6 months would apply to the accident occurred on or after 01/04/2022 and not to the accident occurred before that date. The cause of action for the present petition arose on 10/04/2021 and the Act came into force only on 01/04/2022. Under these circumstances Petitioner says that the above application is liable to be dismissed.

4. Heard both parties on the application.

5. The contention of the respondent insurance

company is that the petition is not maintainable in view of the amended act and the petition should have been filed within 6 months from the date of accident. The amendment act says that the limitation is with effect from 1st April 2022. As rightly argued by the Petitioner, the provision has prospective effect and not retrospective. Counsel for the petitioner has relied on judgement of Hon'ble High Court of Kerala at ernakulam reported in 2022 4 KLT 286 and Argued that The amendment act and the limitation applicable to the accident occurred on and from 142022. The relevant para of the set judgement is as under.

10. Since while introducing the Act of 2019 effective from 1.4.2022, Legislature did not cause any amendment in the Repealing and savings clause specifying its applicability in respect of The accidents occurred prior to the introduction of the amendment.

11. In view of the provisions of Section 6 and the observations of the Supreme Court in the judgment in State of Punjab and others v. Bhajan Kaur and others (supra), I am of the view that the Applicability of the Act i.e., introduction of the old provisions of subsection (3) of Section 166, would have a prospective effect and the Limitation period of six months would apply after introduction of the Amendment i.e., post 1st April 2022. In other words, in any Accident occurred after 1.4.2022, provisions of the amendment Caused in the Act prescribing the limitation to entertain a claim

12. Petition, the parties would be governed by the same but not in respect of the persons whom a right had already

accrued and was Available if the amendment had not been caused.

6. It is clear that the provision of the Amendment Act came into force only on 01/04/2022 and the provision is applicable only to the accident occurred on or after 01/04/2022. The present petition is filed for the compensation for the injuries sustained in the accident occurred on 10/04/2021 which is much earlier to the Amendment Act came into force. The amendment Act always applicable prospectively unless expressed otherwise. In view of the above, the application filed by the Respondent No.1 cannot be considered. The petition is maintainable and the provision Order VII Rule 11(d) is not applicable to the present Petition. Hence, following order is made:

ORDER

This IA filed under order VII Rule 11(d) CPC by the 1st Respondent is rejected.

No order as to costs.

For Steps to R.3

Call on 15.03.2023

II Addl.Judge,
Bengaluru.