

IN THE COURT OF II ADDL.SENIOR CIVIL JUDGE & Addl.

MACT-V, AT CHITRADURGA

DATED THIS THE 8th DAY OF JANUARY, 2024

Present: Smt.Ujwala Veeranna Siddannavar, B.Sc., LL.M.,
II Addl.Senior Civil Judge & Addl. MACT-V,
Chitradurga.

MVC.642/2023

Petitioner : Sri.Mahesh.R.O
S/o Obanna
Aged about 48 years,
Clerk in Uma Maheshwari & Company,
R/o. Lakshmisagara Village,
Chitradurga Taluk-577541.

(By Sri.G.M.P Advocate)

V/S.,

Respondents : 1.The Manager/Incharge Office
Mahindra and Mahindra Limited,
Owner of Mahindra Pickup
bearing No.MH-47/TC-117/349,
Automotive Division,
Akurli Road, Kandivali (East),
Mumbai City – 400101.

2. The Branch Manager,
ICICI Lombard General
Insurance Co Ltd.,
SJR Towers, 3th & 4th Floor,
27, Bannerghatta Main Road,
3rd Phase, JP Nagar,
Beangaluru City-560078.

(R2 – By Sri.B.M.R Adv)

PARTIES ON IA NO.III

**Applicant/ Respondent No.2 : The Branch Manager,
ICICI Lombard General
Insurance Co Ltd.,**

V/s

Opponent/Petitioner : Sri.Mahesh.R.O

Provision under which the application is filed	Order 7 Rule 11 (d) R/w Sec.151 CPC and R/w Sec.166(3) MV Act
Relief sought for	Rejection of petition
The date on which the application is filed	03.11.2023
Number of the application	I.A.No.III
The date on which the objections are filed by different opponents	15.12.2023
The date on which the orders were passed on the said application	08.01.2024

(Smt.Ujwala Veeranna Siddannavar)
*II Addl.Senior Civil Judge
and MACT-V, Chitradurga.*

ORDER ON IA NO.III

When the case was set down await notice of respondent No.1, at that time respondent No.2 filed petition under Order 7 Rule 11 (d) R/w Sec.151 CPC and R/w Sec.166(3) of Motor Vehicle Act for dismissal of petition filed by petitioner.

2. In the memorandum of facts annexed to petition,

respondent No.2 company submitted that, alleged accident occurred on 29.11.2022 while the claim petition has been filed on 25.07.2023. There is an inordinate delay in filing the petition as per the limitation of M.V. Amended provision. As per the recent amendment to Motor Vehicles Act, 1988 Sec.166(3) contemplates that claim petition should be filed within six months. Hence the claim petition filed by petitioner is not maintainable in the eye of law. Therefore, pray for rejection of petition as prayed.

3. Petitioners counsel filed objection to the said petition denying the averments of the petition and submitted that petition is not maintainable in law and facts and belated one. After conducting the investigation the police have filed the charge sheet. Thereafter petitioner collected all the police papers and filed this claim petition before the court well within time and it is not delay. The petitioner is illiterate and not knowing the legal knowledge. Therefore pray for dismissal of petition.

4. Heard both counsel for petitioner and respondent No.2 and perused materials placed on record.

5. Upon hearing the arguments and on perusal of the materials placed on record, following points would arise for my consideration;

1. *Whether the petition needs to be rejected under O.7 R.11(d) R/w sec 151 of CPC, R/w.166(3) of Motor Vehicle Act?*
2. *What order?*

6. My findings to the above points are as under;

Point No.1 :- In the negative

Point No.2 :- As per order for the following;

REASONS

7. **POINT NO.1**:- Petitioner filed motor vehicle claim petition against respondents for the accident occurred on 29.12.2022 at about 9.30 a.m. As per the case of petitioner he met with an accident caused due to rash and negligent driving of Mahindra Pickup driver bearing No.MH-47/TC-117/349 and sustained injuries. He has spent some amount towards medical expenses. Hence he filed claim petition seeking compensation from respondent No.1/owner of the said offending vehicle and respondent No.2/insurance company wherein offending vehicle has been insured.

8. Respondent No.2 appeared through his counsel and filed petition for setting aside the exparte order passed against him and also this application for rejection of main petition on the ground

that it is barred by law limitation. As per Sec.166(3) Motor Vehicle Act no application filed for compensation shall be entertained unless it is made within 6 months from the occurrence of the accident.

9. In this regard Hon'ble High Court of Karnataka in ***W.P.No.201961/2023 Divisional Manager, United India Insurance Company Limited Versus Ramu @ Ramesh and others*** held that the petition U/Sec.166(3) of Motor Vehicle Act has to be read in-consonance with Sec.159, 160, 161 of MV Act. It is further held that as there is no particular time fixed for appearance of the claimants if details are not furnished by investigating officer, Sub-Section 3 of Sec.166 of Motor Vehicle Act would be rendered redundant by the methodology of carrying out the investigation and registering the claim petition. The Rules of 2022 has not been effected in entirety. The various stake holders are not having synchronous manner while dealing with the petition. Therefore the direction have been given to various stake holders in the said judgment by Hon'ble High Court of Karnataka and further held that the petition is maintainable and cannot be dismissed U/Sec.166(3) of Motor Vehicle Act.

10. In view of the said judgments the present petition is maintainable and cannot be rejected under Order 7 Rule 11(d) CPC at the threshold only on the ground that claim petition has been filed after lapse of six months. Further it is well settled principal of law that point of limitation is mixed question of law and fact, it cannot be decided at the initial stage without looking into the evidence adduced by both the parties. Hence on the ground urged by respondent No.2 the petition cannot be rejected. Respondent No.2 not made out sufficient grounds for rejecting the petition as claimed. Accordingly, I answer point no.1 in negative.

11. **POINT NO.2:** For the reasons stated above point No.1, I proceed to pass the following:-

ORDER

I.A. No.III filed by respondent No.2 under Order 7 Rule 11 (d) R/w Sec.151 CPC, R/w Sec.166(3) Motor Vehicle Act is hereby dismissed.

(Dictated to the Stenographer directly on computer, typed by her with my verification and then signed and pronounced by me in the Open Court dated this the 8th day of January, 2024)

**(Smt.Ujwala Veeranna Siddannavar),
II Addl.Sr.Civil Judge and JMFC
Chitradurga.**