

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

MACT-V, AT CHITRADURGA

DATED THIS THE 14th DAY OF AUGUST, 2024

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

MVC.87/2024

Petitioner : Nanditha T.L D/o Nagaraja,
Aged about 15 years,
Student,
R/o Oraganatar Malige Village,
Chitradurga Taluk.

The petitioner is minor
represented by next friend
mother by name
C.Lakshmid devi,
W/o P.K.Thippeswamy,
Aged about 41 years,
R/o Oraganatar Malige Village,
Chitradurga Taluk.

(By Sri.H.H, Advocate)

V/S

Respondents : 1.S.Pramod S/o J.B.Shivanna,
Owner of Omni car bearing,
Reg.No.KA-14/P-3035,
Sirigere village,
Chitradurga Taluk.

2. The Branch Manager,
IFFCO TOKIO General Insurance,Co.Ltd.,
Branch Office,
No.2nd floor,
Pradeep Arcade,
JCR Extension main road,
JCR Extension,Chitradurga Town.

(R1 – By Sri.G.B.S., Adv)

(R2 – By Sri.B.M.R., Adv)

PARTIES ON IA NO.I

Applicant/ Petitioner : Nanditha T.L D/o Nagaraja,

V/s

**Opponent/Respondent No.2 : The Branch Manager,
IFFCO TOKIO General
Insurance,Co.Ltd.,**

PARTIES ON IA NO.III

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

V/s

Opponent/Petitioner : Nanditha T.L D/o Nagaraja,

Provision under which the application is filed	U/Sec.5 of limitation Act and 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	30.07.2024
Number of the application	I.A.No.I and III
The date on which the objections are filed by different opponents	31.07.2024
The date on which the orders were passed on the said application	14.08.2024

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

ORDER ON IA NO.I AND III

The counsel for petitioner filed petition U/s.5 of Limitation Act for condonation of delay in filing the petition. The counsel for 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. For both the petitions objections are filed.

2. In the affidavit of petitioner it is submitted that, alleged accident occurred on 25.05.2023. In the accident he sustained grievous injuries for which she took treatment as inpatient for 20 days at Kushi Multispeciality Hospital, Chitradurga and undergone surgery. Thereafter she took follow up treatment. During the said period she is unable to contact counsel to give information to file claim petition. As such she has not filed the claim petition within time. There is a delay of 07 months in filing the claim petition and it is not intentional. Therefore, pray for condonation of delay in filing the claim petition.

3. To the said petition respondent No.2 filed objection contending that the petition is not maintainable in law. The petition is after thought and delay application has to be filed at

the time of filing petition, but petitioner not filed the said application. After lapse of six months the present petition is filed and it is barred by law of limitation. Hence pray for dismissal of the application.

4. In the memo of facts annexed to I.A.No.II, respondent No.2 company submitted that, alleged accident occurred on 26.05.2022 while the claim petition has been filed on 03.01.2024. There is a 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. Therefore, pray for rejection of the petition as prayed. No objection has been filed by the petitioner.

5. Petitioner counsel filed objection to the said petition denying the averments of the petition and submitted that petition is not maintainable either in law and facts. The petition filed by respondent No.2 is belated one at this stage. The petition is not comes under the Amendment Act because the accident date is 26.05.2023. Hence the petition itself is not maintainable. The respondent No.2 intentionally dragged the proceedings. Therefore

pray for dismissal of petition.

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

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

- 1. Whether the delay in filing petition needs to be condoned?*
- 2. 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?*
- 3. What order?*

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

Point No.1 :- In the affirmative

Point No.2 :- In the negative

Point No.3 :- As per order for the following;

REASONS

9. **POINT NO.1 and 2:-** Petitioner filed motor vehicle claim petition against respondents for the accident occurred on 26.05.2023 at about 04.30 p.m. As per the case of petitioner when petitioner and her father in law were traveling in a motor cycle at that time he met with an accident due to rash driving of Car driver

bearing No.KA-14/P-3035 and took treatment for the same and incurred huge medical expenses. Hence she filed claim petition seeking compensation from respondent No.1/owner of the said offending vehicle and respondent No.2/insurance company wherein the offending vehicle has been insured.

10. After service of summons respondent No.2 appeared through his counsel. Respondent No.2 filed this petition for rejection of the petition on the ground that it is barred by law of 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.

11. In the present case as alleged accident occurred on 26.05.2023 but the claim petition has been filed on 03.01.2024. Hence it is argued that petition is not maintainable. On the other hand petitioner counsel submitted that along with the petition filed U/s.166 of M.V.Act, application U/s.5 of Limitation Act also filed for condoning the delay. In the accident he sustained fracture and other bleeding injuries. After discharge from the hospital she took follow up treatment regularly. Within the

stipulated time she is unable to contact the counsel to inform about alleged accident. The delay is not intentional one, but it is a bonafide mistake, therefore the said delay may be condoned.

12. Admittedly accident occurred on 26.05.2023 and the petition has been filed before this court on 03.01.2024 after lapse of 07 months from the date of the alleged accident. Hence as per latest amendment to Motor Vehicles Rules, there is a delay in approaching this court for claiming compensation under Sec.166(3) of the Act.

13. In this regard it is useful to refer the judgment of Hon'ble High Court of Karnataka in **W.P.No.201961/2023 Divisional Manager, United India Insurance Company Limited Versus Ramu @ Ramesh and others** wherein Hon'ble High Court of Karnataka while deciding a similar matter on the same point under the petition U/Sec.166(3) of Motor Vehicle Act held that the said provision has to be read inconsonance 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.

14. In view of the said judgment the present petition is also 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 affirmative and point No.2 in negative.

15. **POINT NO.2:** For the reasons stated above point No.1,

I proceed to pass the following:-

ORDER

I.A.No.I filed by petitioner under Sec.5 of Limitation Act is hereby allowed.

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 14th day of August, 2024)

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