

IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC AT
HIRIYUR

Dated on this 9th day of July 2024

Present: SMT. SUJATHA SUVARNA B.,
B.Com., LL.B.,

Senior Civil Judge & JMFC,
Hiriyur
MVC No.918/2023

PETITIONER

: **1. Kenchamma**
D/o. Late. Narashimappa,
Aged about 35 years,

2. Dayamanna N.
S/o. Late. Narashimappa,
Aged about 40 years,

Both are R/o. A.K Colony,
Bidrakere village,
Hiriyur Taluk,
Chitradurga District.

[Rep. By Sri.B.G.S Advocate]

Vs

Respondent

: **1. Lakshmidevi,**
W/o. Siddappa,
Aged about 43 years,
R.C owner of the Honda Dio
Motorcycle
bearing No.KA.20.ET.6890,
R/o. Near Amarabharathi school,
Hebri, Hebri post,
Karkala taluk, Udupi district
Pin- 576112.

2. The Authorised manager,
Liberty general insurance

Com. Ltd, 21/15, the landmark, 4th
floor, near trinity metro, MG road,
richmond town,
Bengaluru- 56001.

Policy No.201250020319700241100000
Valid from 04.06.2019 to 03.06.2024

[R.2 Rep. By Sri.BMRC, Advocate]

RANK OF THE PARTIES ON I.A.NO.I

Applicant / Respondents : Lakshmidevi &
another

Vs.

Opponents/ Petitioners : The Kenchamma &
another

RANK OF THE PARTIES ON I.A.NO.II

Applicant /Petitioner : Kenchamma & another

Vs.

Opponents/ Respondents : Lakshmidevi & another

i	Provision under which the applications are filed	IA No.1-U/O 7 Rule 11(d) rw Sec.151of CPC IA No.2- section 5 of limitation Act.
ii	Relief sought for	IA No.1-Rejection of the claim application IA No.2-Condonation of the delay
iii	The date on which the	29.02.2024 &

	applications are filed	18.04.2024.
iv	Number of the application	2
v	The date on which the objections are filed by different opponent	18.04.2024 & 30.05.2024.

COMMON ORDERS ON I.A.NO. I & II

The respondent No.2 has filed I.A.No.I, under Order VII Rule 11(d) R/w Sec.151 of C.P.C., to dismiss the claim petition as barred by limitation.

2. In support of the application, the respondent No.2 has filed memo of facts and stated as follows:-

The accident occurred on 09.01.2023 and petitioner filed his petition on 16.09.2023 As per the amendment of motor vehicle Act 1988 the claim petition has to be filed within 6 month of the occurrence of the accident. The petitioner has filed the said petition after 6 month of the occurrence of the accident. Hence, the claim petition is itself barred by application. Hence, prayed to reject the petition.

3. The petitioners have filed objection to I.A.No.1 and stated as follows:

Due to the death of mother of the petitioner they were in deep sorrow and due to lack of legal knowledge and non availability of police record delay is caused in filing the petition. Hence prayed to condone the delay.

4. The petitioner has filed IA No.II U/Sec.5 of Limitation Act prays to condone 3 months 7 days delay for filing the claim petition and permit the prove their claim.

5. In support of the application the petitioner No.1 has filed affidavit and stated that, due to death of their mother they were in deep sorrow and due to lack of legal knowledge and non availability of police record delay is caused in filing the petition. Hence prayed to condone the delay.

6. The respondent No.2 has filed objections to I.A.No.2 and stated that, application filed by the petitioners is not maintainable either in law or on facts, the petitioners have not shown any sufficient reason regarding the delay to file this petition and not produced any documents with regarding to reason stated in the affidavit, and the application is highly belated, hence, prayed to dismiss the application.

7. Heard and perused the materials on record.
8. The points that would arise for consideration of this court are as follows:

1. Whether the petitioner made out sufficient ground to condone the delay as prayed in the IA No.2?
2. Whether the respondent No.2 has made out sufficient grounds to reject the petition as reasons mentioned in the application at this stage?
3. What order?

9. The findings of this court on the above points are:

- Point No.1 :- In the Affirmative
- Point No.2 :- In the Negative
- Point No.3 :- As per final order,
for the following,

REASONS

10. **POINT No.1 & 2:-** Since these two points are inter connected to each other as such they are taken together for common discussion to avoid repetition.

A perusal of available materials it appears that, the accident took place between the motorcycle and offending motorcycle on

09.01.2023 at 8.00 p.m. The claim petition was filed on 13.09.2023. As per provisions of Sec.166(3) of IMV Act a claim petition ought to have been filed within 6 months from the date of accident.

The decision reported in AIR 1999 Supreme Court 2630 is follows:

11. The law regarding condonation of delay is well settled. In the decision reported in (1998) 7 SCC 123 (N. Balakrishnan v. M. Krishnamurthy), it is observed as follows:-

*It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. **Length of delay is no matter, acceptability of the explanation is the only criterion.** Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, **delay of a very long range can be condoned as the explanation thereof is satisfactory.** Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional*

jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

12. Though there is little delay in presenting the petition for compensation by the petitioners, since they have explained the circumstances which compelled them to file petition after lapse of limitation period. It is well settled law that, the limitation is a mixed question of law and facts, since the petitioners have properly explained while the delay has caused. It is relevant to note here that, any person having lost a member of the family in the road traffic accident cannot be expected to rush to the court in time to claim the compensation.

13. At this juncture, I would like to rely on the judgment passed by the Hon'ble High Court of Karnataka, Kalaburgi Bench, in writ petition No.201961/2023 (MV) in between The Divisional Manager, United India Insurance Co. Ltd., Vs. Ramu @ Ramesh

and Others, wherein the Hon'ble High Court of Karnataka has pleased to observed as under:

“Section 5 of Limitation Act provides for condonation of delay wherever any claim petition, appeal, etc., are filed beyond the period of Limitation and provides discretion to the court to consider the reasons made out in any application filed under Section 5 of Limitation Act and if sufficient cause is made out to condone the delay. As aforesaid MV Act being a beneficial enactment Section 5 of Limitation Act being enacted to provide succor to persons who have come to Court late, but with a valid reason, Section 5 of the Limitation Act would also have to be considered beneficially and there being no bar under the MV Act for applying the principles under Section 5 of the Limitation Act. I am of the considered opinion that it cannot now be said that there is a blanket embargo under subsection (3) of Section 166 of the MV Act in entertaining a claim petition filed after the limitation period.”

Further, his Lordship has pleased to observed that:- “The MV Act being a beneficial Act, the

provision thereof had to be given beneficial meaning and effect. The benefit under the Act, cannot be taken away on a technical aspect that too of limitation, thus, Sec.5 of Limitation Act to the fact of situation, I do not find any infirmity thereof.”

14. Sec 166 is for the benefit of Victim. It came into force as a measure of social legislature. As reasons mentioned above this tribunal come to the conclusion that, it is fit case to condone the delay. As such in my opinion the delay is to be condoned which would to meet ends of justice. Hence, there is no valid ground to reject the claim petition though it has been filed after lapse of limitation period. Accordingly this Court is answered point No.1 in the Affirmative and point No.2 in Negative

15. Point No.3 :- In view of the findings on the above point, I proceed to pass the following;

ORDER

The I.A.No.1 filed by the respondent No.2
U/o.7 R. 11 R/w Sec.151 of CPC R/w Sec.166(3) of
IMV Act is rejected.

The I.A.No.2 filed by the petitioners U/Sec.5 of
Limitation Act is allowed and delay in filing claim
petition by them is condoned.

(Dictated directly to the steno, he typed on lap top, corrected by me and
then pronounced in the open court on this the 9th day of July 2024)

(SUJATHA SUVARNA. B)
Senior Civil Judge & JMFC,
Hiriyur.