

KACD410016682023



**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
AT: HOLALKERE.**

PRESENT: Sri. Saravanan .S.
B.B.M., LL.B.
Senior Civil Judge and JMFC,
Holalkere.

MVC No.1037/2023

Dated: 21st Day of March 2024

Petitioner/s: Sri. Harisha (By Sri.L.K.S, Adv.)	V/s.	Respondent/s: P. Papaiah & Another (R.1 by Sri B.N.T. Adv. R2 by Sri B.M.R Adv.)
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PARTIES TO IA NO.1

Applicant/s: The General Manager (Respondent No.2)	V/s.	Opponent/s: Sri. Harisha (Petitioner)
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PARTIES TO IA NO.2

Applicant/s: Sri. Harisha (Petitioner)	V/s.	Opponent/s: The General Manager (Respondent No.2)
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COMMON ORDER ON I.A.No.1 & 2

The I.A. No.1 filed by the respondent No.2 U/O 7 Rule 11(d) R/w Sec.151 of CPC and R/w Sec.166(3) of IMV, (Amended) Act, 2019

AND

The I.A.No.2 filed by the petitioner U/Sec.5 of the Limitation Act R/w Sec.151 of CPC.

2. In this case, petition filed U/Sec.166 of Indian Motor Vehicles (Amended) Act, 2019, by the petitioner herein, seeking compensation on account of the bodily injuries sustained in the alleged RTA, the petitioner has filed I.A.No.2 U/Sec.5 of the Limitation Act, praying to condone the delay in filing the above petition to proceed with the case.

3. On the other hand, the learned counsel appearing for the respondent No.2/Insurer has filed an I.A.No.1 U/o 7 Rule 11(d) R/w Sec.151 of CPC and also R/w Sec.166(3) of IMV Act, praying to dismiss the petition, since it is barred by limitation, for the reasons stated in the memo of facts.

4. In this case, the petition seeking compensation U/Sec.166 of IMV Act that has been filed before the Hon'ble MACT, at Chitradurga, that has been registered and later on made over to this AMACT, Holalkere for the disposal in accordance with law. At this stage, after having placed the

appearance by the respondents herein, the respondent No.2, who is the Insurance Company has filed the present I.A. U/o 7 Rule 11(d) of CPC and R/w Sec.166(3) of Indian Motor Vehicle's (Amended) Act, 2019, herein afterwards referred to as IMV Act, since the amendment brought about to the said Act 1988, to Sec.166 by inserting Sub-section 3 to the said provision, which bars the Court/Tribunal to entertain any such claim petition, if it is filed after lapse of 06 months of the occurrence of the accident. As such, when the provision itself says that no petition shall be entertained after 06 months of the occurrence of the accident, and hence, U/o 7 Rule 11(d) of CPC, which speaks about the rejection of plaint, which speaks that where suit appears from the plaint to be barred by law. Then, the plaint shall be rejected.

5. The petitioner has filed objection to the said application.

6. On the other hand, the petitioner has filed an application U/Sec.5 of the Limitation Act, praying to condone the delay caused in filing the petition after lapse of its limitation for the reasons stated in the memo of facts by the counsel for the petitioner herein, that the petitioner is also the injured. In the memo of facts, it has been mentioned that the delay which occurred was for the reason that after the occurrence of accident, he was under shock due to the

accidental injuries and also he was under treatment, so, the delay has been occurred and also to obtain the concerned documents from the concerned police and other authorities, the delay was occurred. It is also due to delay in filing of the charge sheet by the concerned police, which is also one of the reasons for delayed in filing of the claim petition before the Hon'ble Tribunal, therefore, he being a student and also do not know the legal process, who prayed to condone the delay to conduct the proceeding in the interest of justice and equity. It is also stated, that if it is not condoned, he will be put to untold hardship.

7. Per contra the respondent No.2 has not filed objection.

8. The following points will arise for my consideration:-

- 1) Whether the petition filed by the petitioner is barred by law, which is liable to be rejected U/o 7 Rule 11(d) of CPC, 1908?
- 2) Whether the petitioner has made out proper grounds to condone the delay caused in filing of the present claim petition U/s 166 of IMV Act?
- 3) What order?

9. I have heard the learned counsels appearing for the parties and also after perused the materials which are placed on record, my findings on the above points are:-

Point No.1 : In the Negative

Point No.2 : In the Affirmative

Point No.3 : As per my final order

for the following:

REASONS

10. **Point No.1 and 2**:- Both points are interlinked to each other, hence, in order to avoid repetition of facts, I have taken up both points together for common discussion.

11. On perusal of the case papers, the date of occurrence of accident is shown as 19-01-2023, the registration of petition is 08-11-2023, as such, there is delay of 03 months 20 days caused in filing of such petition, so that, as contemplated U/Sec.166(3) of IMV Act, 2019, even a day lapse in filing such petition, there is a bar to entertain such petition. However, the petition has been registered, and the application U/Sec.5 of Limitation Act, has been filed by the petitioner before this Tribunal to condone the delay to proceed further with the case, for the reason that the petitioner was under treatment and under shock due to accidental injuries and also to obtain the concerned documents from the concerned police and other authorities, to prefer this petition.

12. On the other hand, it is the only contention of the respondent No.2 insurer that since the petition has been filed after lapse of 06 months from the date of accident, the petition is barred by limitation, therefore, sought for rejection of plaint. Now, the question is whether the Tribunal can invoke Sec.5 of Limitation Act, so as to condone the delay to meet the ends of justice since the provision U/sec.166, 163-A and such other provision as contemplated under the IMV Act are benevolent provision, which are beneficial provisions, which are amended from time to time to provide benefit to any injured or to the legal representatives of a deceased.

13. The reading of **Section 166(3) of IMV Act, 2019**, which reads thus:-

“No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident. (4) The Claims Tribunal shall treat any report of accident forwarded to it under (section 159) as an application for compensation under this Act”

14. The plain reading of the provision of course, the Tribunal cannot entertain any such petition, if filed within 06 months from the date of accident, so that, it speak about the limitation in filing of such claim petition, but not barred by law. Even the Tribunal can frame issue on such point and can be

determined along with merits of the case as understood by the Tribunal. At the same time, the question whether Tribunal can invoke Sec.5 of Limitation Act to condone the delay in filing of such petition after lapse of 06 months of occurrence of accident, this question is concerned our own Hon'ble High Court of Karnataka has laid down the ratio recently in a reported case, in the Judgment rendered by his **Lordship Hon'ble Mr. Justice Suraj Govindaraj in W.P. No.201961/2023 (MV) on 21st July 2023** in the reportable judgment, it has been held that:-

26. "Irrespective of Rules of 2022, in terms of Section 159 of the MV Act, if the Investigating Officer has submitted the First Accident Report in terms of Section 159 of the MV Act, the same would have reached the Court for necessary action to be taken. It is on account of Investigating Officer not having sent the First Accident Report that the above situation has arisen.

27. As afore observed, the MV Act being a beneficial Act, the provisions 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, the Trial Court having applied Section 5 of the Limitation Act to

the fact situation, I do not find any infirmity thereof.

28. Learned High Court Government Pleader is directed to inform the above to the Director General of Police, Commissioner of Transport Department, Secretary Health Department, as also Secretary e-Governance Department.
29. Learned Additional Registrar (Judicial) of this Court is directed to forward a copy of this order to the Director General of Police, Commissioner of Transport Department, Secretary Health Department, as also Secretary e-Governance Department.
30. **In view of the above, I do not find any infirmity in the order passed by the III-Additional Senior Civil Judge and JMFC, Raichur in FR. MVC No.575/2022, as such, the Writ Petition stands dismissed.”**

15. After having gone through the materials placed on record, the reasons assigned by the petitioner herein, with respect to the delayed in filing of petition U/Sec.166 of IMV Act for claiming of benefit for the injuries sustained in the alleged Road Traffic Accident after lapse of 06 months from the date of alleged accident and the reasons shown in the memo of facts

are acceptable, since the injured would not get recover from the injuries some time within 06 months from the date of accident, which depends on the injuries, which he/she/they sustain in the Road Traffic Accident, it is also when a situation may arise that the police may file charge sheet after lapse of 06 months from the date of accident and the documents, which are necessarily required to be collected to file claim petition, it may not be available to the victims or to the legal representatives of the deceased person within 06 months from the date of accident, under such circumstances, the delay would be inevitable for him to file plain petition after lapse of 06 months from the date of accident.

16. Further more, in these region the police are not filing any FAR, IAR and DAR even after the claim tribunal to which, they are supposed to file such reports within the time stipulated under the Act, as per the ratio laid down by our own Hon'ble High Court of Karnataka (supra), there is no bar to entertain such petition if delay is properly explained by the petitioner in filing such claim petition, then as held by the Hon'ble High Court of Karnataka by invoking Section 5 of Limitation Act, this Tribunal can condone the delay in filing claim petition. Hence, the petitioner has made out ground to condone the delay of 03 months 20 days in filing the petition after date of accident. On the other hand, the respondent No.2 insurance company has not made out grounds to reject the

plaint U/o 7 Rule 11(d) of CPC and Section 166(3) of IMV Act, 2019. **Accordingly, I answer Point No.1 in the Negative and Point No.2 in the Affirmative.**

17. **Point No.3:-** In view of the above findings, I proceed to pass the following:

ORDER

The I.A.No.1 filed by the respondent No.2 U/O 7 Rule 11(d) R/w Sec.151 of CPC and R/w Sec.166(3) of IMV (Amended) Act, 2019, is hereby rejected.

The I.A.No.2 filed by the petitioner U/Sec.5 of Limitation Act, R/w Sec.151 of CPC, is hereby allowed.

Consequently, the delay of 03 months 20 days in filing of the claim petition is hereby condoned.

In view of the peculiar facts and circumstances of the case, no order as to costs.

(Dictated to the Stenographer directly on computer, typed by her corrected and pronounced by me in the Open Court on this 21st day of March 2024.)

**(SARAVANAN .S.)
SENIOR CIVIL JUDGE & AMACT.,
HOLALKERE.**