

COMMON ORDERS ON IA NO.3 AND 5

The counsel for the petitioner has filed IA No.5 under section 5 of Limitation Act prayed to condone the delay of preferring present petition by allowing the application in the interest of justice and equity.

2. The petitioner has filed affidavit accompanied to the application stating that she has filed this claim petition on account of death of her husband Mahesappa @ Maheswarappa in the road traffic accident. Further stated that, after her death of husband she is leaving in relative house the concerned police after registering the criminal case the investigation had take so much time to file the charge sheet. Hence, she unable to obtain the police documents to file the petition. Further stated that without the police documents it is difficult to file the claim petition she several times visited the police station and asked the police documents, but the concerned police postponed to file charge sheet against the accused by giving one or the other reasons. Hence, she has filed this claim petition after expiry of prescribed time. Further non filing of the claim petition within the time unintentional and bonafide one, if this application is allowed no hardship would be caused to the other side, if this application is not allowed she will be put great loss and irreparable legal injury. Hence, she prays to allow the application.

3. The respondent No.2 filed objection to this IA by denying the entire averments made in the application. It is further contented that as per Section 166(3) of M.V. Act amended act which is came into force from 01.04.2022 as per the said provision of the act, No application for

compensation shall be entertained unless it is made within six months of the occurrence of accident. Further contended that there is no any inclusionary provision so as to condone the delay if any in filing the claim petition as such the intention of the statute is clear and unambiguous that the claim petition must be filed within 6 months from the date of accident and no claim petition is maintainable if it is filed beyond statutory limitation. Further contended that the present claim petition filed on 28.04.2023 before this court for consideration whereas the accident alleged said to have happened on 15.07.2022 and therefore, it is undisputed fact that the said petition is being filed beyond 6 months as to seek compensation, which is an eventual abuse of the set process, procedure and contrary to the provisions of prevailing law and therefore lead to impediment for the respondent No.3 to protest this case effectively. The amendment to Motor Vehicle Act, 1988 wherein the amendment to Section 166(3) contemplates the limitation of 6(six) months, as to file claim petition before the courts. For the ready reference, the very Section 166(3) is produced before."No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident". Therefore, the applications must be entertained within period of six months from the date of amendment i.e., 01.04.2022. Therefore the petition is hit by Section 166(3) of Motor Vehicle (Amendment) Act-2019. Therefore this application is not maintainable in the eye of law. Further the Ministry of Road Transport and Highways has already notified those new amended provisions of the Motor Vehicles Act, which have taken its effect from 01.04.2022, vide extraordinary

gazette notification dated:25.02.2022, S.O.859(E), wherein the Central Government has notified that Sections 50 to 57 and 93 of the Motor Vehicles (Amendment Act) 2019 which are in concerns to third party insurance and filing of claims before Motor Accident Claims Tribunal. Further contended that the law of limitation may harshly affect a particular party but it has to be applied with all its vigour when the statute so prescribes and the court has no power to extend the period of limitation on equitable grounds. Hence, they prays to reject the application.

4. On the other hand the learned counsel for the respondent No.2 has filed IA No.3 under Order VII Rule 11(d) R/w Sec.151 of C.P.C. R/w Sec.166(3) of Motor Vehicles Act prayed to reject the petition as it is barred by limitation as the accident was occurred on 23.12.2021 and petition was filed on 07.07.2023 after laps of 568 days.

5. This application is accompanied with the sworn affidavit of the Manager Legal of the respondent No.2. In the affidavit he has stated that the present petition filed by the petitioner U/s 163 (a) of the MV Act for compensation on account of accidental injuries sustained to deceased Mr. Sanju that took place on 23.12.2021 in the alleged vehicular accident. The petitioner has made this respondent as a party to this case as alleged insurer of vehicle No KA-17/HF-4110 contending that the vehicle was allegedly insured with this respondent at the time of the alleged accident. As per the documents on record it is pertinent to note that the alleged accident has occurred on 23.12.2021, whereas the Motor Accident Claim petition has been filed on 07.07.2023 i.e., after 568 days from the date

of occurrence of alleged mishap. So there is an inordinate delay on the part of claimants in filling the claim petition and it has not been filed within time limit as specified under the provisions of the MV. Act. Hence, the claim of the applicant is barred by limitation. Further stated that, in view of the provisions of the MV Act 1988 (amended as in 2019) the section 166(3) has come into effect from 1st April by the Central Government as petitioner the notification passed on 25th February 2022. He stated that section 166(3) reads as, "No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident." Hence, the claim has been made at the belated stage i.e. after a period of 568 days from the date of the occurrences of the accident and hence it is not a surviving claim and is totally barred by limitation as per the amended provisions of the MV Act. Hence, liable to be dismissed in toto. At present there is not cause of action against this respondent Insurance Company and as such this respondent No.3 has been unnecessarily joined as a party to the present proceedings in the capacity of the insurer of the vehicle bearing No. KA-17/HF-4110 allegedly involved in the alleged accident dated 23.12.2021 but since the claim petition is filed after a delay of 568 days thus it is not tenable and maintainable. Hence, he prays to dismiss the claim petition.

6. The learned counsel for the petitioner has filed detail objection. In the objection it is contended that application filed by the respondent No.2 is not maintainable either in law or on fact. Further contended that the accident took place on 23.12.2021 and the claim

petition was filed on 07.07.2023 is admitted by this petitioner. In respect to this the petitioner filed this application U/sec.5 of limitation act before this court along with this claim petition. The respondent No.2 filed the objection to the main petition and he is not filed any objection to the application under Section 5 of Limitation Act filed by the petitioner. Further contended that in the accident the petitioner son and husband both are died. Hence, the petitioner was in shock and was in mental upset and she was in position to unable to collect the documents from the concerned police at the earlier stage meantime prior to filed this claim petition the petitioner several time asked to the concerned police to provide the documents. But due to non filing of the charge sheet they are not provided to the petitioner and she was also unable to contact his council within time. He further contended that the respondent No.2 by making false allegation against the petitioner filed the present application with an intention to harass to the petitioner. The petitioner filed this claim before the Hon'ble MACT, Tribunal the summary proceeding and strict rules of the CPC and limitation act not attract to this claim tribunal. The Karanataka High Court reiterated the Motor Vehicle Act being a beneficial legislation the provisions thereof have to be given beneficial meaning and effect. It held that benefit under the act cannot be taken away on technical aspect that too of limitation under Section 166(3) of the Act. Further the respondent No.2 Insurance company by admitting the insurance policy without the settling the claim of the third party victims with an intention to harass the petitioner filed the present application. Wherefore he prayed to dismiss

the application with heavy cost.

7. I have heard the arguments and perused the material placed on record.

8. The present petition is filed for claiming compensation on account of death of her husband in road traffic accident. Further her husband died in road traffic accident and hence she was started to live in her relative house. Further concerned police after registering the criminal case after the investigation taken the so much time to file charge sheet. Hence, within time she is unable to obtain police documents to file this claim petition. Hence, there is a delay.

9. At this juncture I would like to referred the decision of the Honble High Court of the Karnataka in the case of the Divisional Manager United India Insurance Co., V/s Ramu @ Ramesh S/o Yallappa and others, in WP No.201961/2023 dated 21.07.2020, wherein the Honble High Court at para No. 23, 26,27 and 30 held as under;

23. Thus, for all the above reasons also, I am unable to accept the submission of Sri. Mohd.Abdul Quayum, learned counsel for the petitioner-insurance company.

26. Irrespective of rules of 2022, in terms of Section 159 of the M.V.Act, if the investigating officer has submitted the first accidental report in terms of Section 159 of 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 accidental report that the above situation has arisen.

27. As afore observed, the M.V.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.

30. In view of the above, I do not find any infirmity in the order passed by the III Addl. Senior Civil Judge and JMFC, Raichur in F.R MVC No.575/2022, as such, the writ petition stands dismissed.

10. 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 an application filed under section 5 of Limitation Act and if sufficient cause is made out to condone the delay. As aforesaid M.V.Act being a beneficial enactment, Section 5 of the 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 M.V.Act for applying the principles under section 5 of Limitation Act.

11. Therefore, the Hon'ble High Court held that M.V.Act is beneficiary legislation, therefore the principles under section 5 of the limitation act has to be applied to the Section 166(3) of M.V.Act and delay is to be condoned. Therefore in view of the above principles the delay in filing the present petition is to be condoned, by considering the principles held in the above decision. Therefore, I am of the opinion that the delay is to be condoned. When the delay is to be condoned the question of rejection of petition does not arise on limitation, therefore IA No.3 filed by the

respondent No.2 under order VII Rule 11(d) R/w Section 151 of CPC R/w Section 166(3) of M.V.Act is to be dismissed. Hence, I proceed to pass the following:

:ORDER:

IA No.3 filed by the respondent No.2 under order VII Rule 11(d) R/w Section 151 of CPC R/w Section 166(3) of M.V.Act is hereby dismissed.

IA No.5 filed by the petitioner under section 5 of the Limitation Act is hereby allowed and thereby delay in filing petition is hereby condoned.

Hence, case is posted for issues.

Call on:10.09.2025.

Sd/-
(Soubhagya.B.Bhusher)
Sr.C.J & JMFC, Cng.