

COMMON ORDERS ON IA NO.1 AND 3

The counsel for the petitioner has filed IA No.1 under Section 5 of Limitation Act prayed to condone the delay of 1 months 10 days by 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 he has to file present petition within 6 month from the date of accident, but due to non availability of documents such as FIR, Charge Sheet and other documents, he could not able to filed this petition well in time. Hence, there is delay of 1 month 10 days. The delay is bonafide one and not intentional one. If the delay is not condoned he will be put to great hardship. On the other hand if this application is allowed no hardship will be cause to the other side. Hence, he prays to allow the application.

3. On the other hand, the respondent No.3 has filed objections, in the objection he has contented that the application filed by the petitioner is not maintainable either in law or on facts. As per Section 166(3) M.V. Act amended act which is came in to 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 6 months of the occurrence of accident. Further stated 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 with 6 months from the date of accident and no claim petition is maintainable if it is filed beyond statutory limitation. Further it is manifest that the present claim petition is filed on 26.07.2024 before this court for consideration, whereas the accident alleged said to

happened on 11.12.2023 and therefore, it is an undisputed fact that the said petition is being filed beyond 6 months as to seek compensation, which is an eventually abuse of the set process, procedure and contrary to the provisions of prevailing law and therefore lead to impediment for the respondent No.3 herein to protest this case effectively. That the recent amendment to Motor Vehicle Act, 1988 where in the amendment to Section 166(3) contemplates the limitation of 6 months, as to file claim petition before the court. 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 for the occurrence of accident”**. Therefore, the applications must be entertained within a period of 6 months from the date of amendment ie., 01.04.2022. Therefore, the petition is hit by Section 166(3) of Motor Vehicle (Amendment) Act-2019. Therefore, the limitation application not maintainable in the eye of law. Hence, he prays to reject the application.

4. On the other hand, the learned counsel for the respondent No.3 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 the accident occurred on 11.12.2023 and the petition filed on 26.07.2023 which is filed after lapse of 06 days from the date of alleged accident.

5. This application is accompanied with the sworn affidavit of Manager Legal of the respondent

No.3. In the affidavit it is stated that the petitioner has filed the present petition U/s 166 of the MV Act for compensation on account of accidental injuries sustained to the petitioner in the road traffic accident occurred on 11.12.2023. The petitioner has made this respondent as a party to this case as alleged insurer of vehicle No.KA-17/AA-5601 contending that the vehicle was allegedly insured with this respondent at the time of the alleged accident. Further the alleged accident has taken place on 11.12.02023 whereas the Motor Accident claim petition has been filed on 26.07.2024 after laps of 06 months form the date of occurrence of alleged mishap so it is submitted that there is an inordinate delay on the apart 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 petition filed by the petitioner is barred by limitation and therefore, it cannot be entertained and liable to be dismissed. Further stated that in view of the provisions of the MV Act 1988 (Amended as in 2019) the section 166(3) has come into force w.e.f 1st April 2022 by the Central Government as per the notification passed on 25th February 2022. Further 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”**. Since the claim petition has been filed at a belated stage i.e., after a period of 308 days from the date of the occurrence 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, the petition is liable to be dismissed. Further stated that there is no cause of action against this respondent Insurance Company and as such this respondent No.3 has been unnecessarily joined as party to the present proceedings in the capacity of the Insurer of the Vehicle bearing No.KA.17/AA-5601. Hence, he prays to reject the claim petition.

6. The learned counsel for the petitioner has filed detail objection to the said application. In the objection it is contended that the accident occurred on 11.12.2023 the petitioner filed petition on 10.06.2024. However, due to the delay caused by the investigating officer in submitting the final report in connection with the said accident and as the petitioner was undergoing continuous medical treatment and being unaware of the limitation period prescribed for filling the claim petition and informed the advocate belatedly. Consequently, the petitioner counsel has filed the present petition with some delay. Hence, he prays to reject the application.

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 injuries sustained by the petitioner in road traffic accident. The petitioner contended that he was took treatment as inpatient. Hence, he has unable to collect the documents and furnish information to his counsel to prepare petition

in time and thereby there is a delay.

9. At this juncture, I would like to referred the decision of the Hon'ble 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 condoned. When the delay is to be condoned the question of rejection of petition does not arise on limitation, therefore I.A No.2 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.3 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.1 filed by the petitioner under section 5 of the Limitation Act is hereby allowed and thereby delay in filing petition is hereby condoned.

No order as to costs.

Call on:

Sd/-
Sr. C.J & J.M.F.C,
Channagiri.