

COMMON ORDERS ON IA NO.1 AND 4

The counsel for the petitioner has filed IA No.1 under Section 5 of Limitation Act prayed to condone the delay of 650 days in filing the present.

2. The petitioner has filed affidavit accompanied to the application stating that they have filed this claim petition in respect of death of her husband in the road traffic accident. Further stated that the accident occurred on 28.11.2021 and a case was registered at Channagiri police station. They were unaware that a separate claim petition was required to seek compensation in relation to the accident. They had filed a criminal case regarding the death of the husband under the mistake belief that compensation would be awarded by the court in those proceedings. Further only recently upon consulting a lawyer they came to understand that a separate claim petition must be file to seek compensation as no such relief is granted in criminal proceedings. Accordingly the present petition has been filed there is a delay of 650 days in filing this petition which is prayed to be condoned. Hence, she 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 petitioners is not maintainable either under law or on facts, since the motor vehicle Act 1988 amended act does not permit to file application for delay condonation. Further stated that as per Sec. 166(3) MV Act amended Act which is came into force on 01.04.2022 and 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". Since there is no any inclusionary provision so as to condone the delay if any 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 it is manifest that the present claim petition is filed on 16.09.2023 before this court for consideration whereas the accident occurred on 28.11.2021 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 wherein the amendment to Sec.166(3) contemplates the limitation of 6 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 6 months of the occurrence of the accident." Further stated that the applications must be entertained within a period of 6 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 the limitation petition not maintainable in the eye of law. Further stated that 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 Section 50 to 57 and 93 of the Motor Vehicles (Amendment Act) 2019 which are in concerns to third party insurance and filling of claims before Motor Accident Claims Tribunal. Further stated that the law of

limitation may harshly affect a particular party but it has to be applied with its vigour when the statute so prescribes and that the court has no power to extend the period of limitation on equitable grounds and hardship caused to an individual cannot be a ground for not giving effective and grammatical meaning to every word of the provision if the language used therein is unequivocal. Without prejudice to above contention the petitioner filed delay condonation application after filing of claim petition and the delay condonation cannot be given retrospective effect to the date of filing claim petition as such the application filed after of delayed claim petition is not maintainable as such the application is liable to be dismissed. Hence, he prays to reject the application.

4. On the other hand, the learned counsel for the respondent No.3 has filed IA No.4 under Order VII Rule 11(d) R/w Section 151 of C.P.C R/w Section 166(3) of Motor Vehicles Act prayed to reject the petition as the said claim application is filed after 6 months from 01.04.2022 and from the date of occurrence of the accident as per the amendments notified to the motor accident claims.

5. This application is accompanied with the sworn affidavit of Manager Legal and Authorized Signatory of the respondent No.3. In the affidavit it is stated that the petitioners have filed the present petition U/s 166 of the MV.Act for compensation on account of injuries sustained in the road traffic accident occurred on 28.11.2021 and the said claim petition is filed on 16.09.2023 and therefore it is an undisputed fact that the said petition is being filed with an inordinate delay 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 herein protest this case effectively. That the recent amendment to motor vehicle Act 1988 wherein the amendment to Sec.166(3) contemplates that limitation of 6 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 6 months of the occurrence of the 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 Sec.166(3) of Motor Vehicle Act-2019. Therefore, the petition is not maintainable in the eye of law. 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 Section 50 to 57 and 93 of the Motor Vehicles (Amendment Act) 2019 which are concerns to third party insurance and filing of claims before the motor accident claims tribunal. Therefore the claim petition is itself barred by applicable provisions of the motor vehicle Act. 2019.the said claim application is filed after 6 months from 01.04.2022 and from the date of occurrence of the accident as per the amendments notified to the Motor Accident claims. Hence, he prays to reject the claim petition.

6. On the other hand, the learned counsel for the petitioners has filed detail objection to the said application. In the objection it is contended the application is not maintainable both in law and also on facts of this case and is liable to be rejected. The

petitioners at the time of filing of the petition itself filed an application under Sec.5 of the limitation Act praying this court to condone the delay in filing the petition and prays for permission to file the petition. Infact the petitioners have filed the affidavit along with the said IA. Wherein it was specifically sworn to the effect that the accident took place on 28.11.2021 and the criminal case was registered against the accused No.1 for offence under Sec.279, 304(a) IPC. Infact the husband of the petitioner No.1 died in the said accident and the petitioners are from rural area and as such the petitioners were under the impression that the compensation in lieu of death of the husband of the petitioner No.1 will be decided in criminal case itself and on that wrong notion the petitioners have not filed the petition for compensation in time. The petitioners on coming to know that the compensation will not be awarded in the criminal case and on consulting their advocate came to know that a separate petition has to be filed for the grant of compensation in lieu of the death of the husband of the petitioner No.1. At the time when the petitioners came to know this fact, already about 650 days time was elapsed and as such the petitioners have filed the petition by filing an application to permit them to file the same by condoning the delay. Therefore under the aforesaid bonafide reasons the delay was caused to the petitioners to file the present petition. The delay in filing the present petition will be not goes to the rout of denying the right of the petitioners in filing the petition claiming compensation. As such the cause of action survives infavour of the petitioners in filing the present petition for compensation. Therefore, the reason assigned by the respondent in the affidavit annexed to the IA No.4 are false, and as there are bonafide reasons in filing the

present petition beyond the prescribed limitation and thus, the claim made under IA is not sustainable under law and it is prayed to rejected 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 death in road traffic accident. The petitioners a criminal case was registered against the accused No.1. Infact the husband of the petitioner No.1 died in the said accident and the petitioners are from rural area and such they were under the impression that the compensation in lieu of death of the husband of the petitioner No.1 will be decided in the criminal case itself and on that wrong notion the petitioners have not filed the petition for compensation. Hence, she could not able to file this petition well 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 aforeobserved, 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 Ill 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.4 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 to be dismissed. Hence, I proceed to pass the following:

:ORDER:

IA No.4 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 petitioners under Section 5 of the Limitation Act is hereby allowed and thereby delay in filing petition is hereby condoned.

No order as to costs.

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