

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., HUBBALLI

Present:
Sri. RAGHAVENDRA.R.
B.A.L, L.L.B.
I Additional Senior Civil Judge and JMFC.,
Hubballi.

MVC No.597/2024

Dated this the 19th day of December, 2024

Plaintiff : Toufiqsha S/o Husainsha Makandar.
.Vs.
Defendant : Nabeesab S/o Gareebasab Makanadar
and another.

PARTIES TO I.A. NO.III

Applicant/s : Bajaj Allian General Insurance Co. Ltd.,
.Vs.

Opponent/s : Toufiqsha S/o Husainsha Makandar.

- i. Provision under which application is filed : Under Order 7 Rule (d) R/w Sec.151 of CPC R/w Sec.166(3) of M.V. Act.
- ii. Relief sought for : For rejection of plaint.
- iii. The date on which application is filed : 23.11.2024
- iv. Number of the application : III
- v. The date on which objections are filed by different opponents : 04.12.2024

vi. The date on which : 19.12.2024
orders were passed
on the said
application

ORDERS ON IA No.III

This order arises out of interlocutory application filed by the applicant/respondent No.2 under Order VII Rule 11 (d) read with section 151 of Civil Procedure Code read with section 166(3) of Motor Vehicle Act for rejection of plaint.

2. The brief facts of the affidavit annexed to application is that, the present petition is filed on 07.08.2024 against to the date of alleged accident viz 30.01.2024. The present petition is filed after lapse of statutory period of limitation to seek compensation. Therefore, the petition is hit by section 166(3) of Motor Vehicle Act(Amendment) 2019. Hence, the petition may kindly be rejected as petition is filed after six months from the date of occurrence of accident. Hence, prayed to dismiss the petition.

3. The Petitioner have resisted the application by filling counter to application. The petitioner has totally denied the averments of the affidavit annexed to application. Hence, the petitioner prayed to dismiss the application with costs.

4. I have heard the counsel for the parties and perused the materials on record.

5. The following points are for my consideration.

- Point No.1: Whether the respondent No.2 have made out a sufficient grounds to reject the

petition on the grounds urged in the application?

- Point No.2: For what order?

6. My findings to the above points are as under.

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

REASONS

7. **Point No.1**: The present petition is filed for compensation. Before discussion on the merits of the application, it is appears to Court it is necessary to reproduce Order VII rule 11 of Code of Civil Procedure for better understandings. Order VII rule 11 of Code of Civil Procedure reads as follows:- **“Rejection of Plaint.- The plaint shall be rejected in the following cases:-**

- (a) Where it does not disclose a cause of action;***
- (b) Where the relief claimed is under valued and the plaintiff, on being required by the Court to so correct the valuation within time to be fixed by the Court, fails to do so;***
- (c) Where the relief claimed is properly valued, but the pliant is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;***
- (d) Where the suit appears from the statement in the plaint to be barred by law;***
- (e) Where is is not filed in duplicate;***

(f) Where the plaintiff fails to comply with the provision of rule 9:

Provided that the time fixed by the Court of the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to plaintiff.

8. Before commencing discussion on merits of the application, it is relevant to note that recent decision of Hon'ble Supreme Court on rejection of plaint. The Hon'ble Supreme Court has held in decision of ¹ **CIVIL APPEAL NOS.5819-5822 OF 2021 dated 21.09.2021** that,

“20. It Could thus be seen that this Court has held that the power conferred on the Court to terminate a civil action is drastic one, and the conditions enumerated under Order VII Rule 11 of Code of Civil Procedure are required to be strictly adhered to. However, under order VII rule 11 of CPC, the duty is cast upon the Court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII rule 11 of CPC is that when a plaint does not

¹ Rajendra Bajoria and others V/s Hemant Kumar Jalan and others.

disclose a cause of action, the Court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.”

9. The Hon'ble Supreme Court has held in decision reported in ²**(2020) 7 SCC 366** that:

“ Cause of action - Meaning.—Court has to find whether plaint discloses real cause of action or illusory cause of action created by clever drafting. Court must be vigilant against camouflage or suppression and if suit found to be vexatious and an abuse of process of court, it should exercise its drastic power under Rule 11 to reject the plaint.”

10 The main object of rejection of plaint weeds out frivolous, vexatious and improper plaints at the very outset, thus, saving judicial time and resources. It is observed in the case of Azhar Hussain V Rajive Gandhi [1986 Supp SCC 315] that the entire purpose of conferment of such powers under order VII rule 11 of Civil Procedure Code is to ensure that a litigation, which is meaningless and bound to prove abortive is not permitted to occupy the time of the Courts, and exercise the mind of the respondent. Such remedy is necessary to put an end to the sham litigation, so further judicial time is not wasted.

11. It is the contention of the respondents counsel that, in view of subsection 3 of Sec.166 of Motor Vehicle Act, no claim petition can be entertained, unless it is made within six month of the occurrence of the accident. It is not in dispute that the present claim petition is filed after six months. The reasons referred to in the affidavit are believable. But whether this Tribunal has the power to condone the delay or not must be determined to dispose of the application.

12. Section 166 of Motor Vehicle Act provides for a claim of compensation to be made on account of either injury or death being caused due to motor vehicle accident. The above said provision is a beneficial provision which is contained in the motor vehicle act as amended from time to time to provide benefit to injured or to the LR's of deceased.

13. The Hon'ble High Court of Karnataka, Kalaburagi Bench has held in Writ Petition No.201961/2023 dated 21.07.2023 that ***"9. Section 5 of the Limitation Act provides for condonation of delay wherever any claim petition, appeal, etc., are filed beyond a period of limitation and proves 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 the Court late, but with a valid reason, Section 5 of Limitation Act would also have to be considered***

beneficially and there being no bar under Section the M.V.Act for applying the principles under Section 5 of Limitation Act, I am of the considered opinion that it can not now be said that there is a blanket embargo under Sub-Section 3 of Section 166 of M.V.Act in entertaining a claim petition filed after the limitation period.”

14. In view of the dictum of the Hon’ble High Court of Karnataka, in above referred writ petition and also the materials on record clearly discloses that sufficient cause has been established by the petitioner to condone the delay or in filing of the petition with delay. Right now the tribunal has not found any grounds to come to conclusion that, the petition is barred by law of limitation. Hence, I answer **point No.1 in the Negative.**

15. **Point No.2:** As per following;

ORDER

Interlocutory Application No.III filed by the respondent No.2 under Order VII Rule 11(d) read with Section 151 of Code of Civil Procedure and Section 166(3) of Motor Vehicle Act is hereby dismissed with Costs.

(Directly typed and computerized by me in laptop and corrected, signed and then pronounced by me in Open Court on this the **19th day of December, 2024**)

(Raghavendra. R)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.