

KAKB410000832023



**THE COURT OF THE SENIOR CIVIL JUDGE
& J.M.F.C., AT : CHINCHOLI**

Present : Smt.Jyoti.Shantappa.Kale

L.L.M.,

Senior Civil Judge & JMFC, Chincholi.

DATED : THIS THE 07th DAY OF APRIL - 2025

M.V.C.No.199/2023

Petitioner/s

Yadamma W/o Mahantesh & Others

V/s

Respondent/s:

Sharif miya S/o Shabbirmiyya & Another.

-: I.A.No.II :-

Applicant/s:

HDFC General Insurance Company Ltd.,

V/s.

Opponent/s:

Yadamma W/o Mahantesh & Others.

**Order On Interim Application No.II Filed By Respondent No.2
Under Order VII Rule 11 R/W Section 151 Of Civil Procedure
Code, 1908 And Section 166 (3) Of Motor Vehicle (Amendment)
Act 2019**

1. The respondent No.2 company has filed the interim application No.II under the provisions of Order VII Rule 11 R/W Section 151 Of Civil Procedure Code, 1908 And Section 166 (3) Of Motor Vehicle (Amendment) Act 2019 praying to reject the petition as time barred.

2. The application is accompanied with an affidavit sworn by the Assistant Manager of Respondent No.2 company stating that present claim petition is filed by the petitioners for the death in the accident dated: 26-05-2022 and claim petition is filed on 20-01-2023 The present petition is filed after inordinate delay of 58 days to seek compensation. As per the recent amendment to Motor Vehicle Act 1988 wherein the amendment to section 166 (3) contemplates the limitation of 6 months to file claim petition before the court. It is further stated that the petitioner has filed the present petition after 58 days from the date of accident and therefore the petition is not maintainable as it is barred by limitation. It is further stated that the Ministry of Road Transport and Highways have already notified the new amended provisions of Motor Vehicle Act which is taken effect from 01-04-2022 vide Gazette notification dated: 25-02-2022 wherein the Central Government has notified that Section 50 to 57 and 93 of the_Motor vehicle (Amendment) Act 2019 which are concerned to third party insurance. Therefore it is stated that the

claim petition is barred by provisions of Motor vehicle (Amendment) Act 2019 and on these grounds the respondent No.2 company prayed to allow the application and reject the claim petition of the petitioners.

3. On the contrary the petitioners filed objections to IA.No.II contending that the application is not maintainable. It is contended that the petitioner No.1 is illiterate lady and does not have knowledge regarding filing of the claim petition with 6 months. After the death of her husband the petitioner No.1 has undergone mental agony and was suffering from ill-health. It was unable for her to collect the documents and meet the advocate for filing the petition. The delay caused in filing the claim petition is not deliberate and not intentional. If the application is rejected no loss will be caused to the other side whereas if the application is allowed more irreparable loss will be caused to the petitioners. Hence with this contention the petitioners prayed to dismiss the petition filed by the respondent No.2.

4. Heard learned counsel for respondent No.2 and learned counsel for the petitioners on I.A.No.II. The points that arise for my consideration are:

1. Whether the claim petition instituted by the petitioners is liable to be rejected under the provisions of Order VII Rule 11 of Civil

Procedure Code, 1908 and as per provisions of Motor vehicle (Amendment) Act 2019 ?

2. What order?

5. My findings on the aforesaid points are as under;

Point No.1 : In the Negative

Point No.2 : As per final order for the following;

REASONS

6. Point No.1 :

a. The petitioners have filed this petition U/Sec: 166 of Motor Vehicle Act of 1989 seeking compensation for the death of Sri. Mahantesh in motor accident dated: 26-05-2022.

b. It is stated by the respondent No.2 company that present petition is time barred and not maintainable as per the amended provisions of U/Sec: 166 of Motor Vehicle amendment Act 2019.

c. *The provisions of Section 166 of Motor Vehicle amendment Act 2019 states as: No application for compensation shall be entertained unless it is made within six months of the occurrence of accident.*

d. As per the above said provisions the time limit of six months is mandatory for filing the claim petition from the date of accident. In the present case the petitioner has filed application

I.A.No.I U/Sec: 5 of Limitation Act for Condonation of delay of 58 days in filing the claim petition.

e. The records shows that the accident occurred on 26-05-2022 and as per the above said provisions the claim petition ought to have been filed within 26-11-2022 but the present claim petition is filed on 20-01-2023 and therefore there is delay in filing the claim petition. The petitioner has stated that after the death of her husband she had undergone mental agony and was suffering from ill health and therefore she was not able to collect the documents and file the claim petition within statutory period. The record further shows that accident occurred on 26-05-2022 complaint filed on 26-05-2022 and chargesheet is filed by the concerned police station to the court on 07-09-2022.

f. The learned counsel for the petitioner in support of their case relied upon the judgment in ***WP.No.201732/2024 clubbed with WP.No.201740/2024 and WP.No.201737/2024 dated: 01-10-2024 between New India Assurance Company Limited Kalaburagi V/s Sakkubai W/o Eshwar of Hon'ble High Court of Karnataka Kalaburagi Bench*** wherein it is held that the condonation of the delay granted by the claim tribunal is proper and correct and also the Order passed by the claims tribunal rejecting the application filed by

the insurance company U/o 7 Rule 11 R/w 151 and with Section 166 (3) of MV Act.

g. In view of the principles mentioned in the above decision, and looking to the reasons assigned by the petitioners for delay in filing the application is acceptable. No doubt there is delay of 58 days in preferring the petitioner but the reasons shown for the said delay appears to be genuine and the said reason is accepted by this court. The said delay is to be condoned to give an opportunity to the petitioners to putforth their case for final adjudication of rights of the parties. Hence the reason for the delay given by the petitioners is accepted. In the interest of justice and equity, opportunity is to be given to the petitioners to maintain their claim petition. The delay caused in filing the appeal can be condoned.

7. Therefore going through the entire petition averments, there are no sufficient materials to reject the petition as sought by the respondent No.2 in his application. Accordingly I answer point No.1 in the Negative.

8. Point No.2 : In view of my findings on above points, I proceed to pass the following ;

-:: ORDER ::-

The interim application No.II filed by the respondent No.2 under the provisions of Order

VII Rule 11 R/w Section 151 of Civil Procedure
Code, 1908 and Section 166 (3) of Motor vehicle
(Amendment) Act 2019 is hereby rejected.

(Dictated to Typist typed by her corrected by me, signed and pronounced by me in the
open court on 07th day of April- 2025)

(Smt. Jyoti Shantappa Kale)
Senior Civil Judge & JMFC.,
Chincholi.