

IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT SEDAM

PRESENT: SRI. SAGAR GURUGOUDA PATIL

B.A., LL.B.
Senior Civil Judge & JMFC., Sedam

DATED THIS THE 27th DAY OF JUNE-2024.

MVC No.852/2023.

Petitioner:

Vijaykumar

(Advocate for Petitioner by Sri..R.M.)

//V E R S U S//

Respondents:

Mohd.Areef and another

(Advocate for R.1 by Sri. H.L.A)
(Advocate for Resp.2 by Sri.B.S.K.)

ORDER ON No.3

HDFC-ERGO General Insurance Co. Ltd

Applicant/Resp.2

//Versus//

Vijaykumar

Opponent/petitioner.

Order on I.A.No-3 U/O 7 Rule 11 of CPC

The respondent No.2 has filed this application U/O 7 rule 11 of CPC and sought to reject the petition as barred by the law of limitation.

2. The learned counsel for the respondent has filed memo of facts in support of IA and contented that the claim

petition is not maintainable. It is barred by time as per the provision of Section 166(3) of Amended M.V.Act. The provisions of Section 5 of Limitation Act are not applicable to the said Amended Act. The accident occurred on 30.8.2022 and this petition was filed on 3.6.2023. There is inordinate delay of 95 days. The provisions of Section 166(3) of Amended M.V.Act contemplate that petition has to be filed within six months. This claim petition is barred by the law of limitation. Hence, prays to allow the IA.

3. The learned counsel for petitioner has submitted that at the time of filing of petition itself he has filed application U/s.5 of Limitation Act seeking to condone the delay. Hence, this application filed by the respondent No.2 does not survive for consideration. Hence, prays to dismiss the IA.

4. On the basis of the above rival contentions and on hearing both sides, the following points arise for my consideration.

- 1) Whether the respondent No.2 has made out grounds to reject the petition?
- 2) What order?

5. My findings on the above 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:-** The guardian of the petitioner has filed this petition U/s.166 of Motor Vehicles Act claiming compensation for the injuries sustained by the petitioner in the road traffic accident. The learned counsel for the respondent No.2 has argued that as per Sub-section (3) of Sec.166 of the M.V. Act, 2022 which came to be effect on 1.4.2022 the petitioner is required to file the petition within six months of the occurrence of the accident. But in this case the petitioner did not file this petition within six months. Hence prays to dismiss the petition as barred by the law of limitation. He has further argued that the provisions of Section 5 of Limitation Act cannot be attracted to condone the delay caused in filing the claim petition.

7. The learned counsel for the petitioner has argued that the Tribunal can condone the delay acting U/s.5 of Limitation Act. In support of his arguments he has relied on the decision of the Hon'ble High Court of Karnataka Kalaburagi Bench in the case of

the Divisional Manager, United India Insurance Co. Ltd., V/s Ramu @ Ramesh S/o Yallappa (WP No.201961/2023(MV)) DD dated 21.7.2023, wherein the Hon'ble High Court at para 27 of its judgment has held as under:

27. As afore observed, the MV 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 Limitation Act to the fact situation, I do not find any infirmity thereof.

8. In view of the above proposition of Law it becomes clear that the delay caused in filing the petition can be condoned acting U/s.5 of Limitation Act. In the case at hand the delay is only of 55 days which is meagre one. Moreover the delay is caused since the petitioner was under treatment. The same shows that the delay is caused due to a bonafide reasons and it is not intentional one. Therefore it is just and necessary to condone the delay caused in filing this petition. Accordingly this court while passing orders on IA No.1 has condoned the delay of 55 days caused in filing this petition. Since the delay is condoned this application does not survive for consideration. Hence I answer point No.1 in the Negative.

9. Point No.2:- In view of the finding on point No.1, I proceed to pass the following:

ORDER

I.A.No.3 filed by the respondent
No.2 U/O 7 Rule 11 of CPC is hereby
rejected.

(Dictated to the Stenographer directly and typed by him on computer, corrected, signed and then pronounced by me, in the open Court on this the **27th day of June-2024**)

(Sagar Gurugouda Patil)
Senior Civil Judge & JMFC,
Sedam.