

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:

1. Mohd. Areef and another

(Advocate for Resp.1 by H.LA.)
(Advocate for Resp.2 by B.S.K.)

ORDER ON No.1

Vijaykumar

Applicant/petitioner

//Versus//

Mohd.Areef & another Opponents/Respondents.

Order on I.A.No-1 U/s 5 of Limitation Act

The petitioner has filed this application U/s.5 of Limitation Act and sought to condone the delay of 55 days caused in filing this petition.

2. The guardian of the petitioner has sworn to an affidavit in support of IA No.1 and stated that the accident occurred on 30.8.2022 at Malkhed and in the said accident her son-petitioner sustained grievous injuries on the back side of his head. This minor guardian is only member to look after the petitioner. Therefore, she was unable to file the petition within time. The delay caused is not intentional one. Hence prays to allow the IA.

3. The learned counsel for the respondent No.2 has filed objections to IA and contented that the application is not maintainable in view of the provisions of Section 166(3) of Amended M.V.Act and provisions of Section 5 of Limitation are not applicable to the said Act. He has denied the entire contents of the affidavit filed in support of IA. The accident occurred on 30.8.2022 and this petition was filed on 3.6.2023 i.e., after inordinate delay of 95 days. As per the amended Act the petitioner is required to file the petition within six months from the date of accident. Therefore, this petition is barred by time. 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 petitioner has made out grounds to allow the IA.?
- 2) What order?

5. My findings on the above points are as under:

Point No:1 : In the Affirmative.

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 petitioner has filed this IA to condone the delay in filing this petition. 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 and his minor guardian was looking after him. The same shows that the delay is caused due to a bonafide reason and it is not intentional one. Therefore it is just and necessary to condone the delay caused in filing this petition. Hence I answer point No.1 in the Affirmative.

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

ORDER

I.A.No.1 filed by the petitioner U/s.5 of Limitation Act is hereby allowed.

The delay caused in filing this petition is hereby condoned.

(Dictated to the Stenographer directly 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.