

KAKP420019572023



**IN THE COURT OF THE ADDL. DISTRICT & SESSIONS
JUDGE, PRESIDING OFFICER, M.A.C.T, KOPPAL
(Sitting at Gangavathi).**

**Present : Sri.Sadananda Nagappa Naik,
BAL., LLB
Addl. District & Sessions Judge,
Koppal (Sitting at Gangavathi).**

Dated this the 15th Day of April 2024

M.V.C No.410/2023

Sridhar S/o.Virupanna, Age: 23 Years, Occ:
Cooking work in Iscan Temple at Ballari,
R/o.Chaluvadi Oni, Ward No.20, Gangavathi,
Dist: Koppal.

.....Petitioner.

(By Sri.R.S.Hiremath, Advocate)

-V/s-

1. Umar Farooq S/o.Basheer Ahamadh,
Age: 25 Years, Occ: Driver of Truck
bearing Reg.No.KA-32/2903, R/o.
Ward No.29, Belgal road, Ramanjaneya
Nagar, Ballari.
2. Ismail S/o.Kashim Sab, Age: 52 Years,
Occ: Owner of Truck bearing No.KA-32/
2903, R/o.Ward No.13, House No.71/1,
Bhommanal road, Ballari, Tq. & Dist:
Ballari.
3. The Regional Manager, Oriental
Insurance Company Ltd., Sumangala

Complex, 2nd Floor, 2966/1/HDMC,
Lamington road, Hubballi.

.....**Respondents.**

(R-3: By Sri.Bheem Rao, Advocate.)

ORDER ON I.A.Nos.1 & 2

The Petitioner has filed the Application in I.A.No.1 u/s.5 of the Limitation Act r/w.sec.151 of C.P.C praying to condone the delay in filing the Petition.

2. The Respondent No.3 has filed the Application in I.A.No.2 u/o.VII Rule 11 (d) r/w.sec.151 of C.P.C and u/s.166(3) of the Motor Vehicles (Amendment) Act, praying to reject the Claim Petition, as barred by law of limitation.

3. In support of the aforesaid I.A.No.1, the Petitioner has sworn to an Affidavit contending that he has sustained grievous injuries in the accident which has occurred on 20/11/2022 due to rash & negligent driving of the vehicle by Respondent No.1. Soon after the accident, he was under treatment and he could not collect the documents required for filing the above claim petition. Hence, he has prayed to allow the Application.

4. Per contract, the Respondent No.3 has filed objections to the aforesaid I.A.No.1 contending that, there is an inordinate delay in filing the Petition. The Petitioner ought to have file the Petition within 6 months from the date of the accident. As the accident was occurred on 20/11/2022 and the present Claim Petition is filed on 18/08/2023, the same is barred by law of limitation. Hence prayed to dismiss the I.A.No.1.

5. In support of I.A.No.2, the Assistant Manager of Respondent No.3 Company has sworn to an Affidavit stating that the present Petition is filed on 18/08/2023 after lapse of statutory period of six months from the date of occurrence of the accident occurred on 20/11/2022. As the Motor Vehicle (Amendment) Act, 2019 prescribed 6 months limitation for filing the Claim Petition, the same is barred by law of limitation.

6. Per contra, the learned counsel for the Petitioner has filed detailed objections to the aforesaid I.A.No.2 contending that, the I.A.No.2 filed by the Respondent No.3 is not maintainable. Soon after the accident, he was under

treatment and he could not collect the documents required for filing the above claim petition. Hence he prayed to dismiss the I.A.No.2.

7. Heard both learned counsels on I.A.Nos.1 & 2. Perused the entire materials on record.

8. Now the only point that arises for my consideration is;

1. *Whether the Applicant/Petitioner has made a ground to condone the delay in filing the Claim Petition?*
2. *Whether the Applicant/Respondent No.3 has made out sufficient grounds for rejecting the Claim Petition, as prayed in I.A.No.2?*
3. *What Order?*

9. My finding on the above Points are as under;

Point No.1 : In the Affirmative.

Point No.2 : In the Negative.

Point No.3 : As per final order for the following,

REASONS

10. **Point Nos.1 & 2:** As these two points are inter-related to each other in view of which in order to avoid repetition of facts, for the sake of convenience these two Points are taken up together for consideration under one common head.

Order VII Rule 11 empowers the court to reject the plaint/Petition in case the plaint does not disclose a cause of action, where the relief claimed is undervalued and in spite of time given by the court to correct the valuation within time, the plaintiff fails to do so and where the relief claimed is properly valued but the court fee actually paid is insufficient and the deficiency is not made good in time, in spite of time granted by the court or where the Suit is barred by law, if the plaint is not filed in duplicate or where the provisions of Order 7 Rule 9 have not been complied with.

11. While deciding an application under Order 7, Rule 11 it is not necessary to call for the written statement. It may be decided merely by going through the averments made in the plaint. Order VII, Rule 11 of the Code casts a duty on the Court to reject the plaint for non-disclosure of cause of action if the court comes to the conclusion that even if all the allegation set out in the plaint are proved, the plaintiff would not be entitled to any relief. In such case, the court can reject a plaint even without issuing summons to defendant. Irrespective of any objection taken by the

defendant, it is the duty of the Court to see if the plaint really discloses any cause of action or if the plaint is barred under the provisions of any law. Order 7 Rule 11(d) is one of the provisions that provides for rejection of plaint, if it is barred by any law. This being one of the exceptions must be strictly construed. The Court cannot be justified in rejecting a particular portion of the plaint. It can reject the entire plaint.

12. It is the duty of the Court to frame the issue regarding limitation and if it comes to the conclusion that the plaint is time barred, it must reject the plaint though limitation has not been set up as defence (sec.3 Limitation Act 1963). An application for rejecting the plaint can be filed at any stage of the proceeding. However, it should be done at the earliest.

13. Keeping these principles in mind, let be analyse that, whether the Petitioner has made out grounds to condone the delay or the Respondent No.3 is able to establish before the court that the claim petition is liable to be rejected as barred by law of limitation or otherwise.

14. In the present case, it is not in dispute between the parties that, the accident has occurred on 20/11/2022 and the present Claim Petition came to be filed on 18/08/2023. Therefore, there is a delay in filing the present Petition. It is contended by the Respondent No.3 that as per Sec.166(3) of the Motor Vehicles Act, which came into force from 01/04/2022, no application for compensation has to be entertained unless it is made within 6 months of the occurrence of the accident. Hence, it is contended that, as the present Petition is filed beyond 6 months time, the same has to be rejected.

15. Per contra, it is the contention of the Petitioner that soon after the accident, he was under treatment and he could not collect the documents required for filing the above claim petition and contact any Advocate for instructing him to file the Claim Petition. It is pertinent to note that, the Hon'ble Supreme Court of India in the case of the **Collector, Land Acquisition, Ananthanaga V/s.Katiji reported in AIR 1987 SC 1353** – it is held that, power to condone the delay has been conferred in order to enable the court to do

substantial justice to parties by disposing of the matters on merits. In the present case, on perusal of the documents filed along with the Petition, it is evident that the Petitioner has sustained severe injuries and he was under treatment. Therefore, the Petitioner has made out sufficient cause to condone the delay in filing the present Claim Petition.

16. It is also pertinent to note that the Hon'ble High Court of Karnataka in the case the **Divisional Manager, United India Insurance Co.Ltd., V/s. Ram @ Ramesh & another in W.P.No.201961/2023 (MV) dated 21/07/2023** – wherein the delay application u/s.5 of the Limitation Act was filed before the Tribunal, which came to be allowed and the Respondent had challenged the same before the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka has dismissed the Appeal challenging the condonation of limitation and observed that the Motor Vehicles Act is a beneficial Act, the benefit due to the injured cannot be taken away on technical grounds.

17. In the present case, it is not in dispute that the Petitioner has sustained the injuries in the accident and he was under treatment. As the Motor Vehicles Act is a beneficial Act, when the Petitioner had got injured in the accident and come before the Tribunal seeking compensation, his Petition should not be thrown out at threshold itself without adjudicating the rash and negligent act on the part of the driver of the offending vehicle and the compensation to be payable by the owner and Insurance Company of the offending vehicle. Therefore, the Petitioner has made out a ground to condone the delay in filing the Petition. On the other hand, the Respondent No.3 has not made out sufficient grounds for rejection of the claim Petition of the Petitioner. Hence, in the facts and circumstances of the case, I answer the above **Point No.1 in the Affirmative and Point No.2 in the Negative.**

18. **Point No.3 :** In view of my findings on Point No.1 in the Affirmative and Point No.2 in the Negative as above said, I proceed to pass the following,

ORDER

I.A.No.1 filed u/s.5 of the Limitation Act r/w. sec.151 of C.P.C by the Applicant/Petitioner is hereby allowed.

The delay in filing the Claim Petition is hereby condoned.

I.A.No.2 filed u/o.VII Rule 11 (d) r/w.sec.151 of C.P.C r/w.sec.166(3) of the Motor Vehicles (Amendment) Act, by the Applicant/Respondent No.3 is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, directly on Computer and corrected by me and then pronounced in the open court today, this 15th day of April 2024.)

(Sadananda Nagappa Naik)

Addl. District & Sessions Judge
and Presiding Officer, M.A.C.T.,
Koppal (Sitting at Gangavathi).