

KAMS080006752023



**BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL  
AT MYSURU**

**(IN THE COURT OF ADDITIONAL SMALL CAUSES  
AND SENIOR CIVIL JUDGE, AT MYSURU)**

**PRESENT**

**Smt. ZARIFA BANU A.R.**

**B.A.L., LL.M.**

**JUDGE, ADDITIONAL COURT OF SMALL CAUSES  
AS A PRESIDING OFFICER,  
MOTOR ACCIDENTS CLAIMS TRIBUNAL, MYSURU.**

**DATED THIS THE 6<sup>th</sup> DAY OF JULY 2024**

**MVC/458/2023**

Mahadevashetty

...

**Petitioner**

**-Versus-**

Topanayaka.M.C. and others

...

**Respondents**

**I.A.**

M/s Iffo Tokio General Insurance Company Ltd., : **Applicant/Respondent**  
: **No.3**

**-Versus-**

Mahadevashetty : **Opponent/Petitioner**

**ORDERS ON I A**

The learned counsel for the respondent No.3 filed this I.A under Order 7 Rule 11 (d) r/w Sec.151 of CPC r/w Sec.166(3) of MV Act for Rejection of petition for the reason mentioned in the memorandum of facts.

2. In the accompanying memorandum of facts the counsel for respondent No.3 has submitted that, the alleged accident occurred on 14.08.2022. The petition came to be filed on 07.03.2023. Hence, there is an inordinate delay in filing the petition. As per amended provision of MV Act the petitioner has to file petition within six months from the date of accident. As such, the petition is barred

by law of limitation. Hence, prays to reject the petition.

3. On the other hand, learned counsel for the petitioner filed his objection and contended that, the petitioner was under treatment as inpatient and he was unable to contact his counsel to give information to the petition within the stipulated time. If there is any delay in filing claim petition it is for the bonafide reason, not intentional. Hence prays to dismiss the application.

4. Heard arguments of both side. Perused material on record.

5. The points for consideration arises as follows:

1. Whether the respondent No.3 made out ground to reject the petition U/o 7 rule 11 (d) r/w

Sec.151 of CPC r/w Sec.166(3) of  
MV Act?

2. What order?

6. The answer to the above said points  
are as follows:

Point No.1 : In the Negative.

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

**REASONS**

7. **Point No.1:** The petitioner has filed  
this petition for the compensation for the  
injuries sustained by him in the road traffic  
accident. It is the contention of respondent  
No.3 that the alleged accident occurred on  
14.08.2022. The petition came to be filed on  
07.03.2023. As per amended provision of MV  
Act the petitioner has to file petition  
within six months from the date of accident.  
As such, the petition is barred by law of  
limitation. On the other hand, the petitioner  
contended that, the petitioner was under

treatment as inpatient he was not be able to contact his counsel and give necessary information to file the claim petition within the stipulated time. Admittedly, as per Sec.166(3) of MV Act the petition has to be filed within six months from the date of the accident.

8. However, as it is well settled principle of law that the petition can be rejected based on the averments of the petition, not on the defense taken by the respondent in its objection statement. More over the question of law of limitation is a question of mixed law and fact, and it can be decided with full fledged trial of both the parties. The test is as to whether the averments made in the petition are taken to be correct or not is a matter of trial. Thus on account of presumed defense taken by the respondent No.3, petition cannot be rejected. In this regard the Hon'ble supreme

court in Om Prakash Batis V/s Ranjith reported in 2008 ACJ 1700 (SC) it was held that *"the claim application filed under the Motor Vehicle Act is summary in nature and the provisions of the civil procedure code or Evidence Act are not strictly applicable to such proceedings, the tribunal must take care to see that the innocent victims should not suffer and the tribunal should not succumb to the niceties"*. As such in view of the law laid down in the aforesaid judgment, the tribunal should not have go in to the technicalities if found in the petition and documents produced by the petitioner. Hence with these observation this tribunal of the considered view that the respondent No.3 has not made out ground to reject the petition. **Hence, Point No.1 answered in the negative.**

**9. Point No.2:** In view of above said discussion in Point No.1, this court proceeds to pass the following:

**O R D E R**

IA filed by the respondent No.3 under Order 7 Rule 11 (d) r/w Sec.151 of CPC r/w Sec.166(3) of MV Act is hereby dismissed with cost of Rs.1000/-.

*(Dictated to the Stenographer directly on computer, typed by her, revised, corrected and then pronounced by me in the open Court, on this the 6<sup>th</sup> day of July, 2024)*

Sd/-  
**(ZARIFA BANU A.R.)**  
Judge, Addl. Court of  
Small Causes & MACT,  
MYSURU.