

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 6th DAY OF JULY 2024

MVC/458/2023

Mahadevashetty

...

Petitioner

-Versus-

Topanayaka and others

...

Respondents

I.A.

Mahadevashetty : **Applicants/petitioner**

-Versus-

Topanayaka and others : **Opponents/respondents**

ORDERS ON I A

The learned counsel for the petitioner filed this I.A under Sec.5 of Limitation Act r/w Sec.151 of CPC for the reason mentioned in the affidavit.

2. In the accompanying affidavit the petitioner submitted that the he has filed this petition seeking compensation for the injuries sustained by him in the road traffic accident occurred on 14.08.2022. He was under treatment as inpatient and he was not be able to contact his counsel and give necessary information to file the claim petition within the stipulated time. If the application is allowed no hardship or injury will be caused

to the other side. Hence, prays to allow the application.

3. On the other hand, the respondent No.2 company filed its objection and contended that, as per amended provision of MV Act the petitioner has to file petition within six months from the date of accident. The accident occurred on 14.08.2022 and the petition came to be filed on 07.03.2023. As such, there is an inordinate delay of 23 days. As such, the petition is barred by law of limitation. Hence, prays to reject the application.

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

5. The point for consideration arises as follows:

1. Whether the petitioner has made out ground to allow the application filed U/Sec.5 of

Limitation Act r/w Sec.151 of
CPC?

2. What order?

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

Point No.1 : In the Affirmative.

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

REASONS

7. **Point No.1:** The petitioner has filed
this petition seeking compensation for the
injuries sustained by him in the road traffic
accident. The petitioner submitted that due
to the accidental injuries sustained by him
he was under treatment as inpatient and he
was not be able to contact his counsel to
give necessary information to file the claim
petition within the stipulated time.

8. 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 petitioners have to file petition within six months from the date of accident. As such, the petition is barred by law of limitation.

9. Admittedly, as per Sec.166(3) of MV Act the petition has to be filed within six months from the date of the accident. In the case on hand, there is a delay of 23 days in filing the claim petition. In this regard, the Hon'ble Supreme Court in **Gohar Mohammed V/s Uttar Pradesh State Road Transport Corporation and others in SLP (C) No.32448/2018** held that,

"A report filed by the police to the concerned authorities including the stakeholders, insurance companies and jurisdictional MACT should be treated as the claim petition."

10. In the case on hand FIR came to be lodged on 17.08.2022 for the reasons stated in the FIS. Thus as per the aforesaid dictum of Hon'ble Supreme Court the FIR sent by the police to the tribunal the same should be treated as claim petition. When such being the case the question of limitation to file petition does not arise. Furthermore, in the aforesaid judgment the Hon'ble Apex Court held that,

"The issue of six months limitation will arise only in case where no FIR has been registered by the police and no report has been sent/uploaded."

11. The Hon'ble Supreme Court further held that,

"On registration of an FIR, a claimant is entitled to present the petition without the fear of it being thrown out, on the ground of limitation. This would be correct reading of the present legal dispensation in all case where FIR is registered within six months, of the date of any motor accident which takes place after 01.04.2022."

12. In the case on hand, FIR came to be registered on 17.08.2022, immediately after 03 days of the accident. Thus, the police have registered FIR within six months and which is well within the period of limitation.

13. Furthermore, the Hon'ble High Court of Kerala in **Akshay Raj V/s Ministry of Law and Justice Legislative Department represented by the secretary, New Delhi in OP (MAC) No.6/2023 dated 23.01.2023** held that,

"The provisions of the Limitation Act would be applicable for entertaining the petitions for claiming the compensation even beyond the period of six months. The limitation to entertain the claim petition cannot be restricted to six months as there is no provision in the Act excluding the applicability of provisions of Section 29(2) of the Limitation Act."

14. Thus, the ground for delay of 23 days as stated in the application is

satisfactorily explained. Thus, no prejudice will cause to the respondent No.3 if the delay of 23 days is to be condoned. **Hence, Point No.1 answered in the affirmative.**

15. 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 petitioners U/Sec.5 of Limitation Act r/w Sec.151 of CPC is hereby allowed.

By considering the nature of the petition no order as to cost.

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

Sd/-

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